

# Texas Register

Volume 15, Number 54, July 17, 1990

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

Proposed Sections-sections proposed for adoption

Withdrawn Sections-sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

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

Open Meetings-notices of open meetings

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

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

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

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

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## Texas Register Publications

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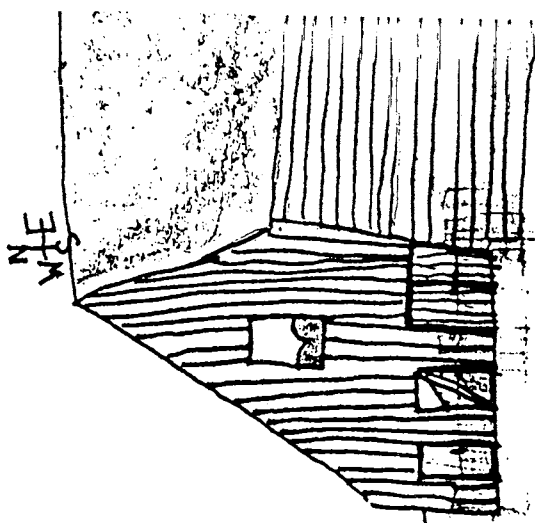
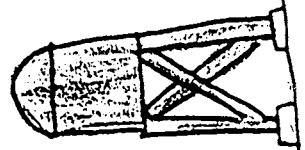
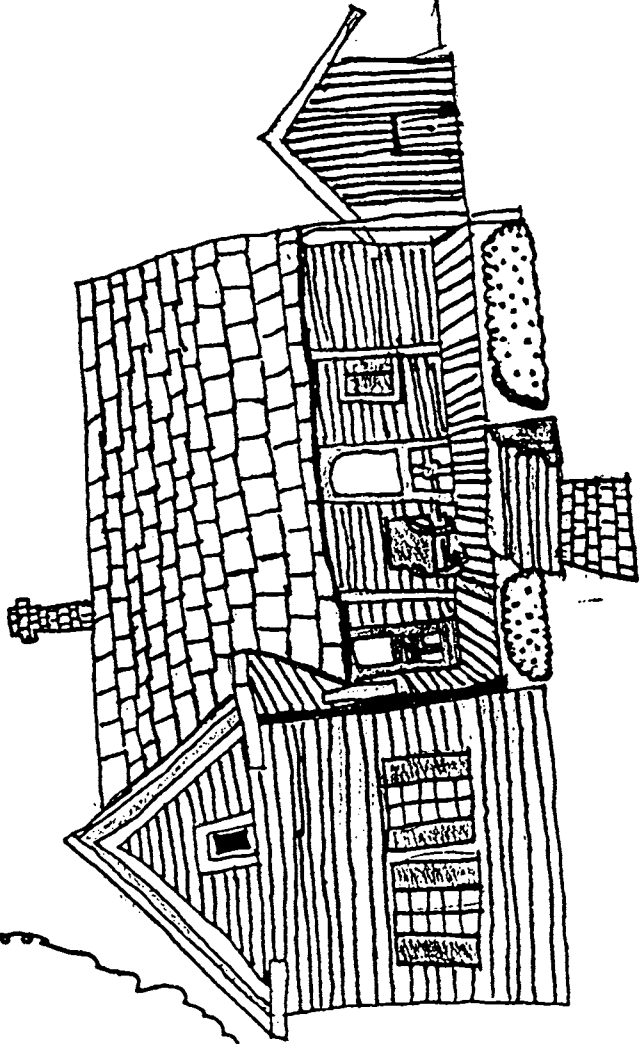
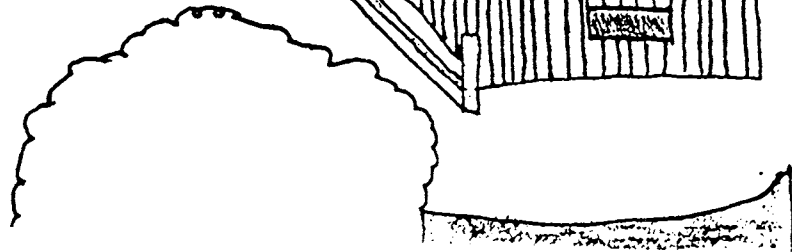
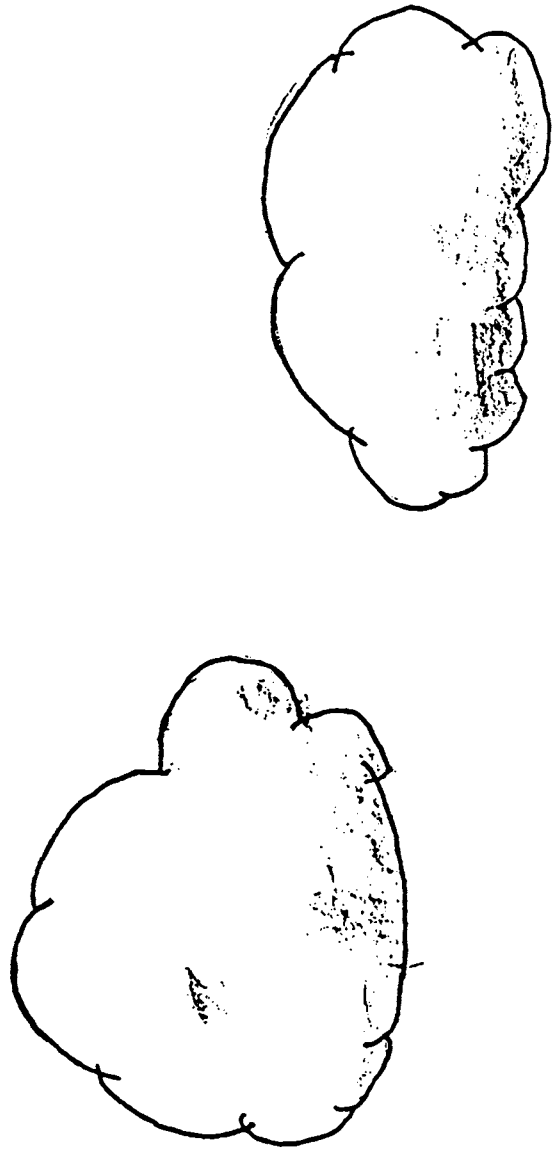
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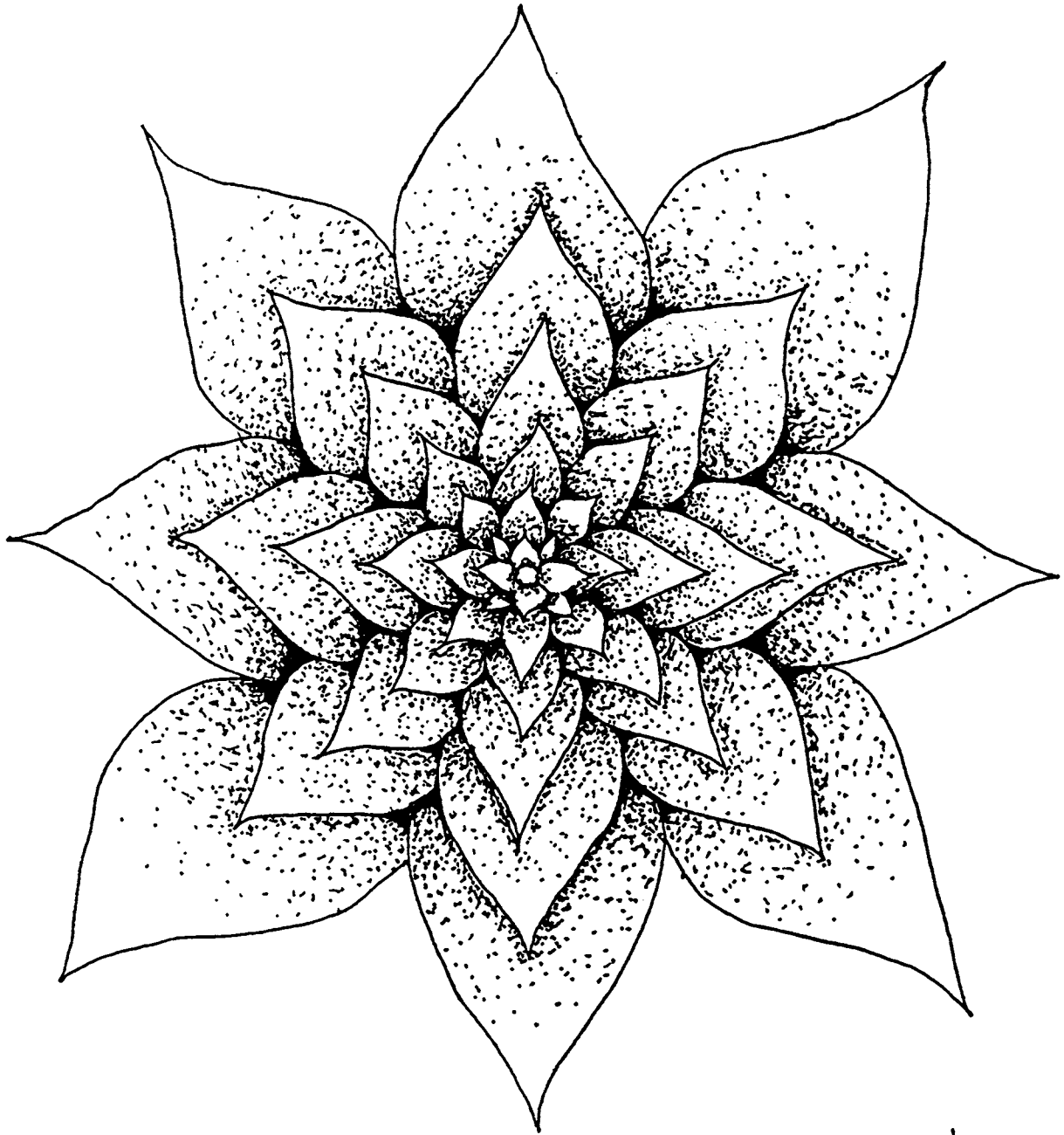
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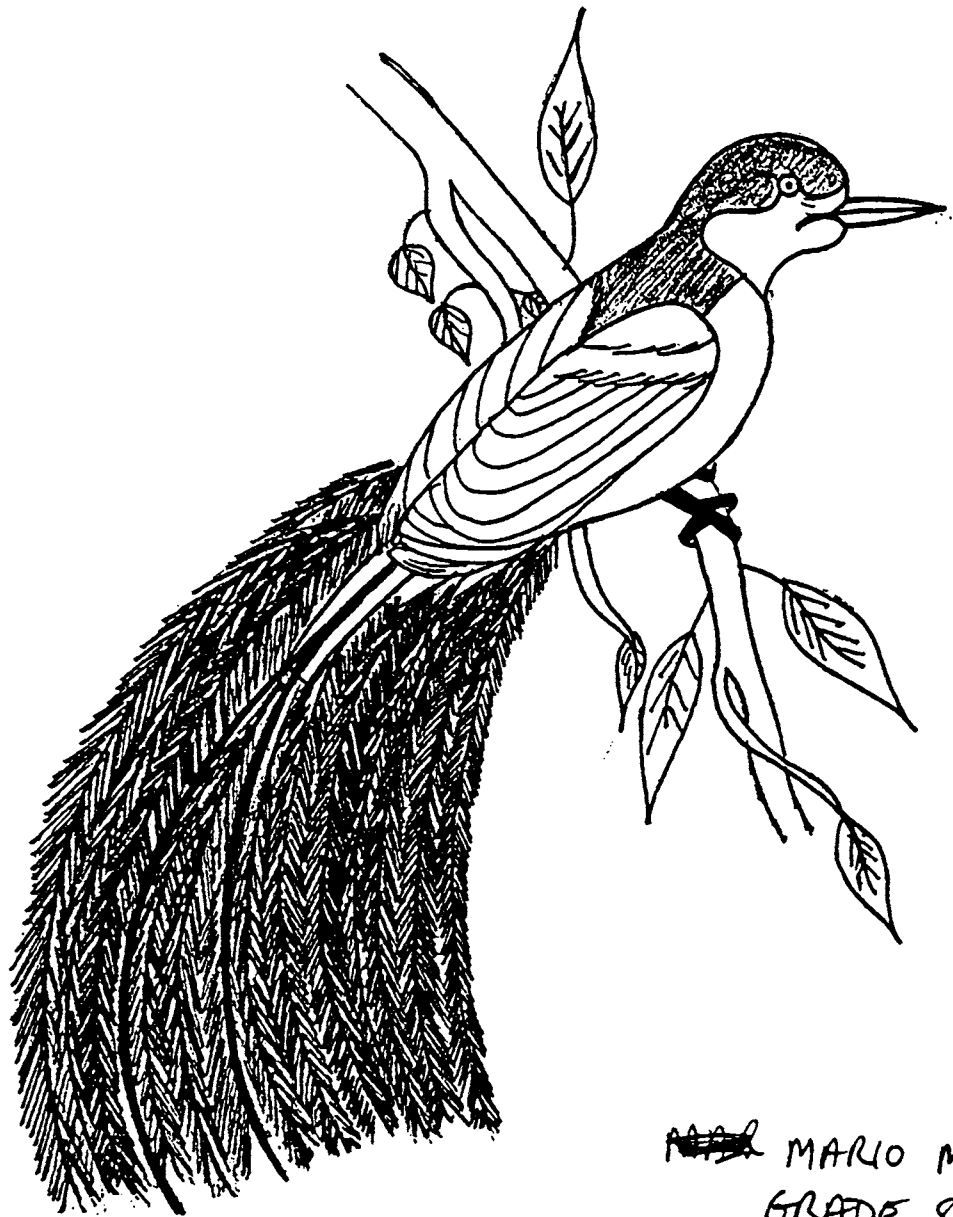


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# TAC Titles Affected

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# Emergency Sections

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

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

## TITLE 34. PUBLIC FINANCE

### Part II. Texas State Treasury Department

#### Chapter 11. Cigarette and Tobacco Tax Practice and Procedure

##### • 34 TAC §§11.2-11.37

The Texas State Treasury Department adopts on an emergency basis new §§11.2-11.37, concerning practices and procedures to be followed by persons contesting certain actions of the agency related to the administration and enforcement of the Texas Cigarette and Tobacco Products Laws. These sections provide definitions of terms used in the sections, define cases to which the sections apply, provide for informal resolution of disputes, provide for the initiation of pre-hearing conferences and administrative hearings, define the limits of discovery, and the admissibility of evidence in the administrative hearing; set requirements for the filing of the proposal for decision and the treasurer's decisions; provide for a motion for rehearing; and prohibit ex parte communications with the administrative law judge.

It is necessary to adopt the new sections on an emergency basis to ensure that the new rules of practice and procedure are in place for any contest of on-going audits performed by the Texas State Treasury Department.

The new sections are adopted on an emergency basis under the Texas Tax Code, §154.415 and §111.002, which provides the treasurer with the authority to adopt rules that do not conflict with the laws of this state or the constitution of this state or the United States for the enforcement of the provisions of and the collection of the taxes and other revenue under the Texas Tax Code, Title 2.

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

**Administrative law judge**—An individual appointed by the treasurer to conduct hearings on matters within the treasurer's jurisdiction and to prepare proposals for decision to properly resolve such matters.

**Agency**—The Texas State Treasury Department.

**Authorized representative**—An individual who represents a party in a contested case and may be any individual other than the party. An authorized representative

may be requested by the agency or the administrative law judge to show proof of his or her authority to act as a party's representative.

**Deficiency determination**—A written notice from the Texas State Treasury Department that a person is required to pay to the State of Texas tax, penalty, or interest in a certain amount.

**Redetermination**—An order of the treasurer establishing the amount of taxes, penalty, or interest due following a review, with or without a hearing, of the deficiency determination and the pleadings and relevant issues raised by the party seeking such review.

**Taxpayer**—Any person who seeks a redetermination of a tax liability, a refund of monies paid, a determination of rights under a permit granted by the Texas State Treasury Department, or to whom a notice of show cause hearing for the suspension or revocation of a permit has been issued.

**§11.3. Intent and Scope of Rules.** The purpose of the rules of practice and procedure is to provide a uniform and orderly procedure by which disagreements with certain actions of the agency pursuant to the Texas Tax Code, Chapters 154 and 155, are pursued. The rules of practice and procedure govern all contested cases before the agency, and are adopted to provide for the fair and efficient disposition of the contested cases.

**§11.4. Informal Resolution.** Informal resolution of disputes or issues arising from agency action are favored and should be pursued whenever possible. Nothing in this chapter shall be construed to diminish or limit the agency's authority to enter into settlement agreements. Requests for settlement of amounts assessed or paid as penalty or interest with respect to a tax assessment are not contested cases.

##### **§11.5. Contested Cases.**

(a) A contested case is a proceeding in which the legal rights, duties, or privileges of a party are to be determined by the agency after an opportunity for adjudicative hearing. Requests for redetermination or refund, as well as actions initiated by the agency to deny, revoke, or suspend permits on grounds other than failure to pay a final tax deficiency or failure to file tax security are contested cases. Requests for settlement

of amounts assessed or paid as penalty or interest with respect to a tax assessment are not contested cases. However, if a contested case results in an adjustment to a tax liability, the corresponding penalty and interest adjustment will also be made.

(b) A dispute may, at the option of the agency, cease being a contested case if the taxpayer's contentions are fully accepted or if the parties agree on a resolution of all contentions. If the dispute ceases to be a contested case, an amended determination or a final billing will be mailed to the taxpayer.

(c) The agency may elect to grant a requested refund or credit or accept an amended return filed by the taxpayer without making such election a contested case or by removing the case from contested case status. The refund or credit may be later reclaimed by the agency with interest if an audit or other investigation concludes that the refund or credit was not due.

**§11.6. Designation of Parties.** Any person who has a direct interest in the resolution of a contested case may be admitted as an interested party upon filing a motion to intervene with the administrative law judge and furnishing proof of service to all other parties. The administrative law judge will decide whether to admit the movant as a party. The motion to intervene may be filed at any time during the proceedings, however, schedules and deadlines established by the administrative law judge will not be altered to accommodate parties admitted after such schedules and deadlines are set, unless the administrative law judge finds good cause to do so.

**§11.7. Appearance and Representation.** Except where the administrative law judge determines that good cause exists, an interested party shall appear at all hearing proceedings of a contested case. In addition to his or her own appearance, the party may be represented by an authorized representative such as an attorney or accountant. A party who is represented by more than one authorized representative may be required to designate a lead representative who shall have control in the management of the representatives' participation.

**§11.8. Participation in a Hearing.** Hearing proceedings are not

open to the public. Any person desiring to observe or participate in any stage of the proceedings who is not a party, not employed by a party, or not called as a witness must obtain the prior permission of the administrative law judge and the agreement of all parties.

#### *§11.9. Conduct and Decorum.*

(a) Every person, party, representative, and witness participating in a hearing shall conduct himself or herself with proper dignity, courtesy, and respect for the administrative law judge and all other participants in the hearing.

(b) No person may conduct himself or herself in any manner which interferes with the orderly and dignified conduct of the hearing. If misconduct shall occur, the administrative law judge shall first warn the person violating this section to refrain from the misconduct, and may exclude that person from the proceeding or recess the proceeding for such time and under such conditions as necessary to correct the situation.

#### *§11.10. Extensions of Time.*

(a) A statutory deadline for requesting redeterminations or claiming a refund will not be waived.

