Texas Register

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Texas Register

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

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

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

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

Texas Administrative Code

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

How to Cite: Under the TAC scheme, each agency section is designated by a TAC number. For example in the citation 1 TAC §27.15:

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

TAC stands for the Texas *Administrative Code;*

§27.15 is the section number of rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

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Proposed Sections

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

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

TITLE 1. ADMINISTRATION

Part V. State Purchasing and General Services Commission

Chapter 113. Central Purchasing Division

Purchasing

The State Purchasing and General Services Commission proposes amendments to §§113.2-113.6, 113.9-113.12, 113.14, 113.31, 113.73, 113.91, 113.93, 113.95, 113.99, and new sections 113.81, 113.83, 113.85, and 113.87, concerning purchasing procedures. Amendments to existing sections delete or modify definitions, administrative code provisions and agency titles that are obsolete due to current legislation or business practice and add a certified disadvantaged business enterprise preference to conform to §118, Article V, Senate Bill 222, 71st Legislature. Definitions are added to facilitate use of electronic data interchange within the purchasing system. The new sections provide for administration of the cooperative purchasing program in support of local governments.

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

Mr. Arnett also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be an efficient and effective central purchasing system which is capable of cost effective compliance with legislated responsibilities and of providing purchasing services to 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 John R. Neel, General Counsel, State Purchasing and General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from date of publication of the proposed sections in the *Texas Register*.

• 1 TAC §§113.2-113.6, 113.9-113.12, 113.14

The amendments are proposed under Texas Civil Statutes, Articles 3 and 13, Article 601b, which provides the State Purchasing and General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of Articles 3 and 13.

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

Blanket bond–A surety which may be provided by a bidder in lieu of a performance bond [or litigation bond] required by an individual advertisement. [A blanket litigation bond must be in the amount of $100,000, payable to the State of Texas.] A blanket performance bond shall be made payable to the State of Texas and be in an amount established by the commission based on a review of a bidder's annual level of participation in the state purchasing program. **Acceptable forms of surety are the same as are defined in performance bond.**

Electronic data interchange (EDI)–Exchange of business information electronically between business parties in a structured format, including, but not limited to, computer direct or indirect electronic information exchange, exchange of computer tapes and disks, and telefacsimile transmission.

Formal bid–A **written** bid **submitted** [requested to be forwarded] in a sealed envelope, in conformance with a prescribed format and to be opened at a specified time, or**, an EDI transmission subject to protection by the commission to prevent disclosure of bid contents to competitors prior to the specified bid opening time.**

[Litigation bond–A bond which may be required by specification for certain purchases and is due at the time the bid or proposal is submitted. The bond will be jointly payable to the requisitioning agency and the commission. Upon agency request, the attorney general will collect claims against the litigation bond when all the following conditions are met: the person is not awarded the contract; the person files suit against the state; the suit is decided against the person: and the judgement reflects a determination that the suit was frivolous, was brought in bad faith, was not brought upon reasonable grounds, or was not brought with a reasonable expectation of success. Acceptable forms of security are the same as is defined in performance bond.]

Request for proposal–A written request for an offer, by one party to another, of any terms and conditions with reference to some product, work, or undertaking to be acquired through a procedure using competitive sealed proposals/competitive negotiations.

Writing or written–Information that consists of letters, words, or numbers, recorded by handwriting, printing, or other form of data compilation. A writing may be an original of the writing itself or any counterpart intended to have the same effect by a person executing or issuing it, or a duplicate of the original which accurately reproduces the original.

Sealed bid–A bid which **is normally** [has been] submitted in a sealed envelope to prevent dissemination of its contents before the specified time and date set for bid opening. **A sealed bid may include bids submitted by electronic data interchange, which are afforded protection sufficient to prevent disclosure of contents to competitors prior to the time set for bid opening.**

§113.3. Requisition Processing.

(a) Purchases and rentals of equipment, are made by the State Purchasing and General Services Commission as a result of requisitions received from state agencies duly **authorized** [signed] and certifying to the availability of funds for the payment of goods and services received.

(1) Requisitions must be submitted **in a form** [on forms] prescribed by or approved by the commission.

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

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

(d) Processing proposed lease purchase arrangements.

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

(3) The commission's determination and certification of cost effectiveness for a proposed lease purchase arrangement as set out in existing law, will not be required if the acquisition covers computer or computer-related equipment which has been included in a long-range information system plan filed with the **Automated Information and Telecommunications Council (AITC) or successor agency** [Automated Information Systems

Advisory Council (AISAC)], and such plan has been approved by **AITC or successor agency** [AISAC]. The requisitioning agency shall furnish the commission a written statement affirming the applicability of this exception at the time of submitting its requisition.

(4)-(6) (No change.)

§113.4. Bid Lists, Conditions Applicable to Both Open Market and Contract.

(a) (No change.)

(b) Removal from bidders list.

(1) (No change.)

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

(3) (No change.)

(c) (No change.)

(d) Mistake in bidders list, effect of. Failure of the commission's **automated system or equipment** [addressing machine] to address a bid invitation envelope or label to a bidder, or utilization of an incorrect bidder's address, or failure of the post office to deliver a bid invitation to a bidder will not constitute cause for other bids received to be rejected and the requirements readvertised.

§113.5. Public Bid Opening and Tabulation, Conditions Applicable to Both Open Market and Contract.

(a)-(n) (No change.)

(o) A bidder submitting a bid to this commission, or to a state agency acting under delegated purchasing authority from the commission, shall by signature on the bid affirm that he has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted bid. **Signing** [Failure to sign to bid, or signing] **a bid** [it] with a false statement[,] shall void the submitted bid or any resulting contracts, and the bidder shall be removed from all bid lists at the commission or at any agency exercising delegated purchasing authority from the commission.

§113.6. Bid Evaluation and Award, Conditions Applicable to Both Open Market and Contract.

(a) (No change.)

(b) Award.

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

(4) In case of tie bids, except as provided in paragraph (3) of this subsection, quality and service being equal, **and for purposes of implementing §118, Article V, Senate Bill 222, 71st Legislature, preference will be given to disadvantaged business enterprises, certified as such by the Texas Department of Commerce, if the disadvantaged business enterprise has its home office in the State of Texas. The preference allowed under this paragraph will not be granted to any bidder otherwise entitled to preference, unless the preference is claimed by marking the appropriate box on the face of the invitation to bid. A preference may be granted to an entitled bidder who fails to check the appropriate box if documents or letters attached to the bid show the entitlement to a preference. If the tie continues after application of provisions of paragraph (3) of this subsection and a disadvantaged business preference set forth in this paragraph**, the award shall be made by drawing of lots.

§113.9. Term Contracts. Texas Civil Statutes, Article 601b, §3.10 and §3.11, authorize the commission to establish term contracts for the purchase and rental of items used in large quantities by several state agencies for delivery during a specified period of time and for estimated quantities only.

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

(3) Awards.

(A) The successful bidder will be notified of the acceptance of his bid by the commission's issuance of **a notice of award** [an award and acceptance notice]. [The bidder must sign and return to the commission one copy of the award and acceptance form with attachments.] **The successful bidder must review the notice of award and notify the State Purchasing and General Services Commission within 10 days of any error requiring correction.**

(B) (No change.)

(4) (No change.)

§113.10. Delegated Purchases.

(a) General delegation. Pursuant to the provisions of Texas Civil Statutes, Article 601b, §3.08, competitive bidding whether formal or informal is not required for purchases not in excess of $250. Purchases subject to Texas Civil Statutes, Article 6203c (required to be made from the Texas Department of **Criminal Justice** [Corrections], see also §113.11 of this title (relating to Texas Department of **Criminal Justice** [Corrections] Purchases) and Texas Civil Statutes, Article 601b, §3.23), as well as purchases of products and services of blind and severely disabled persons subject to the Human Resources Code, Texas Civil Statutes, Chapter 122 (see also §113.12 of this title (relating to Purchase of Blind-Made Goods and Services) and Texas Civil Statutes, Article 601b, §3.22), shall be made in accord with those statutes and will not be affected by this delegation. By authority granted under Texas Civil Statutes, Article 601b, §3.06, the commission has delegated purchasing functions in the following cases to agencies of the state. (Spot and emergency purchase rules will apply to all types of delegated purchases.)

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

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

(e) Acquisition of services. The commission has approved a delegation of purchasing functions connected with the acquisition of all services described in the Act, §3.01(b), and not excluded therein from commission responsibility. Purchases made under this authority must be obtained through competitive bids and documentation forwarded to the commission for approval. If an agency receives certification as described in paragraph (1) of this subsection, it need not send to the commission except when the acquisition of services either is made under proprietary specifications requiring written justification in accord with Texas Civil Statutes, Article 601b, §3.09, or is anticipated to be in an amount in excess of $25,000.

(1) Agency certification requirements.

(A) Eligibility for certification[,] **is** [in the implementation of these procedures, was determined on an 85% or better average compliance by an agency on its service transactions reviewed by the commission from April-September 1984. Subsequent eligibility will be] determined on at least a 90% or better average compliance for a continuous six-month period. Notification of eligibility for certification will be made by the executive director of the commission to the agency head.

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

(2) (No change.)

(f)-(l) (No change.)

§113.11. Texas Department of **Criminal Justice** [Corrections] Purchases.

(a) The commission is authorized by Texas Civil Statutes, Article 601b, §3.23, and Texas Civil Statutes, Article 6203c, to enter into contracts with the Texas Department of [Corrections] **Criminal Justice** for the purchase of supplies, materials, and/or equipment produced by the Department of [Corrections] **Criminal Justice** for use by other state

agencies. When such contracts have been negotiated, the state agencies will be so notified by the issuance of catalog pages listing the items approved for purchase. Orders for these supplies will be placed with the Department of [Corrections] Criminal Justice unless an agency submits written evidence acceptable to the commission that an item available from the Department of [Corrections] **Criminal Justice** will not adequately serve its needs. Items not listed in the Department of [Corrections] **Criminal Justice** catalog but available from the Department of [Corrections] **Criminal Justice** will be handled on an open market requisition basis.

§113.12. Purchase of Products [Blind-Made Goods] and Services ***Of Blind and Severely Disabled Persons.***

(a) Purchase of blind-made goods and services by state agencies is provided for in Texas Civil Statutes, Article 601b, §3.22. The commission is required by Human Resources Code, Chapter 93, to make state purchases of blind-made goods or services when such are offered for sale to state agencies and departments, as a result of efforts made by the Texas Committee on Purchases of **Products** [Blind-Made Goods] and Services **of Blind and Severely Disabled Persons** acting in accordance with legislation applicable to the committee.

(b) Preference for products of workshops, organizations, or corporations whose primary purpose is training and employing mentally retarded or physically handicapped persons is provided for in Texas Civil Statutes, Article 601b, §3.20. Such products shall be given preference if they meet state specifications as to quality, quantity, and price as determined by the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons acting in accordance with legislation applicable to the committee.

§113.14. Invoicing and Payment.

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

(e) [Effective July 1, 1986, a payment owed by a state agency based on a contract executed on or after July 1, 1986, must be mailed to the vendor not later than the 45th calendar day after the day on which the state agency received supplies, material, or equipment; or the day on which the performance of services was completed; or the day on which the state agency received the invoice for the supplies, material, equipment, or services; whichever is later.] Effective September 1, 1987, a payment owed by a state agency based on a contract executed on or after September 1, 1987, must be mailed to the vendor not later than the 30th calendar day after the day on which the state agency received supplies, material, or equipment; or the day on which the performance of services was completed; or the day on which the state agency received the invoice for the supplies, material, equipment, or services; whichever is later. Payments not timely mailed will accrue interest pursuant to the provisions of subsection (f) of this section. For purposes of this subsection, a payment is considered mailed on the date the payment to the vendor is postmarked or electronically transmitted to the vendor's financial institution.

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

(i) In recognition of the interest charges which will accrue pursuant to subsection (f) of this section, for payments not timely made pursuant to subsection (e) of this section, the following schedule for processing of invoices, vouchers, and warrants will prevail on and after **September 1, 1987** [July 1, 1986].

[(1) Effective July 1, 1986, for contracts executed on or after July 1, 1986, the originating state agency must have submitted the invoice and voucher to the commission no later than the 26th calendar day following the date the agency received the invoice from the vendor, or the date the agency received the supplies, material, or equipment, or the date on which the performance of services was completed, whichever is later. The commission must approve the voucher, and submit same to the state comptroller no later than the eighth calendar day following receipt of the invoice and voucher from the originating state agency. The state comptroller must submit the warrant to the originating state agency or mail the warrant to the vendor no later than the 11th calendar day following receipt of the voucher from the commission, or must have electronically transmitted the payment to the vendor's financial institution no later than the 11th calendar day following receipt of the voucher from the commission.]

(1)[(2)] Effective September 1, 1987, for contracts executed on or after September 1, 1987, the originating state agency must have submitted the invoice and voucher to the commission no later than the 11th calendar day following the date the agency received the invoice from the vendor, or the date the agency received the supplies, material, or equipment, or the date on which the performance of services was completed, whichever is later. The commission must approve the voucher and submit same to the state comptroller no later than the eighth calendar day following receipt of the invoice and voucher from the originating state agency. The state comptroller must submit the warrant to the originating state agency or mail the warrant to the vendor no later than the 11th calendar day following receipt of the voucher from the commission, or must have electronically transmitted the payment to the vendor's financial institution no later than the 11th calendar day following receipt of the voucher from the commission.

(2)[(3)] Processing of agency payments not required to be processed through the commission shall be in compliance with the procedures and schedules established by the state comptroller.

(j)-(l) (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-9005277 John R. Neel
General Counsel
State Purchasing and General Services Commission

Earliest possible date of adoption: July 6, 1990

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

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• 1 TAC §113.16

(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 State Purchasing and General Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The State Purchasing and General Services Commission proposes the repeal of §113.16, concerning embedded customer premise equipment after divestiture, January 1, 1984. Section 113.16 has expired in accordance with language contained therein, and has no further effect after December 31, 1985.

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

Mr. Arnett, 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 an efficient and efficient and effective central purchasing system which is capable of cost effective compliance with legislated responsibilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to John R. Neel, General Counsel, State Purchasing and General Services Commission P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from date of publication of the proposal in the *Texas Register*.

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

§113.16. Embedded Customer Premises Equipment After Divestiture January 1, 1984.

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-9005276 John R. Neel
General Counsel
State Purchasing and General Services Commission

Earliest possible date of adoption: July 6, 1990

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

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Specification

• 1 TAC §113.31

The amendment is proposed under Texas Civil Statutes, Articles 3 and 13, Article 601b, which provides the State Purchasing and General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of Articles 3 and 13.

§113.31. General. Pursuant to Texas Civil Statutes, Article 601b, §3.17, the State Purchasing and General Services Commission has established and maintains a program of developing standard specifications for materials, supplies, and equipment purchased by the State Purchasing and General Services Commission. Also pursuant to Texas Civil Statutes, Article 6203c, §9(a), the State Purchasing and General Services Commission has responsibility to develop or approve standard specifications for articles and products manufactured by the Texas Department of **Criminal Justice** [Corrections]. The responsibility for specification development has been delegated to the specifications section of the Central Purchasing Division.

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-9005278 John R. Neel
General Counsel
State Purchasing and General Services Commission

Earliest possible date of adoption: July 6, 1990

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

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Surplus Property Sales

• 1 TAC §113.73

The amendment is proposed under Texas Civil Statutes, Articles 3 and 13, Article 601b, which provides the State Purchasing and General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of Articles 3 and 13.

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

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

(e) Methods of disposing of surplus or salvage property. If no entity described in subsection (c) of this section desires to receive any property reported as surplus or salvage, the commission may dispose of the property by sealed bids or auction, or delegate to the state agency having possession of the property the authority to sell the property on a competitive bid basis. The commission will maintain a mailing list of companies or individuals who have indicated a desire to bid on surplus or salvage property and have made application. Names may be deleted from the mailing list for: failure to bid, failure to make payment on items on which they were the **successful** [successfully] bidder, or failure to renew mailing list application. The commission or the agency shall assess and collect from the purchaser a 2.5% fee over and above the proceeds from the sale of the property to recover the costs associated with the sale of the property.

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

(4) Unsigned bids. Any bid received which is not signed is not a valid bid and is **disqualified** [returned to the sender].

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-9005279 John R. Neel
General Counsel
State Purchasing and General Services Commission

Earliest possible date of adoption: July 6, 1990

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

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Cooperative Purchasing Program

• 1 TAC §§113.81, 113.83, 113.85, 113.87

The new sections are proposed under Texas Civil Statutes, Articles 3 and 13, Article 601b, which provides the State Purchasing and General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of Articles 3 and 13.

§113.81. General.

(a) Pursuant to Texas Civil Statutes, Article 601b, Article 3, the commission has instituted and maintains an effective and economical system for purchasing supplies, materials, services, and equipment for State of Texas agencies subject to biennium general appropriations acts.

(b) It shall be the policy of the commission to perform purchase services for local governments when the commission considers it feasible. The program to provide purchasing service for local governments shall be known as the Cooperative Purchasing Program and may include:

(1) the extension of state automated term contract prices to participating local governments;

(2) solicitation of bids on the open market for items desired by a local government; and

(3) provision of information and technical assistance to local governments about the purchasing program.

(c) The commission may charge a participating local government an amount not to exceed the costs incurred by the commission in providing purchasing services to the local government under this program.

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

Local government–A county, municipality, school district, special district, junior college district, or other legally constituted political subdivision of the state.

Cooperative purchasing program–A program to provide purchasing services to local governments.

Agent of record–An employee or official designated by a local government as the individual responsible to represent the local government in all matters relating to the program.

List of approved equipment–Items available for purchase under term contracts entered into by the commission that may be purchased through the commission by school districts pursuant to the Texas Education Code, §21.901.

Resolution–Document of legal intent adopted by the governing body of a local government that evidences the local government's participation in the cooperative purchasing program.

§113.85. Participation in Cooperative Purchasing.

(a) Local government participation in the cooperative purchasing program is voluntary. A local government may be enrolled in the program only after submission of a resolution. The resolution must specify which contracts the jurisdiction wishes to utilize, the agent of record, and be signed by the chairman of the governing body.

(b) Enrollment in the program will be in effect from the day of receipt by the commission of a complete resolution, until the end of the then current state fiscal year, or August 31.

(c) Renewal of enrollment shall be accomplished by annual adoption of a new resolution or sufficient evidence of intent to continue the program.

(d) Requests for purchase on the open market may be made in writing to the director for purchasing. The director for purchasing or his designee will determine the feasibility of accomplishing the purchase on a case-by-case basis, and will advise the local government of the determination within a reasonable period of time.

§113.87. Responsibilities of Local Governments.

(a) A local government participating in the cooperative purchasing program must:

(1) purchase all items that it requires from the term contracts identified in its resolution, unless an item on term contract does not meet the needs of the local government, or in event of an emergency;

(2) send contract requisitions to the commission for processing and forwarding to the contract vendor;

(3) pay the vendor under each contract directly; and

(4) be responsible for the vendor's compliance with all terms and conditions of performance under the contract.

(b) A local government that purchases an item from a state contract satisfies any state law requiring the local government to seek competitive bids for the purchase.

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-9005280 John R. Neel
General Counsel
State Purchasing and General Services Commission

Earliest possible date of adoption: July 6, 1990

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

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Competitive Cost Review

• 1 TAC §§113.91, 113.93, 113.95, 113.99

The amendments are proposed under Texas Civil Statutes, Articles 3 and 13, Article 601b, which provides the State Purchasing and General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of Articles 3 and 13.

§113.91. General.

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

(c) The state agencies subject to this program **shall be defined by statute** [are the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Services, the Texas Department of Corrections, the Central Education Agency, the Texas Higher Education Coordinating Board, and the Department of Agriculture].

[(d) Competitive cost reviews of state agency commercial activities will be conducted by August 31, 1991, as follows:

[(1) Texas Department of Mental Health and Mental Retardation–Laundry services and building, grounds, and vehicle maintenance services.

[(2) Texas Department of Human Services–Printing services and the claims processing services required for the vendor drug, long-term care, and dental components of the Early Periodic Screening, Diagnosis, and Treatment Program of the medical assistance program.

[(3) Texas Department of Corrections–Food services, building maintenance services, and transportation services.

[(4) Central Education Agency–One commercial activity identified by the Central Education Agency.

[(5) Texas Higher Education Coordinating Board–Commercial activities identified by the Texas Higher Education Coordinating Board pursuant to the provisions of section 113.95(a) of this title (relating to Competitive Cost Review).

[(6) Department of Agriculture–Warehouse and mail handling functions.]

(d)[(e)] The commission may request any information from a state agency that is reasonably necessary for the commission to fulfill its statutory responsibilities.

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

Management study–A state agency analysis of a commercial activity conducted by that agency that is made to determine the essential products and technical requirements of the activity, the necessary measurable quality and quantity of the activity, and the most efficient **in house** method of obtaining a required result [in house].

[State agency–The Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Services, and the Texas Department of Corrections.]

§113.95. State Agency Responsibilities.

(a) Each biennium, **participating** state agencies shall conduct competitive cost reviews of their identified commercial activities. **The commission will assist agencies in determining the reasonableness of assumptions used in defining the activities.** By November 1 of each year, **each** [the] state agency will identify all commercial activities performed by the agency and develop a schedule for analysis of the commercial activities identified. The schedule of analyses will be provided by December 1 of each year to the governing body of the state agency for approval. When the schedule is approved by the governing body, the state agency will conduct a management study of the agency functions specified in the schedule. The management study must be sufficiently comprehensive to enable development of cost estimates by a private sector provider and must contain, at a minimum, the following:

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

(b) The state agency shall estimate the total cost to perform each of the functions. The cost estimate shall be prepared in accordance with procedures and instructions contained in the **current edition of the** "Competitive Cost Review Cost Analysis Guide" published by the office of the state auditor. The agency in-house cost estimates shall be submitted to the state auditor for approval. The commission will not begin preparation of a cost comparison review prior to receipt of the state auditor's certification of the agency in-house cost estimate.

§113.99. State Purchasing and General Services Commission Responsibilities.

(a) In coordination with the state auditor's office, the commission will assist state agencies in defining their commercial activities, and provide input during the development of the management study.

(b)[(a)] The commission shall prepare a cost comparison review which will compare a commission-developed estimated cost to purchase the commercial activity from the private sector with the agency in-house cost estimate.

(c)[(b)] In developing its cost estimate to purchase the commercial activity, the commission may use market surveys, current bid data, state average costs, and comparable bid and contract data from federal, city, county, independent school district, or other public jurisdiction. The cost estimate shall include all costs

associated with the purchase, including the commission cost to conduct and administer the purchasing action.

(d)[(c)] The commission will determine, in its cost comparison review, whether the quality and quantity of the commercial activity that could be provided through purchase is at least equal to the quality and quantity of the commercial activity proposed in the state agency management study and in-house cost estimate. The commission shall use the agency management study as the basis for evaluating the quality and quantity study as the basis for evaluating the quality and quantity of the commercial activity required. Measures not contained in the management study will not be used in making this detemination.

(e)[(d)] Following consultation with the state agency and the state auditor, the commission shall determine whether the total state cost of providing the commercial activity exceeds the cost of purchasing the activity. This determination shall be set forth in the commission's cost comparison review. The cost comparison review shall be provided to the chairman of the goveming body and chief executive officer of the state agency, the govemor, the state auditor, and the comptroller of public accounts.

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-9005281 John R. Neel
General Counsel
State Purchasing and General Services Commission

Earliest possible date of adoption: July 6, 1990

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

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TITLE 16. ECONOMIC REGULATION

Part VI. Texas Motor Vehicle Commission

Chapter 107. Warranty Performance Obligations

• 16 TAC §107.8

The Texas Motor Vehicle Commission proposes an amendment to §107.8, concerning decisions made by the commission in lemon law complaints filed by lessees. Specifically, the amendment provides a method of calculating the purchase price of a leased vehicle and the reasonable allowance to be deducted therefrom when the commission enters a repurchase order in lemon law cases involving leased vehicles.

Russell Harding, executive director of the commission, 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 or small businesses as a result of enforcing or administering the section.

Pursuant to Senate Bill 612, Chapter 845, Mr. Harding has determined that for each year of the first five years the section is in effect, there will be no impact on local employment.

Mr. Harding also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the establishment and clarification of a fair and equitable method for calculating the repurchase price in lemon law cases involving leased vehicles, and establishment of a formula to calculate reasonable allowance for use in cases where the commission orders a repurchase of a leased vehicle under the lemon law.

The adoption of the section will enable the commission to provide consumers with important information in determining how the lemon law will apply to their complaint, and will result in the more expeditious processing and disposition of lemon law cases involving leased vehicles. 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 should be submitted in writing by July 9, 1990 to Russell Harding, Executive Director, Texas Motor Vehicle Commission, P.O. Box 2293, Austin, Texas 78768-2293.

The amendment is proposed under Texas Civil Statutes, Article 4413(36), §6. 07(e), which provide that the commission shall adopt rules for the enforcement and implementation of the Texas Motor Vehicle Commission Code, §6.07.

§107.8. Decisions. Any decisions by the commission and recommended decision by a hearing officer shall give effect to the presumptions provided in the Texas Motor Vehicle Commission Code, §6.07(d), where applicable.

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

(5) Where refund of the purchase price of a leased vehicle is ordered, the purchase price shall be allocated and paid to the lessee and the lessor, respectively as follows:

(A) The lessee shall receive the total of:

***(i)* all lease payments previously paid by him to the lessor under the terms of the lease; and**

***(ii)* all sums previously paid by him to the lessor in connection with entering into the lease agreement, including, but not limited to, any capitalized cost reduction, down payment, trade-in, or similar cost, plus sales tax, license and registration fees, and other applicable governmental fees.**

(B) The lessor shall receive the total of:

***(i)* the actual price paid by the lessor for the vehicle; plus**

***(ii)* an additional 5.0% of such purchase price;**

***(iii)* provided, however that a credit, reflecting all of the payments made by the lessee to the lessor, shall be deducted from the actual purchase price which the manufacturer is required to pay the lessor, as specified in (i) clause of this subparagraph.**

(C) When the commission orders a manufacturer to refund the purchase price in a lease vehicle transaction, the vehicle shall be returned to the manufacturer with clear title upon payment of the sums indicated in subparagraphs (A) and (B) of this paragraph. The lessor shall transfer title of the vehicle to the manufacturer, as necessary in order to effectuate the lessee's rights under this rule. In addition, the lease shall be terminated without any penalty to the lessee.

(D) Refunds shall be made to the lessee, lessor, and any lienholders as their interests may appear. The refund to the lessee under subparagraph (A) of this paragraph, shall be reduced by a reasonable allowance for the lessee's use of the vehicle. A reasonable allowance for use shall be computed according to the formula in current paragraph (4), of this section, using the sum of subparagraph (A)(i) and (ii) of this paragraph as the applicable purchase price.

(6)[(5)] In any award in favor of a complainant, the commission may require the dealer involved to reimburse the [complainant] **owner, lienholder, manufacturer, converter, or distributor** for the cost of any accessories, equipment, or extended service policies sold by the dealer and which were not included in the original price of the vehicle as delivered to the dealer by the manufacturer.

(7)[(6)] If it is found by the commission that a complainant's vehicle does not qualify for replacement or repurchase, then the commission shall enter an order dismissing the complaint insofar as relief under the lemon law is concemed. However, the commission may enter an order in any proceeding, where appropriate, requiring repair work to be perfomed or other action taken to obtain compliance with the manufacturer's [or] **, distributor's, or converter's** warranty obligations.

(8) (No change.)

(9)[(7)] The commission will issue a written order in each case in which a hearing is held and a copy of the order will

be sent to all parties.

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 30, 1990.

TRD-9005589 Russell Harding
Executive Director
Texas Motor Vehicle Commission

Proposed date of adoption: July 25, 1990

For further information, please call: (512) 476-3618

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Part VIII. Texas Racing Commission

Chapter 301. Definitions

• 16 TAC §301.1

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

The Texas Racing Commission proposes an amendment to §301.1, concerning definitions. The amendment amends the definitions of coupled entry, false start, foul, purse or overnight race, in today horse, jockey, minus pool, mutuel field, no race, and outstanding ticket.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that racing in Texas is consistent with racing in other pari-mutuel states. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules to administer the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005419 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Chapter 305. Licenses for Pari-Mutuel Racing

Subchapter B. Individual Licenses

General Provisions

• 16 TAC §305.37

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

The Texas Racing Commission proposes new §305.37, concerning restrictions on licensing. The new section describes the types of occupational licenses that the commission has determined are incompatible.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005421 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Specific Licensees

• 16 TAC §305.42

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

The Texas Racing Commission proposes an amendment to §305.42, concerning owners' licenses. The amendment clarifies that an owner must obtain an owner's license before his or her horse may start in a race.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is consistent with racing in other pari-mutuel states. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005423 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.43

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

The Texas Racing Commission proposes an amendment to §305.43, concerning lessees' licenses. The amendment clarifies the requirements for a lessee's license.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the participants in pari-mutuel racing in Texas are qualified and of the highest integrity. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005425 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.44

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

The Texas Racing Commission proposes an amendment to §305.44, concerning the licensing of trainers. The amendment includes a practical examination for licensure as a trainer, and clarifies the procedure for taking the written examination.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality and that greyhounds are trained in humane ways. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005427 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.45

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

The Texas Racing Commission proposes an amendment to §305.45, concerning authorized agents' licenses. The amendment clarifies the requirements for appointing and revoking the appointment of an authorized agent, as well as the term of such an appointment.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the participants in pari-mutuel racing in Texas are qualified and of the highest integrity. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005429 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §305.49

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

The Texas Racing Commission proposes new §305.49, concerning emergency licenses. The new section establishes a procedure for obtaining an emergency owner's license if the owner is unavailable.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter 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 new section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses as a result of enforcing the new 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005431 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Subchapter C. Racetrack Licenses

General Provisions

• 16 TAC §305.63

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the amendment it adopts on an emergency basis in this issue. The text of the amendment is in the Emergency Rules

section of this issue.)

The Texas Racing Commission proposes an amendment to §305.63, concerning license certificates. The amendment clarifies the deadline for the commission to issue a license certificate, as well as the information to be included on the certificate.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the issuance of racetrack licenses is in accordance with state law. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005433 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Chapter 307. Practice and Procedure

Subchapter C. Proceedings by Stewards and Racing Judges

General Provisions

• 16 TAC §307.201

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

The Texas Racing Commission proposes an amendment to §307.201, concerning the authority of stewards and racing judges. The amendment clarifies the stewards' and judges' authority to refer any matter to the commission.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the highest integrity. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005435 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §307.206

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

The Texas Racing Commission proposes an amendment to §307.206, concerning the effect of rulings against an individual licensee. The amendment clarifies that rulings against an individual licensee apply to another person if the person is liable for the conduct of the licensee or the person benefited from the licensee's conduct.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the highest integrity. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005437 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §307.207

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

The Texas Racing Commission proposes an amendment to §307.207, concerning commission action on stewards' and judges' rulings. The amendment removes the 60-day deadline for the commission to increase a penalty imposed by the stewards or judges.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the highest quality and integrity. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

adopt.

Issued in Austin, Texas on May 22, 1990.

TRD-9005439 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §307.208

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

The Texas Racing Commission proposes an amendment to §307.208, concerning reciprocity for stewards and judges rulings. The amendment clarifies that the stewards and judges honor the rulings issued by other pari-mutuel racing commissions.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the highest integrity. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005441 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Objections and Protests

• 16 TAC §307.221

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the amendmentit adopts on an emergency basis in this issue. The text of the amendment is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §307.221, concerning inquiries and investigations. The amendment clarifies the circumstances under which stewards and racing judges shall conduct inquiries.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the highest integrity. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005443 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §307.222

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

The Texas Racing Commission proposes an amendment to §307.222, concerning objections and entry. The amendment clarifies the procedure for objecting to the entry of a race animal.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality and highest integrity. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005445 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Chapter 309. Operation of Racetracks

Subchapter A. General Provisions

Facilities and Equipment

• 16 TAC §309.18

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

The Texas Racing Commission proposes an amendment to §309.18, concerning first aid. The amendment authorizes a licensed racetrack to provide a licensed vocational nurse, in lieu of a registered nurse.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is safe for the patrons. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005447 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §309.25

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

The Texas Racing Commission proposes an amendment to §309.25, concerning external communication. The amendment clarifies the procedures for limiting external communication during racing hours.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the highest integrity. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005449 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §309.26

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

The Texas Racing Commission proposes an amendment to §309.26, concerning the internal communication system. The amendment authorizes the use of hand held radios in certain circumstances in lieu of an internal communication system.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the highest integrity. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005451 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §309.34

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

The Texas Racing Commission proposes an amendment to §309.34, concerning breathalyzer machines. The new section requires an association to provide a breathalyzer machine.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. Ms. Carter also has determined that for each year of the first five years the section is in effect there will be fiscal implications for small businesses. The cost of the breathalyzer machine is anticipated to be approximately $500-600.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the highest integrity. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005453 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Subchapter A. General Provisions

Operations

• 16 TAC §309.53

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

The Texas Racing Commission proposes an amendment to §309.53, concerning records. The amendment clarifies the type of financial records the commision may require an association to submit.

Paula Cochran Carter, general counsel for

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

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005455 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §309.55

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

The Texas Racing Commission proposes an amendment to §309.55, concerning the stable or kennel area at a racetrack. The amendment clarifies the security service an association shall provide in the stable or kennel area.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005457 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Subchapter A. General Provisions

Operations

• 16 TAC §309.61

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

The Texas Racing Commission proposes an amendment to §309.61, concerning vendors. The amendment pertains to vendors of food, animal feed, medication, or equipment in the stable or kennel area.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005459 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Subchapter B. Horse Racetracks

Racetracks

• 16 TAC §309.115

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

The Texas Racing Commission proposes an amendment to §309.115, concerning starting gates. The amendment requires an association to make at least one starting gate and qualified starting gate personnel available for schooling as often as necessary to accommodate the number of horses requiring schooling from the gate.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005461 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Racetracks

• 16 TAC §309.116

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the amendment it adopts on an emergency basis in this issue. The text of the amendmentn is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §309.116, concerning the distance markers. The amendment describes the starting point markers and distance poles requirements of a horse racetrack.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005463 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Operations

• 16 TAC §309.198

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

The Texas Racing Commission proposes an amendment to §309.198, concerning the official program. The amendment clarifies what information the official program must contain each race day.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005465 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §309.199

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

The Texas Racing Commission proposes an amendment to §309.199, concerning the horsemen's bookkeeper. The amendment clarifies the duties of the horsemen's bookkeeper and the stewards regarding the purse money dispursement.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the highest integrity. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005467 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §309.359

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

The Texas Racing Commission proposes an amendment to §309.359, concerning live lures. The amendment restricts the ability of greyhounds to race if the greyhound was trained in a state that does not prohibit the use of live lures.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality and that greyhounds are trained in humane ways. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

adopt.

Issued in Austin, Texas on May 22, 1990.

TRD-9005469 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Chapter 311. Conduct and Duties of Individual Licensees

Subchapter A. General Provisions

• 16 TAC §311.4

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

The Texas Racing Commission proposes an amendment to §311.4, concerning bribes. The amendment prohibits a licensee to offer, give, solicit, or accept a bribe to purchase or cash a mutuel ticket for another person.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005299 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §311.5

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

The Texas Racing Commission proposes an amendment to §311.5, concerning wagering. The amendment clarifies which licensees are prohibited from wagering in the State of Texas during the term of their license.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005301 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §311.10

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

The Texas Racing Commission proposes an amendment to §311.10, concerning conduct. The amendment states that a licensee may not use offensive, obsecene, or threatening language or gestures to a racetrack or association official, representatives of the racing commission, or to another licensee.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005303 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Subchapter B. Specific Licensees

General Provisions

• 16 TAC §311.103

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

The Texas Racing Commission proposes an amendment to §311.103, concerning an illness report by a trainer. The amendment states that a trainer or kennel owner shall immediately notify the commission veterinarian or designee of unusual symptoms in a horse or greyhound that is in the care and custody of the trainer or kennel owner.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005307 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §311.106

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

The Texas Racing Commission proposes an amendment to §311.106, concerning stable or kennel names. The amendment clarifies stable or kennel name registration.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005309 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Licensees for Horse Racing

• 16 TAC §311.151

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

The Texas Racing Commission proposes an amendment to §311.151, concerning change of trainer. The amendment clarifies the procedure for changing a trainer.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality and that greyhounds are trained in humane ways. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005311 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Subchapter B. Specific Licensees

Licensees for Horse Racing

• 16 TAC §311.152

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

The Texas Racing Commission proposes an amendment to §311.152, concerning trainer employees. The amendment clarifies the duties of a trainer regarding the submission of a current list of employees.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality and that greyhounds are trained in humane ways. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005313 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §311.154

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

The Texas Racing Commission proposes an amendment to §311.154, concerning suspended trainers. The amendment clarifies the prohibition against certain relatives assuming the responsibilities of a suspended trainer.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality and that greyhounds are trained in humane ways. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005315 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §311.155

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

The Texas Racing Commission proposes an amendment to §311.155, concerning reporting to the clocker. The amendment clarifies the persons who may report training information to the morning clocker.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality and that greyhounds are trained in humane ways. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005317 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §311.156

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

The Texas Racing Commission proposes an amendment to §311.156, concerning jockeys. The amendment removes the prohibition against someone paying a fine on behalf of a jockey.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality and that greyhounds are trained in humane ways. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005319 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §311.157

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

The Texas Racing Commission proposes new §311.157, concerning absent trainers. The new section clarifies the duties of a trainer regarding the appointment of a substitute if the trainer must be absent from the association grounds.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality and that greyhounds are trained in humane ways. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005321 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §311.158

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new section it adopts on an

emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes new §311.158, concerning restrictions on racing. The new section prohibits an owner or trainer from entering a horse in a race if the owner or trainer is a part owner of the racetrack or is involved in the sale of tip sheets at the racetrack.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005323 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Subchapter C. Alcohol and Drug Testing

Alcohol

• 16 TAC §311.221

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

The Texas Racing Commission proposes an amendment to §311.221, concerning prohibited conduct. The amendment prohibits a licensee to be under the influence of an alcoholic beverage while the licensee is engaged in the performance of the licensee's duties.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality and that greyhounds are trained in humane ways. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005325 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Chapter 313. Officials and Rules of Horse Races

Subchapter A. Officials

General Provisions

• 16 TAC §313.1

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

The Texas Racing Commission proposes an amendment to §313.1, concerning racetrack and association officials. The amendment clarifies which racetrack and association officials must be present at horse race meetings.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula JCochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005380 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §313.6

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

The Texas Racing Commission proposes an amendment to §313.6, concerning approval of compensation. The amendment removes the horse identifier from the list of officials for whom the commission will set the compensation.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005382 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Duties of Stewards

• 16 TAC §313.21

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

The Texas Racing Commission proposes an amendment to §313.21, concerning eligibility of appointment. The amendment clarifies the requirements for eligibility to serve as a steward.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005386 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §313.22

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

The Texas Racing Commission proposes an amendment to §313.22, concerning general duties. The amendment removes the requirement that a steward be present in the paddock for saddling.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005388 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §313.24

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

The Texas Racing Commission proposes an amendment to §313.24, concerning records and reports. The amendment clarifies the duties of the stewards regarding the keeping of records and reports on their activities.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005390 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §313.25

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

The Texas Racing Commission proposes an amendment to §313.25, concerning the steward's list. The amendment clarifies the procedure for removing a horse from the steward's list.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005392 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §313.45

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

The Texas Racing Commission proposes an amendment to §313.45, concerning the clerk of scales. The amendment clarifies the duties of the clerk of scales.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005394 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §313.50

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

The Texas Racing Commission proposes an amendment to §313.50, concerning the horse identifier. The amendment clarifies the method used by the identifier to identify horses.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005396 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Duties of Other Officials

• 16 TAC §313.56

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

The Texas Racing Commission proposes an amendment to §313.56, concerning the stable superintendent. The amendment changes the person to whom the stable superintendent must deliver health certificates.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005398 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Subchapter B. Entries, Declarations, and Allowances

Entries

• 16 TAC §313.101

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

The Texas Racing Commission proposes an amendment to §313.101, concerning entry procedure. The amendment clarifies the persons who may sign an entry form.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005400 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §313.103

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

The Texas Racing Commission proposes an amendment to §313.103, concerning eligibility requirements for entry. The amendment clarifies the eligibility requirements for entry in a stakes race.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005402 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Subchapter B. Entries, Declarations, and Allowances

Entries

• 16 TAC §313.107

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

The Texas Racing Commission proposes an amendment to §313.107, concerning the draw for post position. The amendment expands the types of people who may be designated to draw the post positions.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005404 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §313.108

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

The Texas Racing Commission proposes an amendment to §313.108, concerning the preferred list. The amendment clarifies the duties of the racing secretary regarding the preferred list.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005406 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §313.110

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

The Texas Racing Commission proposes an amendment to §313.110, concerning coupled entries. The amendment clarifies the requirements for coupling entries.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in

effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

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

TRD-9005384 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §313.111

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

The Texas Racing Commission proposes an amendment to §313.111, concerning age restrictions. The amendment clarifies the age restrictions for horses and horse races.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005408 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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Declarations and Scratches

• 16 TAC §313.132

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

The Texas Racing Commission proposes an amendment to §313.132, concerning scratch time. The amendment authorizes the association to designate a scratch time.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005410 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Allowances and Penalties

• 16 TAC §313.161

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

The Texas Racing Commission proposes an amendment to §313.161, concerning the responsibility for correct weight. The amendment clarifies the person who is responsible for a horse carrying the correct weight.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005412 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §313.166

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

The Texas Racing Commission proposes an amendment to §313.166, concerning the apprentice allowance. The amendment clarifies that the apprentice allowance does not apply to a jockey riding in a stakes race.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has

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

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. 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 before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering, and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005414 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §313.167

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

The Texas Racing Commission proposes an amendment to §313.167, concerning prohibited allowances. The amendment clarifies the prohibition against a weight allowance solely for having been beaten in a race.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005471 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Subchapter C. Claiming Races

• 16 TAC §313.301

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

The Texas Racing Commission proposes an amendment to §313.301, concerning eligibility to claim. The amendment clarifies the persons who may claim a horse.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005473 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §313.302

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

The Texas Racing Commission proposes an amendment to §313.302, concerning claim procedure. The amendment clarifies the claim procedure relating to the amount on deposit.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005475 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §313.303

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

The Texas Racing Commission proposes an amendment to §313.303, concerning effective time of claim. The amendment clarifies the owner for which a claimed horse runs.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has

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

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005477 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §313.305

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

The Texas Racing Commission proposes an amendment to §313.305, concerning amounts on deposit. The amendment clarifies the types of negotiable instruments that may be on deposit to claim a horse.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005479 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §313.306

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

The Texas Racing Commission proposes an amendment to §313.306, concerning transfer of a claimed horse. The amendment authorizes the association to determine the location for delivering a claimed horse.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005481 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §313.311

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

The Texas Racing Commission proposes an amendment to §313.311, concerning the right to claim by depleted stables. The amendment clarifies the procedure by which a depleted stable may make a claim.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005483 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §313.312

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

The Texas Racing Commission proposes an amendment to §313.312, concerning protests. The amendment clarifies the procedure for protesting the claim of a horse that is found to have a prohibited drug, chemical, or substance.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005485 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• **16 TAC §313.314**

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

The Texas Racing Commission proposes an amendment to §313.314, concerning disclosure of mare in foal. The amendment clarifies the date on which a veterinarian's certificate must be issued regarding a mare that has been serviced.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005497 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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Subchapter D. Running of the Race

Jockeys

• **16 TAC §313.401**

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

The Texas Racing Commission proposes an amendment to §313.401, concerning the reporting by jockeys before races. The amendment clarifies the responsibility to report on each day the jockey is scheduled to ride.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality and that greyhounds are trained in humane ways. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005499 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• **16 TAC §313.402**

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

The Texas Racing Commission proposes an amendment to §313.402, concerning weighing out. The amendment clarifies the jockey's responsibility to report to the clerk of scales for weighing out.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality and that greyhounds are trained in humane ways. There will be no effect on small businesses There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005501 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• **16 TAC §313.403**

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the amendment it adopts on an emergency basis in this issue. The text of the

amendment is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §313.403, concerning maximum overweight. The amendment clarifies the circumstances under which a jockey may not weigh out.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality and that greyhounds are trained in humane ways. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005503 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §313.404

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

The Texas Racing Commission proposes an amendment to §313.404, concerning items included in weight. The amendment clarifies the items which are to be included in determining the jockey's weight.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005505 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §313.405

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

The Texas Racing Commission proposes an amendment to §313.405, concerning whips and other equipment. The amendment clarifies the equipment a jockey may not use.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005507 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §313.406

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

The Texas Racing Commission proposes an amendment to §313.406, concerning colors and numbers. The amendment clarifies the required attire for jockeys.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005509 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §313.407

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the amendment it adopts on an emergency basis in this issue. The text of the amendment is in the Emergency Rules

section of this issue.)

The Texas Racing Commission proposes an amendment to §313.407, concerning duty to fulfill jockey engagements. The amendment clarifies the circumstances under which a jockey may be excused from a riding engagement.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005511 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §313.408

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

The Texas Racing Commission proposes an amendment to §313.408, concerning jockey agents. The amendment clarifies the procedure for severing a relationship with a jockey agent.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005513 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §313.409

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

The Texas Racing Commission proposes an amendment to §313.409, concerning jockey mount fees. The amendment clarifies the time at which a jockey mount fee is considered earned.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005515 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §313.410

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

The Texas Racing Commission proposes an amendment to §313.410, concerning contracts and certificates for jockeys. The amendment prohibits a person from employing a jockey to prevent the jockey from riding another horse.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005517 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §313.411

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new section it adopts on an

emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes new §313.411, concerning suspended jockeys. The new section requires the stewards to designate the races in which a suspended jockey can compete.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005519 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §313.421

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

The Texas Racing Commission proposes an amendment to §313.421, concerning horses to the pre-race holding area. The amendment clarifies the time when blinkers may be placed on a race horse.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005521 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Chapter 319. Veterinary Practices and Drug Testing

• 16 TAC §319.3

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

The Texas Racing Commission proposes an amendment to §319.3, concerning restricted medication. The amendment prohibits a person from administering or cause to be administered to a horse or greyhound a prohibited drug, chemical, or other substance, including any restricted medication conduct.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005584 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §319.5

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

The Texas Racing Commission proposes an amendment to §319.5, concerning report by veterinarians. The amendment clarifies when a veterinarian shall report the treatment of a race animal to the commission veterinarian.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005586 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Subchapter B. Treatment of Horses

Veterinary Practices

• 16 TAC §319.101

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

The Texas Racing Commission proposes an amendment to §319.101, concerning racing soundness examinations. The amendment clarifies the time that racing soundness examinations will be conducted.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality and that greyhounds are trained in humane ways. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005588 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §319.102

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

The Texas Racing Commission proposes an amendment to §319.102, concerning the veterinarian's list. The amendment clarifies the procedures for placing a horse on and taking a horse off the veterinarian's list.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality and that greyhounds are trained in humane ways. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendmentis proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

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

TRD-9005591 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §319.106

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

The Texas Racing Commission proposes an amendment §319.106, concerning nerved horses. The amendment clarifies the duties of the racing secretary regarding the list of nerved horses.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality and that greyhounds are trained in humane ways. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005593 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §319.108

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

The Texas Racing Commission proposes an amendment to §319.108, concerning the postmortem examination. The amendment clarifies the scope of postmortem examinations.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality and that greyhounds are trained in humane ways. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

adopt.

Issued in Austin, Texas on May 22, 1990.

TRD-9005595 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Subchapter D. Drug Testing

General Provisions

• 16 TAC §319.302

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

The Texas Racing Commission proposes an amendment to §319.302, concerning reasonable diligence required. The amendment requires the owner, trainer, groom, or other person who has care and custody of a race animal to guard the horse prior to the race to prevent the administration of a drug, chemical, or other prohibited substance.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005597 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Veterinary Practices

• 16 TAC §319.306

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

The Texas Racing Commission proposes an amendment to §319.306, concerning effects of rulings on a purse. The amendment clarifies that if the stewards or racing judges disqualify a race animal under §319.304 concerning disqualification for positive test, the stewards or racing judges shall order the purse for the affected race held until the commission approves the redistribution of the purse.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005599 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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Chapter 321. Pari-Mutuel Wagering

Subchapter A. Regulation and Totalisator Operations

Mutuel Tickets

• 16 TAC §321.34

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

The Texas Racing Commission proposes an amendment to §321.34, concerning claim for payment. The amendment clarifies the form prescribed in which an association shall accept a claim for payment from a pari-mutuel pool in any case where the association has withheld payment or has refused to case a pari-mutuel ticket presented for payment.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005558 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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• 16 TAC §321.38

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

The Texas Racing Commission proposes an amendment §321.38, concerning the cancellation of tickets. The amendment clarifies when an association may cancel a ticket.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005560 Paula Cochran Carter
General Counsel
Texas Racing Commission

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For further information, please call: (512) 476-7223

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- **16 TAC §321.39**

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

The Texas Racing Commission proposes an amendment to §321.39, concerning teller's records. The amendment clarifies that each pari-mutuel teller for an association shall retain and account for all tickets refunded or cancelled by the cashier.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005562 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Regulation of Wagering

- **16 TAC §321.65**

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

The Texas Racing Commission proposes an amendment §321.65, concerning wagering interests. The amendment clarifies that in the event the number of race animals competing in a race exceeds the numbering capacity of the totalisator system, the highest numbered horse and any horses grouped with that horse constitute the mutuel field.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005564 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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- **16 TAC §321.70**

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

The Texas Racing Commission proposes new §321.70, concerning tip sheets. The section describes the requirements for tip sheet vendors.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

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

TRD-9005566 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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Subchapter B. Distribution of Pari-Mutuel Pools

- **16 TAC §321.108**

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

The Texas Racing Commission proposes an amendment §321.108, concerning the quinella. The amendment clarifies that the distribution of the money in a quinella race in the event no ticket is sold on the winning combination or quinella tickets bear the number of

either the winner or the second place animal, the quinella is considered "no contest" and the assocation shall carry forward to the next consecutive quinella race, all money wagered in the quinella.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005570 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §321.109

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

The Texas Racing Commission proposes an amendment to §321.109, concerning the exacta. The amendment clarifies the distribution of the money in an exacta race in the event the exacta is considered "no contest" and the association shall carry forward to the next consecutive exacta pool all money wagered in the exacta pool.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005572 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §321.110

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

The Texas Racing Commission proposes an amendment to §321.110, concerning the trifecta. The amendment clarifies the distribution of the money in a trifecta race in the event the trifecta is considered "no contest." The association shall carry forward to the next consecutive trifecta pool all money wagered in the trifecta pool.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on May 22, 1990.

TRD-9005574 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §321.112

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

The Texas Racing Commission proposes an amendment to §321.112, concerning the pick six. The amendment clarifies that if there are two or more identical favorites in the win pool, all the favorites will be substituted for the nonstarting selection.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which provide the commission with the authority to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

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

TRD-9005576 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §321.113

(Editor's Note: The Texas Racing

Commission' proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes new §321.113, concerning the pick three. The section describes the method for calculating and distributing the pari-mutuel pools on the "pick three" wager.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

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

TRD-9005578 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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• 16 TAC §321.114

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

The Texas Racing Commission proposes new §321.114, concerning prevention of start. The section describes the method for distributing the pari-mutuel pools if a malfunction of the starting gate or box prevents an animal from getting a fair start in the race.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing in Texas is of the finest quality. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted before July 1, 1990, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

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

TRD-9005580 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 476-7223

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TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 13. Financial Planning

Subchapter D. Procedures and Criteria for Funding of Family Practice Residency Programs

• 19 TAC §13.72, §13.73

The Texas Higher Education Coordinating Board proposes new §13.72 and §13.73, concerning procedure and criteria for funding of family practice residency programs. These new sections will provide the most cost-effective method for reimbursing family practice residency programs for rotating family practice residents through rural settings. These rural rotations will help to place family physicians in rural communities that are experiencing difficulties in attracting physicians. Rural preceptors will be reimbursed for travel costs associated with their required attendance at Coordinating Board-sponsored rural rotations workshops.

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

Mr. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the Coordinating Board will have a procedure in place to reimburse programs for allowable expenditures for rural rotations. 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 Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The new sections are proposed under the Education Code, Chapter 51 Subchapter Z, §51.917, which provide the Coordinating Board with the authority to adopt rules regarding procedures and criteria for funding of family practice residency programs.

§13.72. Rural Rotations Preceptor Grants. All physicians meeting Coordinating Board guidelines requirements for rural rotations preceptors may apply for rural rotations preceptor grants.

(1) A Rural Rotations Preceptor Grant is a grant to reimburse rural preceptors for the costs of travel to a rural rotations preceptor workshop. Costs may include reimbursement for travel to and from the site of the workshop.

(2) A Rural Rotations Preceptor Grant will be awarded only on a reimbursement basis.

(3) A Rural Rotations Preceptor Grant will be awarded no more than once to each rural rotations preceptor.

§13.73. Procedures for Requesting a Rural Rotations Preceptor Grant. A Rural Preceptor requesting a Rural Rotations Preceptor Grant must:

(1) submit a request for reimbursement giving evidence that the preceptor attended a rural rotations preceptor workshop; and

(2) document expenditures for travel to substantiate requests for reimbursement in accordance with Coordinating Board guidelines.

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 25, 1990.

TRD-9005350 James McWhorter
Assistant Commissioner
Texas Higher Education Coordinating Board

Proposed date of adoption: July 13, 1990

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

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Chapter 17. Campus Planning and Physical Facilities Development

Subchapter A. General Provisions

• 19 TAC §17.1

(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 Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §17. 1, concerning general provisions. The subchapter is being repealed and rewritten to incorporate the changes that are based on the Coordinating Board's Sunset Bill, Senate Bill 457, the incorporation of several board policies into the rules, and modification of several rules to make them clearer or more consistent. Institutions must file current campus master plans that include information on deferred maintenance, new construction, repair and rehabilitation, land acquisitions, and the source of funding for all projects. A two-step review is required for new construction that would require formula funding. Certain time limits are imposed for new construction, repair and rehabilitation, and land acquisition projects. A rule is added stating that under certain conditions the Coordinating Board shall review for approval improved real property acquired by gift or lease purchase. A new rule is added concerning institutional assessment of its fees for instructional and research equipment.

Don Brown, deputy commissioner, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Brown 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 more efficient planning of construction, operation, and maintenance of university facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The repeal is proposed under the Texas Education Code, §61.0572 and Texas Civil Statutes, Article 61.058, which provides the Coordinating Board with the authority to adopt rules regarding general provisions.

§17.1. Grants for Construction and Equipment.

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-9005243 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: July 13, 1990

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

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Subchapter B. Criteria for Approval of New Construction and Major Repair and Rehabilitation

• 19 TAC §§17.21-17.30

(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 Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §§17. 21-17.30, concerning criteria for approval of new construction and major repair and rehabilitation. The subchapter is being repealed and rewritten to incorporate the changes that are based on the Coordinating Board's Sunset Bill, Senate Bill 457, the incorporation of several board policies into the rules, and modification of several rules to make them clearer or more consistent. Institutions must file current campus master plans that include information on deferred maintenance, new construction, repair and rehabilitation, land acquisitions, and the source of funding for all projects. A two-step review is required for new construction that would require formula funding. Certain time limits are imposed for new construction, repair and rehabilitation, and land acquisition projects. A rule is added stating that under certain conditions the Coordinating Board shall review for approval improved real property acquired by gift or lease purchase. A new rule is added concerning institutional assessment of its fees for instructional and research equipment.

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

Mr. Brown 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 more efficient planning of construction, operation, and maintenance of university facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Kenneth H. Ashworth, Commissioner of Hihger Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The repeals are proposed under the Texas Education Code §61.0572 and Texas Civil Statutes, Article §61.058, which provides the Coordinating Board with the authority to adopt rules regarding criteria for approval of new construction and major repair and rehabilitation.

§17.21. Object.

§17.22. Purpose of New or Remodeled Buildings.

§17.23. Campus Master Plans.

§17.24. New Construction.

§17.25. Major Repair and Rehabilitation.

§17.26. Ad Valorem Tax Limitations (Public Junior Colleges).

§17.27. Legislative Limitations.

§17.28. Barriers to the Handicapped.

§17.29. Consideration of Financial Implications.

§17.30. Provisions for Emergency Approval.

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-9005253 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: July 13, 1990

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

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Subchapter A. Criteria for Approval of New Construction and Major Repair and Rehabilitation

• 19 TAC §§17.21-17.28, 17.31-17.33

The Texas Higher Education Coordinating Board proposes new §§17.21-17.28 and 17.31-17.33, concerning criteria for approval of new construction and major repair and rehabilitation. The changes are based on the Coordinating Board's Sunset Bill, Senate Bill 457, the incorporation of several board policies into the rules, and modification of several rules to make them clearer or more consistent. Institutions must file current campus master plans that include information on deferred maintenance, new construction, repair and rehabilitation, land acquisitions, and the source of funding for all projects. A two-

step review is required for new construction that would require formula funding. Certain time limits are imposed for new construction, repair and rehabilitation, and land acquisition projects. A new rule is added stating that under certain conditions the coordinating board shall review for approval improved real property acquired by gift or lease purchase. A new rule is added concerning institutional assessment of its fees for instructional and research equipment.

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

Mr. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more efficient planning of construction, operation, and maintenance of university facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The new sections are proposed under the Texas Education Code, §61.0572 and Texas Civil Statutes, Article §61.058, which provides the Coordinating Board with the authority to adopt rules regarding campus planning and physical facilities development.

§17.21. Object. The provisions of this subchapter are to prescribe the criteria which shall be considered by the Coordinating Board in approving or disapproving all new construction and major repair and rehabilitation of all buildings and facilities at institutions of higher education, regardless of proposed use or source of funding as required by the Texas Education Code, §61.058.

§17.22. Scope of Coordinating Board Review.

(a) If the cost of a proposed project is not more than $600,000, the Coordinating Board's consideration and determination shall be limited to the purpose for which such new or remodeled building shall be used and its gross dimensions to assure conformity with approved space utilization standards and the institution's approved programs and role and scope. An evaluation of the effectiveness of use of the space in the proposed facility, of current institutional space availability, effectiveness of utilization of existing space, and relative need for additional space will be made from the current physical facilities inventory on file at the Coordinating Board.

(b) For projects that exceed $600,000, the board may consider cost factors and the financial implications of the project to the state.

§17.23. Campus Master Plans.

(a) Consideration of new construction or major repair and rehabilitation projects shall be based upon a comprehensive and current institutional campus master plan on file at the Coordinating Board. In accordance with the Texas Education Code, §61.0582, the campus master plan should include:

(1) an assessment of the deferred maintenance needs, including regular, preventive maintenance needs;

(2) a plan to address the deferred maintenance needs;

(3) the amount the institution plans to designate each fiscal year for repairs, rehabilitations, and deferred maintenance projects;

(4) the funding source of any new construction project that costs more than $300,000 or repair and rehabilitation project that costs more than $600,000. An institution shall be subject to further review by the Coordinating Board or Campus Planning Committee if any change in the funding source, as stated in the master plan, of a project occurs;

(5) a description of the projects for which an institution plans to expend HEAF or PUF funds (the Texas Constitution, Article VII, §17 or §18);

(6) any proposed new construction, repair and rehabilitation, land acquisition, or other construction projects that will be placed on the agenda for Coordinating Board consideration. The current master plan on file with the Coordinating Board must contain all requested projects. The master plan must be updated by October 15th of each year. Each institution should have on file with the Coordinating Board a current inventory of space and the reports necessary to determine conformity with space standards. A new construction project, repair and rehabilitation project, or land acquisition project that is not in an institution's master plan may be considered by the Board if it is determined by the Coordinating Board staff to be a true emergency. A true emergency is considered to be one which careful planning by an institution could not have foreseen.

(b) The board will use the information reported in master plans to assess the deferred maintenance needs of institutions and will include its findings in the board's annual report.

§17.24. New Construction. Coordinating Board approval for new construction financed from any source shall be limited to projects the total cost of which is in excess of $300,000.

§17.25. Major Repair and Rehabilitation. Coordinating Board approval for major repair and rehabilitation of buildings and facilities shall be limited to projects the total cost of which is in excess of $600,000.

§17.26. Limitations (Public Junior Colleges). The requirement of approval by the board does not apply to junior colleges' construction, repair, or rehabilitation financed entirely with funds from a source other than the state, including funds from Ad Valorem tax receipts of the college, gifts, grants, and donations to the college, and student fees.

§17.27. Legislative Limitations. Required approval or disapproval by the Coordinating Board of new construction and major repair and rehabilitation shall not apply to any projects specifically approved by the legislature.

§17.28. Barriers to the Handicapped. The Coordinating Board shall ascertain that the standards and specifications for new construction repair and rehabilitation of all buildings and facilities are in accordance with Texas Civil Statutes, Article 601b, Article 7, regarding design barriers to the handicapped.

§17.31. Contracting for Advice on Costs and Construction. The commissioner may enter into an interagency contract with the State Purchasing and General Services Commission or seek advice elsewhere to ensure that the construction will be undertaken in an economical manner consistent with the Governor's Energy Management Center Standards and that construction not be of elaborate or extravagant design and materials.

§17.32. Assessment of Needs for Instructional and Research Equipment. The institution must have completed a recent assessment of its needs for instructional and research equipment. Before a proposal to construct new educational and general space that would require formula funding will be acted on by the Coordinating Board, the chairperson of the institution's governing board must certify that the need for new construction is at least equal to the need to acquire additional or more modern instructional and research equipment.

§17.33. Provisions for Review of Projects Previously Approved.

(a) If the total cost of a project previously approved by the coordinating Board exceeds cost estimates by more than 10% or if gross square footage is changed by more than 10% or if contracts on a project approved by the Coordinating Board

have not been let within one year from the board's final approval date the proposed project is subject to another review by the board or by the Campus Planning Committee between quarterly meetings of the board.

(b) The Campus Planning Committee of the board will be guided in its decision in part by its judgment as to whether or not the full board would approve the project were it being brought to the board for the first time with the revised cost figures. The action by the Campus Planning Committee will be final, subject to appeal to the full board.

(c) The Campus Planning Committee may refuse to consider a request, disapprove it, approve it, or refer the request to the next meeting of the board.

(d) The Campus Planning Committee shall report all actions to the Board at its next meeting.

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-9005246 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Earliest proposed date of adoption: July 13, 1990

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

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Subchapter C. Application for Approval of New Construction and Major Repair and Rehabilitation

• 19 TAC §§17.41-17.44

(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 Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §§17. 41-17.44, concerning application for approval of new construction and major repair and rehabilitation. The subchapter is being repealed and rewritten to incorporate the changes that are based on the Coordinating Board's Sunset Bill, Senate Bill 457, the incorporation of several board policies into the rules, and modification of several rules to make them clearer or more consistent. Institutions must file current campus master plans that include information on deferred maintenance, new construction, repair and rehabilitation, land acquisitions, and the source of funding for all projects. A two-step review is required for new construction that would require formula funding. Certain time limits are imposed for new construction, repair and rehabilitation, and land acquisition projects. A rule is added stating that under certain conditions the Coordinating Board shall review for approval improved real property acquired by gift or lease purchase. A new rule is added concerning institutional assessment of its fees for instructional and research equipment.

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

Mr. Brown 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 more efficient planning of construction, operation, and maintenance of university facilities. 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 Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The repeals are proposed under the Texas Education Code, §61.0572 and Texas Civil Statutes, Article, §61.058, which provides the Coordinating Board with the authority to adopt rules regarding application for approval of new construction and major repair and rehabilitation.

§17.41. Object.

§17.42. Application for Project Approval.

§17.43. Compliance with Statutory Building Requirements for Accessibility for the Handicapped.

§17.44. Application Form.

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-9005252 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: July 13, 1990

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

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Subchapter B. Application for Approval of New Construction and Major Repair and Rehabilitation

• 19 TAC §§17.41-17.44

The Texas Higher Education Coordinating Board proposes new §§17.41-17.44, concerning application for approval of new construction and major repair and rehabilitation. The changes are based on the Coordinating Board's Sunset Bill, Senate Bill 457, the incorporation of several board policies into the rules, and modification of several rules to make them clearer or more consistent. Institutions must file current campus master plans that include information on deferred maintenance, new construction, repair and rehabilitation, land acquisitions, and the source of funding for all projects. A two-step review is required for new construction that would require formula funding. Certain time limits are imposed for new construction, repair and rehabilitation, and land acquisition projects. A rule is added stating that under certain conditions the Coordinating Board shall review for approval improved real property acquired by gift or lease purchase. A new rule is added concerning institutional assessment of its fees for instructional and research equipment.

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

Mr. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more efficient planning of construction, operation, and maintenance of university facilities. There will be no effect on small businesses as a result of enforcing the new section. 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 Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The new sections are proposed under the Texas Education Code, §61.0572 and Texas Civil Statutes, §61.058, which provides the Coordinating Board with the authority to adopt rules regarding application for approval of new construction and major repair and rehabilitation.

§17.41. Object. The provisions of this subchapter are to guide the institutions and agencies of higher education in applying for the approval of new construction and major repair and rehabilitation of all buildings and facilities regardless of proposed use as prescribed by the Texas Education Code, §61.058.

§17.42. Application for Project Approval. The application procedure shall consist of two stages as follows.

(1) The first stage, which is optional for projects other than new construction of educational and general space that will require formula funding, involves the completion of the application form prescribed by §17.44 of this title (relating to Application Form), except for

the provision of all financial data on the proposed project, and submission of that information at least 60 days prior to the board meeting at which the request is to be considered. The first stage can consist of either a presentation or a request for preliminary approval as described in subparagraphs (A) and (B) of this paragraph.

(A) For new construction of educational and general space the institution must conduct a presentation before the Campus Planning Committee or the board that explains the planning process used to determine the need for additional educational and general space and explains why the particular project is needed. No action will normally be taken by the board at the first stage for a presentation.

(B) The proposing institution may ask for preliminary approval of any project and request Coordinating Board endorsement of the project's feasibility.

(2) The second stage, which is mandatory, involves the completion and submission of the entire application form at least 60 days prior to the board meeting at which the request will be considered. The second stage is required for final board approval or disapproval of the project. If preliminary approval is given during the first stage, there shall be a two-year time limit between preliminary approval and final approval. If the time limit is exceeded, the project is subject to reconsideration by the Coordinating Board.

§17.43. Compliance with Statutory Building Requirements for Accessibility for the Handicapped. As part of the Coordinating Board's construction project review the proposing institution's compliance with statutory building requirements for accessibility to the handicapped, Texas Civil Statutes, Article 601b, Article 7, shall be determined. The authority for the administration and enforcement of Texas Civil Statutes, Article 601b, Article 7, except as otherwise provided in §7.05(f) that Act, rests with the State Purchasing and General Services Commission. To verify this compliance, the following procedure shall be followed.

(1) With an application for project approval, the institution shall attach a certificate of compliance for each project.

(2) The Coordinating Board shall sign the certificate to acknowledge receipt and send the certificate to the State Purchasing and general Services Commission where it will be similarly signed and returned to the Coordinating Board for filing.