(b) An extension of any other deadline established in this chapter may be granted by the agency:

(1) upon its own motion; or

(2) upon written sworn motion duly filed by a party prior to the expiration of the applicable deadline which shows that there is good cause for such extension of time and that the need therefore is not caused by the neglect, indifference, or lack of diligence of the movant.

#### *§11.11. Initiation of a Hearing.*

(a) Redetermination hearing. A taxpayer may request a redetermination hearing by sending the agency a written request for redetermination before the expiration of 30 days after the date on which the service of a deficiency determination is completed. The request shall include a statement of grounds which sets out in detail the reasons the taxpayer does not agree with the deficiency determinations. If the statement of grounds is not received within the time limit or an extension granted prior to the expiration of the time limit, no hearing will be commenced and the taxpayer will be required to pay the deficiency and request a refund pursuant to subsection (b) of this section before any objection to the assessment is considered.

(b) Refund hearing. Before the expiration of six months after the date on which a jeopardy or deficiency determination becomes final, a taxpayer

may request a refund of any tax, penalty, or interest paid to the agency by sending the agency a written request. The request shall include a statement of grounds which specifies and describes in detail the basis on which the request for refund is founded. If no grounds are stated as a basis for the request for refund, no hearing will be commenced and the claim will be denied. If the claim is granted as to any tax amount, the corresponding penalty and interest amount previously paid will be refunded.

(c) Permit hearing. If the agency believes that an application for a permit should be revoked or suspended, the agency shall give notice to the person(s) applying for or holding the permit to show cause why the application should not be denied, or the permit should not be revoked or suspended. The show cause notice issued by the agency shall include a statement of the matters asserted by the agency and the procedures to be followed.

#### *§11.12. Content of Statement of Grounds.*

(a) The statement of grounds must contain the reasons the taxpayer disagrees with the action of the agency. The taxpayer must separately list the items with which the taxpayer disagrees and the factual and legal grounds for the taxpayer's position.

(b) If a taxpayer's statement of grounds raises issues which cannot be resolved from the material contained in the audit or statement of grounds, additional evidence may be obtained through:

(1) a prehearing conference described in §11.18 of this title (relating to Prehearing Conference);

(2) discovery as described in §11.20 of this title (relating to Discovery);

(3) written or oral requests from the agency for additional evidence; or

(4) an audit amendment.

#### *§11.13. Position Letter.*

(a) Following receipt of the taxpayer's statement of grounds and any additional evidence developed pursuant to §11.11(b) of this title (relating to Initiation of a Hearing), a position letter will be sent to the taxpayer. The position letter will accept or reject, in whole or in part, each contention of the taxpayer.

(b) The agency may elect to amend the determination or to issue a final billing, rather than issue a position letter, if the taxpayer's contentions were fully accepted or if the parties agree on a resolution of all contentions. If the determination is amended, it will become final 15 days after mailing and payable 20 days later. A final billing is payable 20 days after mailing unless otherwise specified.

#### *§11.14. Taxpayer's Acceptance or Rejection of Position Letter.*

(a) The taxpayer must accept or reject in whole or in part, the agency's position letter within 15 days after the letter is dated. A form for this purpose will be enclosed with the letter. Acceptance is indicated by signing the motion to dismiss portion of the form and mailing it to the agency; rejection is indicated by completing and signing the motion to set portion of the form and mailing it. Expiration of the 15-day period without returning a completed form to set or dismiss by the taxpayer will result in the dismissal of the hearing and disposition of the case according to the agency's position.

(b) The taxpayer is not required to respond to an amended determination or a final billing, other than by payment, unless the amount of the assessment is incorrect. An amended final determination or final billing concludes the administrative proceeding unless the taxpayer notifies the agency within 15 days of the mailing date that the amount is in error.

*§11.15. Modification of the Position Letter.* It is permissible for the position letter to be supplemented or modified by the agency prior to filing the motion to set or motion to dismiss. Any modification of the position letter will be reduced to writing by the agency and sent to the taxpayer. A 15-day period for acceptance or rejection begins on the day the last modification is dated.

#### *§11.16. Motion to Set.*

(a) A motion to set offers the taxpayer four options.

(1) The taxpayer may request an oral hearing with additional time to submit a legal brief in response to the position letter.

(2) The taxpayer may request an oral hearing and not submit a legal brief in response to the position letter.

(3) The taxpayer may waive the oral hearing and request that the administrative law judge make a recommendation based on the written evidence and arguments, including a legal brief in response to the position letter to be submitted by a date to be set by the administrative law judge.

(4) The taxpayer may waive the oral hearing and request that the administrative law judge make a recommendation based on the written evidence and arguments already submitted.

(b) If a party believes an oral hearing would take more than two hours to complete, the party must file a written request, setting out good cause, for an extended hearing at the time the motion to set is filed.

**§11.17. Notice of Setting.** Upon receipt of a motion to set, the agency will acknowledge receipt of the motion by sending notice to the parties giving:

- (1) the date, time, and place of the prehearing conference if one is to be held;
- (2) if no prehearing conference is scheduled, the date, time, place, and nature of the oral hearing, if one has been requested;
- (3) the date any legal brief in reply to the position letter is due; and
- (4) the name and address of the administrative law judge with whom all documents must be filed.

**§11.18. Prehearing Conference.**

(a) At the discretion of the administrative law judge, a prehearing conference may be held at the time and place stated in the notice of setting for the oral hearing. If notice of the prehearing conference is not given in the notice of setting for the oral hearing, it shall be mailed, certified mail, return receipt requested, at least 10 days prior to the prehearing conference date.

(b) A prehearing conference may be held to consider the following:

- (1) the formulation and simplification of issues;
- (2) the possibility of making admissions or stipulations;
- (3) the procedure at the hearing;
- (4) the identification of and specification of the number of witnesses;
- (5) the filing and exchange of prepared testimony and exhibits;
- (6) the designation of parties;
- (7) the scheduling of discovery; and
- (8) any other matters which may expedite the hearing or otherwise facilitate the hearing process.

(c) The administrative law judge may conduct the prehearing conference by telephone.

**§11.19. Administrative Law Judge to Hear Case.** Hearings will be conducted by an administrative law judge who has authority to examine witnesses, to rule on motions, and to rule upon the admissibility of evidence. The administrative law judge has the authority to continue or recess any hearing, to control the record, and to propose decisions to the agency. If for any reason an administrative law judge cannot continue on a contested case, another administrative law judge will become familiar with the record and perform any

function remaining to be performed without the necessity of repeating any previous proceedings in the case.

**§11.20. Discovery.** An administrative law judge, acting independently or on the motion of any party showing good cause, may:

- (1) subpoena any person to appear and testify and to produce certain documents or other tangible items at an oral hearing;
- (2) commission the taking of an oral deposition in the witness' county of residence or county where the witness does business and require production of certain documents or other tangible items at the time of deposition;
- (3) order any party to allow entry upon property under the party's control for the purpose of doing any act or making any inspection not protected by privilege and reasonably calculated to lead to the discovery of evidence material to the contested case; and
- (4) allow any form of voluntary discovery and compel any form of discovery authorized by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

**§11.21. Filing of Documents.**

(a) All documents submitted after the notice of setting is issued must be filed with the administrative law judge at the address set out in the notice of setting, with a copy mailed certified mail, return receipt requested, to all parties.

(b) The agency may accept facsimile copies as filed documents when the agency determines that acceptance of such facsimile copies is necessary and appropriate. The agency may thereafter require that originals be submitted to replace the facsimile copies.

**§11.22. Inspection of File.** Each party to a contested case and any authorized representative of a party may inspect and copy, at their own expense and in the office of the administrative law judge, all documents on file in the case, subject to the rules of confidentiality contained in the Texas Tax Code.

**§11.23. Continuances.** A motion for continuance of a contested case set for oral hearing must be in writing and filed with the administrative law judge at least seven days prior to the date that the matter is to be heard. If an emergency occurs less than seven days prior to the hearing date, a motion for continuance may be filed. A motion must show that there is good cause for the continuance and that the continuance is not sought because of neglect, indifference, or lack of diligence. A copy of any motion must be served upon all other

parties of record by certified mail, return receipt requested, at the time of filing. If the agency increases the amount of tax deficiency at or before the time of hearing, the taxpayer is entitled to a continuance to obtain and produce further evidence applicable to the items upon which the increase is based.

**§11.24. Conduct of Hearing.**

(a) The hearing will be convened by the administrative law judge, appearances will be noted, any motions or preliminary matters will be taken up, and then each party will have an opportunity to present its case, generally on an issue-by-issue basis, by calling and examining witnesses and introducing documentary evidence. Each party will have opportunity to cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in direct examination. Any objection to testimony or evidentiary offers should be made, and the basis for the objection stated. The administrative law judge may question any party or any witness. The parties may agree to the order of proceeding or the administrative law judge may establish it, but in all cases, the taxpayer is entitled to conclude in presenting evidence and in argument. If there is more than one taxpayer as a party, the administrative law judge shall determine the order of closing among the taxpayers.

(b) The length of each hearing is limited to two hours. Upon a showing of good cause, or upon his or her own motion, the administrative law judge may schedule a hearing for a period longer than two hours. A request for an extended hearing must be made in writing at the time the motion to set is filed.

(c) The administrative law judge is responsible for closing the record and may hold it open for stated purposes.

(d) Parties may submit proposed findings of fact and conclusions of law any time after notice of setting and prior to closing of the record. In an oral hearing, the administrative law judge may allow the parties to file proposed findings of fact and conclusions of law after the record has closed.

**§11.25. Burden of Proof.** If the contested case involves the suspension or revocation of a permit, or the imposition of additional penalty for willful or fraudulent failure to pay tax, the agency has the burden of proving by a preponderance of the evidence that the action is warranted. In all other cases, unless otherwise provided by law, the taxpayer has the burden of proving by a preponderance of the evidence that a particular action or proposed action of the agency, as set out in the position letter, is incorrect.

**§11.26. Stipulated Facts.** By use of the position letter and any reply to it, the prehearing conference, or by means of agreed facts or stipulated facts, the parties are encouraged to narrow their disagreements prior to hearing. Stipulated facts are for purposes of resolution of the contested case before the agency only, and no party is bound by them thereafter.

**§11.27. Rules of Evidence.** The rules of evidence set forth in the Administrative Procedures and Texas Register Act, Texas Civil Statutes, Article 6252-13a, apply to all contested cases. The Act, §14, provides, in part: "In contested cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form."

**§11.28. Oral Evidence, Witnesses, and Penalty for False Statements.** Any party may request an administrative law judge to subpoena witnesses or require the production of documents related to the subject matter of the hearing, or the administrative law judge may do so acting independently. An administrative law judge may require the parties to indicate the persons they expect to call as witnesses. The testimony of witnesses is made under oath or affirmation pursuant to authority granted by the Administrative Procedure and Texas Register Act, §14(b), and the making of false statements may subject a person to criminal prosecution under the Texas Penal Code, §37.02 and §37.03.

**§11.29. Documentary Evidence.** Documentary evidence or exhibits will be marked for identification. Copies or excerpts of documents are permissible.

**§11.30. Evidence by Official Notice.** The administrative law judge may take official notice, on request of a party or acting independently, of matters which trial judges can judicially notice and of facts within the specialized knowledge of the agency. The taking of official notice must be stated on the record, and the parties must have an opportunity to contest the material noticed.

A party requesting the official notice must give sufficient information to enable the administrative law judge to comply.

**§11.31. Witness Fees.** Any witness who is not a party and who is subpoenaed or otherwise compelled to attend any proceeding is entitled to receive \$.20 a mile for going to and from any place more than 25 miles from the witness' place of residence and a fee of \$30 a day or any part of a day. If two or more witnesses travel in a single automobile, only one may receive mileage reimbursement. At the time the request for a witness attendance is filed, the requesting party is required to deposit the estimated amount to which the witness will be entitled with the clerk of the administrative law judges. The deposit is not required when the agency is the requesting party.

**§11.32. Transcript of Oral Hearings.** All contested cases heard by an administrative law judge will be recorded. A copy of the recording will be furnished to any party to the proceeding upon written request to the administrative law judge and payment of a reasonable fee established by the agency. Any party desiring the hearing transcribed by a court reporter must make the necessary arrangements with the reporter and bear the cost.

**§11.33. Proposal for Decision.** An administrative law judge will prepare a proposal for decision within 30 days after the record is closed. The proposal for decision will set out each finding of fact and conclusion of law necessary to the decision. The proposal for decision will be served on the parties and any party adversely affected may file exceptions and briefs within 15 days, serving copies on all other parties. If a party files exceptions, the other parties will have 15 days after the filing to reply.

**§11.34. Treasurer's Decision.**

(a) The proposal for decision along with any exceptions, briefs, and replies filed will be reviewed by the treasurer. The treasurer will issue a decision on the contested case and the treasurer's decision will be sent to all parties. The treasurer's decision is final 15 days from the date issued, unless a motion for rehearing is filed on or before midnight of the 15th day. If the motion for rehearing is granted, the treasurer's decision is vacated pending a subsequent decision upon rehearing. If the motion for rehearing is overruled, whether by order or operation of law, the treasurer's decision is final on the date the motion for rehearing is overruled.

(b) The administrative law judge will not issue a proposal for decision if the dispute ceased to be a contested case.

**§11.35. Motion for Rehearing.** A motion for rehearing may be filed by any party, but to be timely, it must be filed with the administrative law judge within 15 days from the date the treasurer's decision is issued. The motion must state each specific ground upon which the party believes the treasurer's decision is erroneous. In addition, a motion for rehearing on a refund claim must state the amount of the refund sought. Any reply to a motion for rehearing must be filed within 25 days after the date the decision is rendered. The motion will be acted on within 45 days after the date the decision is rendered. These deadlines may be varied only as provided by the Administrative Procedure and Texas Register Act, §16(e) and (f). If a rehearing is granted, a notice will be issued to the parties setting out all pertinent information.

**§11.36. Computation of Time.** In computing any period of time prescribed or allowed by these sections, or by order of an administrative law judge, the period begins on the day after the act, event, or default identified and concludes on the last day of the computed period, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday. Documents required to be filed or served are filed or served when actually received or are deemed filed or served when deposited with the United States Postal Service, postage paid. The postmark date is indicated on a document is presumed to be the date of mailing but this is a rebuttable presumption.

**§11.37. Ex Parte Communications.** There may be no verbal communications with the administrative law judge regarding any issue of fact or law in a case without notice and opportunity for all parties to participate, and there may be no written communications that are not transmitted at the same time to all parties, except that an individual involved in rendering the decision in a case may communicate ex parte with employees of the agency who did not participate in the hearing in the case for the purpose of utilizing their special skills or knowledge in evaluating the evidence.

Issued in Austin, Texas, on July 3, 1990.

TRD-9006766

Anne L. Schwartz  
General Counsel  
Texas State Treasury  
Department

Effective date: July 3, 1990

Expiration date: October 31, 1990

For further information, please call: (512) 463-5971



# 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 7. BANKING AND SECURITIES

### Part I. State Finance Commission

#### Chapter 3. Banking Section

##### Subchapter B. General

###### • 7 TAC §3.22

The Finance Commission of Texas proposes new §3.22, concerning restrictions on loan fees on certain categories of loans. This section is proposed in order to clarify the loan fees prohibition and exception in Texas Civil Statutes, Article 342-508. The purpose of this section is to clarify existing law regarding loan fees and charges on certain categories of loans by banks. The section defines the terms "consumer loan" and "loan fee or charge," prohibits banks from charging or collecting a loan fee or charge on a consumer loan unless authorized by law or the proposed section, excludes loans that are subject to certain chapters of Title 79, Revised Statutes and loans that are not consumer loans from the loan fees or charge prohibition, sets forth the types of loan fees and charges that are permitted in connection with a consumer loan, and provides that, in addition to interest charges, charges for certain services rendered in connection with a consumer loan of \$100 or more and the loan period is one month or more may be charged by a bank, but in an amount not to exceed \$15.

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

Mr. Potts has determined that the proposed section will not have an impact on local economies.

Mr. Potts 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 clarify the types of loans to which the loan fees or charges prohibition applies, the types of loan fees or charges that may be charged on such loans, and the application of the authorized limited loan fees and charges provisions. 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 proposed section as proposed.

Comments on the proposal may be submitted to Robert W. Potts, Assistant General Coun-

sel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, (512) 479-1200.

The new section is proposed under Texas Civil Statutes, Article 342-113, which provide the Finance Commission of Texas with the authority to promulgate rules not inconsistent with the Texas Constitution and statutes of this state to define, identify, and determine incidental powers which a state bank may exercise as necessary to its specific powers, and pursuant to Texas Civil Statutes, Article 342-103, which provide the Finance Commission of Texas with the authority to adopt rules for the regulation of state banks.

#### §3.22. Restrictions on Loan Fees on certain Categories of Loans.

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

(1) Consumer loan—A loan extended primarily for personal, family, or household use, but shall not include:

(A) a loan extended primarily for business, commercial, investment, agricultural, or other similar purposes;

(B) a loan secured, in whole or in part, by a first lien on real property, including, without limitation, a loan secured, in whole or in part, by a first lien on residential real property; or

(C) a loan otherwise excluded under this section.

(2) Loan fee or charge—Any fee, charge, compensation, bonus, commission, or any similar fee or charge, by whatever name called, that is collected and received by the bank for its benefit for the granting of a loan by the bank, but shall not include charges or fees otherwise excluded or authorized under this section.

(3) Residential real property—Real estate improved or to be improved by a structure or structures designed primarily for dwelling use.

(4) Loan secured, in whole or in part, by a first lien—A loan on the security of any instrument (whether a mortgage, deed of trust, or land contract) which makes the interest in real property specific security for the loan; provided, however, that the

instrument is of such a nature that, in the event of default, the real property described in the instrument could be subjected to the satisfaction of the loan with the same priority as a first mortgage of a first deed of trust. A lien shall not be deemed other than a first lien because of ad valorem taxes, water district taxes, other taxes and assessments, or encumbrances in the nature of homeowners, association maintenance fees or similar assessments. A bank may rely in good faith on a mortgagee's title policy, abstract, or title report issued for the benefit of the bank in determining if a loan is secured, in whole or in part, by a first lien.

(b) Prohibition of certain loan fees or charges. Except as otherwise authorized by law or this section, no bank shall charge or collect any loan fee or charge for the granting of a consumer loan made or to be made by the bank.

(c) Transactions subject to certain chapters of title 79, Revised Statutes. With respect to any loan that is subject to Chapters 2, 3, 4, 5, 6, 6A, 7, 8, or 15, Title 79, Revised Statutes (Texas Civil Statutes, Article 5069-2. 01 et seq.), the provisions regarding loan fees and charges in Article 342-508, as amended, shall not apply and the contracting for, charging, or receiving of loan fees and charges shall be determined by and subject to Chapters 2, 3, 4, 5, 6, 6A, 7, 8, or 15, Title 79, Revised Statutes, as applicable.

(d) Excluded transactions. The prohibition against certain loan fees and charges set forth in Article 342-508 and subsection (b) of this section shall apply solely to a consumer loan, and other loans shall be deemed excluded.

(e) Permissible fees and charges. The following fees and charges shall be deemed not to be prohibited loan fees or charges for consumer loans under Article 342-508 and this section:

(1) any and all charges and fees, howsoever denominated, deemed interest under applicable law, whether charged or collected in advance or as interest accrues;

(2) bona fide commitment fees for the separate consideration of committing to make a loan in the future;

(3) costs paid or that will be paid to a third party for any abstract, title

report, attorney's, fees for legal opinion or document preparation, title insurance, property damage insurance, credit life, accident or health insurance, escrows for future payments of taxes and insurance, appraisal fees, and credit reports;

(4) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction;

(5) expenses necessary or proper for the protection of the lender that are actually incurred in the making, servicing, or collection of the loan; and

(6) any and all other fees and charges authorized herein or by applicable law, including, without limitation, commissions for credit insurance and return check charges.

(f) Exception: authorization for loan fee not to exceed \$15. With respect to a consumer loan in which the amount loaned is \$100 or more and the loan period is one month or more, a bank, in addition to and cumulative of interest otherwise provided by law, may charge any borrower the reasonable value of services rendered in connection with the making of any loan, including the drawing of notes, the taking of acknowledgments and affidavits, the preparation of financial statements, and the investigation or analysis of the financial responsibility of the borrower or any endorser, surety or co-signer, in an amount agreed upon, but not to exceed \$15 for each such loan transaction. If the amount that the bank charges for those services exceeds \$15, the amount of interest contracted for shall be forfeited. No bank shall induce or permit any person, or husband and wife, to be obligated directly or indirectly under more than one loan contract under Article 342-508 at the same time for the purpose, or with the effect, of obtaining a higher authorized charge than would otherwise be permitted. The charge authorized herein shall not apply to any renewal or extension of an obligation on which the charge has been previously imposed; provided, however, that such renewal or extension may bear interest at the rate that is otherwise provided by law. The charge shall not apply to a loan transaction wherein the borrower applies all or a portion of the loan proceeds to discharge a prior loan made by the same lender to the same borrower and in connection with which the preceding charge was imposed.

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

Issued in Austin, Texas, on July 10, 1990.

TRD-9006969

Ann Graham  
General Counsel  
Texas Department of  
Banking

Earliest possible date of adoption: August 17, 1990

For further information, please call: (512) 479-1200

## Part II. Banking Department of Texas

### Chapter 11. Miscellaneous

#### Retention of Records

##### • 7 TAC §11.63

The Banking Department of Texas proposes new §11.63, concerning retention periods for records of commercial banks, including trust departments, and trust companies. The Texas Banking Code provides that the Finance Commission of Texas may promulgate general rules and regulations to provide for the preservation of the books and records of banks and trust companies and to permit the destruction or other disposition of such books and records after the same are no longer of any value. The new section introduces the schedules for retention of these records listing the types of records which must be retained and the required retention period for each type of record. The schedules are contained in proposed new 7 TAC §11.64 and §11.65.

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

Ms. Graham 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 provide for the preservation of the books and records of banks and trust companies and to permit the destruction or other disposition of such books and records after the same are no longer of any value in order to improve efficiency and reduce costs. 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 Cynthia N. Milne, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The new section is proposed under Texas Civil Statutes, Article 342-113(3) and Article 342-1102, which authorize the State Finance Commission to adopt regulations to provide for the preservation of the books and records of banks and trust companies during such time as said books and records are of value, and to permit the destruction or disposition of such books and records after the same are no longer of any value.

*§11.63. Retention of Records of Commercial Banks and Trust Companies.* The Texas Banking Code provides that the Finance Commission may promulgate general rules and regulations to provide for the preservation of the books and records of

banks, including trust departments, and trust companies, and to permit the destruction or other disposition of such books and records after the same are no longer of any value. The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) extends the statute of limitations for crimes involving financial institutions to 10 years (12 United States Codes, §1853). The nature of the crimes and the necessity of maintaining evidence for criminal prosecution requires retention of bank and trust records for 10 years. Because these documents may be used in connection with a criminal prosecution, retention of the original documents is desirable. However, due to the difficulty in storing and retrieving original documents, the Finance Commission has determined that the documents listed in §11.64 and §11.65 of this title (relating to Retention of Records of Commercial Banks and Trust Companies and Bank Trust Departments and Trust Company Records) should be retained in the original for the number of years specified in the schedule. Thereafter, the documents may be retained on microfilm, microfiche, optical disk storage, or other similar process for the remainder of the 10-year period.

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

Issued in Austin, Texas on July 9, 1990.

TRD-9006972

Ann Graham  
General Counsel  
Texas Department of  
Banking

Earliest possible date of adoption: August 17, 1990

For further information, please call: (512) 479-1200

#### Retention of Records

##### • 7 TAC §11.64

*(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 Banking Department of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Banking proposes the repeal of §11.64, concerning retention periods for records of commercial banks and trust companies. The new schedule for retention periods will be enacted simultaneously with the repeal of this section and will have the section number 7 TAC §11.64.

Ann Graham, general counsel, 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.

Ms. Graham has determined that the proposed repeal will have no local employment impact.



Ms. Graham also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the repeal of an outdated record retention schedule to enable a new schedule to be enacted. 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 Cynthia N. Milne, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The repeal is proposed under Texas Civil Statutes, Article 342-113(3), and Article 342-1102, which provide the Finance Commission with the authority to adopt regulations to provide for the preservation of the books and records of banks and trust companies during such time as said books and records are of value, and to permit the destruction or disposition of such books and records after the same are no longer of any value.

#### *§11.64. Commercial Bank Records.*

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

Issued in Austin, Texas on July 9, 1990.

TRD-9006978

Ann Graham  
General Counsel  
Texas Department of  
Banking

Earliest possible date of adoption: August 17, 1990

For further information, please call: (512) 479-1200

◆ ◆ ◆  
The Banking Department of Texas proposes new §11.64, concerning retention periods for commercial bank records. The Texas Banking Code provides that the Finance Commission of Texas may promulgate general rules and regulations to provide for the preservation of the books and records of banks, including trust departments, and to permit the destruction or other disposition of such books and records after the same are no longer of any value. The new section sets forth a schedule for retention of records listing the types of records which must be retained and the required retention period for the originals of each type of document. Thereafter, the document may be stored by microfilm, microfiche, optical disc, or other similar process for the remainder of the 10-year storage period.

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

Ms. Graham 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

provide for the preservation of the books and records of banks and trust companies and to permit the destruction or other disposition of such books and records after the same are no longer of any value in order to improve efficiency and reduce costs. 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 Cynthia N. Milne, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The new section is proposed under Texas Civil Statutes, Article 342-113(3) and Article 342-1102, which authorize the State Finance Commission to adopt regulations to provide for the preservation of the books and records of banks and trust companies during such time as said books and records are of value, and to permit the destruction or disposition of such books and records after the same are no longer of any value.

*§11.64. Retention of Records of Commercial Banks and Trust Companies.* The following schedule sets forth the types of records which must be retained. The retention period for each document listed is 10 years. The original document must be retained for the number of years specified for the document. Thereafter, the document may be stored by microfilm, microfiche, optical disc, or other similar process for the remainder of the required 10-year period.

**Type of Record****Retention Period  
for Original Document****ACCOUNTING AND AUDITING**

|  |  |
|--|--|
| Accrual records (prepaid and payables)                 | 3 years  |
| Asset/liability management records                     | 3 years  |
| Audit reports (internal and external)                  | 4 years  |
| Audit work papers (internal)                           | 3 years  |
| Bills paid and invoices                                | 7 years  |
| Budget reports   | 1 year   |
| Call reports   | Permanent  |
| Charged off asset records                              | 5 years after maturity                           |
| Charitable contribution records                        | 7 years  |
| Currency transaction reports                           | 5 years  |
| Depreciation records (after life of asset)             | 3 years  |
| Directors' reports                                     | 3 years*   |
| Escheat records: property report to State Treasurer    | 10 years   |
| Executive committee reports                            | 3 years*   |
| FDIC assessment base records                           | 5 years  |
| General ledger tickets (debits and credits)            | 5 years  |
| General ledger transaction journal                     | 5 years  |
| Overdraft Reports                                      | 5 years  |
| Reserve requirement computations (FR2900)              | 2 years  |
| Statement of Condition, including income statement     |  |
| Daily  | 2 years  |
| Annual   | Permanent  |
| Taxes - Federal  |  |
| a. Corporate income tax returns                        | 4 years after later of due date or date tax paid |
| b. Federal unemployment tax returns (Form 940)         | 4 years after later of due date or date tax paid |
| c. IRS Information Returns (e.g. 1098, 1099, etc.)     | 4 years  |
| d. Nonresident alien withholding tax, Form 1042, 1042s | 4 years  |
| e. Refund claims, disallowed and paid                  | 4 years after later of due date or date tax paid |

\* Provided, however, if reports are exhibits, supplements or complimentary minutes, then retain permanently in accordance with Directors' minutes rules.

| Type of Record  | Retention Period<br>for Original Document        |
|---|--|
| f. Social Security and withholding tax returns (Form 941)   | 4 years after later of due date or date tax paid |
| <b>Taxes - State</b>  |  |
| a. Ad valorem tax   | 4 years after later of due date or date tax paid |
| b. Franchise tax  | 4 years after later of due date or date tax paid |
| c. Sales and use tax  | 4 years after later of due date or date tax paid |
| d. Unemployment tax returns   | 4 years after later of due date or date tax paid |
| <br><b>ADMINISTRATIVE</b>   |  |
| Attachments and/or garnishments<br>Note: Suggest that legal documents, copies of returns and correspondence be filed, after case is closed, with general correspondence | 4 years after close                              |
| Bank examiners' reports   | Permanent  |
| Branch/CBCT applications  | Permanent  |
| Community Reinvestment Act compliance records   | 2 years  |
| Contracts and Leases  | 4 years after termination                        |
| Correspondence - general  | Optional   |
| Court case records  | 4 years after close                              |
| Insurance agency activities   | Permanent  |
| Insurance records   |  |
| a. Bankers blanket bond and Directors and Officers insurance  | 6 years after expiration                         |
| b. All other policies including casualty, Texas multi peril, liability policies, workers compensation, etc.   | 3 years after expiration.                        |
| Registered mail (incoming and outgoing records and return receipt cards)  | 3 years  |
| Regulatory actions (e.g. correspondence, agreements, reports and rulings)   | Permanent  |

**Type of Record****Retention Period  
for Original Document****CERTIFICATES OF DEPOSIT**

|  |                         |
|--|-------------------------|
| Certificates                                       | 7 years after paid      |
| Change of address records                          | 1 year                  |
| Copy of certificate                                | As long as CD is active |
| Interest checks                                    | 5 years                 |
| Interest check log                                 | 1 year                  |
| Reconcilement to general ledger                    | 3 years                 |
| Safekeeping receipts                               | 3 years after close     |
| Signature cards                                    | 5 years after close     |
| Taxpayer identification number certification (W-9) | 5 years after close     |
| Transaction journal                                | 4 years                 |
| Trial Balance                                      | 4 years                 |
| IRA/SEPP records:                                  |                         |
| Form 1099R   | 7 years                 |
| Form 5305A   | 5 years after close     |
| Form 5498 or substitute document                   | 7 years                 |
| W-2 P  | 7 years                 |
| Year-end statement                                 | 7 years                 |

**COLLECTIONS**

|   |                     |
|---|---------------------|
| Collection letters/receipts (incoming and outgoing) | 2 years             |
| Collection register                                 | 3 years             |
| Collection note records                             | 2 years after close |
| Coupon cash letters (outgoing)                      | 6 months            |
| List of cash items (outstanding)                    | 1 year              |
| Savings bond records                                | 3 years             |

**CORPORATE RECORDS**

|   |           |
|---|-----------|
| Annual reports to shareholders                | Permanent |
| Capital stock certificates, records and stubs | Permanent |
| Capital stock ledger                          | Permanent |
| Capital stock transfer register               | Permanent |
| Corporate bylaws                              | Permanent |
| Corporate charter                             | Permanent |

**Type of Record****Retention Period  
for Original Document****Dividend:**

|   |                        |
|---|------------------------|
| a. Checks   | 6 years                |
| b. Dividend register  | 6 years                |
| c. Nominee's information return (1099 DIV)  | 7 years                |
| d. Taxpayer identification number<br>certification (W-9)  | 5 years<br>after close |
| Minute books of meetings (stockholders, directors,<br>etc.)   | Permanent              |
| Proxy material  | 10 years               |
| Receipts for stock certificates   | Permanent              |
| Record of bank's executive officers and principal<br>shareholders indebtedness to correspondent<br>banks (Form FFIEC 004) | 3 years                |
| Record of loans to executive officers, directors,<br>and principal shareholders (Form FFIEC 003)                          | 3 years                |
| Statement of beneficial ownership   | Permanent              |
| Statement of changes in beneficial ownership  | Permanent              |
| Statement of interest (outside business interests<br>of directors, executive officers and principal<br>shareholders)      | 3 years                |
| Stockholder list  | Permanent              |

**DEPOSIT ACCOUNTS**

|   |                                  |
|---|----------------------------------|
| Account analysis records                              | Optional                         |
| Change of address records                             | 1 year                           |
| Checks paid and other debits                          | 5 years                          |
| Corporate resolutions                                 | 5 years after<br>close           |
| Deposit tickets/credit items                          | 5 years                          |
| Hold statement receipt log                            | 2 years after<br>transaction     |
| Letters testamentary/administration/guardianship      | 5 years after<br>close of estate |
| Overdraft trial balance                               | 5 years                          |
| Power of Attorney                                     | 5 years after<br>close           |
| Regulation CC: evidence of compliance                 | 3 years                          |
| Reconcilement to general ledger                       | 3 years                          |
| Return item records                                   | 5 years                          |
| Signature cards                                       | 5 years after<br>close           |
| Small estate affidavit                                | 5 years after<br>close           |
| Statements  | 5 years                          |
| Stop payment orders                                   | 5 years                          |
| TT&L records  | 2 years                          |
| Taxpayer identification number certification<br>(W-9) | 5 years after<br>close           |

| Type of Record   | Retention Period<br>for Original Document |
|--|---|
| Transaction journal  | 4 years                                   |
| Trial balance  | 4 years                                   |
| Undelivered statements and cancelled checks  | 5 years                                   |
| Unposted item records (including stop payments, holds, and NSF checks)   | 5 years                                   |
| <br>   |   |
| DUE TO BANK ACCOUNTS   |   |
| (Generally, see Deposit Accounts)  |   |
| Incoming cash letter records   | 6 months                                  |
| <br>   |   |
| DUE FROM BANK ACCOUNTS   |   |
| Advices  | 2 years                                   |
| Drafts   | 1 year after<br>paid                      |
| Draft register on outstanding drafts   | 1 year                                    |
| Note: affidavits, Bonds of Indemnity, and<br>all pertinent information pertaining to<br>issuance of duplicate checks | 5 years after<br>paid                     |
| Reconciliation register  | 3 years                                   |
| Statements   | 2 years                                   |
| <br>   |   |
| EFT RECORDS  |   |
| Error resolution log   | 2 years                                   |
| Regulation E: Evidence of Compliance   | 2 years                                   |
| Wire copies/advices  | 5 years                                   |
| Wire transfer debit and credit entries   | 5 years                                   |
| Wire transfer log  | 5 years                                   |
| <br>   |   |
| INTERNATIONAL DEPARTMENT   |   |
| Advices over \$10,000 transferring outside U.S.  | 5 years                                   |
| Cable copies   | 5 years                                   |
| Cable requisitions   | 5 years                                   |
| Checks over \$10,000   |   |
| a. Sent outside U.S.   | 5 years                                   |
| b. Drawn on foreign bank   | 5 years                                   |
| c. Received from outside U.S.  | 5 years                                   |
| Foreign collection register  | 4 years                                   |
| Foreign draft carbons and applications   | 6 years                                   |

| Type of Record                              | Retention Period<br>for Original Document |
|---|---|
| Foreign exchange remittance sheets or books | 4 years after<br>issue                    |
| Foreign mail transfer applications          | 4 years                                   |
| Foreign mail transfer carbons               | 4 years                                   |
| Letter of credit applications               | 4 years                                   |
| Letter of credit ledger sheets              | 4 years                                   |
| Travelers check applications                | 2 years                                   |
| Travelers check register                    | 2 years                                   |

#### INVESTMENTS

|  |  |
|--|--|
| Bond amortization records  | 3 years                                    |
| Bond appraisals  | 3 years                                    |
| Bond ledger and portfolio  | 5 years                                    |
| Brokers' confirmations   | 3 years                                    |
| Brokers' invoices  | 3 years                                    |
| Brokers' statements  | 3 years                                    |
| Correspondence   | 3 years                                    |
| Credit information used to evaluate public and investment securities | 3 years                                    |
| Descriptive literature on securities                                 | 3 years                                    |
| Discount brokerage account records                                   | 3 years                                    |
| Liquidity reports  | 3 years                                    |
| Lost or stolen securities (Form X-17-1A)                             | 3 years                                    |
| Municipal securities dealer arrangement (FDIC Form MSD-4 and MSD-5)  | 3 years after<br>employment<br>termination |
| Public fund contract   | 4 years after<br>close                     |
| Safekeeping records and receipts                                     | 4 years                                    |
| Securities transactions  | 3 years                                    |
| Taxpayer identification number certification (W-9)                   | 5 years after<br>close                     |

#### LOANS

|   |                        |
|---|------------------------|
| Applications, approved  | 5 years after<br>paid  |
| Applications, rejected  | 25 months              |
| Change of address records   | 1 year                 |
| Charged off notes and other obligations   | 5 years after<br>close |
| Commitment letters  | 5 years after<br>paid  |
| Collateral records (e.g. security agreements, pledge, hypothecation, UCC-1, UCC-3, corporate resolutions, deeds of trust, regulation U forms, etc.) | 5 years after<br>paid  |

| Type of Record   | Retention Period<br>for Original Document |
|--|---|
| Consumer leases  | 2 years after disclosure                  |
| Credit files (including F/S, credit reports, etc.)                                   | 5 years after close                       |
| Evidence of Compliance with federal laws:  |   |
| a. Fair Credit reporting   | 25 months                                 |
| b. Home Loan data for monitoring purposes  | 25 months                                 |
| c. Home Mortgage Disclosure Act  | 5 years                                   |
| d. Real Estate Settlement and Procedures Act compliance (good faith estimate, HUD-1) | 2 years                                   |
| e. Regulation Z: Evidence of Compliance  | 2 years after disclosure                  |
| f. Flood certificate/insurance on collateral   | until paid                                |
| g. FHA banks statements  | 5 years                                   |
| h. Community Reinvestment Act  | 2 years                                   |
| Federal Reserve Form G-3   | 3 years                                   |
| Federal Reserve Form T-4   | 3 years                                   |
| Insurance records on collateral  | 1 year after expiration or cancellation   |
| Loan Agreement   | 5 years after paid                        |
| Loan Committee Minutes   | 6 years                                   |
| Note   | 5 years after paid                        |
| Notice of Adverse Action   | 25 months                                 |
| Overdraft loan agreement   | 5 years after close                       |
| Payment history record   | 5 years after paid                        |
| Repossession log and records   | 4 years after activity                    |
| Statement of Purpose (loans over \$10,000)   | 5 years after paid                        |
| Student loan records   | 5 years after paid                        |
| Transaction Journal  | 4 years                                   |
| Trial balance  | 4 years                                   |
| <b>OFFICIAL CHECKS AND DRAFTS</b>  |   |
| All official checks-copy   | until paid                                |
| Cashiers checks paid   | 5 years                                   |
| Certified check records  | 5 years after paid                        |
| Draft records  | 5 years after paid                        |



| Type of Record                                      | Retention Period<br>for Original Document |
|---|---|
| Expense check records                               | 5 years after<br>paid                     |
| Money order records (bank's or personal)            | 5 years after<br>paid                     |
| Stop payment records                                | 5 years                                   |
| Travelers check records                             | 5 years after<br>paid                     |
| <b>PERSONNEL</b>                                    |   |
| Affirmative action plan                             | Permanent                                 |
| Annual welfare and pension plan                     | 5 years                                   |
| Applications and resumes                            | 3 years after<br>termination              |
| a. Approved   | Optional, sug-<br>gest 25 months          |
| b. Rejected   | 3 years                                   |
| Attendance records                                  | 3 years                                   |
| COBRA reports                                       | 3 years                                   |
| Group insurance                                     | 1 year after<br>termination               |
| Immigration reports (I-9)                           | 3 years                                   |
| Payroll records/time records                        | 3 years                                   |
| Pension plan records                                | Permanent                                 |
| Personnel file                                      | 6 years after<br>termination              |
| Salary ledger                                       | 3 years                                   |
| Salary receipts                                     | 3 years                                   |
| Note: retain final receipt in personnel folder      |   |
| Tax reports (Forms 940, 941 and state unemployment) | 4 years                                   |
| Wage and tax records (W-2, W-3 and W-4)             | 5 years                                   |
| <b>PROOF, CLEARINGS AND TRANSIT</b>                 |   |
| Balancing forms                                     | 2 years                                   |
| Clearinghouse settlement sheets                     | 6 months                                  |
| Deposit corrections                                 | 6 months                                  |
| Inclearing tapes and listings                       | 6 months                                  |
| Outclearings (cash letter), tapes and listings      | 2 years                                   |
| Proof machine tapes                                 | 2 years                                   |
| <b>SAFE DEPOSIT</b>                                 |   |
| Access records                                      | 4 years                                   |
| Copies of rent receipts                             | 2 years                                   |

| Type of Record   | Retention Period<br>for Original Document |
|--|---|
| Inventory of box contents  | 2 years after<br>close                    |
| Leases or contracts  | 4 years after<br>close                    |
| Signature cards  | 5 years after<br>close                    |
| Wills of deceased tenant   | 2 years                                   |
| <b>SECURITY</b>  |   |
| Evidence of compliance with standards for<br>installation of security devices (Reg. P) | 2 years                                   |
| Management certification of compliance with<br>Bank Protection Act                     | 3 years                                   |
| <b>TELLERS</b>   |   |
| Bank by mail envelopes   | 6 months                                  |
| Cash reconciliation to general ledger  | 3 years                                   |
| Night depository agreements  | 4 years after<br>close                    |
| Night depository envelopes   | 6 months                                  |
| Night depository log   | 2 years                                   |
| Teller's cash tickets  | 5 years                                   |
| Teller's difference/outage records   | 2 years                                   |
| Teller's individual balancing sheets   | 2 years                                   |
| Teller's machine tapes   | 2 years                                   |
| Vault records  | 1 year                                    |

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

Issued in Austin, Texas on July 9, 1990.