§17.44. Application Form. Application forms for requesting Coordinating Board approval will be provided by the Coordinating Board and shall call for the following information:

(1) type of facility proposed;

(2) a description of the project and a statement of need for it;

(3) appropriate financial data, including total cost;

(4) institutional role and scope;

(5) inclusion of project in campus master plan on file at the Coordinating Board;

(6) utilization of space;

(7) certificate of compliance with Texas Civil Statutes, Article 601b, Article 7, on elimination of architectural barriers to the handicapped;

(8) additional remarks as necessary;

(9) date project approved by institutional governing board;

(10) assurance the project has been designed to improve utilization of energy using the Governor's Energy Management Center Standards; and

(11) letter from the chairperson of the institution's governing board certifying that the need for new construction that would require formula funding is at least equal to the need to acquire additional or more modern instructional and research equipment.

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-9005245 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: July 13, 1990

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

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Subchapter D. Requesting Coordinating Board Endorsement of Real Property Acquisitions

• 19 TAC §§17.61-17.65

(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 Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §§17. 61-17.65, concerning requesting coordinating board endorsement of real property acquisitions. The subchapter is being repealed and rewritten to incorporate the changes that are based on the Coordinating Board's Sunset Bill, Senate Bill 457, the incorporation of several board policies into the rules, and modification of several rules to make them clearer or more consistent. Institutions must file current campus master plans that include information on deferred maintenance, new construction, repair and rehabilitation, land acquisitions, and the source of funding for all projects. A two-step review is required for new construction that would require formula funding. Certain time limits are imposed for new construction, repair and rehabilitation, and land acquisition projects. A rule is added stating that under certain conditions the Coordinating board shall review for approval improved real property acquired by gift or lease purchase a new rule is added concerning institutional assessment of its fees for instructional and research equipment.

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

Mr. Brown 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 more efficient planning of construction, operation, and maintenance of university facilities. 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 Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The repeals are proposed under the Texas Education Code, §61.0572 and Texas Civil Statutes, Article §61.058, which provides the Coordinating Board with the authority to adopt rules regarding requesting coordinating board endorsement of real property acquisitions.

§17.61. Object.

§17.62. Real Property Costing Less Than $10,000.

§17.63. Real Property Costing More Than $10,000.

§17.64. Application Form.

§17.65. Application for Approval of Real Property Acquisition.

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-9005251 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education

Proposed date of adoption: July 13, 1990

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

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Subchapter C. Requesting Coordinating Board Endorsement of Real Property Acquisitions

• 19 TAC §§17.61-17.67

The Texas Higher Education Coordinating Board proposes new §§17.61-17.67, concerning requesting coordinating board endorsement of real property acquisitions. The changes are based on the Coordinating Board's Sunset Bill, Senate Bill 457, the incorporation of several board policies into the rules, and modification of several rules to make them clearer or more consistent. Institutions must file current campus master plans that include information on deferred maintenance, new construction, repair and rehabilitation, land acquisitions and the source of funding for all projects. A two-step review is required for new construction that would require formula funding. Certain time limits are imposed for new construction, repair and rehabilitation, and land acquisition projects. A rule is added stating that under certain conditions the Coordinating Board shall review for approval improved real property acquired by gift or lease purchase. A new rule is added concerning institutional assessment of its fees for instrucitonal and research equipment.

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

Mr. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more efficient planning of construction, operation, and maintenance of university facilities. There will be no effect on small businesses as a result of enforcing the new 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 Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The new sections are proposed under the Texas Education Code, §61.0572 and Texas Civil Statutes, §61.058, which provides the Coordinating Board with the authority to adopt rules regarding requesting coordinating board endorsement of real property acquisitions.

§17.61. Purpose. Under the Texas Education Code, §61.0572, the Coordinating Board is directed to "endorse or delay until the next succeeding session of the legislature shall have the opportunity to approve or disapprove the proposed purchase of any real property by an institution of higher education, except a public junior college." In connection with this provision, the procedures in this subchapter shall be followed when an institution requests board endorsement of real property acquisition.

§17.62. Real Property Costing $10,000 or Less. For any real property acquisition costing $10,000 or less, the institution shall describe briefly how it is certain that fair value is being paid for the property. The institution may obtain and submit appraisals for this purpose.

§17.63. Real Property Costing More than $10,000. For the acquisition of real property whose cost exceeds $10,000, the institution shall comply with the following procedure:

(1) On real property proposed to be acquired, the institution shall obtain two appraisal reports issued by appraisers, at least one of whom meets one of the following requirements:

(A) is a member of the American Institute of Real Estate Appraisers (designated M.A.I. or R.M.);

(B) is a senior member of the Society of Real Estate Appraisers (S.R.E.A. and S.R.A.);

(C) is a senior member of the American Society of Appraisers with the professional designation in real estate; or

(D) is a senior member or appraiser-counselor of the National Association of Independent Fee Appraisers (designated I.F.A.S. or I.F.A.C.).

(2) The institution will submit the two appraisals to the Coordinating Board.

(3) If desired by the institution, appraisal figures will be held in confidence and not released publicly. The requiring of appraisals in no way requires the institution to release the figures to property owners during the acquisition process, nor does the requirement of appraisals deny the institution the right to settle a purchase at a price below the appraisals.

§17.64. Application Form. Application forms for requesting Coordinating Board endorsement of the purchase of real property will be provided by the Coordinating Board and shall request the following information:

(1) description of proposed purchase;

(2) appropriate financial data;

(3) description of proposed use;

(4) proposed campus land use according to the master plan;

(5) institutional role and scope;

(6) major costs involved;

(7) the two appraisal reports as prescribed in §17.63 of this title (relating to Real Property Costing more than $10,000)

(8) additional remarks as necessary;

(9) date of approval by institutional governing board; and

(10) statement of need for the real property.

§17.65. Procedure for Endorsement of Real Property Acquisition

(a) Except for projects covered by subsection (c) of this section, the application procedure shall consist of two stages as follows.

(1) The first stage, which is optional, involves the partial completion of the application form prescribed in §17.64 of this title (relating to Application Form). Items dealing with financial data, costs, and appraisal reports shall be excluded. The application shall be submitted at least 60 days prior to the board meeting at which the request is to be considered. Board endorsement of the request at this step shall constitute preliminary approval of the acquisition.

(2) The second stage, which is required in all cases, includes the completion and submission of the entire application form, including costs, source of funds, and the procurement of two appraisal reports as provided in §17.63 of this title (relating to Real Property Costing More than $10,000).

(3) For acquisitions which have received preliminary approval, the board shall give specific consideration to the cost of the real property in determining whether to endorse the acquisition. There shall be a three-year time limit between preliminary approval and final approval.

(b) For requests of an emergency nature, Coordinating Board consideration of requests for real property acquisitions which had received preliminary board approval under Stage 1 is delegated to the Campus Planning Committee. The committee will act upon such requests between scheduled meetings of the board in accordance with the following guidelines.

(1) The Campus Planning Committee will be guided in its decision in part by its judgment as to whether or not the full board would approve the cost figures were the request being brought to the board for the first time. The action by the committee will be final, subject to appeal to the full board at its next meeting.

(2) Emergencies arising in close proximity to a board meeting may be taken to the board for board action or board guidance to the committee in its decision on an emergency request.

(3) The committee may refuse to consider a request, disapprove it, approve it, or refer the request to the next meeting of the board.

(4) The committee shall report all actions to the board at its next meeting.

(c) In accordance with the Texas Education Code, §62.021(b), any land acquisition project to be paid for with proceeds from the higher education assistance fund, and proposed for Coordinating Board endorsement within three months before the start of a regular legislative session, shall be automatically referred to the legislature for consideration.

§17.66. Real Property Acquired by Gifts or Lease-Purchase. The Coordinating Board shall review for approval improved real property acquired by gifts or lease-purchase whenever an institution seeks to place the property as an educational and general building on its facilities inventory that would require formula funding, and the value of the improved real property is more than $300,000 at that time. The board's authority does not apply to gifts, grants, or lease-purchase arrangements for clinical or research facilities.

§17.67. Time Limitation for Endorsement of Land Acquisition. Upon final endorsement of land acquisition the institution will have one year to purchase the approved property. If not purchased within one year the institution must resubmit the proposal to the Board.

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-9005244 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: July 13, 1990

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

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TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 101. Pertaining to Dentistry

Examination-Application

The Texas State Board of Dental Examiners proposes amendments to §§101. 11-101.13, 101.15, 101.31, 101.41, 101.52, 101.61, and the repeal of §101.51, concerning board examinations. The board has made changes in the examination process; therefore, the rules pertaining to the examinations are being amended in order to conform with these changes.

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

Mr. Camp 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 clarification of the examination process. There will be no effect on small businesses as a result of enforcing the sections and repeals. There is no anticipated economic cost to persons who are required to comply with the sections and repeals as proposed.

Comments on the proposal may be submitted to Crockett Camp, Executive Director, P.O. Box 13165, Austin, Texas 78711.

• 22 TAC §§101.11-101.13, 101.15

The amendments are proposed 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.

§101.11. Date and Place of Examinations. The Texas State Board of Dental Examiners holds [two] examinations each year, generally in May-June and in the fall. The examinations are generally held in Dallas, at Baylor College of Dentistry; in Houston, at the University of Texas Dental Branch; in San Antonio, at the University of Texas Dental Branch; or at such other places in Texas as the board may select. The fall examination is generally given at only one school.

§101.12. Applicant Categories.

(a) Classification. Applicants for license are classified in two categories.

(1) Those who have passed the examination given by the National Board of Dental Examiners will be required to pass only the practical portion of the Texas examination including an examination covering the laws of Texas **and** [on] the rules of the board pertaining to dentistry, dental hygiene, other areas of dentistry, and dental laboratories and dental technicians (such applicants shall furnish with his application the National Board of Dental Examiners grade card issued to those having passed any portion of such examination).

(2) Those who have been licensed and engaged in the practice of dentistry for not less than 10 years, at the discretion of the board, may be required to take and pass only the **portions** [practical portion] of the Texas examination **outlined paragraph (1) of this subsection**.

(b) (No change.)

§101.13. Application Forms and Fees.

(a) (No change.)

(b) No refund of dental examination fees paid to the board will be made except where the applicant **fails to meet** [has not met] the following two examination requirements:

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

§101.15. Examination Check-in.

(a) **At a time specified by the board,** [Generally, on the day before the examination begins,] applicants are assembled at a previously designated place for the presentation of their credentials and exhibiting to the members of the board or staff proof of graduation from the schools or colleges conferring their dental degrees. Examination number buttons are issued to the applicants and matters of procedure and special instructions are made known at this assembly.

(b) (No change.)

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

Issued in Austin, Texas on May 21, 1990.

TRD-9005103 Crockett Camp
Executive Director
Texas State Board of Dental Examiners

Earliest possible date of adoption: June 29, 1990

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

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Conduct-Grading

• 22 TAC §101.31

The amendment is proposed 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.

§101.31. Performance Grading.

(a) Each applicant will be graded on his handling of patients, cleanliness, **infection barrier control procedures**, and

infection barrier control procedures, and conduct, as well as the quality of work done and must finish each operation in a reasonable time to receive full credit. Any exposure of the dental pulp (pathological or mechanical) **is a failure and** must be reported to an examiner immediately. If an applicant desires additional X-rays he must X-ray his own patient, also the board may require him to take X-rays.

(b) 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 **may disqualify and fail** [disqualifies and fails] the applicant.

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

Issued in Austin, Texas on May 21, 1990.

TRD-9005102 Crockett Camp
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption: June 29, 1990

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

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Jurisprudence-Preclinical Examination

• 22 TAC §101.41

The amendment is proposed 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.

§101.41. Jurisprudence. The Texas State Board of Dental Examiners feels that it is imperative that each applicant for license to practice dentistry in Texas understand the laws and rules governing the dental profession in Texas for the protection of the public; further, that each applicant [also] possess the ability to **demonstrate his** [construct an acceptable denture set-up as well as the demonstration of his] clinical ability on live patients. In sequence, the examination will consist of check-in, jurisprudence, [set-up,] diagnosis and treatment plan, and the balance of the clinical examination on the patient(s) for whom the applicant prepared the diagnosis and treatment plan. [An applicant must pass the jurisprudence portion of the examination before he will be allowed to proceed to the set-up portion and each applicant must then pass the set-up requirement before he will be allowed to enter the final clinical portion of the examination. Therefore, immediately after the check-in procedure, each will begin the jurisprudence examination given by the board. [which] the applicant must pass. The grades made by each applicant will be posted on the door of the examination area. The grades will be listed as satisfactory or unsatisfactory or pass or fail. The grades on the set-up portion (for those who have already passed the jurisprudence portion) will be posted on the door of the area where the denture set-up was given. Those applicants who passed both the jurisprudence and set-up portions will then be admitted to the final clinical portion of the examination consisting of the diagnosis and treatment plan and the clinical performance of such treatment plan.]

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

Issued in Austin, Texas on May 21, 1990.

TRD-9005101 Crockett Camp
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption: June 29, 1990

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

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Denture Set-Up, Diagnosis and Treatment Plan, Preclinical Examination

• 22 TAC §101.51

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

The repeal is proposed 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.

§101.51. Denture Set-Up.

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 21, 1990.

TRD-9005100 Crockett Camp
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption: June 29, 1990

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

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• 22 TAC §101.52

The amendment is proposed 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.

§101.52. Diagnosis and Treatment Plan and Patient History. After a dental applicant has **taken** [passed] the jurisprudence [and set-up] portion of the examination, he will be given an examination on diagnosis and treatment planning and will also be required to prepare a medical-dental history for his dental patient(s) before being permitted to proceed further in the examination.

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

Issued in Austin, Texas on May 21, 1990.

TRD-9005099 Crockett Camp
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption: June 29, 1990

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

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Specific Examination Information for Dentists

• 22 TAC §101.61

The amendment is proposed 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.

§101.61. Dental Applicants Information.

(a)-(o) (No change.)

(p) Be considerate of your patient. You will be graded on neatness, cleanliness, **infection control techniques,** and general care of your operatory area as well as treatment of your patient and quality of work performed.

(q) (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 21, 1990.

TRD-9005098 Crockett Camp,
Executive Director

Texas State Board of
Dental Examiners

Earliest possible date of adoption: June 29, 1990

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

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Chapter 103. Dental Hygiene Examination-Application

The Texas State Board of Dental Examiners proposes amendments to §§103.11, 103.15, 103.21-103.23, 103.31, 103.41, concerning dental hygiene examinations. The board has made changes in the examination process; therefore, the rules pertaining to the examinations are being amended in order to conform with these changes.

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

Mr. Camp 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 clarification of the examination process. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Crockett Camp, Executive Director, P.O. Box 13165, Austin, Texas 78711.

• 22 TAC §103.11, §103.15

The amendments are proposed 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.

§103.11. Date and Place of Examination. **The Texas State Board of Dental Examiners holds examinations each year** [Examinations are regularly held twice annually], generally in May-June and in the fall. **The** examinations may be held in Dallas, at Baylor College of Dentistry; in Houston, at the University of Texas Dental Branch; **in San Antonio, at** the University of Texas Dental School; [at San Antonio], or at **such other places** [other times and locations] in Texas as the board may select. **The fall examination is generally given at only one school** [The school where the examination is held will charge each applicant a fee for services and materials].

§103.15. Check-In.

(a) **At a time specified by the board,** [Generally on the day before the examination begins] the applicants are assembled at a previously designated place for the presentation of their credentials and exhibition to the members of the board their diplomas from the schools or colleges from which they graduated. Graduates of accredited dental hygiene schools within the State of Texas may exhibit photostatic or card size reproductions of such diplomas. At this meeting examination number buttons are issued to the applicants and matters of procedure and special instructions are made known at this assembly.

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

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

Issued in Austin, Texas on May 21, 1990.

TRD-9005097 Crockett Camp
Executive Director
Texas State Board of
Dental Examiners

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

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Work Sheet and Schedule Examination Check-Steps

• 22 TAC §§103.21-103.23

The amendments are proposed 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.

§103.21. General Information.

(a) (No change.)

(b) Each applicant **(candidate)** must furnish **his/her own patient(s)** [one patient], **prophylactic instruments, mouth mirrors, and a red and blue pencil** for the prophylaxis and x-ray portion. [Such patient must have 20 natural teeth of which six are lower anterior teeth.] All patients must be approved by an examiner before work is started.

§103.22. Procedures and Subjects. The procedures and subjects upon which each applicant will be examined and must pass are as follows: [One] Oral Prophylaxis, x-ray-one full mouth x-ray on the prophy patient (**20** [18] films [, 14 regular and 4 bite-wings], and such other operations or procedures as the board may deem advisable to test **each** [such] applicant's ability. After approval by an examiner, the applicant will take, develop, mount, and critique the x-rays. X-ray film, of acceptable quality, will be furnished by the **school** [board]. Each applicant must be prepared to use x-ray machines available at the school. Each applicant will furnish and bring her own x-ray racks.

§103.23. Jurisprudence and Grading. The Texas State Board of Dental Examiners feels that it is imperative for all dental hygiene applicants to have a through knowledge of the laws, rules, and regulations governing all phases of the dental profession. Therefore, an applicant must pass the jurisprudence examination [before being admitted to the clinical examination. Grades made by each applicant on the jurisprudence examination will be posted at the examination area soon after the jurisprudence examination is completed. The grades will be listed as satisfactory or unsatisfactory or pass or fail.] In sequence, the examination will consist of check-in, jurisprudence, and the clinical examination.

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

Issued in Austin, Texas on May 21, 1990.

TRD-9005096 Crockett Camp
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption: June 29, 1990

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

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Conduct-Grading

• 22 TAC §103.31

The amendment is proposed 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, 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 **may disqualify and fail** [disqualifies and fails] the applicant on the examination.

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

Issued in Austin, Texas on May 21, 1990.

TRD-9005093 Crockett Camp
Executive Director
Texas State Board of Dental Examiners

Earliest possible date of adoption: June 29, 1990

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

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Specific Examination Information for Dental Hygienists

• 22 TAC §103.41

The amendment is proposed 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.

§103.41. Dental Hygiene Applicant Information.

(a)-(j) (No change.)

(k) [Be prepared to polish restorations in the mouth.] Be prepared to sharpen your own instruments. Be prepared to answer questions when requested to do so by an examiner.

(l)-(m) (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 21, 1990.

TRD-9005094 Crockett Camp
Executive Director
Texas State Board of Dental Examiners

Earliest possible date of adoption: June 29, 1990

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

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Part XV. Texas State Board of Pharmacy

The following proposals submitted by the Texas State Board of Pharmacy will be serialized beginning in the June 8, 1990, issue of the *Texas Register*. The earliest date of adoption is July 6, 1990.

Chapter 281. General Provisions

- **22 TAC §281.24 (amendment)**
- **22 TAC §281.33 (amendment)**
- **22 TAC §281.51 (amendment)**

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Part XXIV. Texas State Board of Veterinary Medical Examiners

Chapter 571. Licensing

Examinations

• 22 TAC §571.3

The Texas State Board of Veterinary Medical Examiners proposes an amendment to §571.3, concerning licensing examination eligibility for students by removing the requirement that candidates actually receive their veterinary diploma prior to licensure if they are enrolled in a DVM/Ph.D. program. In addition the amendment removes reference to gender.

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

Mr. Wilson 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 not be applicable, as the public is relatively unaffected by this particular proposed section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Donald B. Wilson, Texas State Board of Veterinary Medical Examiners, 1946 South IH-35, Box 113, Austin, Texas 78704, (512) 447-1183.

The amendment is proposed under Texas Civil Statutes, Article 8890, §7(a), which provide the Texas State Board of Veterinary Medical Examiners with the authority to make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act.

§571.3. Licensing Examinations Eligiblity-Students.

(a) To be eligible to participate in the State Board licensing examinations, **applicants** [an applicant] must be certified by the dean of the college from which **they are** [he is] expected to graduate that **they are** [he is] in the last 120 days of **their** [his] veterinary college education and **are** [is] expected to graduate. **In the absence of a diploma or transcript certifying award of the Doctor of Veterinary Medicine (DVM) degree, the** [The] dean must submit a letter stating the applicant did in fact graduate [and obtain his diploma] before the applicant is eligible to obtain **a** [his] license, **providing all other requirements have been met** [if he has satisfied all other requirements] .

(b) (No change.)

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

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

TRD-9005330 Donald B. Wilson
Executive Director
Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 447-1183

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Chapter 573. Rules of Professional Conduct

General Professional Ethics

• 22 TAC §573.9

The Texas Board of Veterinary Medical Examiners proposes new §573.9, concerning nonresident consultant. The new section will limit their practice in Texas to specific purposes on an individual case basis.

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

Mr. Wilson 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 not be applicable as the public is relatively unaffected by this particular proposed section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Donald B. Wilson, Texas Board of Veterinary Medical Examiners, 1946 South IH-35, Box 113, Austin, Texas 78704, (512) 447-1183.

The new section is proposed under Texas Civil Statutes, Article 7465a, §7(a) , which provide the Texas State Board of Veterinary Medical Examiners with the authority to make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act.

§573.9. Nonresident Consultants. Licensed veterinary practitioners from other states may enter the State of Texas for purposes of consultation, on an individual case basis, and for a specific purpose; not on a routine visit schedule. Consultants must, at all times, practice under the direct supervision of a veterinarian licensed in this state.

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

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

TRD-9005332 Donald B. Wilson
Executive Director
Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 447-1183

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Chapter 577. General Administration and Duties

Staff and Miscellaneous

- **22 TAC §577.13**

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

The Texas Board of Veterinary Medical Examiners proposes the repeal of §577.13, concerning nonresident consultants as it presently reads and redesignation of the section as a rule of professional conduct along with limiting consultation work to a specific purpose on an individual case basis.

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

Mr. Wilson 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 not be applicable, as the public is relatively unaffected by this particular proposed section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Donald B. Wilson, Texas Board of Veterinary Medical Examiners, 1946 South IH-35, Box 113, Austin, Texas 78704, (512) 447-1183.

The repeal is proposed under Texas Civil Statutes, Article 8890, §7(a), which provide the Texas State Board of Veterinary Medical Examiners with the authority to make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act.

§577.13. Nonresident Consultants.

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-9005331 Donald B. Wilson
Executive Director
Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 447-1183

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

The following proposals submitted by the Texas Department of Health will be serialized beginning in the June 8, 1990, issue of the *Texas Register*. The proposed date of adoption is August 18, 1990.

Chapter 145. Long-term Care

Subchapter B. Minimum Standards for Nursing Homes

- **25 TAC §145.12 (amendment)**

Subchapter E. Procedures on Long-term Care Facilities

- **25 TAC §145.91 (amendment)**

Subchapter G. Standards for Nursing Homes That Cover Licensure and Medicaid Certification

- **25 TAC §145.111 (new)**

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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 8, 1990, issue of the *Texas Register*. The proposed date of adoption is January 1, 1991.

Chapter 10. Family Self-support Services

Child Day Care Services

- **40 TAC §§10.3101-10.3190 (repeals)**

Title IV-A Funded Child Care

- **40 TAC §§10.3301-10.3307, 10.3320-10.3324 (repeals)**

The proposed date of adoption for the following proposal is August 21, 1990.

Child Care Management Services Statewide Implementation

- **40 TAC §§10.3401-10.3454 (repeals)**

The proposed date of adoption for the following proposal is August 1, 1990.

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

Services and Supplies Included in the Vendor Payment

- **40 TAC §16.3806 (amendment)**

The proposed date of adoption for the following proposal is July 1, 1990.

Recipient Rights

- **40 TAC §16.6112 (amendment)**

The proposed date of adoption for the following proposal is June 1, 1990.

Chapter 29. Purchased Health Services

Subchapter W. Chemical Dependency Treatment Facility Services

- **40 TAC §§29.2201-29.2203 (new)**

The proposed date of adoption for the following proposal is August 15, 1990.

Chapter 48. Community Care For Aged and Disabled

Eligibility

- **40 TAC §48.2916 (amendment)**

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

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

The Texas Department of Human Services (DHS) proposes the repeal of §§16.901, 16.1301-16.1305, 16.1501, 16.1504-16.1509, 16.1511-16.1513, 16. 1901, 16.1903, 16.1904, 16.1906, 16.1907, 16.1910-16.1912, 16.1914-16.1919, 16. 2901-16.2908, 16.3001-16.3009, 16.3011-16.3017, 16.3101-16.3107, 16.3201-16.3212, 16.3301-16.3304, 16.3401-16.3404, 16.3501-16.3507, 16.3801-16.3805, 16.3807, 16. 3901, 16.3902, 16.4101-16.4103, 16.4901-16.4913, 16.5101, 16.5102, 16.5901-16. 5903, 16.6101-16.6111, 16.6113-16.6120, 16.7101, 16.7102, 16.7104, and 16.9802, concerning intermediate care facilities/skilled nursing facilities (ICF/SNF). The repeals are necessary to enable DHS to propose new sections under Chapter 19 concerning DHS's long-term care nursing facility requirements for licensure and medicaid certification which will replace DHS's intermediate care facilities/skilled

nursing facilities (ICF/SNF) rules 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 of local governments 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 ICF/SNF rules necessary to propose new nursing facility regulations. 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.

Questions about the content of this proposal may be directed to Rose Davis at (512) 450-3529 in DHS's institutional care section. Comments on the proposal may be submitted to Cathy Rossberg, Agency Liaison, Policy Communication Services-202, Texas Department of Human Services 222-E, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Purpose

• 40 TAC §16.901

(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.

§16.901. Introduction.

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-9005169 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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Compliance with Federal Laws

• 40 TAC §§16.1301-16.1305

(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.

§16.1301. Section 504 of the Rehabilitation Act of 1973.

§16.1302. Civil Rights Act of 1964.

§16.1303. Age Discrimination Act of 1975.

§16.1304. Title VII of the Civil Rights Act of 1964.

§16.1305. Texas Civil Practices and Remedies Code.

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

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

TRD-9005170 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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Compliance with State and Local Laws

• 40 TAC §§16.1501, 16.1504-16.1509, 16.1511-16.1513

(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.

§16.1501. Introduction to Compliance.

§16.1504. Contract Requirements.

§16.1505. Effective Dates of Provider Contracts.

§16.1506. Change of Ownership.

§16.1507. Nursing Facility Ceases To Participate.

§16.1508. Surety Bonds or Letters of Credit.

§16.1509. Licensure, Registration, or Certification of Personnel.

§16.1511. Additional Participation Requirements.

§16.1512. Educational Requirements for Persons Under 22.

§16.1513. Selection and Contracting Procedures for Adding Beds in High-occupancy Areas.

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-9005171 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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• 40 TAC §16.1514

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

§16.1514. Preadmission Screening and Annual Recipient Review (PASARR).

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

(1) Active treatment for individuals with mental illness–The implementation of an individualized plan of care developed under and supervised by a physician, provided by a physician or other qualified mental health professionals, that prescribes specific therapies and activities for the treatment of persons who are experiencing an acute episode of severe mental illness, which necessitates supervision by trained mental health personnel.

(2) Active treatment for individuals with mental retardation–A continuous program for each client, which includes aggressive, consistent implementation of specialized and generic training, treatment, health services and related services that is directed toward:

(A) the acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible; and

(B) the prevention or deceleration of regression or loss of current optimal functional status. Active treatment does not include services to maintain generally

independent clients who are able to function with little supervision or in the absence of a continuous active treatment program.

(3) Advanced years–A chronological age of greater than 64 years of age or a chronological age of greater than 50 years along with a chronic or acute medical condition that is likely to significantly diminish life expectancy as certified by a physician.

(4) Alzheimer's disease–A degenerative disease of the central nervous system as diagnosed by a physician in accordance with the International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM).

(5) Amyotrophic lateral sclerosis–A degenerative motor neuron disease as diagnosed by a physician in accordance with International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM).

(6) Chronic obstructive pulmonary disease–A disease of the respiratory system as diagnosed by a physician in accordance with the International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM).

(7) Comatose–A state of unconsciousness characterized by the inability to respond to sensory stimuli as certified by a physician.

(8) Congestive heart failure–A disease of the circulatory system as diagnosed by a physician in accordance with International Classification of Diseases, 9th Revision Clinical Modification (ICD-9-CM).

(9) Convalescent care–Care provided after a person's release from an acute care hospital that is part of medically prescribed period of recovery which does not exceed 120 days.

(10) Dementia–A degenerative disease of the central nervous system as diagnosed by a physician in accordance with the International Classification of Diseases 9th revision Clinical Modification (ICD-9-CM).

(11) Functioning at the brain stem level–A significantly impaired state of consciousness characterized by normal respirations and minimal (mostly reflexive) response to environmental stimuli as certified by a physician.

(12) Huntington's disease–A disease of the central nervous system diagnosed by a physician in accordance with the International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM).

(13) Level I–identification screening–The process of identifying individuals with an indication of mental illness, mental retardation and/or a related condition, who require a Level II PASARR assessment.

(14) Level II–PASARR assessment–Preadmission Screening and Annual Resident Review assessment of persons with mental illness, mental retardation, and/or a related condition conducted in accordance with Nursing Home Reform Provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87).

(15) Mental illness–A current primary or secondary diagnosis of a major mental disorder (as defined in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition (DSM-III-R) limited to schizophrenic, paranoid, major affective, schizoaffective disorder, and atypical psychosis, and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder).

(16) Mental retardation–A diagnosis of mental retardation (mild, moderate, severe, and profound) as described in the American Association on Mental Deficiency's Manual on Classification in Mental Retardation (1983). In this manual mental retardation is significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(17) New admission–An individual who is admitted to any nursing facility in which he has not recently resided and to which he cannot qualify as a readmission. Also, any individual transferring from one nursing facility to another nursing facility, with or without an intervening hospital stay.

(18) Nursing facility–A Texas Medicaid-certified institution, except for a facility certified as an intermediate care facility for the mentally retarded (ICF/MR), providing nursing services to nursing facility residents.

(19) Nursing facility applicant–An individual seeking admission to a Texas Medicaid-certified nursing facility.

(20) Nursing facility resident–An individual who resides in a Texas Medicaid-certified nursing facility and receives services provided by professional medical nursing personnel of the facility.

(21) OBRA '87–Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203).

(22) Parkinson's Disease–A degenerative disease of the central nervous system as diagnosed by a physician in accordance with the Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM).

(23) PASARR–Preadmission screening and annual resident review.

(24) PASARR determination–A decision made by Texas Department of Mental Health and Mental Retardation (TDMHMR) PASARR Determination Program professional staff to establish if an individual requires the level of services provided in a nursing facility as contrasted with other settings and if the individual has the need for active treatment for mental illness, mental retardation, and/or a related condition. The decisions are based on information included in the Level II PASARR Assessment document.

(25) Psychotherapeutic medication–Pharmaceutical indicators for Level II PASARR Assessment are:

(A) antipsychotic: Acetophenazine (Tindal), Chlorpromazine (Thorazine), Fluphenazine Decanoate (Proxlixin Decanoate), Fluphenazine enanthate (Prolixin Enanthate), Fluphenazine hydrochloride (Prolixin, Permitil), Mesoridazine (Serentil), Perphenazine (Trilafon), Prochlorperazine (Compazine), Promazine (Sparine, Prozine), Thioridazine (Mellaril, Mellarils), Trifluoperazine (Stelazine), Triflupromazine (Vesprin), Chlorprothixene (Taractan), Droperidol (Inapsine), Haloperidol (Haldol), Loxapine (Loxitane), Molindone (Moban), Pimozide (Orap), Thiothixene (Navane), and other antipsychotics;

(B) antimanic agents: Lithium (Eskalith, Lithobid, Lithotabs, Cibalith);

(C) antidepressants. Medications when used for treatment of depression as identified on the DHS's Client Assessment, Review, and Evaluation (CARE) form or recipient's medical record: Isocarboxaid (Marplan), Phenelzine (Nardil), Tranycypromine (Parnate), Amitriptyline (Elavil, Endep), Amoxapine (Asendin), Desipramine (Pertofrane), Doxepin (Adapin, Sinequan) , Trazodone (Desyrel), Fluoxetine (Prozac), Imipramine (Tofranil, Tofranil-PM, Janimine), Maprotaline (Ludiomil), Nortriptyline (Aventyl, Pamelor), Protriptyline (Vivactil), and Trimipramine (Surmontil).

(26) Readmission–An individual who is readmitted to a nursing facility in which he has resided following a temporary absence for hospitalization or for therapeutic leave.

(27) Related condition–A severe, chronic disability as defined in 42 Code of Federal Regulations §435.1009, that meets all of the following conditions:

(A) it is attributable to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition including autism, but excluding mental

illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment or services similar to those required for these persons;

(B) it is manifested before the person reaches age 22;

(C) it is likely to continue indefinitely;

(D) it results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(28) Substantial risk of serious harm to self and/or others - Harm which may be demonstrated either by a person's behavior or by evidence of severe emotional distress and deterioration in his mental condition to the extent that the person cannot remain at liberty, as determined by a court of law.

(29) Ventilator dependent–Reliance upon a respirator or respiratory ventilator as a life support system to assist with breathing because of a respiratory condition.

(b) Preadmission screenings.

(1) Effective January 1, 1989, all new admissions (private pay, Medicare beneficiaries, and Medicaid recipients) must have a CARE form (Purpose Code 1/P) and be screened prior to admission to a nursing facility to determine if:

(A) the individual has mental illness (MI), mental retardation (MR), and/or a related condition (RC);

(B) nursing facility placement is appropriate in contrast to other settings; and

(C) the individual requires active treatment.

(2) A nursing facility must not admit any individual who has met the conditions of paragraphs (1)(A) and (C) of this section, and for whom facility placement is not appropriate in contrast to other settings.

(3) Readmissions are not subject to preadmission screenings.

(4) Level I identification screening. Individuals are identified as having mental illness, mental retardation, or a related condition (MI/MR/RC) through use of DHS's CARE form, Item 34.

(A) The attending physician makes a positive response to CARE Form Item 34 for the presence of MI if the individual:

(i) has a diagnosis of MI;

(ii) has a history of MI within the last two years;

(iii) has been prescribed a psychotherapeutic medication on a regular basis in the absence of a justifiable neurological disorder; or

(iv) presents any evidence of MI (excluding a primary diagnosis of Alzheimer's disease or dementia) including possible disturbances in orientation, affect, or mood.

(B) The attending physician makes a positive response to Item 34 for the presence of MR and/or RC if the individual:

(i) has a diagnosis of MR and/or RC;

(ii) has any history of MR and/or RC identified in the past;

(iii) presents any evidence (cognitive or behavioral functioning) that may indicate the presence of MR and/or a RC; or

(iv) has been determined eligible and is referred by an agency that serves people with MR and/or RC.

(C) A positive response to CARE form Item 34 requires that an individual must receive a Level II assessment prior to admission to a nursing facility.

(D) An individual may be immediately admitted to or continue residing in a nursing facility if:

(i) Item 34 of DHS's CARE form is marked no;

(ii) an individual is in the nursing facility for convalescent care;

(iii) an individual is comatose, terminally ill, or has a serious medical condition;

(iv) an individual has a primary diagnosis of dementia and is not MR and/or RC; or

(v) an individual has Alzheimer's disease.

(4) Level II Assessment. TDH staff must contact the attending physician to verify the information marked on DHS's CARE form, Item 34. If the attending physician verifies that the individual is MI/MR/RC then TDH staff or their contracted staff will conduct on-site assessments of all individuals identified as having MI/MR/RC through the Level I Screening.

(A) The assessment process consists of a:

(i) PASARR nursing facility assessment;

(ii) PASARR mental illness assessment (as appropriate);

(iii) PASARR mental retardation and related conditions assessment (as appropriate);

(B) Depending on the mental and/or physical condition, TDH sends either a:

(i) MI assessment team consisting of:

(I) a registered nurse who is a qualified mental health professional (at least one year experience with direct services in a professional capacity); and

(II) other qualified mental health professionals; with

(III) a psychiatrist and social worker sign-off at TDH State Office.

(ii) MR Assessment team consisting of:

(I) a registered nurse who is a qualified mental retardation professional (at least one year experience with direct services in a professional capacity working with people who have a developmental disability); and

(II) a psychologist who is also a qualified mental retardation professional with at least a Master's degree.

(C) TDH will have other professionals on staff and/or on a consultant basis who have the expertise in the evaluation of individuals with related conditions.

(D) If during the assessment process TDH ascertains that an individual does not have MI/MR/RC, then the Level II Assessment may be discontinued and the individual may be admitted to the nursing facility.

(E) All assessment data are

reviewed by TDH staff for completeness and accuracy and sent to TDMHMR for PASARR determination as specified in subsection (c) of this section.

(F) The nursing facility is required to notify TDH if it receives a DHS CARE form with Item 34 blank.

(c) Annual resident reviews.

(1) Effective January 1, 1989, all current nursing facility residents with an indication of MI/MR/RC must be identified by TDH through on-site visits which includes chart reviews and interviews with residents.

(2) The nursing facility is required to assist TDH in identifying all residents who may be MI/MR/RC by providing CARE forms on all residents (Medicaid, Medicare, and private pay) and making residents' records available.

(3) Those individuals identified as having MI/MR/RC are required to receive a Level II assessment as described in subsection (b)(4) of this section.

(4) As of April 1, 1990, all identified residents must have received a Level II assessment. These residents, any new residents, or any other resident, must be reassessed annually if their condition changes to indicate a positive response to CARE form Item 34 through the identification process. The nursing facility must submit another CARE form if a resident's condition changes significantly where there is an indication that the resident might benefit from active treatment.

(d) Determination process.

(1) TDMHMR reviews the assessment data gathered by TDH in order to determination whether:

(A) nursing facility services are appropriate in contrast with other services; and

(B) an individual requires active treatment for his mental and/or physical condition.

(2) Determinations are based on criteria established by TDMHMR under 25 Texas Administrative Code, Part II, Subchapter 402

(E) One of the following determinations are made:

(A) nursing facility services are needed, but active treatment services are not needed. Those individuals may be admitted to or continue residing in a nursing facility;

(B) nursing facility services are needed and active treatment services are needed. Those individuals may be admitted to or continue residing in a nursing facility and receive active treatment within the facility;

(C) nursing facility services are not needed but active treatment services are needed. Those individuals may not be admitted to or continue residing in a nursing facility except as described in subsection (d)(3) of this section. Those individuals who are current nursing facility residents must be alternately placed as described in subsection (e) of this section.

(3) If a nursing facility resident has 30 or more months of continuous residence in a nursing facility preceding the PASARR determination, the resident may choose to remain and receive active treatment services in the nursing facility, or seek alternate placement.

(4) If during the determination process TDMHMR ascertains that a person does not have MI/MR/RC, the PASARR determination process may be discontinued and the individual may be admitted to the nursing facility.

(5) TDMHMR will notify all individuals of the results of their PASARR determination through a letter sent to them, the nursing facility administrator, the attending physician, and the local MHMR authorities, the Texas Department of Aging (TDoA), and the local Medicaid eligibility unit. Any individual, or his legal representative, responsible party, or family member not in agreement with the PASARR determination, may file an appeal with TDMHMR to receive a DHS fair hearing according to Chapter 79 of this title (relating to Legal Services).

(e) Active treatment and alternate placement.

(1) TDMHMR contracts with the local MHMR authority to purchase case management, active treatment, and alternate placement for persons determined by TDMHMR as requiring active treatment and alternate placement.

(2) The local MHMR authority assigns a case manager for those residents who require active treatment services and/or must be alternately placed.

(3) An interdisciplinary team will be constituted by the case manager in order to develop a plan for active treatment and/or alternate placement. This team will identify those additional services required for active treatment that are not already being provided by the nursing facility and covered in the nursing facility daily vendor rate. This team must include:

(A) a representative of the nursing facility;

(B) primary physician;

(C) other professionals deemed appropriate; and

(D) the family.

(4) The case manager will determine how active treatment services will be provided and will facilitate provision of those services. These services will be provided via contract funds from TDMHMR with the local MHMR authority. The local MHMR authorities may directly provide or may subcontract for those services with other providers, including the nursing facility. Those services must meet the relevant portions of TDMHMR's Community Service Standards.

(5) The case manager and/or all active treatment service providers will report monthly to the primary or attending physician regarding the delivery of active treatment.

(6) The case manager will locate alternate placement if required.

(7) The nursing facility must allow TDA staff or representatives from Advocacy, Inc., to counsel and inform affected residents of their rights and options under PASARR.

(8) Active treatment services and nursing facility services are to be coordinated and integrated for maximum benefit to the resident. A nursing facility must allow for the MHMR authority or a subcontracted provider to provide active treatment services within the facility. If a nursing facility accepts individuals or has individuals who require active treatment for their mental condition, it must establish and maintain a written cooperative agreement with the local MHMR authority that includes:

(A) general responsibilities of the facility and the provider for delivering the appropriate and mutually supportive services to those residents requiring active treatment for their MI/MR/RC;

(B) a provision allowing the MHMR authority staff to access the facility's resident record and assessment information to avoid unnecessary duplication of services, with appropriate consent of the eligible resident, legal representative, or responsible party;

(C) a provision allowing the MHMR authority staff an opportunity to participate in or provide information for the facility's admission, programmatic, and discharge planning meetings when the active treatment needs of an eligible resident are being considered;

(D) a provision allowing the

nursing facility staff to participate in or provide information to the MHMR authority case manager during each active resident's treatment planning; and

(E) how conflicts over such issues as time, space, and equipment should be resolved.

(9) The nursing facility must maintain, as a separate document in the resident's record, a copy of the original Individual Active Treatment Plan developed by the interdisciplinary team, and any subsequent changes.

(10) The facility must obtain and document in the interdisciplinary medical-social plan of care the following information from the active treatment plan, the designated provider, the case manager, other written report, and documented telephone contacts:

(A) efforts to resolve the differences between the active treatment plan and the medical-social plan of care;

(B) active treatment objectives;

(C) the resident's adjustment to the active treatment program;

(D) changes and modification to the plan; and

(E) the facility's responsibility for follow-through on each active treatment objective.

(11) The facility must ensure that all residents who may benefit from active treatment are identified.

(12) All providers of active treatment, including the nursing facility, must meet the relevant portions of TDMHMR's Community Service Standards for the delivery of active treatment services.

(f) Nursing facilities who admit or retain individuals that have not been screened by TDMHMR or who admit or retain individuals for whom nursing facility placement has been found to be inappropriate and who require active treatment will not be reimbursed for that individual as described in §16.3807 of this title (relating to Limitations on Provider Charges to Patients).

(g) Nursing facilities must provide discharge planning services to all residents who are to be alternately placed as described in §16.6112 of this title (relating to Discharges/Relocations) and provide residents those rights described in §§16.6101-16.6120 of this title (relating to Recipient Rights).

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 31, 1990.

TRD-9005656 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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Governing Body and Management

• 40 TAC §§16.1901, 16.1903, 16.1904, 16.1906, 16.1907, 16.1910-16.1912, 16.1914-16.1919

(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.

§16.1901. Purpose of Governing Body.

§16.1903. Recipient Admission.

§16.1904. Institutional Plan.

§16.1906. Operating Policies and Procedures.

§16.1907. Incident or Accident Reporting.

§16.1910. Use of Outside Resources.

§16.1911. Consultant Services.

§16.1912. Recipient-patient Care Policies.

§16.1914. Financial Records.

§16.1915. Financial Audits.

§16.1916. Medical Transportation.

§16.1917. Collection of Applied Income.

§16.1918. Computation of Daily Reimbursement Rate for Recipients.

§16.1919. "Grandfathered" ICF II, ICF III, and Skilled Recipient-patient Requirements.

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

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

TRD-9005172 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

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

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Physician Services

• 40 TAC §§16.2901-16.2908

(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.

§16.2901. Introduction.

§16.2902. Admission Information.

§16.2903. Physician Supervision.

§16.2904. Visit Schedules for Recipients with SNF Levels of Care.

§16.2905. Visit Schedules for Recipients with ICF Levels of Care.

§16.2906. Certification and Recertification Requirements.

§16.2907. Availability for Emergency Recipient-patient Care.

§16.2908. Dental Services.

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

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TRD-9005173 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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Nursing Services

• 40 TAC §§16.3001-16.3009, 16.3011-16.3017

(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.

§16.3001. Twenty-four Hour Services.

§16.3002. ICF II Staff Requirements.

§16.3003. ICF Staff Requirements.

§16.3004. SNF Staff Requirements.

§16.3005. Other Staff Requirements.

§16.3006. Waiver of SNF Seven-day Registered Nurse Requirement.

§16.3007. Request for Waiver.

§16.3008. ICF Director of Nursing.

§16.3009. SNF Director of Nursing.

§16.3011. Charge Nurse Requirements.

§16.3012. Charge Nurse Responsibilities.

§16.3013. Rehabilitative Nursing Care.

§16.3014. General Nursing Care.

§16.3015. Supervision of Nutrition.

§16.3016. Administration of Drugs.

§16.3017. Conformance with Physician Orders.

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-9005174 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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Food and Nutrition Services

• 40 TAC §§16.3101-16.3107

(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.

§16.3101. Introduction.

§16.3102. Staff and Qualifications.

§16.3103. Dietary Consultant Requirements.

§16.3104. Documentation Requirements for Dietary Consultant.

§16.3105. Hygiene.

§16.3106. Menus and Nutritional Adequacy.

§16.3107. Food Storage and Preparation.

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-9005175 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

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

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Pharmacy Services

• 40 TAC §§16.3201-16.3212

(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.

§16.3201. General Requirements.

§16.3202. Supervision.

§16.3203. Pharmacy Services Committee.

§16.3204. Pharmacist Consultant.

§16.3205. Drug Security.

§16.3206. Drug Records.

§16.3207. Drug Orders.

§16.3208. Drug Release.

§16.3209. Drug Administration.

§16.3210. Controlled Substances.

§16.3211. Emergency Drug Kit.

§16.3212. Drug Monitoring.

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-9005176 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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Laboratory and Radiology Services

• 40 TAC§§16.3301-16.3304

(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.

§16.3301. Written Policies.

§16.3302. Provision of Services.

§16.3303. Availability of Results.

§16.3304. Blood and Blood Products.

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-9005177 Cathy Rossberg
Agency liaison, Policy

Communication Services
Texas Department of Human Services

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

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Social Services

• §§16.3401-16.3404

(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.

§16.3401. General Requirements.

§16.3402. Direct Delivery of Social Services by the Facility.

§16.3403. Referral for Social Services.

§16.3404. Social Services Planning Process.

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

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TRD-9005178 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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Rehabilitation Services/Goal-directed Therapy

• 40 TAC §§16.3501-16.3507

(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.

§16.3501. Provision of Services.

§16.3502. Staff and Qualifications.

§16.3503. Therapist Responsibilities.

§16.3504. Goal-directed Therapy.

§16.3505. Screening.

§16.3506. Staff Training.

§16.3507. Qualifications for Outpatient Physical Therapy and Speech Pathology.

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-9005179 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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Services and Supplies Included in the Vendor Payment

• 40 TAC §§16.3801-16.3805, 16.3807

(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.

§16.3801. Vendor Payment.

§16.3802. Additional Charges.

§16.3803. Supplementation of Vendor Payments.

§16.3804. Penalties for Supplementation.

§16.3805. Provision of Certain Medical Equipment, Supplies, and Prosthetic Devices.

§16.3807. Limitations on Provider Charges to Patients.

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-9005180 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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Medical Records

• 40 TAC §16.3901, §16.3902

(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.

§16.3901. General Requirements.

§16.3902. Staff and Qualifications in a Skilled Nursing 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-9005181 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

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

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Medical Direction

• 40 TAC §§16.4101-16.4103

(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.

§16.4101. Introduction.

§16.4102. Functions.

§16.4103. Waiver of the Medical Direction Requirement.

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-9005182 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

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

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Physical Environment

• 40 TAC §§16.4901-16.4913

(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.

§16.4901. Introduction.

§16.4902. Sleeping Rooms.

§16.4903. Multi-purpose Rooms.

§16.4904. Kitchen and Dietetic Service Areas.

§16.4905. Communication.

§16.4906. Comfort.

§16.4907. Linens and Clothing.

§16.4908. Infection Control in SNFs.

§16.4909. Engineering and Maintenance.

§16.4910. Housekeeping.

§16.4911. Nurses Station.

§16.4912. Auxiliary Station.

§16.4913. Mechanical Means for Patient Observation.

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-9005183 Cathy Rossberg
Agency liaison, Policy Communication Services
Texas Department of Human Services

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

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Safety

• 40 TAC §16.5101, §16.5102

(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.

§16.5101. Fire Safety.

§16.5102. Disaster Plan.

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

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

TRD-9005184 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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Recipient-patient Activities

• 40 TAC §§16.5901-16.5903

(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.

§16.5901. General Requirements.

§16.5902. Activities Director Requirements.

§16.5903. Recipient-patient Activities Plan.

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

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

TRD-9005185 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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Recipient Rights

• 40 TAC §§16.6101-16.6111, 16.6113-61.6120

(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.

§16.6101. Introduction.

§16.6102. Exercise of Rights.

§16.6103. Policies.

§16.6104. Freedom of Association.

§16.6105. Access to Facility.

§16.6106. Recipient-patient Council.

§16.6107. Privacy.

§16.6108. Confidentiality of Records.

§16.6109. Property.

§16.6110. Right to Manage Personal Funds.

§16.6111. Protection of Funds.

§16.6113. Care Involvement.

§16.6114. Work Activity.

§16.6115. Restraints.

§16.6116. Statement of Services and Bills.

§16.6117. Religious Activities.

§16.6118. Rejection of Life-sustaining Procedures.

§16.6119. Refunds.

§16.6120. Grievances.

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-9005186 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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Medical Review and Re-evaluation

• 40 TAC §§16.7101, 16.7102, 16.7104

(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.

§16.7101. Utilization Review.

§16.7102. Periodic Medical Review and Inspections of Care.

§16.7104. Medical Care Evaluation Studies.

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-9005187 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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Support Documents

• 40 TAC §16.9802

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

§16.9802. Medicare Part A Skilled Nursing Facility Deductible and Coinsurance Payment.

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-9005188 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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Chapter 19. Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

The Texas Department of Human Services (DHS) proposes new ™™19.1, 19.101, 19.201-19.219, 19.301-19.305, 19.401, 19.501-19.505, 19.601-19.604, 19.701, 19. 801-19.813, 19.901-19.912, 19.1001-19.1010, 19.1101-19.1106, 19.1201-19.1208, 19. 1301-19.1310, 19.1401, 19.1402, 19.1501-19.1521, 19.1601-19.1612, 19.1701-19. 1708, 19.1801-19.1809, 19.1901-19.1933, 19.2001-19.2013, and 19.2101-19.2107, concerning DHS's long-term care nursing facility requirements for licensure and Medicaid certification. These sections constitute new Chapter 19 which will replace DHS's Chapter 16, intermediate care facilities/skilled nursing facilities (ICF/SNF), effective October 1, 1990. The new sections result from the Omnibus Budget Reconciliation Act of 1987 and Senate Bill 487 which create one set of requirements for Medicaid-certified facilities. The new sections contain the new federal requirements, parts of the ICF/SNF standards for participation, Texas Department of Health (THD) minimum licensing standards for nursing homes, and administrative and utilization review procedures.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the new sections are in effect there will be fiscal implications 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 will be an estimated additional cost of $19,809,716 for fiscal year 1991; $20,717,962 for fiscal year 1992; $20,954,330 for fiscal year 1993; $21, 844,376 for fiscal year 1994; and $23,185,663 for fiscal year 1995. There is no anticipated effect on local government for the first five-year period the new sections are in effect.

Mr. Raiford also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be better trained and monitored nurse aides in nursing facilities, more appropriate placement of persons with mental illness or mental retardation, better protection of residents' rights, and better enforcement of sanctions for failure of nursing facilities to meet the needs of the residents. There will be no effect on small businesses as a result of enforcing the new sections. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed.

Questions about the content of this proposal may be directed to Rose Davis at (512) 450-3529 in DHS's institutional care section. Comments on the proposal may be submitted to Cathy Rossberg, Agency Liaison, Policy Communication Services-202, Texas Department of Human Services 222-E, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

• 40 TAC §19.1

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

§19.1. Basis and Scope.

(a) Basis in legislation.

(1) The following laws govern the requirements for the long-term care nursing facility requirements for licensure and Medicaid certification, unless noted otherwise in this chapter: Texas Civil Statutes, Article 4442c; Social Security Act, §§1102.1819(a)-(d), 1861(j) and (l), 1863, 1871, 1902(a)(28), 1905(a) and (c), and 1919(a)-(d) (42 United States Code §§1302, 1395x(j) and (l), 1395hh, 1396a(a)(28) and 1396d(c)); and 42 Code of Federal Regulations 483.

(2) Social Security Act, §1919(a)-(d), creates the term, "nursing facility," in the Medicaid Program, which replaces the terms "skilled nursing facility" and "intermediate care facility" effective October 1, 1990.

(3) The long-term care nursing facility requirements for licensure and Medicaid certification specify requirements of federal and state laws and regulations governing the Title XIX Nursing Facilities Vendor Program administered by the Texas Department of Human Services (DHS) in cooperation with other federal and state agencies.

(A) Each requirement is established to ensure compliance under the law, equity among those served, provision of all authorized services, and proper fund disbursement.

(B) If there is a conflict between material in these requirements and the laws or regulations governing the

program, the latter are controlling.

(b) Scope. The long-term care nursing facility requirements for licensure and Medicaid certification contain the requirements that an institution must meet in order to qualify to participate as a licensed facility in the Medicaid Program. They serve as a basis for survey activities for licensure and certification.

(1) These requirements provide the nursing facility with information necessary to fulfill its vendor contract for participation with the Texas Department of Human Services (DHS). Each facility is required to keep these requirements current. The requirements are the basis for surveys by federal and state surveyors, are part of the vendor contract, and are necessary for the facility to remain in compliance with federal and state laws.

(2) DHS recognizes personal pronouns used in these standards refer to both genders, and no exclusion is implied with use of the generic "he."

(3) These requirements for licensure and Medicaid certification apply to all residents (private pay, Medicaid applicants and recipients, VA patients, Medicare recipients, etc) who are admitted to and reside in a Medicaid certified facility or a Medicaid certified distinct part of a facility.

(4) Requirements applicable to residents of facilities or distinct parts of facilities that are not certified for Medicaid or Medicare participation are found in the Texas Department of Health minimum licensing standards for nursing homes.

(5) Requirements for facilities or distinct parts of facilities that are certified for Medicare only participation may be found in the February 2, 1989, *Federal Register* and the Texas Department of Health, minimum licensing standards for nursing homes.

(6) These long-term care nursing facility requirements for licensure and medicaid certification supersede all joint agency policy interpretations and agency policy interpretations of the Texas Department of Human Services and Texas Department of Health prior to October 1, 1990.

(c) Purpose and application. The purpose of these sections is to promote the public health, safety, and welfare and provide for the development, establishment, and enforcement of standards; for the care of individuals in facilities of the character defined and covered herein; and for the establishment, construction, maintenance, and operation of such facility which in the light of advancing knowledge will promote safe and adequate care of individuals of these facilities. Residents shall not be admitted or retained if their needs cannot be met through services provided by the facility either directly or through arrangements, if so allowed by these requirements.

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

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

TRD-9005189 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 B. Definitions

• 40 TAC §19.101

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

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

Act–The Health and Safety Code, Chapter 242.

Activities assessment–See comprehensive assessment and comprehensive plan of care.

Activities director–The qualified individual appointed by the facility to direct the activities program as described in §19.502 of this title (relating to Activities).

Administrator–Same as licensed nursing home administrator.

Admission determination of medical necessity–The qualification assigned to an applicant or recipient upon his entry into a nursing facility or upon his becoming eligible for Medicaid. The admission determination of medical necessity is valid for up to 180 days from the effective date assigned by the Texas Department of Health Long-term Care Unit (TDH/LTCU).

Agent–An adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.

Attending physician–A physician, currently licensed by the Texas State Board of Medical Examiners, who is designated by the resident or responsible party who has primary responsibility for the treatment and care of the resident.

Barrier precautions–These precautions include the use of gloves, masks, gowns, resuscitation equipment, eye protectors, aprons, faceshields, and protective clothing.

Bed-hold–Allowable charges when a resident is discharged and out of the building.

Body fluids–Any secretions or emissions from the human body. Body fluids include, but are not limited to, blood, semen, saliva, tears, vomitus, urine, feces, breast milk, wound drainage, spinal and amniotic fluids, vaginal secretions, menses, and mucous.

Certification–Meeting all the requirements for participating in the Medicaid and/or Medicare programs as determined by TDH.

CFR–Code of Federal Regulations.

Competent–Having requisite or adequate ability, as in making personal health care or financial decisions.

Comprehensive assessment–A multidisciplinary description of a resident's needs and capabilities to include daily life functions and significant impairments of functional capacity.

Comprehensive care plan–A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs.

Consulting physician/dentist/podiatrist–One who responds to a request by the attending physician for consultations.

Continued stay review–A review done by TDH/LTCU staff to determine if a recipient needs continued nursing facility care. Continued stay reviews are performed only after the TDH/LTCU receives the documentation submitted on Texas Nursing Facility CARE forms from the nursing facility, and may result in new effective dates and new continued-stay-review dates. A recipient's current medical necessity determination may be sustained, changed, or denied. A continued stay review is completed every 180 days unless the recipient has been out of the nursing facility vendor payment program over 30 days.

Controlled substance–A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Texas Civil Statutes, Article 4476-15, §1.02(5), and/or the Federal Controlled Substance Act of 1970, Public Law 91-513.

Custodial care and personal care–Supervision of and assistance with the resident's eating, dressing, grooming, bathing, toileting, transferring, ambulation, and mobility. Custodial care and personal care may also include assistance with and/or self-administration of medications. The individual requiring this care is unable to function safely and independently in his environment because of some degree of mental or functional impairment. He does not demonstrate the need for services by licensed nurses, therefore, would not qualify for a medical necessity determination.

Dangerous drugs–Any drug as defined in the Texas Dangerous Drug Act, Texas Civil Statutes, Article 4476-14, §2.

Date of receipt of CARE request forms–The earlier of the two following dates:

(A) the date stamped on the CARE forms by the TDH/LTCU when the TDH/LTCU office receives them, or

(B) the certified mailing date stamped by the United States Postal Service on its certified mail forms when the CARE assessment forms are deposited for mailing to the TDH/LTCU office.

Dentist–A practitioner licensed by the Texas State Dental Examiners Board.

Dietary Service Supervisor (food service director)–The director of food service must be at least:

(A) a person who is a qualified dietitian; or

(B) an associate-of-arts graduate in nutrition and food management (a dietary technician); or

(C) a graduate of a dietetic technician or dietetic assistant training program approved by the American Dietetic Association, or the Dietary Manager's Association, whether conducted by correspondence or in a classroom; or

(D) a person who has completed a state-agency-approved 90-hour course in food service supervision; or

(E) a person who has training and experience in food service supervision and management in a military service equivalent in content to the programs in subparagraphs (A)-(D) of this definition and has had his or her training credentials evaluated and approved by the Nutrition Program Specialist, Bureau of Long-term Care, TDH.

Dietitian–

(A) A dietitian who is qualified based upon either registration by the Commission on Dietetic Registration of the American Dietetic Association, or education, training, or experience in identification of dietary needs, planning and implementation of dietary programs.

(B) A qualified dietitian may be an individual with a license but without registration and who has a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management; has one year of supervisory experience in dietetic service of a health care facility; and participates annually in continuing dietetic education.

(C) Persons who are not registered or licensed, as provided by subparagraphs (A) or (B) of this definition, must have credentials evaluated and approved by the nutrition program specialist, Bureau of Long-term Care, TDH.

(D) All qualified dietitians not registered as provided by subparagraph (A) of this definition must have 15 hours dietetic continuing education annually. Attendance must be reported to the TDH Bureau of Long-term Care.

Direct care by licensed nurses–Direct care consonant with the physician's planned regimen of total resident care includes:

(A) assessment of the resident's health care status;

(B) planning for the resident's care;

(C) assignment of duties to achieve the resident's care;

(D) nursing intervention; and

(E) evaluation and change approaches as necessary.

DHS–Texas Department of Human Services.

Distinct part–That portion of a facility certified to participate in the Medicaid Nursing Facility Program.

Drug (also referred to as medication)–Any of the following:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

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

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

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

Drug administration error–A drug is:

(A) given in the wrong amount;

(B) given in the wrong strength;

(C) given at the wrong time (more than 60 minutes before or after the ordered time of administration);

(D) given by the wrong route of administration;

(E) given to the wrong resident;

(F) ordered and not administered, and the reason and justification for the omission are not recorded;

(G) the wrong drug; or

(H) given without physician's order.

Durable power of attorney–The designation of an agent to make treatment decisions if the individual designator becomes incapable.

Elderly individual–A person at least 55 years old.

Exposure (infections)–The direct contact of blood or bloody body fluids of one person with the skin or mucous membranes of another person. Other possibly infectious secretions are semen and vaginal secretions.

Facility–Unless otherwise indicated, a nursing facility (NF).

(A) "Facility" may include a distinct part of a facility as specified in 42 Code of Federal Regulations, §440.40 or §440.150 (CFR), but does not include an institution for the mentally retarded or persons with related conditions described in 42 Code of Federal Regulations, §440.140(c).

(B) For Medicaid, a facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in §19.604 of this title (relating to Preadmission Screening and Annual Resident Review (PASARR)).

(C) For Medicare, a facility may not include any institution that is for the care and treatment of mental diseases as described in of the Social Security Act, §1881(j)(15).

(D) For the Texas Department of Health, a facility is an institution or establishment that provides organized and structured nursing care and service, and is subject to licensure as a nursing home under the Health and Safety Code, Chapter 242.

(E) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the

provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

Family representative–An individual appointed by the resident to represent the resident and other family members. This could be by formal or informal arrangement.

Fiduciary agent–An individual who holds in trust another's monies.

Free choice–Unrestricted right to choose, as in a qualified provider of services.

Full time–Employment 40 hours per week, at least eight hours per day, five days per week.

Gloves–Examination gloves of vinyl or latex, general purpose utility gloves or rubber household gloves.

Goals–Long-term: general statements of desired outcomes. Short-term: measurable time-limited, expected results which provide the means to evaluate the resident's program toward achieving long-term goals.

HCFA–Health Care Financing Administration.

Health care provider–An individual or facility licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice, and includes a physician.

HIV–Human Immunodeficiency Virus.

HPPD–Hours per patient (resident) day, used in calculating hours of care per day for each resident.

Human Resources Code–Statutory requirements promulgated by the legislature of the State of Texas directing the provision of human services.

Incident–An unusual or abnormal event or occurrence in, at or affecting the facility and/or the resident of the facility.

Incompetent–Lacking the qualities needed for effective action, as in making personal health care or financial decisions.

Infection control–An active program designed to provide a safe, sanitary, and comfortable environment that help prevent the transmission of disease and infection.

Interdisciplinary care plan–The coordinated comprehensive care plan which is developed for each resident by the interdisciplinary team after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity needs, and resident's rights. The plan includes strategies developed by the team, as described in §19.602(b)(2) of this title (relating to Comprehensive Care Plans), consistent with the physician's prescribed plan of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

(A) goal setting;

(B) establishing priorities for management of care;

(C) making decisions about specific measures to be used to resolve the resident's problems; and/or

(D) assisting in the development of appropriate coping mechanisms.

Involuntary transfer–The resident is moved, removed, or transferred without the consent of the treating physician and the resident or the resident's responsible party.

IV–Intravenous.

JAPI–Joint Agency Policy Interpretation.

A policy interpretation used by two or more of the following state agencies–DHS, TDH, and TDMHMR.

Legal guardian–A person lawfully invested with power and duty to take care of another person and manage the property and rights of that person who is considered incapable of administering his/her own affairs.

Legal representative–One who stands in place of and represents the interest of another.

Legend drug or prescription drug–Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

Licensed nursing home (facility) administrator–A person currently licensed by the Texas Board of Licensure for Nursing Home Administrators who is responsible for the management of the facility and must work at least 40 hours per week on administrative duties.

Licensed vocational nurse (LVN)–A nurse who is currently licensed by the Board of Vocational Nurse Examiners for the State of Texas.

Licensing agency–The Texas Department of Health Life Safety Code (also referred to as the Code or NFPA 101)–The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA), as required under of the Health and Safety Code, Chapter 242, §4. Life Safety Code, NFPA 101, is a registered trademark of the National Fire Protection Association, Inc., Quincy, Massachusetts 02269.

Life support–Use of any technique, therapy, or device to assist in sustaining life.

Local health authority–The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Health and Safety Code, §121.021.

Long-term care unit (LTCU)–A team of TDH health care professionals responsible for utilization review functions in Title XIX nursing facilities, determination of medical necessity for Medicaid recipients, and survey for licensure and certification of nursing facilities for Title XIX participation.

Medicaid applicant–One who is requesting the determination of financial eligibility in order to become a Medicaid recipient.

Medicaid recipient–One who meets the requirements of the Title XIX Medicaid Program, is eligible for services, and resides in a Medicaid participating facility.

Medicaid, Title XIX–Social Security Act.

Medicaid nursing facility vendor payment system–Electronic billing and payment system for reimbursement to nursing facilities for eligible Medicaid recipients. Vendor payment is based on the nursing facility's claim approval of the DHS-generated nursing facility billing statement to DHS. The nursing facility billing statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

Medical care–Care required for preservation of life and comfort, for prevention and treatment of illness and maintenance of bodily and mental function, and is under the continued supervision of a physician. Such care is to be provided, for purposes of long-term care facilities, in an institution with services of registered nurses or licensed vocational nurses continuously available to carry out the physician's plan of care for his patients who are residents in the facility.

Medical director–A physician licensed by the Texas State Board of Medical Examiners, who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care.

Medical necessity (MN)–The determination that a recipient requires the services of registered nurses or licensed vocational nurses in an institutional setting to carry out the physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute a medical need. The ICF-MR Program is excluded from this definition.

Medical necessity assessment–The process by which the TDH/LTCU evaluates, reviews, and establishes the determination of the applicant's or recipient's health problems and the need for nursing care based upon information that must be supplied to TDH by the Nursing Facility.

Medical-social care plan–See interdisciplinary comprehensive care plan.

Medically related condition–An organic, debilitating disease or health disorder that requires services provided in a nursing facility, under the supervision of licensed nurses.

Medicare, Title XVIII–Part of the Social Security Act.

Medication aide–A person who holds a current permit issued under the Medication Aide Training Program as described in 25 TAC,§145. 251-§145.261 (relating to Medication Aide Training Program) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

Minimum (Uniform) data set (MDS)–A comprehensive assessment of the resident's medical, functional, and psychosocial status as specified by the Secretary of Health and Human Services to be done on an instrument specified by the State of Texas.

Natural Death Act–Provisions of Texas Civil Statutes, Article 4590h.

NHIC–National Heritage Insurance Corporation.

Nonnursing personnel–Persons not assigned to give direct personal care to residents. They include administrators, secretaries, activities directors, bookkeepers, cooks, janitors, maids, laundry workers, and yard maintenance workers.

Nurse aide/orderly–Unlicensed nursing personnel staff whose primary duties consist of direct resident care and services to include, but not limited to, such services as hygiene, grooming, dressing, feeding, ambulating, turning, positioning, and taking vital signs. Duties do not include routine housekeeping, laundry, and dietary functions.

Nurse aide trainee–An individual enrolled in nurse aide training, who has not completed the curriculum and competency evaluation.

Nursing assessment–The collecting of data through observation, interview, and nursing examination. After the data are collected, the nurse observes the resident's abilities and disabilities and identifies which disabilities constitute the resident's nursing problems consistent with the physician's planned regimen of total resident care.

Nursing care–Services provided by nursing personnel which include, but are not limited to: observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

Nursing care planning–See interdisciplinary care plan or comprehensive care plan.

Nursing facility/home–An institution or establishment that provides organized and structured nursing care and service, and is subject to licensure as a nursing home under the Health and Safety Code, Chapter 242, and/or certified to participate in the Medicaid Title XIX Program. Nursing home is also referred to as nursing facility or facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care to the residents; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

Nursing facility/home administrator–A person licensed by and in good standing with the Texas Board of Licensure for Nursing Home Administrators. Also referred to as administrator.

Nursing intervention–Those activities consistent with the comprehensive care plan, which the nurse initiates to help the resident cope with, meet, or resolve his needs. The activities may be performed by:

(A) the nurse;

(B) unlicensed nursing personnel acting under the supervision and/or direction of a registered nurse or licensed vocational nurse in a nursing facility (NF) or a Medicare skilled nursing facility (SNF);

(C) the resident and nurse acting together. Nursing intervention includes, but is not limited to:

(i) providing direct services to residents when specialized skills and training are required, including observation;

(ii) coordinating the various activities successfully so that the goals and objectives stated in the resident's plan of care are achieved;

(iii) evaluating the care being given;

(iv) redirecting or modifying the care according to the resident's response to the care and treatment plans;

(v) keeping the physician informed of the resident's condition;

(vi) re-establishing goals or objectives as indicated by the resident's condition;

(vii) assessing staff training needs;

(viii) training staff and communicating plans of care;

(ix) assigning appropriately trained staff to carry out components of nursing care plan.

Nursing personnel–Persons assigned to give direct personal and nursing services to residents. They include registered nurses, licensed vocational nurses, nurses aides, orderlies, and medication aides.

Nurse practitioner–A registered professional nurse currently licensed by the Board of Nurse Examiners for the State of Texas, who is prepared for advanced nursing practice by nature of knowledge and skills obtained through a post-basic or advanced educational program of study acceptable to the board. (Rule 219.1-Rules and Regulations Related to Professional Nurse Education, Licensure, and Practice from the Board of Nurse Examiners for the State of Texas.) According to federal requirements (42 Code of Federal Regulations §491.2) a nurse practitioner is a registered professional nurse who is currently licensed to practice in the State of Texas, who meets the state's requirements governing the qualifications of nurse practitioners, and who meets one of the following conditions:

(A) is currently certified as a primary care nurse practitioner by the American Nurses' Association or by the National Board of Pediatric Nurse Practitioners and Associates; or

(B) has satisfactorily completed a formal one-academic-year educational program that:

(i) prepares registered nurses to perform an expanded role in the delivery of primary care;

(ii) includes at least four months (in the aggregate) of classroom instruction and a component of supervised clinical practice; and

(iii) awards a degree, diploma, or certificate to persons who successfully complete the program; or

(C) has successfully completed a formal educational program (for preparing registered nurses to perform an expanded role in the delivery of primary care) that does not meet the requirements of 42 Code of Federal Regulation, paragraph (b)(2), §491.2, and has been performing an expanded role in the delivery of primary care for a total of 12 months during the 18-month period immediately preceding July 14, 1978.

Nursing supervision–Planning, evaluating, and directing the activities of the nursing unit for which the nurse is responsible. Integral components of supervision are the assessment, organization, and management of residents care delivered by nursing personnel and the preparation and implementation of resident treatment plans consistent with the physician's planned regimen of total resident care. Supervision by the director of nurses means the 24-hour responsibility for the nursing care provided in the facility. Supervision by a shift charge nurse of a unit covers the period of time identified in the shift schedule. Nursing staff in charge of a

unit during a shift are under the overall supervision of the director of nurses. The director of nurses assumes responsibility for direct resident care by coordinating the efforts and directing the activities of the nursing personnel according to their levels of knowledge and capabilities.

OBRA–Omnibus Budget Reconciliation Act, which includes the Nursing Home Reform Act of 1987.

Optometrist–An individual with the profession of examining the eyes for defects of refraction and prescribing lenses for correction who is licensed by the Texas Optometry Board.

Overall care plan–See interdisciplinary comprehensive care plan.

PASARR–Preadmission screening and annual resident review.

Pharmacist–An individual who prepares and dispenses medications prescribed by a physician, dentist, or podiatrist and is licensed by the Texas State Board of Pharmacy to practice pharmacy.

Physical restraint–See Restraints (physical).

Physician–A doctor of medicine or osteopathy currently licensed by the Texas State Board of Medical Examiners.

Physician assistant (PA)–

(A) A graduate of a physician assistant training program that is accredited by the Committee on Allied Health Education and Accreditation of the Council on Medical Education of the American Medical Association; or

(B) a person who has passed the examination given by the National Commission on Certification of Physician Assistants. According to federal requirements (42 Code of Federal Regulation, §491.2) a physician assistant is a person who meets the applicable state requirements governing the qualifications for assistant to primary care physicians, and who meets at least one of the following conditions:

(i) is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or

(ii) has satisfactorily completed a program for preparing physician's assistants that:

(I) was at least one academic year in length;

(II) consisted of supervised clinical practice and at least four months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(III) was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation; or

(C) a person who has satisfactorily completed a formal educational program (for preparing physician assistants) that does not meet the requirements of 42 Code of Federal Regulation, paragraph (d)(2), §491.2, and has been assisting primary care physicians for a total of 12 months during the 18-month period immediately preceding July 14, 1978.

Podiatrist–A practitioner whose profession encompasses the care and treatment of feet who is licensed by the Texas State Board of Podiatry Examiners.

Poison–Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally which contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a physician, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

Practitioner–A physician, podiatrist or dentist, when relating to pharmacy services.

Preadmission medical necessity determination–The determination of need for nursing facility care by TDH before that recipient's admission into the nursing facility. This determination is valid until admission into a nursing facility or up to 30 days from the effective date assigned by the LTCU.

PRN (pro re nata)–For the emergency, as needed.

Provider–The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with DHS.

Psychoactive drugs–Drugs prescribed to control mood, mental status, or behavior.

Quality Assessment and Assurance Committee–Develops and implements appropriate plans of action to correct identified quality deficiencies.

Recipient–Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility.

Recipient care–Action taken by the interdisciplinary team to help an individual resolve or develop a coping mechanism for his medical, physical, and psycho-social problems. This care includes involvement in assessing, evaluating, observing, implementing, intervening, and documenting information to determine the resident's needs and the frequency and manner with which they are met.

Recipient status–The determination of medical necessity as established by the TDH/LTCU.

Recipient supervision by physician–The health care of every resident must be supervised by a physician who:

(A) is licensed by the State of Texas; and

(B) prescribes a planned regimen of total resident care based on the comprehensive care plan.

Registered nurse (RN)–An individual currently licensed by the Board of Nurse Examiners for the State of Texas as a registered nurse in the State of Texas.

Reimbursement methodology–The method by which DHS determines nursing facility per diem rates that are statewide and uniform by class of service.

Representative payee–A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

Resident–Any individual residing in a facility for which the standards in this chapter are applicable, regardless of the method of payment.

Responsible party–An individual authorized by the resident to act for him or her as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or verbal.

Restraints (chemical)–Psychoactive drugs administered for the purposes of discipline, or convenience, and not required to the resident's medical symptoms.

Restraints (physical)–Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body.

Secretary–Secretary of Health and Human Services.

Services required on a regular basis–Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home/family setting. Services required on a regular basis include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

Shall–The word to signify a mandatory provision.

Should–The word to signify a nonmandatory but recommended provision.

Single state agency–The Texas Department of Human Services (DHS), which is designated as the single state agency for the administration of the Texas Medical Assistance Program (Title XIX).

SNF–Skilled nursing facility (Medicare).

Social services director–

(A) A facility of more than 120 beds must employ a full-time social worker.

(B) A facility of 120 beds or less must either employ a half-time social worker or designate, in writing, an individual who will perform required social service functions.

(C) If the individual, designated to perform the functions required to deliver social services in the facility lacks the qualifications of a social worker, as specified in §19.503(c)(1-2) of this title (relating to Social Services), he must receive consultation from a social-work consultant who does meet qualifications as specified in §19.503(c)(1-2) of this title (relating to Social Services).

(D) If the facility is 120 beds or less, and chooses to designate an individual other than a qualified social worker to be the social services director, that individual is responsible for developing the social history and social-needs assessment, and arranging for and documenting all referrals. The facility must have written procedures identifying how the referral process is accomplished, the types of services that may be provided, and what resources may be used in order to meet the psychosocial needs of the residents.

(E) The social services director must assure that the approaches on the services portion of the comprehensive care plan are implemented and staff are trained as necessary.

Social security administration–Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries in filing claims, and provide information about the Medicare program.

Social worker–A qualified social worker in the State of Texas with:

(A) a master's degree in social work; or

(B) a bachelor's degree in social work from a college or university accredited by the Council of Social Work Education, and at least one year of social work experience in a health care setting.

State plan–A formal plan for the medical assistance program, submitted to HCFA, in which the State of Texas agrees to administer the program in accordance with the provisions of the state plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the United States Department of Health and Human Services.

State survey agency–The Texas Department of Health (TDH), which through contractual agreement with the single state agency, is designated as the agency responsible for Title XIX survey and certification of nursing facilities, utilization review in the Title XIX nursing facilities, and determination of medical necessity for Medicaid recipients.

Supervising physician–A physician who assumes responsibility and legal liability for services rendered by a physician assistant (PA) or nurse practitioner (NP), and who has been approved by the Texas State Board of Medical Examiners to supervise services rendered by specific PA(s) or NP(s). This definition applies only to physicians who supervise PAs or NPs.

Supervision (direct)–Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in these sections and in federal regulations, the supervisor must be on the premises and directly supervising.

Supervision (general)–Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. The person being supervised must have direct access to the licensed/qualified person providing the supervision.

Supervision (intermittent)–Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

TDH–Texas Department of Health.

TDMHMR–Texas Department of Mental Health and Mental Retardation.

Texas Register–A publication of the Texas Register Publications Section of the Office of the Secretary of State which contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies. The *Texas Register* was established by the Administrative Procedure and Texas Register Act of 1975.

Title II–Retirement survivors' disability insurance.

Title XVI–SSI-supplemental security income.

Title XVIII–Medicare provisions of the Social Security Act.

Title XIX–Medicaid provisions of the Social Security Act.

Total health status–Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

Trust funds–An exact system of accounting for Medicaid recipients' incomes and expenses to safeguard their money when they are unable to, or chose not to manage their personal finances.

Turnaround document–A request for continued-stay review on the Texas Nursing Facility Client Assessment Review and Evaluation (CARE) form prepared by DHS which the facility must update and submit in a timely manner.

Uniform data set–See Minimum data set.

Universal precautions–The use of barrier and other precautions by long-term care facility employees and/or contract agents to prevent the spread of blood borne diseases.

Vendor payment–Payment made by DHS on a daily rate basis for services delivered to recipients in certified nursing facilities.

Working day–Any 24-hour period, Monday through Friday, excluding state and federal holidays.

1861(j)(1) beds–Beds in a nursing facility found by the Health Care Financing Administration (HCFA) to meet §1861(j)(1) status of the Social Security Act.

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

Issued in Austin, Texas on May 23, 1990.

TRD-9005190 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. Resident Rights

• 40 TAC §§19.201-19.219

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

§19.201. Introduction. The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident.

§19.202. Exercise of Rights.

(a) The resident has the right to exercise his rights as a resident at the facility and as a citizen or resident of the United States.

(b) The resident has the right to be free of interference, coercion, discrimination, or reprisal from the facility in exercising his or her rights.

(c) In the case of a resident adjudged incompetent under the laws of the State of Texas by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed under Texas law to act on the resident's behalf.

(d) The facility must comply with all applicable provisions of the Human

Resources Code, Title 2, Chapter 102. An elderly individual may not be denied appropriate care on the basis of his race, religion, color, national origin, sex, age, handicap, marital status, or source of payment.

(e) The facility must allow the resident the right to observe his religious beliefs. The facility must respect the religious beliefs of the resident in accordance with Public Law Number 90-248, §§1907.6113-1907.6115.

(f) Competent adults may issue directives or durable powers of attorne for health care, subject to the requirements of §19.218 of this title (relating to Incompetency).

§19.203. Notice of Rights and Services.

(a) The facility must inform the resident, both orally and in writing, in a language that the resident understands, of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. Such notification must be made prior to or upon admission and during the resident's stay if changed.

(b) The facility must also inform the resident, upon admission and during the stay, in a language the resident understands, of the following:

(1) facility admission policies;

(2) a description of the protection of personal funds as described in §19.204 of this title (relating to Protection of Resident Funds); and

(3) the Human Resources Code, Title 2, Chapter 102; or

(4) a written list of the rights and responsibilities contained in the Human Resources Code, Title 2, Chapter 102.

(c) Receipt of information in subsections (a) and (b) of this section, and any amendments to it, must be acknowledged in writing. See subsection (j) of this section concerning furnishing written description of legal rights.

(d) The facility must post a copy of each document specified in subsections (a) and (b) of this section in a conspicuous location. Additional posting responsibilities are identified in subsection (l) of this section concerning Medicare and Medicaid information; §19.1921(j) of this title (relating to General Requirements for a Nursing Facility) concerning additional items that must be posted; and §19.208 of this title (related to Examination of Survey Results).

(e) The resident, or designated representative as provided by §19.217 of this title (relating to Directives and Durable Powers of Attorney) and §19.219 of this title (relating to Documentation for the Delegation of Long Term Care Resident's Rights), has the right to inspect and purchase photocopies of all records pertaining to the resident, upon written request and 48 hours notice to the facility, at a photocopying cost not to exceed the amount customarily charged in the community.

(f) The resident has the right to be fully informed in language that he can understand of his total health status, including but not limited to, his medical condition.

(g) The resident has the right to refuse treatment and to refuse to participate in experimental research.

(1) If the resident refuses treatment, he must be informed of the possible consequences.

(2) If the resident chooses to participate in experimental research, he must be fully notified of the research and possible effects of the research. The research may be carried on only with the full written consent of the resident's physician, and the resident.

(3) Experimental research must comply with Federal Drug Administration regulations on human research as found in 45 Code of Federal Regulations Part 4b, Subpart A.

(h) The facility must:

(1) inform each resident who is entitled to Medicaid benefits, in writing, at the time of admission to the Nursing Facility or, when the resident becomes eligible for Medicaid of:

(A) the items and services that are included in Nursing Facility services provided under the State Plan and for which the resident may not be charged;

(B) those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services; and

(2) inform each resident when changes are made to the items and services specified in subsection (h)(1)(A) and (B) of this section.

(i) The facility must inform each resident before, or at the time of admission, and periodically during the resident's stay, (if there are any changes) of services available in the facility and of charges for those services, including any charges for services not covered under Medicare or by the facility's per diem rate. Notice must be in writing, at least 30 days in advance of the effective date of any changes in rates for services not covered by medicaid.

(j) The facility must furnish a written description of legal rights which includes:

(1) a description of the manner of protecting personal funds, described in §19.204 of this title (relating to Protection of Resident Funds); and

(2) a statement that the resident may file a complaint with the Texas Department of Health concerning resident abuse, neglect, and misappropriation of resident property in the facility.

(k) The facility must inform each resident of the name, specialty, and way of contacting the physician responsible for his or her care.

(l) The facility must prominently display in the facility written information, and provide to residents and potential residents oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive funds for previous payments covered by such benefits.

(m) The facility must inform new admissions and their spouses that a resource assessment, to be done by DHS, is available upon request. The purpose of the assessment is to determine a protected resource amount reserved for the spouse in the community.

(n) Notification of changes.

(1) Except in a medical emergency or when a resident is incompetent, a facility must immediately consult with the resident and immediately notify the resident's physician, and if known, the resident's legal representative or interested family member within 24 hours when there is:

(A) an accident involving the resident which results in injury; or

(B) a significant change in the resident's physical, mental, or psychosocial status;

(C) a need to alter treatment significantly; or

(D) a decision to transfer or discharge the resident from the facility as specified in §19.302 of this title (relating to Transfer and Discharge).

(2) The facility must also promptly notify the resident and, if known, the resident's legal representative or interested family member when there is:

(A) a change in room or roommate assignment as described in §19. 501(e) of this title (relating to Quality of Life); or

(B) a change in resident rights under federal or state law or regulations as described in §19.202 of this title (relating to Exercise of Rights).

(3) The facility must record and periodically update the address and phone number of the resident's family or legal representative, or a respon- sible party.

§19.204. Protection of Resident Funds.

(a) The resident has the right to manage his or her financial affairs and the facility may not require residents to deposit their personal funds with the facility. The resident may designate another person to manage his financial affairs.

(b) Management of personal funds. Upon written authorization of a resident, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility, as specified in subsection (d) of this section. The facility will act as a fiduciary agent if the facility holds, safeguards, and accounts for the resident's personal funds.

(c) The facility must provide each resident and responsible party with a written statement at the time of admission that meets the following require- ments.

(1) The statement describes the resident's rights to select how personal funds will be handled. The following alternatives must be included:

(A) the resident has the right to manage his financial affairs;

(B) the facility may not require residents to deposit their personal funds with the facility;

(C) the facility has an obligation, upon written authorization of a resident, to hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility;

(D) the resident has a right to apply to the Social Security Administration to have a representative payee designated for federal or state benefits to which he may be entitled; and

(E) except when subparagraph (D) of this paragraph applies, the resident has a right to designate in writing another person to manage personal funds.

(2) The statement notes that any charge for the facility handling a resident's personal funds is included in the facility's basic rate.

(3) The statement advises the resident that the facility must have written permission from the resident, responsible party, or legal representative to handle his personal funds.

(4) The statement states that if the resident becomes incapable of managing his personal funds and does not have a representative payee, responsible party, or legal representative, the facility is required to notify the Department of Human Services (DHS) regional Medicaid eligibility worker.

(d) Deposit of funds. The facility must keep funds received from a resident for holding, safe guarding, and account, separate from the facility's funds. This separate account must be identified "Trustee, (Name of Facility), Resident's Trust Fund Account." A facility may commingle the trust funds of Medicaid residents and private-pay residents. If the funds are commingled, the facility must provide, upon request, the following information. This information must be provided to the Texas Department of Human Services, the Texas Department of Health, the Texas attorney general's Medicaid Fraud Control Unit, and the United States Department of Health and Human Services:

(1) copies of release forms signed and dated by each private-pay resident or responsible party whose funds are commingled. The facility must include in the release forms permission for the facility to maintain trust fund records of private-pay residents in the same manner as the Medicaid resident's trust funds.

(A) The release forms must be secured from the private-pay residents upon admission or at the time of request for trust fund services.

(B) The facility must include in the release form a provision allowing inspection of the private-pay resident's trust fund records by the above reference agencies.

(2) legible copies of the trust fund records of private-pay residents whose funds are commingled. The facility must keep these records in the same manner as the financial records of Medicaid residents as specified in this section;

(3) funds in excess of $50. The facility must deposit any resident's personal funds in excess of $50 in an interest-bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on the resident's account to his or her account;

(4) funds less than $50. The facility must maintain a resident's personal funds that do not exceed $50 in a non-interest bearing account or petty cash fund.

(e) Accounting and records. The facility must establish and maintain current, written, individual records of all financial transactions involving the resident's personal funds that the facility is holding, safeguarding, and accounting. The facility must keep these records in accordance with the American Institute of Certified Public Accountants' Generally Accepted Accounting Standards. The facility must also keep records in accordance with requirements of law for a trustee in a fiduciary relationship that exists for these financial transactions. The facility must include at least the following in these records:

(1) resident's name;

(2) identification of resident's representative payee, responsible party, or legal representative, if any;

(3) admission date;

(4) resident's earned interest, if any;

(5) documentation for all transactions (facility staff must document, on the recipinet's trust-fund ledger or deposit/withdrawal document, the date and amount of each deposit and withdrawal, the name of the person who accepted the withdrawn funds, and the balance after each transaction. Each withdrawal must be signed by the resident on the trust-fund ledger or deposit/withdrawal document. If the resident cannot sign, the transaction must be signed by at least one witness. This witness can be any person except the person(s) responsible for accounting for the trust funds, that person's supervisor, or the person(s) who accepts the withdrawn funds); and

(6) receipts for purchases and payments, including cash-register tapes or sales statements from a seller. Receipts are required when the purchase is made by the facility or someone other than the resident, responsible party, legal representative, or individual, other than facility personnel, authorized in writing by the resident, and when the purchase is for items costing more than one dollar. Receipts are not required when purchase is made by the resident, responsible party, legal representative, or individual, other than facility personnel, authorized in writing by the resident, or when the item(s) purchased costs one dollar or less. Required receipts must contain:

(A) the resident's name;

(B) the date the receipt was written or created;

(C) the amount of money spent for the resident;

(D) the specific item(s) purchased with the trust-fund money;

(E) the name of the business from which the purchase was made; and

(F) the signature of the resident. If the signature of the resident cannot be obtained, the signature of a witness as described in paragraph (5) of this subsection must be obtained; and the

facility or department staff must be able to determine, at a future audit date, the witness's name, address, and relationship to the resident or facility. If the disbursement has been prior authorized as evidenced by the resident's or witness's signature and date on the trust-fund ledger or deposit/withdrawal documents, the signature is not required on the receipt.

(f) Notice of certain balances. The facility must notify each resident that receives Medicaid benefits:

(1) when the amount in the resident's account reaches $200 less than SSI resource limit for one person, specific in §1611(a)(3)(B) of the Social Security Act; and

(2) That, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI.

(g) Conveyance upon death. Upon the death of a resident with a personal fund deposited with the facility, the facility must convey promptly the resident's funds and a final accounting of those funds to the responsible party or heir to the estate, or make a bona fide effort to locate the responsible party or heir to the estate. Within 45 days of the resident's death, the facility must use the following procedures to clear the resident's account.

(1) The facility must set up a trust fund for the deceased resident or deposit the money to already existing accounts.

(2) Once DHS designated regional staff verify that the money owed the deceased resident is on hand and held in trust, the department considers the account cleared if the facility supplies the department with a notarized affidavit outlining the facility's intention. The affidavit must contain:

(A) the resident's name;

(B) the amount of money being held;

(C) the facility's efforts to locate the responsible party or heirs;

(D) a facility statement acknowledging that this money is not the property of the facility, but the property of the deceased person's estate; and

(E) a statement that the facility will hold the money in trust until the legal heir or responsible party is located or the money escheats to the state. Money held in trust in the facility is subject to future audit and will be reviewed each time the facility is audited.

(3) Facilities choosing not to hold this money in trust may send the money to the Texas Department of Human Services, Fiscal Division, P.O. Box 149055, Austin, Texas 78714-9055, at any time before the money escheats to the state. The money must be identified as escheat money. The facility must include the notarized affidavit described in paragraph (2) of this subsection with the money for identification.

(h) Assurance of financial security. The facility must purchase a surety bond, or provide self-insurance to assure the security of all personal funds of residents deposited with the facility.

(i) Limitation on charges to personal funds. The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare.

(j) Access to financial record. The individual financial record must be available on request to the resident, responsible party, or legal representative.

(k) Quarterly statement. The facility must provide a written statement, at least quarterly, to each resident, representative payee, responsible party, or family or legal representative. The statement must reflect any resident funds which the facility has deposited in an account as well as any resident funds held by the facility in a petty cash account. The statement must include at least the following:

(1) balance at the beginning of the statement period;

(2) total deposits and withdrawals;

(3) interest earned, if any;

(4) identification number and location of any account in which the resident's personal funds have been deposited; and

(5) ending balance.

(l) Banking charges.

(1) Charges for checks, deposit slips, and services for pooled checking accounts are the responsibility of the facility and may not be charged to the resident, family, or responsible party. These costs, however, may be reported as allowable costs by the facility on its cost report.

(2) Bank service charges and charges for checks and deposit slips may be deducted from individual checking accounts since this type of account pre- serves the dignity and independence of the resident and is for personal use.

(3) The facility may not charge the resident, family, or responsible party for the administrative handling of either type of account. These costs may be reported as allowable costs by the facility on its cost report.

(4) If the facility places any part of the resident's money in savings accounts, certificates of deposit, or any other plan whereby interest or other benefits are accrued, the facility must distribute the interest or benefit to participating residents on an equitable basis in either pooled checking accounts or individual checking accounts.

(m) Access to funds.

(1) Personal funds held in the facility. Immediately upon a resident's request, or transfer or discharge, the facility must return to the resident, the representative payee, responsible party, or the legal representative the full balance of the resident's personal funds that the facility has received for holding, safeguarding, and accounting. Because funds held in the facility are usually small amounts, the facility is expected to meet this requirement at the time of request, transfer, or discharge, whichever occurs first.

(2) Personal funds held outside the facility. Upon request or if a resident is transferred or discharged, the facility must, within five business days, return to the resident, representative payee, responsible party, or the legal representative the full balance of a resident's personal funds that the facility has deposited in an account, including any interest accrued.

(n) Handling of monthly benefits. If the Social Security Administration has determined that a Title II and Title XVI Supplementary Security Income (SSI) benefit to which the resident is entitled should be paid through a representative payee, the provisions in 20 Code of Federal Regulation, §§404. 1601-404.1610 for Old Age, Survivors, and Disability Insurance benefits and 20 Code of Federal Regulation §§419.601-419.690 for SSI benefits apply.

(o) Change of ownership. If the ownership of a facility changes, the old owner must transfer the bank balances or trust funds to the new owner with a list of the residents and their balances. The old owner must get a receipt from the new owner for the transfer of these funds. The old owner must keep this receipt for audit purposes.

(p) Alternate forms of documentation. Without prior written approval of DHS, alternate forms of documentation, including affidavits, will not be accepted by the department to verify the resident's personal fund expenditures or as proof of compliance with any requirements specified in these requirements for resident's personal funds.

§19.205. Free Choice.

(a) The resident has the right to:

(1) choose and retain a personal

attending physician, subject to that physician's compliance with the facility's standard operating procedures for physician practices in the facility;

(2) be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(3) unless adjudged incompetent or otherwise found to be incapacitated under the laws of the State of Texas, participate in planning care and treatment or changes in care and treatment. See §19.217 of this title (relating to Directives and Durable Powers of Attorney).

(b) Except for residents who are pregnant, terminally ill adult residents are free to exercise their will in making written or unwritten directives to reject life-sustaining procedures. The resident's attending physician must comply with a previously issued directive of a resident who becomes comatose or otherwise unable to communicate unless the physician believes the directive no longer reflects the resident's present desire. If the attending physician refuses to comply with a directive or treatment decision, he must make a reasonable effort to transfer the resident to another physician. The desire of a terminally ill resident who is under 18 years old and who is competent is to supersede the effects of a directive executed on his behalf by persons specified in the Texas Natural Death Act. (See §19.217 of this title (relating to Directives and Durable Powers of Attorney).

(c) The resident must be allowed complete freedom of choice to obtain any Medicaid services from any institution, agency, pharmacy, person, or organization that is qualified to perform the services, unless the provider causes the facility to be out of compliance with the requirements specified in this chapter. A facility must not require residents to purchase supplies or services, including pharmaceutical supplies or services, from the facility itself or from any particular vendor. The resident has the right to be informed of prices before purchasing any item or services from the facility, except in a emergency.

(d) The facility must furnish Medicaid residents with complete information about available Medicaid services, advise them how to obtain these services, and fully explain their rights to freely choose service providers as specified in subsection (c) of this section. The facility's information and advice to each resident must include the following elements.

(1) The facility must inform the resident about:

(A) resident eligibility requirements;

(B) available Medicaid services;

(C) limitations on services, such as requirements for prior authorization and limits on the number of outpatient hospital days available without special approval; and

(D) the rights and responsibilities of Medicaid applicants and residents.

(2) The facility must advise the resident that:

(A) he is entitled to receive Medicaid services from any provider participating in the State Medicaid program; and

(B) he may request a hearing before the Texas Department of Human Services (DHS) if he believes that his right to freely choose providers has been abridged without due process.

(3) The facility must give the resident a copy of DHS's User's Guide for Medicaid Services.

§19.206. Privacy and Confidentiality. The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

(1) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room.

(2) Except as provided in subsection (c)(2) of this section, the resident may approve or refuse the release of personal and clinical records to any individual outside of the facility.

(3) The resident's right to refuse release of personal and clinical records does not apply when:

(A) the resident is transferred to another health care institution;

(B) record release is required by law or third-party payment contract; or

(C) during Medicare or Medicaid surveys.

(4) The facility must ensure the resident's right to privacy in the following areas:

(A) accommodations as described in §19.1501(d) of this title (relating to General Requirements);

(B) medical treatment. The facility must provide privacy to each resident during examinations, treatment, case discussions, and consultations. Staff must treat these matters confidentially.

(C) personal care;

(D) access and visitation as described in §19.212 of this title (relating to Access and Visitation Rights);

(E) governmental searches are permitted only if there exists probable cause to believe an illegal substance or activity is being concealed. Administrative searches by the appropriate entity, such as the fire inspector, are allowed only for limited purposes, but such searches would not ordinarily extend to the resident's personal belongings. The Department of Human Services and the Nursing Facility must provide for and allow residents, and nonrecepients, their individual freedoms. State statutes authorize inspections of the Nursing Facility but do not authorize inspection of those areas in which an individual has a reasonable expectation of privacy. Any direct participation by DHS personnel in an inspection of "the contents of residents' personal drawers and possessions," is in violation of Federal and State law;

(F) the resident has the right to privacy for meetings with family and resident groups.

(5) All information that contains personal identification or descriptions which would uniquely identify an individual resident or a provider of health care is considered to be personal and private and will be kept confidential. Personal identifying information (except for PCN numbers) will be deleted from all records, reports, and/or minutes from formal studies which are forwarded to the Texas Department of Human Services, or anyone else. These records, reports, and/or minutes, which have been de-identified, will still be treated as confidential. All such material mailed to TDHS or anyone else must be in a sealed envelope marked "Confidential."

§19.207. Grievances. A resident has the right to:

(1) voice grievances with respect to treatment or care that is, or fails to be furnished, without discrimination or reprisal for voicing the grievance; and

(2) prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents;

(3) notify state agencies of complaints against a facility. Complaints will be acknowledged by the staff of the agency that receives the complaint. All

complaints will be investigated, whether oral or written. The Texas Department of Human Services will investigate complaints regarding financial matters related to Medicaid residents, and the Texas Department of Health will investigate quality of care complaints.

§19.208. Examination of Survey Results. The resident has the right to:

(1) examine the results of the most recent survey of the facility conducted by Federal or State surveyors and any plan of correction in effect with respect to the facility. The results must be posted by the facility in a place readily accessible to residents; and

(2) receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

§19.209. Refunds.

(a) The Nursing Facility must refund private funds paid to the facility for periods covered by Medicaid, including retroactive periods of Medicaid coverage, when:

(1) the Medicaid vendor payment has been accepted by the Nursing Facility; or

(2) the Nursing Facility has been notified by the Texas Department of Human Services (DHS) about an individual's eligibility for Medicaid, and the resident or his responsible party makes a verbal or written request to the facility for a refund for the period covered by Medicaid.

(b) The Nursing Facility must make the refund within 30 days of receipt of vendor payment from DHS for the covered period.

(c) When the facility becomes aware of the need for a refund as indicated in subsection (a) of this section, facility staff must write to the resident or his responsible party, notifying him about his right to a refund and the amount due. The written notification must include a statement to be signed by the resident or his responsible party, acknowledging receipt of the notification. Facility staff must file this signed acknowledgment form in the resident's financial record.

§19.210. Work. The resident has the right to:

(1) refuse to perform services for the facility; and

(2) perform services for the facility, if he chooses, when:

(A) the facility has documented the need or desire for work in the plan of care;

(B) the plan specifies the nature of the services performed and whether the services are voluntary or paid;

(C) compensation for paid services is at or above prevailing rates; and

(D) the resident agrees to the work arrangement described in the plan of care.

§19.211. Mail. The resident has the right to privacy in written communications, including the right to:

(1) send and receive mail promptly that is unopened;

(2) request facility staff to help open and read incoming mail and help address and post outgoing mail;

(3) have access to stationery, postage, and writing implements at the resident's own expense.

§19.212. Access and Visitation Rights.

(a) The resident has the right and the facility must provide immediate access to any resident by the following:

(1) any representative of the secretary;

(2) any representative of the State of Texas;

(3) the resident's individual physician;

(4) the state long-term-care ombudsman as established under the Older Americans Act of 1965, §307(a)(12);

(5) any representative of Advocacy Incorporated, Agency on Aging, or the office of the state long-term-care ombudsman who is responsible for the protection and advocacy systems for developmentally disabled individuals established under the Developmental Disabilities Assistance and Bill of Rights Act, Part C; and

(6) any representative of the Texas Department of Mental Health and Mental Retardation who is responsible for the protection and advocacy systems for mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act;

(7) subject to the residents' right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(8) subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(b) The facility must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(c) The facility must allow representatives of the state ombudsman cited in subsection (a)(4) of this section to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with state law.

§19.213. Telephone.

(a) The resident has the right to have regular access to the private use of a telephone (other than a pay phone), which can also be used for making calls to summon help in case of emergency.

(b) The telephone must be in an accessible location and available to residents at all times.

(c) The facility must permit residents to contract for private telephones at their own expense. The facility must not require private telephones to be connected to a central switchboard.

§19.214. Personal Property. The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing as space permits, unless to do so would infringe upon the rights or health and safety of other residents. Reasons for any limitations are documented in the resident's clinical record. (See §19.1921(n) of this title (relating to General Requirements for a Nursing Facility)).

(1) If the resident dies, personal property must be transferred to the estate.

(2) If it is donated or sold to the facility by the resident or estate, the transaction must be documented.

(3) If the resident dies and there is no responsible party, family, or legal guardian and no arrangements have been made for the disposition of property, the facility must sell any property of significant value at fair market value and treat the money as personal funds and handle according to §19.204(g) of this title (relating to Protection of Resident Funds).

§19.215. Married Couples. The resident must be ensured privacy for visits with his or her spouse. The resident has the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.

§19.216. Self-administration of Drugs. Each resident has the right to self-administer drugs unless the interdisciplinary team, as defined in §19.1303 of this title (relating to Additional Supervision and Consultation Requirements), has determined

for each resident that this practice is unsafe.

§19.217. Directives and Durable Powers of Attorney. Competent adults may issue directives or durable powers of attorney for health care, subject to the requirements of this section. (See §19.219 of this title (relating to Documentation for the Delegation of Long Term Care Residents' Rights) and §19.205(b) of this title (relating to Free Choice)).

(1) Directives.

(A) Any competent adult may, at any time, execute a directive for the withholding or withdrawal of life-sustaining procedures in the event of a terminal condition.

(B) Written directives must be signed by the resident in the presence of two witnesses not related to the resident by blood or marriage and who would not be entitled to any portion of the estate of the resident on his death. The two witnesses to the resident's signature must sign the directive. A witness to a directive may not be:

(i) the attending physician or an employee of the attending physician;

(ii) an employee of a health facility in which the declarant is a resident if the employee is providing direct resident care to the declarant or is directly involved in the financial affairs of the facility;

(iii) a resident in a health care facility in which the declarant is a resident; or

(iv) any person who has a claim against any portion of the declarant upon his decease at the time of the execution of the directive.

(C) A competent qualified adult resident may issue a directive by a non written means of communication. The resident must issue the directive in the presence of the attending physician and two witnesses. The witnesses must possess the same qualifications as required in a written directive. The physician must make the fact of the existence of the directive a part of the resident's clinical record, and the witnesses must sign the entry in the resident's clinical record. Additionally, the attending physician and witnesses must comply with all other requirements of the Texas Civil Statutes, Article 4590h-1 (Natural Death Act).

(2) Durable Power of Attorney for health care.

(A) For purposes of this paragraph, the term "agent" is defined as an adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.

(B) The durable power of attorney for health care recognizes the right of a competent adult to designate an agent to make treatment decisions if that person later becomes ill and incapable of managing health care decisions.

(C) The agent may not consent to:

(i) commitment or placement in a mental facility;

(ii) convulsive treatment;

(iii) psychosurgery;

(iv) abortion; or

(v) neglect by omission of comfort care.

(D) The following may not act as an agent:

(i) the resident's health care provider;

(ii) an employee of the resident's Nursing Facility, unless the person is a relative of the resident;

(iii) the resident's residential care provider; or

(iv) an employee of the resident's residential care provider, unless the person is a relative of the resident.

(E) The durable power of attorney for health care must be signed in the presence of two witnesses, as defined in subsection (a)(2) of this section.

(F) A durable power of attorney for health care may be revoked by:

(i) the resident's notification of intent to the agent or nursing facility, orally, in writing, or by any other method, to revoke the durable power of attorney for health care; and without regard to the resident's mental state, competency, or capacity to make health care decisions;

(ii) the execution by the resident of a subsequent durable power of attorney for health care; or

(iii) the divorce of the resident and spouse, if the spouse is the agent.

(G) The resident, attending physician, witnesses, nursing facility, agents and all parties involved must comply with the requirements of the Natural Death Act, the Probate Code, the Family Code and the durable power of attorney statute.

§19.218. Incompetency. If a resident has been adjudicated incompetent, or has been found by the attending physician to be, for medical reasons, incapable of understanding these rights, the resident's rights are to be exercised as outlined in this subchapter. Documentation to support delegation of rights must be according to the provisions of §19.219 of this title (relating to Documentation for the Delegation of Long Term Care Residents Rights) .

§19.219. Documentation for the Delegation of Long Term Care Residents Rights.

(a) The delegation of the individual, resident and citizen rights may occur in any three cases:

(1) when a competent individual chooses to allow another to act for him;

(2) when the resident has been adjudicated to be incompetent by a court of law; or

(3) when the physician has determined that, for medical reasons, the resident is incapable of understanding and exercising such rights.

(b) In order to assure preservation of rights, the physician and the facility must be aware of, must address, and must document specific information concerning the incapability of the resident to understand and exercise his rights even if the resident has been adjudicated incompetent and a guardian has been appointed or if there is an extant Durable Power of Attorney.

(c) To ensure that the protection of a resident adjudicated incompetent or determined to be incapable of exercising his/her rights and responsibilities for medical reasons, the administrator, the physician, and the resident care staff have specific responsibilities.

(d) Administrative documentation:

(1) the relationship of the resident to the person assuming his rights and responsibilities;

(2) that the responsible person can act for the resident;

(3) the extent of a guardianship or Power of Attorney.

(e) Physician documentation:

(1) a statement that the resident is or is not capable of understanding and exercising his or her rights;

(2) specific causative and/or contributive medical diagnosis(es);

(3) medical observations and test(s) which support the diagnosis. Examples: Alzheimer's Disease, Organic Brain Syndrome, confusion, short term memory loss, inability to attend to verbal input, disorientation as to time, place, or person, incoherent speech, inability to attend or converse or to answer questions (etc.);

(4) periodic assurance that there has been no essential change in the resident's mental function;

(5) reevaluation whenever a significant change in resident status occurs or for orders that impact on resident rights (e.g. "No CPR").

(f) Facility staff documentation:

(1) resident assessments, care plans and progress notes that address the resident's inability to exercise his rights and responsibilities and demonstrate that the facility encourages the resident to exercise his rights and responsibilities to his fullest capability;

(2) assurance that the resident who is mentally capable of understanding and exercising his rights, but physically incapable of doing so, receives interventions which facilitate the exercise of his rights.

(g) The presence of such documentation does not guarantee the protection of a resident's rights and responsibilities, but forms the basis for compliance with the Federal requirements for the delegation of a resident's rights. It is important because it increases the likelihood that the resident's care-givers and family will understand and be accountable for the resident's rights and responsibilities.

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-9005191 Cathy Rossberg
Agency Liaison
Policy Communication Services

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

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Subchapter D. Admission, Transfer, and Discharge Rights

• 40 TAC §§19.301-19.305

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

§19.301. Admissions Policy.

(a) The facility must:

(1) not require a third party guarantee of payment to the facility as a condition of admission, or expedited admission, or continued stay in the facility;

(2) not charge, solicit, accept, or receive, in addition to any amount otherwise to be paid under the state plan, any gift, money, donation, or other consideration as a precondition of admission, expedition admission, or continued stay in the facility.

(b) A facility must:

(1) not require residents or potential residents to waive their rights to Medicare or Medicaid;

(2) not require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.

(c) States or political subdivisions may apply stricter admission standards under state or local laws than specified in subsections (a) and (b) of this section, to prohibit discrimination against individuals entitled to Medicaid benefits.

(d) A facility may require an individual who has legal access to a resident's income or resources available to pay for facility care, to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.

(e) A nursing facility may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in §19.1701 of this title (relating to Vendor Payment (Items and Services Included)). See §19.1702 of this title (relating to Additional Charges (Items and Services Excluded from Vendor Payment)).

(f) A nursing facility may solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the resident, or potential resident (applicant), but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility. For information about vendor payment and other charges to residents, see §19.1708 of this title (relating to Limitations on Provider Charges to Patients).

§19.302. Transfer and Discharge.

(a) Transfer and discharge requirements. See also §19.1915 of this title (relating to Transfer Agreement). The facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless:

(1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(2) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(3) the safety of individuals in the facility is endangered;

(4) the health of other individuals in the facility would otherwise be endangered;

(5) the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid.

(6) the resident, responsible party, or family or legal representative requests a voluntary transfer or discharge;

(7) the Texas Department of Mental Health and Mental Retardation (TDMHMR) screens the individual and determines that he:

(A) has a diagnosis of mental illness or mental retardation or a related condition;

(B) does not require the level of service provided by a nursing facility; and

(C) does or does not require active treatment (see §19.604 of this title (relating to Preadmission Screening and Annual Resident Review (PASARR)); or

(8) the facility ceases to operate or participate in the program which reimburses for the resident's care;

(b) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in subsection (a)(1)-(5) of this section, the resident's clinical record must be documented. The documentation must be made by:

(1) the resident's physician when transfer or discharge is necessary under subsection (a)(1) or (2) of this section; and

(2) a physician when transfer or discharge is necessary under subsection (a)(4) of this section.

(c) Notice before transfer. Before a facility transfers or discharges a resident, the facility must:

(1) notify the resident and, if known, a responsible party or family or legal representative of the resident about the transfer or discharge and the reasons for it;

(2) record the reasons in the resident's clinical record; and

(3) include in the notice the items described in subsection (e) of this section.

(d) Timing of the notice.

(1) Except when specified in paragraph (3) of this subsection, the notice of transfer or discharge required under subsection (c) of this section must be made

by the facility at least 30 days before the resident is transferred or discharged.

(2) The requirements described in paragraph (1) of this subsection do not have to be met if the resident, responsible party, or family or legal representative requests the discharge or relocation. It is always in the facility's best interest, however, to obtain written permission from the resident, responsible party, or family or legal representative in lieu of meeting these requirements. When the facility initiates the move, whether transfer or discharge, with or without the approval of the resident, responsible party, or family or legal representative, the facility must adhere to the requirements described in paragraph (1) of this subsection.

(3) Notice may be made as soon as practicable before transfer or discharge when:

(A) the safety of individuals in the facility would be endangered, as specified in subsection (a)(3) of this section;

(B) the health of individuals in the facility would be endangered, as specified in subsection (a)(4) of this section;

(C) the resident's health improves sufficiently to allow a more immediate transfer or discharge, as specified in subsection (a)(2) of this section;

(D) an immediate transfer or discharge is required by the resident's urgent medical needs, as specified in subsection (a)(1) of this section; or

(E) a resident has not resided in the facility for 30 days.

(e) Contents of the notice. For nursing facilities, the written notice specified in subsection (c) of this section must include the following:

(1) the reason for transfer or discharge;

(2) the effective date of transfer or discharge;

(3) the location to which the resident is transferred or discharged;

(4) a statement that the resident has the right to appeal the action as outlined in the Fair Hearings, Fraud, and Civil Rights Handbook of the Texas Department of Human Services;

(5) the name, address, and telephone number of the Texas long term care ombudsman, which is Texas Department of Aging, P. O. Box 12786, Austin, Texas 78711-2786, (512) 444-2727.

(6) in the case of a resident with mental illness or mental retardation, the address and phone number of the state mental health/mental retardation authority, which is: Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, (512) 454-3761; and the phone number of the agency responsible for the protection and advocacy of persons with mental retardation and related conditions, which is: Advocacy Incorporated, 7800 Shoal Creek Boulevard, Suite 175-E, Austin, Texas 78757, (512) 454-4819.

(f) Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(g) Notice of relocation to another room. Except in an emergency, the facility must notify the resident and either the responsible party or the family or legal representative at least five days before relocation of the resident to another room within the facility. The facility must prepare a written notice which contains:

(1) the reasons for the relocation;

(2) the effective date of the relocation; and

(3) the room to which the facility is relocating the resident.

(h) Fair hearings. Any individual discharged as a result of a determination by TDMHMR as described in subsection (a)(7) of this section is informed of his right to request a fair hearing and to be represented by an authorized representative. Fair hearings are conducted according to the provisions of Chapter 79, Subchapters L, M, and N of this title (relating to Fair Hearings, Appeals Process, and Hearing Procedure). Individuals requesting admission to Medicaid contracted nursing facilities have 90 days to appeal. Individuals currently residing in a Medicaid contracted nursing facility have 10 days to appeal. Payments for Medicaid residents to the facility continue until the hearing officer makes a final determination. When decisions are upheld, overpayments to the nursing facility are immediately recouped.

(i) Discharge of married residents. If two residents in a facility are married and the facility proposes to discharge one spouse to another facility at a similar level of care, the facility must give the other spouse notice of his or her right to be discharged to the same facility. If the spouse notifies a facility, in writing, that he or she wishes to be discharged to another facility, the facility must discharge both spouses on the same day, pending availability of accommodations.

§19.303. Notice of Bed-hold Policy and Readmission.

(a) Notice before transfer. Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility must provide written information to the resident and a family member or legal representative that specifies:

(1) the duration of the bed-hold policy under the Medicaid state plan (see §19.1702 of this title (relating to Additional Charges (Items and Services Excluded from Vendor Payment)) and §19.1703 of this title (relating to Therapeutic Home Visits Away from the Facility) if any, during which the resident is permitted to return and resume residence in the facility; and

(2) the facility's policies regarding bed-hold periods, which must be consistent with subsection (c) of this section, permitting a resident to return.

(b) Notice upon transfer. At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility must provide written notice to the resident and a family member or legal representative, which specifies the duration of the bed-hold policy described in subsection (a) of this section.

(c) Permitting resident to return to facility. A nursing facility must establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period under the state plan, is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident:

(1) requires the services provided by the facility; and

(2) is eligible for Medicaid nursing facility services.

(d) Bed-hold charges. For requirements concerning bed-hold charges refer to §19.1702 of this title (relating to Additional Charges (Items and Services Excluded from Vendor Payment)).

§19.304. Equal Access of Quality Care.

(a) A facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services under the Medicaid state plan for all individuals regardless of source of payment.

(b) The facility may charge any amount for services furnished to non-Medicaid residents consistent with the notice requirement in §19.203 of this title (relating to Notice of Rights and Services).

(c) The Texas Department of Human Services is not required to offer additional services on behalf of a recipient other than services provided in the state plan.

§19.305. Discharge Planning. Discharge planning must be done by appropriate facility staff in accordance with the provisions outlined in §19.603 of this title (relating to Discharge Summary and Discharge Plan of Care).

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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Agency liaison, Policy Communication Services
Texas Department of Human Services

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Subchapter E. Resident Behavior and Facility Practice

• 40 TAC §19.401

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

§19.401. Resident Behavior and Facility Practice.

(a) Restraints. The resident has the right to be free from any physical restraints imposed or psychoactive drugs administered for purposes of dis- cipline or convenience, and not required to treat the resident's medical symptoms.

(b) Abuse. The resident has the right to be free from verbal, sexual, physical or mental abuse, corporal punishment, and involuntary seclusion.

(c) Staff treatment of residents. The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, or abuse of residents.

(1) The facility must:

(A) not use verbal, mental, sexual, or physical abuse, including corporal punishment or involuntary seclusion; and

(B) not employ individuals who have been convicted of abusing, neglecting, or mistreating individuals.

(2) The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, are reported immediately to the administrator of the facility or to other officials in accordance with Texas law through established procedures.

(3) The facility must have evidence that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the administrator or his designated representative or to other officials in accordance with Texas law within five working days of the incident; and if the alleged violation is verified, appropriate corrective action must be taken.

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

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Subchapter F. Quality of Life

• 40 TAC §§19.501-19.505

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

§19.501. Quality of Life. A facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

(1) Dignity. The facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his individuality.

(2) Self-determination and participation. The resident has the right to:

(A) choose activities, schedules, and health care consistent with his interests, assessments, and plans of care;

(B) interact with members of the community both inside and outside of the facility; and

(C) make choices about aspects of his life in the facility that are significant to him.

(3) Participation in resident and family groups.

(A) A resident has the right to organize and participate in resident groups in the facility. Examples of such groups' functions are to:

(i) consider issues and complaints about conditions in the facility;

(ii) relay complaints and suggestions to the facility administrator; and

(iii) relay complaints to the Texas Department of Health (TDH) or any appropriate agency.

(B) A resident's family has the right to meet in the facility with the families of other residents in the facility.

(C) The facility must provide a resident or family group, if one exists, with private space.

(D) Staff or visitors may attend meetings at the group's invitation.

(E) The facility must provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings.

(F) When a resident or family group exists, the facility must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(G) The facility must assist residents to attend meetings.

(4) Participation in other activities. A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(5) Accommodation of needs. A resident has the right to:

(A) reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and

(B) receive notice before the resident's room or roommate in the facility is changed (see §19.302 of this title (relating to Transfer and Discharge).

§19.502. Activities.

(a) Activities.

(1) The facility must provide for an ongoing program of activities designed

to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident.

(2) The activities program must be directed by a qualified professional who:

(A) is a qualified therapeutic recreation specialist who is:

(i) licensed or registered by the State of Texas; and

(ii) eligible for certification as a therapeutic recreation specialist under the requirements set by the National Therapeutic Recreation Society; or

(B) has two years of experience in a social or recreational program within the last five years, one of which was full-time in a resident activities program in a health care setting and has:

(i) a high school diploma or equivalency certificate; and

(ii) has completed a state-approved activities director course; or

(C) is a qualified occupational therapist who:

(i) is certified as an occupational therapist by the American Occupational Therapy Association; and

(ii) is a graduate of an occupational therapist educational program accredited jointly by the American Occupational Therapy Association and the Committee on Allied Health Education and Accreditation of the American Medical Association; or

(D) is a qualified occupational therapy assistant who:

(i) is certified as an occupational therapy assistant by the American Occupational Therapy Association; and

(ii) is a graduate of an occupational therapy assistant program accredited by the American Occupational Therapy Association; or

(E) has completed 60 or more college credits toward a degree in social work or a degree in social or behavioral sciences and has completed the state-approved activities director course; or

(F) The person has:

(i) a master's degree in social work, social or behavioral sciences, therapeutic recreation training or rehabilitation counseling, or education, or

(ii) a bachelor's degree in social work, social or behavioral sciences, therapeutic recreation training or rehabilitation education; or

(G) persons qualifying under subparagraphs (B) or (E) of this paragraph, but who lack the state-approved course or the experience requirements may serve as an activities director, with consultation, until the full requirements are met for no longer than two years from the date of employment.

(b) Consultation.

(1) Consultation, if required, must be provided by a person who is a qualified activities consultant. A qualified activities consultant is one who meets all qualifications and requirements of an activities director, as specified in subsection (a)(2) of this section.

(2) Consultation, if required, must be provided at least four hours every two months for facilities with an average daily occupancy of 60 or fewer residents. For facilities with an average daily occupancy of over 60 residents, consultation must be provided at least eight hours every two months.

(c) Continuing education of activities directors and activity director consultants.

(1) Activities directors and activity director consultants must successfully complete eight hours of approved continuing education or equivalent continuing education units each year, in addition to any continuing education required by the Texas Department of Health (TDH).

(2) An activities director is exempt from completion of the state-approved course if:

(A) the person has been employed full-time as an activities director continuously since January 1, 1976; or

(B) the person has successfully completed a 36-clock-hour activities director's course before November 1, 1978, which was sponsored by an accredited educational institution or professional group or association.

(d) Activities planning process. The facility must ensure that the ac- tivities planning process includes the following elements.

(1) Activities assessment. An assessment of each resident's activity needs must be completed within four days after the admission, as a coordinated component of the comprehensive assessment. The assessment must meet professional standards for quality and comply with §19.601 of this title (relating to Resident Assessment). The activities assessment should consider needs for one-to-one relationship, social group interaction, reality orientation, intellectual stimulation, recreation, self-expression, and activities related to daily living. The activities portion of the comprehensive assessment should document resident choice in scheduling activities and participation in care planning activities.

(2) Activities care planning.

(A) Plan requirements. The facility must ensure that an activities plan is developed for each resident within seven days after completion of the comprehensive assessment.

(B) The plan must be a coordinated component of the resident's comprehensive care plan and must be signed and dated by the activities director. If required elements of the activities plan are already contained in the assessment document, it does not have to be repeated in the activities plan. The plan must be developed within the activities level approved by the resident's attending physician and must encourage the resident to return to normal activities and self-care. The activities portion of the comprehensive care plan must contain long- and short-term goals and the approaches and activities which are designed to achieve the goals. It must be completed in accordance with the requirements of §19.602 of this title (relating to Comprehensive Care Plans). The approaches and activities should be based upon the resident's interest and needs.

§19.503. Social Services General Requirements.

(a) The facility must provide medically-related social services to attain or maintain the highest practicable physical, mental or psychosocial well-being of each resident.

(b) Social services director.

(1) A facility of more than 120 beds must employ a full-time social worker (see subsection (c) of this section).

(2) A facility of 120 beds or less must designate, in writing, an individual who will perform required social service functions (see subsections (d) and (e) of this section).

(3) If the facility is 120 beds or less, and chooses to designate an individual other than a qualified social worker to be the social services director, that individual is responsible for developing the social history and social-needs assessment.

(4) If the individual, designated to perform the functions required to deliver social services in the facility lacks the qualifications of a social worker, as specified in subsection (c) of this section, he must receive consultation from a social-work consultant who does meet qualifications as

specified in subsection (c) of this section.

(c) Qualifications of a social worker. A qualified social worker is an individual certified by DHS with:

(1) a masters degree in social work; or

(2) a bachelors degree in social work from a college or university accredited by the Council of Social Work Education, and at least one year of social-work experience in a health-care setting.

(d) Qualifications of a social services director in facilities of 120 beds or less is an individual with:

(1) the qualifications of a social worker in the State of Texas as specified in subsection (c) of this section;

(2) a bachelors degree in social work;

(3) two years of social work supervised experience in a health care setting working directly with individuals; or

(4) similar professional qualifications.

§19.504. Social Services Process. The psycho/social assessment should contain a comprehensive collection of infonnation about the resident including a social history and social needs portions.

(1) Social assessment. The social service director, if not a qualified social worker, must complete the resident's social assessment under the general direction of the qualified social worker consultant. The residents' social assessment must be completed in accordance with professional standards for quality and in accordance with the provisions of §19.601 of this title (relating to Resident Assessment).

(A) The assessment must address background information, social, psychological, and emotional status, strengths, and ability to participate.

(B) The assessment will identify resident needs and problems which may include, but are not limited to: one-to-one relationships; family and social interaction; reality orientation; intellectual stimulation; financial and emotional security; dealing with feelings about disability, death, or dying, or other emotional, mental, environmental, or physical limitations which impair the ability of the resident to meet his full potential.

(2) Social services plan.

(A) The social services director, if not a qualified social worker, must develop the social services portion of the comprehensive care plan under the general direction of the qualified social worker consultant. The social services portion of the care plan is developed after the social history and social needs assessment are completed.

(B) Reviews and updates. The social services director must ensure that the social services portion of the comprehensive care plan is reviewed and updated as provided in §19.602 of this title (relating to Comprehensive Care Plans).

(3) Implementation.

(A) At the level of professional intervention, social work services must be provided by an individual qualified according to professionally accepted standards for the State of Texas as provided by §19.503(c) of this title (relating to Social Services).

(B) The social services director must assure that the approaches on the social services portion of the comprehensive care plan are implemented and staff are trained as necessary.

§19.505. Environment.

(a) The facility must provide:

(1) a safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible;

(2) housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior;

(3) clean bed and bath linen that are in good condition;

(4) private closet space in each recipient's room, as specified in §19.1501(d) of this title (relating to General Requirements);

(5) adequate and comfortable lighting levels in all areas (see §19.1515 of this title (relating to Lighting and Illumination));

(6) comfortable and safe temperature levels. Facilities initially certified after October 1, 1990, must maintain temperature ranges of 71-81 degrees Fahrenheit; and

(7) for the maintenance of comfortable sound levels.

(b) The facility must adhere to the additional provisions found in §§19.1501-19.1521 of this title (relating to Physical Plant and Environment).

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-9005194

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 G. Resident Assessment

• 40 TAC §§19.601-19.604

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

§19.601. Resident Assessment. The facility must conduct initially and periodically a comprehensive accurate, standardized, reproducible assessment of each resident's functional capacity.

(1) Admission orders. At the time each resident is admitted, the facility must have physician orders for the resident's immediate care.

(2) Comprehensive assessments.

(A) The facility must make a comprehensive assessment of the resident's needs, which:

(i) is based on a uniform data set specified by the Secretary and uses an instrument that is specified by DHS; and

(ii) describes the resident's capability to perform daily life functions and significant impairments in functional capacity.

(B) The comprehensive assessment must include at least the following information:

(i) medically defined conditions and prior medical history;

(ii) medical status measurement;

(iii) functional status;

(iv) sensory and physical impairments;

(v) nutritional status and requirements;

(vi) special treatments or procedures;

(vii) psychosocial status;

(viii) discharge potential;

(ix) dental condition;

(x) activities potential;

(xi) rehabilitation potential;

(xii) cognitive status; and

(xiii) drug therapy.

(C) Assessments must be conducted:

(i) for individuals admitted on or after October 1, 1990, no later than four days after the date of admission;

(ii) for residents currently in a facility, not later than October 1, 1991;

(iii) promptly after a significant change in the resident's physical or mental condition (as soon as the resident stabilizes at a new functional or cognitive level, or within two weeks, whichever is earlier); and

(iv) in no case, less often than once every 12 months.

(D) Review of assessments. The Nursing Facility must examine each resident no less than once every three months and as appropriate, and revise the resident assessment to assure the continued accuracy of the assessment.

(E) Use. The results of the assessment are used to develop, review, and revise the resident's comprehensive plan of care as specified in §19.602 of this title (relating to Comprehensive Care Plans)

(F) The facility must coordinate assessments with the pre-admission screening program to the maximum extent practicable to avoid duplicative testing and effort.

(G) The comprehensive assessment shall include the Minimum Data Set (MDS) specified by DHS to be completed as required in subsection (b)(3) of this section and the Client Assessment, Review, and Evaluation (CARE) form to be completed.

(3) Accuracy of assessments.

(A) Coordination.

(i) Each assessment must be conducted or coordinated with the appropriate participation of health professionals.

(ii) Each assessment must be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment.

(B) Certification. Each individual who completes a portion of the assessment must sign and certify the accuracy of that portion of the assess- ment.

(C) Penalty for Falsification. An individual who willfully and knowingly certifies (or causes another individual to certify) a material and false statement in a resident assessment is subject to a civil money penalties. The implementing regulations for this statutory authority are located in 42 Code of Federal Regulations 1003.

(D) Use of independent assessors. If a state determines, under a survey or otherwise, that there has been a knowing and willful certification of false statements under subsection (c)(3) of this section, the State may require (for a period specified by the state) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the state.

§19.602. Comprehensive Care Plans.

(a) The facility must develop a comprehensive care plan for each resident that includes measurable short-term and long-term objectives and timetables to meet a resident's medical, nursing, and psychosocial needs that are identified in the comprehensive assessment. Approaches must be listed that identify the activity that will be provided and by whom.

(b) The comprehensive care plan must be:

(1) developed within seven days after completion of the comprehensive assessment;

(2) prepared by an interdisciplinary team that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs,and with the participation of the resident, the resident's family or legal representative, to the extent practicable; and

(3) periodically reviewed and revised by a team of qualified persons after each assessment.

(c) The services provided or arranged by the facility must:

(1) meet professional standards of quality; and

(2) be provided by qualified persons in accordance with each resident's written plan of care.

(d) The care plan must be made available to all direct care staff.

§19.603. Discharge Summary and Discharge Plan of Care.

(a) When the facility anticipates discharge, the resident must have a discharge summary that includes:

(1) a recapitulation of the overall course of the resident's stay;

(2) a final summary of the resident's status, to include items in §19.601(b)(2) of this title (relating to Resident Assessment) must be available for release to authorized persons and agencies with the consent of the resident or legal representative;

(3) a post-discharge plan of care, developed with the participation of the resident, a family representative, responsible party, and/or legal guardian, which will, after discharge, assist the resident to adjust to his new living environment.

(b) The post-discharge plan of care must be available at the time of discharge when a resident is being discharged to a private residence, another nursing facility, a Medicare Skilled Nursing Facility, another residential facility such as a board and care home, or an intermediate care facility for the mentally retarded

(c) Discharges to the hospital require only the items specified in subsection (d)(1)-(10) of this section

(d) A physicians' discharge/death summary must be completed within 20 working days of the death/discharge (except if the resident has been discharged to the hospital for 10 days or less, and readmitted to the same facility) and must include:

(1) resident name;

(2) physician's name;

(3) admission date;

(4) discharge date;

(5) admission diagnosis(es);

(6) discharge diagnosis(es);

(7) condition on discharge;

(8) prognosis;

(9) disposition of resident (where resident went and how resident left the facility (wheelchair, walking, stretcher, etc.); and

(10) attending physician's signature.

(e) If completed, a copy of the minimum data set, should accompany all transfer and discharge information.

§19.604. Preadmission Screening and Annual Resident Review (PASARR).

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

(1) Active treatment for individuals with mental illness-The implementation of an individualized plan of care developed under and supervised by a physician, provided by a physician or other qualified mental health professionals, that prescribes specific therapies and activities for the treatment of persons who are experi-

encing an acute episode of severe mental illness, which necessitates supervision by trained mental health personnel.

(2) Active treatment for individuals with mental retardation–A continuous program for each client, which includes aggressive, consistent implementation of specialized and generic training, treatment, health services and related services that is directed toward:

(A) the acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible; and

(B) the prevention or deceleration of regression or loss of current optimal functional status. Active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program.

(3) Advanced years–A chronological age of greater than 64 years of age or a chronological age of greater than 50 years along with a chronic or acute medical condition that is likely to significantly diminish life expectancy as certified by a physician.

(4) Alzheimer's disease–A degenerative disease of the central nervous system as diagnosed by a physician in accordance with the International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM).

(5) Amyotrophic lateral sclerosis–A degenerative motor neuron disease as diagnosed by a physician in accordance with International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM).

(6) Chronic obstructive pulmonary disease–A disease of the respiratory system as diagnosed by a physician in accordance with the International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM).

(7) Comatose–A state of unconsciousness characterized by the inability to respond to sensory stimuli as certified by a physician.

(8) Congestive heart failure–A disease of the circulatory system as diagnosed by a physician in accordance with International Classification of Diseases, 9th Revision Clinical Modification (ICD-9-CM).

(9) Convalescent care–Care provided after a person's release from an acute care hospital that is part of medically prescribed period of recovery which does not exceed 120 days.

(10) Dementia–A degenerative disease of the central nervous system as diagnosed by a physician in accordance with the International Classification of Diseases 9th revision Clinical Modification (ICD-9-CM).

(11) Functioning at the brain stem level–A significantly impaired state of consciousness characterized by normal respirations and minimal (mostly reflexive) response to environmental stimuli as certified by a physician.

(12) Huntington's disease–A disease of the central nervous system diagnosed by a physician in accordance with the International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM).

(13) Level I–identification screening–The process of identifying individuals with an indication of mental illness, mental retardation and/or a related condition, who require a Level II PASARR assessment.

(14) Level II–PASARR assessment–Preadmission Screening and Annual Resident Review assessment of persons with mental illness, mental retardation, and/or a related condition conducted in accordance with Nursing Home Reform Provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87).

(15) Mental illness–A current primary or secondary diagnosis of a major mental disorder (as defined in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition (DSM-III-R) limited to schizophrenic, paranoid, major affective, schizoaffective disorder, and atypical psychosis, and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder).

(16) Mental retardation–A diagnosis of mental retardation (mild, moderate, severe, and profound) as described in the American Association on Mental Deficiency's Manual on Classification in Mental Retardation (1983). In this manual mental retardation is significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(17) New admission–An individual who is admitted to any nursing facility in which he has not recently resided and to which he cannot qualify as a readmission. Also, any individual transferring from one nursing facility to another nursing facility, with or without an intervening hospital stay.

(18) Nursing facility–A Texas Medicaid-certified institution, except for a facility certified as an intermediate care facility for the mentally retarded (ICF/MR), providing nursing services to nursing facility residents.

(19) Nursing facility applicant–An individual seeking admission to a Texas Medicaid-certified nursing facility.

(20) Nursing facility resident–An individual who resides in a Texas Medicaid-certified nursing facility and receives services provided by professional medical nursing personnel of the facility.

(21) OBRA '87–Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203).

(22) Parkinson's Disease–A degenerative disease of the central nervous system as diagnosed by a physician in accordance with the Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM).

(23) PASARR–Preadmission screening and annual resident review.

(24) PASARR determination–A decision made by Texas Department of Mental Health and Mental Retardation (TDMHMR) PASARR Determination Program professional staff to establish if an individual requires the level of services provided in a nursing facility as contrasted with other settings and if the individual has the need for active treatment for mental illness, mental retardation, and/or a related condition. The decisions are based on information included in the Level II PASARR Assessment document.

(25) Psychotherapeutic medication–Pharmaceutical indicators for Level II PASARR Assessment are:

(A) antipsychotic: Acetophenazine (Tindal), Chlorpromazine (Thorazine), Fluphenazine Decanoate (Proxlixin Decanoate), Fluphenazine enanthate (Prolixin Enanthate), Fluphenazine hydrochloride (Prolixin, Permitil), Mesoridazine (Serentil), Perphenazine (Trilafon), Prochlorperazine (Compazine), Promazine (Sparine, Prozine), Thioridazine (Mellaril, Mellarils), Trifluoperazine (Stelazine), Triflupromazine (Vesprin), Chlorprothixene (Taractan), Droperidol (Inapsine), Haloperidol (Haldol), Loxapine (Loxitane), Molindone (Moban), Pimozide (Orap), Thiothixene (Navane), and other antipsychotics;

(B) antimanic agents: Lithium (Eskalith, Lithobid, Lithotabs, Cibalith);

(C) antidepressants. Medications when used for treatment of depression as identified on the DHS's Client Assessment, Review, and Evaluation (CARE) form or resident's clinical record: Isocarboxaid (Marplan), Phenelzine (Nardil), Tranycypromine (Parnate), Amitriptyline (Elavil, Endep), Amoxapine (Asendin), Desipramine (Pertofrane), Doxepin (Adapin, Sinequan), Trazodone (Desyrel), Fluoxetine (Prozac), Imipramine

(Tofranil, Tofranil-PM, Janimine), Maprotaline (Ludiomil), Nortriptyline (Aventyl, Pamelor), Protriptyline (Vivactil), and Trimipramine (Surmontil);

(26) Readmission–An individual who is readmitted to a nursing facility in which he has resided following a temporary absence for hospitalization or for therapeutic leave.