TRD-9006971      Ann Graham  
                         General Counsel  
                         Texas Department of Banking

Earliest possible date of adoption: August 17, 1990

For further information, please call: (512) 479-1200

• 7 TAC §11.65

*(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 Banking Department of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Banking proposes the repeal of §11.65, concerning retention periods for trust department records. The new schedule for retention periods will be included in proposed new 7 TAC §11.64, which will be enacted simultaneously with the repeal of this section.

Ann Graham, general counsel, 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.

Ms. Graham has determined that the proposed repeal will have no local employment impact.

Ms. Graham also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the repeal of an outdated record retention schedule to enable a new schedule to be enacted. 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 proposed repeal may be submitted to Cynthia N. Milne, Assistant General Counsel, Texas Department of Banking 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The repeal is proposed under Texas Civil Statutes, Article 342-113(3) and Article 342-1102, which provide the Finance Commission with the authority to adopt regulations to provide for the preservation of

◆                    ◆                    ◆  
the books and records of trust departments during such time as said books and records are of value, and to permit the destruction or disposition of such books and records after the same are no longer of any value.

§11.65. Trust Department Records.

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

Issued in Austin, Texas on July 9, 1990.

TRD-9006979      Ann Graham  
                         General Counsel  
                         Texas Department of  
                         Banking

Earliest possible date of adoption: August 17, 1990

For further information, please call: (512) 479-1200

◆                    ◆                    ◆  
The Banking Department of Texas proposes new §11.65, concerning retention periods for records of commercial bank trust departments and trust companies. The Texas Banking Code provides that the Finance Commission of Texas may promulgate general rules and regulations to provide for the preservation of the books and records of commercial banks and trust companies, and to permit the destruction or other disposition of such books and records after the same are no longer of any value. The new section sets forth a schedule for retention of records listing the types of records which must be retained and the required retention period for the originals of each type of document. Thereafter, the document may be stored by microfilm, microfiche, optical disc, or other similar process for the remainder of the 10-year storage period.

Ann Graham, general counsel, has determined that for the first five-year period

the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Graham, 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 provide for the preservation of the books and records of banks and trust companies and to permit the destruction or other disposition of such books and records after the same are no longer of any value in order to improve efficiency and reduce costs. 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 Cynthia N. Milne, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The new section is proposed under Texas Civil Statutes, Article 342-113(3) and Article 342-1102, which authorize the State Finance Commission to adopt regulations to provide for the preservation of the books and records of banks and trust companies during such time as said books and records are of value, and to permit the destruction or disposition of such books and records after the same are no longer of any value.

§11.65. Bank Trust Departments and Trust Company Records. The following schedule sets forth the types of records which must be retained. The retention period for each document listed is 10-years. The original document must be retained for the number of years specified for the document. Thereafter, the document may be stored by microfilm, microfiche, optical disc, or other similar process for the remainder of the required 10-year period.

Type of Record

Retention Period  
for Original Document

---

FILES

Files retention period begins with account termination date- nonessential material destroyed at account closing

AGREEMENTS

Agency  
Trust  
Court  
Wills

Permanent  
Permanent  
Permanent  
Permanent

AUTHORIZATIONS

Directives

Permanent

APPRAISALS

Real property  
Personal property

10 years  
10 years

CORRESPONDENCE

Trust  
Decedent's Personal Records

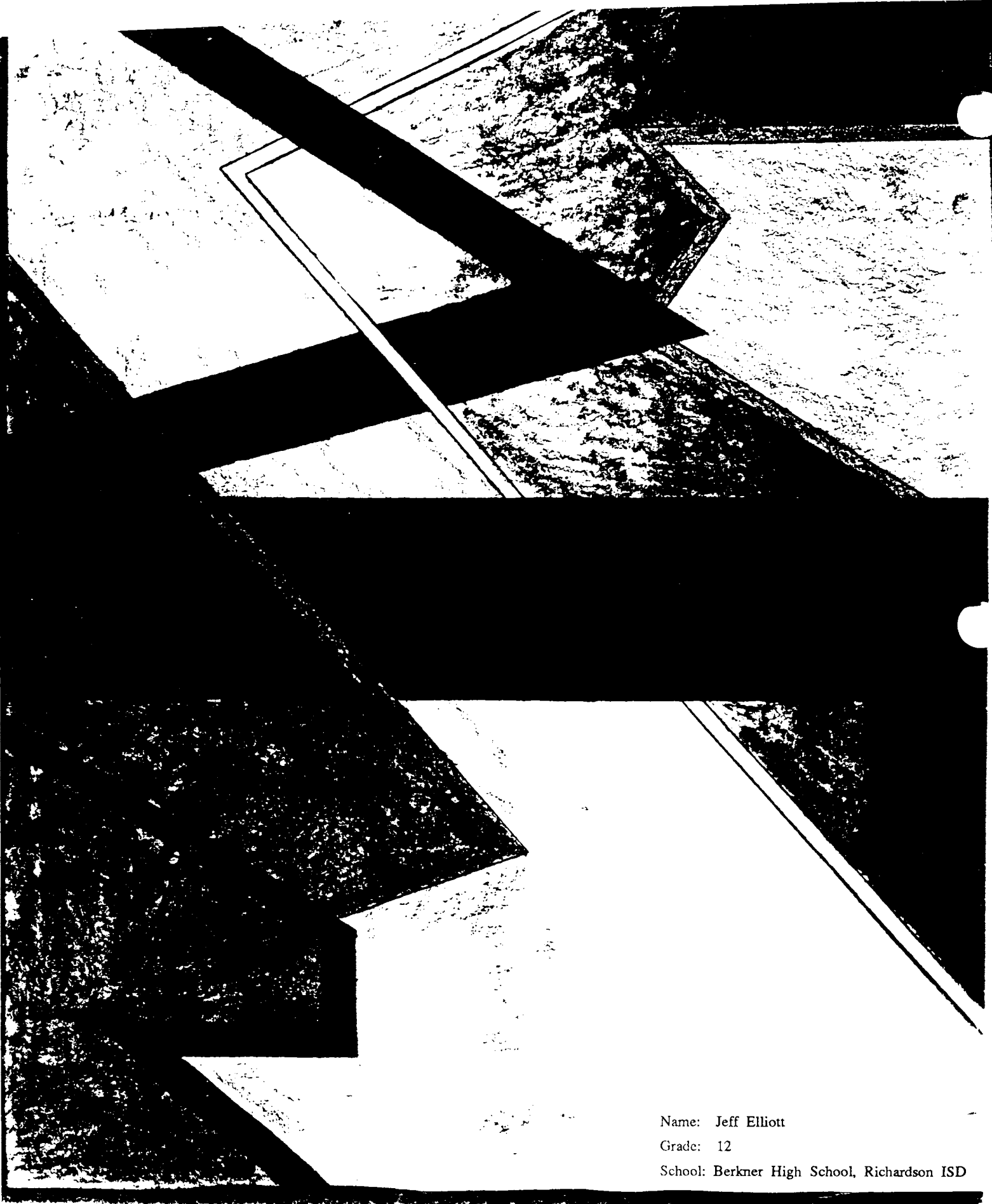
7 years; then microfilm  
Deliver or distribute where appropriate and obtain receipt, otherwise destroy 1 year after closing  
7 years

Fees

| Type of Record                            | Retention Period<br>for Original Document |
|---|---|
| <b>MISCELLANEOUS</b>                      |   |
| Trust                                     | 7 years; then<br>microfilm                |
| Others                                    | 3 years                                   |
| Paid Bills & advices of payment           | 3 years                                   |
| Pending                                   | Destroy at<br>closing                     |
| Receipt of assets delivered after closing | 7 years                                   |
| Legal Opinions                            | Permanent                                 |
| <b>PURCHASE AND SALE</b>                  |   |
| Broker confirmations                      | 7 years                                   |
| Broker statements                         | 7 years                                   |
| Real Estate & Mortgage Documents          | 10 years                                  |
| Investment Review                         | Permanent                                 |
| <b>STATEMENTS</b>                         |   |
| Final Statement of Account                | Permanent                                 |
| Historical Activity Statements            | Permanent                                 |
| Other                                     | Destroy at<br>account closing             |
| <b>TAX FILES</b>                          |   |
| Ad Valorem Tax Returns                    | 2 years; then<br>microfilm                |
| Estate Tax Return                         | 15 years; then<br>microfilm               |
| Federal and State Tax Returns             | 10 years; then<br>microfilm               |
| Intangible Tax Returns                    | 2 years; then<br>microfilm                |
| Social Security Returns                   | 5 years; then<br>microfilm                |
| <b>PERSONAL TRUST ACCOUNT RECORDS</b>     |   |
| Accounting Ledgers                        | Permanent                                 |
| Asset Listings (computer)                 | Permanent                                 |
| Asset Pricing Lists                       | 2 years                                   |
| Cash Listing (computer)                   | Permanent                                 |

| Type of Record  | Retention Period<br>for Original Document   |
|---|---|
| Cash & Asset Detail per Account   | Permanent   |
| Check registers   | 1 year  |
| Check Requisition   | 1 year  |
| Checks  | Permanent   |
| Check Vouchers (Probate accounts)   | 6 years after<br>account closing  |
| Claims and Research   | 7 years   |
| Common Trust Fund Valuations  | Permanent   |
| Comptroller Reports   | Permanent   |
| Daily Department Balance Control Sheets   | 7 years   |
| Daily Statement of Department   | 1 year  |
| Escheat Reports   | Permanent   |
| Fee Ledgers   | Destroy at<br>account closing   |
| Fee Schedules   | 3 years   |
| Fee Outstanding   | 7 years   |
| Income Receipt Listing (Dividends, interest,<br>mortgages & loans, rentals, mineral income) | 3 years   |
| Nominee Records   | 3 years   |
| Posting tickets   | 3 years   |
| Overdraft list  | 3 years   |
| Pledge Reports  | 7 years   |
| Suspense Reports  | 7 years   |
| <br>CORPORATE TRUSTS  |   |
| Agreement   | Permanent   |
| Amortization Schedules  | Destroy at<br>maturity  |
| Cancelled Stock Certificates  | 7 years; then<br>return to company  |
| Cancelled Bonds and Coupons   | Return to issuing<br>corporation or<br>destroy retaining<br>receipt at<br>account closing |
| Change of Address   | 2 years   |
| Correspondence  | 3 years   |
| Coupon Envelopes  | 1 year  |
| Coupon Ledgers  | Permanent   |
| Dividend Check Tapes  | 4 months  |
| Dividend Record Cards   | 7 months after<br>closing   |
| Dividend and Registered Bond Interest Checks  | 7 years   |
| Dividend and Interest Listing   | 1 year  |
| Form 1099, 1096   | 3 years after<br>filing   |

| Type of Record  | Retention Period<br>for Original Document  |
|---|--|
| Journals  | Permanent  |
| Signature Files   | Until termination<br>of account  |
| Stock Transfer Receipts   | Permanent  |
| Stockholders Ledgers  | Permanent  |
| Stockholders Listing  | 3 years  |
| Stock Transfer Instruction  | 7 years  |
| Supporting Papers to Transfers  | 7 years  |
| Surety Bonds  | 7 years then<br>deliver to<br>company - to be<br>retained<br>permanently         |
| Transfer Sheets   | Permanent  |
| GENERAL DEPARTMENT RECORDS  |  |
| Accountings of Prior Fiduciaries  | Permanent  |
| Account Reviews   | 7 years after<br>closing; then<br>destroy  |
| Audit Reports   | 7 years  |
| Buy and Sell Orders   | 7 years  |
| General Correspondence  | 3 years  |
| Inventory of and Safe Deposit Box Release                               | 5 years  |
| Minute Books, Trust Committee and Trust<br>Investment Committee, etc.   | Permanent  |
| Notes, mortgages, contracts   | Return to<br>customer when<br>paid in full                                       |
| Oil Run Statements  | 3 years  |
| Original Trust Entries (daily debits and<br>credits and multiple forms) | 7 years  |
| Registered Mail Report  | 3 years  |
| Safekeeping Receipts (cancelled)  | 7 years  |
| Safekeeping Inventory   | 7 years  |
| Tickler Cards   | Destroy at<br>account closing<br>or 1 year after<br>retiring from<br>active file |
| Vault Withdrawal and Deposit Tickets                                    | 7 years  |
| Wall Street Journal   | 2 years  |



Name: Jeff Elliott  
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School: Berkner High School, Richardson ISD



This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt. Issued in Austin, Texas on July 9, 1990.

TRD-9006970 Ann Graham  
General Counsel  
Texas Department of Banking

Earliest possible date of adoption: August 17, 1990  
For further information, please call: (512) 479-1200

**TITLE 16. ECONOMIC  
REGULATION**  
**Part I. Railroad**  
**Commission of Texas**  
**Chapter 5. Transportation**  
**Division**  
**Subchapter P. Commercial**  
**Zones**

• **16 TAC §5.294**

The Railroad Commission of Texas, pursuant to a petition filed by the City of Keller, proposes an amendment to §5.294, concerning existing commercial zones. The amendment as proposed would add the City of Keller to the existing Dallas and Fort Worth commercial zones.

Jackye Greenlee, assistant director-central operations, 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.

Karen Johnson, hearings examiner, 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 increase the number of available for-hire carriers to transport commodities between the existing Dallas and Fort Worth commercial zones and the City of Keller. 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 Karen Johnson, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 911b, §(g)(4), which authorize the Railroad Commission of Texas to prescribe commercial zones.

**§5.294. Existing Commercial Zones.** Commercial zones defined and prescribed by the commission after notice and hearing are as follows.

(1) The Dallas commercial zone shall include the following:

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

(C) the following cities and towns which are adjacent to and commer-

cially a part of the City of Fort Worth: Haltom City, Watauga, Richland Hills, North Richland Hills, Hurst, Bedford, Colleyville, Grapevine, Euless, Arlington, Pantego, Dalworth Gardens, Kennedale, Forest Hill, Everman, Burleson, Crowley, Edgecliff, Benbrook, Aledo, White Settlement, Westover Hills, Westworth Village, River Oaks, Sansom Park, Lake Worth Village, Lakeside, Azle, Saginaw, Manfield, [and] Blue Mound, and Keller.

(D)-(I) (No change.)

(2) The Fort Worth commercial zone shall include the following:

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

(D) the following cities and towns which are adjacent to and commercially a part of the City of Fort Worth: Haltom City, Watauga, Richland Hills, North Richland Hills, Hurst, Bedford, Colleyville, Grapevine, Euless, Arlington, Pantego, Dalworth Gardens, Kennedale, Forest Hill, Everman, Burleson, Crowley, Edgecliff, Benbrook, Aledo, White Settlement, Westover Hills, Westworth Village, River Oaks, Sansom Park, Lake Worth Village, Lakeside, Azle, Saginaw, Mansfield, [and] Blue Mound, and Keller.

(E)-(G) (No change.)

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

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

Issued in Austin, Texas on July 9, 1990.

TRD-9006956 Cril Payne  
Assistant Director  
Legal Division-General Law

Earliest possible date of adoption: August 17, 1990

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

**Chapter 7. Gas Utilities**  
**Division**

**Substantive Rules**

• **16 TAC §7.42**

*(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 Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Railroad Commission of Texas proposes the repeal of and new §7.42, concerning the administration of the gas utility tax authorized under Texas Civil Statutes, Article 6060.

The 71st Legislature amended Texas Civil Statutes, Article 6060, by raising the gas utility tax rate from one fourth of 1.0% to one half of 1.0% and by significantly reducing the revenue subject to the tax. This section is proposed to implement the recent legislative amendments to Article 6060.

This section outlines the procedures to be followed in calculating and paying the gas utility tax. This section sets forth the revenues which are subject to and those which are not subject to the tax. Additionally, in order to determine taxable gross income, deduction of certain costs is provided for under proposed new §7.42.

Steve Newberry, manager, gas utility audit, has determined that for the first five-year period the proposed repeal is in effect there will be fiscal implications for state government as a result of enforcing or administering the repeal. The effect on state government for the first five-year period that Article 6060, as amended, will be in effect will be an estimated additional cost of \$10,500 for fiscal year (fy) 1990; \$14,000 for fy 1991; \$600 for fy 1992; \$800 for fy 1993; and \$800 for fy 1994. There will be an estimated loss in revenue of \$7 million for fy 1990; \$9 million for fiscal years 1991-1994.

Mr. Newberry and Ms. Renea Ryland, hearings examiner, have 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.

Ms. Ryland 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 proper assessment and collection of the gas utility tax as required by law. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with Texas Civil Statutes, Article 6060, as amended by the legislature, will be a decrease in the amount of the gas utility tax paid.

Comments on the proposal may be submitted to Renea Ryland, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. Comments will be accepted for 60 days after publication in the *Texas Register*. The repeal is proposed under Texas Civil Statutes, Article 6060, which authorize the commission to adopt rules necessary to the

administration, collection, and enforcement of taxes imposed by Article 6060.

**§7.42. Gross Receipts Tax.**

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

Issued in Austin, Texas on July 10, 1990.