(27) Related condition–A severe, chronic disability as defined in 42 Code of Federal Regulations, §435.1009, that meets all of the following conditions:

(A) it is attributable to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition including autism, but excluding mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment or services similar to those required for these persons;

(B) it is manifested before the person reaches age 22;

(C) it is likely to continue indefinitely;

(D) it results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(28) Substantial risk of serious harm to self and/or others–Harm which may be demonstrated either by a person's behavior or by evidence of severe emotional distress and deterioration in his mental condition to the extent that the person cannot remain at liberty, as determined by a court of law.

(29) Ventilator dependent–Reliance upon a respirator or respiratory ventilator as a life support system to assist with breathing because of a respiratory condition.

(b) Preadmission screenings.

(1) Effective January 1, 1989, all new admissions (private pay, Medicare beneficiaries, and Medicaid residents) must have a CARE form (Purpose Code 1/P) and be screened prior to admission to a nursing facility to determine if:

(A) the individual has mental illness (MI), mental retardation (MR), and/or a related condition (RC);

(B) nursing facility placement is appropriate in contrast to other settings; and

(C) the individual requires active treatment.

(2) A nursing facility must not admit any individual who has met the conditions of paragraph (1)(A) and (C) of this subsection, and for whom facility placement is not appropriate in contrast to other settings.

(3) Readmissions are not subject to preadmission screenings.

(4) Level I Identification Screening. Individuals are identified as having mental illness, mental retardation, or a related condition (MI/MR/RC) through use of DHS's CARE form, Item 34.

(A) The attending physician makes a positive response to CARE form Item 34 for the presence of MI if the individual:

(i) has a diagnosis of MI;

(ii) has a history of MI within the last two years;

(iii) has been prescribed a psychotherapeutic medication on a regular basis in the absence of a justifiable neurological disorder; or

(iv) presents any evidence of MI (excluding a primary diagnosis of Alzheimer's disease or dementia) including possible disturbances in orientation, affect, or mood.

(B) The attending physician makes a positive response to Item 34 for the presence of MR and/or RC if the individual:

(i) has a diagnosis of MR and/or RC;

(ii) has any history of MR and/or RC identified in the past;

(iii) presents any evidence (cognitive or behavioral functioning) that may indicate the presence of MR and/or a RC; or

(iv) has been determined eligible and is referred by an agency that serves people with MR and/or RC.

(C) A positive response to CARE form Item 34 requires that an individual must receive a Level II assessment prior to admission to a nursing facility.

(D) An individual may be immediately admitted to or continue residing in a nursing facility if:

(i) Item 34 of DHS's CARE form is marked no;

(ii) an individual is in the nursing facility for convalescent care;

(iii) an individual is comatose, terminally ill, or has a serious medical condition;

(iv) an individual has a primary diagnosis of dementia and is not MR and/or RC; or

(v) an individual has Alzheimer's disease.

(5) Level II Assessment. TDH staff must contact the attending physician to verify the information marked on DHS's CARE form, Item 34. If the attending physician verifies that the individual is MI/MR/RC then TDH staff or their contracted staff will conduct on-site assessments of all individuals identified as having MI/MR/RC through the Level I Screening

(A) The assessment process consists of a:

(i) PASARR nursing facility assessment;

(ii) PASARR mental illness assessment (as appropriate);

(iii) PASARR mental retardation and related conditions assessment (as appropriate).

(B) Depending on the mental and/or physical condition, TDH sends either a:

(i) MI assessment team consisting of:

(I) a registered nurse who is a qualified mental health professional (at least one year experience working directly with persons with mental illness; and

(II) other qualified mental health professionals; with

(III) a psychiatrist and social worker sign-off at TDH State Office.

(ii) MR Assessment team consisting of:

(I) a registered nurse who is a qualified mental retardation professional (at least one year experience working directly with persons with mental retardation or developmental disabilities); and

(II) a psychologist who is also a qualified mental retardation professional with at least a Master's Degree.

(C) TDH will have other professionals on staff and/or on a consultant basis who have the expertise in the evaluation of individuals with related conditions.

(D) If during the assessment process TDH ascertains that an individual does not have mental illness, mental retardation, or related condition (MI/MR/RC), then the Level II Assessment may be discontinued and the individual may be admitted to the nursing facility.

(E) All assessment data are reviewed by TDH staff for completeness and accuracy and sent to TDMHMR for PASARR determination as specified in subsection (c) of this section.

(F) If Item 34 indicates "No" on the CARE form, but Items 16-20 indicate a diagnosis of MI, MR, or RC, it is the responsibility of the nursing facility to contact the PASARR unit of TDH and request screening by an assessment team.

(c) Annual resident reviews.

(1) Effective January 1, 1989, all current nursing facility residents with an indication of MI/MR/RC must be identified by TDH through on-site visits which includes chart reviews and interviews with residents.

(2) The nursing facility is required to assist TDH in identifying all residents who may be MI/MR/RC by providing CARE forms on all residents (Medicaid, Medicare, and private pay) and making residents' records available.

(3) Those individuals identified as having MI/MR/RC are required to receive a Level II assessment as described in subsection (b)(4) of this section.

(4) As of April 1, 1990, all identified residents must have received a Level II assessment. These residents, any new residents, or any other residents must be reassessed annually if their condition changes to indicate a positive response to CARE form Item 34 through the identification process. The nursing facility must submit another CARE form if a resident's condition changes significantly where there is an indication that the resident might benefit from active treatment.

(d) Determination process.

(1) TDMHMR reviews the assessment data gathered by TDH in order to determination whether:

(A) nursing facility services are appropriate in contrast with other services; and

(B) an individual requires active treatment for his mental and/or physical condition.

(2) Determinations are based on criteria established by TDMHMR under 25 Texas Administrative Code, Part II, Subchapter 402(E). One of the following determinations is made:

(A) nursing facility services are needed, but active treatment services are not needed. Those individuals may be admitted to or continue residing in a nursing facility.

(B) nursing facility services are needed and active treatment services are needed. Those individuals may be admitted to or continue residing in a nursing facility and receive active treatment within the facility;

(C) nursing facility services are not needed but active treatment services are needed. Those individuals may not be admitted to or continue residing in a nursing facility except as described in paragraph (3) of this subsection. Those individuals who are current nursing facility residents must be alternately placed as described in subsection (e) of this section.

(3) If a nursing facility resident has 30 or more months of continuous residence in a nursing facility preceding the PASARR determination the re- sident may choose to remain and receive active treatment services in the nursing facility, or seek alternate placement.

(4) If during the determination process TDMHMR ascertains that a person does not have MI/MR/RC, the PASARR determination process may be discontinued and the individual may be admitted to the nursing facility.

(5) TDMHMR will notify all individuals of the results of their PASARR determination through a letter sent to them, the nursing facility administrator, the attending physician, and the local MHMR authorities, the Texas Department of Aging (TDoA), and the local Medicaid eligibility unit. Any individual, or his legal representative responsible party, or family member not in agreement with the PASARR determination, may file an appeal with TDMHMR to receive a DHS fair hearing according to Chapter 79 of this title (relating to Legal Services).

(e) Active treatment and alternate placement.

(1) TDMHMR contracts with the local MHMR authority to purchase case management, active treatment, and alternate placement for persons determined by TDMHMR as requiring active treatment and alternate placement.

(2) The local MHMR authority assigns a case manager for those residents who require active treatment services and/or must be alternately placed.

(3) An interdisciplinary team will be constituted by the case manager in order to develop a plan for active treatment and/or alternate placement. This team will identify those additional services required for active treatment that are not already being provided by the nursing facility and covered in the nursing facility daily vendor rate. This team must include:

(A) a representative of the nursing facility;

(B) primary physician;

(C) other professionals deemed appropriate; and

(D) the family.

(4) The case manager will determine how active treatment services will be provided and will facilitate provision of those services. These services will be provided via contract funds from TDMHMR with the local MHMR authority. The local MHMR authorities may directly provide or may subcontract for those services with other providers, including the nursing facility. Those services must meet the relevant portions of TDMHMR's Community Service Standards.

(5) The case manager and/or all active treatment service providers will report monthly to the primary or attending physician regarding the delivery of active treatment.

(6) The case manager will locate alternate placement if required.

(7) The nursing facility must allow TDA staff or representatives from Advocacy, Incorporated, to counsel and inform affected residents of their rights and options under PASARR.

(8) Active treatment services and nursing facility services are to be coordinated and integrated for maximum benefit to the resident. A nursing facility must allow for the MHMR authority or a subcontracted provider to provide active treatment services within the facility. If a nursing facility accepts individuals or has individuals who require active treatment for their mental condition, it must establish and maintain a written cooperative agreement with the local MHMR authority that includes:

(A) general responsibilities of the facility and the provider for delivering the appropriate and mutually supportive services to those residents requiring active treatment for their MI/MR/RC;

(B) a provision allowing the MHMR authority staff to access the facility's reeipient record and assessment information to avoid unnecessary duplication of services, with appropriate consent of the eligible resident, legal representative, or responsible party;

(C) a provision allowing the MHMR authority staff an opportunity to participate in or provide information for the facility's admission, programmatic, and discharge-planning meetings when the active treatment needs of an eligible resident are being considered;

(D) a provision allowing the nursing facility staff to participate in or provide information to the MHMR authority case manager during each active resident's treatment planning; and

(E) how conflicts over such issues as time, space, and equipment should be resolved.

(9) The nursing facility must maintain, as a separate document in the resident's record, a copy of the original Individual Active Treatment Plan developed by the interdisciplinary team, and any subsequent changes.

(10) The facility must obtain and document in the interdisciplinary medical-social plan of care the following information from the active treatment plan, the designated provider, the case manager, other written report, and documented telephone contacts:

(A) efforts to resolve the differences between the active treatment plan and the medical-social plan of care;

(B) active treatment objectives;

(C) the resident's adjustment to the active treatment program;

(D) changes and modification to the plan; and

(E) the facility's responsibility for follow-through on each active treatment objective.

(11) The facility must ensure that all residents who may benefit from active treatment are identified.

(12) All providers of active treatment, including the nursing facility, must meet the relevant portions of TDMHMR's Community Service Standards for the delivery of active treatment services.

(f) Nursing facilities who admit or retain individuals that have not been screened by TDMHMR or who admit or retain individuals for whom nursing facility placement has been found to be inappropriate and who require active treatment will not be reimbursed for that individual as described in §19.1708 of this title (relating to Limitations on Provider Charges to Patients).

(g) Nursing facilities must provide discharge planning services to all residents who are to be altemately placed as described in this section and provide residents those rights described in §19.302 of this title (relating to Transfer and Discharge).

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 March 23, 1990.

TRD-9005195 Cathy Rossberg
Agency Liaison
Texas Department of
Human Services

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

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Subchapter H. Quality of Care

• 40 TAC §19.701

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

§19.701. Quality of Care. Each resident must receive the necessary nursing, medical, and psychosocial services to attain and maintain the highest possible mental and physical functional status, as defined by the comprehensive assessment and plan of care. Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

(1) Activities of daily living. Based on the comprehensive assessment of the resident, the facility must ensure that:

(A) a resident's abilities in activities of daily living do not diminish unless the circumstances of the individual's clinical condition demonstrate that diminution is unavoidable. This includes the resident's abilities to:

(i) bathe, dress, and groom;

(ii) transfer and ambulate;

(iii) toilet;

(iv) eat; and

(v) use speech, language, or other functional communication systems;

(B) the resident is given the appropriate treatment and services to maintain or improve his abilities specified in paragraph (1) of this section;

(C) a resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(2) Vision and hearing. To ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities, the facility must, if necessary, assist the resident:

(A) in making appointments; and

(B) by arranging for transportation to and from the office of a medical practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.

(3) Pressure sores. Based on the comprehensive assessment of the resident, the facility must ensure that:

(A) a resident who enters the facility without pressure sores does not develop pressure sores unless his clinical condition demonstrates that they are unavoidable; and

(B) a resident having pressure sores receives necessary treatment and services to promote healing, prevent infection, and prevent new sores from developing.

(4) Urinary incontinence. Based on the comprehensive assessment of the resident, the facility must ensure that:

(A) a resident who is incontinent of bladder receives the appropriate treatment and services to restore as much normal bladder functioning as possible;

(B) a resident who enters the facility without an indwelling catheter is not catheterized unless his clinical condition demonstrates that catheter- ization is necessary; and

(C) a resident who is inconti-

nent of bladder receives appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible.

(5) Range of motion. Based on the comprehensive assessment of the resident, the facility must ensure that:

(A) a resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(B) a resident with a limited range of motion receives appropriate treatment and services to increase range of motion and/or to prevent further decrease in range of motion.

(6) Psychosocial functioning. Based on the comprehensive assessment of the resident, the facility must ensure that:

(A) a resident who displays psychosocial adjustment difficulty receives appropriate treatment and services to achieve as much remotivation and reorientation as possible; and

(B) a resident whose assessment does not reveal a psychosocial adjustment difficulty does not display a pattern of decreased social interaction and/or increased withdrawn, angry, or depressive behaviors, unless his clinical condition demonstrates that such a pattern is unavoidable.

(7) Naso-gastric tube. Based on the comprehensive assessment of the resident, the facility must ensure that:

(A) a resident who has been able to eat enough alone or with assistance is not fed by naso-gastric tube unless his clinical condition demonstrates that use of a naso-gastric tube is unavoidable; and

(B) a resident who is fed by a naso-gastric or gastrostomy tube receives the appropriate treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal-pharyngeal ulcers, and to restore, if possible normal feeding function.

(8) Accidents. The facility must ensure that:

(A) the resident environment remains as free of accident hazards as possible; and

(B) each resident receives adequate supervision and assistive devices to prevent accidents.

(9) Nutrition. Based on the comprehensive assessment of the resident, the facility must ensure that a resident:

(A) maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless his clinical condition demonstrates that this is not possible; and

(B) receives a therapeutic diet when there is a nutritional problem.

(10) Hydration. The facility must ensure that the resident is provided with sufficient fluid intake to maintain proper hydration and health.

(11) Special needs. The facility must ensure that residents receive proper treatment and care for the following special services:

(A) injections;

(B) parenteral or enteral fluids;

(C) colostomy, ureterostomy, or ileostomy care;

(D) tracheostomy care;

(E) tracheal suctioning;

(F) respiratory care;

(G) podiatric care; and

(H) prostheses.

(12) Drug therapy.

(A) Unnecessary drugs. Each resident's drug regimen must be free from unnecessary drugs.

(B) Antipsychotic drugs. Based on the comprehensive assessment of the resident, the facility must ensure that:

(i) residents who have not used antipsychotic drugs are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition; and

(ii) residents who use antipsychotic drugs receive gradual dose reductions, drug holidays, or behavioral programming, unless clinically contraindicated, in an effort to discontinue use of these drugs.

(13) Medication errors. The facility must ensure that:

(A) it is free of significant medication error rates; and

(B) residents are free of significant medication errors.

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 March 23, 1990.

TRD-9005196 Cathy Rossberg
Agency Liaison
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 I. Nursing Services

• 40 TAC §§19.801-19.813

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

§19.801. Nursing Services. The facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.

(1) Sufficient staff.

(A) The facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:

(i) except when waived under paragraph (3) of this section, licensed nurses; and

(ii) other nursing personnel.

(B) Except when waived under paragraph (3) of this section, the facility must designate a licensed nurse to serve as a charge nurse on each tour of duty.

(2) Registered nurse.

(A) Except when waived under paragraphs (3) or (4) of this section, the facility must use the services of a registered nurse for at least eight consecutive hours a day, seven days a week.

(B) Except when waived under paragraphs (3) or (4) of this section, the facility must designate a registered nurse to serve as the director of nursing on a full-time basis, 40 hours per week.

(C) The director of nursing may serve as a charge nurse only when the facility has an average daily occupancy of 60 or fewer residents.

(3) Waiver of requirement to provide licensed nurses on a 24-hour basis. A facility may request a waiver either from the requirement that a Nursing Facility provide a registered nurse for at least eight consecutive hours a day, seven days a week as specified in paragraph (2) of this section, or the requirement that a Nursing Facility provide licensed nurses on a 24-hour basis, including a charge nurse as specified in paragraph (1) of this section, if the following conditions are met:

(A) the facility demonstrates to the satisfaction of the Texas Department of Health that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel;

(B) the Texas Department of Health determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility;

(C) the Texas Department of Health finds that, for any periods in which licensed nursing services are not available, a registered nurse or a physician is obligated to respond immediately to telephone calls from the facility;

(D) a waiver granted under the conditions listed in this paragraph is subject to annual Texas Department of Health review; and

(E) in granting or renewing a waiver, a facility may be required by the Texas Department of Health to use other qualified, licensed personnel.

(4) Waiver of the requirement to provide services of a registered nurse for more than 40 hours a week in Medicare SNF.

(A) The secretary may waive the requirement that a Medicare SNF provide the services of a registered nurse for more than 40 hours a week, including a director of nursing specified in paragraph (2) of this section, if the secretary finds that the facility:

(i) is located in a rural area and the supply of Medicare skilled nursing facility services in the area is not sufficient to meet the needs of individuals residing in the area;

(ii) has one full-time registered nurse who is regularly on duty at the facility 40 hours a week; and

(iii) either:

(I) has only residents whose physicians have indicated (through physician's orders or admission notes) that they do not require the services of a registered nurse or a physician for a 48-hour period; or

(II) has made arrangements for a registered nurse or a physician to spend time at the facility, as determined necessary by the physician, to provide necessary skilled nursing services on days when the regular full-time registered nurse is not on duty.

(B) A waiver of the registered nurse requirement under subparagraph (A) of this paragraph is subject to annual renewal by the secretary.

(5) The facility must request a waiver through the local TDH long-term care unit, in writing, at any time the administrator determines that staffing will fall, or has fallen, below that required in paragraphs (1) and (2) of this section for a period of 30 days or more out of any 45 days.

(A) The facility must notify the DHS Nursing Home Billing Unit, in writing, at the same time the request is made to the local LTCU.

(B) Information to be included in the request/notification:

(i) date beginning when facility was/is unable to meet staffing requirements;

(ii) type waiver requested-24 hour licensed nurse or seven day per week R.N.;

(iii) projected number of hours per month staffing reduced for 24 hour licensed nurse waiver or seven day per week R.N. waiver;

(iv) staffing adjustments made due to inability to meet staffing requirements.

(C) Waivers will be granted by TDH, Central Office, Austin. Subsequent to all surveys, TDH will report to DHS all periods of time during which staffing requirements were not met for any 30 days during any 45-day period.

(D) Amounts paid to facilities in the per diem payment to meet the staffing requirements of paragraphs (1) and (2) of this section may be reduced as described in §19.1701 of this title (relating to Vendor Payment (Items and Services Included)).

(E) If a facility, after requesting a waiver, is later able to meet the staffing requirements of paragraphs (1) and (2) of this section, TDH and DHS must be notified, in writing, the effective date that staffing meets requirements.

(F) Verification that the facility appropriately made a request and notification will be done at the time of survey.

(5) Approved waivers are valid throughout the facility certification period unless approval is withdrawn. During the recertification survey, the determination is made for approval or denial for the next facility certification period should a waiver continue to be necessary. The facility requests a redetermination for a waiver from the TDH long-term care unit at the time the recertification survey is scheduled. At other times if a request is made, the long-term care unit may schedule a visit for waiver determination. Recommendation for approval or denial of a waiver is initially made by the surveyor. Further recommendation is made by the TDH state office, and for a Medicare SNF, information is submitted to the Secretary of the Department of Health and Human Services for final approval or denial.

(6) To be approved for a waiver, the Nursing Facility must meet all of the requirements stated in this subchapter. Also, the nursing facility must be in continuing compliance with the requirements specified throughout this chapter. In some instances, the survey agency may require additional conditions or arrangements such as:

(A) an additional licensed vocational nurse on day-shift duty when the registered nurse is absent;

(B) modification of nursing services operations; and

(C) modification of the physical environment relating to nursing services.

(7) Denial or withdrawal of a waiver may be made at any time if any of the following conditions exist:

(A) federal requirements for a waiver are not met on a continuing basis;

(B) the level of resident care is not acceptable; or

(C) justified complaints are found in areas affecting resident care.

(8) A SNF (Medicare) must be in a rural area for waiver consideration as specified in paragraph (4) of this section. A rural area is any area outside the boundaries of a standard metropolitan statistical area. Rural areas are defined and designated by the Federal Office of Management and Budget, are determined by population, economic, and social requirements, and are subject to revisions.

§19.802. Nursing Services Staffing Requirements.

(a) The ratio of licensed nurses to residents must be sufficient to meet the needs of the residents.

(1) At a minimum, the facility must maintain a ratio (for every 24-hour period) of one licensed nursing staff person for each 20 residents. This equates to a minimum of .4 licensed-care hours per resident day (HPPD).

(2) There shall be at least one licensed nurse on each shift.

(3) Licensed nurses who may be counted in the ratio include, but are not limited to, director of nursing, assistant directors of nursing, staff development coordinators, charge nurses, and medication/treatment nurses. These licensed nurses may be counted subject to the limitations of paragraph (4) of this subsection and subsection (f) of this section.

(4) Staff, who also have administrative duties, not related to nursing, may be counted in the ratio only to the degree of hours spent in nursing related duties.

(b) The facility must have sufficient total direct-care staff to meet the needs of the residents.

(c) ICF II staff requirements. ICF II waivered facilities must have a licensed nurse on the day shift. In addition, the attendant ratio for ICF II facilities must be at least one attendant for each 20 residents during a 24-hour period. All bedroom corridors must be observable at all times from a nurses station by direct line of sight or by mechanical means. There must be at least one nurses station per floor in a multistoried building.

(d) A registered nurse must have a current license from the Board of Nurse Examiners for the State of Texas.

(e) A licensed vocational nurse must have a current license from the Board of Vocational Nurse Examiners of Texas.

(f) If a multi-level facility (NF-Medicare SNF) has one director of nurses over the entire facility, he/she may not be counted in the nursing ratio. The facility may have a director of nurses over a distinct part such as Medicare only SNF. If this is the case, the nurse may be counted in the ratio for the appropriate area.

(g) The administrator is responsible for always maintaining as many nurse aides and orderlies as necessary to meet the needs of residents. Nursing time devoted solely to resident care is included in computing nursing requirements. There must be enough nursing personnel to provide 24-hour nursing services. Personnel are increased if necessary to ensure that each resident receives protection of his rights and quality care as specified by these requirements.

(h) Nursing personnel must be assigned duties consistent with their education and experience and based on the characteristics of the resident load and the nursing skills needed to provide care to residents.

(i) The facility must maintain weekly time schedules showing the number and classification of nursing personnel, including relief personnel, who will work on each unit during each tour of duty.

(j) A graduate vocational nurse who has a temporary work permit must work under the direction of a licensed vocational nurse, registered nurse, or licensed physician who is physically present in the facility.

(k) If the facility uses licensed temporary nursing personnel, the temporary personnel must have the same qualifications that permanent facility employees do. Temporary personnel may not serve as the director of nursing. If temporary personnel are used for afternoon or night shifts, a full-time, currently licensed nurse must be on call and immediately available by telephone. The on-call nurse must be a registered nurse unless the facility has a current waiver from TDH and is not required to provide daily RN coverage.

(l) The charge nurse on the afternoon shift must be at least a licensed vocational nurse.

(m) The licensed charge nurse working on the 7-3 and 3-11 shift and charge individual working on the 11-7 shift (if because of waiver granted a licensed nurse is not required on the 11-7 shift) will conduct rounds to see all residents on their shift.

(n) It is not a deficiency if the facility has documentation that a nurse has a current temporary work permit from the Board of Vocational Nurse Examiners of Texas or the Board of Nurse Examiners of Texas. (See §19.804(a)(3) of this title (relating to Nursing Facility Director of Nursing Services.)

§19.803. Additional Staff Requirements for NF's Granted a Waiver from the Requirement to Provide 24-hour Per Day Licensed Nurse Coverage. Facilities must have 24-hour nursing services from enough qualified nursing personnel to meet the total nursing needs of the resident and as specified by the waiver granted. Nursing personnel include registered nurses and licensed vocational nurses, nurse aides, orderlies, and medication aides.

(1) The waivered facility must have a full-time registered or licensed vocational nurse on the day shift seven days a week. For purposes of this requirement, the starting time for the day shift must be between 6 a.m. and 9 a. m. The facility must specify in writing the schedule that it follows.

(2) The licensed nurse ratio for each 24-hour period must be as specified by the waiver granted.

(3) If a waivered facility has an LVN director of nurses, consultation by an RN must be provided as specified in §19.804(a)(4) of this title (relating to Nursing Facility Director of Nursing Services).

§19.804. Nursing Facility Director of Nursing Services.

(a) The director of nursing services is a qualified registered nurse employed full-time who has, in writing, administrative authority, responsibility, and accountability for the functions, activities, and training of the nursing services staff, and who serves only one facility in this capacity.

(1) If the director of nursing services has other institutional responsibilities, a qualified registered nurse serves as an assistant so that there is the equivalent of a full time director of nursing services on duty.

(2) The director of nursing works during the day, starting any time between 6 a.m. and 9 a.m., and devotes a minimum of 8 hours per day, five days per week, to the facility's nursing services.

(3) Nurses with temporary permits may not be a director of nurses or charge nurse.

(4) If a NF, as a result of waivered status, employs a licensed vocational nurse to supervise and direct nursing services, the NF must have an agreement with a registered nurse who must provide the vocational nurse at least four hours of consultation in the facility per week. The agreement between the facility and the consultant must comply with §19.1906 of this title (relating to Use of Outside Resources). The registered nurse will not assume director of nursing duties, but will act as a consultant to solve problems involving resident care, conduct in-service training, and maintain proper clinical records.

(5) The director of nursing may be the charge nurse of the day shift, only when the facility has an average daily occupancy of 60 or fewer residents.

(b) The director of nursing services is responsible for:

(1) development and maintenance of nursing service objectives, standards of nursing practice, nursing policy and procedure manuals, and written job descriptions for each level of nursing personnel;

(2) scheduling of and participation in daily rounds of all nursing units;

(3) coordinating nursing service with other resident services, including but not limited to, meeting with the consultant dietitian about resident menus and meal service when medically indicated; .

(4) recommending the number and levels of nursing personnel to be employed, participating in their recruitment and selection, and recommending termination of employment when necessary;

(5) participating in nursing staff development;

(6) ensuring that nursing personnel:

(A) provide treatments, medications, and diets to residents as prescribed by the residents' physicians;

(B) provide rehabilitative nursing care to residents as needed;

(C) keep residents comfortable, clean, and well-groomed;

(D) provide protection to residents from accident, injury, and infection;

(E) assist and train residents in self-care and encourage them to participate in group activities; and

(F) document, as required by §19.805(c)(11) of this title (relating to Nursing Facility Charge Nurse Responsibilities) and §19.807(f) of this title (relating to General Nursing Care in Nursing Facilities) the degree of staff participation in assisting the resident with activities of daily living. Routine charting for Medicaid residents must reflect the resident's ability as assessed on the basis of the way he performs his activities of daily living at least 60% of the time;

(7) participating in planning and budgeting for nursing care;

(8) participating in the development and implementation of resident care policies;

(9) developing work schedules to provide optimum resident care with available personnel;

(10) ensuring that licensed personnel accompany physicians on rounds;

(11) ensuring that a comprehensive assessment is completed and an interdisciplinary plan of care is established, reviewed, and modified as necessary for each resident according to the requirements of §19.601 of this title (relating to Resident Assessment) and §19.602 of this title (relating to Comprehensive Care Plans) and that care planning meetings are coordinated;

(12) ensuring that charting is accomplished;

(13) ensuring that drugs covered by the Controlled Substances Act are verifiable by inventory;

(14) ensuring that a licensed nurse screens the resident for rehabilitation needs with each completion of the Texas Nursing Facility Client Assessment Review and Evaluation (CARE) form. If an evaluation by a therapist(s) is indicated during the screening process, the licensed nurse contacts the attending physician to discuss the findings;

(15) ensuring that when licensed nurses take a verbal or telephone order from a physician, the order is reduced to writing, the nurse signs the order, and the physician subsequently signs the order and the signed order is returned to the chart within seven working days.

(c) The director of nursing must ensure that the comprehensive care plan describes nursing action for continuity of care on a 24-hour basis as described in §19.602 of this title (relating to Comprehensive Care Plans). Based on the prescribed medical plan, a nursing assessment must be initiated following admission and completed according to the provisions of §19.601 of this title (relating to Resident Assessment).

(d) The director of nursing may assign a ward clerk on each shift to be responsible for charting. This must be done under the direction of and co- signed by the charge nurse.

§19.805. NF Charge Nurse Responsibilities.

(a) A registered nurse or a qualified licensed vocational nurse is designated as charge nurse by the director of nursing services for each tour of duty and is responsible for supervision of the total nursing activities in the facility during each tour of duty.

(b) The charge nurse delegates responsibility to nursing personnel for the direct nursing care of specific residents during each tour of duty on the basis of staff qualifications, size and physical layout of the facility, and the emotional, social, and nursing care needs of residents.

(c) The charge nurse:

(1) is responsible during the shift, for the total nursing care of residents in his assigned unit;

(2) is able to recognize significant changes in the conditions of residents and take necessary action;

(3) supervises direct-resident-care personnel in the unit;

(4) ensures that the individual plan of care is followed to meet the resident's needs according to generally accepted nursing practices with the State of Texas;

(5) administers or supervises the preparation and administration of prescribed medications;

(6) administers or supervises prescribed treatments;

(7) supervises serving of prescribed diets and fluid intake (it is acceptable to document only deviations from normal) and reports persistent unresolved problems to the physician and the director of nursing;

(8) ensures that all medications and treatments are charted after they are administered or completed by the person administering the medication or completing the treatment on his assigned shift;

(9) supervises the preparation of incident and accident reports;

(10) directs charting on his shift;

(11) enters or approves, and signs, nurses' notes at least monthly, and ensures that exceptions are noted, documented and signed as specified in §19. 807(f) and (h) of this title (relating to General Nursing Care in Nursing Facilities);

(12) ensures that discharge information, as specified in §19.603 of this title (relating to Discharge Summary and Discharge Plan of Care) is forwarded with a resident upon transfer or discharge;

(13) ensures that drugs covered by the Controlled Substances Act are verifiable by inventory;

(14) participates in regular staff meetings;

(15) is responsible for the detection and correction of situations that have a high probability of causing accidents or injuries to residents;

(16) ensures continuing promotion of the resident's physical and emotional health by assisting and teaching him regarding his medical care. If a resident refuses to follow instructions, the charge nurse must document the refusal in the resident's chart;

(17) conducts daily rounds to observe all residents on their unit on each tour of duty; and

(18) ensures that all orders originate with a physician, dentist, or podiatrist. A licensed nurse may accept and carry out a physician's, dentist's, or podiatrist's order for the administration of medications or treatments when that order originates with one of the above licensed practitioners and is merely relayed or communicated to the RN or LVN through another person. The RN or LVN who carries out the order is responsible for assuring that the order is correct. He/she is required to question any order which he/she suspects is not correct.

§19.806. NF Rehabilitative Nursing Care. The facility must have a program of rehabilitative nursing care that is an integral part of nursing service and is directed toward helping each resident to achieve and maintain an optimal level of self-care and independence. Nursing personnel must be trained in rehabilitative nursing and must provide rehabilitative services daily for residents who require them. Nursing personnel must routinely record these services in the resident's clinical record. Rehabilitative nursing services include:

(1) keeping residents active and out of bed for reasonable periods of time, except if otherwise indicated by the physician's orders, and helping them learn self-care, transfer skills, and ambulation skills;

(2) helping residents to adjust to their disabilities and to use prosthetic, orthotic, or other adaptive equipment;

(3) helping residents to carry out prescribed restorative procedures and exercises;

(4) maintaining good body alignment and proper positioning of bedfast residents;

(5) encouraging, helping, or repositioning bedfast and/or restrained residents to change positions at least every two hours day and night, or as prescribed by the attending physician. Change the resident's position to stimulate circulation and discourage decubiti and contractures. Restraints must be released every two hours for a minimum of 10 minutes and the resident repositioned. Use of specific restraints and their release must be documented in the clinical record.

§19.807. General Nursing Care in Nursing Facilities.

(a) All nursing care must be given according to the instructions of the nurse in charge and must be consistent with the attending physician's orders.

(b) Complete baths must be given at least every second day for helpless or chairfast residents unless an alternative plan is recommended by the physician. Partial baths must be given on the intervening days unless contra-indicated. The frequency of bathing depends on the condition of the resident, his skin condition, and the nature of the impairment.

(c) Ambulatory residents must receive a complete bath at least once a week.

(d) Incontinent residents must have daily baths and must be appropriately cleaned and changed after each incontinent episode. Adequate nursing procedures must be used to keep the bedding dry and the residents comfortable. If the skin is irritated, soothing, healing lotions or creams must be applied, subject to the physician's orders.

(e) Skin care must be given to all residents.

(f) Residents' physical complaints, accidents, incidents, and changes in condition, diagnosis, and progress must be promptly recorded as exceptions which are included in the clinical record. Any significant adverse changes in the resident's physical or emotional condition must be promptly reported to the attending physician. Every attempt to make these reports and every contact made with the attending physician must be documented in the clinical record.

(g) Apparent death must be reported immediately to the attending physician and the relatives or guardians of the deceased. The body must not be removed from the facility without the physician's authorization. Telephone authorization is acceptable if not in conflict with local regulations. Authorization by a justice of the peace, acting as coroner, is sufficient when the attending or consulting physician is not available.

(h) Nursing personnel must periodically, and at least daily, observe residents and record exceptions in the residents' clinical records as appropriate. (See subsection (f) of this section).

§19.808. Supervision of Nutrition in Nursing Facilities. Nursing personnel must be aware of the nutritional needs of residents, and:

(1) encourage residents to eat in the dining area unless medically contraindicated;

(2) ensure that residents who do not eat in the dining area are provided their own trays;

(3) assist in the prompt feeding of residents, if necessary, so that food is served at the proper temperature;

(4) ensure that drinking water is available to residents at all times unless medically contraindicated; and

(5) observe food and fluid intake of residents. Deviations from normal are charted in the resident's clinical record and reported to the nurse in charge.

§19.809. Administration of Drugs in Nursing Facilities.

(a) The facility must ensure that drugs and biologicals are administered only by a physician, licensed nurse, or medication aide. Each resident has the right to self-administer drugs as outlined in §19.216 of this title (relating to Self-administration of Drugs). Proper administration of a drug means that the individual dose must be removed at the appropriate time from a previously dispensed, properly labeled container (including a unit dose container), verified with the physician's orders, and administered to the proper resident at the proper time.

(b) The facility must ensure that drugs and biologicals are ordered, accounted for, and administered in accordance with the pharmacy services regulations in §§19.1301-19.1310 (relating to Pharmacy Services.)

(c) PRN medication. PRN medications shall be recorded in the clinical record at the time of administration and not before. The recording in the clinical record shall include: the reason for administration, what medication given, date and time medication is given, the amount given, and the resident's response.

§19.810. Nursing Practices.

(a) Licensed vocational nurses whose formal training has not included venipuncture or nasogastric tube insertion procedures may perform these procedures if the RN director of nursing or RN consultant document that each LVN (by name) has received instruction in the performance of these procedures and is qualified to perform them.

(b) Under ordinary circumstances, venipunctures and insertion of nasogastric tubes shall be accomplished by a registered nurse.

(c) In cases of venipunctures, blood specimens for laboratory tests may be drawn and intravenous fluids may be given by any R.N. or L.V.N. who is qualified through their formal training. An LVN shall not administer any medications intravenously, but an LVN may monitor intravenous drug medications once started by an RN.

(d) Enteral tube feedings (i.e. NG, gastrostomy, jejunostomy, etc.) shall be given in accordance with physicians orders by a registered or licensed nurse only using established feeding procedures.

(e) Syringe feedings shall be given in accordance with physicians orders and established feeding procedures. They may be given by any nonlicensed nursing personnel, provided that nonlicensed nursing personnel have had inservice from the licensed nurse and have demonstrated proficiency by a return demonstration.

(f) Urinary catheters shall be inserted/irrigated in accordance with physicians orders by licensed nurses using established procedures. Intake and output records shall be kept as indicated by the physician. Catheters shall be positioned at all times to allow for flow of gravity.

(g) Monitoring of specific restraints shall include observations of the resident at least every hour with changing and positioning as described in §19.806(e) of this title (relating to Nursing Facility Rehabilitative Nursing Care).

(h) Locked restraints are not allowed with the exception of dutch doors as long as the requirements in §19. 401 of this title (relating to Resident Behavior and Facility Practice) are met.

(i) Fecal impactions must be removed by licensed nurses.

(j) Nursing personnel must wash or disinfect their hands between treatment of residents. (See §19.1401 of this title (relating to Infection Control.))

(k) When suctioning is necessary for a resident, it must be done by licensed nurses or physicians.

(l) It is the duty of the facility nursing staff to assure that the routine reduction and/or debridement or manicure of nails on hands and feet is performed. Physician orders are not required unless the debridement is medically contraindicated. A physician's order is required for podiatric services.

§19.811. Student Nurses. If the facility has a contract or agreement with an accredited school of nursing to use their facility for a portion of the student nurses' clinical experience, those student nurses may provide care under the following conditions.

(1) Student nurses may be used in nursing homes, provided the instructor gives class supervision and assumes responsibility for all student nursing activities occurring within the home. All instruction must be provided by the school of nursing instructor. The instructor must be on the premises when students are administering medication. A licensed nurse must supervise a student nurse who is administering medication. These students cannot be counted in the nurse-to-resident ratio required in the standards. Student nurses shall not be used to meet staffing requirements to meet the needs of residents.

(2) The student nurse may administer medications only when in the facility on assignment as a student of their school of nursing. Student nurses may not be utilized to fulfill the requirement for administration of medications by licensed personnel, personnel completing a state-approved course in medication administration, or medication aides. Student nurse medication administration activities must be confined to that required in their student learning experience only.

§19.812. Special Nurses and Sitters.

(a) The nursing facility is not responsible for payment for a special nurse (registered nurse or licensed vocational nurse) or sitter requested by the resident's physician or family.

(b) The special nurse or sitter must be hired as a separate agreement between the nurse or sitter and resident, or the resident's family or legal representative, and paid directly by them.

(c) The participating facility may assist in the hiring of a special nurse or sitter but shall not in any way enter into the billing, collection, or fee setting for the special duty nurse or sitter.

(d) Sitters may not perform any nursing function without meeting the qualifications as specified in §19.1903 of this title (relating to Required Training of Nurse Aides) and §19.1904 of this title (relating to Proficiency of Nurse Aides).

(e) The nursing facility is responsible for meeting the needs of the residents regardless of the presence of special nurses or sitters.

§19.813. Charges for Special Nurses or Sitters.

(a) If it can be determined by the auditing staff that the facility received no monetary benefits from an arrangement for special duty nurses or sitters, no financial exception will be made. (See §19.1704 of this title (relating to Vendor Payment Information)).

(b) If it is determined by the auditing staff that the facility received monetary benefits from an arrangement for special duty nurses or sitters, a financial exception will be made and the facility will be asked to reimburse the appropriate individuals. In such cases, the appropriate individual will be the resident or the responsible party who paid the special duty nurses or sitters.

(c) If the resident or family hires an individual to do the special duty nursing, who was already on their staff and a replacement for this person was not hired, the facility shall be determined to have received a monetary benefit. The reason for such a decision is that the facility was relieved of the responsibility of paying this person's regular salary during the period she was on special duty. (See §19.1706 of this title (relating to Supplementation of Vendor Payments)).

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-9005197 Cathy Rossberg
Agency Liaison
Texas Department of Human Services

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For further information, please call: (512) 450-3745

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Subchapter J. Dietary Service

• 40 TAC §§19.901-19.912

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

§19.901. Dietary Service. The facility must provide each resident with a nourishing, palatable, well-balanced diet that meets daily nutritional and special dietary needs of each resident. See information about kitchens in §19.1513(n) of this title (relating to Other Rooms and Areas).

§19.902. Staffing. The facility must employ a qualified dietitian either full-time, part-time, or on a consultant basis.

(1) If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food service.

(2) A qualified dietitian is one who is qualified based upon either:

(A) registration by the Commission on Dietetic Registration of the American Dietetic Association; or

(B) on the basis of education, training, or experience in identification of dietary needs, planning, and implementation of dietary programs. A qualified dietitian may be an individual with a license but without registration and who has a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management; has one year of supervisory experience in dietetic service of a health care facility; and participates annually in continuing dietetic education.

(3) Persons, who are not registered or licensed, as provided by subsection (b) of this section, must have credentials evaluated and approved by the nutrition program specialist, Bureau of Long Term Care, Texas Department of Human Services (TDH).

(4) All qualified dietitians not registered as provided by subsection (b)(1) of this section must have 15 hours dietetic continuing education annually and attendance must be reported to the TDH Bureau of Long Term Care.

(5) The designated director of food service is responsible for the overall operation of the dietary service. If the director is not a qualified dietitian, he/she must receive consultation from a qualified dietitian. The director of food service must participate in regular conferences with the administrator and with the registered nurse who has responsibility for the resident and the resident's plan of care. In conferences concerning the resident's plan of care, the director of food service must provide information about approaches to identified nutritional problems. The director of food service should make recommendations and assist in developing personnel policies.

(6) The director of food service must be at least:

(A) a qualified dietitian;

(B) an associate-of-arts graduate in nutrition and food management (a dietary technician); or

(C) a graduate of a dietetic technician or dietetic assistant training program approved by the American Dietetic Association, or the Dietary Manager's Association, whether conducted by correspondence or in a classroom;

(D) a person who has completed a state-agency-approved 90-hour course in food service supervision; or

(E) a person who has training and experience in food service supervision and management in a military service equivalent in content to the programs in paragraphs (1)-(4) of this subsection and has had his or her training credentials evaluated and approved by the nutrition program specialist, Bureau of Long Term Care, Texas Department of Human Services (TDH).

§19.903. Sufficient Staffing. The facility must employ sufficient support personnel competent to carry out the functions of the dietary service. The dietary service department must be staffed at least 12 hours daily, and weekly staffing schedules must be posted. Food service employees must be trained to perform assigned duties and participate in selected in-service education programs.

§19.904. Dietary Consultant Requirements.

(a) Minimum dietary consultant hours per month. The facility must ensure that dietary consultant hours are provided as follows:

(1) facility population: 60 residents or under–eight hours;

(2) facility population: each additional 30 residents or fraction thereof–four hours.

(b) To meet the consultant-hour requirement, time may be accrued and counted exactly as rendered.

(c) A consultant's visit must be long enough to allow:

(1) continuing liaison with medical and nursing staff;

(2) nutritional assessment and resident counseling;

(3) guidance to the dietary service supervisor and staff;

(4) approval of all menus;

(5) participation in the development or revision of dietary policies and procedures;

(6) planning and conducting in-service education programs;

(7) development of a plan to meet resident nutritional needs and update the plan as required; and

(8) supervision of preparation of meals, serving of meals, and recording food intake.

(d) The facility must outline consultant services in a signed contract. This requirement does not apply to facilities which employ a registered dietitian or qualified dietitian on their staff.

§19.905. Documentation Requirements for Dietary Consultant.

(a) The facility must maintain documentation reflecting consultation with a dietitian and make it available for review by federal and state representatives. The facility must include at least the following in the documentation:

(1) the name of the consultant dietitian;

(2) the dates of the consultant's visits;

(3) assessment of the dietary service, including all special diets ordered; and

(4) review of fluids for nutritional and hydrational purposes according to physician's orders.

(b) The facility must ensure that the documentation of the consultation is signed and dated at each visit.

(c) The name of the dietitian/consultant dietitian shall be posted in a place for residents to see.

§19.906. Hygiene.

(a) Dietary service personnel must be in good health and practice hygienic food-handling techniques. Persons with symptoms of communicable diseases or open, infected wounds may not work.

(b) Dietary service personnel must wear clean, washable garments, wear hair coverings or clean caps, and have clean hands and fingernails.

(c) In addition to the requirements stated in §19.1920 of this title (relating to Operating Policies and Procedures), routine health examinations must meet all local, state, and federal codes for food service personnel.

(d) Food handlers' permits, if required, must be current.

§19.907. Menus and Nutritional Adequacy.

(a) Menus must:

(1) meet the nutritional needs of residents in accordance with the

recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

(2) be prepared in advance; and

(3) be followed.

(b) Every facility must ensure that menus are written at least one week in advance and designed to meet the nutritional and special dietary needs of residents in accordance with the attending physician's orders. Written menus must be followed. To the extent medically possible, the menu must meet the recommended dietary allowances of the Food and Nutritional Board, National Research Council, National Academy of Sciences.

(c) A qualified dietitian may accept diet orders and changes from the physician.

(d) The facility must ensure that a current diet manual, approved by the Texas Department of Health (TDH), is readily available to dietary service personnel and the supervisor of nursing service.

(e) The facility must retain records of menus served and food purchased for 30 days.

(f) The facility must post the current week's menu in the dietary department so employees responsible for purchasing, preparing, and serving foods can use it.

(g) The facility must vary menus from week to week, and menus shall be in a place for residents to see. The facility must serve food in adequate amounts and adjust menus for seasonal changes. The facility does not need to note substitutions on the menu, but must record substitutions after service and keep them on file for 30 days.

(h) The facility must consider the general age group in planning menus.

(i) A list of residents receiving special diets and a record of their diets must be kept in the dietary area for at least 30 days.

(j) A file of tested recipes, adjusted to proper yield, must be kept in the dietary area.

(k) The dietary department must keep a seven-day supply of staple foods and a two-day supply of perishable foods at all times. The facility is allowed the flexibility to use food on hand to make substitutions at any interval as long as comparable nutritional value is maintained. The facility must document the substitution on the day of use.

(l) The facility must have equipment and procedures to keep food at proper temperatures during service.

(m) The facility must have table service for all who can and will eat at the table, including wheelchair residents. Residents who need help eating must be assisted promptly after the tray is served.

(n) The facility must ensure that trays for bedfast residents rest on firm supports such as over-bed tables. The facility must provide sturdy tray stands of proper height to residents able to be out of bed for their meals. The facility must provide adaptive self-help devices to contribute to independence in eating for residents who need them.

(o) The facility must prepare and serve therapeutic diets, additive or restrictive, as prescribed by the attending physician. The facility must ensure that therapeutic diet orders are planned, prepared, and served with supervision or consultation from a qualified dietitian. Persons responsible for therapeutic diets must have sufficient knowledge of food value to make suitable substitutions if necessary.

(p) Prescribed caloric levels must be accompanied by a specific meal pattern which meets all the recommended nutritional allowances when possible. It is the responsibility of the dietitian to provide specific diets and meal patterns to accommodate these diets as ordered. It is also his/her responsibility to make certain dietary employees know how to weigh and measure to follow these diets. Every kitchen must have a diabetic food exchange list posted and in use.

(q) The dietitian must either write or completely evaluate all general and therapeutic diets for the nursing facility.

(r) It is agreeable to use 2.0% milk for a resident in a facility providing this does not conflict with the physician's orders.

(s) Milk must not be transferred through a middleman type process between the refrigerator dispenser and the actual glass used by the resident. Milk must be poured directly from the dispenser into clean glasses and covered when transporting or refrigerating until meal service to the resident.

§19.908. Food. Each resident receives and the facility provides:

(1) food prepared by methods that conserve nutritive value, flavor, and appearances;

(2) food that is palatable, attractive, and at the proper temperature;

(3) food prepared in a form designed to meet individual needs, if not in conflict with physician's orders;

(4) substitutes of similar nutritive value to residents who refuse food served; and

(5) reasonable substitutions of comparable nutritional content if the resident refuses 50% of the food served. It must be documented in the clinical record if the substitution was rejected.

§19.909. Food Intake. Food intake of residents shall be required to be monitored and recorded as follows.

(1) Nursing personnel shall be in the dining room during meals to assure that correct diets are served the residents and the safety of the residents.

(2) Deviations from normal food and fluid intake shall be recorded in the clinical records.

(3) In-between meals, bedtime snacks, and supplementary feedings, either as apart of the overall care plan or as ordered by a physician, including caloric restricted diets, must be documented as accepted or rejected.

(4) An identification system, such as tray cards, shall be available to ensure that all diets are served in accordance with physician's orders.

§19.910. Frequency of Meals.

(a) Each resident receives and the facility provides at least three meals daily, at regular times comparable to normal mealtimes in the community.

(b) There must be not more than 14 hours between a substantial evening meal and breakfast the following day, except as provided in subsection (d) of this section.

(c) The facility must offer snacks at bedtime daily.

(d) When a nourishing snack is provided at bedtime, up to 16 hours may elapse between a substantial evening meal and breakfast the following day, if a resident group agrees to this meal span and a nourishing snack is served.

(e) Routine snacks that are not ordered by the physician and are not part of the plan of care do not need to be documented as accepted or rejected.

§19.911. Sanitary Conditions. The facility must:

(1) procure food from sources approved or considered satisfactory by federal, state, and local authorities;

(2) store, prepare, and serve food under sanitary conditions, as required by the Texas Department of Health food service sanitation requirements;

(3) establish effective procedures for cleaning all equipment and work areas that shall be followed consistently.

(4) establish dish washing procedures and techniques that are well developed and include pre-soaking the silverware. Procedures shall be carried out in compliance with state and local health codes;

(5) provide that waste which is not disposed of by mechanical means shall

be kept in leak-proof non-absorbent containers with close fitting covers and shall be disposed of in a manner that will prevent transmission of disease, a nuisance, a breeding place for flies, or feeding place for rodents. Containers shall be kept clean;

(6) ensure that dry or staple food items shall be stored off the floor in a ventilated room not exposed to contamination by sewage, sewer gases, waste water backflow, contamination by condensation, leakage, drainage, excessive humidity, rodents or vermin;

(7) ensure that handwashing facilities, including hot and cold water, soap dispensers, and paper towel dispensers, or air dryers, are provided in the food preparation area.

§19.912. Deficiency in Dietary Services. When a survey discloses that a facility has not employed a qualified dietetic supervisor, the finding will be treated initially as a correctable deficiency.

(1) When such a deficiency is first noted, the relevant standard will be marked not met and a reasonable plan of correction will be required of the facility.

(2) When the deficiency is found to exist in subsequent surveys, if it can be determined that the facility can demonstrate through appropriate documentation that it has made and will continue to make a good faith effort to achieve compliance, but that for reasons beyond its control, these efforts have been thwarted, the facility will be allowed to retain its correctable deficiency status. If the facility is unable to establish this good faith effort to comply, then the provider agreement cannot be renewed.

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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Texas Department of Human Services

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

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Subchapter K. Physician Services

• 40 TAC §19.1001-19.1010

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

§19.1001. Physician Services. A physician must personally approve a recommendation that an individual be admitted to a facility. Each resident must remain under the care of a physician. The facility must ensure that:

(1) the medical care and other health care of each resident is supervised by a physician;

(2) another physician supervises the medical care and other health care of residents when their attending physician is unavailable. See §19.1006 of this title (relating to Admission Information); and

(3) each resident of the facility or his/her responsible party shall have the right to choose and change the physician of such resident at any time, and the facility shall not interfere with or limit such right, except when such choice of physician creates a non-compliance situation for the facility regarding federal, state, or local laws and regulations and/or the facility's medical staff policies. Such changes shall be recorded on the admission record and all other appropriate forms maintained by the facility.

§19.1002. Physician Visits. The physician must:

(1) review the resident's total program of care, including medications and treatments, at each visit required by §19.1003 of this title (relating to Frequency of Physician Visits).

(2) write, sign, and date progress notes at each visit;

(3) sign all orders; and

(4) review and sign their programs of care.

(A) Physician's orders must bear the usual signature of the physician responsible for the orders, as well as the effective date.

(B) Changes cannot be made either on a handwritten or computerized physician's order sheet after the orders have been signed by the physician unless space allows for additional orders below the physician's signature, including space for the physician to sign again.

(C) In the event a change of orders is necessary, they will need to be treated as new orders. Should the change be by telephone, the telephone order shall be signed by the physician and returned to the clinical record within seven working days.

§19.1003. Frequency of Physician Visits. Physician visits must conform to the following schedule.

(1) For skilled nursing facilities (Medicare), the resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least once every 60 days thereafter.

(2) For nursing facilities, the resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least once every 90 days thereafter.

(3) A physician visit is considered timely if it occurs not later than 10 days after the date the visit was required.

(4) Except as provided in subsection (e) of this section, all required visits must be made by the physician personally.

(5) At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner in accordance with §19.1005 of this title (relating to Physician Delegation of Tasks).

(6) Each resident shall be examined at least annually by his or her physician.

§19.1004. Availability of Physician for Emergency Care. The facility must provide or arrange for the provision of physician services 24 hours a day, in case of an emergency.

(1) The facility must have written procedures at each nursing station for obtaining emergency physician services at all times.

(2) A qualified physician must furnish emergency medical care to a resident if the attending physician is not immediately available. The facility must post a schedule of names and telephone numbers of physicians at each nursing station. The facility must include in the emergency procedures directives for the immediate care of the resident, names of persons to be notified, and a list of reports to be prepared.

(3) In the event of an acute illness or accident requiring medical and/or nursing care beyond the capabilities of a nursing facility, the resident shall be transferred to a hospital where needed services and facilities are available; provided, however, until said transfer is made the nursing home personnel shall have authority to carry out emergency procedures as prescribed by a licensed physician. In case of an emergency illness which does not necessitate transfer of a resident from the facility, appropriate nursing personnel shall keep a necessary record of medications and vital signs in order to keep the attending physician fully informed relative to the health status of the individual resident.

§19.1005. Physician Delegation of Tasks.

(a) Except as specified in subsection (b) of this section, a physician may delegate tasks to a physician assistant or nurse practitioner who:

(1) meets the applicable definition in 42 Code of Federal Regulation, §491.2 (see §19.101 of this title (relating to Definitions));

(2) is acting within the scope of practice as defined by state law; and

(3) is under the supervision of the physician.

(b) A physician may not delegate a task when the regulations specify that the physician must perform it personally, or when the delegation is prohibited under state law or by the facility's own policies.

(c) If physician assistant (PA) or nurse practitioner (NP) services are used in the facility, facility staff must ensure that the following conditions exist.

(1) The facility has written agreements with physicians who intend to use the services of PAs or NPs.

(2) The facility has established, written procedures specifying that:

(A) the PA or NP is identified clearly to residents, responsible parties, and to employees as a PA or NP;

(B) residents are informed that the PA or NP is not a physician and that the resident may see the supervising physician at their request;

(C) residents or responsible party consent, in writing, to receive services from the PA or NP; and

(D) the resident's or responsible party's signed consent is included in the resident's record.

§19.1006. Admission Information.

(a) At admission, the facility must obtain resident information from a physician, including current medical findings, diagnoses, orders for immediate care, and the resident's discharge and rehabilitation potential. If medical orders cannot be obtained upon admission, the medical director or an emergency physician may give temporary orders until the attending physician fulfills this responsibility.

(b) The medical history and physical examination report shall be sufficient for the attending physician to evaluate the resident's immediate and long term needs, and shall include a diagnosis and any other information that may be needed for the care of the resident.

(c) A copy of a recent hospital discharge summary of history and physical examination report which contains all of the required information may be utilized. If the author of such hospital report is not the resident's attending physician, then the attending physician must acknowledge the report in writing by cosigning the report.

(d) Where the admitting physician is not the attending physician, the attending physician must see the resident within seven days after admission and prepare a history and physical examination report or acknowledge the ap- propriate report from the hospital as described in subsection (c) of this section.

(e) If the attending physician is the author of the hospital report described in subsection (c) of this section, then no cosignature is required.

§19.1007. Certification and Recertification Requirements.

(a) Physician's certification of nursing facility residents is required no more than seven days after or 30 days before admission to the facility or before the Medicaid agency authorizes payment, whichever is later.

(b) Physician's recertification of residents is required for admission and every 180 days thereafter.

(c) Physician's certification and recertification statements documenting the need for continued health care services are placed in each resident's clinical record and reviewed on a regular basis by the Texas Department of Health (TDH) Long-term Care Unit staff. The facility must ensure that each certification or recertification states: "I hereby certify that this resident requires/continues to require NF care."

(d) The physician's certification/recertification statement may be maintained as a separate document such as a certification sheet. In this event, the certification/recertification must be updated and signed by the physician at the intervals required in subsection (b) of this section.

(e) If the certification/recertification statement is included in the physician's plan of care or orders or in the physician's progress notes, it must specify the number of days it is valid, as required in subsection (b) of this section. In this case the certification/recertification must state: "I hereby certify that this resident continues to require NF care for 180 days."

§19.1008. Physicians Charging a Fee to Complete Forms. The Texas nursing facility CARE form for a resident assessment is completed in connection with required physician visits with the resident. The physician charges NHIC the allowable amount for the visit which includes his services for completing the form. This assumes that the physician actually filled out the form and, in such cases, he should show on the bill that the visit was for medical evaluation or reevaluation purposes. If a nursing facility administrator pays the physician for his services of completing forms for recipients, DHS does not reimburse the physician for those same expenses.

§19.1009. Physician Signatures. Signature stamps and faxing signed documents are acceptable if used as described in §19.1912(i)(2) of this title (relating to Additional Clinical Record Service Requirements).

§19.1010. Physicians' Reporting Communicable Diseases. The physician must report all reportable communicable diseases immediately according to the requirements specified in §19.1401(b)(4) of this title (relating to Infection Control).

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

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Subchapter L. Specialized Rehabilitative Services

• 40 TAC §§19.1101-19.1106

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

§19.1101. Provision of Specialized Rehabilitative Services. A facility must provide or obtain rehabilitative services, such as physical therapy, speech/language pathology, and occupational therapy to every resident it admits.

(1) If specialized rehabilitative services are required in the resident's comprehensive plan of care, the facility must:

(A) provide the required services; or

(B) obtain the required services from an outside resource, in accordance with §19.1906 of this title (relating to Use of Outside Resources), from a provider of specialized rehabilitative services.

(2) The facility must ensure that safe and adequate space and equipment are available for rehabilitative services offered.

(3) The facility must ensure that rehabilitative services are provided under a written plan of treatment based on the physician's diagnosis and orders, and that services are documented in the resident's

clinical record.

(4) The facility must ensure that an evaluation of the resident's rehabilitation needs is integrated into the resident's overall plan of care.

§19.1102. Qualifications. Specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.

(1) A qualified therapist is:

(A) a speech-language pathologist who:

(i) has a certificate of clinical competence in speech-language pathology granted by the American Speech-Language-Hearing Association, in effect on January 17, 1974; or

(ii) meets the educational requirements for certification and has or is in the process of accumulating the supervised clinical experience required for certification;

(B) an audiologist who:

(i) has a certificate of clinical competence in audiology granted by the American Speech-Language-Hearing Association, in effect on January 17, 1974; or

(ii) meets the educational requirements for certification and has or is in the process of accumulating the supervised clinical experience required for certification;

(C) an occupational therapist (a qualified consultant) who:

(i) is a graduate of an occupational therapy curriculum accredited by the Council on Medical Education of the American Medical Association and the American Occupational Therapy Association;

(ii) is certified by the American Occupational Therapy Association under its requirements in effect on August 1, 1989; or

(iii) has two years experience as an occupational therapist, and has achieved a satisfactory grade on a proficiency examination approved by the secretary of health and human services, except that this determination of proficiency does not apply to persons initially licensed by a state or seeking initial qualifications as an occupational therapist after December 31, 1977;

(D) an occupational therapy assistant who:

(i) is certified as an occupational therapy assistant by the American Occupational Therapy Association under its requirements in effect on August 1, 1989; or

(ii) has two years of experience as an occupational therapy assistant, and has achieved a satisfactory grade on a proficiency examination approved by the secretary of health and human services, except that this determination of proficiency does not apply to persons initially licensed by a state or seeking initial qualification as an occupational therapy assistant after December 31, 1977;

(E) a physical therapist who:

(i) is a graduate of a program in physical therapy approved by the American Physical Therapy Association or by the Council on Medical Education of the American Medical Association;

(ii) has two years experience as a physical therapist and has achieved a satisfactory grade on a proficiency examination approved by the secretary of health and human services, offered until December 31, 1977;

(iii) is licensed or registered before January 1, 1966, and has 15 years of full-time experience as a physical therapist before January 1, 1970;

(iv) has graduated from a state-approved, four year college program in physical therapy before January 1, 1966; or

(v) is currently licensed as a physical therapist by the Texas State Board of Physical Therapy Examiners; or

(F) a physical therapist assistant who:

(i) is a graduate of a two-year college level program approved by the American Physical Therapy Association;

(ii) has equivalent training and experience; or

(iii) is licensed as a physical therapy assistant by the Texas State Board of Physical Therapy Examiners.

(2) A physical therapy aide is a person who assists in the practice of physical therapy and whose activities require on-the-job training and on-site supervision by a physical therapist or physical therapy assistant. A physical therapy aide is not a certified corrective therapist or an adaptive or corrective physical education specialist.

§19.1103. Therapist Responsibilities. Therapists must:

(1) ensure the safety, effectiveness, and cleanliness of the equipment used;

(2) perform assessments and develop required care plans and progress reports;

(3) submit reports of the resident's progress to the physician within two weeks after initial therapy and every 30 days thereafter or more often if necessary;

(4) provide treatment notes for each therapy visit which includes, but is not limited to, start and stop time of visit, treatment provided, and resident response;

(5) provide recommendation to nursing staff for supplemental activities, e.g., additional ambulation; and

(6) provide a discharge summary which includes recommendations to nursing service for actions to improve or maintain function when the therapist discharges the resident from rehabilitative therapy.

§19.1104. Goal-directed Therapy.

(a) If a facility admits or retains residents who require physician-prescribed rehabilitative services, the facility must either furnish goal-directed therapy as a certified Title XVIII provider of services or must have written agreements with Title XVIII providers of rehabilitative services. The facility must ensure that such agreements provide a basis for effective working arrangements under which goal-directed therapy is made available to residents if needed and ordered by the attending physician.

(b) The goal-directed therapy system includes physical therapy, occupational therapy, and speech pathology services. The attending physician must order these services.

(c) Payment for therapy services for residents with Medicare coverage is billed to Medicare. Prior authorization by the Texas Department of Human Services (DHS) is required for residents with only Medicaid coverage.

(d) The Texas Department of Human Services (DHS) pays nursing facilities for physical, occupational, and speech therapy services provided to residents who are eligible for Medicaid but are not eligible for Medicare. DHS also pays Title XVIII-certified physical therapists for physical therapy services provided to eligible residents. DHS pays whichever of the following rates is lowest:

(1) the maximum allowable Medicaid rate per visit as determined by the Texas Board of Human Services;

(2) the therapy provider's interim rate per visit as determined by Medicare; or

(3) the provider's customary charge per visit.

(e) DHS pays contracted nursing facilities an administrative fee determined

by the Texas Board of Human Services for each approved unit of service for costs incurred in processing claims for payment for therapy services. Only contracted nursing facilities may receive payment of this fee. The department pays the fee for each approved unit of therapy service that a facility reports, based on a rate determined by the Texas Board of Human Services. A unit of service is defined as one physical therapy service, one occupational therapy service, or one speech therapy service performed for one resident.

(f) Coverage for physical therapy includes evaluation and treatment of functions that have been impaired by illness or injury. The purpose is to improve and restore the resident's ability to perform transfer or ambulation activities. The services must be provided with the expectation that the resident's functioning will improve measurably in 30 days.

(g) Coverage for occupational therapy includes evaluation and treatment of functions that have been impaired by illness or injury. The purpose is to improve or restore the resident's ability to perform self-care activities. The services must be provided with the expectation that the resident's functioning will improve measurably in 30 days.

(h) Coverage for speech pathology includes evaluation and treatment of communication disorders that are related to loss of hearing or have been acquired. Treatment must be provided with the expectation that the resident's communication will improve measurably in 30 days.

§19.1105. Screening.

(a) The facility must screen all recipies for rehabilitation needs at the following times:

(1) preadmission/admission;

(2) continued stay review; and

(3) request for retroactive medical necessity.

(b) If an evaluation by a therapist is indicated by the screening process, the nurse contacts the attending physician by telephone or by mail within two working days of the screening to discuss the findings.

§19.1106. Qualifications for Outpatient Physical Therapy, Speech/Language Pathology, and Occupational Therapy. If the facility provides outpatient physical therapy, speech language/pathology, or occupational therapy services, it must meet the health and safety regulations pertaining to those services specified in 42 Code of Federal Regulations, Subpart Q, §§483. 40, 483.45, 483,70, and 483.75(q)(r).

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

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Subchapter M. Dental Assistance

• 40 TAC §§19.1201-19.1208

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

§19.1201. Dental Services. The facility must assist residents in obtaining routine and 24-hour emergency dental care.

(1) Skilled nursing facilities (Medicare).

(A) The facility must provide or obtain from an outside resource, in accordance with §19.1906 of this title (relating to Use of Outside Resources), routine and emergency dental services.

(B) An SNF (Medicare) may charge a resident an additional amount for emergency dental services.

(2) Nursing facilities. The facility must provide or obtain from an outside resource, in accordance with §19.1906 of this title (relating to Use of Outside Resources), the following dental services to meet the needs of each resident:

(A) routine dental services (to the extent covered under the State plan); and

(B) emergency dental services, which include, but are not limited to:

(i) loss of airway due to maxillo/facial traumatic obstruction;

(ii) shock due to loss of blood from maxillo/facial or oral area;

(iii) uncontrolled arterial bleeding within maxillo/facial or oral area;

(iv) extreme pain in oral cavity and associated structures;

(v) loss of tooth due to trauma;

(vi) fracture of the maxilla or mandible;

(vii) laceration in or around oral cavity; and

(viii) serious infectious/swellings, rapidly growing neoplasm, and seemingly spontaneous hemorrhage.

(C) Based on the definition of emergency services approved by the Council of Dental Health of the American Dental Association, routine restorative procedures and root canal therapy are not considered emergency procedures.

(D) Emergency dental care, provided by a dentist, not otherwise reimbursed as medical/dental care or Early Periodic Screening Diagnosis and Treatment (EPSDT) dental care through Purchased Health Services at NHIC, is reimbursed through a voucher system (as described in §19.1205 of this title (relating to Reimbursement for Emergency Dental Services)).

(3) At the time of admission, the facility obtains the name of the resident's preferred dentist and records the name in the clinical record.

(4) The facility shall comply with §242.160 of the Health and Safety Code as amended by the 70th Legislature, 1987, (House Bill 1739) by asking each resident if they desire an annual dental examination at the resident's own expense.

§19.1202. The Nursing Facility Emergency Dental Services System. The Texas Department of Human Services (DHS) will reimburse nursing facilities the cost of emergency dental services provided to eligible Medicaid residents residing in Medicaid contracted facilities or distinct parts.

(1) Resident's must be 21 years of age or older.

(2) Services reimbursed are subject to the limitations specified in §19.1201(2) of this title (relating to Dental Services).

(3) Emergency dental services may be provided only if the attending physician orders a dental consultation. See §19.1001 of this title (relating to Physician Services).