TRD-9007012 Cril Payne  
Assistant Director, Legal  
Division-General Law  
Railroad Commission of  
Texas

Proposed date of adoption: September 15, 1990

For further information, please call: (512) 463-7009

The new section is proposed under Texas Civil Statutes, Article 6060, which authorize the commission to adopt rules necessary to the administration, collection, and enforcement of taxes imposed by Article 606.

**§7.42. Gas Utility Tax.**

(a) Tax imposed. Every gas utility as described in Texas Civil Statutes, Article 6050, §1(b), shall report and pay a gas utility tax as required by Texas Civil Statutes, Article 6060. The gas utility tax is imposed on the gross income received from all activity performed by the gas utility in Texas pursuant to Texas Civil Statutes, Article 6050, §1(b). The rate of the tax is one-half of 1.0% of the gross income subject to the tax.

(b) Tax payment. The gas utility tax shall be reported and paid as follows.

(1) Each gas utility on which this tax is imposed shall report and pay to the Railroad Commission of Texas the tax imposed by February 20, May 20, August 20, and November 20 for the preceding calendar quarter. The gas utility tax report shall be of a form and content as established by the Transportation/Gas Utilities Division and shall be completed in all detail as requested. The payment shall be made payable to the state treasurer and be received by the commission. A gas utility tax report and/or payment will be considered timely filed if it is received by the Transportation/Gas Utilities Division on or before the preceding dates or is sent to the division in accordance with paragraph (2) of this subsection.

(2) If a gas utility tax report and/or payment is sent to the Transportation/Gas Utilities Division by first-class United States mail in an envelope or wrapper properly addressed and stamped and is deposited in the mail one day or more before the last day for filing same, it shall be received by the division and deemed filed in time if received not more than 10 days tardily. A legible postmark

affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.

(c) Definitions. For purposes of assessing the gas utility tax the terms below are defined as follows:

(1) Gross income shall be equal to the total gross receipts from any activity described in Texas Civil Statutes, Article 6050, §1(b), less a deduction of the costs paid to another person for purchasing, treating, or storing natural gas or for gathering or transporting natural gas to the facilities of the gas utility.

(2) Gross receipts shall be equal to the total revenue received from the sale and/or transportation of gas that is properly accounted for in accordance with the National Association of Regulatory Utility Commissioners (NARUC) uniform system of accounts, or the Federal Energy Regulatory Commission (FERC) system of accounts as specified in §7.43 of this title (relating to System of Accounts). Revenue reported in NARUC or FERC Account Numbers 480, 481, 482, 483, 484, and 489 shall be subject to the gas utility tax. If a gas utility that engages in both transmission and distribution of natural gas makes an allocation of costs to the transmission function, which is approved by the commission, then no additional gas utility tax as provided herein shall be paid on costs allocated to the distribution function. If, however, no such allocation is made, then such gas utility shall be required to pay gas utility tax on sales to end-use customers. A properly authorized gate rate shall be deemed to constitute a sufficient allocation of transmission costs.

(3) Treating shall be any process designed to make gas of pipeline quality.

(d) Non-jurisdictional receipts. The following revenues shall not be included in the computation of gross receipts:

(1) revenues received from first sales of gas by a producer thereof exclusively. If the sale by a producer of gas includes both produced and purchased gas, then the total revenues from the sale of produced gas shall be exempt from the gas utility tax;

(2) revenues received from burnertip sales by a gas utility engaged solely in retail gas distribution;

(3) revenues derived from transporting, delivering, selling, or otherwise making available natural gas for fuel, either directly or indirectly, to the owners of irrigation wells or from the sale, transportation, or delivery of natural gas for any other direct use in agricultural activities;

(4) revenues received from interstate transactions or sales of gas which are subject to the jurisdiction of the Federal Energy Regulatory Commission under the provisions of the Natural Gas Act, 15

United States Code, §717 et seq. and the Natural Gas Policy Act, 15 United States Code, §3301 et seq;

(5) revenues received from brokerage or offsystem sales.

(e) Deductions. To determine taxable gross income, deductions from gross receipts for certain costs incurred are allowed. Deductions may be used to reduce current tax liability to zero. Current deductions may not be carried forward and deducted from gross receipts in the next quarter. All deductions shall be properly accounted for in accordance with the NARUC uniform system of accounts or the FERC system of accounts as specified in §7.43 of this title (relating to System of Accounts). Allowable deductions shall be expenses reported in NARUC or FERC Account Numbers 777, 800, 801, 802, 803, 804, 806, 807, 824, and 858. The balances in Account Numbers 808 and 809 shall be netted. If the net is a debit balance, that balance shall also be deducted from the gross receipts. If the net is a credit balance, that balance shall reduce the allowable deductions.

(f) Enforcement and penalties. Each gas utility liable for the gas utility tax shall be subject to the enforcement and penalty provisions set forth in Texas Civil Statutes, Article 6060. A delinquent gas utility tax draws simple interest, at the rate of 10% a year beginning on the 60th day after the date the tax becomes delinquent until the tax is paid. The tax is considered paid when received by the commission in accordance with section (b) of this section.

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

Issued in Austin, Texas on July 10, 1990.

TRD-9007013 Cril Payne  
Assistant Director, Legal  
Division-General Law  
Railroad Commission of  
Texas

Proposed date of adoption: September 15, 1990

For further information, please call: (512) 463-7009

**TITLE 25. HEALTH SERVICES**

**Part I. Texas Department of Health**

**Chapter 37. Maternal and Child Health Services**

**Chronically Ill and Disabled Children's Services**

The Texas Department of Health proposes the repeal of existing §37.90 and proposes new §37.90, concerning chronically ill and

disabled children's services. The section covers approved providers and facilities. The repeal will allow for the restructuring of the section as it now exists. The new section amends existing criteria and procedures for program cleft/craniofacial centers/teams for program reimbursement; and will add the criteria and procedures for bone marrow transplant centers and cardiac outreach clinics to become approved for program reimbursement.

Stephen Seale, Chief Accountant III, has determined that for the first five-year period that the proposed 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. Seale also has determined that for each year the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the program will be able to recognize bone marrow transplant centers, cardiac outreach clinics, and cleft/craniofacial centers/teams which are designated for program use for diagnosis and treatment of program specified diagnoses. There is no anticipated economic cost to small or large businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with section as proposed. There also will be no effect on local employment.

Comments on the proposal may be submitted to John E. Evans, Chief, Bureau of Chronically Ill and Disabled Children's Services, 1100 West 49th Street, Austin, Texas 78756, 512/458-7355. Public comments will be accepted for 30 days after this proposed section has been published in the *Texas Register*.

• 25 TAC §37.90

The repeal is proposed under Health and Safety Code, §35.005, which provides the Texas Board of Health with the authority to adopt rules concerning medical, financial, and other criteria for eligibility to receive services under the Chronically Ill and Disabled Children's Services Program; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

§37.90. *Approved Providers and Facilities.*

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

Issued in Austin, Texas, on July 9, 1990.

TRD-9006918 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: September 22, 1990

For further information, please call: (512) 458-7355



The new section is proposed under Health and Safety Code, §35.005, which provides the Texas Board of Health with the authority to adopt rules concerning medical, financial, and other criteria for eligibility to receive services under the Chronically Ill and Disabled Children's Services Program; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

§37.90. *Approved Providers and Facilities.* All approved providers must agree to abide by program rules and regulations, to accept program fees as payment in full, and not to discriminate against patients on the basis of insurance or Medicaid status. The following groups of providers must be processed through an application process to determine their desire to participate within the program's rules as approved by the board and to determine their qualifications in relation to the criteria for participation as decided by the board.

(1) Physicians, dentists, and podiatrists. To be approved for program participation the person must submit a fully completed application and attach the documents as requested on the form.

(A) Criteria. To be approved for program participation, a person must:

(i) have a Texas medical/dental/podiatric practice license;

(ii) have practiced in Texas for a minimum of one year;

(iii) be certified by the American Board of Medical Specialties, the American Osteopathic Association Specialty Boards, or by American Dental Specialty Boards, or American Board of Pediatric Surgery in the specialty area in which the physician/dentist/podiatrist will participate in the chronically ill and disabled children's (CIDC) services;

(iv) an active provider with the Texas Medicaid program and agree to accept Medicaid payment;

(v) agree to abide by the rules of the CIDC services;

(vi) agree to allow on-site visits and/or audit privileges to program staff; and

(vii) accept responsibility for actions of their staff performed in behalf of the provider.

(B) Procedures.

(i) Applications will be reviewed by the program to assure that:

(I) all parts of the application form have been completed, including a signature and date;

(II) all of the eligibility criteria have been met;

(III) copies of documents verifying the applicant's American board or sub-board certification and state practice license are attached; if no sub-board exists for a specialty area, documentation of the applicant's training and curriculum vitae must be attached.

(ii) Review of the application will result in approval or denial. An incomplete application will be returned to the applicant with explanation of information required. The program may consider a temporary approval status when geographic need for services exists. The one-year practice requirement may be waived in extenuating circumstances.

(I) Physicians/dentists/podiatrists who are board eligible, but not yet board certified must meet the following criteria in order for a temporary approval to be considered:

(-a-) have completed their specialty training; and

(-b-) are fully eligible for certification by the American specialty boards but are awaiting completion of board examinations.

(II) Temporary approval shall be granted for a 12-month period and may be renewed pending satisfactory progress, as determined by the program, toward completion of the board examination.

(iii) Within 15 days of the program's receipt of the provider application, a letter will be sent to the applicant stating the result of the review process.

(iv) Any physician/dentist/podiatrist who disagrees with the result of the program's review may appeal the decision through one of the following processes:

(I) administrative review;

(II) review by the program's General Advisory Committee; and/or

(III) due process hearing as set forth in §37.96(a)(2) of this title (Relating to Appeals, Confidentiality, Gifts, and Nondiscrimination).

(C) Update activities. In an effort to maintain the accuracy and currency of provider information, the program will

formally update its listing of approved providers at least once every year. Those providers that have not received any program payment for services rendered during the previous two-year period will be given the option of withdrawing from program approved status, becoming inactive, or updating information to remain active. If updated information is not received within 60 days of the date of notification, the provider will be considered inactive. This action will not remove a provider's approval, but reinstatement to active status will be made at the provider's request as soon as current information is given to the program.

(i) Updated information may include, but is not limited to, the following:

(I) current address, telephone number, and state comptroller's vendor identification number;

(II) name(s) of those hospitals where current privileges are held;

(III) notification of any additional specialty medical or dental board certifications with supporting documents attached; and

(IV) a copy of the current license to practice medicine or dentistry in Texas.

(ii) The provider will be given a current copy of program rules to review at the time reinstatement is requested.

(2) Hospitals.

(A) Criteria. The criteria for hospital approval includes, but is not limited to:

(i) current approval by the Joint Commission on Accreditation of Health Care Organizations;

(ii) location within Texas, unless as provided in §37.86(g) of this title (relating to Authorization of Services);

(iii) program approved medical staff sufficient to meet anticipated program case load;

(iv) a definable pediatric unit or facilities, equipment, and qualified staff necessary to meet the special needs of program eligible patients, as determined by the program;

(v) on-site visits and/or audit privileges to program staff.

(B) Procedures.

(i) Applications will be reviewed by the program to assure that:

(I) all parts of the application form have been completed including a signature and date;

(II) all of the eligibility criteria have been met; and

(III) copies of documents have been provided verifying program approved medical staff as well as facilities available at the hospital to meet approval criteria.

(ii) Review of the application will result in approval or denial. An incomplete application will be returned to the applicant with explanation of information required. The application may be resubmitted with required documentation for reconsideration.

(iii) Within 15 days of the program's receipt of the provider application, a letter will be sent to the applicant stating the result of the review process.

(iv) Any hospital that disagrees with the result of the program's review, may appeal the decision through one of the following processes:

(I) administrative review; or

(II) review by the program's General Advisory Committee; and/or

(III) a due process hearing as set forth in §37.96(a)(2) of this title (relating to Appeals, Confidentiality, Gifts, and Nondiscrimination).

(C) Update activities. In an effort to maintain the accuracy and currency of provider information, the program will formally update its listing of approved hospitals at least once every year. Those providers that have not received any program payment for services rendered during the previous two-year period will be given the option of withdrawing from program approved status, becoming inactive, or updating information to remain active. If updated information is not received within 60 days of the date of notification, the provider will be considered inactive. This action will not remove a provider's approval, but reinstatement to active status will be made at the provider's request as soon as current information is given to the program.

(i) Updated information may include, but is not limited to, the following:

(I) current address, telephone number, state comptroller's vendor identification number, and current administrator;

(II) additional program approved medical staff;

(III) additional qualified staff or facilities available; and

(IV) updated approval by Joint Commission on Accreditation of Health Care Organizations.

(ii) The provider will be given a current copy of program rules to review at the time reinstatement is requested.

(3) Ambulatory surgical care (ASC) facilities.

(A) Ambulatory surgery services may be utilized by the program as a cost efficient means as long as quality of care is assured. Any hospital approved for program participation whose Joint Committee on Accreditation of Health Care Organizations accreditation includes hospital-sponsored ambulatory care services may be utilized for ambulatory surgery. However, freestanding facilities, even if governed or affiliated with an approved hospital, must apply for program approval. The program may contract with a limited number of facilities to assure program cost containment. For approval to participate in the CIDC Program, a freestanding ambulatory surgical care facility must meet the following criteria.

(i) State licensure requirements. Facilities must meet state licensure requirements in accordance with for ambulatory surgical centers in accordance with §§135.1-135.27 of this title (relating to Operating Requirements for Ambulatory Surgical Centers).

(ii) Medicare certification. Facilities must meet Medicare standards in accordance with Part II, Department of Health and Human Services, Health Care Financing Administration, 42 Code of Federal Regulations, Parts 405 and 416, relating to Medicare Program; Ambulatory Surgical Services, published in the *Federal Register*, Volume 47, Number 151, August 5, 1982.

(iii) Pediatric equipment. Pediatric facilities must have available all necessary pediatric equipment including operating room, surgical tools, resuscitation apparatus, pharmaceutical services, beds, and other supplies that are appropriate for children.

(iv) Staff requirements. Staff must be as follows.

(I) CIDC approved surgical staff must perform the surgical procedures.

(II) A board certified anesthesiologist must be in the operating room and present for the induction of anesthesia and at the time of completion of anesthesia, on the premises (immediately available) at the time of surgical procedure and until the patient leaves the facility.

(III) An R.N. with documented clinical pediatric experience must be on the premises at all times while the patient is in the facility.

(v) Risk management principles. The facility must apply risk management principles to all patient care.

(vi) Patient transfer. The facility must have patient transfer agreements with CIDC approved hospitals in the area.

(B) Centers are required to submit documentation of the criteria, as set out in subparagraph (A)(i)-(v) of this paragraph, in writing to the CIDC Bureau through an application process in accordance with subparagraph (D) of this paragraph.

(C) CIDC reimbursement for care at freestanding ambulatory surgical care facilities will be limited to:

(i) children 24 months of age or older; and

(ii) surgical procedures designated as ASA (American Society of Anesthesiologists) Level I and II.

(D) Application procedures will be as follows.

(i) Applications will be reviewed by the program to assure that:

(I) all parts of the application form have been completed including a signature and date;

(II) all of the criteria for program participation have been met; and

(III) copies of documents have been provided verifying facility state licensure, Medicare certification, and patient transfer agreements with CIDC approved hospitals.

(ii) Review of the application will result in approval or denial. An incomplete application will be returned to the applicant with explanation of information required. The application may be resubmitted with required documentation for reconsideration.

(iii) Within 15 days of the program's receipt of the provider application, a letter will be sent to the applicant stating the result of the review process.

(iv) Any ambulatory surgical care facility who disagrees with the result of the program's review may appeal the decision through one of the following processes:

(I) administrative review; or

(II) review by the program's General Advisory Committee; and/or

(III) a due process hearing in accordance with the requirements in §37.96 of this title (relating to Appeals, Confidentiality, Gifts, and Nondiscrimination).

(E) In an effort to maintain the accuracy and currency of provider information, the program will formally update its listing of approved ambulatory surgical care facilities at least once every year. Those providers that have not received any program payment for services rendered during the previous two-year period will be given the option of withdrawing from program approved status, becoming inactive, or updating information to remain active. If updated information is not received within 60 days of the date of notification, the provider will be considered inactive. This action will not remove a provider's approval but reinstatement to active status will be made at the provider's request as soon as current information is given to the program.

(i) Updated information may include, but is not limited to, the following:

(I) current address, telephone number, state comptroller's vendor identification number, and current administrator;

(II) current listing of program approved medical staff;

(III) current listing of qualified staff or facilities available; and

(IV) Medicare certification status.

(ii) The provider will be given a current copy of program rules to review at the time reinstatement is requested.

(4) Specialty centers. Such facilities must meet specific criteria as set

forth by the program. Lists of facilities which are approved for program participation may be obtained from the program.

(A) Inpatient rehabilitation centers.

(i) Criteria. The criteria for inpatient rehabilitation facility approval includes, but is not limited to, the following.

(I) The facility will have current accreditation by either the Joint Commission on Accreditation of Health Care Organizations (JCAHCO) as a comprehensive physical rehabilitation program or Commission on Accreditation of Rehabilitation Facilities (CARF) as a comprehensive inpatient rehabilitation program.

(II) The facility will be located within Texas.

(III) CIDC Program staff will have on-site visits and/or audit privileges.

(IV) A physician as medical director who is CIDC approved and demonstrates experience in rehabilitation will be available.

(V) For units with patients less than 14 years old, a designated pediatrician will be available to participate in direct patient care and consultation regarding the rehabilitation unit's pediatric patients. This physician will be either certified or eligible for certification by the American Board of Pediatrics.

(VI) When pediatric patients (patients less than 14 years old) are receiving inpatient treatment, the unit will have at least one registered nurse with pediatric training or experience available to the unit at all times.

(VII) For units with patients less than 14 years old, a nutritionist (minimum registered dietitian) preferably with experience in evaluation and counseling children with chronic illness, will be on staff or available for consultation in order to provide nutrition services.

(VIII) For units with patients less than 14 years old, the unit-facility will have at least one recreational area or playroom with age appropriate and safe materials for patients who are at different stages in rehabilitation; the play area should be bed and wheelchair accessible.

(IX) For units with patients less than 14 years old, the unit will have specialized age-appropriate equipment necessary for day-to-day provision of care.

(X) The facility will make arrangement for/provide appropriate educational services for children in the rehabilitation unit.

(XI) It is recommended that psychological services be available.

(ii) Procedures.

(I) Applications will be reviewed by the program to assure that:

(-a-) all parts of the application form have been completed including a signature and date;

(-b-) all of the eligibility criteria have been met; and

(-c-) copies of documents have been provided verifying program approved medical staff as well as facilities available at the hospital to meet approval criteria.

(II) Review of the application will result in approval or denial. An incomplete application will be returned to the applicant with explanation of information required. The application may be resubmitted with required documentation for reconsideration.

(III) Within 15 days of the program's receipt of the provider application, a letter will be sent to the applicant stating the result of the review process.

(IV) Any facility who disagrees with the result of the program's review, may appeal the decision through one of the following processes:

(-a-) administrative review; or

(-b-) a due process hearing as set forth in §37.96(a)(2) of this title (relating to Development and Improvement of Standards and Services).

(iii) Update activities. In an effort to maintain the accuracy and currency of provider information, the program will formally update its listing of approved facilities at least once every year. Those providers that have not received any program payment for services rendered during the previous two-year period will be given the option of withdrawing from program approved status, becoming inactive, or updating information to remain active. If updated information is not received within 60 days of the date of notification,

the provider will be considered inactive. This action will not remove a provider's approval but reinstatement to active status will be made at the provider's request as soon as current information is given to the program.