§19.1203. Qualification of the Provider. Emergency dental services must be provided by a dentist licensed by the Texas State Board of Dental Examiners.

§19.1204. Dentist Responsibilities. The dentist must:

(1) maintain the confidentiality of the resident's clinical record. Medicaid regulations prohibit the disclosure of information about Medicaid residents without their consent;

(2) render services in accordance with the reimbursement policies and operational instructions established by DHS, and in compliance with the "Rules and Regulations Relating to the Practice of Dentistry" set forth by the Texas State Board of Dental Examiners (TSBDE); and

(3) notify DHS and stop providing services if the TSBDE suspends a dentist's license. A dentist placed on probation by TSBDE may continue to provide emergency dental services to Medicaid residents in nursing facilities during the probationary period except when:

(A) the conduct for which the provider has been placed on probation is related to fraud or abuse of Medicaid or other federally funded state health programs; or

(B) the dentist's conduct or practice has caused or could cause harm to residents or other residents.

§19.1205. Reimbursement for Emergency Dental Services. The cost of emergency dental services provided to eligible Medicaid residents residing in nursing facilities will be reimbursed to facilities on a voucher system.

(1) The following items must be submitted to DHS, Emergency Dental Service System, Mail Code 643-W, P. O. Box 149030, Austin, Texas 78714-9030:

(A) a State of Texas Purchase Voucher completed and signed by the administrator, which includes facility, resident, and procedures identifying information, and False Claim Statement: "I understand that payment and satisfaction of this claim will be from Federal and State funds, and that any false claims, statements or documents, or concealment of a material fact may be prosecuted under applicable Federal or State laws;"

(B) an itemized bill (statement) to the facility signed by the treating dentist which includes a statement regarding whether or not the services were also billed to NHIC; and

(C) a copy of the dentist's treatment notes in which the nature of the emergency is clearly documented.

(2) Services will not be reimbursed through the Nursing Facility Emergency Dental Service System which are reimbursable through NHIC or the EPSDT program.

§19.1206. Maximum Payment.

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

(1) Usual fee–The fee a provider usually charges private-pay residents for a service.

(2) Maximum fee–The highest fee that the Texas Department of Human Services (DHS) pays, through NHIC for an allowable procedure. Upon request, DHS will furnish in writing, the maximum fee schedule.

(3) Adjusted fee–The fee derived when the dental consultant may recommend adjusting the charge for a dental procedure that has a payment limitation as specified in the chart of allowable services, procedure codes, and limitations included in the Early and Periodic Screening, Diagnosis, and Testing (EPSDT) dental services section of NHIC's Provider Procedures Manual. The dental consultants may adjust payment for a specific dental procedure below the maximum fee for the procedure when DHS has partially paid for the service on the same tooth or when the degree of difficulty, as determined by a review of the x-rays or itemized laboratory statement, does not justify the maximum fee.

(b) Payments for emergency dental services rendered in the Nursing Facility Emergency Dental Service System are the lowest of:

(1) the provider's usual fee;

(2) the maximum fee listed on the fee schedule; or

(3) the adjusted authorized fee.

(c) Maximum fees are those set by NHIC. Fees will change when reset by NHIC.

§19.1207. Payment of Claims.

(a) The facility must accept payment by DHS as payment in full for services and neither the dentist nor the facility may charge the resident an additional amount.

(b) DHS reimburses facilities for services properly rendered in accordance with applicable laws, regulations, and operational instructions. DHS may withhold or suspend payment for services that are not properly rendered.

(c) The Nursing Facility Emergency Dental Services System makes no payment for services that are available under any other Texas Medical Assistance Program.

(d) The provider dentist may charge the resident only for services that the resident requests and that are not reimbursable by the Texas Medical Assistance Program.

(e) The Nursing Facility Emergency Dental Services System will not reimburse for missed appointments.

§19.1208 Utilization Review. Utilization review activities required by the Medicaid program are accomplished through a series of monitoring systems developed to ensure that services are appropriate to need and in the optimum quality and quantity. Both residents and providers are subject to utilization review monitoring. The resident's clinical record documentation by facility staff must support the dentist's assessment and treatment. The monitoring focuses on the appropriate screening activities, the necessity of all services and the quality of care as reflected by the choice of services provided, type of provider involved, and setting in which care was delivered. This ensures the efficient and cost-effective administration of the Medicaid program.

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

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

TRD-9005201

Cathy Rossberg
Agency Liaison
Texas Department of Human Services

Proposed date of adoption. October 1, 1990

For further information, please call: (512) 450-3745

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Subchapter N. Pharmacy Services

• 40 TAC §19.1301-19.1310

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

§19.1301. Pharmacy Services. The facility must provide routine and emergency drugs and biologicals to its recpients, or obtain them under an agreement described in §19.1906 of this title (relating to Use of Outside Resources).

(1) Methods and procedures. The facility may permit unlicensed personnel to administer drugs, but only under the general supervision of a licensed nurse. The unlicensed individual must have a current medication aide permit issued by the Texas Department of Health.

(2) A facility must provide pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident.

(3) The Quality Assessment and Assurance Committee will monitor the Pharmaceutical Services of the facility as described in §19.1917 of this title (relating to Quality Assessment and Assurance).

(4) Service consultation. The facility must employ or obtain the services of a licensed pharmacist who:

(A) provides consultation on all aspects of the provision of pharmacy services in the facility;

(B) establishes a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation; and

(C) determines that drug records are in order and that an account of all controlled drugs is maintained and periodically reconciled;

(D) adheres to additional supervision and consultation requirements in §19.1303 of this title (relating to Additional Supervision and Consultation Requirements).

(5) Drug regimen review.

(A) The drug regimen of each resident must be reviewed at least once a month by a licensed pharmacist.

(B) The pharmacist must report any irregularities to the attending physician or the director of nursing, or both, and these reports must be acted upon.

(C) The physician must review the resident's drug regimen in accordance with the schedule provided in §19.1003 of this title (relating to Frequency of Physician Visits).

(6) Labeling of drugs and biologicals. The facility must assure that labeling of all drugs and biologicals is in accordance with currently accepted professional principles, and includes the appropriate accessory and cautionary instructions, and the expiration date (see §19.1304 of this title (relating to Drug Security)).

(7) Storage of drugs and biologicals.

(A) In accordance with state and federal laws, the facility must store all drugs and biologicals in locked compartments under proper temperature controls, and permit only authorized personnel to have access to the keys (see §19.1304 of this title (relating to Drug Security)).

(B) The facility must provide separately locked, permanently affixed compartments for storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and other drugs subject to abuse, except when the facility uses single unit package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected (see §19. 1309 of this title (relating to Controlled Substances)).

§19.1302. Choice of Pharmacy Provider.

(a) The recipient's choice of pharmacy provider and any changes in his choice must be recorded on appropriate forms maintained by the facility. To ensure compliance with §19. 205 of this title (relating to Free Choice), if a unit dose and related distribution equipment system is chosen in a Nursing Facility, the facility must provide the Texas Department of Human Services (DHS) and the Texas Department of Health (TDH) with any or all of the following documentation upon request:

(1) copies of facility admission policies or agreements outlining the unit dose and related distribution equipment system used;

(2) copies of any written agreements between the facility and the pharmacy supplying the Medicaid residents' medications;

(3) documentation that each Medicaid resident has been advised in writing about the unit dose and related distribution equipment system chosen for the facility, including information that the distribution system might be more expensive for those drugs which are not covered by Medicaid or for those that exceed the maximum number allowed under the Medicaid Vendor Drug Program;

(4) documentation that each Medicaid resident has accepted or not accepted the current facility's chosen unit dose and related distribution equipment system. If the resident is incapable of making this decision, the concurrence must be given by a responsible party. The facility must include in the resident's agreement to accept the system a stipulation that the recipi ent has the right to change his mind if not satisfied with the services provided by the pharmacy(ies) participating in the facility's chosen unit dose and related distribution equipment system;

(5) documentation that all participating pharmacies being used by Medicaid residents have been given 30 days notice before the facility's selection and implementation of a unit dose and related distribution equipment system to give pharmacists the opportunity to change to a similar system. This is to ensure that the facility maintains uniformity of dispensing procedures in the event the resident or any of the pharmacists accept the system.

(b) The resident's freedom of choice of pharmacy services is not considered abridged when the facility's policies require:

(1) a written agreement that the resident's pharmacy services be provided by a pharmacy on a 24-hour basis for emergency medications; and/or

(2) a written agreement that the resident's medications be delivered to the facility on a timely and reasonable basis.

(c) The resident's choice of pharmacy provider must be in accordance with §19.205(c) of this title (relating to Free Choice).

(d) The facility must comply with at least one of the following two requirements.

(1) The facility must record the resident's choice to accept or not accept the use of a less expensive generic substitution on appropriate forms maintained by the facility. If the resident is incapable of making this decision, the choice must be made by a responsible party. The facility must state in the documentation that the resident has the right to change his mind concerning the use of generic substitution at any time.

(2) In a prominent place that is in clear public view, the facility must display a sign in block letters of not less than one inch in height that reads, in both English and Spanish. English: "Texas law allows a less expensive generically equivalent drug to be substituted for certain brand name drugs unless your physician directs otherwise. You have a right to refuse such substitution. Consult your physician or pharmacist concerning the availability of a safe, less expensive drug for your use." Spanish: "Las leyes de Texas permiten que se substituya una medicina genricamente equivalente y menos cara por ciertas medicinas de marca reconocida a menos que su medico instruya de otra manera. Usted tiene derecho a rehusar dicha substitucion. Consulte a su medico o farmacitico con referencia a la disponibilidad de una medicina segura y menos cara para su uso."

(d) If the facility has a licensed pharmacy, a licensed pharmacist must operate it. If the facility does not have a pharmacy, it must be able to obtain prescribed drugs and biologicals from a pharmacy as needed.

§19.1303. Additional Supervision and Consultation Requirements.

(a) The facility must provide pharmaceutical services under the responsibility and direction of a pharmacist consultant and the director of nursing.

(b) A pharmacist, currently licensed by the State of Texas and in good standing, must be an employee of the facility or act as a consultant to the facility. The facility must ensure that notes on the monthly visits by the consulting pharmacist are entered in the resident's clinical record. The pharmacist must prepare a written report for quar-

terly review. This report may consist of the monthly summaries (see §19.1301(e) of this title (relating to Pharmacy Services)).

(c) The number of hours per month the consultant pharmacist devotes to the pharmaceutical services for ordering, storage, administration, disposal, recordkeeping (documentation) of drugs and medications, and drug regimen review shall be based upon the total number of residents in the facility and shall not be less than:

(1) four hours for facilities with 60 residents or less;

(2) five hours for facilities with 61-150 residents;

(3) six hours for facilities with more than 150 residents.

(d) The facility must ensure that its residents' pharmacy needs are met. Consultant time may be reduced if the administrator and consultant agree and if the Texas Department of Health (TDH) concurs.

(e) The consultant, who does not need to be a Medicaid vendor, must comply with all department requirements for administration of the Texas Medical Assistance Program. Besides the usual pharmaceutical consultant duties, he advises and educates professional staff on pharmacy matters.

(f) The consultant must keep at the facility a record of services, consultations, and recommendations for pharmacy procedure.

§19.1304. Drug Security.

(a) The facility must establish procedures for storing and disposing of drugs and biologicals in accordance with federal, state, and local laws.

(b) Medications must be properly labeled and stored in a locked medication room, cabinet, or cart. When not in use, a medication cart must be secured in a locked medication storage room designated only for the storage of medications. Only authorized personnel have access to the keys.

(1) The facility must ensure that the pharmacy prescription label(s) on each resident's drug container shows:

(A) the resident's full name;

(B) the prescribing physician's name;

(C) the pharmacy prescription file number;

(D) the name, strength, and amount of the drug dispensed;

(E) the expiration date of all time-dated drugs;

(F) the date of issuance (the date the prescription is filled or refilled);

(G) warning labels if needed;

(H) the physician's directions for use;

(I) the name, address, and telephone number of the issuing pharmacy; and

(J) the dispensing pharmacist's name or initials.

(2) If the label is on the container of a Controlled Substances Act drug, the label must have the following warning, "Caution: federal law prohibits the transfer of this drug to any person other than the resident for whom it was prescribed."

(3) Small multiple-dose containers are placed into another container, and the pharmacy's regular label, properly completed, is affixed to it. If a multiple dose container of drugs is too small for a regular prescription label to be affixed, a strip label is attached containing the name of the resident and the prescription number. If the two containers become separated, the small drug container still has the resident identification.

(4) Self-administered medications, as described in §19.216 of this title (relating to Self-administration of Drugs), must be properly labeled and stored as required by this subsection. If medications are not self-administered out of the medication room with the help of the medication nurse, the medications may be kept in a locked cabinet in the resident's room. When medications are self-administered, the facility remains responsible for medication security and accurate information.

(c) The facility must ensure that containers with illegible, incomplete, or missing labels are returned to the pharmacist for relabeling.

(d) The facility must store the drugs of each resident in their original containers.

(e) The director of nursing or the charge nurse must call the consulting or issuing pharmacist to report any errors such as improper labeling.

(f) The facility must store drugs requiring refrigeration in a refrigerator in the medication room. Only food and beverage items for resident use may be stored in the medication refrigerator, but they must be kept separate from the residents' drugs. Drugs also may be kept in a separate, permanently attached, locked medication storage box in a refrigerator near the nursing station.

(g) The facility must store drugs used externally separately from internal drugs. The facility must store poisons separately from all drugs.

(h) Medications of deceased residents, medications which have passed the expiration date, and medications which have been discontinued are sent to either the administrator's office or the director of nurses' office. These medications must be accounted for and kept under lock and key. Within 90 days, these medications must be disposed of according to federal and state laws or rules. Discontinued drugs may be reinstated if reordered during the 90-day time period. These medications cannot be given to a family member or representative.

(i) Bulk dangerous and/or bulk controlled drugs shall not be maintained in the facility except as outlined in §19.1310 of this title (relating to Emergency Drugs).

§19.1305. Drug Records. The facility must maintain detailed records of the receipt and disposition of all drugs. The facility must also maintain an individual drug administration record for each resident.

§19.1306. Drug Orders.

(a) All drugs must be ordered in writing by the resident's physician or consulting dentist or podiatrist, at the request of the attending physician. If drug orders are verbal, they must be taken by a licensed nurse, pharmacist, or a physician, and immediately recorded and signed by the person receiving the order. All drug orders must be counter-signed by the physician, dentist, or podiatrist and returned to the chart within seven working days.

(b) The facility may permit verbal orders for Schedule II drugs only in an emergency.

(c) The issuing pharmacist must be notified at least 72 hours before the administration of a resident's last dose of medicine. Replacement medicine does not have to be in the facility at that time, but it must be available by the time the rescipient has taken his last dose.

(d) The facility must have written policies and procedure that are followed when stopping the administration of drugs. If the amount of a drug or the time for discontinuance is not specified, stop-order procedures will be developed by the facility through the pharmacist consultant and medical director.

(e) The facility must notify the attending physician of an automatic stoporder before the last dose is administered.

§19.1307. Drug Release.

(a) Medications shall be released to residents only on the written or verbal authorization of the attending physician.

(b) If a resident is leaving the facility on a furlough, enough prescription drugs to last throughout the furlough must be released. The facility must inventory Schedule II, III, and IV drugs in and out. Non-schedule drugs should be listed by name. The pharmacist must handle any division of the prescription, and all information on the original prescription label must appear on the furlough medication supply.

§19.1308. Drug Administration.

(a) Except for self-administered drugs as described in §19.216 of this title (relating to Self-administration of Drugs), drugs and biologicals must be administered only by physicians, licensed nursing personnel, or medication aides in accordance with physician's orders.

(b) The facility must use only the drug administration procedures established by the pharmacy services committee in nursing facilities (See §19. 1917 (relating to Quality Assessment and Assurance)) to ensure that:

(1) drugs to be administered are checked against physician's orders;

(2) the resident is identified before the administration of a drug; and

(3) each resident has an individual medication record and that the dose of drug administered is properly recorded after administration in that record by the person who administered the drug.

(c) The facility must ensure that drugs and biologicals are prepared and administered by the same person, except under unit-of-use package distribution systems and as outlined in §19.216 of this title (relating to Self-administration of Drugs).

(d) Drugs prescribed for one resident must not be administered to any other person.

(e) The facility nursing staff must immediately report drug errors and adverse drug reactions to the resident's physician and record them in the resident's record. An incident report must be completed in accordance with §19.1923 of this title (relating to Incident or Accident Reporting). Medica- tion errors include, but are not limited to administering the wrong medication, administering at the wrong time, administering the wrong dosage strength, administering by the wrong route, and/or administering to the wrong resident.

(f) Nursing facilities must have current medication reference texts or sources.

(g) Crushing of medication. All drugs dispensed by the pharmacist should be as ready for administration as the current status of pharmaceutical technology will permit. There are times when, for some reason, a resident cannot or will not swallow a tablet or capsule. At that time, a licensed nurse may exercise her professional judgment in the crushing of a medication, providing that the medication is not a time-released or enteric coated medication.

(1) Should there be any question about crushing a medication for a resident, the licensed nurse must check with the treating physician, dispensing pharmacist or pharmacist consultant.

(2) The crushed medication should be administered as soon as feasible once it has been added to another substance.

§19.1309. Controlled Substances. The facility must adhere to the following procedures governing the use of drugs covered by the Controlled Substances Act.

(1) A separate record must be maintained for each drug covered by Schedules II, III, and IV of the Controlled Substances Act, Health and Safety Code, Chapter 481.

(2) The record for each drug must contain the prescription number, name and strength of drug, date received by facility, date and time administered, name of resident, dose, physician's name, signature of person administering dose, and original amount dispensed with the balance verifiable by drug inventory at every shift change.

(3) Schedule V drugs shall be exempt from the requirements in paragraph (1) and (3) of this section.

§19.1310. Emergency Drugs.

(a) Stocks of inventoried emergency dangerous drugs may be kept in facilities as follows.

(1) The contents of the emergency dangerous drug kit will be determined by the Quality Assessment and Assurance Committee.

(2) Ownership of the emergency drugs shall be by a physician with the exception of controlled substances which will be the property of a pharmacy.

(3) The medical director may keep his stock of inventoried emergency dangerous drugs, along with the required supplies for proper administration of the drug, in the locked medication storage area in a sealed container with his name on it. He may order a dose from this stock supply for his facility resident to be administered by the licensed nurse on duty. The medical director may authorize in writing, other physicians to use from the stock supply, or to order the licensed nurse on duty to administer a dose to their resident.

(b) The facility shall develop policies and procedures that include the following:

(1) a signed agreement for obtaining controlled drugs from a pharmacy;

(2) a limitation on the type and quantity of controlled substances as follows:

(A) the controlled drugs shall be limited to injectable unit of use commercially available sizes in dosage strengths that are generally recommended for a single dose therapy;

(B) analgesic controlled drugs shall be limited to no more than three different drugs. This category shall not exceed a maximum total of six doses;

(C) anticonvulsant controlled drugs shall be limited to no more than two different drugs. This category shall not exceed a sum total of six doses; and

(D) the controlled drugs selected by the facility under this clause shall not exceed a sum total of eight doses for the overall quantity maintained by the facility;

(3) a requirement that the facility be responsible for proper control and accountability for such emergency kits within the facility, including the requirement that the facility maintain complete and accurate records of the controlled drugs placed in the emergency kits, in accordance with §19.1309(1) -(2) of this title (relating to Controlled Substances). An exception to this requirement is that a prescription number and balance verifiable by drug inventory at every shift change shall not be applicable;

(4) controlled drugs shall be returned to the supplying pharmacy upon termination of the agreement;

(5) a requirement that the facility take a physical inventory at least every three months.

(c) Oxygen or oxygen concentrators shall be readily available in the facility for resident use in the case of emergency.

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-9005202 Cathy Rossberg
Agency Liaison
Texas Department of
Human Services

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For further information, please call: (512) 450-3745

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Subchapter O. Infection Control

• 40 TAC §§19.1401-19.1402

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

§19.1401. Infection Control. The facility must establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection.

(1) Infection control program. The facility must establish an infection control program under which it:

(A) investigates, controls, and prevents infections in the facility;

(B) decides what procedures, such as isolation, should be applied to an individual resident; and

(C) maintains a record of incidents and corrective actions related to infections.

(2) Preventing spread of infection.

(A) When the infection control program determines that a resident needs isolation to prevent the spread of infection, the facility must isolate the resident in a well-ventilated, single bedroom with a separate toilet and bathing unit.

(B) The facility must prohibit employees with a communicable disease or infected skin lesions from direct contact with residents and their food, if direct contact will transmit the disease.

(C) The facility must require staff to wash their hands after each direct resident contact for which handwashing is indicated by accepted professional practice.

(D) The name of any resident of a facility with a reportable disease as specified in 25 Texas Administrative Code, §§97.1-97.11 concerning control of communicable diseases shall be reported immediately to the city health officer, county health officer, or health unit director having jurisdiction, and appropriate infection control procedures shall be implemented as directed by the local health authority. For further information on reportable diseases, see Texas Department of Health Publication 6-101 "Rules and Regulations for Control of Communicable Diseases."

(E) The facility must:

(i) ensure that aseptic procedures and isolation techniques are followed;

(ii) monitor the health status of employees which includes requiring periodic health examinations which include those tests or procedures determined by the employee's personal physician, a physician representing the facility, or by the facility's policy:

(I) a physician must perform the examination or authorize the examination procedure(s) be performed by qualified professionals. An example of the latter requirement would be authorization by the medical director for tuberculin skin tests to be administered by a nurse;

(II) the facility's program must involve all employees and be based on periodic examinations. Periodic means an initial examination, as well as, at least annual examinations. Two weeks from the date of employment is considered a reasonable period for the initial examination. Facilities with a policy that exceeds two weeks for the initial examination will be required to justify their policy in writing, and submit that justification to the Texas Department of Health for approval;

(iii) monitor staff performance to ensure that infection control policies and procedures are followed; and

(iv) develop procedures for handling food, laundry, disposal of environmental and resident wastes, pest control, traffic control, visiting rules, and resident care to avoid possible sources of infection, and

(3) Linens. Personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

(4) The Quality Assessment and Assurance Committee as described in §19.1917 of this title (relating to Quality Assessment and Assurance) will monitor the infection control program.

§19.1402. Universal Precautions. Universal precautions shall be used in the care of all residents because a reliable source cannot identify all those persons infected with blood-born pathogens.

(1) Universal precautions apply to blood and other body fluids containing visible blood.

(A) Universal precautions do not apply to feces, nasal secretions, sputum, tears, urine, and vomitus unless they contain visible blood.

(B) Universal precautions do not apply to saliva. Gloves need not be worn when feeding residents and when wiping saliva from skin.

(2) General principles of universal precautions.

(A) All health-care workers shall routinely use appropriate barrier precautions to prevent skin and mucous-membrane exposure when contact with blood or other body fluids of any resident is anticipated.

(i) Gloves shall be worn for touching blood and blood contaminated body fluids, mucous membranes, or non-intact skin of all residents for handling items or surfaces soiled with blood or body fluids, and for performing venipuncture and other vascular access procedures.

(ii) Gloves shall be changed after contact with each resident.

(iii) Masks and protective eyewear or face shields shall be worn during procedures that are likely to generate droplets of blood or other body fluids to prevent exposure of mucous membranes of the mouth, nose, and eyes.

(iv) Gowns or aprons shall be worn during procedures that are likely to generate splashes of blood or other body fluids.

(B) Hands and other skin surfaces shall be washed immediately and thoroughly if contaminated with blood or other body fluids. Hands shall be washed immediately after gloves are removed.

(C) All health-care workers shall take precautions to prevent injuries caused by needles, scalpels, and other sharp instruments after procedures.

(D) Although saliva has not been implicated in HIV transmission, to minimize the need for emergency mouth-to-mouth resuscitation, mouthpieces, resuscitation bags, or other ventilation devices shall be available for use in areas in which the need for resuscitation is predictable.

(E) Pregnant health-care workers are not known to be at greater risk of contracting HIV infection than health-care workers who are not pregnant; however, if a health-care worker develops HIV infection during pregnancy, the infant is at risk of infection resulting from perinatal transmission. Because of this risk, pregnant health-care workers should be especially familiar with and strictly adhere to precautions to minimize the risk of HIV transmission.

(3) The facility must have policies that provide for:

(A) orientation and training at the time of employment, and continuing education, at least annually, for all health care workers;

(B) provision of equipment and supplies necessary to minimize the risk of infection from blood-born pathogens; and

(C) monitoring adherence to recommended protective measures.

(4) The facility shall implement infection control procedures including, but not limited to, universal precautions. The intent is to provide protection from predictable exposure to blood or visibly blood contaminated body fluids, regardless of known or suspected human immunodeficiency virus (HIV) serologic status. It is not the intent to mandate protection from all possible or theoretical exposure to blood or body fluids contaminated with visible blood. This represents minimum precautions and facilities are free to utilize more stringent policies for the protection of their employees and residents.

(5) Facility employees and residents shall be protected from direct exposure to blood and body fluids that are visibly contaminated with blood to prevent exposure to HIV and Hepatitis B virus (HBV). The following outlines minimum requirements for specific departments in a facility.

(A) Overall facility requirements.

(i) The facility's policy regarding Hepatitis B vaccinations shall address all circumstances warranting such vaccinations and identify employees at substantial risk of directly contacting blood or visibly blood contaminated fluids. All such employees shall be informed when and where Hepatitis B vaccinations are available as prescribed by standard medical practice.

(ii) The facility shall provide the necessary supplies and equipment for barrier precautions. Eye protectors, face masks, and gowns (aprons) shall be available for all tasks or procedures that are likely to generate sprays or splashes of blood/body fluids. These are not required for routine care.

(iii) Needles and other sharp objects shall be placed in a puncture resistant container immediately after use. Needles shall not be recapped, bent or broken prior to disposal.

(iv) After they are used, disposable syringes and needles, scalpel blades, and other sharp items shall be placed in puncture-resistant containers for disposal; the puncture-resistant containers should be located as close as practical to the use area.

(v) Large-bore reusable needles shall be placed in a puncture-resistant container for transport to the reprocessing area.

(vi) Facility employees with weeping or exudative lesions or dermatitis shall use protective barriers when providing resident care and/or handling clean or soiled resident equipment or linen.

(vii) When performing cardiopulmonary resuscitation (CPR), a one way anti-reflex ventilaton device shall be used.

(viii) Linen, clothing, or other materials that are visibly contaminated with blood or bloody body fluids shall not be sorted or rinsed in resident care areas, but shall be placed in bags or containers that prevent leakage before transport for cleaning. Gloves shall be worn while bagging these materials.

(xi) To clean a surface contaminated with visible blood, the employee shall:

(I) wear impermeable gloves;

(II) if a small area, remove visible material with absorbent towels;

(III) if hard surface or large contaminated area:

(-a-) flood with 10% hypochlorite bleach or comparable solution;

(-b-) reclean area with 10% hypochlorite bleach or comparable solution and fresh towels;

(IV) if rug or carpet, use a disinfectant and absorbent agent according to directions;

(V) place all contaminated linens in a leak-proof bag appropriately labeled or colored as containing biohazardous material. Used gloves will be separately bagged at the site in an appropriately labeled or colored bag;

(VI) wash hands with soap and water.

(B) Nursing.

(i) Sterile gloves shall be worn for procedures when acceptable professional nursing standards require sterile techniques.

(ii) Examination gloves shall be worn for invasive procedures and procedures involving contact with mucous membranes, unless otherwise indicated, and for other resident care that does not require the use of sterile gloves.

(iii) Examination gloves shall be worn, at least, in situations where direct contact with blood or blood is likely. Examples of such situations include, but are not limited to: providing wound or decubitus care; cleaning up blood contaminated body fluids; and removal of impactions.

(iv) Examination gloves are not necessary for contact with intact skin or for handling unsoiled objects previously in contact with or handled by others.

(v) Examination gloves shall be removed and discarded after contact with each resident or body fluid. Hands shall be washed with soap and water immediately after gloves are removed. A new set of gloves shall be worn by employees when drawing an individual's blood. If this procedure is provided by independent contractors, the contractee will provide all equipment and adhere to universal precautions procedures.

(C) Dietary. All food service employees will exercise care to avoid injury to hands when preparing food. Should an injury occur, both aesthetic and sanitary considerations dictate that food contaminated with blood shall be discarded.

(D) Housekeeping.

(i) Employees shall use general-purpose utility gloves for housekeeping chores involving potential blood contact and for cleaning and disinfection procedures.

(ii) Utility gloves may be disinfected and reused, but shall be discarded if they are peeling, cracked, or discolored, or if they have punctures, tears, or other evidence of deterioration.

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-9005203

Cathy Rossberg
Agency Liaison
Texas Department of Human Services

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For further information, please call: (512) 450-3745

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Subchapter P. Physical Plant and Environment

• 40 TAC §§19.1501-19.1521

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

§19.1501. General Requirements. The facility must be designed, constructed, equipped, and maintained to protect the health and ensure the safety of residents, personnel, and the public. (See also §19.505 of this title (relating to Environment)).

(1) Life safety from fire. The facility must meet the applicable provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference). Incorporation of the 1985 edition of the National Fire Protection Association's Life Safety Code (published February 7, 1985; ANSI/NFPA) was approved by the Director of the Federal Register in accordance with 5 United States Code, §552(a) and 1 Code of Federal Regulations, Part 51 that govern the use of incorporation by reference. The code is available for inspection at the Office of the Federal Register Information Center, Room 8301, 1110 L Street NW, Washington, D.C. Copies may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02200. If any changes in this code are also to be incorporated by reference, a notice to that effect will be published in the Federal Register.

(A) After consideration of Texas Department of Health (TDH) survey findings, the Health Care Financing Administration (HCFA) may waive specific provisions of the Life Safety Code which, if rigidly applied, would result in unreasonable hardship upon the facility but only if the waiver does not adversely affect the health and safety of residents or personnel.

(B) The provisions of the Life Safety Code do not apply in a state in which HCFA finds, in accordance with applicable provisions of the Social Security Act, §1861(j)(13), that a fire and safety code imposed by state law adequately protects patients, residents, and personnel in long term care facilities.

(2) Emergency power.

(A) An emergency electrical power system must supply power adequate at least for lighting all entrances and exists, equipment to maintain the fire detection, alarm and extinguishing systems, and life support systems in the event the normal electrical supply is interrupted. (See §19.1510 of this title (relating to Emergency Electrical Services).

(B) When life support systems are used, the facility must provide emergency electrical power with an emergency generator (as defined in NFPA 99, Health Care Facilities) that is located on the premises.

(3) Space and equipment. The facility must:

(A) provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide residents with needed services as required by these standards and as identified in each resident's plan of care; and

(B) maintain all essential mechanical, electrical, and patient care equipment in safe operating condition.

(4) Resident rooms. Resident rooms must be designed and equipped for adequate nursing care, comfort, and privacy of residents.

(A) Bedrooms must:

(i) accommodate no more than four residents. The total number of beds in ward rooms with three or more beds shall not exceed 50% of the total facility capacity in existing facilities unless approved by TDH;

(ii) measure at least 80 square feet per resident in multiple resident bedrooms and at least 100 square feet in single resident rooms;

(iii) have direct access to a corridor;

(iv) be designed or equipped to assure full visual privacy for each resident. Appropriate measures shall be taken through the use of cubicle curtains, screens, or procedures to protect the privacy and dignity of the residents. Curtains and screens shall be rendered and maintained flame retardant;

(v) in facilities initially certified after August 1, 1989, each bed must have ceiling suspended curtains, which extend around the bed to provide total visual privacy, in combination with adjacent walls and curtain (see (d)(4) of this section);

(vi) have at least one operable window to the outside which can readily be opened from the inside without the use of tools. The height of the window sill (opening) shall not exceed 36 inches above the floor. The minimum area of windows in each bedroom shall equal at least 8.0% of the room area. Operable window sections may be restricted to not more than six or not less than four inches for security or safety reasons if approved in writing by TDH. Each window shall be provided with a flame-retardant shade, curtain, or blind; and

(vii) have a floor at or above grade level.

(B) The facility must provide each resident with:

(i) a separate bed of proper size and height for the convenience of the resident. The bed will be a minimum of 36 inches wide with a headboard of sturdy construction, a clean, comfortable mattress with a moisture-proof cover, and a comfortable pillow. Each bed shall be provided with suitable bedspreads, blankets, etc., to assure the comfort and warmth of each resident, and shall not be passed from resident to resident without first being laundered. The bed of each resident with physician's orders for bedrails shall have bedrails affixed to both sides of the bed;

(ii) bedding appropriate to the weather and climate; and

(iii) functional furniture appropriate to the resident's needs including a comfortable chair, bedside cabinet, and individual closet space in the resident bedroom with at least 16 inches of hanging space, shelves for personal belongings accessible to the resident, and having closeable door(s). Each bedroom shall be provided with at least one (noncombustible) wastebasket.

(C) HCFA or TDH agency may permit variations in requirements specified in paragraph (4)(A)(i) and (ii) of this section relating to rooms in individual cases when the facility demonstrates in writing that the variations:

(i) are required by the special needs of the residents; and

(ii) will not adversely affect residents' health and safety.

(D) The width and length of bedrooms and the arrangement shall assure appropriate resident circulation, especially in relation to emergency evacuation and to usual wheelchair movement. Bedrooms should not be less than 10 feet in the smallest dimension. There shall be at least 36 inches between beds and should be at least 18 inches between any bed and the adjacent parallel wall that restricts access by the resident (i.e., bed sides should not have to be placed against a wall to meet other spacing requirements). Beds shall not extend into the bedroom door opening, nor shall any other piece of furnishing or equipment be located such as to preclude or inhibit the removal of any bed or ready closing and latching of the bedroom door in an emergency.

(E) Each bed shall have access to a nurse call device that is part of an electrical nurse call system.

(F) Each bed shall be provided with an appropriate, safe, durable, non- glare permanently bed mounted or wall mounted reading light fixture. The fixture shall be wired in accordance with NFPA 70. Such fixtures should be mounted at least five feet six inches above the floor. The switch shall be within reach of a resident in the bed.

(G) At least one duplex receptacle shall be provided for each bed. Other duplex receptacles shall be provided as needed and/or as required by NFPA 70.

(H) Each bedroom shall be assured of having general lighting, either by means of appropriate combination reading light or by means of separate fixture.

(I) For emergency separation from fire and smoke, bedroom doors shall be maintained to close completely without dragging or binding, to latch securely, and to fit reasonably tight in the frame. The gap between the floor and the bottom of the closed door shall not exceed 3/4 inch.

(J) When an isolation room is provided or required, it shall have a special non-recirculating air system and a complete bathroom.

(K) Vacant bedrooms may not be used for hazardous activities or hazardous storage, unless specifically approved by TDH in writing.

(L) Bedrooms shall be identified with a raised or recessed unique number placed on or near the door. Refer to §19.1514(c) of this title (relating to Provisions for the Handicapped) and §19.1503(e) of this title (relating to Applicable Codes and Standards).

(M) Residents must be permitted and encouraged to have personal possessions in their rooms that do not interfere with their care, treatment, or well-being, or that of other residents.

(N) Locks on bedroom doors. There are situations in which locks on bedroom doors meet definite patient needs. These include, but are not necessarily limited to, the following:

(i) married couples whose rights of privacy could be infringed upon unless bedroom door locks are permitted;

(ii) residents for whom the attending physician wants bedroom door locks to enhance their sense of security;

(iii) residents for whom restraint through confinement to their own rooms is necessary for their own and/or other persons' safety.

(O) In situations such as those which are listed above, locks on bedroom doors will be permitted contingent upon adherence to the guidelines set out below:

(i) bedroom door locks for other than restraining purposes must be of the type which the occupant can unlock at will from inside the room;

(ii) all bedroom door locks must be of the type which can be unlocked from the corridor side;

(iii) attendants must carry keys which will permit ready accessibility to the locked bedrooms when entrance becomes necessary;

(iv) bedroom doors which are locked for resident restraining purposes must be of the dutch door type, with only the lower section locked. The upper part of the doorway would be open to permit visual supervision of the residents from the corridor. The dutch door should be easily unlocked by nurses and attendants. Resident restraints of any nature cannot be applied without orders from the attending physician. (See §19.401 of this title (relating to Resident Behavior and Facility Practice)).

(v) The locking of bedroom doors by residents for privacy or security or by nursing home staff for restraint (dutch door) will not be permitted except when specifically included in the attending physician's written orders and authorized by the nursing home administrator.

(5) Toilet facilities. Each resident room must be equipped with or located near toilet and bathing facilities. See §19.1513(k) of this title (relating to Other Rooms and Areas) for additional requirements.

(6) Resident call system. In addition to the requirements in §19.1513(d) of this title (relating to Other Rooms and Areas), the nurse's station must be equipped to receive resident calls through a communication system from:

(A) resident rooms; and

(B) toilet and bathing facilities;

(C) for additional guidelines, refer to §19.1514(d) of this title (relating to Provisions for the Handicapped).

(7) Dining and resident activities. The facility must provide one or more rooms designated for resident dining and activities. These rooms must:

(A) be well-lighted;

(B) be well ventilated, with nonsmoking areas identified;

(C) be adequately furnished;

(D) have sufficient space to accommodate all activities; and

(E) meet the additional requirements of §19.1513(l) and (m) of this title (relating to Other Rooms and Areas).

(8) Other environmental conditions. The facility must provide a safe functional, sanitary and comfortable environment for residents, staff and the public. The facility must:

(A) establish procedures to ensure that water is available to essential areas when there is a loss of normal water supply;

(B) have adequate outside ventilation by means of windows, or mechanical ventilation or a combination of the two;

(C) equip corridors with firmly secured handrails on each side (see additional requirements in §19.1513(j) of this title (relating to Other Rooms and Areas); and

(D) maintain an effective pest control program so that the facility is free of pests and rodents. (See §19.1519 of this title (relating to Pest Control)).

(9) No occupancies or activities undesirable to the health, safety, or well-being of residents shall be located in the facility.

(10) In operations where there is a chance of cross-contamination, there shall be provided a separation of clean and soiled operations, so as to lessen the chance of cross-contamination by facility employees, residents, and others. Such separation shall be in relation to traffic flow, air currents, air exhaust, water flow, vapors, and other conditions.

(11) Floors of the facility shall be level, smooth, and free of any irregularities which might influence safety.

(12) Walls and ceilings not specifically described elsewhere shall be cleanable, maintained attractively, and in good repair.

(13) Walls and floors shall be kept free of cracks. The joint between the walls and floors is to be maintained so as to be free of spaces which might harbor insects, rodents, or vermin.

(14) An electric water cooler or water fountain shall be accessible to residents. When new drinking fountains are provided, at least one shall be installed to meet ANSI Standard A117.1-1980 for the use by the handicapped. Fountains existing at the time of the publication of these sections do not have to be altered.

(15) The use of common drinking cups or glasses, common towels or washcloths, and common bath soap or hand soap is prohibited.

(16) Draperies, curtains (including cubicle curtains), and other similar furnishings and decorations shall be flame resistant in accordance with NFPA 701. Documentation shall be on file in the facility.

(17) Public toilet(s) with sanitary handwashing and drying provisions shall be provided or designated. At least one toilet shall be accessible to and usable by the handicapped.

(18) Deodorant use for air freshening purposes. The following procedures apply to deodorants or air fresheners:

(A) deodorants or air fresheners are permitted provided the dispensing device is located in such a manner as to be inaccessible to residents/patients;

(B) such products are not used to cover odors resulting from poor housekeeping practices or unsanitary conditions;

(C) such products are not used in excess;

(D) there is no contra-indication on the label of the product indicating that such product should not be used in the presence of the aged or ill;

(E) devices such as ozone generators, ultra-violet generators, and smoke eliminators, shall be approved by the Texas Department of Health.

(19) The facility shall comply with TDH requirements as described in §§1.131-1.137 of Title 25 (relating to Definitions, Treatment, and Disposition of Special Waste from Health Care Related Facilities).

§19.1502. Construction.

(a) Requirements. The requirements of this section are applicable to both new and existing facilities unless stated otherwise.

(b) Construction, change in medical necessity, and waivers.

(1) Sections 145.271-145.285 of Title 25 (relating to Subchapter Q, Planning and Construction for Nursing Homes) is a companion part of this rule and must be referenced for new construction, conversions of existing unlicensed buildings, remodeling, additions, and bed additions.

(A) New construction is defined as any construction work which began on or after the effective date (9-9-87) as described in §§145.271-145.285 of Title 25 (relating to Subchapter Q, Planning and Construction for Nursing Homes). The provisions of the chapter or subchapter titled "New Health Care Occupancies" of the Life Safety Code are applicable.

(B) An existing nursing home is defined as one which was operating with a license as a nursing home or custodial care facility on the effective date (9-9-87) as described in §§145.271-145.285 of Title 25 (relating to Subchapter Q, Planning and Construction for Nursing Homes). and has not subsequently become unlicensed. The provisions of the chapter or subchapter entitled "Existing Health Care Occupancies" of the Life Safety Code are applicable.

(C) An existing unlicensed building is defined as any building (or portion thereof) which was not licensed as a nursing home or a custodial care facility on or after the effective date (9-9-87) as described in §§145.271-145.285 of Title 25 (relating to Subchapter Q, Planning and Construction for Nursing Homes), including those which may have carried a license but have become vacant, or those on which the licensee has willfully allowed the license to expire. The provisions of this chapter or the subchapter entitled "New Health Care Occupancies" of the Life Safety Code are applicable.

(2) No construction work, including the addition or removal of walls, doors, and windows, shall be started prior to having plans approved by the licensing agency (Architectural Section) as called for in §§145.271-145. 285 of Title 25 (relating to Subchapter Q, Planning and Construction for Nursing Homes). Alterations or new installations of building services equipment, such as mechanical and electrical systems, generators, fire alarm, and detection systems, etc., shall be accomplished as nearly as possible in conformance with the requirements for new construction as required by the Life Safety Code.

(3) Routine maintenance, repairs, equipment replacement, upkeep, painting, trim, etc., are not considered as remodeling.

(4) Life safety features and equipment that have been installed in existing buildings and are now in excess of that required by the Life Safety Code must continue to be maintained or completely removed with the approval of the licensing agency.

(5) When an existing licensed facility plans building additions or remodeling, which includes construction of additional resident beds, then the ratio of bathing units shall be reevaluated to meet minimum standards and the square footage of dining and living areas shall be reevaluated by the licensing agency at a minimum of 19 square feet per bed. Conversion of existing living, dining, or activity areas to resident bedrooms shall not reduce these functions to a total area of less than 19 square feet per bed. The dietary department shall be evaluated by the facility's registered or licensed dietitian or architect having knowledge in the design of food services operations. Such evaluation shall be provided to the licensing agency.

(6) The licensing agency may grant a waiver for certain provisions of the physical plant and environment which, in the opinion of the licensing agency, would be impractical for the facility to meet. In granting the waiver, the licensing agency shall determine that there will be no adverse affect on resident health and safety and the requirement, if not waivered, would impose an unreasonable hardship on the facility. The licensing agency may require offsetting or equivalent provisions in granting such a waiver.

§19.1503. Applicable Codes and Standards. Facilities shall meet the requirements of the Life Safety Code, as defined in §19.1501(a) of this title (relating to General Requirements) and any other codes and standards of the National Fire Protection Association (NFPA) listed in this section, except as may be otherwise approved or required by the licensing agency. In addition, the following codes, standards or guidelines shall generally govern their subject areas for existing construction.

(1) If the municipality has a building code and a plumbing code, then those codes shall govern.

(2) In the absence of such governing municipal codes, nationally recognized codes shall be used, such as the Standard Building Code and the Standard Plumbing Code, both of the Southern Building Code Congress International, Inc. Such nationally recognized codes, when used, shall all be publications of the same group or organization to assure the intended continuity.

(3) Heating, ventilating, and air-conditioning systems shall be designed and installed in accordance with NFPA 90A and the Heating, Ventilating, and Air Conditioning Guide of the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE), except as may be modified herein

(4) Electrical and illumination systems shall be designed and installed in accordance with NFPA 70 and the Lighting Handbook of the Illuminating En- gineering Society (IES) of North America except as may be modified herein.

(5) Handicap provisions are to be designed and installed in accordance with Standard A117.1-1980 of the American National Standards Institute (ANSI) and the requirements of the State Purchasing and General Services Commission for handicapped or disabled citizens.

(6) Every building and portion thereof shall be capable of sustaining all dead and live loads in accordance with accepted engineering practices and standards.

(7) Each building shall be classified as to building construction type for fire resistance rating purposes in accordance with NFPA 220 and the Life Safety Code.

(8) Building insulation materials, unless sealed on all sides and edges in an approved manner with non-combustible material, shall have a flame spread rating of 25 or less when tested in accordance with NFPA 255 and NFPA 258.

§19.1504. Site and Grounds.

(a) Site grades shall provide for positive surface water drainage so that there will be no ponding or standing water at or near the building such as would present a hazard to health or provide a breeding site or harborage for disease vectors.

(b) Outdoor activity, recreational, and sitting spaces shall be provided for residents as space permits.

(c) Each facility shall have parking spaces to satisfy the needs of residents, employees, staff, and visitors. Provisions shall be made for handicapped parking and access into the building.

(d) Protection shall be provided for resident safety from traffic or other site hazards by the use of appropriate methods, such as fences, hedges, retaining walls, railings, or other landscaping. Such protection shall not inhibit the free emergency egress to a safe distance away from the building.

(e) Auxiliary buildings located on the site within 20 feet of the main licensed structure and which contain hazardous operations or contents, such as laundries or storage buildings, shall meet the same code requirements for safety as the main licensed structure, or the building shall be moved to be 20 feet or further away from the main building.

(f) Other buildings on the site shall meet the appropriate occupancy section or separation requirements of the Life Safety Code.

(g) 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.

§19.1505. Fire Service and Access.

(a) The facility shall be served by a paid or volunteer fire department. The fire department must provide written assurance to the licensing agency that the fire department can respond to an emergency at the facility within an appropriately prompt time for the travel conditions involved.

(b) The facility shall be served by an adequate water supply that is satisfactory and accessible for fire department use as determined by the fire department serving the facility and by the licensing agency.

(c) There shall be at least one approved readily accessible fire hydrant located within 300 feet of the building. The hydrant shall be on a minimum six-inch service line, or else there shall be an approved equivalent (such as a storage tank). The hydrant, its location, and service line, or equivalent shall be approved by the local fire department and the licensing agency.

(d) The building shall have suitable fire lanes for access as required by local fire authorities and the licensing agency.

§19.1506. Means of Egress.

(a) Corridors and other means of egress shall be kept clear of obstructions and shall not be used for any purpose which would interfere with its use as an exit, such as for storage, vending machines, seating, or similar purposes. The corridor width shall be maintained at all times.

(b) Ways of egress and exit signs shall be illuminated at all times.

(c) In addition to the required illumination (normal and emergency), the facility shall keep on hand and readily available to night staff no less than one working flashlight per nurses station.

(d) Doors within the means of egress shall not be equipped with a latch or lock which requires the use of a key or tool to open from the inside of the building. A latch or other fastening device on a door shall be provided with a knob, handle, panic bar, or other simple type of releasing device, the method of operation of which is obvious, even in darkness.

§19.1507. Interior Finishes. Interior finishes of walls and ceilings shall have limited flame spread rating as required by the Life Safety Code. Where new interior finishes of walls, ceilings, or floors are applied to existing facilities, the new finishes shall meet the requirements for flame spread ratings for new construction. Fire retardant paints or solutions shall not be applied to new materials in an effort to meet flame spread requirements for new construction. This description of interior finishes does not apply to furniture or accessories.

§19.1508. Fire Alarms, Detection Systems, and Sprinkler Systems. Fire alarms, detection systems and sprinkler systems shall be as required by the Life Safety Code, the National Fire Protection Association (NFPA) 72A, and NFPA 13.

(1) Components shall be compatible and laboratory listed for the use intended.

(2) Wiring and circuitry for alarm systems shall meet the applicable requirements for NFPA Standards, including NFPA 70, for such systems.

(3) Fire alarm systems shall be installed, maintained, repaired, etc., by an agent having a current certificate of registration with the State Fire Marshal's Office of the Texas State Board of Insurance, in accordance with state law. A fire alarm installation certificate shall be provided as required by the Office of the State Fire Marshal.

(4) The fire alarm system shall be designed so that whenever the general alarm is sounded by activation of any device (manual pull, smoke sensor, sprinkler, kitchen range hood extinguisher, etc.) the following shall occur automatically:

(A) smoke and fire doors which are held open by approved device shall be released to close;

(B) air handlers (air conditioning/heating distribution fans) serving three or more rooms or any means of egress shall shut down immediately;

(C) smoke dampers shall close; and

(D) the proper zone indicating lights shall show on the fire alarm control panel(s), including auxiliary panels.

(5) Fire alarm bells or horns shall be located throughout the building for audible coverage. Flashing alarm lights (visual alarms) shall be installed to be visible in corridors and public areas including dining rooms and living rooms.

(6) A master control panel shall be visible at the main nurse station which has alarm and trouble conditions by zones, power on lights and required signal devices for trouble conditions. All control panels must be listed in accordance with the provisions of the Underwriters Laboratories, Inc. (UL) for intended use, i.e., manual, automatic, and water flow activation. Alarm

and trouble zoning shall be smoke compartments and by floors in multi-story facilities.

(7) Remote annunciator panels, equipped with alarm by zone and trouble signals shall be located at auxiliary or secondary nurse stations on each floor or major subdivisions of single story facilities, that will indicate the alarm condition of adjacent zones and the alarm conditions at all other nurse stations.

(8) Manual pull stations shall be provided at all exits, living rooms, dining rooms, and at or near the nurse stations.

(9) The NFPA 13 sprinkler system shall be interconnected with the fire alarm panel as a separate zone for alarm and trouble. Activation of the tamper switch will provide a trouble condition on the fire alarm panel which will not impair the operation of the alarm.

(10) The kitchen range hood extinguisher shall be interconnected with the fire alarm system. This interconnection may be a separate zone on the panel or combined with other initiating devices located in the same zone as the range hood is located.

(11) Partial sprinkler systems (those provided only for hazardous areas) shall be interconnected to the fire alarm system and comply with the Life Safety Code. Each partial system shall have a valve with a supervisory switch to sound a trouble signal, water flow switch to activate the fire alarm, and an end of line test drain.

§19.1509. Subdivision of Building Spaces–Smoke Barriers.

(a) Subdivision of building spaces shall be as required by the Life Safety Code.

(b) The facility shall maintain the integrity of smoke barrier walls, including those parts of walls in attics and other concealed spaces.

(c) The facility shall maintain the integrity of smoke dampers in air ducts.

§19.1510. Emergency Electrical Services. Emergency electrical services shall be provided to comply with the provisions of the National Fire Protection Association (NFPA) 70. This includes such items as emergency power provided by generator or batteries for fire alarm systems, emergency egress lighting, nurse call systems, television cameras and monitors (if used for corridor observation), life support system, designated wall receptacles, etc.

(1) Life safety systems. Life safety systems shall include:

(A) illumination for means of egress, nurse stations, medication rooms, dining and living rooms, and areas immediately outside of exit doors;

(B) exit signs and exit directional signs required by the Life Safety Code;

(C) alarm systems, including fire alarms activated by manual stations, water flow alarm devices of sprinkler systems, fire and smoke detecting systems, and alarms required for nonflammable medical gas systems if installed. Where hospital type functions are included in the nursing home facility, applicable standards shall apply;

(D) task illumination and selected receptacles at any required or provided generator set location;

(E) selected duplex receptacles, including receptacles in resident corridors, nurse stations, medication rooms, including biological refrigerator, etc., if a generator is required or provided;

(F) nurse calling systems;

(G) elevator cab lighting, control, and communication systems;

(H) equipment necessary for maintaining telephone service; and

(I) those paging or speaker systems that are necessary for the emergency plan for communication during emergency. Radio transceivers that are necessary for emergency use shall be capable of operating for at least one hour upon total failure of both normal and emergency power.

(2) Critical systems. Where critical systems are provided, there shall be a delayed automatic or manual connection. Critical systems consist of non-life safety equipment, such as kitchen equipment (refrigerator, freezer, ice maker, etc.), and temporary operation of an elevator.

(3) Details. The emergency lighting shall be automatically in operation within 10 seconds after the interruption of normal electric power supply. Emergency service to receptacles and equipment may be delayed automatic or manually connected. Receptacles connected to emergency power shall be of a uniform and distinctive color. Stored fuel capacity shall be sufficient for not less than four-hour operation of required generator.

(4) Emergency motor generator, if required or provided:

(A) any emergency generator shall be installed in accordance with NFPA 37 and NFPA 99;

(B) generators located on the exterior of the building shall be provided with a noncombustible protective cover or be protected as per manufacturer's recommendations;

(C) motor generators fueled by public utility natural gas shall have the capacity to be switched to an alternate fuel source. (Reference NFPA 70).

(5) Wiring. Wiring for the emergency system shall be in accordance with NFPA 70.

§19.1511. Portable Fire Extinguishers. Portable fire extinguishers shall be provided and maintained to comply with the provisions of the National Fire Protection Association (NFPA) 10. This includes such items as type of extinguishers (A, B, or C), location and spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent (with any necessary servicing), and hydrostatic testing as recommended by manufacturer.

(1) Portable type ABC or BC chemical extinguishers shall not be located in resident corridors. Extinguishers in resident corridors shall be 2 1/2 gallon pressurized water or other type approved by the licensing agency and spaced so that travel distance is not more than 75 feet.

(2) Extinguishers shall be installed on supplied hangers or brackets or be mounted in cabinets approved by the licensing agency.

(3) Extinguishers shall be surface wall-mounted or recessed in cabinets where they are not subject to physical damage or dislodgement.

(4) Extinguishers having a gross weight not exceeding 40 pounds shall be installed so that the top of the extinguisher is not more than five feet above the floor. Extinguishers having a gross weight greater than 40 pounds shall be installed so that the top of the extinguisher is not more than 3 1/2 feet above the floor. In no case shall the clearance between the bottom of the extinguisher and the floor be less than four inches.

(5) Portable extinguishers provided in hazardous rooms shall be located as close as possible to the exit door opening and on the latch (knob) side.

§19.1512. Elevators, Escalators, and Moving Walks. Elevators shall comply with the provisions of the Life Safety Code and American National Standard Institute Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks (ANSI A17.1). Elevators are required for buildings having residents' facilities (such as bedrooms, dining or recreation areas) or services (such as diagnostic or therapy) located on other than the main entrance floor. Passenger eleva-

tors, escalators, and walks shall be inspected by a qualified agent at least every six months. Freight elevators and dumbwaiters shall be inspected every 12 months.

§19.1513. Other Rooms and Areas.

(a) Nurses station. A nurses station is an area designated as the focal point on all shifts for the administration and supervision of resident-care activities for a designated number of resident bedrooms.

(1) A licensed nurse must be assigned to the nurses station during every shift that requires a licensed nurse.

(2) All resident bedroom corridors must be observable by direct line of sight or by mechanical means from a designated nurses station or auxiliary station. There must be at least one nurses station per floor in multi-storied buildings.

(3) If all resident bedroom corridors are observable by direct line of sight from inside the nurses station or from within 24 inches of the counter or hall of the nurses station, no auxiliary stations are required, even if resident bedrooms are more than 150 feet from the nurses station.

(4) When resident bedrooms are more than 150 feet from the nurses station and the adjacent corridors are not observable from the station by direct line of sight, an auxiliary station must be established and used.

(5) All corridors adjacent to resident bedrooms that are more than 150 feet from a designated nurses station or auxiliary station must be observable by direct line of sight from the designated nurses station or auxiliary station. Corridors located in the service area of an auxiliary station must be observable, as described in paragraphs (3) and (4) of this subsection, at the auxiliary station. They may also be observable, usually by mechanical means, at the nurses station.

(6) The 150-foot limitation described in paragraphs (3)-(5) of this subsection may be increased to 165 feet in facilities or additions to facilities completed before August 10, 1983.

(b) Auxiliary station. Each auxiliary station must include a work area in which nursing personnel can document and maintain resident data, even if the facility's initial decision is to maintain clinical records at the nurses station.

(1) Auxiliary stations must be staffed by nursing personnel during all shifts.

(2) More than one auxiliary station may be assigned to a designated nurses station, regardless of the distance between stations. More than one corridor may be observed by mechanical means from a designated nurses station or auxiliary station.

(3) A nurse call system, located in the service area or a designated auxiliary station, must register calls at the nurses station to which it is assigned.

(4) Each auxiliary station 'must have an emergency electrical source adequate to power lights at the station.

(5) Although medications and clinical records may be maintained at an auxiliary station, the facility must ensure adherence to safeguarding and confidentiality requirements.

(6) In those instances in which a required auxiliary station does not already exist and the facility must establish a new auxiliary station, all applicable standards, particularly those pertaining to the physical plan and the Life Safety Code, must be observed. All renovations and structural changes require prior approval from the Texas Department of Health.

(7) All new construction completed after August 10, 1983, must allow direct line-of-sight observation of all resident bedroom corridors from the nurses station or auxiliary station.

(c) Mechanical means for resident observation.

(1) The nursing facility may use mechanical means, such as closed-circuit television and mirrors, to observe residents in the facility.

(2) Closed-circuit television monitoring systems must meet the following criteria.

(A) The camera(s) must be placed to view the entire corridor length, without any" blind spots."

(B) The camera(s) must be capable of providing recognizable images, in minimum and maximum light levels, for the complete viewing area.

(C) The monitor(s) must be installed and be clearly visible to persons in the nurses station or auxiliary station who are assigned to the area monitored by the camera.

(D) The system must be supplied with emergency power that enables the system to function during electrical service failures.

(E) Each camera must have its own separate monitor.

(F) If they perform the minimum basic functions specified in subsections (a)-(d) of this section, television monitoring systems installed before March 1984 may remain in service until the equipment is replaced or the system is expanded. Replacement systems or new component equipment must satisfy subsections (a)-(f) of this section.

(3) Mirrors must meet the following criteria.

(A) The mounting height of the mirror must be no less than six feet and eight inches from the floor to the bottom of the mirror.

(B) The mirror(s) must not extend more than three and one-half inches from the face of the corridor wall, unless the bottom of the mirror is more than seven feet and six inches above the floor.

(C) The mirror image must be clear enough that individuals can be recognized, in minimum and maximum light levels, throughout the viewing area.

(4) The monitoring systems described in this section must neither be installed nor used to deny privacy to staff or residents.

(d) Each nurses station must be equipped to register residents' calls through a communication system from resident areas including bed, toilet, and bathing facilities. The call cord does not have to be accessible in all parts of the room, but must be accessible to the resident. The system must be connected to on and off switches operable at each bed, toilet unit, and bathing unit. Each call entered into the system shall activate a corridor dome light above the bedroom/bathroom/toilet corridor door that opens onto a corridor. A visual signal at the nurses station which indicates the room from which the call was placed, and an audible signal should be of sufficient amplitude to be clearly heard by nursing staff. The amplitude or pitch of the audible signal shall not be such that is irritating to residents or visitors. The system shall be designed such that calls entered into the system may be cancelled only at the calling station. Intercom type systems shall be installed only after approved by the licensing agency.

(e) There shall be sufficient, lockable, enclosed medicine storage spaces, medicine room, or medication cart. The medication storage area shall be furnished with a refrigerator. There shall be sufficient space available for medication preparation area equipped with a sink having hot and cold water. When not in use, the medication cart must be secured in a locked medication storage room designated only for the storage of medications. Only authorized personnel shall have access to the medication storage area and the medication cart. Medication storage and preparation areas shall be adequately ventilated and temperature controlled. (See §19.1301(g) of this section (relating to Pharmacy Services)).

(f) A clean utility room shall be provided and shall contain a sink with hot and cold water. It shall be part of a system for storage and distribution of clean and sterile supply materials and equipment.

(g) A soiled utility room shall be provided and contain a flushing fixture, and a sink with hot and cold water. It shall be part of a system for collection and cleaning or disposal of soiled utensils or materials.

(h) Soiled linen rooms shall be provided as needed and required commensurate with the type of laundry system used. These rooms shall have adequate forced exhaust ducted to the exterior. Air shall be exhausted continually whenever there are soiled linens in the room. A soiled linen room may be combined with a soiled utility room.

(i) Clean linen storage shall be provided and conveniently located to resident bedroom areas.

(j) Corridor handrails shall be provided on each side of resident use corridors on all walls 18 inches or greater. These rails shall be substan- tially anchored to withstand downward force and shall be mounted 33 to 36 inches from the floor.

(k) Residents' bathing and toilet facilities.

(1) Bedrooms not provided with their own (or shared) direct access toilets and baths shall have general use baths and toilets conveniently located for each sex.

(2) Bathtubs or showers shall be provided at minimum rate of one for each 20 beds which are not otherwise served by bathing facilities directly accessible from resident bedrooms.

(3) In toilet facilities designed for multi-resident use, water closets shall be separated in such a manner that they can be used independently and afford privacy. Toilet paper in a suitable dispenser shall be provided within reach of each toilet.

(4) Water closets and lavatories shall be provided at a minimum rate of one for each eight beds which are not otherwise served by these fixtures directly accessible from resident bedrooms. A lavatory shall be provided in or adjacent to each area having a water closet.

(5) Lavatories shall be equipped with a mixer faucet and hot and cold water. Resident-use hot water must be provided within the temperature guidelines specified in §19.1517(g) of this title (relating to Plumbing).

(6) There shall be sufficient number of toilet rooms and bathing areas designed to accommodate residents in wheelchairs, including space in or around fixtures. Proper heights, locations, and installations shall be made for grab bars, and any mirrors, and accessories provided.

(7) Grab bars and lavatories shall be substantially anchored to withstand sustained and repeated downward and outward pressure. Grab bars shall be provided at all resident water closets and bathing fixtures. New grab bar installations shall meet ANSI requirements.

(8) Floors, walls, and ceilings shall be non-absorbent, cleanable surface. Floors and tub or shower standing surfaces shall be slip resistant.

(9) Doors to bathing and toilet facilities shall be wide enough for safe and easy passage of wheelchair residents. Folding or sliding doors shall not be used unless it can be established that no safety hazard exists.

(10) Recipient baths or toilets having privacy locks will require that keys for opening the doors are kept readily available to the staff.

(11) Provision shall be made for sanitary hand washing and drying by staff, visitors., or residents at each lavatory.

(12) Bathrooms and toilets rooms shall have effective forced air or gravity exhaust to the exterior.

(13) Bathing areas shall be provided with safe heating.

(14) Bathtubs, showers, and lavatories shall be kept clean and in proper working order. They shall not be used for laundering or for storage of soiled materials or for the cleaning of mops, brooms, etc.

(15) Nurse call devices must be provided at resident-use baths and toilets and be within easy reach of residents from those units.

(16) Electrical outlets in wet areas shall be provided with ground fault interrupters. This does not include toilet rooms where there are no bathing units.

(l) Resident living areas.

(1) Resident living areas such as living rooms, dayrooms, lounges, recreation rooms, and sunrooms shall be provided to meet the needs of the residents' comfort. Combined living and dining areas should be not less than 19 square feet per bed, but must not be less than 10 square feet per bed.

(2) No single room less than 100 square feet shall be included as part of the acceptable total area required.

(3) At least one living area shall have an outside window.

(4) Living areas shall be provided with comfortable furniture of substantial construction and be appropriately decorated to provide a pleasant and comfortable environment for residents and visitors. Furnishings and decorations shall not obstruct exits or ways of egress.

(5) Non-smoking areas must be identified as described in §19.1501(7) of this title relating to (General Requirements).

(m) Dining areas.

(1) Dining space shall be provided to adequately serve needs of the residents and provide an efficient, sanitary, and pleasant environment for dining.

(2) Facilities having continuing deficiencies in the service of meals directly attributable to inadequately sized dining areas will be required to submit a special plan of correction specifying how meal planning or service will be changed, or provide other means to correct the deficiency. This corrective plan will be prepared by a registered or licensed dietitian. Reference Subchapter Q of the Planning Construction Manual of TDH (relating to Planning and Construction for Nursing Homes) for dining and living area requirements related to proposed bed increases.

(n) Kitchens.

(1) Nursing Facility kitchens will be evaluated on the basis of their performance in the sanitary and efficient preparation and serving of meals. 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. Evaluation shall be based on the number of meals served. Continuing problems directly attributable to an inadequately sized kitchen area will require submission of a special plan of correction specifying how the kitchen area will be changed. This corrective plan will be approved by a registered or licensed dietitian or architect having knowledge in the design of food service operations. Reference §§229.161–229.171 of Title 25 (relating to Food Service Sanitation).

(2) Kitchen temperature, at peak load, shall not exceed a temperature of 85 degrees Fahrenheit measured over the room at the five foot level. Sufficient heating shall be provided to maintain an average temperature of not less than 70 degrees Fahrenheit in winter (with exhausts operating) at the five-foot level.

(3) The kitchen shall have operational equipment for preparing and serving meals and for refrigerating and freezing of perishable foods, as well as equipment in, and/or adjacent to, the kitchen or dining area for producing ice.

(4) The kitchen shall have facilities for washing and sanitizing dishes and cooking utensils. Such facilities shall be adequate for the number of meals served and the method of serving (permanent or disposable dishware, etc.). The kitchen shall contain a multi-compartment sink large enough to immerse pots and pans. In all facilities, a mechanical dishwasher is required for sanitizing dishes. Separation of soiled and clean dish areas shall be main-

tained, including air flow and traffic flow.

(5) The kitchen must have an adequate supply of hot and cold water. Hot water for sanitizing purposes shall be 180 degrees Fahrenheit or the manufacturer's suggested temperature for chemical sanitizers, as specified for the system in use. For mechanical dishwashers the temperature measurement is at the manifold. Hot water for general kitchen use shall be 140 degrees Fahrenheit

(6) A kitchen must have at least one handwashing lavatory in the food preparation area. The dish washing area shall have ready access to a handwashing lavatory or handsanitizing device. Handwashing lavatories shall be provided with hot and cold running water, a sanitary soap dispenser, and paper towel dispenser (or hot air dryer).

(7) Nonabsorbent smooth finishes or surfaces shall be used on kitchen floors, walls, and ceilings. Such surfaces shall be capable of being routinely sanitized to maintain a healthful environment.

(8) A janitor's closet with service sink shall be easily and readily accessible to the kitchen.

(9) Kitchen exhaust hood at cooking equipment and its attached automatic chemical extinguisher shall comply with National Fire Prevention Association (NFPA) 96. The licensing agency may waive certain details of NFPA 96 for existing kitchen exhausts at cooking equipment provided that basic function and safety are not compromised.

(o) Food storage areas.

(1) Food storage areas shall provide for storage of a seven-day minimum supply of non-perishable (staple) foods and a two-day supply of perishable foods at all times.

(2) Shelves and pallets shall be moveable wire, metal, or sealed lumber, and walls must be finished with a non-absorbent finish to provide a cleanable surface.

(3) Dry food storage shall have a venting system to provide for reliable positive air circulation.

(4) The maximum room temperature for food storage shall not exceed 85 degrees Fahrenheit at all times. The measurement shall be taken at the five-foot level.

(5) No foods shall be stored on the floor. Dunnage carts or pallets may be used to elevate foods not stored on shelving.

(6) Sealed containers shall be provided for storing dry foods after the package seal has been broken.

(7) 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.

(p) Auxiliary serving kitchens (those not contiguous to food preparation/serving areas).