(I) Updated information may include, but is not limited to, the following:

(-a-) current address, telephone number, state comptroller's vendor identification number, and current administrator;

(-b-) additional program approved medical staff;

(-c-) additional qualified staff or facilities available; and

(-d-) updated approval by JCAHCOor accreditation from the CARF.

(II) The provider will be given a current copy of program rules to review at the time reinstatement is requested.

(B) Cleft/craniofacial (C/C) centers. To assure that eligible children with craniofacial anomalies, including cleft lip palate, receive quality comprehensive services, the following minimum standards for C/C teams have been established. The standards are based on guidelines recommended by the American Cleft Palate Association and draft material developed by the North Carolina Crippled Children's Program and the Illinois Department of Health. These standards must be met by C/C teams requesting approval from the CIDC Program.

(i) Approval process. All C/C teams must submit a completed CIDC C/C provider application form as specified by the CIDC Program. Applicants meeting the criteria outlined in the guidelines of this subparagraph will receive CIDC Program approval for a maximum of three years. Applications may include an application form, provider agreements, resumes of active team participants, and a description of team composition and process.

(ii) Administrative responsibilities of the C/C team.

(I) Coordination. The administrator of the C/C team is clearly identified and must assure that the following activities are accomplished:

(-a-) specify the mechanism for accepting referrals and providing community and patient education;

(-b-) schedule meetings of the C/C team members and scheduling patient appointments;

(-c-) summarize the C/C team's decisions;

(-d-) assist patients with CIDC Program eligibility requirements;

(-e-) assure confidentiality;

(-f-) submit an annual report with content as specified by the CIDC Program (due 30 days after the end of the state fiscal year);

(-g-) request required authorization for covered services from the CIDC Program;

(-h-) maintain centralized records;

(-i-) maintain communication (including C/C team reports) with the patient's local physician/dentist and other local resources involved in order to facilitate interim and follow-up care; and

(-j-) assure that the team abides by the CIDC Program rules and regulations.

(II) Records management. A system for maintaining a centralized record for each eligible CIDC patient must be in place. Each patient's record must include:

(-a-) a medical history and physical;

(-b-) a social assessment;

(-c-) other C/C team member assessments;

(-d-) a summary of the C/C team's decisions; and

(-e-) a treatment plan including all planned C/C team procedures and any follow-up procedures to be provided by other professionals and agencies.

(III) C/C team patient reviews.

(-a-) Frequency. Each child must be discussed by the C/C team in a joint meeting at least one time per year; on the recommendation of the C/C team, some single cases, after six or seven years of age, may be seen every other year.

(-b-) Location. The team will physically meet in a clearly identified location for patient review meetings.

(-c-) Required attendance. A representative from surgery, dentistry, and speech pathology must be present at team patient review meetings but reports from all involved team members (a minimum of all required active participants for comprehensive C/C teams) should be available.

(iii) Rights of patients. A CIDC Program approved C/C team recognizes the rights of eligible patients. All members of the C/C team are expected to:

(I) inform parents/guardians or adult patients of the complete information concerning diagnosis, treatment, and prognosis; and

(II) insure that parents/guardians or adult patients participate in decisions involving the patient's care including development of the treatment plan.

(iv) Composition of a comprehensive C/C team.

(I) Required active participants.

(-a-) A comprehensive C/C team must be composed of the following active participants (only active participants representing surgery, dentistry, and speech pathology are required to attend C/C team patient review meetings):

(-b-) The required active team participants must be able to see patients in the same city with the exception of the primary care physician who may or may not see the patient in the same city as the other active C/C team participants. Despite this exception, the primary care physician is still required to attend and/or submit reports to the C/C team patient review meeting(s).

(-c-) Although there may be several health care providers in the same category designated as active C/C team participants (e.g. more than one plastic surgeon, more than one case manager), each patient seen by the C/C team should be seen by a group of C/C team members who consistently interact with the patient and who are responsible for monitoring and coordinating the patient's treatment plan and follow-up.

(II) The following team participants/services must be readily available to serve patients in the same city as the required active participants. These C/C team participants or participants providing these services must agree to actively participate with the C/C team as required according to individual patient needs. These participants must attend and/or submit reports to the C/C team patient review if they have involvement with the patient:

(-a-) a pediatric dentist (if not already designated as a team member);

(-b-) a licensed audiologist (master's level);

(-c-) neurology;

(-d-) neurosurgery;

(-e-

) ophthalmology;

(-f-) radiology (should be board certified but CIDC Program approval not required);

(-g-) genetic counseling;

(-h-) nutritional counseling; and

(-i-) psychology.

(III) Physicians and dentists must be approved as CIDC Program providers, with the exception of radiologists.

(v) Diagnostic procedures. An approved C/C team must have available the following diagnostic procedures:

(I) multiview videofluoroscopy;

(II) fibroptic nasopharyngoscopy;

(III) cephalometrics; and

(IV) CT and three-dimensional reconstruction (only required for C/C teams managing craniofacial anomalies).

(vi) Case coordination.

(I) Each member of the C/C team, in cooperation with other members of the C/C team, shall be responsible for his/her specific area of management.

(II) The case manager will be responsible for the coordination of services for each patient. Each patient should have only one case manager. The case manager should assure that the focus of the service is patient and family oriented and that a comprehensive treatment plan is jointly developed by the patient/family and C/C team. A copy of the plan shall be given to the family, referring physician, and upon request, to the TDH regional social worker. The plan should include specific treatments and time frames for all disciplines and agencies involved. The case manager must assure that the patient is seen by only one team.

(III) When appropriate, a CIDC Program approved physician, in the child's home community, should be designated for follow-up and emergencies.

(IV) Some care, other than surgery, may be delivered by providers other than the named C/C team members. These providers may be from a different geographic area than the C/C team. However, there must be communication between the independent providers and the C/C team, and services must be consistent with the C/C team treatment plan. All providers must meet CIDC Program guidelines in accordance with this section. The plan should be monitored by the C/C team who will provide appropriate follow-up.

(V) Communication, including C/C team reports, must be maintained with the patient's local physician/dentist and other local resources involved in order to facilitate interim and follow-up care. If a patient moves to another part of the state, the C/C team should inform the patient and his/her family of the C/C team closest to the family's new place of residence and inform the C/C team of the patient's relocation in order to assure continuity of care.

(vii) Statewide coverage.

(I) Affiliated C/C team approval.

(-a-) To facilitate statewide coverage, affiliated C/C teams may be approved. An affiliated C/C team must meet the criteria in clauses (i)-(iii), (vi), and (viii) of this subparagraph. All of the members must meet the CIDC Program provider enrollment requirements of this section. Affiliated C/C teams must be composed of a minimum of:

(-b-) An affiliated C/C team must consult with and coordinate treatment plan development with a comprehensive C/C team(s) according to individual patient needs. This coordination for comprehensive care must be documented in the patient's record.

(-c-) In the application process, an affiliated C/C team must specify the comprehensive C/C team(s) with which it is linked. A letter of agreement between the two or more C/C team(s) must accompany the application. The letter must verify the linkage between the two or more C/C teams and must specify the following:

(II) Corresponding members.

(-a-) Any CIDC Program provider can be a corresponding member of a C/C team for the purpose of interim and follow-up care.

(-b-) A corresponding member must work in full compliance with the treatment plan established by the comprehensive C/C team.

(-c-) Regular communication between the C/C team and the corresponding member must occur.

(viii) Implementation.

(I) Comprehensive C/C teams and affiliated C/C teams shall be designated by October 1, 1990. After January 1, 1991, only approved C/C teams will be reimbursed for invasive procedures by the CIDC Program. Corresponding members may be reimbursed by the CIDC Program for non-invasive follow-up and interim care only.

(II) The final decision regarding approval will only be made when the CIDC Program has carefully reviewed the documentation submitted, and has been convinced that the applying C/C team is capable of meeting the standards in this subparagraph. For C/C teams with one or more deficiencies noted in their application a time frame will be specified for the correction of the deficiencies. C/C team approval and interim reimbursement will be dependent on the nature of the deficiency and the ability of the C/C team to correct it within the time frame specified. Once the C/C team has been approved, its ongoing approval will only depend on its demonstrated ability to continue to maintain the high standards expected. This ability will be verified through CIDC Program required reports and documentation. In addition to required reports and documentation, the CIDC Program may verify compliance with standards in this subparagraph through site visits.

(C) Cardiac outreach clinic guidelines. These guidelines are subject to review and periodic revision by CIDC Program staff and the Cardiovascular Advisory Committee (CVAC).

(i) Definition and purpose of a CIDC Program approved cardiac outreach clinic.

(I) A cardiac outreach clinic is a primary or secondary level health care facility adequately equipped and staffed by local and secondary or tertiary level (outreach) staff who perform the following functions:

(-a-) assessment and screening of patients for cardiac disease;

(-b-) identification and referral of patients with cardiac disease to the appropriate closest tertiary center for definitive diagnostic procedures and, if needed, surgery; and

(-c-) clinic management of patients with heart disease to include development of a care/service plan, tracking, and periodic follow-up and coordination with local case management services providers if available.

(II) The clinic must meet a recognized need of the community and surrounding geographic area. The clinic must be located a significant distance from tertiary centers of health care. The distance is such that routine travel to the tertiary center(s) for the services described in subclause (I) of this clause is an unreasonable expectation for the volume of local patients in need of such services; thus, the distance represents a barrier to quality health care for the community.

(ii) Staff.

(I) The outreach clinic must have the following staff as a minimum:

(-a-) a coordinator who shall be capable of processing referrals, scheduling appointments, coordinating clinics if more than one exists, and tracking patients if follow-up is necessary. It is strongly encouraged that the coordinator be locally based. If the clinic coordinator is not locally based, the clinic coordinator must communicate regularly (more frequently than the clinic frequency) with all local clinic staff involved with the cardiac clinic to insure that all of the coordinator's functions/responsibilities are fulfilled;

(-b-) an outreach physician who shall be a CIDC Program approved pediatric cardiologist who is responsible for supervising the cardiac outreach clinic, conducting the patient assessment, screening, developing the patient's individualized care plan, making appropriate recommendations for referral when necessary, sending a follow-up letter to the referral source, and maintaining appropriate medical records on the patients. The CIDC Program CVAC will review any request for exception to the preceding criteria for the outreach physician. It is strongly recommended that outreach physicians come from secondary or tertiary centers in closest geographic proximity to the community for ease of access;

(-c-) a nurse who shall be a minimum LVN with at least one year of clinical pediatric experience, either locally based or outreach. The nurse must be on site at the time of the physician exam; and

(-d-) a social worker (optional but strongly encouraged)

who shall be certified by the Texas Department of Human Services, and is either locally based or outreach. If the outreach clinic does not have a social worker, the clinic must identify patients in need of social work services and refer them to local case management services providers, if available, or the Texas Department of Health regional social work staff. The social worker, if available, must be on site at the time of the physician exam.

(II) All clinic staff must coordinate (share information) as requested with local case management services providers, if available.

(iii) Facility/equipment.

(I) The outreach clinic facility must have the ability to obtain adequate supplies, space, and equipment for the following:

(-a-) measuring vital signs on the smallest to largest child. An electronic blood pressure device must be available;

(-b-) performing weights and measures on all children; and

(-c-) obtaining acceptable EKG's and chest x-rays on all children.

(II) The clinic must be able to obtain routine lab work. It is encouraged that local resources for equipment be used when available.

(III) The clinic should be held where adequate examination facilities and record processing and storage facilities are available. Details on clinic setting standards may be obtained from the document titled "Generic Standards for Health Care" developed by the Texas Department of Health in June, 1988, which the department adopts by reference. These standards are available from the Texas Department of Health Associateship for Community and Rural Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. The key criteria for clinic setting as described in the department publication entitled "Generic Standards for Health Care" are as follows.

(-a-) The clinic shall be accessible to the target population.

(-b-) Clinic services shall be provided in a setting designed to ensure comfort, safety, and privacy of the patient, and to expedite the work of the staff.

(iv) Services.

(I) Routine outreach clinic services must include history and physical exam, standard lab, EKG, and



chest x-ray. Echocardiography may be performed if the results are of acceptable quality for pediatric patients and reviewed and interpreted by the cardiologist responsible for the clinic. In addition, each patient identified with heart disease and referred by the clinic to a secondary or tertiary center shall have an individualized care plan developed. The outreach clinic staff shall work in conjunction with the patient, family, the referral source, and the secondary or tertiary center to develop the plan. The clinic staff are responsible for tracking patients if follow-up is required in the plan of care. Clinic services shall be integrated into the patient's overall service needs through clinic staff cooperation and sharing of information with local case management services providers (if available). The clinic must address Spanish speaking/bilingual needs and, in general, be culturally sensitive in the provision of services.

(II) The following clinical services shall not be approved or reimbursed by the CIDC Program at cardiac outreach clinics; echocardiography (unless clinic approval is given, see subclauses (III) and (IV) of this clause); exercise testing; catheterization; and surgery.

(III) For echocardiograms to be considered for approval and reimbursement, the following information must be submitted with the clinic proposal/application (see clause (xi) of this subparagraph):

(-a-) the names and credentials of who will review and interpret the echocardiograms; and

(-b-) the type of echocardiography equipment that will be used and its suitability for pediatric patients.

(IV) Echocardiography should be used selectively for well defined indications and must not be used as routine screening. CIDC Program approval and reimbursement for echocardiography services are subject to periodic review.

(v) Patient volume/percent of patient volume that is CIDC Program eligible. The anticipated outreach clinic patient volume must be projected when documenting the need for the clinic (see clause (xi) of this subparagraph). A minimum of 50% CIDC Program eligibles must be projected. Clinic referrals may be accepted from all sources, including self-referral.

(vi) Records management. The clinic shall have an organized patient record system. The records shall be confidential and secure and available to the patient upon request with a signed release of information. A complete and accurate record of each patient's health

care shall be maintained. The clinic shall implement a policy which delineates guidelines for the release of confidential information. Information collected for reporting purposes shall be disclosed only in summary, statistical, or other forms which do not identify particular individuals. The clinic shall have a written policy regarding retention and proper disposal of patient records. Further details on these standards may be obtained from the department publication entitled "Generic Standards for Health Care."

(vii) Patient's rights. The outreach clinic shall assure confidentiality of patient information. Facilities within the clinic will be arranged or designed so that services shall be provided in a manner that protects the dignity and privacy of the patient. The clinic will provide services in a timely manner. The clinic shall provide services in a non-discriminatory manner. Services for patients not CIDC Program eligible may be billed on a sliding scale according to income guidelines. The clinic shall have a written policy that guarantees services to patients regardless of their ability to pay. Individuals may not be coerced into services, nor must participation in one service/program be an eligibility requisite for another. The clinic shall provide services in such a way that they can be understood by the patient. Further details on these standards may be obtained from the department publication entitled "Generic Standards for Health Care."

(viii) Tracking/follow-up.

(I) Tracking of patients who require follow-up visits must be done at the local outreach clinic level. This tracking process involves updating of information on the patients' location and compliance record. This information must be communicated to the base center of the outreach physician. Tracking of patients' whereabouts and compliance must be a concerted effort of the clinic in order to ensure continuity of care. Should a patient move out of the service area of the clinic, an attempt should be made to provide the patient and family with information on what services are available in the area where they are relocating. Follow-up on services provided is also an important aspect of the clinic service delivery. The clinic should have a system in place for the active determination of the effectiveness of services provided and adjustment of the plan of care when needed to maximize the patient's benefit.

(II) The clinic will have an organized tracking system to monitor patients' health status and use of the health care system. The following tracking system requirements are adapted from the department publication entitled "Generic Standards for Health Care." The system shall:

(-a-) schedule patient contacts at regular intervals according to program guidelines/protocols, and coordinate with other services/opportunities needed;

(-b-) monitor broken appointments and put in place a system to follow-up for rescheduling;

(-c-) alert staff for follow-up of conditions identified as priorities for care; and

(-d-) track referrals made to other providers/agencies.

(ix) Community interaction.

(I) For CIDC Program approval/funding of the clinic, the local community, including the local/county medical society, must support the need for the clinic (see clause (xi) of this subparagraph). Within the first three months of CIDC Program funding, the local community, including local physicians, community service groups, and the general public, must be informed about the clinic setup and availability. The clinic must be integrated into the local health care system. The clinic staff must submit a report (to include patient numbers, services rendered, diagnoses, etc.) at least annually to the local/county medical group.

(II) The outreach clinic physician must communicate with the local/primary physician or referral source concerning the patient's history, physical exam, and diagnosis and must involve the local physician in the development of the patient's treatment/service plan. Local physicians must be encouraged to participate in the clinic.

(III) The outreach clinic physician and cardiac clinic staff should provide continuing education in the areas of diagnosis, evaluation, and treatment of patients with suspect and confirmed cardiovascular disease for local physicians and other community professionals involved with the clinic patient population.

(IV) The outreach clinic will coordinate its services with other community activities in an effort to facilitate the public's access to the clinic and other community services and to prevent duplication of services.

(V) If local pediatric cardiology expertise becomes available which meets the needs expressed in the outreach clinic proposal and is community supported, then the outreach clinic staff should plan and implement a phasing out of their services in coordination with the local providers.

(x) Evaluation (these criteria are adapted from the department's publication entitled "Generic Standard for Health Care").

(I) The outreach clinic will have a plan for internal review and evaluation of its services to assure the provision of quality services in compliance with the CIBC Program/clinic standards.

(II) The outreach clinic will submit reports to the CIBC Program (at least annually). The format and content of these reports will be specified by the CIBC Program and will be used as a paper audit to assure that the clinic is performing in accordance with this subparagraph. The CIBC Program will be permitted to conduct on-site visits to evaluate the clinic's adherence to the guidelines in this subparagraph. The on-site visits will be conducted when deemed necessary by the CIBC Program. The outreach clinic staff will typically be given two weeks notice and will be consulted for scheduling purposes.

(xi) Outreach clinic application process for initial and continued approval. The CIBC Program will use the following process to determine initial approval of cardiac outreach clinics. Every three years a CIBC Program approved cardiac outreach clinic must resubmit an application proposal for consideration of continued approval. In addition to the application proposal, the CIBC Program will review the clinic's annual reports and any on-site visit information available. If the clinic no longer meets the guidelines, approval may be discontinued. If concerns exist regarding quality of care, staff, facility, or justification issues, CIBC, with input from the CVAC, shall decide the status of the clinic until corrective action is taken; the recommended corrective action; the time frame for corrective action to occur; and the re-evaluation process. The CIBC Program will inform the clinic as to whether or not approval is continued.

(I) Proposal/application. Physicians of the local community to which outreach is planned must submit the proposal for the outreach clinic to the CIBC Program through the Texas Department of Health (TDH) regional office. The proposal must be submitted on an application form developed by CIBC Program. The proposal shall include the following information:

(-a-) a list of physicians and other staff who will participate in the clinic operation and service delivery (local and outreach);

(-b-) the estimated volume of patients (CIBC and non-CIBC) in the area in need of outreach;

(-c-) the frequency of clinics;

(-d-) the estimated number of patients (CIBC and non-CIBC) per clinic;

(-e-) the medical condition(s) of patients to be seen;

(-f-) the comments, support, and recommendations from the local pediatric and/or family/general practitioners medical society in the area receiving outreach services;

(-g-) a justification for the outreach clinic to the area which includes the following:

(-A-) If there are local CIBC Program approved physicians practicing in the specialty of the proposed outreach clinic, the CIBC Program will not consider approval/funding of the outreach clinic without specific justification of the community's "unmet need" and a written plan of coordination with the local physicians.

(-B-) If controversy exists in the community regarding the need for the outreach clinic, the proposal must address the controversy, the steps taken to seek resolution, and why the outreach clinic is still justified.

(-h-) a plan to coordinate the clinic with the TDH regional office;

(-i-) the specifications of other outreach clinics in the area and efforts made to coordinate with them;

(-j-) an agreement to allow audit privileges to the CIBC Program when deemed necessary by the CIBC program staff;

(-k-) a signed statement/form indicating that the outreach clinic shall meet and uphold the guidelines of this subparagraph.

(-m-) a proposed budget for CIBC Program funding, including the estimated overall clinic costs for personnel, facility, physician/clinic services, laboratory, radiology, supplies, equipment, travel, and other, and the percentage/amount of these costs requested to be funded by the CIBC Program; and

(-n-) a signed agreement by the outreach clinic physician that the outreach clinic staff will comply with §37.83 of this title (relating to Eligibility for Patient Services) in regard to CIBC Program eligibles seen at the clinic.

(II) TDH regional office review. The proposal will be reviewed

by the TDH regional office staff (medical director with input from social workers, nurses, nutritionists).

(-a-) The TDH regional office review staff shall submit the following information to the CIBC Program:

(-b-) If controversy exists in the community regarding the need for the outreach clinic the TDH regional office review staff shall submit the following information to the CIBC Program:

(III) CIBC review. The proposal and TDH regional review staff information will be submitted to the CIBC Program for review. The proposal and regional information (and annual reports and on-site visit information if the review is for continued approval) will be shared with the CVAC. The CIBC Program will determine outreach clinic approval/disapproval based on proposal content, the input from the regional staff, and the recommendations of the CVAC. The CIBC Program funding of the clinic will depend upon the clinic's budget request and CIBC availability of funds in accordance with clause (xii) of this subparagraph.

(xii) CIBC Program funding of approved outreach clinics. Those outreach clinics approved by the CIBC Program may receive funding on a contract or fee for service basis for the outreach physician's/team members' travel to the clinic site, the salaries of local and/or outreach staff necessary for administration of the clinic or provision of clinic services, physician services, facility use fees, laboratory, radiology, EKGs, and other procedures necessary for assessment and screening of patients. The CIBC Program will reimburse fee for service for covered services provided CIBC Program eligibles only if the providers of services are not otherwise funded by the CIBC Program. The CIBC Program will not fund rental of facility space. The specific reimbursement arrangement will depend upon budget needs specified in the clinic proposal and CIBC Program availability of funds.

(D) Bone marrow transplant center guidelines. The following minimum guidelines for bone marrow transplant centers have been established to assure that children and young adults, whose medical conditions justify the need of bone marrow transplantation, receive quality comprehensive services. Bone marrow transplant centers in Texas must meet the guidelines of this subparagraph to be approved by the CIBC Program for funding.

(i) Approval as a chronically ill and disabled children's (CIBC) services bone marrow transplant center.

(I) Initial approval process.

(-a-) All bone marrow transplant centers must submit to the CIDC Program a completed CIDC bone marrow transplant center (center) application form. Information required shall include:

(-b-) The CIDC Program will conduct an initial on-site visit if deemed necessary to assess quality of care and determine if the bone marrow transplant center meets the criteria in this subparagraph. Initial approval would then be based on the information obtained from the application and the on-site visit.

(-c-) Applicants meeting the guidelines as set forth in this subparagraph will receive CIDC Program approval for a maximum of three years.

(-d-) For those centers that meet the guidelines of this subparagraph yet have been in existence for only one year (i.e. only six transplants performed) or whose caseload history over the prior three years does not demonstrate six transplants per year, the CIDC Program may approve the center yet require a site visit after one year to determine continuing approval.

(II) Continuing approval process.

(-a-) The bone marrow transplant center's approval for an additional three years shall be based on qualitative and quantitative assessments. Quality and quantity shall be assessed by annual reports, and on-site visits. The annual reports must document that the requirements in the guidelines in this subparagraph are met. The reports must list caseload information and patient outcomes. The CIDC Program shall specify the report format. If the bone marrow transplant center no longer meets the guidelines in this subparagraph, approval shall be discontinued.

(-b-) If the on-site visit generates concerns regarding the center's quality of care, staff, or facility, the annual reports and on-site review team report(s) will be submitted to the CIDC General Advisory Committee. The committee will make a recommendation which shall include: the status of the center until corrective action is taken, the recommended corrective action; the time frame for corrective action to occur; and the re-evaluation process.

(-c-) The CIDC Program will inform the center as to whether or not approval is to be continued.

(ii) On-site visits. On-site visits made by the CIDC Program will assess a center's quality of care and adherence to the guidelines of this subparagraph. At the time of the site visit the center must submit documentation that the guidelines of this subparagraph are met.

(I) On-site review team composition. The CIDC Program will select the on-site review team to consist of:

(-a-) two Texas licensed pediatric hematologist/oncologists (adult hematologist/oncologists with board certification in hematology/oncology may be substituted for review of "adult" bone marrow transplant centers), sub-board certified in pediatric hematology-oncology or eligible for sub-board certification by the American Board of Medical Specialties; and

(-b-) one CIDC Program staff member.

(II) Frequency of on-site visits. On-site visits may be made by the CIDC Program site review team prior to determination of initial approval. For continuation of approved centers, on-site visits will be made every three years, or more often if deemed necessary by the CIDC Program, to determine if the guidelines of this subparagraph are being maintained.

(III) On-site review process. During the on-site visit a chart review will be conducted. For initial approval the on-site review team will review at least five consecutive bone marrow transplantations performed over the last year at the center. For continuing approval the on-site review team will review 18 consecutive bone marrow transplantations performed over the last three years at the center. The chart review will serve to assess competency of staff; quality of the therapeutic measures; and outcome of short and long-term follow-up of patients. In addition to the chart review, the quality of the facility and records documentation shall be evaluated on-site.

(IV) Written report. The on-site review team shall submit a written report to the CIDC Program in a format specified by the CIDC Program. The CIDC Program shall share the report with the center and the CIDC General Advisory Committee.

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

(I) "Pediatric" bone marrow transplant centers—Those centers which the CIDC Program approves and re-

imburses for bone marrow transplants performed on patients ages 0-20.

(II) "Adult" bone marrow transplant centers—those centers which the CIDC Program approves and reimburses for bone marrow transplants performed on young adult patients ages 18-20 only.

(iv) Case load requirements.

(i) Initial approval. For initial approval a bone marrow transplant center must have performed a minimum of six transplants over the last year. To be designated as a CIDC Program approved "pediatric" bone marrow transplant center the six transplants must be performed on patients ages 0-17. The center should demonstrate the ability to perform both allogeneic and autologous transplants unless the center elects to limit the scope of its approval to only one type of transplant. The center must have the capability of providing total body irradiation.

(II) Continued approval. For continued approval, a center should perform at least six bone marrow transplants a year to maintain proficiency. To be continued as a CIDC Program approved "pediatric" bone marrow transplant center the six transplants must be for patients ages 0-17. The center must maintain and demonstrate the ability to perform both allogeneic and autologous transplants unless the center elects to limit the scope of its approval to only one type of transplant. The center must maintain the capability of providing total body irradiation.

(v) Bone marrow transplant center staff requirements (for "adult" centers the equivalent CIDC Program approved specialists and nurses without pediatric specialization may be substituted). "Pediatric" centers must meet the following staff requirements.

(I) Pediatric hematologist/oncologist. The director of a CIDC pediatric bone marrow transplant center must be a CIDC Program approved pediatric hematologist/oncologist. The director must be certified or eligible for certification in the sub-board of pediatric hematology/oncology and must have experience in bone marrow transplantation that includes having performed at least 25 bone marrow transplants demonstrating a consistent high quality of procedural and patient management skills when submitted to peer review.

(II) Other medical staff.

(-a-) The "pediatric" bone marrow transplant center, directed

by a CIDC Program approved pediatric hematologist/oncologist must assure that there is adequate professional coverage 24 hours a day to manage all complications and emergencies. Professional coverage may include pediatric residents under the supervision of attending pediatricians.

(-b-) A CIDC Program approved "pediatric" bone marrow transplant center has available physicians in the following specializations for consultation:

(III) Nursing staff. A CIDC Program approved "pediatric" bone marrow transplant center has one to two registered nurses experienced in pediatrics per patient per shift. The head nurse must be experienced in pediatrics and have at least one year's clinical experience in bone marrow transplantation in children.

(IV) Social work staff. A CIDC Program approved "pediatric" bone marrow transplant center must have available a certified social worker for referrals for family social assessments and for coordination of community resources.

(V) Case management staff. At the time of informed consent for the bone marrow transplant, an individual must be designated as case manager who is assigned to the patient's family and who will assist the family in designing and implementing an individualized service plan which will coordinate the services needed to accomplish the rehabilitation of the patient. This plan must take into account the stated medical goals and the family's specific needs to attain those goals. The case manager may be a member of the center's nursing or social work staff or may be another individual identified as such by the center who is capable of performing the stated responsibilities.

(vi) Administration/facilities requirements.

(I) Administration. Hospital support systems and service delivery must be sufficiently integrated to manage all complications and emergencies.

(II) Nursing training. A continuing education nursing in-service training program on bone marrow transplantation must be developed and in place and is required for nurses assigned to the bone marrow transplant program.

(III) Infection control. Infection control procedures must be in place and in compliance with the Joint Commission on Accreditation of Health Care Organization requirements. Transplant

patients must be assigned to private rooms with the capability for standard reverse isolation.

(IV) Treatment protocols.

(-a-) The program director must assure that all bone marrow transplantation protocols are approved by the hospital's internal review board.

(-b-) To be designated as a CIDC Program approved "pediatric" bone marrow transplant center, the center and staff must be active participants in one of the national pediatric research protocol groups.

(-c-) Donor match criteria for reimbursement will be designated by the CIDC Program and will track the National Marrow Donor Program histocompatibility criteria.

(V) Intensive care facilities. A CIDC approved "pediatric" bone marrow transplant center must have available a pediatric intensive care unit (adult intensive care unit for "adult" centers).

(VI) Laboratory facilities. A CIDC Program approved bone marrow transplant center must have documented evidence of an affiliation/agreement with an HLA (histocompatibility antigens) typing laboratory. The laboratory must be accredited by American Association of Blood Banks or the American Society of Histocompatibility and Immunogenetics. The center must have laboratory facilities available with capacity and experience in cryopreserving bone marrow in liquid nitrogen for autologous transplants.

(VII) Blood components supply. A CIDC Program approved bone marrow transplant center must have a written agreement with a blood bank to provide adequate blood component support. If the blood bank does not have the ability to irradiate blood, the center's radiation therapy department or the associated radiation therapy facility must have that ability. (See subclause (VIII) of this clause).

(VIII) Radiation therapy. A CIDC Program approved bone marrow transplant center must have capacity for single or double-source total body irradiation by an experienced radiation therapist either through its own facility or through documented association with an independent radiation therapy facility. A radiation therapy quality assurance program must be in place which requires an external review process.

(IX) Records management. A CIDC Program approved bone marrow transplant center must maintain a medical records system permitting prompt retrieval of information. Medical records must be legible, accurately documented in a timely manner, and accessible to the CIDC site review team.

(X) Responsibility to the CIDC Program. A CIDC Program approved bone marrow transplant center shall agree to abide by CIDC rules and regulations which include, but are not limited to, utilizing all third party resources available to patients prior to requesting payment; accepting program payment as payment in full; submitting program required documentation; and submitting an annual report due 30 days after the end of the state fiscal year (August 31).

(XI) Rights of patients. A CIDC Program approved bone marrow transplant center is responsible for assuring that all members of the transplant team recognize the rights of eligible patients.

(-a-) The responsible physician is expected to inform parents or guardians or adult patients of the complete information concerning treatment and prognosis. He or she should provide opportunities for parents or adult patients to participate in discussion involving the patient's care and provide a written follow-up plan for parents or guardians or adult patients and referring physicians. Communication should occur between the center physician and a local physician (preferably CIDC Program approved) in the child's home community for follow-up care.

(-b-) As a part of the qualification for a CIDC bone marrow transplant center, all facilities must disclose to CIDC Program present methods of priority selection of patients for bone marrow transplantation. This is to include priorities for selection of both allogenic and autologous grafts and the use of any randomized patient selection methods. Selection procedures will be reviewed for their fairness and consistency with the following CIDC Program policy statement. It is the policy of the Chronically Ill and Disabled Children's Bureau that once a CIDC patient is recognized as in need of a bone marrow transplant and meets both the criteria for the center's transplant protocol and the CIDC Program eligibility standards, that fair selection procedures should be employed to expedite the necessary care needed without deference to the client's nationality, race, religion, creed, or socioeconomic standards.

(vii) Priority medical conditions for CIDC Program reimbursement for bone marrow transplantation. The CIDC Program will determine which medical conditions with levels of

severity may be eligible for reimbursement as well as coverage policies for bone marrow transplants.

(E) Other types of centers. The CIDC Program may recognize other types of centers in various localities in the state which may be designated for program use for diagnosis and treatment of certain conditions needing specialized evaluation and treatment, and comprehensive planning and follow-up.

(5) Other approved providers and facilities. With changes in the health delivery system and in consideration of cost effectiveness and efficiency, the CIDC Program may, with the approval of the board, establish other areas of approved providers and facilities.

(6) Provider application for program approval.

(A) Applications may be obtained from the CIDC Program on request. A copy of the CIDC Program's rules and regulations and a provider's manual will be mailed to the applicant to provide current information regarding the program. The completed application will be reviewed by CIDC Program staff for correctness and to verify that all professional criteria have been met, including required documentation. Notification of the status of the application will be made within 15 days of CIDC Program receipt of the application.

(B) Any provider may withdraw from program participation at any time by notifying the CIDC Program in writing of its desire to do so.

(7) Denial/modification/suspension/termination of provider or facility approval.

(A) The CIDC Program may deny, modify, suspend, or terminate the approval of providers or facilities for due cause. Any provider or facility submitting false or fraudulent claims, failing to provide and maintain quality services or medically acceptable standards, or not adhering to the agreement signed at the time of application or renewal for CIDC Program participation is subject to review, fraud referral, and/or administrative sanctions which include suspension of payment. The CIDC Program may cancel or suspend a physician's/dentist's/podiatrist's approved provider status based on the CIDC Program's knowledge of disciplinary action taken against the provider by the Texas State Board of Medical Examiners, the provider's peers, or by professional medical association or society (local, regional, or national in scope).

(i) The CIDC Program will notify the provider or facility in writing of the proposed action to be taken, the date of the action, and the reasons for the action.

(ii) The provider has the right of appeal as described in §37.96(a) of this title (relating to Appeals, Confidentiality, Gifts, and Nondiscrimination).

(iii) The CIDC Program must give the provider at least 30 days written notice prior to final action.

(B) A due process hearing is available to any provider for the resolution of conflict between the CIDC Program and the provider.

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

Issued in Austin, Texas, on July 9, 1990.

TRD-9006919

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

Proposed date of adoption: September 22, 1990

For further information, please call: (512) 458-7355

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part III. Texas Youth Commission

#### Chapter 81. Administrative Provisions

#### Care Management System for Delinquent Youth

##### • 37 TAC §81.115

*(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 Youth Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Youth Commission proposes the repeal of §81.115, concerning criteria for releasing delinquent youth from a residential facility. The section is being repealed in order to adopt a new section specifying criteria.

John Franks, director of fiscal affairs, 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. Franks 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 a more efficient use of resources. 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North

Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The repeal is proposed under the Human Resources Code, §61.065 and §61.07, which provides the Texas Youth Commission with the authority to establish requirements of admission and examine each child committed to it.

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

Issued in Austin, Texas on July 9, 1990.

TRD-9006967

Ron Jackson  
Executive Director  
Texas Youth Commission

Earliest possible date of adoption: August 17, 1990

For further information, please call: (512) 483-5244

## Chapter 85. Admission and Placement

### Placement Planning

#### • 37 TAC §85.29

The Texas Youth Commission proposes new §85.29, concerning criteria for releasing delinquent youth from a residential facility. Youth are required to complete certain behavioral and length of stay requirements in order to be returned to the community. Youth may be moved from one placement to another prior to release criteria having been met. Youth can be moved to a placement of more restriction for disciplinary reasons.

John Franks, director of fiscal affairs, 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. Franks 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 a more efficient use of residential placements for delinquent youth. 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under the Human Resources Code, §61.065 and §61.07, which provides the Texas Youth Commission with the authority to establish requirements of admission and examine each child committed to it.

#### §85.29. Program Completion and Movement.

(a) Policy. The Texas Youth Commission (TYC) uses specific objective criteria to determine when a youth has completed a program and is eligible to be re-

leased home or to another program. Progress toward successful completion of criteria is evaluated at specific regular intervals. When criteria are substantially complete the youth attains parole status and is moved to his or her home. When specific criteria are met but completion of required criteria is not possible or is not desirable in the current placement program, the youth is moved to a follow-up placement where completion is possible. Additional procedures and restrictions are applied prior to the release from TYC institutions for all sentenced offender youth. See General Operating Policy (GOP) 47.15, §81.118 of this title (relating to Sentenced Offender Disposition). Youth may be moved to a placement of equal or more restriction as a disciplinary consequence.

(b) Rules.

(1) Program completion criteria.

(A) Youth in TYC operated programs become eligible for program release and parole status when the following criteria are met:

(i) completion of the minimum length of stay;

(ii) completion of the level system program;

(iii) completion of required Individual Case Plan (ICP) objectives; and

(iv) no major violations of rules of conduct within 30 days:

(I) prior to the case review to determine eligibility for parole release; and

(II) prior to the actual release.

(B) Youth in private residential contract programs become eligible for program release and parole status when the following criteria are met:

(i) completion of any TYC minimum length of stay;

(ii) written program completion criteria required by the contract program;

(iii) completion of required ICP objectives; and

(iv) no major violations of rules of conduct within 30 days:

(I) prior to the case review to determine eligibility for parole release; and

(II) prior to the actual release.

(C) TYC program staff where the youth is assigned determine when criteria have been met.

(D) Program completion criteria are explained to every youth through the youth handbook and during orientation to each placement.

(2) Release review requirements.

(A) Progress in ICP objectives is routinely evaluated with the youth as required in GOP 49.01, §81.120 of this title (relating to Case Planning).

(B) Progress in the level system is routinely evaluated with the youth as required in GOP 49.03, §81.121 of this title (relating to Level System in TYC Operated Facilities).

(C) In addition, a parole/release review is held specifically to evaluate a youth's status in meeting program completion criteria and thus his or her release and parole status eligibility. The first parole/release review is held on the following schedule.

(i) For a youth with a minimum length of stay requirement, the first review is conducted no later than 30 days prior to completion of the minimum length of stay.

(ii) For a youth with no minimum length of stay requirement, the first review can be conducted at any time during placement and will be conducted no later than three months after initial placement.

(D) If, at the first parole/release review, it is determined the youth has not completed all criteria and that substantial completion is possible in the current program, the youth continues in the current program. The staff shall thereafter, formally review and evaluate the youth for parole/release:

(i) at three month intervals if the youth is violent offender classification as long as the youth is in the initial program;

(ii) at one month intervals if the youth is any other classification as long as the youth is in the initial program; or

(iii) at one month intervals for any youth in any follow-up program.