(1) 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.

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

(3) Finishes of all surfaces except ceilings shall be the same as those required for dietary kitchens.

(q) Administrative and public areas. Facilities shall have administrative area(s) for normal business transactions and maintenance of records.

(r) Laundry.

(1) Laundry facilities must be located in areas separate from resident rooms. The laundry shall be designed, constructed, and equipped and appropriate procedures shall be utilized to assure that laundry is handled, cleaned, and stored in a sanitary manner.

(2) Laundry for general linen and clothing shall be arranged so as to separate soiled and clean operations as they relate to traffic, handling, and air currents. Suitable exhaust and ventilation shall be provided to prevent air flow from soiled to clean areas.

(3) Floors, walls, and ceilings shall be non-absorbing and easily cleanable.

(4) Soiled linen shall be stored and/or transported in closed or covered containers. Soiled linen storage or holding rooms shall have effective forced air or gravity exhaust ducted to the exterior.

(5) Laundry areas shall have air supply and ventilation to minimize mildew and odors. Doors shall not remain open, for sanitation and safety reasons.

(6) Room size, and number and type of appliances shall provide efficient, sanitary, and timely laundry processing to meet the needs of the facility.

(7) The laundry, if located in the facility, shall meet Life Safety Code requirements for separation and construction for hazardous areas.

(s) Resident use laundry. This service, if provided, shall be limited to not more than one residential type washer and dryer per laundry room. This room shall be classified as a hazardous area as per the Life Safety Code.

(t) Personal grooming area. Space and equipment shall be provided for the hair care and grooming needs of the residents. Hair care and grooming service will be provided in resident bedrooms or in designated areas which are not in a way of egress.

(u) Storage rooms. General and/or specific storage areas shall be provided as needed and required for safe and efficient operation of the facility. Items shall not be stored in inappropriate places such as corridors or rooms which are not equipped for special hazard protection.

(v) Janitor closets. In addition to the janitors' closet called for in certain departments, other janitors' closets shall be provided throughout the facility to maintain a clean and sanitary environment. All such closets shall have effective forced air or gravity exhaust ducted to the outside.

(w) Sterilizing and disposal facilities.

(1) An effective system for sterilization of equipment and supplies shall be provided for reusable items requiring such sterilization.

(2) A policy and procedure for the safe and sanitary disposal of special waste shall be provided in accordance with TDH requirements as described in §§1.131-1.137 of Title 25 (relating to Definitions, Treatment and Disposition of Special Waste from Health Care Related Facilities). Space and facilities shall be provided for the sanitary storage and disposal of waste, not classified as special, by incineration, mechanical destruction, compaction, containerization, removal, or contract with outside resources, or by a combination of these techniques.

(x) Maintenance/engineering service and equipment areas.

(1) The facility shall provide storage for building equipment, supplies, tools, parts, and yard maintenance equipment.

(2) Volatile liquids and supplies may not be kept within the main building housing residents.

(y) Oxygen. The facility shall implement procedures that assure the safe and sanitary use and storage of oxygen.

§19.1514. Provisions for the Handicapped.

(a) The facility shall provide and mark at least one parking space for the handicapped.

(b) The facility shall provide wheelchair access into the building by use of ramps and curb breaks. Ramps shall not slope more than 1:12 (one unit of rise to 12 units of run).

(c) Room identification signs or letters 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 or recessed at least

1/32 inch minimum. Characters shall be at least 5/8 inch in height and no higher than two inches.

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

(e) Handicapped toilet facilities shall be available and shall be of sufficient size to accommodate wheelchairs.

(f) Water closet seat height in toilet facilities equipped for the handicapped shall be 17 to 19 inches from floor.

(g) Mirrors and dispensers in facilities for the handicapped shall be no higher than 40 inches above the floor.

(h) Drinking fountains or coolers installed to meet handicapped requirements shall meet ANSI A117.1 (i.e., up front spout and controls no more than 36 inches from floor maximum).

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

§19.1515. Lighting and Illumination. Current recommendations of the Illumination Engineering Society of North America 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, nurses' 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 overbed reading lamps, medication preparation or storage areas, kitchens, and nurse's 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 task.

§19.1516. Heating, Ventilating, and Air-conditioning Systems (HVAC).

(a) The heating system shall be capable of maintaining a temperature of not less than 72 degrees Fahrenheit at the resident level in all resident-use areas. Auxiliary heating devices permanently installed, such as heat strips in ducts, electric ceiling mounted heating units, and electric baseboards, may be used to augment a central heating system as approved by the licensing agency. (See §19.505 of this title (relating to Environment)).

(b) The cooling system shall be capable of maintaining a temperature suitable for the comfort of the residents in resident-use areas.

(c) Air flow shall be directed or adjusted so that a resident is not in direct drafts that could be harmful to the health and comfort of the resident.

(d) Unvented heating units and portable heaters are prohibited.

(e) The facility shall be well ventilated through the use of windows, mechanical ventilation, or a combination of both. Rooms and areas which do not have outside windows and which are used by residents or personnel shall be provided with functioning mechanical ventilation to change the air on a basis commensurate with the room usage. Air systems shall provide for the induction and mixing of at least 10% outside fresh air into the facility unless otherwise approved by the licensing agency (i.e., 100% continuous recirculation of interior air in most areas is not acceptable). When certain rooms or areas are dependent on a central air system for proper ventilation, including exhaust, that central air system fan shall run continuously.

(f) Operable outside windows shall be provided with insect screens. Outside doors shall be self-closing to control entry of insects. All exterior doors shall be effectively weather stripped.

(g) Heating and air conditioning systems shall be provided with clean and effective air filters.

(h) Ducts and piping subject to surface condensation shall be insulated to prevent such condensation at least in areas which may affect sanitation or cause building deterioration.

(i) A comfortable temperature for residents when bathing shall be provided by methods such as central heating and/or by auxiliary units.

(j) Heating, ventilating, and air conditioning systems shall comply with the provisions of applicable National Fire Prevention Association (NFPA) standards. Ducts are to be of a Class A material (noncombustible). Gas fired equipment shall be in rooms of one-hour fire resistive construction and provided with sprinkler protection. Combustion air for gas fired equipment shall be ducted from the exterior.

(k) Air flow shall be designed to prevent cross contamination within any area where applicable, such as laundries and kitchens, as well as the system or facility as a whole.

(l) With relationship to adjacent areas, a positive air pressure shall be provided for clean utility rooms, clean linen rooms, and medication rooms. Conditioned supply air shall be introduced into these rooms.

(m) With relationship to adjacent areas, a negative air pressure shall be provided for soiled utility rooms, soiled laundry rooms, bathrooms, toilets, and other odor producing rooms. Air from these rooms shall not be recirculated, but instead shall be exhausted through ducts to the exterior by effective means.

(n) Facility temperature shall be maintained for the comfort of residents.

§19.1517. Plumbing.

(a) If the municipality has a plumbing code, that code shall be used as a basis for determining the correctness of plumbing installation. In the absence of a municipal code, a nationally recognized plumbing code shall be used, such as the Standard Plumbing Code of the Southern Building Code Congress International, Inc.

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

(c) Sewage shall be discharged into a state-approved sewerage system or septic system; otherwise, the sewage shall be collected, treated, and disposed of in a manner which is approved by the Texas Department of Health.

(d) The wastewater drainage and sewage system shall assure that sanitation is maintained for residents. Wastewater or sewage shall not be discharged on the surface of the ground. In no case shall traps be allowed to lose their seal. Appliances shall have air gaps as required for connections to the sewerage system. Venting shall assure a rapid flow of wastewater in the sewage system.

(e) The interior cold water supply system and piping shall be so placed or so insulated as to prevent condensation drip in habitable areas and in storage areas.

(f) Backflow preventers or vacuum breakers shall be installed with any water supply fixture where the outlet or attachments may be submerged.

(g) Resident-use hot water shall be reliably controlled, such as by thermostatic or mixing valves, to not exceed 110 degrees Fahrenheit at each fixture (and not less than 100 degrees F). An upper limit deviation of 5 degrees Fahrenheit is allowed for fluctuation in supply water temperature, temperature variance due to distance between heater and fixture, volume, and timing of hot water usage, and other factors.

(h) Hot water for other usages shall be provided at the temperatures required for the appliance or fixture or for the operation involved, such as dishwashing and laundry.

(i) The supply quantity of hot water shall be adequate for normal peak load usage. Facilities which continue to experience a shortage of hot water shall remedy the situation by such means as adding storage tanks, adding or increasing the size of water heaters, or other approved means.

(j) Water heaters shall be equipped with pressure temperature relief valves.

§19.1518. Housekeeping Services.

(a) The facility shall provide sufficient housekeeping and maintenance personnel, equipment, and supplies to maintain the interior and exterior of the facility in a safe, clean, orderly, and attractive manner. Nursing personnel shall not be assigned routine housekeeping duties. In a Nursing Facility, an employee must be designated as responsible for housekeeping services.

(b) Housekeeping personnel shall utilize accepted practices and procedures to keep the facility free from offensive odors, accumulations of dirt, rubbish, dust, and hazards.

(c) Floors shall be maintained in good condition and cleaned regularly. Polishes on floors shall provide a non-slip finish, and throw or scatter rugs, and/or any loose floor covering shall not be used except for non-slip entrance mats.

(d) Occupied resident rooms shall be cleaned and put in order at least daily.

(e) Mop heads shall be of the removable type of shall be laundered or replaced at frequent intervals to ensure cleanliness.

(f) Deodorizers shall not be used to cover up odors caused by unsanitary conditions or poor housekeeping practices. Odor control shall be achieved by prompt cleansing of bedpans, urinals and commodes, by the prompt and proper care of residents and soiled linens, by good housekeeping procedures and by approved ventilation.

(g) Storage areas shall be kept safe and free from accumulations of extraneous materials such as refuse, discarded furniture, and newspapers. Combustibles such as cleaning rags and compounds shall be kept in closed metal containers and labeled as to contents.

(h) Attics, mechanical rooms, boiler rooms, and other similar areas shall not be used for storage purposes.

(i) The grounds shall be kept neat and free from refuse and litter. Areas around buildings, sidewalks, gardens, and patios shall be kept clear of dense undergrowth.

(j) All bleaches, detergents, disinfectants, insecticides and other poisonous substances shall be kept in a safe place accessible only to employees. They shall not be kept in containers previously containing food or medicine. Containers must be labeled.

§19.1519. Pest Control.

(a) An effective, safe, and continuing pest control system against insects, rodents, and vermin shall be in operation in the facility. Pest control services shall be provided by personnel of the Nursing Facility or by contract with a licensed pest control company. Care shall be taken to use the least toxic and least flammable effective insecticides and rodenticides. These compounds shall be stored in non-food preparation and storage areas. Poisons shall be under lock.

(b) The facility shall protect against harborages and entrances for insects, rodents, and vermin.

(c) Garbage and trash shall be stored in enclosed containers, protected against leakage, contact with disease vectors, and access to animals. It shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises in conformity with state and local practices. Garbage and trash containers shall be maintained free of accumulations and coatings of garbage. Garbage storage areas shall be kept clean and in a state of good repair.

§19.1520. Linen.

(a) The Nursing Facility shall have available at all times a quantity of linen essential for the proper care and comfort of residents. Linens shall be handled, stored, and processed so as to control the spread of infection.

(b) Linen will be maintained in good repair. Worn or damaged linen will be discarded and replaced.

(c) Linen shall be washed, dried, stored, and transported in a manner which will produce hygienically clean linen. The washing process must have a mechanism for soil removal and bacteria kill.

(d) The linen supply shall be at least three times the usual occupancy, with at least one complete set of linen per resident (one towel, one washcloth, one pillow case, and two sheets) clean and available for use at any time.

(e) Clean linen shall be stored in a clean linen area easily accessible to the personnel.

(f) Clean towels and washcloths shall be provided to each resident as needed or desired. Towels and washcloths shall be stored in a sanitary manner between uses by the resident and shall not be used by more than one resident between launderings.

(g) Soiled linen and clothing shall be stored separately from clean linen and clothing. Soiled linen and clothing shall be stored in well ventilated areas, and shall not be permitted to accumulate in the facility. Soiled linen and clothing shall be transported in accordance with procedures consistent with universal precautions. Bags or containers shall not be reused to transport or store clean items.

(h) Soiled linen shall not be sorted, laundered, rinsed, or stored in bathrooms, resident rooms, corridors, kitchens, or food storage areas, except soiled linen and clothing which is not contaminated with blood may be rinsed in a resident's bathroom water closet.

(i) Resident's personal clothing that is not soiled with body wastes may be stored in a closed container in the resident's closet. The clothing must be collected and cleaned at least weekly.

(j) Facility staff shall wash their hands both after handling soiled linen and before handling clean linen.

§19.1521. Safety Operations. The facility must have a written plan with procedures to be followed in an internal or external disaster and for the care of casualties.

(1) The facility must maintain the plan and procedures at the nurses station and with department managers within the facility. The facility must ensure that the plan and procedures are reviewed at least annually. Changes in administrator, construction, or emergency phone numbers will require the facility to review and possibly modify the disaster plan. All reviews of disaster plans must be documented.

(2) The facility must include in the disaster plan, evacuation routes and procedures to be followed in the event of fire, explosion, or other disaster. The plan must also include procedures for the prompt transfer of casualties, clinical records, medications, and notification of appropriate persons.

(3) All employees must be familiar with the disaster plan and must be instructed in the location and use of the facility's alarm systems, fire-fighting equipment, and procedures. The facility must post fire and explosion evacuation routes prominently throughout the facility. The facility must have a fire safety plan within the disaster plan. The fire safety plan must be rehearsed quarterly on each shift with at least one rehearsal conducted each month. A comprehensive fire drill report form shall be completed for each rehearsal of the fire safety plan.

(4) In smaller, simple one story buildings where all exits are obvious, the licensing agency may not require the posting of evacuation routes.

(5) The facility shall have an emergency contingency plan to ensure the residents' comfort and safety, including the provision of potable water. An emergency electrical system must be adequate to power lights at nursing stations, telephone switchboard, night lights, exit signs and emergency egress lighting, boiler room, and fire alarm system until other arrangements can be made.

(6) Emergency telephone

numbers shall be clearly posted on or near each phone. Emergency telephone numbers shall include the local fire department, ambulance, and police.

(7) The facility shall report to the licensing agency all fire incidents and disasters as soon as possible. Telephone reports shall be followed by written reports. Failure of the fire alarm, emergency power, or sprinkler system shall require that all facility staff be informed of conditions, and the facility shall take special precautions such as establishing a fire watch, appropriate to the situation. These situations shall be reported to the local fire authority.

(8) Severe weather drills and other emergency drills shall be held as needed and as called for by the facility's policy and procedure manual.

(9) The fire alarm and sprinkler systems shall be inspected and tested at least once every three months by a licensed agent. Each such quarterly inspection and test shall be of the complete system including smoke dampers, individual sprinkler heads, etc. A standard report form of the inspection shall be completed by the agent and kept on file by the facility. The report shall include the signature of the person making the inspection and the date of the inspection. The facility shall maintain a current contract on file for the services of the inspecting company.

(10) The facility may, at its own discretion, make simple periodic tests of the basic fire alarm system, such as by activating a manual pull station, particularly when conducting required fire drills. At any time the facility staff verifies or suspects some malfunction of the system, the condition shall be immediately investigated and corrected.

(11) Emergency generators, if required or provided shall be maintained in operating condition at all times. They shall be inspected and run, under load, for at least 30 minutes each week. A signed or initialed record or log shall be kept on file by the facility. The condition and proper operation of the emergency egress lighting should also be checked at this time.

(12) A functional test shall be conducted on every required battery emergency lighting system at 30-day intervals for a minimum of 30 seconds. An annual test shall be conducted for a 1 1/2 hour duration. Equipment shall be fully operational for the duration of the test. Written records of testing shall be kept by the owner for inspection by the authority having jurisdiction.

(13) Automatic fixed dry chemical extinguishers mounted in kitchen range hoods shall be inspected and serviced by a licensed agent (type A license with the State Fire Marshal's office) at least once every six months. A written, signed report shall be left on file with the facility. The hood, exhaust ducts, and filters shall be kept clean and free of accumulations of grease.

(14) Portable fire extinguishers shall be visually inspected monthly by facility staff and shall have maintenance provided annually by a licensed agent in accordance with National Fire Prevention Association (NFPA) 10. A record of the annual maintenance shall be kept in the facility. Portable extinguishers shall be protected from damage and shall be kept on their mounting brackets or in cabinets at all times.

(15) Facilities using gas shall have the gas piping lines from the meter and appliances tested for leaks annually by a qualified person. A written, signed report shall be made of these tests and kept on file. Any unsatisfactory conditions shall be noted and corrected promptly.

(16) Smoking policies shall be formulated and adopted by the facility. The policies shall comply with all applicable codes, regulations and standards, including local ordinances. It is the responsibility of the facility to inform residents, staff, visitors, and other affected parties of smoking policies through distribution and/or posting. The facility is responsible for enforcement of smoking policies which shall include at least the following provisions.

(A) Smoking tobacco, matches, lighters, or other smoking paraphernalia are not permitted to be kept or stored in a resident's room or in their possession without supervision.

(B) Smoking by residents on the premises is permitted only when supervised by staff of the facility or visitors. The type of supervision (individual versus group supervision) will be determined by the resident's medical condition. The resident must be within direct view of the smoking supervisor, in reasonably close proximity of the supervisor, and the supervisor must be able to quickly respond in the event of an emergency. Additionally, the supervisor, whether staff or visitor, must be aware of these responsibilities. A facility may establish a no-smoking policy for any public areas of the facility.

(C) Smoking shall be prohibited in any room, ward or compartment where flammable liquids, combustible gas, or oxygen are used or stored and in any other hazardous locations. Such areas shall be posted with "No Smoking" signs.

(17) No storage is permitted in rooms with gas-fired equipment. Bulk storage of volatile or flammable liquids or materials shall not be allowed anywhere within the building.

(18) Medical equipment, carts, wheelchairs, tables, furniture, dispensing machines, and similar physical objects, shall not be stored in corridors or other ways of egress.

(19) Smoke doors, fire doors, and doors to hazardous rooms must be kept closed and shall not be propped or wedged open. Only approved devices such as alarm activated electromagnetic hold-open devices may be used to hold such doors open, except doors to rooms classified as severe hazard.

(20) Electrical extension cords shall not be used on a permanent or semipermanent basis as a substitute for approved wiring methods. Approved electrical receptacles shall be provided in quantity and location for the normal use of appliances.

(21) All abandoned utilities such as electrical wiring, ducts, and pipes, shall be removed from the facility when no longer usable.

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-9005204 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) 450-3745

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

The Texas Department of Human Services (DHS) proposes the repeal of §16. 1514 and proposes new §16.1514 concerning preadmission screening and annual resident review requirements. The purpose for the repeal and new section is to comply with the requirements of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) (Public Law 100-203). This legislation changed the Social Security Act, §1819(e) and 1919(e), and 42 Code of Federal Regulations, §483.100. These changes require ICF/SNF facilities to have in effect on January 1, 1989, a process for preadmission screening and annual resident review. The effect of the new section is to prohibit Medicaid nursing facilities from admitting or retaining new or current residents with mental illness, mental retardation, or a related condition.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed repeal and new section will be in effect there will be fiscal implications as a result of enforcing or administering the repeal and new section. The effect on state government for the first five-year period the repeal and new section will be in effect is an estimated additional cost of $32,495,403 for fiscal year 1991; $33,142,742 for fiscal year 1992; $31,523,009 for fiscal year 1993;

$28,240,402 for fiscal year 1994; and $26,435,945 for fiscal year 1995. There will be no effect on local government or small businesses for the first five-year period the proposed repeal and new section will be in effect.

Mr. Raiford also has determined that for each year of the first five years the repeal and new section are in effect the public benefit anticipated as a result of enforcing the repeal and new section will be to restrict from nursing facilities patients with mental illness, mental retardation, or a related condition so they can be given the appropriate active treatment for their mental and physical conditions. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Marc Gold at (512) 450-3174 in DHS's Institutional Care Section. Comments on the proposal may be submitted to Cathy Rossberg, Agency Liaison, Policy Ccommunication Services-212, Texas Department of Human Services 454-W, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

Compliance with State and Local Laws

• 40 TAC §16.1514

(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.

§16.1514. Preadmission Screening and Annual Review Requirements (PASARR).

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-9005211 Cathy Rossberg
Agency Liaison, Policy Communication Services
Texas Department of Human Services

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

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Subchapter Q. Medical Review and Re-evaluation

• 40 TAC §§19.1601-19.1612

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

§19.1601. Medical Necessity (MN) and Utilization Review (UR). In addition to financial eligibility requirements, the Texas Department of Human Services places limits on Nursing Facility services, for Medicaid residents, based on such criteria as medical necessity and utilization control procedures (42 Code of Federal Regulations, §440.230(d)).

(1) The Texas State Plan for Title XIX requires a process of utilization review for Nursing Facilities participating in the Texas Medical Assistance program.

(2) Utilization review encompasses patterns of care and services within a nursing facility. This review is within the context of medical necessity, appropriateness, quality of care and outcomes, and availability of facilities and services.

(3) The long-term care units of the Texas Department of Health, acting as independent professional review units, perform utilization review functions for the purpose of determining pre-admission, admission, and continued-stay review medical necessity.

§19.1602. Utilization Review Plan.

(a) Professionally developed written criteria are used to evaluate the necessity for admission and continued stay of Medicaid residents. Criteria are based on current regional health care delivery norms and are developed and maintained by the Texas Department of Human Services (DHS).

(b) Plan objectives:

(1) to promote high quality resident care that meets the resident's needs;

(2) to determine if needed services are available and provided on a continuing basis;

(3) to ensure that services provided are necessary;

(4) to review the plan of care and post-care planning activities; and

(5) to identify patterns of care that are ineffective and to assist in establishing efficient provision of services through educational programs.

(c) Long-term care unit (LTCU), utilization review committee.

(1) Each long-term care unit utilization review committee will consist of the following:

(A) all physicians in the unit (if the unit has one physician, then a Texas Department of Health state office physician will be the second physician member);

(B) registered nurses in the unit;

(C) social workers in the unit; and

(D) other staff as needed.

(2) A physician is available for consultation about utilization review activities.

(3) The long-term care unit physician receives technical and administrative supervision from the appropriate Texas Department of Health state office bureau staff.

(4) Admission and continued-stay reviews are the responsibility of the LTCU. Reviews are based on facility documentation required by DHS.

§19.1603. Definition of the Review Process. A preadmission, admission or continued-stay review is the determination of the need for initiating or continuing nursing facility care by evaluating the resident's medical/nursing needs. This establishes whether or not the resident has medical necessity for Nursing Facility care. The review and determination must be accomplished prior to any facility services delivered for which vendor payment is expected except as provided in §19.1608 of this title (relating to Retroactive Medical Necessity Determinations).

(1) Documentation and utilization requirements are based on each resident's need for care, rather than on the classification of the facility or distinct part in which the resident lives.

(2) The review process is initiated when the field-based, long-term care unit of the Texas Department of Health is notified by the facility submitting a Texas Nursing Facility CARE form that a Medicaid applicant or resident is requesting vendor assistance for care in a contracted nursing facility. This review includes an initial assessment of the feasibility of an alternate care placement for the individual. A preadmission or admission review is accomplished by the long-term care unit (LTCU).

(A) A preadmission review of a Texas Nursing Facility CARE form establishes that a need for Nursing Facility care exists and serves as the initial step in the Preadmission Screening and Annual Resident Review (PASARR) process. A preadmission review does not establish an authorization for reimbursement or a level of reimbursement.

(i) The preadmission review may be submitted for the purpose of establishing medical necessity which may be necessary for processing an application for Medicaid.

(ii) The preadmission screening for PASARR is necessary when an individual being admitted to any nursing facility in which he or she has not recently resided and to which he or she cannot qualify as a readmission. Such an individual is subject to preadmission screening if he or she has mental illness (MI) or mental retardation (MR). Readmission to the same nursing facility following a temporary absence for hospitalization or therapeutic leave are not new admissions. (See §19.604 of this title (relating to Preadmission Screening and Annual Resident Review (PASARR)).

(iii) The preadmission determination of medical necessity and PASARR screening is valid until admission into a Nursing Facility or up to 30 days from the effective date assigned by the LTCU.

(B) An admission review of a Texas Nursing Facility CARE form determines the medical necessity and establishes an authorization for reimbursement and a level of reimbursement. The date of admission is defined as the day from which the facility expects to begin receiving Medicaid nursing facility vendor payment for services rendered. It is the same day that is reflected on the Resident Transaction Notice for admission. If a facility is receiving Medicare copayment from DHS on a resident, that resident is not considered to be in the Medicaid vendor payment system. Admission reviews must be done as follows:

(i) when a Medicaid applicant or resident is admitted and the facility expects to receive Medicaid Nursing Facility vendor payment, a new (not a continued-stay review) admission assessment and review must be done if a resident has been out of the Medicaid Nursing Facility vendor payment system for longer than 30 days;

(ii) when a dually eligible resident (Medicare/Medicaid) is initially admitted into Medicare, then becomes eligible for Medicaid per diem reimbursement, and the facility wants to initiate Medicaid nursing home vendor payment;

(iii) when a private pay patient makes application for Medicaid;

(iv) when the resident has remained for more than 30 days in another facility that has had its contract cancelled and no new contract issued within that time period;

(v) when a resident's medical condition changes while out of the facility, and the facility wishes to submit a new admission medical necessity determination; or

(vi) the Texas Nursing Facility CARE form must be received in the long term care unit regional office in accordance with §19.1606 of this title (relating to Utilization Review Effective Dates). The admission review and determination of medical necessity (MN) remains valid for up to 180 days from date of admission or the stamp-in date at the LTCU. Each admission request for MN determination resets the continued-stay review cycle as described in §19.1606 of this title (relating to Utilization Review Effective Dates).

(C) The continued-stay review is done 180 days after the effective date of the admission MN determination and every 180 days thereafter.

(i) It is the facility's responsibility to submit to the TDH/LTCU requests for continued-stay reviews on a timely basis whether or not the facility has received a turnaround document indicating current eligibility.

(ii) Continued-stay reviews are accomplished no later than the day after the expiration of the current medical necessity determination. Continued-stay reviews are performed only after the TDH/LTCU receives the documentation on the Texas Nursing Facility CARE form submitted by the Nursing Facility and may result in new effective dates of MN determination and new continued-stay review dates. A resident's current determination of MN may be sustained or denied.

(iii) For residents with a skilled medical necessity on October 1, 1990, the next request for a continued-stay review is due 180 days from the admission or continued-stay review effective date just prior to October 1, 1990.

(3) Mailed requests for admission and continued-stay reviews for medical necessity determination. The stamp-in date (effective date) will be considered to be the date mailed only if sent by certified mail.

(A) When utilizing Certified Mail, the facility must enclose an original and photocopy of an alphabetized list of medical necessity (MN) assessment forms being submitted with each envelope/package as well as a self-addressed, stamped envelope. The MN assessment forms must also be in alphabetical order. The facility is responsible for the content of each envelope/package including the accuracy and completeness of the forms and list.

(B) At the LTCU, the lists submitted by the facility will be compared to the envelope-package contents. Verification of content will be made and the MN assessment forms stamped in. Any discrepancies will be noted on the photocopy list. Each photocopy list will be returned to the facility in the envelope provided. LTCUs shall retain the alphabetized list for two years as part of the facility records.

(C) Facilities shall retain the photocopy of the alphabetized list with the certified mail receipt attached at least until all accounts are satisfied for the time periods involved.

§19.1604. Physicians' Certifications and Recertifications.

(a) The resident's physician is required at intervals specified in §19.1007(b) of this title (relating to Certification and Recertification Requirements) to certify or recertify the necessity for continued Nursing Facility care.

(b) Certifications and recertifications are to be made by the physician when signing such Texas Nursing Facility CARE forms submitted to the TDH/LTCU that require physician signatures.

§19.1605. Additional Requirements for Submitting Requests for a Continued-Stay Review.

(a) The facility must ensure that all forms are submitted to the local long-term care unit serving the facility no later than the day after the expiration of the current Medical Necessity (MN) determination to ensure that payments continue. A valid MN determination is an eligibility requirement for Medicaid participation, and vendor payments cannot be made on behalf of residents who do not have established MN. The Texas Department of Health (TDH) accepts CARE forms from facilities up to 45 days before the expiration of the resident's current MN determination.

(b) All forms must be fully completed and contain all current information, regardless of any adverse actions taken against the facility.

(c) To ensure that payments continue, any forms that are returned for proper completion must be received by the long-term care unit office no later than the day after expiration of the current MN determination.

(d) If a CARE form is not received by the day after the expiration date of the current MN determination, the current MN determination ceases to exist. To reinstate an expired MN determination, facility staff must submit an updated CARE form assessment to the TDH/LTCU. The date of receipt of these CARE forms is the new effective date of the MN.

(e) DHS does not pay for the period of time between the MN determination expiration date and the new effective date of the MN determination, and recoups any inadvertent payments made to facilities. If a lapse in payment is because of a facility error, restrictions apply as described in §19.1708 of this title (relating to Limitations on Provider Charges to Patients).

§19.1606. Utilization Review Effective Dates. When the resident is admitted to or discharged from the Medicaid Nursing Facility vendor payment system, the administrator of the facility must submit, within 72 hours, a Resident Transaction Notice form to Nursing Home Billing Services 646-E, Texas Department of Human Services, P. O. Box 149030, Austin, Texas 78714-9030.

(1) The administrator of the facility must submit to the Long Term Care Unit (LTCU) a new Texas Nursing Facility CARE form within 20 calendar days following admission to the Medicaid Nursing Facility vendor payment system.

(A) The CARE form must be completed and signed by the physician within seven working days following admission to the nursing facility vendor payment system.

(B) The Texas Nursing Facility CARE form submitted within 20 calendar days will be effective the date of the admission.

(C) The effective date of a Texas Nursing Facility CARE form not submitted within 20 calendar days following admission to the Nursing Facility vendor payment system will be the stamp-in date at the LTCU.

(2) An admission Texas Nursing Facility CARE form must include a current certification by a physician.

(3) An admission Texas Nursing Facility CARE form establishes an authorization for reimbursement, the level of reimbursement, sets a medical necessity (MN) determination, and sets a continued-stay review cycle.

(4) The administrator of the admitting facility must submit a request for MN determination assessment for admission, when:

(A) more than 30 days have elapsed between discharge from one facility and admission to the new facility;

(B) more than 30 days have elapsed between discharge and readmission to the Medicaid nursing facility vendor payment system because of hospitalization or stays funded by Medicare reimbursement;

(C) the resident's current MN determination has expired; or

(D) the resident has remained for more than 30 days in another facility that has had its contract cancelled and no new contract issued within that time period.

(5) The Texas Department of Human Services (DHS) does not make vendor payment when a MN determination expires. A provider is not entitled to payment for services rendered from the expiration date to the new effective date of a resident's MN determination. Vendor payment made by DHS for that period is subject to recoupment.

(6) If more than 30 days elapse between the effective dates of a facility's contract cancellation and new contract, the facility must initiate an MN determination assessment for admission for residents who have remained in the facility during the noncontracted period.

(7) The stamp-in date at the LTCU will be considered to be the date mailed only if sent by certified mail and according to the requirements in §19.1603(3) of this title (relating to Definition of the Review Process).

§19.1607. Denied Medical Necessity. If the long-term care unit nurse determines that the written criteria for admission or continued stay are not met, the nurse's decision is reviewed by the long-term care unit physician.

(1) If the physician agrees with the decision, the attending physician is notified within two working days and allowed an opportunity to present his views and any additional information about the resident's need for continued stay. This notification must be documented. If the long-term care unit physician performs the admission or continued-stay review instead of the long-term care unit nurse and finds that the admission or continued stay is not necessary, he may notify the attending physician directly.

(2) If the attending physician does not respond or contest the findings of the committee or sub-group or those of the physician who performed the admission or continued-stay review within two working days, then the findings are final.

(A) Written notification of final determination must be sent to the attending physician, the resident (or responsible party), the facility administrator, and the state office of the Texas Department of Human Services no later than two days after the determination, and in no event later than three working days after the end of the assigned continued-stay period.

(B) If possible, the written notification should be received by all parties within the stated time period.

(3) If the attending physician contests the findings of the committee or sub-group, or those of the physician who performed the admission or continued-stay review, or if he presents additional information about the need for admission or continued stay, at least one additional physician member of the long-term care unit must review the case.

(A) If two physician members determine that the resident's admission or stay is not medically necessary or appropriate after considering all the evidence, their determination becomes final.

(B) Written notification of this decision must be sent to the attending physician, resident (or responsible party), facility administrator, and the state office of the Texas Department of Human Services (DHS) no later than two days after the decision, and in no event later than three workdays after the end of the assigned continued-stay period.

(4) A non-physician must not make a final determination that a resident's stay is not medically necessary or appropriate.

(5) Resident's appeals will be processed as outlined in the Fair Hearings, Fraud, and Civil Rights Handbook of the Texas Department of Human Services.

§19.1608. Retroactive Medical Necessity Determinations. Private-pay individuals living in Medicaid-certified nursing facilities, or distinct parts, who do not receive SSI cash benefits may be eligible for three months prior vendor payments. To ensure that vendor payments begin on the date that an individual's financial resources are exhausted, the potential resident must have a valid medical necessity (MN) determination and the Nursing Facility staff should maintain his clinical records in compliance with the Medicaid utilization review (UR) requirements.

(1) To be in compliance with UR requirements, potential residents' clinical records must be maintained and reviewed as follows.

(A) The physician's plan of care must be dated no more than 30 days before the date that the facility administrator learned about the patient's application for Medicaid assistance, or before authorization for vendor payment.

(B) The physician's recertifications and plans of care must be maintained and reviewed according to the requirements described in §19.1603 of this title (relating to Definition of the Review Process); §19.1002 of this title (relating to Physician Visits); and §19.1007 of this title (relating to Certification and Recertification Requirements); and §19. 1901 of this title (relating to Administration).

(2) If a resident is found to be otherwise eligible for vendor payments for all or part of the three months prior to the date of his application for Medicaid assistance, Texas Department of Human Services (DHS) Medicaid eligibility staff will notify facility staff. Facility staff must review the applicant's clinical record to ensure that it meets the UR requirements and submit a request for MN determination form (CARE) for the retroactive period. Facility staff must ensure that the form:

(A) indicates potential eligibility for Medicaid;

(B) clearly identifies, in the form's comment section, the applicable retroactive period(s) for which payment is requested; and

(C) includes, in the form's comment section, a statement of certification that the applicant required NF services during the applicable period(s). This statement must be initialed by the attending physician.

(3) If an applicant meets all other eligibility criteria for three-months-prior coverage, DHS makes retroactive vendor payments according to the assigned Texas Index for Level of Effort (TILE) level for the period indicated on the CARE form submitted for retroactive coverage.

(4) DHS makes retroactive vendor payments for only those months during which physician-certification, plan-of-care, and medical necessity requirements are met. The Long Term Care Unit (LTCU) nurse verifies, during the first TDH on-site visit after establishment of any retroactive medical necessity, that the applicant's record includes the physician's certification, recertification, and plans of care, and that the plans were reviewed as required during the applicable period(s).

(5) The effective date of the new MN determination for the retroactive period of eligibility is the first day of the earliest month in which the applicant qualified for a medical necessity determination.

§19.1609. General Qualifications for Medicaid Medical Necessity Determinations. Medical necessity (MN) is the prerequisite for participation in the Medicaid (Title XIX) Long-term Care program. This section contains the general qualifications for an MN determination. To verify that medical necessity exists, an individual must meet the conditions described in paragraphs (1) and (2) of this section or the conditions described in paragraph (3) of this section. To qualify under the conditions described in paragraph (3) of this section, the individual must first be evaluated and found ineligible for Nursing Facility care.

(1) The individual must demonstrate a medical disorder or disease or both, with a related impairment that:

(A) limits his ability to recognize problems, changes in his condition, and the need for or side effects of prescribed medications;

(B) is of sufficient seriousness that his needs exceed the routine care which may be given by an untrained person; and

(C) requires nurses' supervision, assessment, planning, and intervention that are available only in an institution.

(2) The individual must require medical/nursing services that:

(A) are ordered by and remain under the supervision of a physician;

(B) are dependent upon the individual's documented medical, physical, and/or functional disorders, conditions, or impairments;

(C) require the skills of registered or licensed vocational nurses;

(D) are provided either directly by or under the supervision of nurses in an institutional setting; and

(E) are required on a regular basis.

(3) The individual must have been admitted to a nursing facility for a medically related condition and must require medical/nursing services that:

(A) are ordered by and remain under the supervision of a physician;

(B) depend upon the individual's documented medical or physical disorders, with related functional disorders, conditions, or impairments; and

(C) have lived in an intermediate-care, skilled nursing facility, or nursing facility for five consecutive years, causing him to lack a readily available support system and adequate financial resources to maintain him in a community setting.

§19.1610. Criteria Specific to a Medical Necessity Determination. Specific criteria are used to determine which medical necessity is most appropriate for an applicant or a resident. The Texas Department of Human Services (DHS) recognizes, however, that these criteria are not all inclusive. The applicant's or the resident's condition may be so complex that only the professional medical judgment of long-term care unit (LTCU) physicians will be the deciding factor according to the procedures specified in §§19.1601-19. 1604 of this title (relating to Medical Necessity (MN) and Utilization Review (UR); Utilization Review Plan; Definition of the Review Process; and Physicians' Certifications and Recertifications).

(1) For an applicant or a resident to qualify for nursing facility care, the resident's medical problems and health care needs are, at a minimum, such that he requires institutional care under the supervision of a physician and routine assessment, planning, and intervention by a registered or a licensed vocational nurse. An applicant or a resident must need services for which registered or licensed vocational nurses' supervision is required on a daily and/or routine basis. Services which could qualify an individual for a medical necessity determination include but are not limited to:

(A) routine monitoring of an individual in stable condition to determine responses to the treatment plan and to detect problems requiring the physician's attention and/or a change in the plan of care;

(B) administration of intramuscular (IM) medications and observation of the individual's response and side effects;

(C) administration and adjustment of medication for pain and monitoring of result and side effects;

(D) administration of insulin to a diabetic individual whose condition is stable but who is unable to self-administer insulin because of physical, medical, or mental reasons;

(E) routine oxygen administration after a regimen of therapy has been established and/or therapy can be done by the individual with nursing supervision;

(F) routine oral suctioning;

(G) tracheostomy care when a individual's condition is stable, but he is unable to care for his tracheostomy;

(H) routine IPPB therapy after a regimen of therapy has been established and/or therapy can be done by the individual with nursing supervision;

(I) routine maintenance of an indwelling catheter system;

(J) routine care of stoma and surrounding skin in the presence of a colostomy or ileostomy and routine care of a suprapubic catheter;

(K) decubitus care involving superficial, non-infected lesions and preventive measures when an individual has a physical illness which makes him susceptible to decubiti formation;

(L) bowel and bladder control training and maintenance after a successful program has been established;

(M) care of an individual with an amputation or a fracture requiring routine care of a stylized condition and reinforcement of an established rehabilitation plan;

(N) rehabilitation/restorative care, passive range-of-motion (ROM) exercises and positioning, care and assistance in application of braces/ prosthetic devices or reinforcement of maintenance rehabilitative procedures.

(2) Intermediate Care II (ICF II). ICF II level-of-care determinations are limited to Title XIX resident who had an ICF II, ICF III, or skilled level-of-care determination and were residing in a Nursing Facility on March 1, 1980. ICF II level-of-care determinations are available to persons who had an ICF II, ICF III, or skilled medical necessity on March 1, 1980, and leave the Nursing Facility for a hospital stay, therapeutic home visit, or other Title XIX service and return to a nursing facility with no break in Medicaid eligibility. These residents retain their benefits regardless of subsequent level-of-care determinations, with the exception of a denial of medical necessity. (See §19. 1609(3) (relating to General Qualifications for Medicaid Medical Necessity Determinations)).

§19.1611. Annual and Periodic Medical Review by Texas Department of Health.

(a) The Texas Department of Health (TDH) provides an annual interdisciplinary review of residents residing in nursing facilities at the time of annual survey for licensure and certification.

(b) The long-term care units, including physicians, nurses, social workers and other related health care personnel, of the TDH are responsible for all periodic independent medical review evaluation procedures for determinations of medical necessity under Title XIX for nursing facilities.

(c) Annual surveys (noted in subsection (a) of this section) may include a review of requests for MN determination and services required and supplied to residents by the Nursing Facility. The annual survey for licensure and certification include a review to determine if the care and services provided by the facility staff meet the health needs of residents. The interdisciplinary comprehensive care plan, and any alternate care plan may also be reviewed.

(d) Facility staff must cooperate with and fully support TDH team members during annual surveys or periodic on-site inspections for the purpose of personal contact with and observation of each resident and the review of each resident's records.

§19.1612. Signature. The Texas Department of Health (TDH) long term care unit (LTCU) staff have the primary purpose of quality assurance for Title XIX residents and do not have responsibilities as contracted consultants whether it be a registered nurse (RN), consultant, pharmacy consultant, dietary consultant, or others. It is not in keeping with the role and responsibilities of the LTCU staff to sign the patient care policies of a 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-9005205 Cathy Rossberg
Agency Liaison, Policy Communication Services
Texas Department of Human Services

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

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Subchapter R. Vendor Payment

• 40 TAC §§19.1701-19.1708

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

§19.1701. Vendor Payment (Items and Services Included).

(a) A facility provides, under the terms of the contract, for the total medical, nursing, and psychosocial needs of each recipient.

(b) The daily rate is compatible with reasonable charges consistent with efficiency, economy, and quality of total care. The facility must ensure that care meets the health needs and promotes the maximum well-being of recipients. It includes:

(1) social care;

(2) regular, special, and supplemental diets;

(3) non-legend drugs, with the exception of insulin. Additionally, this reference does not include alcoholic beverages unless prescribed for medicinal purposes. Alcoholic beverages not prescribed for medicinal purposes are at the expense of the recipient or the family. To determine if the alcoholic beverage is prescribed for medicinal purposes, the clinical record has to include the amount of alcohol prescribed for the recipient, the frequency the alcohol is to be administered to the recipient, and the medical reason for the alcohol. Vendor payment is not made for any deviation from this required documentation;

(4) medical accessories and equipment;

(A) The following items must be prescribed by the attending physician:

(i) medical accessories include but are not limited to canulas, tubes, masks, IV fluids and IV equipment.

(ii) medical equipment includes but is not limited to wheelchairs, crutches, canes, oxygen tanks, chest respirators, mattresses, hospital-type beds, enteral pumps, oxygen concentrators, trapeze bars, and walkers.

(B) Facilities are not required to provide any particular brand or type of medical accessory or equipment, but only those items necessary to ensure appropriate recipient care.

(i) If the physician does not order a specific type or brand of medical accessory or equipment, the facility may choose the type or brand.

(ii) If the recipient or family prefers a specific type or brand of item rather than the ones furnished by the facility, the recipient, responsible party, or family may be billed for the item, or the recipient's personal funds may be used to purchase the item, or both.

(iii) Before purchasing or charging for the preferred item, the facility must secure written authorization from the recipient or family indicating his desired preference, the date, and signature of the person requesting the preferred item. The signature may not be that of an employee of the facility.

(5) Medical supplies. Medical supplies include but are not limited to tongue depressors, swabs, bandaids, cotton balls, and alcohol.

(A) These items do not require a prescription from the attending physician.

(B) Facilities are not required to provide any particular brand or type of medical supply, but only those items necessary to ensure appropriate recipient care.

(C) If the recipient or family prefers a specific type or brand of item rather than ones furnished by the facility; the recipient, responsible party, or family may be billed for the item, or the recipient's personal funds may be used to purchase the item, or both.

(D) Before purchasing or charging for the preferred item, the facility must secure written authorization from the recipient or family indicating his desired preference, the date, and signature of the person requesting the preferred item. The signature may not be that of an employee of the facility.

(c) Facilities are required to furnish and maintain, in good repair, equipment necessary to meet the needs of the recipient, such as the following:

(1) equipment which can be used by more than one person, such as wheel-chairs, adjustable chairs, walkers, crutches, and canes; and

(2) assistive devices that are used to assist individuals in accomplishing a task.

(d) Facilities are also required to furnish medical supplies necessary to meet the needs of the recipient.

(e) Payment for these types of equipment and supplies is an allowable cost and is reimbursable under the cost-related reimbursement methodology.

(f) Indwelling catheters, ileostomy bags, colostomy bags, and other related supplies are considered prosthetic devices and must be provided by the facility. For recipients that have Part B Medicare benefits, this equipment must be paid for by Medicare. If Medicare benefits are unavailable, this equipment is an allowable cost and is reimbursed under the Medicaid cost-related reimbursement methodology.

(g) Coverage of certain medical equipment and supplies as a Medicare Part B benefit is applicable only if the Medicare beneficiary is residing in his own home or in a bed in an institution which can be defined as his own home.

(h) If a recipient desires equipment for full-time use as a convenience rather than a documented need, its purchase is the responsibility of the recipient. In these cases, only the recipient can use the equipment, and it becomes the personal property of the recipient and is so identified.

(i) Upon discharge from the facility, the recipient must retain the equipment which he has purchased. If the recipient dies, the purchased equipment must be transferred to the estate. If it is donated or sold to the facility by the recipient or the estate, the transaction must be documented. (See §19.214 of this title (relating to Personal Property)).

(j) Other services included in the daily rate, but not all-inclusive, are:

(1) hygienic care of the hair, including trimming male patient's hair; and

(2) regular laundry services, except dry cleaning.

(k) The facility must furnish to recipients the basic personal need items that are essential in maintaining personal health, hygiene, and cleanliness. Personal need items included in the daily rate, but not all inclusive, are:

(1) toothbrush;

(2) toothpaste;

(3) shampoo;

(4) shaving cream;

(5) razors;

(6) razor blades;

(7) sanitary napkins;

(8) comb or hair brush;

(9) soap;

(10) body lotion;

(11) denture adhesive;

(12) denture cleaner;

(13) facial tissues; and

(14) cloth or disposable diapers. If the attending physician orders diapers for incontinent care, the facility must provide them. If the family makes written request to the facility to put diapers on the recipient, and the attending physician and Director of Nurses (DON) document in the clinical record that there is no real need for diapers, the recipient, responsible party, or family may be billed for the diapers, or the recipient's personal funds may be used to purchase the items, or both.

(l) The specific type or brand of personal needs items used by the facility must be disclosed to the recipient; then, if a recipient prefers to use a specific type or brand of a personal need item(s) rather than the item(s) furnished by the facility, he may use his personal funds to purchase the item(s).

(1) Before purchasing or charging for the preferred item(s), the facility must secure written authorization from the recipient or family indicating his desired preference, the date, and signature of the person requesting the preferred item(s).

(2) The signature may not be that of an employee of the facility. If the recipient's personal funds are used to purchase an item(s), the item(s) is for his sole use.

(3) When the facility purchases personal need item(s) with the recipient's personal funds, the facility must ensure that the item(s) is in an individual container or package that is labeled with the recipient's name. The facility is not held responsible for labeling personal need items brought into the facility and not reported to the management.

(m) If services are provided in the facility for the recipient that are not included in the daily rate, payment is arranged between the recipient and the provider of services. Exceptions to this are listed in §19.1702 of this title (relating to Additional Charges (Items and Services Excluded from Vendor Payment)). The facility may collect payment from the recipient to purchase services and items outside the facility.

(n) Except as described in paragraphs (1) and (2) of this subsection, the Texas Department of Human Services (DHS) makes vendor payments to Nursing Facilities for the day a recipient enters a nursing facility, but not for the day a recipient leaves a facility. The two exceptions are as follows.

(1) If entrance and departure are on the same day, and the recipient does not enter another Title XIX facility on that day, DHS pays for the entire day.

(2) If departure is because of the recipient's death and the deceased recipient is not sent to another Title XIX facility for legal procedures necessary upon the death of the recipient, pays for the entire day.

(o) Vendor payments are made to Medicaid Nursing Facilities that comply with the PASARR requirements.

(p) Amounts paid to facilities in the per diem payment to meet the staffing requirements of §19.801(1) and(2) of this title (relating to Nursing Services) may be reduced when the specified staffing requirements are not met for any 30 days out of any 45-day period.

(1) Reduction in payment begins the 46th day after the 1st day that staffing requirements are not met when there are 30 such days in a 45-day period.

(2) Reduction in payment continues until such time that the facility notifies TDH and DHS that staffing requirements are met and the administrator anticipates that the requirements will continue to be met.

(3) Upon discovery that staffing requirements were not met and DHS was not notified, any amounts inadvertently paid to the facility may be immediately recouped using the specifications in this subsection.

§19.1702. Additional Charges (Items and

(a) The cost of oxygen, the gas only, is not included in the daily vendor rate. A nursing facility may charge for the oxygen only. If prescribed by the physician, the cost of oxygen may be charged to the recipient, the rate to be determined as follows.

(1) Oxygen must be charted in the recipient's clinical record as to time and quantity. To substantiate the amount charged, the facility must document in the recipient's financial record the time used, quantity used, and amount charged the facility by the supplier and the amount charged the recipient by the facility.

(2) Facilities are allowed the option of charging by the cost per tank for oxygen when it is used exclusively by one recipient on a recurring basis, or charging by the partial tank when used by more than one recipient.

(3) In no case shall the facility charge the recipient more for oxygen than was the facility's cost.

(4) Sample formula to be used when charging for partial use of a tank: Rate per liter (from supplier) x liters per hour (3,4,etc.) x minutes used = charge to recipient 60.

(b) The Texas Department of Human Services (DHS) does not make vendor payments when a Title XIX recipient is absent from the facility because of:

(1) therapeutic home visits that extend beyond three days; or

(2) hospital inpatient services. However, DHS makes vendor payments for periods when a recipient is a hospital outpatient subject to the following limitations.

(A) DHS makes vendor payments when a Title XIX recipient is absent from the Nursing Facility past midnight for outpatient hospital services, including services resulting from hospital outpatient observation. In these cases the facility must document in the clinical record that the recipient was not admitted as an inpatient in the hospital.

(B) If the recipient is admitted to the hospital for inpatient services anytime during a hospital outpatient observation period, a patient transaction notice showing discharge must be submitted effective the date the recipient left the Nursing Facility.

(c) The facility may enter into a written agreement with the recipient or responsible party to reserve a bed, according to the specifications of §19.303 of this title (relating to Notice of Bed-hold Policy and Readmission).

(1) The facility may charge the recipient an amount not to exceed the DHS daily vendor rate according to the recipient's classification at the time the individual leaves the facility.

(2) The facility must document all bed-hold charges in the recipient's financial record at the time the bed-hold reservation services was provided.

(3) The facility may charge a bed-hold fee only if the recipient has left the physical premises of the building structure. A bed-hold fee may not be charged if the recipient is in another part of the same facility.

(4) The facility may not charge a bed-hold fee if the Texas Department of Human Services (DHS) is paying for the same period of time, as in a three day therapeutic home visit.

(d) The facility may charge for transportation beyond normal transportation as defined in §19.1931 of this title (relating to Medical Transportation).

(e) The billing of flu shots to recipients by the nursing facility is not allowed. If there are written orders by the physician that the individual recipient is to be given a flu shot, the cost is to be billed by the physician to the National Heritage Insurance Company. does not pay for immunizations under its Vendor Drug Program.

(f) Vendor payments are not made to Medicaid nursing facilities that admit or retain recipients that have not been screened by the TDMHMR. Vendor payments made inadvertently to a nursing facility are immediately recouped.

§19.1703. Therapeutic Home Visits Away from the Facility.

(a) The facility must have written policies and procedures governing recipient therapeutic home visits away from the facility for the purpose of visiting with relatives and friends.

(b) The following conditions must be met for the facility to receive vendor payment:

(1) the recipient's plan of care provides for physician-authorized therapeutic visits;

(2) if a visit exceeds three days, the facility submits a discharge form effective the first day. Days are defined as 24-hour periods extending from midnight to midnight. Situations that require a discharge form effective the first day include:

(A) alternate care living arrangements, including at home; and

(B) transfer or discharge to other medical care or living arrangements covered under Title XIX;

(3) the facility must maintain a record of each therapeutic visit away from the facility. These records are available for review by Texas Department of Human Services (DHS) staff and a semiannual verification of visits is conducted by this staff;

(4) verification that therapeutic visits took place and were documented is a part of the audit procedures during the DHS audit of the facility. does not pay for therapeutic visits which were not documented.

(c) The Texas Department of Human Services does not make vendor payments for any time a Title XIX recipient-patient is away from the facility because of inpatient hospitalization.

(d) Before a facility transfers or discharges a recipient, the facility must provide written notification to the recipient, and, if known, a responsible party, or family or legal representative, regarding the three-day time limit for a home visit, as specified in subsection (b)(2) of this subsection, and that Medicaid does not pay for hospital visits, as specified in subsection (c) of this section. Readmittance of a recipient to the facility must be consistent with §19.1702(b) -(c) of this title (relating to Additional Charges (Items and Services Excluded from Vendor Payment).

§19.1704. Vendor Payment Information.

(a) Vendor payment will be made based upon the nursing facility administrator's or the administrative designee's approval of the Nursing Care Statement.

(b) Vendor payment will be made at periodic intervals but not less than once per month for services rendered during the previous billing period.

(c) The vendor payment for an entire month will be in accordance with the number of calendar days in the month.

(d) Vendor payment for time periods of less than an entire calendar month shall be made in accordance with the number of days care was provided beginning with the effective date on the Notification of Recipient Medical Necessity Determination and/or Vendor Payment Plan.

(e) Days are defined as 24-hour periods extending from midnight to midnight. Payment is computed in terms of whole days, even though the recipient may have been in a nursing facility only a fractional part of the day of entrance. (See §19. 1701(m) of this title (relating to Vendor Payment (Items and Services Included)).

(f) Vendor payment shall be made in terms of daily rates.

(g) The recipient must have the status of a certified recipient, must have been determined to be in need of Nursing Facility care, and must be physically located in a Medicaid certified bed of a facility at the time the service is rendered to

receive payment for the service.

§19.1705. Effective Date of Vendor Coverage. If an applicant is determined to be eligible and in need of Nursing Facility care, the effective date of vendor coverage is either the date the individual entered the facility, the date of application, or the date the need for nursing facility care was established, whichever date is the latest.

(1) Once the effective date is established, the Texas Department of Human Services (DHS), through the contract agreement with the facility, sets the acceptable rates for services.

(2) If the facility charges the applicant an amount over the recognized monthly rate set by DHS, the difference must be refunded to the recipient or the responsible party.

(3) Private pay individuals living in Medicaid certified nursing facilities, or distinct parts, who do not receive SSI cash benefits may be eligible for "Three months prior" vendor payments. (See §19. 1608 of this title (relating to Retroactive Medical Necessity Determinations)).

§19.1706. Supplementation of Vendor Payments.

(a) Facilities must abide by Public Law 95-142 related to Medicare/Medicaid antifraud and abuse amendments.

(b) Participation will be limited to providers of services who accept, as payment in full, the amounts paid in accordance with the fee structure approved by the Texas Department of Human Services (DHS).

(c) Providers who have a contract with DHS and who solicit contributions, donations, or gifts from Medicaid recipients or family members will be in noncompliance with federal requirements.

(d) The facility must inform Medicaid recipients and their families that their right to Nursing Facility services is not contingent upon contributions. The facility must give copies of this notice to the recipient, and either the responsible party or family representative.

(e) If a recipient, family member, guardian, or other interested party does make a free-will contribution, the Nursing Facility administrator executes a statement for signature by both the contributor and the administrator. It will state that the services provided to any Medicaid recipient in the Nursing Facility are not predicated upon contributions and that the gifts are free-will contributions.

§19.1707. Penalties for Supplementation. A felony conviction with a fine of not more than $25,000 or imprisonment for not more than five years or both, can be imposed on anyone in the facility who knowingly and willfully:

(1) accepts, from the recipient, money or other considerations in excess of rates established by the state for services provided under a state plan approved under Title XIX; or

(2) charges, solicits, accepts, or receives any gifts, money, donation, or other consideration in addition to amounts required to be paid under a state plan approved under Title XIX (other than charitable donations from an organization or a person unrelated to the recipient as a precondition for admitting or keeping a recipient in the nursing facility if the cost of services is paid for under the state plan.

§19.1708. Limitations on Provider Charges to Patients. A provider of Medicaid (Title XIX) services may neither charge nor take other recourse against Medicaid recipients, their family members, or their representatives for any claim denied or reduced by because of the provider's failure to comply with any department rule, regulation, or procedure.

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

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

TRD-9005206 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 S. Reimbursement Methodology for Nursing Facilities

• 40 §§19.1801-19.1809

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

§19.1801. General Reimbursement Information.

(a) Texas Medicaid long-term care. The Department of Human Services (DHS) reimburses Texas Medicaid long-term care contracted providers for care provided to recipients in nursing facilities (NF). The Texas Board of Human Services determines reimbursement rates that are statewide and uniform by class of service as specified in this section and in §24.101 and §24.102 of this title (relating to General Specifications and Methodology).

(b) Uniform rates. Reimbursement rates are uniform statewide with the possible exception of demonstration or pilot implementation projects involving experimental classes, as specified in §19.1807(d) of this title (relating to Rate Setting Methodology).

§19.1802. Cost Reporting Procedures. Each provider must submit financial and statistical information on cost report forms provided by the Department of Human Services (DHS) or on facsimiles which are formatted according to DHS specifications and are preapproved by DHS staff.

(1) Accounting methods. All information submitted on cost reports must be based upon the accrual method of accounting except where otherwise specified in the lists of allowable and unallowable costs and in the case of governmental entities operating on a cash basis.

(2) Chart of accounts. Providers must complete cost reports according to DHS' prescribed chart of accounts and statements of allowable and unallowable costs.

(3) Recordkeeping requirements. Each provider must maintain records according to the requirements stated in §19.2010 of this title (relating to Surety Bonds or Letters of Credit). Providers must ensure that records are accurate and sufficiently detailed to support the legal, financial, and other statistical information contained in the cost report. Failure to maintain records that support the information submitted on the cost report in a form which is in compliance with DHS's chart of accounts for long-term care providers constitutes grounds for contract cancellation and recovery of liquidated damages from the provider. In cases of noncompliance, DHS allows providers 90 days, subsequent to notification, to comply with DHS record-keeping requirements. DHS may withhold all vendor payments to the provider during those 90 days or until the deficiency is corrected. If the provider does not correct the deficiencies within 90 days from the date of notification, DHS may cancel the provider's contract and recover liquidated damages from the provider, if any are specified in the contract.

(4) Allowable and unallowable costs. Providers must complete the cost report according to DHS's statements of allowable and unallowable costs.

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

(6) Due date. Providers must submit cost reports to DHS no later than

three months following the end of the provider entity's fiscal year.

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

(8) Cost report supplements. DHS may at times require additional financial and other statistical information to ensure the fiscal integrity of the Texas Medicaid Long-term Care Program. Providers must submit the information to DHS upon request, to the extent that it can be reasonably expected to be at the disposal of the provider.

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

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

(11) On-site cost report audits.

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

(B) On-site audit standards. DHS performs on-site cost report audits in a manner consistent with generally accepted auditing standards (GAAS) approved by the American Institute of Certified Public Accountants and included in Standards for Audit of Governmental Organization, Programs, Activities and Functions, issued by the United States Comptroller General.

(C) Access to records. Each provider entity or its designated agent(s) must allow access to any and all records necessary to verify information submitted to DHS on Medicaid cost reports. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the provider. If a provider does not allow inspection of pertinent records within 30 days following written notice from DHS, a hold is placed on vendor payments until access to the records is allowed. If a central office or other entity pertaining to a multi-facility operation refuses access to records, then the vendor hold is extended to all related parties having Medicaid contracts with DHS.

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

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

§19.1803. Allowable and Unallowable Costs–General Information.

(a) General information. The Texas Department of Human Services (DHS) defines allowable and unallowable costs to identify expenses which are reasonable and necessary to provide recipient care to Medicaid recipients on the part of an economical and efficient provider. The primary objective of the cost reporting process is to determine fair and reasonable reimbursement rates to providers. To achieve that objective, DHS compiles a rate base consisting, if possible, only of allowable cost information. If DHS classifies a particular type of expense as unallowable for purposes of compiling a rate base, it does not mean that individual providers may not make expenditures of this type. Allowable costs included in the rate base determine only the costs and maximum reimbursement rates associated with an economical and efficient operator. Cost reporting by DHS Medicaid contracted providers should be consistent with generally accepted accounting principles (GAAP). In cases where DHS cost reporting rules conflict with GAAP, IRS, or other authorities, DHS rules take precedence for Medicaid provider cost reporting purposes.

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

(1) Allowable costs. Those expenses that are reasonable and necessary in the normal conduct of operations relating to recipient care in a nursing facility (NF). If possible, only allowable costs are included in the rate base.

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

(B) Necessary refers to the relationship of the cost to the provision of recipient care. To qualify as a necessary expense, a cost must be one that is usual and customary in the operation of a NF, and must meet all of the following requirements:

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

(ii) the cost does not appear on the list of specific unallowables;

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

(iv) the expense was incurred in the purchase of materials, supplies, or services provided directly to the recipients or staff of individual NFs in the conduct of normal operations relating to recipient care;

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

(C) Normal conduct of operations relating to recipient care refers to otherwise allowable costs that include, but are not limited to, the following:

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

(ii) related-party transaction. Allowable costs are those which result from arms-length transactions involving unrelated parties. In related-party transactions, the allowable cost to the NF is the cost to the related party. Allowable costs in this regard are limited to the lesser of the actual purchase price to the related party, or usual and customary charges for comparable goods or services. Two or more individuals or organizations constitute related parties whenever they are affiliated or associated in a manner that entails some degree of legal control or practical influence of one over the other. This affiliation or association may be based on common ownership, past or

present mutual interests in long-term care or other types of enterprises, or family ties.

(2) Unallowable costs. Those expenses that are not reasonable or necessary for the provision of recipient care in a NF, according to the criteria as specified in paragraph (1) of this subsection. Unallowable costs are not included in the rate base used for determining recommended reimbursement rates.

§19.1804. List of Allowable Costs. The following list of allowable costs is not comprehensive, but serves as a general guide and clarifies certain key expense areas. The absence of a particular cost does not necessarily mean that it is not an allowable cost. Amounts, other than the Medicaid per diem rate, reimbursed to facilities for goods or services provided to Medicaid recipients by facility staff or consultants must be offset against the appropriate line items for salaries and wages or other service expenses in the recipient care cost center of the Medicaid cost report. Except where specific exceptions are noted, the allowability of all costs is subject to the general principles specified in §19.1803(a) of this title (relating to Allowable and Unallowable Costs).

(1) Compensation of nursing facility (NF) employees. Only those employees who provide services directly to the recipients or staff of individual NFs in the normal conduct of operations relating to recipients are: director of nursing; registered nurses; licensed vocational nurses; aides, orderlies, and other salaried direct care staff; medical clerks; food service supervisor; cooks and other food service personnel; laundry and housekeeping staff; recreational staff; social workers; administrator; assistant administrator; houseparents; accountants and bookkeepers; other clerical and secretarial staff; buildings, equipment, and grounds maintenance staff. This includes:

(A) wages and salaries;

(B) payroll taxes and insurance. Federal Insurance Contributions Act (FICA or Social Security), Unemployment Compensation Insurance, Workmens' Compensation Insurance;

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

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

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

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

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

(3) Compensation of outside consultants. This includes medical director, registered nurse, social worker, pharmacist, speech-language pathologist, audiologist, psychologist, recreational therapist, records librarian, physical therapist, occupational therapist, and dentist.

(4) Management fees paid to unrelated parties. The department considers management fees paid to unrelated parties as allowable.

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

(A) In multi-facility organizations where the clear separation of costs to individual facilities is not always possible, the allowable portion of actual costs for materials, supplies, and services may be allocated to individual Texas facilities on a pro rata basis. Although the preferred allocation method for these costs is a recipient-day-of-service basis, providers who wish to use a pro rata cost basis may do so. Once a provider has chosen an allocation method, however, he must consistently use that method in preparing subsequent cost reports.

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

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

(ii) The expense does not duplicate other expenses.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) building equipment; buildings and grounds improvements and repairs; durable medical equipment, furniture, and appliances; and power equipment and tools used for buildings and grounds maintenance: minimum schedules consistent with estimated useful lives of depreciable hospital assets, published by the American Hospital Association;

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

(B) Provider-owned property. Property owned by the provider entity and improvements to property owned, leased, or rented by the provider entity that are valued at less than $500 at the time of purchase may be treated as ordinary expenses.

(C) Rental and lease expense. Rental and lease expense paid to a related party is limited to the actual allowable cost incurred by the related party. This includes buildings, building equipment, transportation equipment used for the transport of recipients or materials and supplies utilized by the NF, durable medical equipment, furniture and appliances, and power equipment and tools used for buildings and ground maintenance.

(D) Interest expense.

(i) Interest expense is allowable on loans for the acquisition of allowable items, subject to all of the requirements for allowable costs, plus two additional ones.

(I) The loan must be evidenced in writing.

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

(ii) Allowable interest expense on related-party loans is limited to the lesser of:

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

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

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

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

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

(10) Business and professional association dues. These dues are limited to associations devoted primarily to issues of recipient care.

(11) Outside training costs. These costs are limited to direct costs (transportation, meals, lodging, and registration fees) for training provided to personnel rendering services directly to the recipient or staff of individual NFs. To qualify as an allowable cost, the training must be:

(A) located within the continental United States; and

(B) related directly and primarily to recipient care.

(12) Nonlegend drugs. This includes alcoholic beverages only when prescribed by a physician for treatment of a specific medical condition.

§19.1805. List of Unallowable Costs. The following list of unallowable costs is not comprehensive, but rather serves as a general guide and clarifies certain key expense areas. The absence of a particular cost does not necessarily mean that it is an allowable cost. Except where specific exceptions are noted, the allowability of all costs is subject to the general principles specified in §19.1803(a) of this title (relating to Allowable and Unallowable Costs):

(1) compensation in the form of salaries, benefits, or any form of perquisite provided to owners, partners, officers, directors, stockholders, employees, or others who do not provide recipient-care-related services directly to the recipient or staff of individual nursing facilities (NFs);

(2) personal expenses not directly related to the provision of long-term recipient care in a NF;

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

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

(5) advertising expenses other than those for yellow pages advertising, advertisements for employee recruitment, and advertising to meet any statutory or regulatory requirements;

(6) business expenses not directly related to the care of recipient in a long-term care facility. This includes business investment activities, stockholder and public relations activities, and farm and ranch operations;

(7) political contributions;

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

(9) trade discounts of all types;

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

(11) dues to all types of political and social organizations, and to professional associations not directly and primarily con-

cerned with long-term recipient care;

(12) entertainment expenses except those incurred for entertainment provided to the staff of a NF as an employee benefit;

(13) expenses for medical services not provided to Medicaid recipients;

(14) expenses incurred for services provided in a NF but not related to long-term recipient care. This includes meals not provided to recipients or to NF employees as a part of an employment contract, nonmedical rentals, barber and beauty shop operations, canteens and gift shops, and vending machines;

(15) boards of directors fees;

(16) fines and penalties for violations of regulations, statutes, and ordinances of all types;

(17) fund raising and promotional expenses;

(18) expenses incurred in the purchase of goods and services with revenues from gifts, donations, endowments, and trusts;

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

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

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

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

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

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

(25) returns, allowances, and refunds;

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

(27) out-of-state travel expenses, except for provision of recipient-care-related services to NF personnel. This includes training and quality assurance functions;

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

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

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

(31) expenses which cannot be adequately documented;

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

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

§19.1806. Cost Finding Methodology.

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

(1) The Texas Department of Human Services (DHS) excludes from the rate base any unallowable expenses included on the cost report and makes adjustments to expenses reported by providers to ensure that the rate base reflects costs which:

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

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

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

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

(A) Revenue offsets. DHS distinguishes between two types of revenues: recipient revenues and other revenues. Recipient revenues are contractual payments for basic services provided in an SNF or ICF. Recipient revenues include payments by recipients, their families and third parties such as Medicaid, Medicare, private insurance and federal, state and local government. Other revenues include interest income, gifts, grants, donations, beauty and barber shop receipts, prior year over payments, vending machine proceeds, gift shop receipts, and payment for meals by employees or guests. These other revenues are used to offset reported expenses after allowances for reasonable overhead costs. Interest income is used to offset working capital interest expense, not to exceed total interest costs. An exception is interest income from funded depreciation accounts or qualified pension funds, which is not treated as a revenue offset item. For facilities reporting central office overhead expenses, interest income is offset against interest expenses before the allocation of central office costs to individual NFs.

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

(i) Increases in buildings depreciation and rental or lease expense for buildings rented or leased from a related party are allowed when facilities undergo changes in ownership, and are limited to the lesser of:

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

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

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

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

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

Determination of Inflation Indices).

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

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

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

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

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

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

(iii) building depreciation;

(iv) building equipment depreciation;

(v) departmental equipment depreciation;

(vi) leasehold improvement amortization;

(vii) other amortization;

(viii) total interest expense;

(ix) total insurance for buildings and equipment;

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

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

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

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

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

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

(i) 85%; or

(ii) the overall average occupancy rate for contracted beds in facilities included in the rate base during the cost reporting periods included in the base.

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

(b) Cost determination by cost centers. DHS combines adjusted expenses from the rate base into two cost centers.

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

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

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

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

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

§19.1807. Rate Setting Methodology.

(a) Case mix classes. DHS reimbursement rates for NFs vary according to the assessed characteristics of recipient. Rates are determined for 11 case-mix classes of service, plus a 12th, temporary classification assigned by default when assessment data are incomplete or in error.

(b) Rate determination. The Texas Board of Human Services determines general reimbursement rates for medical assistance programs for Medicaid recipients under the provision of Human Resources Code, Chapter 24 (relating to Reimbursement Methodology). The Texas Board of Human Services determines reimbursement rates for NFs based on consideration of DHS staff recommendations. To develop reimbursement rate recommendations for NFs, DHS staff apply the following procedures.

(1) Cost centers. The case-mix payment methodology derives rates from two components: the recipient care rate component and the all-other cost rate component, which includes dietary, facility, and administration costs. The recipient care rate component varies according to the case-mix class of service. The all-other cost component is constant across case-mix classes. The methodology for determining the all-other cost rate component consists of the following two steps.

(A) The cost component for the all-other cost center is calculated at the median point in the array of per diem costs for all contracted nursing facilities (NFs) included in the rate base, after the costs are adjusted as specified in §§19.1801-19.1806 of this title (relating to General Reimbursement Information, Cost Reporting Procedures, Allowable and Unallowable Costs, List of Allowable Costs, List of Unallowable Costs, and Cost Finding Methodology).

(B) The cost component for the all-other cost center is multiplied by an incentive factor which yields the all-other-costs rate component. The Texas Board of Human Services determines the incentive factor based on consideration of staff recommendations and input from interested parties. The incentive factor must not exceed 1.07.

(2) Case-mix classification system. All Medicaid recipients are classified according to the Texas Index for Level of Effort (TILE) classification system described in paragraph (5) of this subsection. The TILE classification system includes four clinical categories, which are further subdivided on the basis of an activity of daily living (ADL) scale, resulting in a total of 11 TILE case-mix groups. A 12th group is used by default when a recipient's case-

mix group membership is indeterminate because of assessment errors or omissions. Each of the 12 case-mix groups, including the default group, is assigned a case-mix index of effort. This index indicates the relative amount of staff time required on average to deliver care to recipients in that group. The case-mix index for each of the 11 TILE groups is determined through statistical and clinical analyses of recipient resource utilization data previously collected in Texas NFs. The lowest index for the 11 TILE groups is used as the case-mix index for the default group.

(3) Per diem rate methodology. Staff determine per diem rate recommendations for each of the 11 TILE groups and for the default group according to the following procedures:

(A) statewide average case-mix index. Determine the statewide average case-mix index for all Medicaid recipients, except those in the default group;

(B) average recipient care rate component. To determine the average recipient care rate component, adjust the raw sum of recipient care costs in all Texas Nursing Facilities in the current cost report data base in order to account for disallowed costs and inflation, as specified in this subsection and subsections (a), (c)-(f) of this section. Then divide the adjusted total by the sum of recipient-days of service in all facilities in the current cost report data base. Multiply the resulting weighted, average per diem cost of recipient care by the incentive factor described in subparagraph (A)(ii) of this paragraph. The result is the average recipient care rate component;

(C) case-mix pricing factor. To determine the case-mix pricing factor, divide the average recipient care rate component from subparagraph (B) of this paragraph by the statewide average case-mix index from subparagraph (A) of this paragraph;

(D) case-mix recipient care per diem rate components. To calculate the recipient care per diem rate component for each of the 11 TILE case-mix groups and for the default group, multiply the case-mix index for each group by the case-mix pricing factor from subparagraph (C) of this paragraph;

(E) total case-mix per diem rates. For each of the 11 TILE case-mix groups and for the default group, the recommended total per diem rate is the sum of the group's case-mix recipient care per diem rate component from subparagraph (D) of this paragraph, and the all-other cost rate component from paragraph (1)(B) of this subsection.

(4) Case-mix classification effective periods. The effective periods of case-mix classifications are defined as follows.

(A) A recipient's case-mix classification and associated per diem rate payment remain in effect until the recipient's next required continued stay review, unless one of the following events take place:

(i) a provider submits an off-cycle assessment (Purpose Code R) as specified in paragraph (6)(D) of this subsection;

(ii) a DHS nurse reviewer revises the recipient's assessment and TILE classification under the provisions of paragraph (7) of this subsection;

(iii) the recipient is discharged from the Medicaid nursing facility vendor payment system for more than 30 days.

(B) The case-mix classification and associated per diem payment rate of a recipient in the default group are changed retroactively when the provider furnishes DHS with corrected data that permit classification in one of the 11 TILE case-mix groups.

(5) The TILE classification system. The Texas Index for Level of Effort (TILE) classification system is defined in terms of recipient condition and service-descriptors on the Texas Nursing Facility Client Assessment, Review, and Evaluation (CARE) form. Classifications are based on criteria for frequen- cy and duration for each descriptor. The TILE classification system includes four clinical categories. These categories are subdivided on the basis of an activities of daily living (ADL) scale that measures functional abilities for eating, transferring, and toileting. The combination of clinical categories and ADL measurements yields an array of 11 TILE case-mix classifications.

(A) Clinical categories. Each recipient is assigned to one of the following four clinical categories.

(i) The heavy-care group. To qualify for the heavy-care clinical group, a recipient must have at least one of the following conditions or be receiving at least one of the following treatments: coma; quadriplegia; stage- 3 or -4 decubitus with decubitus care and/or wound-dressing twice daily; non-oral nourishment; daily oral/nasal suctioning; or daily tracheostomy care. The recipient must also have a total ADL score of at least six out of a possible nine.

(ii) The rehabilitation group. To qualify for the rehabilitation clinical group, a recipient must be receiving physical or occupational therapy at least three times per week. The therapy must be ordered by a licensed physician, must be restorative in intent, and must be reimbursed by Medicare or through DHS's goal-directed therapy system.

(iii) The clinically unstable group. To qualify for the clinically complex unstable group, a recipient must have at least one of the following conditions or be receiving at least one of the following treatments: recent amputation of a limb; seizures; dehydration with intake/output monitoring at least two times per day; incontinence with bowel and bladder management at least three times per day; urinary tract infection with intake/output monitoring at least three times per day; daily oxygen administration; respiratory therapy at least three times per day; or wound dressing at least two times per day.

(iv) The clinically stable group. This clinical group includes all recipients who do not qualify for the heavy-care, rehabilitation, or clinically unstable group. Recipients in the clinically stable group are included in a mental/behavioral condition subgroup if:

(I) they have an ADL score of exactly three out of a possible nine; and

(II) they have at least one of the following cognitive or behavioral characteristics: incoherent/frequent disorientation, daily disruptive behavior, or daily aggressive behavior.

(B) Computation of the activities of daily living (ADL) scale. The ADL scale is used to assess recipients' daily functional abilities in eating, transferring, and toileting. Each of these activities is rated on a five-point system on the Texas Nursing Facility CARE form. DHS staff recode these ratings on a three-point system. The recoding results in scores that range from one to three for each item and from three to nine for the sum of all items. The combined nine-point scale is used to determine case-mix classifications within the clinical categories.

(C) Special cases. A recipient who qualifies for more than one of the 11 TILE case-mix groups is classified in the group with the highest case-mix index and associated per diem rate. If a provider incorrectly or incompletely reports data necessary for TILE determination, the recipient is temporarily classified in the default group until the data are corrected.

(6) Recipient assessment. Facility nurse assessors assess recipients for TILE determination by completing Texas Nursing Facility CARE forms. These assessments establish TILE classifications and set continued stay review (CSR)

periods as follows.

(A) A preadmission assessment (Purpose Code 1) does not establish a TILE classification and does not set a CSR period.

(B) The nurse assessor submits a new admission assessment (Purpose Code 2) within 20 calendar days, as provided in §19.1603 (relating to Definition of the Review Process). The new admission assessment establishes a TILE classification and sets an initial CSR date. The new admission TILE classification is effective for the same period of time as the admission medical necessity (MN) described in §19. 1603 of this title (relating to Definition of the Review Process). The new admission TILE classification is effective for the same period of time as the admission MN as described in §19.1606 of this title (relating to Utilization Review Effective Dates).

(C) A continued-stay-review assessment (Purpose Code 3) establishes a new TILE classification and sets a new CSR period.

(D) If a recipient's medical condition deteriorates to the extent that he qualifies for a different clinical category in the TILE classification system described in paragraph (5) of this subsection, the provider may submit an off-cycle assessment (Purpose Code R). However, only two off-cycle assessments for any one recipient are permitted per year, one for the period from January through June and one from July through December. An off-cycle assessment establishes a new TILE classification only if the recipient in fact qualifies for a different clinical category. The assessment sets a new CSR period, however, whether or not the recipient's TILE classification is changed.

(E) A Texas Nursing Facility CARE form may be submitted for the purpose of allowing a provider to correct errors previously made in the assessment portion of the forms (Purpose Code U). (Items 30,31 and 50-99) This does not change the continued stay review period or necessarily change the TILE group. Purpose Code U corrections must be submitted within 60 days from the date of assessment. Request for Purpose Code U changes after the 60 days will not be accepted. Submit a copy of the Texas Nursing Facility CARE form containing the error and a new form with a Purpose Code U, to Provider Billing Unit, TDHS, Austin, Texas 78714-9030.

(F) If a recipient experiences a significant change related to mental illness, mental retardation, and/or a related condition which indicates that the recipient might benefit from active treatment, an off-cycle request for a recipient PASARR review must be submitted to the TDH/LTCU using a Texas nursing facility CARE form (Purpose Code F).

(G) If an individual has a valid medical necessity, but requires a screening due to an inter-facility transfer, or is being admitted to a nursing facility in which he or she has not recently resided and to which he or she cannot qualify as a readmission, the nursing facility will submit a CARE form (Purpose Code G).

(7) Review and appeal of case-mix assessments. DHS nurse reviewers conduct desk reviews and in-depth, on-site reviews of samples of Texas Nursing Facility CARE forms completed by providers.

(A) When a DHS nurse reviewer discovers a problem or an inconsistency on an assessment form, the reviewer contacts the facility nurse assessor for clarification and makes appropriate corrections. If necessary, the reviewer changes the Texas Index Level of Effort (TILE) classification and notifies the facility of the change in writing. The change in TILE classification and in the associated per diem rate is effective on the date of the review and remains in effect until a new assessment is submitted as specified in subsection (b)(6) of this section.

(B) If a DHS nurse reviewer and a facility nurse assessor are unable to agree about an assessment, the facility nurse assessor requests an informal review by a DHS nurse supervisor. If the provider disagrees with the findings of the nurse supervisor, the provider may initiate a formal appeal, as stated in Chapter 79, Subchapter Q, of this title (relating to Contract Appeals Process) by submitting a request to the Associate Commissioner for Legal Services, Mail Code 212-W, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030. The TILE classification and associated per diem rate specified by the DHS nurse reviewer remain in effect during any period of informal review or formal contract appeal. If the informal review or contract appeal process establishes that DHS has changed a TILE classification in error, DHS corrects the error retroactively.

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

(c) Experimental reimbursement class.

(1) DHS may define experimental reimbursement classes to be used in research and demonstration projects on new reimbursement methods. Demonstration or pilot projects based on experimental reimbursement classes may be implemented on a statewide basis or may be limited to a specific region of the state or to a selected group of providers.

(2) Pediatric care reimbursement class. DHS is developing an experimental reimbursement class for nursing facilities that primarily serve pediatric patients. The purpose of this experimental reimbursement class is to determine what service and cost differences may exist between pediatric and geriatric patients. This experimental class will be in effect from April 1, 1990-March 31, 1995. During this period, DHS will test a facility-specific reimbursement methodology in qualifying facilities.

(A) Definitions.

(i) Pediatric care reimbursement class. To qualify for the pediatric care reimbursement class, a facility must have had an average daily census of 85% or more children for the six-month period prior to its entry into the class. The census must be based on the entire licensed facility and not a distinct part. Additionally, the facility must maintain an average daily census of 85% or more children to remain in this experimental reimburse ment class.

(ii) Children. For the purposes of this experimental reimbursement class, children are defined as being at or below 22 years of age.

(B) Rate determination. DHS determines rates based on staff recommendations. Staff formulate rate recommendations in accordance with the provisions of the Human Resources Code, Chapter 24 (relating to Reimbursement Methodology). Rate recommendations are formulated in the following manner.

(i) Rates for this reimbursement class will be determined prospectively on a facility-specific basis. A facility's reimbursement rate will be determined by applying clause (iii) of this subparagraph to the most recent cost report deemed acceptable to DHS. In order for a cost report to be considered acceptable, it must reflect a facility's incurred costs at a census level of 85% or more children as specified in subparagraph (A)(i) of this paragraph and the cost report must be completed as specified in §19.1802(1)-(9) of this title (relating to Cost Reporting Procedures). The reported costs must be verifiable by review or by on-site audit as specified in §19.1802(10) and (11) of this title (relating to Cost Reporting Procedures). If no acceptable cost report is

available, providers will be required to submit a cost report covering the time period specified by DHS.

(ii) Section 19.1801(a) and (b) of this title (relating to General Reimbursement Information) and §19.1807(a) and (b) of this title (relating to Rate Setting Methodology) will not apply to the rate determination for this experimental reimbursement class. All other sections of the reimbursement methodology apply to the pediatric care reimbursement class.

(iii) The facility-specific rate is determined as follows: The total of each cost area from the most recent cost report is adjusted to account for disallowed costs and inflation as specified in §19.806 of this title (relating to NF Rehabilitative Nursing Care). The adjusted total for each cost area is then divided by the number of patient-days of service for the cost report period. The resulting costs per day for each of the cost areas are summed to determine the total facility-specific reimbursement rate.

(iv) As specified in §19.806 of this title (relating to NF Rehabilitative Nursing Care), costs are projected from facility's cost report base period to the rate period.

(C) Payment of the facility-specific rate. The reimbursement rate for the pediatric care reimbursement class will be paid for all Medicaid-eligible recipients of a qualifying facility. If the facility's average daily census falls below 85% children, payment of the facility-specific reimbursement rate will cease and the facility will be reimbursed under the case mix methodology. If the facility wishes to reenter the pediatric care reimbursement class, it must requalify under the requirements specified in subparagraph (A)(i) of this paragraph and it must submit a new application to DHS as specified in subparagraph (E) of this paragraph.

(D) Frequency of rate determination. DHS determines facility-specific rates for the pediatric care reimbursement class at least annually.

(E) Application to the pediatric care reimbursement class. Nursing facilities wishing to be reimbursed under the pediatric care reimbursement class must submit a written a written request to the commissioner of DHS.

(F) Start date for payment of the facility-specific rate. If DHS determines that the facility qualifies for the pediatric care reimbursement class, payment of the facility-specific rate will begin on the first day of the month following the date of receipt of the written request. If a facility requests a review or appeal of the cost report audit, as provided in §24.601 of this title (relating to Reviews and Administrative Hearings), the facility will continue to be reimbursed under the case mix methodology until the dispute is resolved. Based on the result of the review or hearing, the facility's rate will be retroactively adjusted to the level of the facility-specific rate.

(d) Nurse aide preparation costs. DHS reimburses nursing facilities for the reasonable and necessary costs of preparing nurse aides for the competency evaluation testing required under the Omnibus Budget Reconciliation Act of 1987. Reimbursement is limited to the Medicaid portion of the costs allowed under OBRA '87. Payments are based on cost reimbursement vouchers. Allowable costs are limited to the actual expenses incurred from January 1, 1989, through September 30, 1990, for:

(1) temporarily replacing an aide who is undergoing the preparation and testing process;

(2) reimbursing an aide who must work more than 40 hours a week in order to participate in the facility's official preparation process;

(3) providing an outside trainer or a substitute for an in-house trainer; and

(4) training supplies and materials that the facility would not otherwise have used in recipient care.

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

§19.1808. Chart of Accounts. A chart of accounts is a listing of account titles indicating the method of classifying financial and other statistical data in accounting records. Each participating provider must maintain records according to the department's chart of accounts for long-term care providers. The detailed items are:

(1) assets:

(A) current assets:

(i) cash;

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

(iii) short-term investments;

(iv) accounts receivable;

(v) notes and other receivables;

(vi) inventory;

(vii) prepaid expenses;

(viii) other current assets;

(B) noncurrent assets:

(i) long-term investments;

(ii) buildings and equipment;

(iii) land and land improvements;

(iv) other tangible assets;

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

(vi) other intangible assets: Preopening and other organizational costs, miscellaneous tangible assets, accumulated amortization–other intangible assets;

(vii) other assets;

(2) liabilities and capital:

(A) current liabilities:

(i) accounts payable;

(ii) accounts payable–recipient trust fund (fiduciary account not to be added to facility liability total);

(iii) notes payable;

(iv) salaries, wages, and employee benefits payable;

(v) payroll taxes and insurance payable;

(I) FICA taxes payable;

(II) federal income taxes withheld;

(III) other payroll insurance payable;

(vi) other taxes payable:

(I) Texas ad valorem taxes payable;

(II) Texas franchise taxes payable;

(III) other taxes payable;

(B) other current liabilities;

(C) long-term liabilities:

(i) long-term mortgages payable;

(ii) long-term notes payable;

(iii) other long-term liabilities;

(D) capital:

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

(ii) capital: business corporation

(I) capital stock;

(II) additional contributed capital;

(III) retained earnings;

(IV) dividends declared;

(V) net income (or loss);

(iii) capital: partnership or sole proprietorship:

(I) capital;

(II) net income (or loss);

(III) drawings;

(3) revenue accounts:

(A) nursing facility (NF) contracted beds:

(i) Medicare;

(ii) NF–Medicaid by TILE case-mix classification;

(iii) other recipients;

(B) noncontracted non-MR beds (all recipients);

(C) other gross revenue:

(i) nurse aide training from Medicaid;

(ii) nurse aide training from Medicare and other sources;

(iii) gifts, grants, donations, endowments, and trusts:

(I) restricted;

(II) unrestricted;

(D) room, bed holds, and reservations;

(E) drugs and medications;

(F) meals: employees and guests;

(G) rentals: medical;

(H) rentals: nonmedical;

(I) interest sources;

(J) barber and beauty shop;

(K) vending machines;

(L) canteen and gift shop;

(M) social service and activity service;

(N) other revenues;

(4) adjustments to gross revenue:

(A) allowance for uncollectibles - Medicaid;

(B) other adjustments to gross revenue;

(5) expense accounts:

(A) routine daily service expense:

(i) NF contracted beds.

(I) salaries and wages: professional staff;

(II) salaries and wages: other staff;

(III) medical supplies and nonlegend drugs;

(IV) contract or outside services;

(V) other expense;

(ii) noncontracted non-MR beds:

(I) salaries and wages: professional staff;

(II) salaries and wages: other staff;

(III) medical supplies and nonlegend drugs;

(IV) other expense;

(B) consultant service expense (except dietary);

(C) durable medical equipment (DME) expense:

(i) purchased DME;

(ii) leased DME;

(D) training expense:

(i) salaries and wages: professional staff;

(ii) salaries and wages: other staff;

(iii) other expenses;

(E) social services expense:

(i) salaries and wages: professional staff;

(ii) salaries and wages: other staff;

(iii) other expenses;

(F) activity service expense:

(i) salaries and wages: professional staff;

(ii) salaries and wages: other staff;

(iii) other expenses;

(G) therapy service expense:

(i) salaries and wages: professional staff;

(ii) salaries and wages: other staff;

(iii) other expenses;

(H) laundry, linen, and housekeeping expense:

(i) salaries and wages;

(ii) supplies;

(iii) contract or outside services;

(iv) linen and bedding;

(v) other expenses;

(I) dietary expense:

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

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

(iii) food;

(iv) special dietary supplements;

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

(7) consultant service: dietician/ nutritionist;

(8) contract or outside services;

(9) other services;

(10) operation and maintenance expense:

(A) salaries and wages;

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

(C) telephone and telegraph;

(D) garbage disposal;

(E) supplies;

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

(12) maintenance and repairs: transportation equipment;

(13) maintenance and repairs: departmental equipment;

(14) gasoline and oil;

(15) pest control service;

(16) security service;

(17) contract or outside services;

(18) other expense;

(19) buildings, equipment, and other capital expense;

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

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

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

(D) rental or lease expense: transportation equipment;

(E) rental or lease expense: other equipment;

(F) depreciation: building;

(G) depreciation: building equipment;

(H) depreciation: land improvements;

(I) depreciation: departmental equipment;

(J) depreciation: transportation equipment;

(K) amortization: leasehold improvements;

(L) amortization: preopening and other organization expense;

(M) amortization: other;

(N) interest: mortgage loans;

(O) interest: working capital loans;

(P) interest: other;

(Q) taxes: ad valorem;

(R) taxes: Texas corporate franchise;

(S) taxes: other;

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

(U) insurance: transportation expense;

(V) insurance: other;

(20) general administrative expense:

(A) salaries and wages: administrator;

(B) employee benefits: administrator;

(C) salaries and wages: assistant administrator;

(D) employee benefits: assistant administrator;

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

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

(G) salaries and wages: professional administrative staff;

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

(I) insurance: professional and facility malpractice;

(J) insurance: other;

(K) advertising;

(L) travel and seminars;

(M) dues: associations which represent the interest of nursing homes in Texas;

(N) dues: other;

(O) fees: professional services;

(P) fees: other;

(Q) miscellaneous office expense;

(R) central office overhead.

(i) salaries and wages;

(ii) payroll taxes;

(iii) employee benefits;

(iv) advertising;

(v) travel and seminars;

(vi) dues: association;

(vii) dues: other;

(viii) fees: professional services;

(ix) fees: other;

(x) miscellaneous office expense;

(xi) rental or lease expense;

(xii) depreciation and amortization expense;

(xiii) interest expense;

(xiv) taxes: ad valorem;

(xv) taxes: Texas corporate franchise;

(xvi) taxes: other;

(xvii) insurance expenses;

(xviii) operation and maintenance expense;

(xix) other;

(S) facility payroll tax and employee benefit expense:

(i) FICA contributions: all facility employees;

(ii) unemployment insurance: all facility employees;

(iii) workers' compensation insurance: all facility employees;

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

(21) purchases of services, facilities, and supplies from related organizations:

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

(i) price paid by facility;

(ii) cost to related organization;

(B) purchases of services from related parties:

(i) price paid by facility;

(ii) prevailing price in area for same service;

(C) loans from related parties:

(i) principal payments during reporting period;

(ii) remaining liability at end of reporting period;

(iii) interest expense during reporting period;

§19.1809. Medicare Part A Skilled Nursing Facility Deductible and Coinsurance Payment. When the department receives valid Medicare claims, the department pays the full amount of the Medicare Part A skilled nursing facility (SNF) deductible and coinsurance.

(1) When Medicare changes its daily interim payment, the department adjusts the Medicaid payment on the Part A SNF coinsurance amount if necessary. The adjustment is effective on the first day of the month following the Medicare change.

(2) If a recipient is a qualified Medicare beneficiary (QMB) the department pays to the facility the entire amount of the recipient's deductible and coinsurance for Part A and Part B services and items billed to Medicare by the 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 March 23, 1990.

TRD-9005207

Cathy Rossberg
Agency Liaison
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 T. Administration

• 40 TAC §§19.1901-19. 1933

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

§19.1901. Administration. A nursing facility (NF) must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(1) Licensure. A NF must be licensed by the Texas Department of Health as described in §19.2001 of this title (relating to Licensure).

(2) Compliance with federal, state, and local laws and professional standards. The facility must operate and provide services in compliance with all applicable federal, state, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility. All facility personnel and consultants must be licensed, registered, or certified as required by state and local law. They must also meet requirements in the regulations.

(3) Relationship to other health and human services (HHS) regulations. In addition to compliance with the regulations set forth in these long term care nursing facility requirements for licensure and certification, facilities are obliged to meet the applicable provisions of other HHS regulations, including, but not limited to, those pertaining to nondiscrimination on the basis of race, color, or national origin (45 Code of Federal Regulations, Part 80), nondiscrimination on the basis of handicap (45 Code of Federal Regulations, Part 84), nondiscrimination on the basis of age (45 Code of Federal Regulations, Part 91), protection of human subjects of research (45 Code of Federal Regulations, Part 46), and fraud and abuse (42 Code of Federal Regulations, Part 455). Although these regulations are not in themselves considered requirements under 42 Code of Federal Regulations 483, their violation may result in the termination or suspension of, or the refusal to grant or continue payment with federal funds.

§19.1902. Governing Body.

(a) The facility must have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility.

(1) The governing body must have written policies and procedures that are formally adopted and dated, periodically updated, and available to all of its members, staff, residents, family or legal representatives of residents, and the public.

(2) These policies and procedures must govern all services and specify the types of services offered.

(3) The governing body must appoint a qualified full-time nursing facility administrator as its official representative, and designate the administrator's responsibilities and authority. The governing body of a rural hospital participating in the Medicaid Swing Bed Program as specified in §19.2006 of this title (relating to Medicaid Swing Bed Program for Rural Hospitals) satisfies this requirement when it appoints a hospital administrator as its official representative and designates the administrator's responsibilities and authority, subject to the following exception. If the swing beds are used for more than one 30-day length of stay per year, per resident, the hospital's governing body must appoint a full-time licensed nursing facility administrator.

(b) The governing body appoints the administrator who is:

(1) licensed by the Texas State Board of Licensure for Nursing Home Administrators;

(2) responsible for management of the facility;

(3) required to work at least 40 hours per week on administrative duties.

(c) The facility must operate under the supervision of a full-time nursing facility administrator licensed by the Texas Board of Licensure for Nursing Home Administrators. A rural hospital participating in the Medicaid Swing Bed Program as specified in §19.2006 of this title (relating to Medicaid Swing Bed Program for Rural Hospitals) satisfies this requirement when it operates under the supervision of a hospital administrator, subject to the following exception. If the swing beds are used for more than one 30-day length of stay per year, per resident, these hospital swing beds must be under the supervision of a full-time licensed nursing facility administrator. The administrator, as a professional, must work at least 40 hours per week on administrative duties. The administrator must be accountable to the governing body for overall management of the nursing facility. The administrator's authority and responsibilities must be clearly outlined to include:

(1) maintaining liaison with the governing body, medical and nursing staff, and other professional and supervisor staff, through regular meetings and periodic reporting;

(2) adopting and enforcing rules and regulations for the health care and safety of residents and others, and for the protection of their personal property and civil rights;

(3) establishing standard operating procedures for physician practices in a nursing facility, in coordination with the director of nursing;

(4) evaluating, implementing, and documenting disposition of recommendations from the facility's committees and consultants;

(5) managing the facility through employment of professional and ancillary personnel and through proper delegation of duties;

(6) naming a responsible employee to act in the administrator's absence so the facility has continuous administrative direction;

(7) ensuring that all volunteer programs are planned and supervised by a designated employee;

(8) notifying the Texas Department of Health immediately if the facility does not have an administrator;

(9) designating a person in authority if the facility does not have an administrator. The facility must secure a licensed nursing home administrator within 30 days.

§19.1903. Required Training of Nurse Aides. See §19.1929 of this title (relating to Staff Development).

(1) General rule. A facility must not use any individual working in the facility as a nurse aide for more than four months, on a full-time, temporary, per diem, or other basis, unless:

(A) that individual has completed a training and competency evaluation program, or a competency evaluation program approved by the Texas Department of Health; and

(B) that individual is competent to provide nursing and nursing related services.

(2) Competency. A facility must permit an individual to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competence only when:

(A) the individual is in a training and competency evaluation program or a competency evaluation program approved by the Texas Department of Health; and

(B) the facility has asked and not yet evaluated a reply from the Texas Department of Health registry for information concerning the individual.

(3) Required retraining. When an individual has not performed paid nursing or nursing-related services for a continuous period of 24 consecutive months since the most recent completion of a training and competency evaluation program, the facility must require the individual to complete a new training and competency evaluation program.

(4) Regular in-service education. The facility must provide regular performance review and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides. Inservice education must include training for individuals providing nursing and nursing-related services to residents with cognitive impairments. See §19.1929 of this title (relating to Staff Development).

(5) Definition of nurse aide. For purposes of this section, the term "nurse aide" means any individuals providing nursing or nursing-related services to residents in a facility. This definition does not include an individual who volunteers to provide such services without pay.

§19.1904. Proficiency of Nurse Aides. The facility must ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

§19.1905. Staff Qualifications.

(a) The facility must employ on a full-time, part-time, or consultant basis those professionals necessary to carry out the provisions of these requirements of participation.

(b) Professional staff must be licensed, certified, or registered in accordance with applicable state laws.

(c) There shall be on duty in the facility sufficient nursing and sufficient non-nursing personnel to maintain the premises in an orderly, safe, and clean manner; to prepare and serve meals; to keep a supply of clean linens; to assist and supervise the residents in the use of the recreational facilities; and to meet the other operational needs of the facility. All such persons shall be physically, emotionally, and mentally able to perform their assigned duties.

(d) Each facility shall implement and maintain a staff development program according to the provisions of §19.1929 of this title (relating to Staff Development).

§19.1906. Use of Outside Resources.

(a) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility must have that service furnished to residents by a person or agency outside the facility under an arrangement described in the Social Security Act, §1861(w) or an agreement described in subsections (b) and (c) of this section.

(b) Arrangements or agreements pertaining to services furnished by outside resources must specify in writing that the facility assumes responsibility for:

(1) obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility; and

(2) the timeliness of the services.

(c) In addition, if the facility enters into an agreement with any outside resource, the facility shall state in the agreement the responsibilities, functions, objectives, and terms of the agreement, including financial arrangements and charges.

(1) The administrator or his representative and the qualified professional shall sign the agreement. If the facility is owned by a corporation, a copy of the agreement signed by the representative of the corporate entity and the qualified professional fulfills this requirement.

(2) The facility shall require in any such agreement that outside resources meet the same qualifications that would apply if the services were provided by facility employees.

(3) The outside resource, if acting as a consultant, shall prepare written, signed, and dated reports to apprise the administrator of progress, plans for implementation, evaluation of performance, and recommendations. The administrator must retain the reports for two years.

(4) The facility allows outside resource access to the clinical records of only those residents who have orders for the service(s) to be provided.

§19.1907. Medical Director.

(a) The nursing facility must designate a physician to serve as medical director.

(b) The medical director is responsible for:

(1) implementation of resident care policies (see §19.1922 of this title (relating to Resident Care Policies); and

(2) the coordination of medical care in the facility.

§19.1908. Laboratory Services.

(a) The facility must provide or obtain clinical laboratory services to meet the

needs of its residents. The facility is responsible for the quality and timeliness of the services.

(1) If the facility provides its own laboratory services, the services must meet the applicable conditions for coverage of the services furnished by independent laboratories specified in 42 Code of Federal Regulations, Part 405, Subpart M.

(2) If the facility provides blood bank and transfusion services, it must meet the applicable conditions for:

(A) independent laboratories specified in 42 Code of Federal Regulations, Part 405, Subpart M; and

(B) hospitals specified in 42 Code of Federal Regulations, §482.27(d).

(3) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be approved for participation in the Medicare program either as a hospital or an independent laboratory;

(4) If the facility does not provide laboratory services on site, it must have an agreement to obtain these services only from a laboratory that is approved for participation in the Medicare program either as a hospital or as an independent laboratory.

(b) The facility must:

(1) provide or obtain laboratory services only when ordered by the attending physician;

(2) promptly notify the attending physician of the findings;

(3) assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance;

(4) file in the resident's clinical record signed and dated reports of clinical laboratory services;

(5) allow the outside resource access to the clinical records of only those residents who have orders for lab tests.

§19.1909. Radiology and Other Diagnostic Services.

(a) The skilled nursing facility (Medicare) must provide or obtain radiology and other diagnostic services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(1) If the facility provides its own diagnostic services, the services must meet the applicable conditions of participation for hospitals contained in 42 Code of Federal Regulations, §482.26.

(2) If the facility does not provide diagnostic services, it must have an agreement to obtain these services from a provider or supplier that is approved to provide these services under Medicare.

(b) The facility must:

(1) provide or obtain radiology and other diagnostic services only when ordered by the attending physician;

(2) promptly notify the attending physician of the findings;

(3) assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance;

(4) file in the resident's clinical record signed and dated reports of x-ray and other diagnostic services; and

(5) allow outside resources access to the clinical records of only those residents who have orders for radiology services.

§19.1910. Clinical Records.

(a) The facility must maintain clinical records on each resident in accordance with accepted professional standards and practices that are:

(1) complete

(2) accurately documented;

(3) readily accessible; and

(4) systematically organized.

(b) Clinical records must be retained for:

(1) five years after medical services end as stated in the provider agreement/contract; or

(2) for a minor, three years after a resident reaches legal age under Texas law.

(c) The facility must safeguard clinical record information against loss, destruction, or unauthorized use;

(d) The facility must keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by:

(1) transfer to another health care institution;

(2) law;

(3) third party payment contract; or

(4) the resident.

(e) The facility must permit each resident to inspect and purchase a copy of his or her records according to §19.203(e) of this title (relating to Notice of Rights and Services).

§19.1911. Contents of the Clinical Record. The clinical record of each resident must contain:

(1) sufficient information to identify the resident;

(2) a record of the resident's assessments;

(3) the plan of care and services provided;

(4) the results of any preadmission screening and annual resident review conducted by the Texas Department of Health (TDH)or the Texas Department of Mental Health and Mental Retardation (TDMHMR);

(5) progress notes;

(6) any directives or durable powers of attorney as described in §19.218 of this title (relating to Incompetency);

(7) discharge information;

(A) a discharged/death summary from the attending physician completed within 20 working days after resident's discharge or death. See §19.603 of this title (relating to Discharge Summary and Discharge Plan of Care);

(B) a discharge plan prepared by facility staff prior to a resident's discharge, according to the requirements of §19.603 of this title (relating to Discharge Summary and Discharge Plan of Care);

(8) identification information on an admission or face sheet:

(A) full name of resident (first, middle, last);

(B) home address, including street address, city, county, and state;

(C) Social Security number;

(D) DHS resident number, if applicable;

(E) Medicare claim number, if applicable;

(F) marital status;

(G) date of birth;

(H) sex;

(I) religious preference;

(J) ethnic group;

(K) usual occupation (the kind of work engaged in most of working life, even if retired);

(L) birthplace;

(M) father's name;

(N) mother's maiden name;

(O) dates of service in United States armed forces;

(P) name, address, and telephone number of referral agency or hospital from which admitted;

(Q) personal physician and alternate if applicable;

(R) name of dentist;

(S) name and address of next of kin or other responsible party;

(T) admitting diagnosis;

(U) final diagnosis;

(V) disposition;

(W) name of funeral home, if appropriate;

(X) dates of admission and discharge; and

(Y) other useful identifying data.

(9) an initial medical evaluation, including history, physical examination, diagnoses, and an estimate of restoration potential (either subsection (j) or (k) is acceptable by TDH at time of survey);

(10) authentication of any hospital diagnoses. This may be in the form of a hospital discharge summary sheet, a report from the resident's hospital or attending physician, or a transfer form. The facility is allowed seven workdays after admission to receive this information from the hospital;

(11) the physician's signed and dated orders, including medication, treatment, diet, and restorative and special medical procedures required for the safety and well-being of the receipient;

(12) a comprehensive, interdisciplinary, care plan explaining the precise reasons for placement and containing documentation showing that the plan is reassessed periodically. If alternate care is feasible, a qualified social worker (social services staff from the nursing facility or from an outside agency) must consult with the nursing facility staff to develop an alternate care plan for the physician's approval. The alternate care plan must also specify the health care plan of treatment for the resident. The facility must indicate in the clinical record that care is authorized only by a physician. The comprehensive care plan may be kept separate from the active clinical record but must be easily accessible to all staff and consultants delivering care;

(13) physician's progress notes signed by the physician for each visit or consultation;

(14) arrangements for the medical care of the resident in the physician's absence, and specific instructions about how such care may be obtained.

(15) observations made by nursing personnel. Nursing personnel must record observations according to the time frames specified in §19.805 of this title (relating to Nursing Facility Charge Nurse Responsibilities). Facility staff must ensure that the observations show at least the following:

(A) admission and assessment information including:

(i) date, hour, how transported, and who accompanied;

(ii) known allergies, adverse drug reactions, and idiosyncrasies;

(iii) physical condition including hygiene, appearance, height and weight (if obtainable), vital signs, age, skin condition (abrasions, lesions, decubiti), deformities, mobility status, and vision, hearing, and continent status;

(iv) mental status (alert, labile, oriented, disoriented, comatose) including response to nursing facility placement;

(v) prosthetic devices or other appliances such as eyeglasses, dentures, hearing aids, walkers, colostomy or ileostomy bags, and indwelling catheters; and/or

(vi) items as specified on the minimum data set and the Texas nursing facility client assessment review and evaluation (CARE) form;

(B) current information including:

(i) PRN medications and results;

(ii) treatments and any notable results;

(iii) physical complaints, changes in clinical signs and behavior, mental and behavioral status, and all incidents or accidents; and

(iv) flow sheet items which may include bathing, restraint documentation, elimination, fluid intake, deviations from normal diet, vital signs, ambulation status, positioning, continency status and care, and weight (the flow sheets may be kept from the active clinical record but must be easily accessible to all staff and consultants delivering care); and

(v) the resident's ability to participate in activities of daily living as defined in §19.804(b) (6)(F) of this title relating to Nursing Facility Director of Nursing Services).

(C) discharge information as required in paragraph (8) of this section.

(16) the date and hour of all drugs and treatments administered. The current drug treatment record may be kept separate from the active clinical record but must be easily accessible to all staff and consultants delivering care;

(17) special procedures performed for the safety and well-being of the resident and which may include:

(A) laboratory and x-ray, and rehabilitation reports;

(B) consultation reports;

(C) dental reports;

(D) social service notes; and

(E) resident care referral reports.

(18) laboratory results for HIV testing which shall be kept separate from the active clinical record. Upon discharge, these reports become part of the resident's closed clinical record.

§19.1912. Additional Clinical Record Service Requirements.

(a) The facility must make clinical records readily accessible for review by the Texas Department of Human Services (DHS), the Texas Department of Health (TDH), and the Department of Health and Human Services.

(b) The facility shall maintain a permanent chronological register(s) of all residents admitted to and discharged from the facility. This register(s) shall contain at least the following information on each resident:

(1) name of resident (first, middle, and last);

(2) date of birth;

(3) date of admission;

(4) date of discharge/death; and

(5) disposition (where resident went).

(c) In the event of closure of a facility, change of ownership, or change of administrative authority, the new management shall maintain documented proof of the medical information required for the continuity of care of all residents. This documentation may be in the form of copies of the resident's clinical record on the original clinical record. In a change of ownership, the two parties will agree and designate in writing who will be responsible for the retention and protection of the inactive and closed clinical records.

(d) All resident care information must be recorded in ink.

(1) Erasures are not allowed on any part of the clinical record, with the exception of the medication/treatment/diet section of the resident care plan card.

(2) Erasures and obliterations may create curiosity and suspicion as to the reasons for the change. The correct procedure is to line out the incorrect data with a single line in ink. The date of the lining out, the signature of the person doing it, and the correct information should be added.

(3) Alterations on physician's orders are, after they are completed, unacceptable.

(e) Periodic thinning of active records is necessary to reduce bulkiness. Items which may be thinned are medication and treatment sheets, nurses' notes, and, if appropriate, physicians' orders and progress notes. At least the current and two previous months of this data are to be retained on each active chart at all times.

(1) In instances where an attending physician desires that all his orders and notes be retained on charts, his wishes should be honored.

(2) Certain records must remain on the charts for the sake of completeness. These include: current history and physical, transfer summary, discharge summary, belongings list, applicable Department of Human Services forms, and admission sheet. Each record is recommended to contain the past six months worth of lab and x-ray reports.

(f) Readmissions.

(1) If a resident is temporarily transferred to the hospital (10 days or less and readmitted to the same facility), it is not necessary to develop a completely new clinical record upon the resident's readmission. Upon readmis- sion, it is necessary to:

(A) Obtain current, signed physician's orders;

(B) record a descriptive nurse note, giving a complete assessment of the resident's condition;

(C) start a new medication sheet to document medications ordered by the physician;

(D) update the admission sheet and include any changes in diagnoses, etc.;

(E) obtain the transfer summary, which could update the history and physical and could constitute new orders, provided it is signed by a physician. If incomplete, the facility must obtain the hospital history and physical and discharge summary;

(F) update the care plan as needed; and

(G) update the belongs list if necessary.

(2) A new clinical record is initiated if the recepient is a new admis- sion or has been gone over 10 days.

(g) PRN medications/treatments must be recorded in the medical record at the time of administration and not before. The recording in the medical record includes the reason for administration, what medication/treatment given, time the medication/treatment given, and the resident's response.

(h) Facilities participating in the TDHS Respite Care Program will follow the documentation requirements of that program until such time the resident may be admitted to the Medicaid nursing facility vendor payment system or as a private pay nursing facility resident still residing in a Medicaid certified facility or distinct parts. At that time, all the require- ments of these regulations must be met.

(i) Signatures.

(1) The use of electronic data transmission of facsimiles (faxing) is acceptable for sending and receiving health care documents, including the transmission of physicians' orders. Long term care facilities may utilize electronic transmission if they adhere to the following requirements:

(A) The sending station or originator of the document maintains an original signed by the author.

(B) All faxed documents must be signed by the author.

(C) The person wanting to use faxing to send documents to the facility must send the facility a letter stating his/her intent and sign it using the official signature which he/she will use to sign the faxed reports.

(D) The facility must implement safeguards to assure that faxed documents sent and received are directed to the correct location to protect confidential health information from unauthorized access.

(2) Stamped signatures are acceptable for all orders, if the person using the stamp sends a letter of intent, which specifies that they will be the only one using the stamp, and then signs the letter with the same signature as the stamp.

(3) The facility must maintain all letters of intent on file and make them available to representatives of the state Medicaid and survey agencies upon request.

(4) All orders must originate with a physician, dentist, or podiatrist. See §19.805(c)(18) of this title (relating to Nursing Facility Charge Nurse Responsibilities).

(j) When resident records are destroyed after the retention period is complete, the facility shall shred or incinerate the records in a manner which protects confidentiality. At the time of destruction, the facility shall document the following for each record destroyed:

(1) resident name;

(2) medical record number, if used;

(3) Social Security number; and

(4) date and signature of person carrying out disposal.

(k) The facility must develop and implement policies and procedures to safeguard the confidentiality of medical record information form unauthorized access. The facility must allow access and/or release confidential medical information under court order or by written authorization of the resident or his or her legal guardian unless the physician documents in the medical record that access to the information would be harmful to the physical, mental, or emotional health of the resident (see §19.206 of this title (relating to Privacy and Confidentiality).

(l) Telephone orders shall be immediately reduced to writing, signed by the person receiving the order, mailed to the physician for signature, and returned to the clinical record within seven working days.

§19.1913. Clinical Records Service Supervisor. The facility must designate in writing a clinical records supervisor who has the authority, responsibility, and accountability for the functions of the clinical records service. The clinical records supervisor must be:

(1) A registered record administrator (RRA) or an accredited record technician (ART); or

(2) An individual with experience appropriate to the scope and complexity of services performed as determined by TDH, and who receives consultation at a minimum of every 180 days from an RRA or ART. If poor records are cited as a deficiency, the consultant must visit the facility as required by the plan of correction.

§19.1914. Disaster and Emergency Preparedness.

(a) The facility must have detailed written plans and procedures to meet all potential emergencies and disasters such as fire, severe weather, and missing residents.

(b) The facility must train all employees in emergency procedures when they begin to work in the facility, periodically review the procedures with existing staff, and carry out staff drills using those procedures.

§19.1915. Transfer Agreement.

(a) In accordance with the Social Security Act, §1861(1) the facility must have in effect a written transfer agreement with one or more hospitals approved for participation under the Medicare and Medicaid programs that reasonably assures that:

(1) Residents will be transferred from the facility to the hospital and ensured of timely admission to the hospital when transfer is medically appropriate as determined by the attending physician; and

(2) Medical and other information needed for care and treatment of residents, and when the transferring facility deems it appropriate, for determining whether such residents can be adequately cared for in a less expensive setting than either the facility or the hospital, will be exchanged between the institutions.

(b) In addition, to ensure continuity of care, the transfer agreement should:

(1) provide for prompt diagnostic and other medical services;

(2) ensure accountability for a resident's personal effects at the time of transfer;

(3) specify the steps needed to transfer a resident in a prompt, safe and efficient manner;

(4) provide for supplying, at the time of transfer, a summary of administrative, social, medical, and nursing information to the facility to which the resident is transferred. The summary must either be a transcript of the resident's medical record, an interagency referral form, or a copy of the admission sheet and summary;

(5) ensure that provisions of the Civil Rights Act of 1964, Title VI, are met.

(c) If the board and/or governing body for a long term care facility and a hospital are the same, the controlling entity must have written procedures outlining how transfers will occur. This is regardless of whether there are different administrators.

(d) The facility is considered to have a transfer agreement in effect if the state survey agency determines that the facility tried to enter into an agreement but could not, and if it is the public interest not to enforce this requirement. The facility must document in writing its good faith effort to enter into an agreement.

(e) A rural hospital participating in the Medicaid Swing Bed Program as specified in §19.2006 of this title (relating to Medicaid Swing Bed Program for Rural Hospitals) is not required to enter into a transfer agreement with another hospital.

§19.1916. Utilization Review. The nursing facility must cooperate with the Texas Department of Human Services in a utilization review plan that determines the need for nursing facility care based on the medical necessity of the resident (see §19.1601 of this title (relating to Medical Necessity (MN) and Utilization Review (UR)).

§19.1917. Quality Assessment and Assurance.

(a) The facility must maintain a Quality Assessment and Assurance Committee consisting of:

(1) the director of nursing services;

(2) a physician designated by the facility; and

(3) at least three other members of the facility's staff.

(b) The Quality Assessment and Assurance Committee:

(1) meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary; and

(2) develops and implements appropriate plans of action to correct identified quality deficiencies.

(c) The Quality Assessment and Assurance Committee, or a subcommittee thereof, will establish and monitor an infection control program according to §19.1401 of this title (relating to Infection Control), and will monitor the pharmaceutical services of the facility according to §19. 1301 of this title (relating to Pharmacy Services).

(d) See §19.701(l) and (m) of this title (relating to Quality of Care) and §19.1923 of this title (relating to Incident or Accident Reporting) for additional items that should be monitored by the Quality Assessment and Assurance Committee.

§19.1918. Disclosure of Ownership.

(a) The facility must comply with the disclosure requirements of 42 Code of Federal Regulations, §420.206 and §455.104 .

(b) The facility must provide written notice to the Texas Department of Health at the time of initial request for certification and at each survey if a change occurs in:

(1) persons with an ownership or control interest, as defined in 42 Code of Federal Regulations, §420.201 and §455.101;

(2) the officers, directors, agents or managing employees;

(3) the corporation, association, or other company responsible for the management of the facility; or

(4) the facility's administrator or director of nursing.

(c) The notice specified in subsection (b) of this section must include the identify of each new individual or company.

(d) The ownership of a facility shall be fully disclosed to the state licensing agency. In the case of corporate ownership, the corporation shall:

(1) provide a copy of the certificate of authority of articles of incorporation, as appropriate, and a copy of the corporate bylaws;

(2) provide to the licensing agency the name and address of the individual or agent authorized to provide service in Texas; and

(3) provide to the licensing agency a list of all individuals exercising management or control of the corporation.

(e) Refer to §19.2008 of this title (relating to Change of Ownership) for additional requirements.

§19.1919. Independent Medical Evaluation and Audit. The facility must cooperate in an effective program which provides for a regular program of independent medical evaluation and audit of the residents in the facility to the extent required by the Texas Department of Human Services (see §§19.1601-19.1604 of this title (relating to Medical Necessity (MN) and Utilization Review (UR); Utilization Review Plan; Definition of the Review Process; and Physician's Certifications and Recertifications).

§19.1920. Operating Policies and Procedures.

(a) The facility shall have an administrative policy and procedure manual that outlines the general operating policies

and procedures of the facility. The manual must include policies and procedures related to admission and admission agreements, resident care services, refunds, transfers and discharges, receiving and responding to complaints and recommendations, and protection of residents' personal property and civil rights.

(b) The facility shall have written personnel policies and procedures that are explained to employees when first employed and always available to them. The policies and procedures may include job assignment, working hours, overtime, payment, payroll deductions, paydays, insurance, fringe benefits, time off, education programs, holidays, vacation, resignations and terminations, breaks, probation, leaves of absence, dress, and conduct.

(c) The facility shall have written policies for the control of communicable diseases in employees and residents, provision of a safe and sanitary environment for residents and employees, and reporting and reviewing accidents/incidents involving residents and employees. If employees contract a communicable disease that is transmissible to residents through food handling or direct resident care, the employee shall be excluded from providing these services as long as an acute infection is present. The decision to return to work shall be made by the facility's administrator in conjunction with the employee's personal physician, the facility's medical director, local or state health authority, and in accordance with generally accepted practices. The facility must maintain evidence of compliance with local and/or state health codes or ordinances regarding employee and resident health status (see §19. 1401 of this title (relating to Infection Control).

(d) The facility shall ensure that personnel records are correct and contain sufficient information to support placement in the assigned position (including a resume of training and experience). Where applicable, a current copy of the person's license or permit shall be in the file.

(e) Upon request of the licensing agency, the facility shall make available financial records to demonstrate the facility's compliance with applicable state laws and standards relating to licensing.

(f) If the resident or his or her responsible party entrusts the handling of petty cash (for incidental purposes such as soft drinks, magazines, tobacco, etc.) to the nursing facility, simple financial records of receipts and expenditures of such petty cash must be maintained in a non-interest bearing account or petty cash fund. These funds shall not be deposited in the general operating bank account of the facility (see §19.204 of this title (relating to Protection of Resident Funds)).

(g) The facility shall make arrangements to transfer residents to another health care facility when residents' needs change or become acute in accordance with §19. 302 of this title (relating to Transfer and Discharge) and to §19.603 of this title (relating to Discharge Summary and Discharge Plan of Care).

§19.1921. General Requirements for a Nursing Facility.

(a) The facility shall admit and retain only residents whose needs can be met through service from the facility staff, or in cooperation with community resources or other providers under contract.

(b) A physician must order admission. Before or at admission, a physician must certify for each resident that nursing facility (NF) services are needed. Facilities must have written and dated admission policies that are approved by the governing body and revised as necessary. The facility must comply with §19.2105 of this title (relating to Texas Civil Practices and Remedies Code).

(c) When a facility proposes to discharge a resident because the facility cannot meet the resident's needs through services from the facility staff in cooperation with community resources or other providers under contract with the facility, the facility must follow the procedures described in §19.302 of this title (relating to Transfer and Discharge).

(d) Individuals who have met the requirements of §19.604 of this title (relating to Pradmission Screening and Annual Resident Review (PASARR)) and have mental and/or physical diseases which endanger other residents may be admitted or retained if adequate rooms and care are provided to protect the other residents.

(e) Each license shall specify the 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.

(f) Copies of this subchapter shall be available to the personnel of the facility. They shall be instructed in the requirements of the law and the rules pertaining to their respective duties.

(g) The term "hospital" may not be used as part of the name of a nursing facility unless it has been classified and duly licensed as a hospital by the appropriate state agency.

(h) Upon request, the nursing facility management shall make available to the licensing agency representatives copies of 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.

(1) Documents or records which may be copied and made available are resident's clinical records including nursing notes, pharmacy records, medication records, and physicians' orders.

(2) The facility may charge the licensing agency at a rate not to exceed the rate charged by the department for copies. Collection shall be by billing the licensing agency.

(3) The procedure of copying shall be the responsibility of the administrator or designee. If copying requires the records be removed from the facility, a representative of the facility shall be expected to accompany the records and assure their order and preservation.

(4) It shall be the responsibility of the licensing agency to maintain the confidentiality of all records or documents photocopied for its use. The licensing agency shall protect the copies for privacy and confidentiality of all records or documents photocopied for its use. The licensing agency shall protect the copies for privacy and confidentiality in accordance with recognized standards of clinical records practice, applicable state laws, and licensing agency policy.

(5) In accordance with the Act, the facilities and their officers and employees and the residents' attending physicians shall not be held civilly liable for surrendering physicians' orders, pharmacy records, state-office notes and memorandums, residents' files, and other confidential or private material under this provision.

(i) In the event any facility ceases operation, temporarily or permanently, voluntarily or involuntarily, notice shall be provided to the residents and residents' relatives or responsible parties of closure.

(1) 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 voluntary closure actions, notices shall be provided as required within seven days of ownership's final decision to close.

(2) Written notice is waived for involuntary closure; however, the facility remains responsible for verbal notice immediately to residents, relatives, or responsible parties.

(j) Each licensed facility shall conspicuously and prominently post the information listed in paragraphs (1)-(5) of this subsection in an area of the facility that is readily and customarily available to the public. The posting shall be in a manner that each item of information is directly visible at a single time. The location of posting shall be in a main lobby or living room or main corridor leading from the main lobby or living room, or for a facility of less than 30 beds the posting may be in the area where public notices are usually posted, as long as that location otherwise

qualifies. In the case of a licensed section that is part of a larger building or complex, the posting shall be in the licensed section or public way leading thereto. Any exceptions shall be as approved by the licensing agency. The following items shall be posted:

(1) the facility license;

(2) a complaint sign provided by the licensing agency giving the toll-free telephone number and noting that the number is available for both registering complaints and obtaining information concerning the facility;

(3) a notice in a form prescribed by the licensing agency that inspection reports and related reports are available at the facility for public inspection;

(4) a concise summary in non-technical language prepared by the licensing agency of the most recent inspection report;

(5) a notice in a form prescribed by the licensing agency stating that:

(A) a person has a cause of action against a facility, or the owner or employee of the facility, that suspends or terminates the employment of the person or otherwise disciplines or discriminates against the person, for reporting the abuse or neglect of a facility resident to the person's supervisors, to the department, or to a law enforcement agency, in accordance with the Health and Safety Code, Chapter 242; and

(B) a person making a bad faith, malicious, or reckless report of abuse or neglect is subject to a criminal penalty, in accordance with the Health and Safety Code, Chapter 242; and

(C) the facility has available for public inspection a copy of the Health and Safety Code, Chapter 242 (E), pertaining to abuse and neglect.

(k) The inspection reports and related reports that will be available at the facility for public inspection shall include licensing inspection reports, deficiency sheets, and plan of correction of Medicare and Medicaid participating facilities, and summaries provided by the licensing agency of inspections and complaint investigations. This material shall cover the most current 12 months. The material available for public inspection shall be available at the on-premises business office or administrator's office during normal facility office hours. On admission to the facility, the resident and/or responsible party shall be advised that these reports are available.

(l) A copy of the Health and Safety Code, Chapter 242 referred to in subsection (h)(5)(C) of this section, shall be available for public reference at the on-premises business office or administrator's office during normal facility office hours.

(m) Summaries, inspection reports, and related reports prepared by the licensing agency shall be available to the public through the established licensing agency's public disclosure procedures.

(n) Within 72 hours of admission, the facility must prepare a written inventory of the personal property a resident brings to the facility, such as furnishings, jewelry, televisions, radios, sewing machines, and medical equipment the facility does not have to inventory the resident's clothing; however, the operating policies and procedures must provide for the management of resident clothing to prevent loss and/or damage. The facility administrator or his or her designee must sign and retain the written inventory and must give a copy to the resident and/or the resident's responsible party, and the facility must revise the written inventory to show if property is lost, destroyed, damaged, replaced, or supplemented. Upon discharge of the resident, the disposition of personal effects must be documented by a dated receipt bearing the signature of the resident and/or the resident's responsible party. See §19.214 of this title (relating to Personal Property).

(o) Intemperate use of alcohol or controlled substances, disorderly conduct, or the violation of any law involving moral turpitude on the part of the owner, administrator, or employees while on duty engaged in the operations and functions of a facility may, in extreme circumstances, constitute grounds for denial or revocation of license.

(p) Substantiated evidence of the owner, administrator, or any employee willfully inflicting injury, physical suffering, or mental anguish on any resident in a facility; or failure of management, who is knowledgeable of a substantiated case of physical/mental abuse or neglect, to take corrective action; or failure of management, who has cause to believe that a resident's physical or mental health or welfare has been or may be adversely affected by abuse or neglect caused by another person or persons, to report it in accordance with the Health and Safety Code, Chapter 242, may in extreme circumstances constitute grounds for denial or revocation of license.

(q) Persons convicted of certain crimes may not be employed in nursing facilities. Therefore, criminal history checks on certain employees must be performed prior to an offer of permanent employment with the facility.

(1) The Texas Department of Human Services Office of the Inspector General, on behalf of the Texas Department of Health and Texas Department of Human Services contract administrators conducts the checks.

(2) Anyone to whom an offer of employment is made is subject to a criminal history check with the following provisions.

(A) Administrators, registered nurses, and other employees that are licensed under other laws need not be checked.

(B) A facility may request a criminal history check on any person employed at that facility, including a person licensed under another law or otherwise exempt.

(3) The computer match for criminal history records will look for convictions in the following areas:

(A) a misdemeanor or felony classified as an offense against the person or the family;

(B) a misdemeanor or felony classified as public indecency;

(C) felony drug offenses;

(D) felony theft offenses with certain exceptions;

(E) burglary, robbery, and aggravated robbery.

(4) A facility may not hire permanently or shall immediately terminate a person's employment if the results of the criminal conviction check reveal that the person has been convicted of an offense listed previously, with the following exceptions.

(A) A facility may employ or continue employing a person convicted of a drug offense only if:

(i) the person produces evidence satisfactory to the facility that they have successfully completed a drug rehabilitation program; and

(ii) the conviction was not for an offense under the Texas Controlled Substances Act (Texas Civil Statutes, Article 4476-15) §4.012(b), 4. 052, or 4.053.

(B) A facility may also employ or continue employing a person convicted of a theft offense (under the Penal Code, §31.03) if:

(i) the person can prove to the facility's satisfaction that the offense would have been classified as a misdemeanor if the law in effect when the facility obtains the results had applied to that offense;

(ii) the offense occurred at least 10 years before the date on which the person applied for employment at the facility, and

(iii) the person has not been convicted of any subsequent criminal offenses listed in the Penal Code, §31.03 .

(C) There are no provisions for an appeal process or waiver of requirements.

(D) The previously listed are the only exceptions to requirements set forth in this law.

(E) Results of criminal history checks will be communicated by TDHS to the facility only where there is a criminal conviction that could make the individual ineligible for employment.

(5) The facility must inform each person that applies for employment that the facility is required to conduct a criminal conviction check before it may make an offer of employment to the applicant and that the facility will request a criminal conviction check on the applicant.

(A) The facility may make an offer of temporary employment to a person pending the results of a criminal conviction check. The facility may not hire a person on a permanent basis until the facility receives the results of the criminal conviction check.

(B) The facility must provide to TDHS the necessary information on a job applicant no later then the 72nd hour after the hour on which the person accepts temporary employment.

(C) Information must be supplied on the request for criminal history check form that is filled out and submitted to the TDHS regional data entry site.

(6) Results of the criminal history check will be communicated only if a criminal conviction record is found. Normally, the check will have been completed within 45 days of the facility's submittal of a form. Therefore, if no response has been received with 45 days, it is likely that no conviction was found, and the facility may make an offer of permanent employment.

(A) If TDHS receives a notice that a person has been convicted of one of the listed offenses, it will notify the facility of the results and send a copy to the Texas Department of Health or the TDHS contract manager.

(B) All criminal records received by TDHS are privileged information and are for the exclusive use of TDHS, the Texas Department of Health, and the facility for which TDHS requested the information.

(C) The records may not be released or otherwise disclosed to any person or agency except on court order or with the written consent of the person being investigated.

(D) A person commits an offense if the person releases or otherwise discloses any information received under this law without the authorization described previously. The offense is a second degree felony.

(7) If the employee disputes the results of the check, the employee should provide to the facility a fingerprint card that has been prepared and certified by a law enforcement agency. The facility submits that card to the Texas Department of Human Services, Office of the Inspector General. It will then be submitted to DPS and the results will be communicated to the facility.

(8) A facility or an officer or employee of a facility is not civilly liable for failure to comply with this law if the facility makes a good faith effort to comply. The Texas Nurse-Aide Registry will include the results of criminal history checks made if a conviction bars employment. A facility that hires a nurse aide who is listed on the nurse-aide registry may use the nurse- aide registry to obtain criminal history information on an applicant.

(9) Facilities that utilize temporary employment agencies must inform them of this requirement to assure that it will be met.

§19.1922. Resident Care Policies.

(a) The facility must have written policies to govern the nursing care and related medical or other services provided. The written policies must include plans for promoting self-care and independence. The written policies must also include, but are not limited to:

(1) admission, transfer, and discharge policies, including categories of residents accepted and excluded;

(2) physician services, privileges, and practices;

(3) physician assistant (PA) and nurse practitioner (NP) services (the attending physician may choose to use the services of a PA or NP. The PA or NP may perform duties and tasks, as assigned by his supervising physician, that do not require an independent medical judgment. The supervising physician retains professional responsibility and legal liability for the care and treatment of his residents, as specified in rules and regulations of the Texas Board of Medical Examiners);

(4) responsibilities of non-physician health care workers (e.g., nursing rehabilitation therapies, dietary services, emergency care and resident assessment and care planning);

(5) nursing services;

(6) dietary services;

(7) restorative services;

(8) pharmacy services;

(9) care of residents in emergencies, during communicable disease episodes, and when residents are critically ill or mentally disturbed;

(10) a disaster plan;

(11) dental services;

(12) ancillary diagnostic and therapeutic services (such as laboratory, radiology, pharmacy, and rehabilitative therapies);

(13) social services;

(14) resident activities;

(15) clinical records;

(16) hospital agreements;

(17) emergency medical/health care;

(18) infection control;

(19) accidents and incidents;

(20) use of medications;

(21) confidentiality and the use and release of clinical information;

(22) utilization review;

(23) Human Immunodeficiency Virus (HIV) guidelines for residents. The facility must follow the AIDS/HIV Model Guidelines established by the Texas Department of Health, including, but not limited to, the issues of education of residents, and confidentiality. The method and scope of information may vary according to the needs of the resident; and

(24) overall quality of care, quality assessment, and assurance.

(b) Resident care policies are developed by the medical director and by professional personnel, including one or more physicians, licensed or registe- red nurses, a registered pharmacist, and the licensed nursing home administra- tor. The advisory group must review the policies at least annually and update them as necessary.

(c) The NF must designate, in writing, the medical director or the director of nurses to be responsible for the execution of resident care policies. If the responsibility for day-to-day execution of these policies has been assigned to a registered nurse, the medical director serves as the advisory physician from whom the nurse receives medical guidance.

§19.1923. Incident or Accident Reporting.

(a) The facility must detail in the medical record every accident or incident, including allegations of mistreatment of residents by facility staff, medication errors, and drug reactions.

(b) Accidents, whether or not resulting in injury, and any unusual incidents or abnormal events including allegations of mistreatment of residents by staff or personnel or visitors, shall be described in a separate administrative record and reported by the facility in accordance with the licensure Act and this section.

(1) If the incident appears to be of a serious nature, it shall be investigated by or under the direction of the director of nurses, the facility administrator, or a committee charged with this responsibility.

(2) If the incident involves a resident and is serious or is one requiring special reporting to the licensing agency, the resident's responsible party and attending physician shall be immediately notified.

(3) Certain types of incidents shall be specially and specifically reported to the central office of the licensing agency in accordance with guidelines established by the licensing agency.

(c) Accident or incident reports shall be filed in the administrator's office, shall be retained for the period of time indicated for clinical records, and shall contain the following information:

(1) For incidents involving residents, the name of the resident; witnesses (if witnesses were present); date, time, and description of the incident; circumstances under which it occurred; action taken including documentation of notification of the responsible party and attending physician if appropriate; and final disposition that indicates the resident's condition has stabilized and/or is resolved. The final disposition shall include the date and time of entry, resident's vital signs, and description of the resident's present health condition. The incident report shall be completed under the direction of the director of nurses or individual in charge of the shift of duty at the time the accident or incident occurred. The nursing staff is then to document in the nurses notes, on each shift, the condition of the resident for at least 24 hours or until the condition stabilizes.

(2) Incident reports describing incidents not involving residents shall contain such information as names of individuals involved, date, time, witnesses (if witnesses were present), description of the event or occurrence, including the circumstances under which it occurred, action taken, and final disposition that indicates resolution of the event or occurrence.

(d) The facility must investigate incidents/accidents and complaints for trends which may indicate resident abuse (see §19.1917 of this title (relating to Quality Assessment and Assurance). Trends that might be identified include, but are not limited to, type of accident, type of injury, time of day, staff involved, staffing level, and relationship to past complaints.

(e) The facility must make incident reports available for review, upon request and without prior notice, by representatives of the United States Department of Health and Human Services, the Texas Department of Health, and the Texas Department of Human Services.

§19.1924. Financial Records.

(a) Nursing facility staff must maintain current financial records in accordance with recognized fiscal and accounting procedures. The facility must ensure that records clearly identify each charge and payment made on behalf of each resident residing in the facility. The facility must clearly state in its records to whom charges were made and for whom payment was received.

(b) The facility must make financial records and supporting documents available at any time within working hours and without prior notification for review by the Department of Health and Human Services, the Texas Department of Health, the Texas attorney general's Medicaid Fraud Control Unit, and the Texas Department of Human Services. The facility must keep the financial records in the facility for a minimum of three years and 90 days after the termination of the contract period or for three years after the end of the federal fiscal year in which services were provided if there was a provider agreement/contract with no specific termination date in effect. The facility must also keep for the same period of time supporting fiscal documents and other records necessary to ensure claims for federal matching funds.

§19.1925. Financial Audits.

(a) The Texas Department of Human Services (TDHS) audits all facilities periodically. A facility is notified of audit plans and is given a report of the final audit findings. If vendor payment problems are found, the Provider Services Section works with the facility to reconcile the discrepancies. If the findings show that refunds are due residents or their responsible parties, the regional staff assist the facility in reconciling the audit findings. Upon receipt of an audit exception, the facility must provide additional documentation, reach a final agreement, make restitution within 60 days, or request a hearing within 15 days. Requests for an informal hearing are to be directed to TDHS, Provider Services Section. Requests for a formal hearing are to be directed to TDHS, Office of General Counsel.

(b) If the facility does not pay the amount due the resident within the specified time frame, the department may withhold other funds due the facility beginning on the 60th day without providing advance notice. The department releases funds when the facility produces documentation that it has refunded the proper amount to the resident or responsible party.

(c) The department may require the facility to pay the resident refund amount to the department plus any anticipated cost, including personnel salaries, which is incurred by the department in making the refund to the proper party.

(d) On change of ownership, the facility is audited before final settlement with the previous owner.

§19.1926. Collection of Applied Income.

(a) Nursing facilities may collect from the resident only the applied income that is specified on the resident's payment plan forms, except when that amount exceeds the monthly vendor rate. In this event, the facility may collect only an applied-income amount equal to the maximum monthly Medicaid vendor rate.

(b) If a payment plan appears incorrect, the facility administrator should contact the local Texas Department of Human Services (TDHS) worker to correct the plan. Even if a resident's income increases, the administrator must not collect an increased payment until the plan is changed. The administrator should not collect an increased payment in anticipation of a payment plan increase.

(c) If an admitted resident does not have a payment plan, the administrator should contact the local worker for help in determining how much applied income is owed. If the forthcoming forms indicate a lesser payment, the administrator should refund the excess immediately and notify the worker.

(d) Facilities that collect payments (part applied income, part Medicaid) in excess of the vendor rate are in violation of department regulations and of Public Law 95-142 which makes "solicitation of supplementation" a felony.

(e) Regional TDHS staff must report any violations. If an investigation shows that the facility has violated this standard, a recommendation for withholding vendor payments, contract termination, referral to the courts, or other contract action may be made.

(f) The Nursing facility must refund the resident's prorated applied income money when the resident has paid in advance for the full month and is discharged from the facility any time during the month. The facility must make the refund within 30 calendar days from and including the date of discharge, even when

vendor payment has not been received from the department.

§19.1927. Computation of Daily Reimbursement Rate for Residents with Applied Income.

(a) Reimbursement is computed by multiplying the established daily rate by the number of days in the month. The resident's applied income is then subtracted and the result is divided by the number of days in the month.

(b) A facility may not collect more than the applied income reported on the payment plan form in a 31-day month.

§19.1928. Volunteer Program.

(a) The facility shall promote a volunteer program designed to assist in meeting the social and emotional needs of the residents.

(b) A volunteer council may be utilized to involve the community in the volunteer program.

§19.1929. Staff Development. Each facility shall implement and maintain programs of orientation, training, and continuing in-service education to develop the skills of its staff (see §19.1903 of this title (relating to Required Training of Nurse Aides). The programs shall meet the requirements described in this section.

(1) A rural hospital participating in the Medicaid Swing Bed Program as specified in §19.2006 of this title (relating to Medicaid Swing Bed Program for Rural Hospitals) satisfies the requirements of this section when it receives TDH certification as a swing bed hospital in the Medicare Swing Bed Program, if the swing beds are used for no more than one 30-day length of stay per year, per resident.

(2) The following orientation, training, and continuing in-service education programs shall be provided by the facility for its employees.

(A) Present employees shall demonstrate and/or submit evidence to the facility training coordinator that they have competency in the skills and have knowledge meeting the requirements of orientation and job-specific training, the same as required for new employees, or shall receive part or all orientation or training as necessary to have such required competency and knowledge. Documentation of attainment of competency and receipt of knowledge shall be on the same report forms as for new employees, those forms being derived from a standard training inventory list prepared by and supplied only in sample form by the licensing agency. The facility shall make all necessary copies. The form shall not be modified in any way. The standard training inventory list, hereinafter referred to as the training inventory list, will be the document used to accomplish the following:

(i) to serve as an inventory for determining if more training is needed for present employees, and if so, in what areas;

(ii) to determine the level of training success for each employee; and

(iii) to point out employees who fail to adequately complete training and who must receive all or part of the orientation or training again as necessary to gain required competency and knowledge.

(B) The orientation section of the training inventory list will be the same for all employees. Each job-specific area will be covered by the training inventory list. The inventory list will be administered by the facility training coordinator or by the appropriate and competent person named to carry out or assist in carrying out the training program. The administrator of the inventory list must be closely familiar with the actual training each individual taking the training inventory list has undergone.

(C) New employees shall receive orientation and job-specific training, of the content and scope as specified herein and as approved by the licensing agency. On completion of the training, the employees shall be tested by the required inventory list.

(D) Both new and present employees must receive continuing in-service education of content and scope, as it relates to the job category involved and as approved by the training coordinator.

(E) Employees involved.

(i) Employees included are those having responsibility for any part of the care given to residents and who have any contact with residents. Licensed and degreed personnel will not be required to meet the job-specific requirements of paragraph (2) of this section for these training programs, but will be included in training required for all employees under the orientation provisions in the same subsection.

(ii) Orientation is required for all employees, except the administrator. The employee categories requiring job-specific training and continuing in-service education to their respective jobs are nursing, dietary, janitor/housekeeper, activity-social service, and clinical records.

(I) For the purpose of this paragraph, a medication aide is considered a nurse aide and must receive the same training as the nurse aides in orientation, job-specific training, and continuing in-service education. The continuing in-service education requirement for nurse aides in this paragraph may not be used for renewal as a medication aide.

(II) Administrators licensed by these / Texas Board of Licensure for Nursing Home Administrators and administrators-in-training under the auspices of that board are not included. Consultants and subcontract personnel who are not employees of the facility are not included.

(III) A person who is employed as a food service supervisor and enrolls in an approved food service supervisor course within 90 calendar days after the date of employment, is not required to receive the dietary job-specific training.

(IV) Activity directors who meet the requirements for activity directors under §19.502 of this title (relating to Activities), are excluded from the job-specific training.

(V) A person who is employed as the activity director and enrolls in an activity director course that is approved by the Texas Department of Human Services, is exempt from the activities director training, provided the 80-hour activity director course is begun within 90 calendar days after the date of employment.

(iii) The administrator shall be responsible for determining that employees who come from outside placement resources have been adequately trained to perform the job which they will occupy in the facility. Outside placement resources would include contract personnel, registry personnel, agency pools, and temporary help placement agencies. Orientation programs for such individuals may be conducted at the discretion of each facility. Facility administrators shall request outside placement resources to provide documented evidence that their personnel have successfully completed the required training.

(F) As part of orientation, each employee must receive instruction regarding the Human Immunodeficiency Virus (HIV) as outlined in the educational information provided by the Texas Department of Health Model Workplace Guidelines. At a minimum the HIV curriculum must include:

(i) modes of transmission;

(ii) methods of prevention;

(iii) behaviors related to substance abuse;

(iv) oOccupational precautions;

(v) current laws and regulations concerning the rights of an AIDS/HIV-infected individual; and

(vi) behaviors associated with HIV transmission which are in violation of Texas law.

(3) Facility training coordinator.

(A) The administrator of the facility shall designate in writing a facility training coordinator to organize, oversee, and coordinate the facility's program of orientation, job-specific training, and continuing in-service education. The training coordinator shall engage the services of appropriate and competent persons to carry out or assist in carrying out the programs. The coordinator, based on his own instruction, or by recommendation of the instructors or trainers involved, shall determine the status of all employees, new and present, with respect to training programs, training needs, and competencies. The coordinator will be held responsible for checking or causing to be checked the credentials of persons being trained.

(B) A training coordinator may serve more than one facility as long as the training program requirements are met. As the training coordinator will be responsible for the training of all employee categories, that person shall be a professionally or vocationally licensed person in health care or shall hold a bachelor's degree from an accredited college or university. Ideally, the training coordinator will have had training or experience in adult education and in the general area of health care.

(C) To assure that the overall quality of service provided by the facility is not lessened, the facility administrator and director of nurses are not to serve as the training coordinator.

(4) Methods acceptable.

(A) It is the intent of the licensing agency to accept various methods by which a facility may accomplish its training and in-service education programs as long as the employees receive the training and education necessary to achieve the competencies and proficiencies outlined in the training inventory list within the required total timeframes. Programs may be conducted in the facility, in a school or college, or elsewhere. Instructors may be consultants, qualified facility employees including the training coordinator, persons from outside the facility or representatives of schools or other organizations, as engaged or approved by the training coordinator. Facility employees with other duties may be used in training programs as long as their other required duties are not adversely affected.

(B) A facility consultant may teach the continuing in-service education required by this program and count that as part of the time spent in consultation. The time a consultant may use teaching in orientation or job-specific training in accordance with Title 25, §145.131 concerning basic teaching outline, may not be counted as time spent in consultation.

(C) Any generally recognized training technique may be used, including, when appropriate, demonstration and learning-by-doing while actually on the job. In teaching technical and nursing care of the elderly and other residents of the facilities, consideration shall be given in all such subjects to the psychological and social needs of the residents.

(D) If the facility chooses to purchase training from a college, school or other institution, to meet these requirements, the course must be approved. For a college, school, or other institution to acquire approval, it must submit a letter of intent or training outline it will use to the licensing agency for approval. If the college, school, or other institution uses the material suggested by the licensing agency, it may submit a letter of intent to the licensing agency. In either case, it is the facility's responsibility to determine that the college, school, or other institution has a current approval from the licensing agency. The licensing agency will maintain a current list of approved training institutions. Health care facilities shall have open access to that list.

(5) Programs teaching outline.

(A) New employee training requirements are as follows.

(i) New employee orientation and job-specific training shall meet the requirements specified in subparagraph (B) of this paragraph, concerning general description of orientation, training, and continuing in-service education programs. The training for an employee shall include information not less than that specified for the category or sub-category applicable to the employee in the basic teaching outlines included as part of these sections.

(ii) If a facility has a policy prohibiting a skill to be performed, that facility may exclude the training for that skill. Similarly, if a facility has no residents requiring a certain skill, that facility may exclude the training for that skill. In both cases, documentation to this effect shall be made on the individual's training inventory list.

(iii) Each facility shall submit a letter of intent which shall include an outline of the subject matter (if different from the one suggested by the licensing agency), the date of implementation of the training, and the name and curriculum vitae of the designated training coordinator. The substituted teaching outline is subject to approval by the licensing agency. A copy of the licensing agency's basic teaching outline and suggested plan for implementing the training program will be furnished to each facility; addi- tional copies may be reproduced by the facility. The minimum subject require- ments of training for each category are shown in the licensing agency's basic teaching outline, and it is expected that each individual subject in each category will receive an appropriate amount of time. Appropriate learning-by-doing, when supervised by the training coordinator, or the person designated by the training coordinator, may count toward job-specific training. Such training may be subject to monitoring and approval by the licensing agency.

(B) Continuing in-service education subjects shall relate to the job category involved and be as approved by the training coordinator.

(6) Schedule of training and continuing in-service education.

(A) The facility must provide all new employees with a full orientation shall be provided within 10 working days of employment. The remainder of the training required on the outline for each of the respective job categories shall be completed within 120 calendar days following the 10 working day orientation.

(B) Continuing in-service education requirements are as follows.

(i) Each new and present employee shall secure or receive the numbers of hours of continuing in-service education per year as appropriate to his or her specific job, but not less than the following:

(I) licensed nursing personnel and nurse aides–two hours per quarter;

(II) food service supervisors, cooks and helpers, dietary aides–two hours per quarter;

(III) housekeepers, janitors, laundry workers–one hour per quarter;

(IV) activity staff–one hour per quarter;

(V) social services staff–one hour per quarter; and

(VI) medical record clerks–one hour per quarter.

(ii) Annual in-service training on rehabilitation nursing procedures, the use of restraints, and the promotion of a restraint-free environment must be given to all nursing personnel.

(iii) In addition, all facility employees shall receive annual in-service on the following:

(I) the proper technique for prevention and control of infections;

(II) fire prevention and safety;

(III) accident prevention;

(IV) confidentiality of resident information;

(V) preservation of resident dignity, including protection of privacy and personal and property rights;

(VI) HIV as outlined in paragraph (2)(F) of this section;

(VII) services to residents with cognitive impairments.

(iv) The Quality Assessment and Assurance Committee as described in §19.1917 of this title (relating to Quality Assessment and Assurance) shall assist in identifying additional topics for continuing in-service education.

(v) When related to the employee's respective job, attendance at outside meetings or seminars may be used to satisfy the continuing in-service education requirement for a maximum of four quarters. The facility shall keep records of the total number of hours of in-service education for all employees in the facility as well as records of attendance of each individual employee.

(C) If present employees have to meet the same requirements as new employees, documentation covering these requirements shall be recorded on the same training inventory list and other report forms, as are used for new employees.

(D) Job interruption for any reason, including leave of absence, will cause a suspension of the minimum training time. The training time restarts immediately upon the renewal of active employment.

(E) Part-time employee requirements are as follows.

(i) Part-time employees shall be included in orientation and their respective job-specific training and continuing in-service education.

(ii) Additional time may be allowed for the completion of both the orientation and job-specific training for part-time employees. The number of hours worked will determine the time allowed for completion of training. Orientation must be completed within 80 hours worked and job-specific within 960 hours worked.

(7) New employee requirements are as follows.

(A) Any new employee who has already met all the training requirements or has had similar training, or six months previous employment in a health care facility, and presents verification of previous experience need undergo only that part of training which would relate to orientation and/or specific training peculiar to the facility. To receive credit for all or any completed portion of past training, the employee must be able to offer documented evidence in the form of copies of records of subjects completed in the facility of former employment or demonstrate skill competency to the training coordinator. In either instance, the training inventory will be used as the record for documenting credit.

(B) Any new employee that has had at least six months previous experience in a health care facility may demonstrate competency to the training coordinator. The required training inventory list will be administered by the facility training coordinator or by the appropriate and competent person to determine if more training is needed, and if so, in what areas. The employee's previous service dates are to be verified by the former employer, and this documentation included in the employee's training record.

(8) The training coordinator is to assure himself/herself that the employee being trained is in fact receiving the knowledge and attaining the skills in accordance with the intent of the program. The licensing agency will provide samples of the required standardized training inventory list. The training coordinator may develop examinations or other tests of skills or knowledge; but such tests shall not be used in lieu of the required standardized training inventory list.

(9) Records.

(A) Each facility shall keep appropriate records on each employee who must be involved in training and education programs. The records shall show the status and progress of each employee with reference to his or her required training and shall denote completion and show the date of completion of the appropriate training. An employee is not eligible to receive a record of completion of job-specific training until the required course work is completed and the training coordinator is satisfied appropriate skill levels are attained. Thus, the awarding of a completion record may take as long as 120 calendar days for an employee.

(B) Copies of all records and training inventory lists will be maintained in employee files. However, when the training is provided by a school, college, or other educational institution approved by the licensing agency, those records and training inventory lists need only be maintained by the training institution. Training inventory lists and records pertaining to orientation will in all cases be maintained by the facility. A record or report from an educational institution attesting that a student has successfully completed a training course will be acceptable to the licensing agency, but such record or report must be available in the facility involved for review by the licensing agency. Records of a student or graduate of an educational institution will be made available to the student or graduate on his or her request in accordance with policies of the institution. When an employee terminates employment in a facility, on that employee's request, the facility shall provide that employee with a copy of his or her training inventory list and/or other documentation showing his or her status with respect to required training. Such records shall be shared with another facility on request of the employee. All records shall be made available to representatives of the licensing agency. The facility shall also have a record showing the designation of the training coordinator by the administrator and a resume or curriculum vitae of the coordinator.

(10) An employee changing position within a facility will be considered as a new employee with respect to the new position, and will be subject to being provided with any additional training that would be required for the category or subcategory of the new position within the total minimum training time for that job category or subcategory.

(11) Each facility shall maintain not less than a 30-day advance schedule of training classes. This shall not apply for classes being taught by a college, school, or other institution, where the advance scheduling becomes the responsibility of that institution. The licensing agency will offer assistance in organizing and maintaining training programs, or in orienting

training coordinators, to the extent licensing agency staff and funds permit.

§19.1930. Blood and Blood Products. If the facility stores and transfuses blood or blood products, the facility must meet the conditions established for certification of hospitals that are contained in 42 Code of F ederal Regulations, §405.1028(j)-(l).

§19.1931. Medical Transportation.

(a) The nursing facility is responsible for providing normal transportation for the resident to medical services outside the facility. The attending physician must have ordered the medical services.

(b) Normal transportation is to and from the medical care provider of the resident's choice, who is generally available and used by residents of the locality for medical care included under the Texas Medical Assistance Program. If a Title XIX provider is not in the locality, transportation is to and from the nearest appropriate Title XIX provider if the resident so chooses. The term "locality" means the service area surrounding the nursing facility from which individuals ordinarily come or are expected to come for inpatient or outpatient services.

(c) Transportation charges, including non-emergency, routine ambulance services, involved in the certification or recertification of a resident are the responsibility of the nursing facility.

(d) The facility may not charge the department's health insuring agent, the resident, the family, or responsible party for normal transportation as defined in this section. Normal transportation charges are covered in the monthly vendor rate. The facility may not use the department's community-based Title XIX medical transportation program.

(e) Charges for the following medically necessary ambulance services are not the responsibility of the nursing facility, but are payable by the department's health insuring agent as a Medicaid benefit. They must be properly documented with a physician's authorization and in accordance with the department's health insuring agent's guidelines for payment of ambulance services:

(1) emergency ambulance services; and

(2) non-emergency ambulance services, except for certification or recertification, for residents who must be transported by litter or who must have a life-sustaining support system. This group includes the severely disabled who must be transported in such a fashion and those who are unable to use other means of transportation for stated medical reasons.

(f) If ambulance services are reimbursable by the department's health insuring agent, they are not the responsibility of the resident, the family, or the responsible party.

(g) Nursing facilities are encouraged to use family, friends, sponsors, civic groups, or charitable organizations as resources for transportation services. If normal transportation is not obtainable from these sources, the facility must provide or purchase the appropriate services.

§19.1932. Adjustment or Repair of Prosthetic Devices. Provisions requiring the physician's orders to be documented apply to care and services provided in the institution but do not apply to adjustment or repair of prosthetic devices used by the resident or to services received outside the facility in keeping with planning by family members.

§19.1933. Services Provided by Order of Physician. Nursing facility administrators are responsible for assuring that all medical or medical support services provided to a resident in the nursing facility are ordered by the treating physician. Permitting such services to be provided in the facility without the order of the treating physician constitutes a violation of the contract between the nursing facility and the Department of Human Services.

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

Issued in Austin, Texas on May 23, 1990.

TRD-9005208 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

• **§§19.2001-19. 2013**

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

§19.2001. Licensure.

(a) The facility must meet the following conditions to be approved by the Texas Department of Human Services (DHS) for participation in the Title XIX Texas Medical Assistance program and receive state and federal reimbursement for services to Title XIX residents.

(1) The facility is currently licensed by the Texas Department of Health (TDH) as a Nursing Facility.

(2) The facility has filed an application with DHS for participation as a Nursing Facility in the Title XIX Texas Medical Assistance program.

(3) TDH has furnished DHS with a valid certification for the facility.

(4) The facility's owner or authorized representative has a written contract with DHS.

(b) Pursuant to the Health and Safety Code §§222.021, 222.024, and 222.025, relating to duplication of health care inspections and licensing, a rural hospital participating in the Medicaid swing bed program as specified in §19.2006 of this title (relating to Medicaid Swing Bed Program for Rural Hospitals) satisfies the TDH licensure and certification requirements in subsection (a)of this section when it is currently licensed and certified as a hospital by TDH. However, in accordance with the Omnibus Health Care Rescue Act of 1989 (House Bill 18), which states that if the rural hospital's swing beds are used for more than one 30-day length of stay per year, per patient, the hospital must comply with the Minimum Licensing Standards promulgated by TDH pursuant to Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Texas Civil Statutes, Article 4442(c), and the full Nursing Facility Requirements for Licensure and Medicaid Certification as promulgated by TDH and TDHS.

(c) Application for license.

(1) An applicant for a state license to operate a nursing home shall be a full-time licensed nursing home administrator. The state license to operate the nursing home will be issued in the name of the qualified full-time nursing home administrator.

(2) Application shall be made on a form or in a manner as determined by the licensing agency. The application shall be completed in all detail. The applicant shall have the physical and mental capability to conduct the operations of the facility pursuant to rules adopted by the Texas Board of Health. The application is to be completed by the administrator, signed 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 required by Chapter 242.034 of the Health and Safety Code. This fee shall be submitted in the form of a check or money order payable to TDH;

(II) a copy of the full-time administrator's current license as issued by the Texas Board of Licensure for Nursing Home Administrators;

(III) approval from the local health authority having jurisdiction over the facility, for issuing the license;

(IV) approval from the fire marshal having jurisdiction over the facility, for issuing the license;

(V) 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 authority or articles of incorporation, as appropriate, and a copy of the corporate bylaws. If owned by a partnership, it will be necessary to provide a copy of the partnership agreement;

(VI) a fee as required under Chapter 12.032 of the Health and Safety Code (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

(VII) 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 required by Chapter 242.034 of the Health and Safety Code. This fee shall be submitted in the form of a check or money order payable to TDH;

(II) a copy of the full-time administrator's current license as issued by the Texas Board of Licensure for Nursing Home Administrators;

(III) approval from the local health authority having jurisdiction over the facility, for issuing the license;

(IV) approval from the fire marshal having jurisdiction over the facility, for issuing the license;

(V) 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 authority or articles of incorporation, as appropriate, and a copy of the corporate bylaws. If owned by a partnership, it will be necessary to provide a copy of the partnership agreement.

(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 application shall include:

(I) approval from the local health authority having jurisdiction over the facility, for issuing the license;

(II) approval from the fire marshal having jurisdiction over the facility, for issuing the license;

(III) a fee as required by Chapter 242.034 of the Health and Safety Code. The fee shall be submitted in the form of a check or money order payable to TDH; and

(IV) approval from the Architectural Section of the licensing agency, based upon drawing(s) reviewed prior to conversion or construction and a 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) Change of administrator. The application shall include:

(i) a fee as required by Chapter 242. 034 of the Health and Safety Code. The fee shall be submitted in the form of a check or money order payable to TDH; and

(ii) a copy of the full-time administrator's current license as issued by the Texas Board of Licensure for Nursing Home Administrators.

(E) Renewal.

(i) The application shall include:

(I) a fee required by Chapter 242. 034 of the Health and Safety Code. The fee shall be submitted in the form of a check or money order payable to TDH;

(II) a copy of the full-time administrator's current license as issued by the Texas Board of Licensure for Nursing Home Administrators;

(III) approval from the local health authority having jurisdiction over the facility, for issuing the license; and

(IV) approval from the fire marshal having jurisdiction over the facility, for issuing the license.

(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 accordance with applicable laws and standards. Compliance will be ascertained by on-site inspections by appropriate inspection teams, including architectural evaluations.

(3) 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.

(4) 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.

(5) An existing facility licensed and operating at a certain level of resident care and proposing to change the level of care to a higher level shall meet all

additional requirements, if any, for the new level of care proposed, as required by applicable standards.

§19.2002. Participation Requirements.

(a) These requirements apply to Nursing Facilities which have been licensed and certified as eligible for participation under Title XIX.

(b) Each nursing facility must comply with the state requirements for participation and the facility's contract on a continuing basis.

(c) A facility may not participate in the Texas Medical Assistance Program if it has restrictive policies or practices, including:

(1) requiring the resident to make a will, with the facility named as legatee or devisee;

(2) requiring the resident to assign his life insurance to the facility;

(3) requiring the resident to transfer property to the facility;

(4) requiring the resident to pay a lump sum entrance fee or make any other payment or concession to the facility beyond the recognized rate for board, room, and care as a condition for entry, departure, or continued stay;

(5) controlling or restricting the resident, the resident's guardian, or responsible party in the use of the resident's personal needs allowance;

(6) restricting the resident from leaving the facility at will except as provided by state law;

(7) restricting the resident from applying for Medicaid for a specified period of time;

(8) refusing to provide services to a Medicaid resident solely because the resident has refused to accept a particular unit dose and related distribution equipment system;

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

(10) preventing terminally ill adult residents from exercising their will in making written or unwritten directives to reject life-sustaining procedures.

(d) If the Texas Department of Human Services (DHS) has documentation showing good cause, it reserves the right to reject the facility's participation or to cancel an existing contract if the facility charges the Title XIX resident, any member of his family, or any other source for supplementation or for any item except as allowed within department policies and regulations.

(e) State statutes and Title XIX Nursing Facility contracts provide for appeal procedures for aggrieved providers whose vendor payments may be or have been suspended or whose contracts have been cancelled by DHS. A facility must send a written request for a contract appeals hearing within 10 calendar days after receipt of a department letter notifying the facility of the proposed action. The facility must send the request for a hearing to the General Counsel, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030. Hearings will be held in Austin.

(f) The department's interpretations of the requirements for participation or the contract may not be appealed to the department's contract appeals hearing committee unless the interpretation has caused an adverse action for the facility.

(g) Representatives of DHS, the Texas Department of Health (TDH), the Medicaid Fraud Control Unit, and the Department of Health and Human Services may enter the premises of the participating facility at any time to make inspections or to privately interview the residents receiving assistance from DHS. For visits after 7 p.m., all reasonable efforts will be made to avoid disturbing the residents.

(h) Facilities must supply DHS complete information according to federal and state requirements about the identity of:

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

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

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

(4) each partner, if the facility is organized as a partnership (a copy of the partnership agreement is required, but the dollar amount of capital contributions of the partners may be omitted); and

(5) any director, officer, agency, or managing employee of the institution, agency, or organization, who has ever been convicted of a criminal offense related to the person's involvement in programs established by Title XVIII, XIX, and XX (effective dates for disclosure of any convictions are July 1, 1966, for Medicare, and January 1, 1969, for Medicaid.)

(i) If a profit-making corporation operates the facility, a copy of the following material is required:

(1) certificate of incorporation (for Texas corporations only);

(2) certificate of authority to do business in Texas (for out-of-state corporations only);

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

(4) any management contract for the facility. If no stockholder owns, directly or beneficially, 5.0% or more of the corporate stock, the president and secretary of the corporation should state this on the department form.

(j) Non-profit corporations must furnish a copy of:

(1) certificate of incorporation (for Texas corporations only);

(2) certificate of authority to do business in Texas (for out-of-state corporations only);

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

(4) a copy of any management contract for the facility.

(k) Facilities other than those described in subsections (j) and (k) of this section must furnish a copy of:

(1) charter or other legal basis for the organization which owns the facility;

(2) any management contract or agreement for the facility;

(3) by-laws of the organization (if applicable); and

(4) other information required by the department to determine the status of the legal entity which owns the facility.

(l) Facilities must disclose business transaction information. A facility must send to DHS, within 35 days after the date of a written request, complete information on:

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

(2) any business transactions between the facility and any wholly owned supplier, or between the facility and any subcontractor during the five-year period ending on the date of the request.

(m) The facility must report changes in the required information promptly to DHS.

(n) Failure to provide this information may result in suspension, termination, or other contract action including, but not limited to, holding vendor funds. Payment to the facility is denied beginning on the day after the date information was due, and ending on the day before the date the information is received by the department.

§19.2003. Additional Participation Requirements.

(a) All Medicaid contracted beds in Texas' Nursing Facilities must be found by the Health Care Financing Administration (HCFA) to meet §1861(j)(1) status of the Social Security Act to participate in the Medicaid Program.

(b) Except as specified in subsections (c) and (d) of this section and in §19.2004 of this title (relating to Selection and Contracting Procedures for Adding Beds in High Occupancy Areas), the Texas Department of Human Services (DHS) does not accept applications for participation from or contract for Nursing Facility beds with any Nursing Facility that was not granted by the Texas Health Facilities Commission before September 1, 1985, a valid certificate of need (CON) or other valid order that had the effect of authorizing the operation of the facility at the bed capacity for which participation is sought.

(c) If the provider meets all criteria, DHS may exempt the following facilities from the policy stated in subsection (b) of this section.

(1) Facilities that change ownership. Except as otherwise provided in this section, DHS limits contracting with the new owner to no more certified Medicaid beds than the previous owner had when the ownership change occurred.

(2) Facilities that TDH has decertified. DHS limits contracting to no more than the number of certified Medicaid beds on the effective date of decertification. The facility must meet all certification and contract requirements within 12 months of the effective date of decertification.

(3) Facilities whose Medicaid contracts are terminated because of the imposition of any sanctions as specified in §19.2012 of this title (relating to Remedies for Violations of Title XIX Nursing Facility Contractual Agreements). DHS limits contracting to no more than the number of certified Medicaid beds on the effective date of the contract cancellation. The facility must meet all certification and contract requirements within 12 months of the effective date of its contract cancellation.

(4) Facilities being replaced in whole or in part. DHS limits contracting of the replacement beds to the county in which the original facility was located and to no more than the number of certified Medicaid beds being replaced. DHS does not contract with the existing facility and the replacement facility simultaneously.

(5) Facilities that add no more than 10 beds or 10% of the existing number of certified Medicaid beds, whichever is less, within a 24-month period. In computing the 24-month periods, the first 24-month period begins September 1, 1985, and expires August 31, 1987. DHS will accept an application from a facility if the facility:

(A) has a Medicaid contract to provide SNF and/or ICF services;

(B) has an average occupancy rate of at least 90% in the six-month period ending the last day of the month immediately preceding the month of application (the facility must submit written documentation acceptable to DHS substantiating the occupancy rate); and

(C) has not had sanctions imposed as specified in §19.2012 of this title (relating to Remedies for Violations of Title XIX Nursing Facility Contractual Agreements) which have resulted in contract cancellation in the 12-month period immediately preceding the month of application.

(6) Facilities whose capacity is less than 60 licensed beds. For reasons of efficiency, DHS will accept an application to contract up to 60 beds from a small facility of less than 60 licensed beds if the facility:

(A) has a Medicaid contract to provide Nursing Facility services; and

(B) has not had sanctions imposed as specified in §19.2012 of this title (relating to Remedies for Violations of Title XIX Nursing Facility Contractual Agreements) which have resulted in contract cancellation in the 12-month period immediately preceding the month of application.

(7) Converted facilities contracting to operate as teaching Nursing Facilities. Facilities contracting under this exemption must meet each of the applicable following criteria.

(A) The facility must have been in existence for at least three years before the first day of the calendar year in which the facility applies to participate in Medicaid as a teaching nursing facility.

(B) A hospital or nursing facility that converts to a teaching nursing facility must convert at least an entire wing or distinct part for operation as a teaching facility under the Medicaid program.

(C) A hospital participating as a teaching nursing facility must be licensed by TDH as a nursing facility and must meet all the requirements of a licensed nursing facility.

(D) The facility must provide DHS with acceptable written documentation that is has entered into an affiliation agreement of at least five years' duration with a school offering an accredited family practice residency program and/or an accredited nursing program for registered or vocational nurses or both. The school must offer classroom training on its own campus or on the campus of an accredited college or university of which it is a part, and the curriculum must include a geriatric component. At the end of the five year period, the facility may continue or discontinue the affiliation agreement at its own discretion.

(E) During the first year of the initial Medicaid contract for beds under this exemption, the department will not accept a change in the facility's ownership unless the new owner operates the facility under the same terms and conditions that existed at the time the exception was granted. After the first year, the department will accept an ownership change as long as the change does not affect continuance of the affiliation agreement between the facility and a school for the remainder of the five years specified in subparagraph (D) of this paragraph.

(8) Facilities that apply for participation under the DHS commissioner's waiver authority.

(A) The commissioner of DHS has authority to waive the restriction on contracting in subsection (b) of this section and direct the department to enter into Medicaid contracts with Nursing Facilities that satisfy the requirements specified in this subparagraph. In a manner acceptable to DHS, each of these facilities must:

(i) document that there is a crisis and immediate need for additional Medicaid nursing-facility beds in the facility's community;

(ii) document that there are problems with the quality of care available in the facility's community, and show that new Medicaid-contracted beds will remedy these problems;

(iii) demonstrate that Medicaid residents in the facility's community do not have reasonable access to nursing-facility care;

(iv) document strong community support for a new Medicaid Nursing Facility; and

(v) agree to make a contractual commitment that the individual or company entering into a Medicaid contract under the provisions of this paragraph will directly own and operate the facility for at least three years.

(B) The commissioner also has the authority to:

(i) waive the requirement in paragraph (10)(A) of this subsection, which provides that teaching Nursing Facilities must exist for at least three years before applying to participate in Medicaid; and

(ii) direct the department to enter into Medicaid contracts with teaching Nursing Facilities that meet the requirements in paragraph (7)(B)-(E) of this subsection.

(d) Facilities must submit properly completed monthly occupancy report forms to DHS each month. This report must be submitted on or before the fifth day of the month following the reporting period month.

§19.2004. Selection and Contracting Procedures for Adding Beds in High-occupancy Areas.

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

(1) Designated county-commissioner precinct–A county-commissioner precinct within Harris, Bexar, Dallas, or Tarrant county.

(2) Nontransferable letter of intent–A written document, initiated by the Texas Department of Human Services (DHS) and issued to potential contrac- tors selected in a random selection process, specifying the location and number of beds for which DHS will contract, provided that the potential contractor meets all criteria specified by DHS.

(3) Occupancy rate–The number of patients occupying certified Medicaid beds, divided by the number of existing certified Medicaid beds in a county or designated county-commissioner precinct. The number of beds committed to by a selected potential contractor with a non-transferable letter of intent is included in the occupancy-rate data for the county or designated county-commissioner precinct from the date of issuance of the letter of intent, unless the potential contractor defaults.

(4) Open solicitation period–A period of no more than 30 days during which potential contractors may ask to participate in a random-selection process for adding beds in a high-occupancy area.

(5) Potential contractor–A provider who wants to contract for additional beds in a county or designated county-commissioner precinct that has reached its threshold. A potential contractor may be either a Nursing Facility provider or a hospital provider.

(6) Threshold–An occupancy rate of 90% in a county or designated county-commissioner precinct. If a county has a population of more than 5,000 and has no beds certified for Title XIX participation, it is considered to have exceeded the threshold.

(b) DHS computes occupancy rates by using the information contained in the Nursing Home Occupancy Information form. Monthly copies of occupancy-rate information for a particular county or county-commissioner precinct are available on request. Requests may be sent to Provider Services Section, Mail Code 646-E, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030.

(c) When DHS determines that the occupancy rate in a county or designated county-commissioner precinct exceeds the threshold in each of five months in any continuous six-month period, the department places a public notice in the *Texas Register* to announce an open solicitation period. The public notice includes the following information:

(1) identification of the high-occupancy area(s);

(2) six-month occupancy-rate figures for the high-occupancy area(s), and

(3) the beginning and ending dates for the open solicitation period.

(d) Potential contractors seeking to contract in an area identified in the public notice must make written reply to the public notice. The reply must be received by the Provider Services Section, Mail Code 646-E, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030, before the close of business on the published ending date of the open solicitation period. The reply must include the following information:

(1) the name, address, and phone number of the person wishing to contract;

(2) the location of available beds, which must be currently licensed as nursing home beds or as hospital beds by the Texas Department of Health (TDH); and

(3) the number of proposed beds offered.

(e) DHS places potential contractors who respond to the public notice and who meet the requirements in subsection (d) of this section on a waiting list for the primary selection process. If the beds being offered are in architecturally distinct parts of a facility, each distinct part is registered separately on the waiting list. The department places each potential contractor on the primary-selection waiting list in the order in which TDH originally licensed the beds that the potential contractor is proposing for medicaid participation. In other words, beds are placed on the waiting list in the order of their original licensing.

(f) At the end of the 30-day solicitation period DHS accepts the first name on the list of potential contractors. If the beds offered by the first selected potential contractor do not reduce the occupancy rate in the high-occupancy area to less than 80%, the department accepts subsequent potential contractors in the order of their appearance on the list until the occupancy rate is reduced to less than 80%, or until no more potential contractors are available. Potential contractors whose beds are selected to reduce the occupancy rate in the high-occupancy area may immediately contract with DHS to provide Medicaid services.

(g) When there are insufficient available beds after the primary selection, potential contractors may participate in a secondary selection process. The secondary selection is for potential contractors who wish to construct a facility.

(h) To initiate a secondary selection process, DHS places a public notice in the Texas Register announcing an open solicitation period. The public notice includes the following information:

(1) identification of the high-occupancy area(s);

(2) six-month occupancy-rate figures for the high-occupancy area(s);

(3) the beginning and ending dates for the open solicitation period; and

(4) the number of blocks of beds for which DHS will contract.

(i) Potential contractors seeking to contract to construct a facility in a high-occupancy area must make written reply to the public notice. The reply must be received by the Provider Services Section, Long Term Care Department, Mail Code, 646-E, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030, before the close of business on the published ending date of the open solicitation period. The reply must include the following information:

(1) the name, address, and phone number of the person wishing to contract;

(2) the location of the proposed facility; and

(3) the number of proposed blocks of beds offered.

(j) DHS restricts potential contractors to offering beds in specified blocks, as follows:

(1) 120-bed blocks are allowed in counties or designated county-commissioner precincts with 1,500 or more certified Nursing Facility beds;

(2) 90-bed blocks are allowed in counties or designated county-commissioner precincts with fewer than 1,500 certified Nursing Facility beds.

(k) Potential contractors who reply as specified in subsection (i) of this section are allowed 90 days to qualify for the secondary selection, as specified in subsection (l) of this section. DHS notifies the potential contractors in writing about the beginning and ending dates of the qualifica- tion period. If no potential contractors submit replies during the open solicitation period, DHS publishes in the *Texas Register* a second public notice announcing the reopening of the open solicitation period until a potential contractor replies to the public notice. Upon receipt of a reply from a potential contractor, as specified in subsection (i) of this section, DHS places a notice in the *Texas Register* to announce the closing date of the reopened solicitation period.

(l) To qualify for the secondary election, potential contractors must demonstrate an intent and ability to begin construction of a facility and complete contracting within time frames specified in subsections (q) and (r) of this section, by submitting a letter of application to DHS with the following documentation:

(1) acceptable written documentation showing the ownership of or an option to buy the land on which the proposed facility is or will be located;

(2) a letter of finance from a financial institution;

(3) a signed agreement stating that, if selected, the potential contractor will pay liquidated damages if the 180-day and/or 18-month deadline(s) described in subsection (q) of this section are not met. The signed agreement must also require the potential contractor to provide, within 10 workdays after the date of selection, a surety bond or other financial guarantee acceptable to DHS ensuring payment in the event of default. If the 180-day deadline described in subjection (q) of this section is not met, liquidated damages are 5.0% of the estimated total cost of the proposed or completed facility. If the 18-month deadline described in subsection (q) of this section is not met, liquidated damages are 10% of the estimated total cost of the proposed or completed facility;

(4) acceptable written documentation that the preliminary architectural plans for the proposed or completed facility have been submitted to Texas Department of Health (TDH).

(m) Potential contractors who submit false information will be eliminated from the secondary selection process.

(n) DHS places qualified potential contractors on a secondary-selection waiting list in the order that their applications are received. Each application must be complete at the time of its receipt, as specified in subsection (l) of this section.

(o) After the 30-day open solicitation period, DHS accepts the first qualified potential contractor on the secondary-selection waiting list. If the block of beds offered by the first selected potential contractor does not reduce the occupancy rate in the high-occupancy area to less than 80%, the department accepts subsequent potential contractors in the order of their appearance on the list until the occupancy rate is reduced to less than 80%, or until no more potential contractors are available. A potential contractor offering more than one allowable block of beds in an open area is allowed one opportunity for selection per proposed block of beds.

(p) DHS issues a nontransferable letter of intent to the potential contractors selected to reduce the occupancy in the high-occupancy area to less than 80%. A potential contractor who does not meet the 180-day and/or 18-month deadline(s) to complete the process of contracting with DHS for additional beds, as specified in subsection (q) of this section, thereby defaults on the requirements of the nontransferable letter of intent. At its sole option, DHS may grant a 90-day extension to a potential contractor who anticipates default on the 18-month deadline, if the potential contractor submits to DHS written documentation explaining the reasons for the delay in completion of the facility. The request for a 90-day extension of the 18-month deadline must be made in writing to DHS 15 days before the date of the anticipated default. DHS allows no extensions for defaults on the 180-day deadline. Potential contractors on the secondary waiting list who were not initially selected to reduce the occupancy rate in the open area, are considered alternate candidates for a nontransferable letter of intent when a selected potential contractor defaults. Upon default, DHS notifies alternate candidates of their selection for a nontransferable letter of intent in the sequential order established during the secondary selection process. If no alternate candidates are available, DHS publishes in the *Texas Register* a second public notice announcing reopening of the open solicitation period. The reopened solicitation period remains open until a potential contractor replies, as specified in subsection (i) of this section. Upon receipt of the reply, DHS places a notice in the *Texas Register* announcing the closing of the reopened solicitation period.

(q) Potential contractors selected in the secondary selection process and granted a nontransferable letter of intent have 180 days to complete all foundation work and 18 months from the date of the nontransferable letter of intent to complete the process of contracting with DHS for additional beds. Verification of completed foundation work is done on-site by TDH staff. DHS notifies potential contractors in writing about the 180-day and 18-month deadlines. The process of contracting is considered complete when facility construction requirements are completed and the facility is licensed and certified by TDH.

(r) The potential contractor owes liquidated damages to DHS if the 180-day and/or 18-month deadline(s) specified in subsection (q) of this section are not met. A DHS-approved 90-day extension of the 18-month deadline does not prevent collection of the potential contractor's liquidated damages; and collection of liquidated damages does not preclude DHS from terminating the nontransferable letter of intent for default.

(s) The initial Medicaid contract for beds under provisions in this section requires payment of liquidated damages in an amount equal to $100 per contracted bed if the provider sells the facility during the first year of the initial Medicaid contract.

(t) Providers may request an informal review of DHS actions involving this section and §19.2003 of this title (relating to Additional Participation Requirements) by writing to Texas Department of Human Services, Administrator, Provider Services Section, Mail Code 646-E, P.O. Box 149030, Austin, Texas 78714-9030.

§19.2005. Contract Requirements.

(a) The Texas Department of Human Services (DHS) may enter only into time-limited contracts with the facility. The terms of any contract may not extend beyond one year. Five types of contracts are permitted:

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

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

(3) a 12-month agreement subject to a provision for automatic cancellation 60 days after the final scheduled date for corrections, unless the TDH determines and has notified DHS that all required corrections have been satisfactorily completed;

(4) a probationary contract period of 30 days; and

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

(b) Nursing Facilities (NFs) must comply with all requirements for participation.

(c) If state requirements for participation contain additional or more restrictive requirements, facilities must meet these requirements.

§19.2006. Medicaid Swing Bed Program for Rural Hospitals.

(a) Program description. The Texas Department of Human Services (DHS) operates the Medicaid Swing Bed Program for rural hospitals located in counties with populations of 100,000 or less. The Medicaid Swing Bed Program is mod-

eled on Medicare's Swing Bed Program. The Medicaid Swing Bed Program permits participating rural hospitals to use their beds interchangeably to furnish both acute hospital care and Nursing Facility care to Medicaid residents when no care beds are available in Nursing Facilities (NFs) in the area. When a participating rural hospital furnishes NF nursing care to Medicaid residents, DHS makes payment to the hospital using the same procedures, the same case-mix methodology, and the same Texas Index for Level of Effort (TILE) rates that the Texas Board of Human Services authorizes for reimbursing NFs participating in the Texas Medicaid Nursing Home Program.

(b) Application to participate. Rural hospitals apply to DHS to participate in the Medicaid Swing Bed Program. Each applicant must be located in a county with a population of 100,000 or less and must meet the qualifying requirements of the Medicare Swing Bed Program. Hospitals approved for participation enter into swing bed provider agreements with DHS.

(c) Parallel participation in Medicare. Each participating rural hospital must:

(1) have a Medicare hospital provider agreement; and

(2) be Medicare-certified by the Texas Department of Health (TDH) as a swing bed hospital in the Medicare Swing Bed Program.

(d) Applicability of Medicare requirements. Each participating rural hospital must satisfy all the requirements of the Medicare Swing Bed Program, except for Medicare's five-weekday transfer requirement and 15% payment limitation do not apply for Medicaid reimbursement purposes.

(e) Applicability of long term NF requirements for licensure and certification. From day one of the resident's stay, participating rural hospitals must meet the requirements set forth in §19.101 of this title (relating to Definitions); §§19.2101-19.2107 of this title (relating to Federal Requirements); §§19.1501-19.1510 of this title (relating to General Requirements; Construction; Applicable Codes and Standards; Site and Grounds; Fire Service and Access; Means of Egress; Interior Finishe; Fire Alarms, Detection Systems, and Sprinkler Systems; Subdivision of Building Spaces-(Smoke Barriers); and Emergency Electrical Services; §§19. 1901-19.1919 of this title (relating to Administration; Governing Body; Required Training of Nurse Aides; Proficiency of Nurse Aides; Staff Qualifications; Use of Outside Resources; Medical Director; Laboratory Services; Radiology and Other Diagnostic Services; Clinical Records; Contents of the Clinical Record; Additional Clinical Record Service Requirements; Clinical Records Service Supervisor; Disaster and Emergency Preparedness; Transfer Agreement; Utilization Review; Quality Assessment and Assurance; Disclosure of Ownership; and Independent Medical Evaluation and Audit; §§19.1701-19.1708 of this title (relating to Vendor Payment); §§19.1601-19.1602 of this title (relating to Medical Necessity (MN) and Utilization Review (UR), and Utilization Review Plan); §§19.1801-19.1802 of this title (relating to General Reimbursement Information, and Cost Reporting Procedures); and Appendix A, General Reimbursement Methodology, of DHS's ICF/SNF Standards for Participation. Specific licensure and participation requirements relating to the Omnibus Health Care Rescue Act of 1989 (HB 18) are found in §19.2001(b) of this title (relating to Licensure), §19.2002(b) of this title (relating to Participation Requirements), §19.1902(a) of this title (relating to Governing Body), §19. 1929(1) of this title (relating to Staff Development), and §19.1915(d) of this title (relating to Transfer Agreement) Requirements relating to the Health and Safety Code (duplication of health care inspections and licensing) are found in §19.2001(b) of this title (relating to Licensure).

§19.2007. Effective Dates of Provider Contracts.

(a) The effective date of the provider contract for an initial certification is the date the on-site survey is completed if the facility meets:

(1) all federal health and safety standards; and

(2) any other requirements imposed by the Texas Department of Human Services (DHS).

(b) If the facility does not meet any of the requirements specified for an initial certification, the contract is effective on the earlier of the following dates:

(1) the day the facility meets all requirements; or

(2) the day the facility's correction plan, approvable waiver request, or both are accepted by the state official of the Texas Department of Health (TDH) authorized to make certification decisions. The facility must have met all requirements imposed by DHS.

(c) The effective date of the provider contract for facilities that have a current contract is the day after the expiration date of the previous contract if the facility continues to meet certification and contract requirements.

§19.2008. Change of Ownership. An ownership change is any change in the business organization that changes the legal entity responsible for the operation of the facility.

(1) Obligation of the seller, that is, the existing owner as specified on the contract with this department. The seller must ensure that the Texas Department of Human Services (DHS) receives written notification of any proposed change in ownership at least 10 days before this change occurs. Failure to provide this notification may, at the department's option, result in the seller's liability for the contract violations that occur from the date of the ownership change until the department receives written notice and establishes an effective date on which the department recognizes the ownership change. That effective date may be as many as 30 days after the date the department receives the written notice of ownership change. The seller's vendor payments may be held, at the department's option, when the department receives information about a proposed or actual change in ownership. Release of the vendor payments depends upon the seller's providing the department with an acceptable final cost report and, at the department's option, one of the following documents in a format acceptable to the department:

(A) a surety bond or an irrevocable letter of credit as described in §19.2010 of this title (relating to Surety Bonds or Letters of Credit);

(B) the buyer's nontransferable written agreement that the buyer has agreed to pay the department for any liabilities that exist or may be found to exist during the period of the seller's contract with this department; or

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

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

(A) any plan of correction;

(B) an expiration date;

(C) compliance with health and safety standards;

(D) compliance with the ownership and financial interest disclosure requirements of 42 Code of Federal Regulations §§455.104, 455.105, and 1002.3;

(E) compliance with civil rights requirements in 45 Code of Federal Regulations, Parts 80, 84, and 90;

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

(G) any sanctions as specified in §19.2012 of this title (relating to Remedies for Violations of Title XIX Nursing Facility Contractual Agreements), including deficiencies, vendor holds, compliance periods, notification for correction of contract violations, probationary contracts, and history of deficiencies.

(3) Neither medical assistance nor amounts payable to vendors out of public assistant funds are transferable or assignable at law or in equity. The department will not allow non-split agreements in the case of ownership changes. Non-split arrangements are arrangements where the department does not interrupt payments to old and new owners but continues reimbursements as though no ownership change has occurred. A split in pay agreement ensures that payments to the former owner stop on a certain date and payments for services thereafter go to the new owner.

(4) The buyer and seller. The buyer and seller of a nursing home may reach any agreement they wish, but the department will not participate in a non-split procedure which would allow the new owner to receive the former owner's accrued vendor payments.

(5) A financial audit will follow each change in ownership. When audit discrepancies are found, restitution settlement will be the responsibility of the appropriate party based on the split agreement.

(6) Removal of financial records from facility. It is permissible for the corporation or individual selling the facility to remove the financial records pertaining to his period of ownership from the facility and maintain them at the corporation home office. The corporation must, however, maintain these financial records for the time period prescribed by law or until such time as all audit exceptions are reconciled, whichever period is the longer. The trust fund records, including ledger cards, should remain with the new owner since the trust fund record pertains to the individual's money and must be available at his place of residence.

§19.2009. Nursing Facility Ceases to Participate. A Nursing Facility may lose its status as a participating facility if any of the following conditions are met:

(1) the facility withdraws voluntarily from the program. The owner and administrator must request withdrawal, in writing, from the Texas Department of Human Services (DHS) at least 10 days before the withdrawal date;

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

(3) DHS invokes the cancellation clause if the deficiencies are not corrected within specified time limits, as specified in §19.2012 of this title (relating Remedies for Violations of Title XIX Nursing Facility Contractual Agreements);

(4) TDH terminates certification of the facility;

(5) the nursing facility's license expires;

(6) TDH revokes the facility's license. TDH notifies DHS of the action taken, and DHS assumes responsibility for cancelling the facility's status as a participating facility;

(7) the nursing facility (NF) is a Title XIX/XVIII provider of services, and Medicare (Title XVIII) terminates the contract because of contract violation;

(8) DHS cancels the contract because the department determines that the Nursing Facility is in breach of the contract.

§19.2010. Surety Bonds or Letters of Credit.

(a) If the facility has a change in ownership or termination of a contract (voluntary or involuntary), the selling facility's vendor payments may be held. Usually, the amount held is equal to the facility's average monthly payments.

(b) At its sole option, the Texas Department of Human Services (DHS) may allow the facility's owner to obtain a surety bond or an irrevocable letter of credit for a period of three years to cover the adjustments or exceptions resulting from an audit. The three-year period begins with the department's recognized effective date of the facility's sale. Usually, the surety bond equals the average monthly vendor payments paid to the facility. Facilities terminating a contract for long-term care services may furnish a surety bond only if all required long-term care facility cost reports have been filed with the department. If an acceptable surety bond or letter of credit is presented to the department, the vendor payments may be released. Facilities must ensure that this bond or irrevocable letter of credit is in a format acceptable to the department, and does not include requirements that the department, as a condition of receiving payment, either:

(1) return the original bond or letter; or

(2) submit to any draft requirement of an irrevocable letter of credit or surety bond, in addition to the department's letter demanding payment.

§19.2011. Licensure, Registration, or Certification of Personnel. All facility personnel and consultants must be licensed, registered, or certified as required by state and local law. They must also meet requirements in these regulations. The facility must be in compliance with all applicable provisions of federal, state, and local laws, regulations and codes pertaining to health, safety, sanitation, and research.

§19.2012. Remedies for Violations of Title XIX Nursing Facility Provider Agreements.

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

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

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

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

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

(5) New Medicaid admission–The admission of a resident who has never been previously admitted to the facility or who, if previously admitted, was discharged or voluntarily left the facility. New admissions do not include the following:

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

(B) individuals who, after a temporary absence from the facility for a therapeutic visit as described in §19.1703 of this title (relating to Therapeutic Home Visits Away from the Facility), are readmitted to beds reserved for them.

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

(7) Severity–The seriousness of a finding.

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

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

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

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

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

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

(i) A facility may request an informal reconsideration and/or an appeals hearing. An informal reconsideration must be submitted in writing to Provider Services, Texas Department of Human Services, Post Office Box 149030, Austin, Texas 78714-9030. Appeal procedures involving state statutes, liquidated damages, and Title XIX nursing facility contracts are held as specified in §19. 2002 of this title (relating to Participation Requirements).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The second time the state survey agency notifies DHS of cited deficiencies, based on severity and scope, within 18 months of the first notification, DHS will impose liquidated damages of $5.00 per day, per certified Medicaid bed for every day the facility is out of compliance, beginning with the date of the on-site visit exit conference by the TDH/LTCU and ending with the date the facility is notified by the state survey agency that all deficiencies are corrected. The facility will be assessed liquidated damages for a minimum of 15 calendar days, even if the deficiencies are corrected sooner, or the facility is decertified before 15 days have elapsed. DHS also imposes or authorizes the imposition by the state survey agency of any or all of the following actions when recommended by the state survey agency in writing:

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

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

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

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

(D) A facility may request an informal reconsideration and/or an appeals hearing. An informal reconsideration must be submitted in writing to Provider Services, Texas Department of Human Services, Post Office Box 149030, Austin, Texas 78714-9030. Appeal procedures involving state statutes, liquidated damages, and Title XIX nursing facility contracts are held as specified in §19.2002(f) of this title (relating to Participation Requirements). Decertification hearings are held by the state survey agency.

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

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

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

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

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

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

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

(c) When a facility's provider agreement is cancelled by DHS under the provisions of this section and after a mandatory 30-day period of no vendor payment to the facility, DHS may enter into a probationary provider agreement with the facility, as specified in §19.2005(a) (4) of this title (relating to Contract Requirements). DHS may enter into this provider agreement after the state survey agency conducts an onsite, follow-up visit and notifies DHS that the deficiencies that caused the cancellation of the contract are no longer in effect.

(d) After the probationary provider agreement period, DHS may enter into a nonprobationary provider agreement as specified in §19.2005(a)(1)-(3) of this title (relating to Contract Requirements). DHS may enter into this provider agreement only after the state survey agency conducts an on-site, follow-up visit and notifies DHS that the deficiencies that caused the cancellation of the provider agreement are no longer in effect and the facility is otherwise complying with Medicaid policy.

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

(1) DHS administrative citations.

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

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

(C) If cited deficiencies are not corrected within 60 days from the date the facility is placed on vendor hold, DHS cancels the facility's provider agreement for breach of contract. A facility may request an informal reconsideration and/or an appeal hearing. An informal reconsideration must be submitted in writing to Provider Services, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030. Appeal procedures involving state statutes, liquidated damages, and Title XIX nursing facility provider agreements are held as specified in §19.2002 of this title (relating to Participation

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

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

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

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

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

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

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

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

(i) State survey agency review/appeals procedures.

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

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

(B) schedules any meetings requested by providers;

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

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

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

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

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

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

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

§19.2013. Educational Requirements for Persons under 22.

(a) Before receiving or renewing a contract for participation in the Nursing Facility (NF) program, an NF that accepts school-age residents, ages 3-21, must provide assurances to the Texas Department of Human Services (DHS) that it has:

(1) established a written cooperative agreement with the local independent school district that includes:

(A) general responsibilities of the facility and the school district in delivering appropriate and mutually supportive services to eligible school-age residents;

(B) a provision allowing the school district staff to access, with appropriate consent of the eligible resident or guardian, the facility's resident record and assessment information to avoid unnecessary duplication of services;

(C) a provision allowing the school district staff an opportunity to participate in or provide information for the facility's admission, programmatic, and discharge-planning meetings when the educational needs of an eligible resident are being considered; and

(D) a provision allowing the NF staff to participate in or provide information to the school district's admission, review, and dismissal (ARD) committee during its deliberations about each eligible school-age resident; and

(2) developed written policies and procedures to ensure that all eligible school-age residents, ages 3-21, who have neither successfully graduated from nor completed an approved school program are enrolled in a Texas Education Agency-approved educational program.

(b) If a provider desires to provide and administer the provider's own educational program(s), the provider must secure and maintain certification as a nonpublic school from the Texas Education Agency.

(c) Educational services and Nursing Facility services are to be coordinated and integrated for maximum benefit to the resident. If a skilled or intermediate care facility accepts persons under 22 years of age, the following guidelines apply:

(1) the nursing facility must maintain a copy of the written cooperative agreement with the local independent school district;

(2) conflicts over such issues as time, space, and equipment, should be resolved in the cooperative agreement;

(3) the nursing facility must maintain, as a separate document in the school-age resident's record, a copy of the original Individual Education Plan (IEP) de-

veloped by the school district, and any subsequent changes;

(4) in order to address the resident's educational needs, the facility must obtain and document, in the interdisciplinary medical-social plan of care, the following necessary information from the IEP, the designated school representative, other written reports, and documented telephone contacts:

(A) efforts to resolve the differences between the IEP and the medical-social plan of care;

(B) educational objectives (e.g., behavior therapy, speech therapy, etc.), services, and approaches;

(C) the receipient's adjustment to the educational program;

(D) changes and modifications to the plan; and

(E) discipline(s) in the facility responsible for follow-through on each educational objective.

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-9005209 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 V. Federal Requirements

• §§19.2101-19.2107

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs. Section 504 of the Rehabilitation Act of 1973. "No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance." The facility must be in compliance with all applicable federal laws including §504 of the Rehabilitation Act of 1973.

§19.2101. Federal Requirements.

(a) The definition of "handicapped person" in 45 Code of Federal Regulations §84.3(j) is one who has a physical or mental impairment which substantially limits one or more major life activities. In School Board of Nassau County, Florida *v.* Arline, the Supreme Court held that persons with contagious diseases are within the coverage of §504 of the Rehabilitation Act of 1973.

(b) With respect to services, 45 Code of Federal Regulations §84.3(k)(4) states, a "qualified handicapped person" is one who meets the essential eligibility requirements for the receipt of such services.

(c) The facility must not discriminate in admission practices against persons with contagious diseases who are otherwise eligible for Medicaid services.

§19.2102. Civil Rights Act of 1964. The Civil Rights Act of 1964 states "No person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." Compliance with Title VI includes meeting the following requirements.

(1) Even if an open admission policy is announced, additional steps may be necessary to desegregate the facility, particularly if it has excluded or primarily served residents of one race, color, or national origin. nursing facilities that serve residents of one race exclusively must take corrective action unless they can show that this pattern has not been caused by discriminatory practices.

(2) If a nursing facility is owned or operated by a private organization, its services may be restricted to members of the organization without losing the facility's eligibility as long as membership in the organization and admission to the facility is not denied because of anyone's race, color, or national origin.

(3) Residents must be housed without regard to race, color, or national origin. Biracial occupancy of multi-bed rooms and wards on a non-discriminatory basis would be the result.

(4) Residents must not be asked if they will share a room with a person of another race, color, or national origin. The transfer of residents is not to be used to evade compliance with Title VI.

(5) Residents must be provided services by all personnel (medical, non-medical, and volunteer) without regard to race, color, or national origin.

(6) Attending physicians must be permitted to provide services without regard to the physician's or the resident's race, color, or national origin. Other medical, paramedical, or non-medical persons, whether engaged in a contractual or consultant capacity, must be selected and employed in a nondiscriminatory manner. The facility must not deny the same opportunities to qualified persons on the basis of race, color, or national origin. Dismissal of persons from nursing facilities must not be based on race, color, or national origin.

(7) The facility must ensure that services rendered by employees, vendors, or others in nursing facilities are provided without regard to race, color, or national origin. These include but are not limited to:

(A) administrative services (admission requirements, clinical records, fiscal referral systems, and deposits);

(B) resident privileges and care services (nursing, medical, physical and occupational-recreational therapy, social services, waiting lists, courtesy titles, visiting hours, dietary, dental, pharmacy, diagnostic and laboratory services, and trainee and volunteer programs); and

(C) facilities (laundry, maintenance, gift shops, lounges, cafeterias, beauty salons and barber shops, dining rooms, lavatories, and ambulances).

(8) Nursing facilities must adopt and implement effective written policies for compliance with Title VI of the Civil Rights Act. Employees, physicians, and paramedical personnel who provide resident care services must be notified in writing of these policies.

(9) Nursing facilities must include in contracts between the nursing facility and providers or subcontractors of resident services, written assurance that services will be provided without discrimination. This requirement includes transfer agreements.

(10) Nursing facilities must let the community know that admission to the facility, patient care services, and other activities is operating without regard to race, color, or national origin. Notice to the community may be given by letters to and meetings with physicians, local health and welfare agencies, paramedical personnel, and public and private organizations which have an interest in equal opportunity. Notices to newspapers and signs in Nursing Facilities also may be used to inform the public.

(11) Nursing facilities must allow residents to use nursing facilities and services without regard to race, color, or national origin. Facilities which have had dual accommodations to effect racial segregation must have ended this practice.

§19.2103. Age Discrimination Act of 1975. This Act prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. Facilities must be in compliance with the Age Discrimination Act of 1975.

§19.2104. Title VII of the Civil Rights Act of 1964. Title VII prohibits discrimination because of race, color, sex, or national origin in all employment practices. Facilities must be in compliance with Title VII of the Civil Rights Act of 1964.

§19.2105. Texas Civil Practices and Remedies Code. The facility must not discriminate against any individual in its admission policies or basic services based on the individual's race, color, sex, national origin, age, or handicap. Facilities must comply with the Civil Practices and Remedies Code.

§19.2106. Protection of Human Research Subjects. All facilities must be in compliance with 45 Code of Federal Regulations, Part 46, Protection of Human Subjects.

§19.2107. Program Integrity. All facilities must be in compliance with 42 Code of Federal Regulations, Part 455, Program Integrity: Medicaid.

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-9005210 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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Chapter 29. Purchased Health Services

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 will be 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 will be 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 will be 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. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Joe Branton at (512) 338-6505 in DHS's Purchased Health 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.

§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.)

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

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Subchapter L. General Administration

• 40 TAC§29.1126

The Texas Department of Human Services (DHS) proposes to amend §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 will be 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 will be in effect is an estimated additional cost of $121 in fiscal year (FY) 1990; $1450 in FY 1991; $1507 in FY 1992;

$1531 in FY 1993; and $1634 in FY 1994. There are no fiscal implications for local governments or small businesses 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 is no anticipated economic cost to individuals who are required to comply with the proposed section.

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

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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 §1905(l) of the Social Security Act, 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 will be 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 will be 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 governments and small businesses 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 new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be a larger range of FQHC services available to the Medicaid-eligible population. There is no anticipated economic cost to individuals 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, Texas.

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 §1861(aa)(1)(A)-(C) of the Social Security Act, 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 §§329, 330, or 340 of the Public Health Service Act 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 FQFQHC'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 Heath 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 CFR §§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 §§79.1601-79.1614 of this title (relating to Subchapter Q, 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

TITLE 43. TRANSPORTATION

Part I. State Department of Highways and Public Transportation

Chapter 1. Administration

Sick Leave Pool Program

• 43 TAC §§1.300-1.305

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

The State Department of Highways and Public Transportation proposes new §§1.300-1.305, concerning the sick leave pool program. The new sections prescribe the policy and procedures for administering the department's sick leave pool program. The new sections are proposed in order to comply with the recent passage of Senate Bill 357, 71st Legislature, 1989, codified as Texas Civil Statutes, Article 6252-8e, which mandates the governing body of each state agency to adopt rules not later than February 28, 1990. The new sections provide for the creation of a sick leave pool from voluntary contributions of sick leave from an employee's personal leave account and authorizes the use of sick leave from the pool by an employee when the employee or a member of the employee's immediate family has a catastrophic illness or injury. These new sections describe the purpose of the program, eligibility criteria for participation, procedures for contributing to and withdrawing from the sick leave pool, and provisions for equal treatment of employees who use sick leave from the pool as compared with employees who use earned sick leave.

Mr. Leslie A. Clark, director, Human Resources Division, has determined there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect will be an estimated additional cost of $268,910 per year for 1991-1995. There will be no effect on local governments or small businesses for the first five-year period the sections will be in effect. Mr. Clark has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed sections.

Mr. Clark also has determined that for each year of the first five years the sections as proposed are in effect there will be no direct public benefit anticipated 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 Leslie A. Clark, Director, Human Resources Division, State Department of Highways and Public Transportation, 11th and Brazos, Austin, Texas 78701 no later than July 9, 1990.

The new sections are adopted under Texas Civil Statutes, Article 6252-8e, which authorize state agencies to establish rules for a sick leave pool for catastrophic illness or injury, and Texas Civil Statutes, Article 6666, which provide the State Highway and Public Transportation Commission with the authority to establish rules for the conduct of the work of the State Department of Highways and Public Transportation.

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 25, 1990.

TRD-9005337 Diane L. Northam
Administrative Procedures Technician
State Department of Highways and Public Transportation

Earliest possible date of adoption: July 6, 1990

For further information, please call: (512) 463-8630

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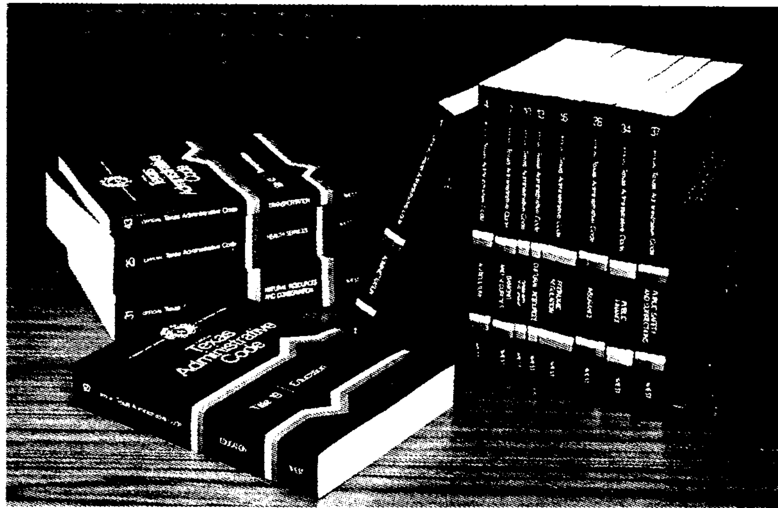

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