(E) If, at any parole/release review, it is determined the youth has completed all criteria except required ICP objectives, follow-up placement is considered and the following is documented:

(i) the extent to which required objectives have been completed; and

(ii) a detailed explanation of requirements remaining to be completed.

(3) Criteria complete-parole/release procedures.

(A) If, at the parole/release review, it is determined the youth has completed all required program completion criteria, a date of release is set for within 30 days.

(B) A youth may request and will be granted a Level II (transfer) hearing prior to the move.

(C) Parole/release of Type A violent offenders must be approved by the executive director. A release packet includes the ICP, record of progress through the level system, record of major rules violations, the home evaluation, parole plan, a current psychiatric and/or psychological, and the institutional superintendent and director of institutions recommendations and justifications. The executive director notifies the youth, superintendent, and director of institutions in writing of the decision. If release is denied, the executive director indicates a date for resubmitting the release packet.

(D) TYC does not accept the presence of a detainer as an automatic bar to earned release. The agency releases a youth to authorities pursuant to a warrant.

(E) When it is determined that a youth will be paroled out of state upon completion of the program, required information regarding the anticipated out-of-state placement shall be forwarded to the interstate compact administrator so that arrangements may be made for supervision of the youth. Arrangements for out-of-state supervision requires a minimum of six to eight weeks to complete.

(4) Criteria incomplete-follow-up movement procedures.

(A) A youth may be moved to a follow-up placement when the program staff finds and documents that conditions in the appropriate set of criteria have been met.

(i) Norm criteria:

(I) the youth has met all program completion criteria except required ICP objectives; and

(II) a follow-up program is a more appropriate placement in which the youth can meet remaining objectives.

(ii) Exception criteria. Type B violent and chronic serious offenders may be moved to a follow-up placement that can meet their needs prior to completing their minimum length of stay if the following criteria are met.

(I) Satisfactory adjustment at the current placement for a period of at least 120 consecutive days, i.e., no security admissions; and

(II) substantial progress on their ICP objectives; and

(III) low run risk, i.e., no attempted or actual escape or runaway for the past 18 months.

(B) A follow-up placement is always of equal or less restriction than the youth's current placement.

(C) A youth may request and will be granted a Level II (transfer) hearing prior to the move.

(D) Youth placed in a follow-up program must have a follow-up program plan developed by TYC releasing staff after consultation with the receiving staff.

(E) A parole/release review to evaluate the youth's progress toward completion criteria in the follow-up program must be held at monthly intervals and documented as instructed in paragraph (2)(D) and (E) of this subsection.

(5) Parole.

(A) Parole status means that a youth having attained parole status shall not be moved into a placement of maximum or high restriction without a Level I hearing. A youth either earns parole status or is granted parole status under specific conditions.

(B) A youth earns parole status when he is deemed to have substantially completed all program completion criteria. When a youth is eligible, he is released to his home or home substitute unless such movement is not possible according to GOP 47.11, §81.116 of this title (relating to Home Placement). If a youth's release to his home or home substitute is not immediately possible, he attains parole status in the current program (unless he is in an institution) and is released as soon as possible. If a youth in an institution has not been placed out of the institution within 30 days, he is moved to a temporary placement.

(C) If a youth does not earn parole status, he is granted parole status in the following circumstances.

(i) A youth in a follow-up program(s) who has not earned parole, attains parole status automatically six months after release to the first follow-up program. Parole status is automatically attained in six months:

(I) regardless of progress toward substantial completion of ICP objectives in the follow-up plan;

(II) regardless of the number of follow-up placements the youth has been in since the first follow-up placement; and

(III) if the youth has not been moved to any placement as a disciplinary move since his placement in the first follow-up program.

(ii) A youth whose initial placement is a minimum restriction level facility having no program completion criteria to meet, shall attain parole status after completion of six months if the youth has not been moved to any other placement as a disciplinary move.

(6) Disciplinary movements.

(A) A disciplinary movement is the movement of a youth, following appropriate due process, as a consequence of violation of rule(s). Disciplinary movements are always to placements of equal or more restriction than the current placement, as defined by GOP 47.07, §81.114 of this title (relating to Program Restriction Levels). Youth can be moved to a placement of more restriction for disciplinary reasons only.

(B) Disciplinary moves must be justified through an appropriate due process hearing.

(C) Any disciplinary move requires that a new set of program completion criteria be developed which must be met prior to release from that program.

(D) When a youth in a follow-up program is assessed a disciplinary move, he loses credit for the time spent in follow-up program(s). The six month time count begins again if, upon completion of the necessary program completion criteria at the disciplinary placement, the youth is assigned to another follow-up program.

(E) In accordance with disciplinary policies, a disciplinary move justified through a due process hearing may

not always occur. When a youth in a follow-up program is held in the same program in lieu of a transfer, the program is no longer considered a follow-up program. When this occurs, a new set of program completion criteria is assigned and any accumulated follow-up time is lost just as it would be if the youth had physically moved.

(7) Exceptions in hardship cases. Youth may be released and paroled home without meeting completion criteria in hardship cases upon the recommendation by parole staff. Release in hardship cases requires approval of the executive director if the youth is a Type A violent offender, or of the deputy executive director if the youth is a Type B violent offender or any other classification.

(8) Exceptions to control population. Youth, except sentenced offenders and Type A violent offenders, may be moved from their residential program assignment without meeting completion criteria when population is at or above established capacity. Such early release movement by a facility to lower population may be initiated only after approval of the deputy executive director. Youth who have completed the minimum length of stay and are low risk are released first. In general, youth who are closest to completing criteria may be released next; however, Type B violent and chronic serious offenders must meet the following criteria.

(A) Violent offender-Type B:

- (i) currently on Level 4;
- (ii) completion of nine months of stay;
- (iii) substantial completion of ICP objectives;
- (iv) no major violations of Rules of Conduct within 30 days prior to consideration for waiver and prior to the actual release; and
- (v) recommendation by superintendent.

(B) Chronic serious offenders:

- (i) currently on Level 4;
- (ii) completion of seven months of stay;
- (iii) substantial completion of ICP objectives;
- (iv) have no major violations of Rules of Conduct within 30 days prior to consideration for waiver and prior to the actual release; and
- (v) recommendation by superintendent.

(9) Parent notification. Parents or guardians are notified of all movements. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on July 9, 1990.

TRD-9006966 Ron Jackson  
Executive Director  
Texas Youth Commission

Earliest possible date of adoption: August 17, 1990

For further information, please call: (512) 483-5244

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Part VII. Texas  
Commission on Law  
Enforcement Officer  
Standards and Education  
Chapter 211. Administrative  
Division

• 37 TAC §211.98

The Texas Commission on Law Enforcement Officer Standards and Education proposes an amendment to §211.98, concerning psychological examinations. Section 211.98 will be amended by clarifying the filing requirements of psychological declarations by law enforcement agencies.

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

Ms. McCully-Bonner also has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be a clearer administrative procedure for filing the results of psychological examinations by law enforcement agencies. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Johanna McCully-Bonner, General Counsel, Texas Commission on Law Enforcement Officer Standards and Education, 1606 Headway Circle, Suite 100, Austin, Texas 78754.

The amendment is proposed under the Texas Government Code, §415.010 and §415.057, which provides the Texas Commission on Law Enforcement Officer Standards and Education with the authority to pass rules for the administration of Chapter 415, and establishes the procedures for filing the results of psychological examinations by law enforcement agencies.

*§211.98. Psychological Examination and Reporting Requirements [of an Initial License Applicant].*

(a) An initial license applicant and a license holder subject to the 180 day

break in service requirements must undergo a psychological examination except as provided by subsection (v) of this section. A license holder, shall undergo a psychological examination prior to appointment if the last psychological declaration on file at the commission is a negative declaration. A license holder who is currently under appointment, may be required to undergo a psychological examination either as a condition of continued employment or as part of an employment process. This examination must be administered by a professional who:

(1) has been registered by the commission to do so; or

(2) is a licensed psychologist or psychiatrist.

(b)-(g) (No change.)

(h) Before the examination, the professional must obtain a waiver of confidentiality signed by the examinee that approves the release of the declaration to the commission, to the requesting agency, to the agency of current appointment, or to another professional and that approves the release of any supporting notes, tests, or other documents to another professional conducting an examination under this section.

(i) A positive declaration form will be provided by the professional directly to the chief administrator of the requesting agency for submission with a license application or report of appointment or as otherwise required. A negative declaration form will also be provided by the professional directly to the chief administrator of the requesting agency for submission to the commission within 10 working days of its effective date. The professional must, in either case, retain indefinitely the waiver and a copy of each declaration either of which must be made available for inspection by or provided to the commission upon request. If the commission has appointed the professional to administer the examination, the declaration and a copy of the waiver will be submitted directly to the commission.

(j) The commission may deny or refuse to issue a license if there is no declaration, if the required declaration is no longer current or has been withdrawn or invalidated, or if the declaration or examination was not made in compliance with this section. A declaration is no longer current after more than 180 days from its effective date. The effective date is the date the declaration was signed. [If a license is issued based upon a current declaration, that initial declaration does not have to be updated or reissued and a license holder does not have to undergo another examination unless otherwise required by law or rule. This section only applies to an initial applicant for any license and shall not be construed to require a re-examination or a

new declaration to retain an existing license or after a break in service. Nor shall this section be construed to require a professional or an agency to report to the commission a positive or negative declaration with regard to an existing license.]

(k) (No change.)

(1) If ordered to do so by the commission, an initial license applicant or the holder of a recently issued license must submit to another examination by a professional appointed by the commission. The commission may order an [another] examination if, before licensing or within 180 days after licensing, there is a conflict between two current declarations or if at any time it has cause to believe that:

(1) the examinee, the agency, or the professional has failed to follow commission rules relating to the examination or declaration; [or]

(2) the examinee, the agency, or the professional has submitted a false or incorrect report relating to the examination or declaration; or

(3) the license holder does not meet minimum psychological standards for retention of a license.

(m)-(u) (No change.)

(v) The holder of a current license in any category, who applies for an initial issuance of a license in the same category, will not be required to provide a new declaration for the new license, unless otherwise required. If the applicant for a new license in a different category has a declaration on file at the commission for that category, submitted by the appointing agency and if the applicant has been employed by that agency on a continuous basis since that initial filing of the declaration, then the agency will not be required to, but may submit a new declaration for that category, with the license application. If the application is for a new license in a different category and if the new declaration will be made by the same professional, the new declaration may be based upon a supplementary examination that incorporates the results of the initial examination but covers any additional issue raised by the new appointment.

(w) (No change.)

(x) The effective date of amendments to subsection (w) of this section is February 1, 1990, the effective date of amendments to subsections (a), (h), (i), (j), (l), (1), and (v) of this section is February 1, 1991.

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

Issued in Austin, Texas on July 11, 1990.



Earliest possible date of adoption: August 17, 1990

For further information, please call: (512) 834-9222

## Chapter 213. Administrative Division

### Substantive Rules

- 37 TAC §§213.1, 213.3, 213.10, 213.20, 213.50, 213.60

The Texas Commission on Law Enforcement Officer Standards and Education proposes new §213.1. Definitions; §213.3. Board of Directors; §213.10. Graduate, Management Institute (GMI); §213.20. Participant Selection and Class Assignment for the Graduate, Management Institute (GMI); §213.50. Research; and §213.60. Additional Programs concerning the admission standards and programs sponsored by the Law Enforcement Management Institute. The new sections as proposed will establish admission standards for the programs operating under the auspices of the Law Enforcement Management Institute for the training of law enforcement managers and provide an overview of the various programs administered by the Institute.

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

Ms. McCully-Bonner 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 increased training of police management personnel. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Johanna McCully-Bonner, General Counsel, Texas Commission on Law Enforcement Officer Standards and Education, 1606 Headway Circle, Suite 100, Austin, Texas, 78754.

The new sections are proposed under the Texas Government Code, §415.010, and §§415.091-415.099, which provides the Texas Commission on Law Enforcement Officer Standards and Education with the authority to pass rules for the administration of Chapter 415, and provides the enabling legislation for the Law Enforcement Management Institute.

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

**Active license**—A license, certificate, or acknowledgement issued by the

commission pursuant to Chapter 415, Government Code, that is current and has not been voluntarily surrendered, suspended, revoked, or canceled.

**Board of directors**—The governing body of the Law Enforcement Management Institute and the advisory body to the Texas Commission on Law Enforcement Officer Standards and Education.

**Commission**—The Texas Commission on Law Enforcement Officer Standards and Education.

**Graduate Management Institute**—A program of instruction, including research, leading to the designation, GMI.

**Management institute**—The Law Enforcement Management Institute.

**Overview program**—Course of instruction required for selection into the Graduate, Management Institute (GMI) Program.

**Participation agreement**—The notarized letter agreement signed by GMI participants on acceptance into the GMI program.

**Participation costs**—Tuition, books, room, board, and travel costs.

**Public law enforcement agency**—A law enforcement agency of a national or international government, a state, a political subdivision of a state, or a special district of a state.

**Topical seminars**—A course of instruction, usually of short duration, the purpose of which is to disseminate critical information in a timely fashion.

### §213.3. Board of Directors.

(a) The Board of Directors of the Law Enforcement Management Institute is appointed under the provisions of the Government Code, §415.093.

(b) The board serves in an advisory capacity to the commission, performing those functions outlined in the Government Code, §415.098, and additional duties as may be assigned by the commission.

(c) The board may issue awards for outstanding performance by program participants and/or faculty.

(d) The effective date of this section is February 1, 1991.

### §213.10. Graduate, Management Institute (GMI).

(a) The Graduate, Management Institute (GMI) is a program created and conducted by the Management Institute, for the training of eligible personnel employed by a public law enforcement agency.

(b) To qualify for the designation, Graduate, Management Institute (GMI), a participant shall have satisfactorily completed the program requirements, including, but not limited to:

(1) attendance, group and class participation, and timely completion and

presentation of written and oral reports; and

(2) participation in test validation programs, all requirements contained in the participation agreement, and any other requirements of the GMI program.

(c) Individuals licensed by the commission shall retain an active license, while a participant of the GMI, in order to successfully complete the program.

(d) Participation costs of those participants, who are Texas residents, shall be paid from the Law Enforcement Management Institute fund.

(e) Commission training hours or points will be awarded for satisfactory completion of each segment of the program.

(f) The effective date of this section is February 1, 1991.

### §213.20. Participant Selection and Class Assignment for the Graduate, Management Institute (GMI).

(a) Participants shall be selected from public law enforcement agencies in the State of Texas.

(b) Participants may be selected from public law enforcement agencies from other states or countries.

(c) In addition to the requirements contained in subsections (a) and (b) of this section, the minimum eligibility requirements for applicants are:

(1) five years full-time, paid employment in a public law enforcement agency;

(2) current employment by a public law enforcement agency in a full-time, paid position;

(3) satisfactory completion of the Management Overview Program; and

(4) a completed, board approved, GMI application.

(d) The minimum eligibility requirement provided in subsection (c)(1) of this section may be waived by the commission, at the discretion of the executive director, upon written request of the applicant, a showing of good cause, and the recommendation of the board.

(e) The participants' class assignment is made at the discretion of the board of directors and will be based upon the following:

(1) regional representation according to population;

(2) cultural, ethnic and gender diversity;

(3) the student's education, training, work experience, and current position of employment; and

(4) any other factors as warranted.

(f) The effective date of this section is February 1, 1991.

**§213.50. Research.**

(a) The Management Institute will participate in and conduct research pertaining to the studies of police administration, law enforcement management, and advanced technical studies relating to law enforcement. The Management Institute will cooperate with municipal, county, special districts, states, federal and international public law enforcement agencies, and other entities in order to facilitate this research. The results of this research will be reported to the board, the commission and other interested parties.

(b) The effective date of this section is February 1, 1991.

**§213.60. Additional Programs.**

(a) The Management Institute will develop, implement, and maintain education and training opportunities including, but not limited to, the executive issues series, topical seminars, and any other programs deemed relevant.

(b) The effective date of this section is February 1, 1991.

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

Issued in Austin, Texas on July 11, 1990.

TRD-9006989      Johanna McCully-Bonner  
General Counsel  
Texas Commission on Law  
Enforcement Officer  
Standards and  
Education

Earliest possible date of adoption: August 17, 1990

For further information, please call: (512) 834-9222

**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**Part I. Texas Department of Human Services**

**Chapter 3. Income Assistance Services**

**Subchapter MM. Aid to Families with Dependent Children-Unemployed Parent Program**

**• 40 TAC §§3.3901-3.39110**

The Texas Department of Human Services (DHS) proposes new §§3.3901-3.3911, concerning Definitions; Establishment of Aid to Families with Dependent Child-

Unemployed Parent Program; Eligibility; Household Determination; Time Limitations; AFDC-UP Medicaid Assistance Only (MAO); Employment Services; Volunteering for JOBS; Failure to Comply with JOBS; Eligibility for Type Program 07 Medicaid Services; and Eligibility for Type Program 37 Medicaid Services, as Subchapter MM, Aid to Families with Dependent Children-Unemployed Parent Program, in its Income Assistance Services chapter. The purpose of the new sections is to comply with a mandate of the Federal Family Support Act of 1988.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed sections will be in effect there will be 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 is an estimated additional cost of \$18,102,750 in fiscal year (FY) 1991; \$17,719,408 in FY 1992; \$18,345,723 in FY 1993; \$19,309,705 in FY 1994; and \$20,284,674 in FY 1995. There will be no fiscal implications for local governments as a result of enforcing or administering the sections.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to provide assistance to two-parent families in need because one or both parents are unemployed. 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 proposed sections. Questions about the content of this proposal may be directed to Marianne McDonald at (512) 450-3437 in DHS's Client Self-support Services Division. Comments on the proposal may be submitted to Cathy Rossberg, Policy Communication Services-419, 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 new sections are proposed under the Human Resources Code, Title 2, Chapters 22, 31, and 32, which authorizes the department to administer public and medical assistance programs.

**§3.3901. Definitions.** The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

**AFDC-UP-Aid to Families with Dependent Children- Unemployed Parent program**-A program under which cash and medical assistance is provided to two-parent families which are in need because the principal wage earner is unemployed.

**AFDC-UP MAO-Aid to Families with Dependent Children-Unemployed Parent program, Medical Assistance Only.**

**Case Year**-A 12-month period of eligibility for AFDC-UP or AFDC-UP MAO benefits, based on the last digit of the case number.

**DHS**-Texas Department of Human Services.

**JOBS**-Job Opportunities and Basic Skills-A program created by the Family Support Act of 1988 to provide AFDC fam-

ilies with education, training, support services, and employment that will enable them to become economically self-sufficient.

**MAO**-Medical Assistance Only.  
**TP**-Type Program.

**§3.3902. Establishment of Aid to Families with Dependent Children-Unemployed Parent Program.** Effective October 1, 1990, The Texas Department of Human Services (DHS) establishes the Aid to Families with Dependent Children-Unemployed Parent (AFDC-UP) program. The purpose of the AFDC-UP program is to provide cash and Medicaid assistance to two-parent families in which the principal wage earner is unemployed.

**§3.3903. Eligibility.** To be eligible for services under the AFDC-UP program, the family must meet the requirements of this subchapter and the AFDC requirements for applicants as specified in this chapter.

**§3.3904. Household Determination.** A child must live with both parents and be deprived because the principal wage earner parent is unemployed, as stipulated in 45 Code of Federal Regulations, §233.100(a)(1) and §233.100(a)(3).

**§3.3905. Time Limitations.** DHS limits AFDC-UP payments to no more than six in a case year. Medicaid eligibility is limited to one case year per approved application. However, the family is again eligible, without reapplication, for up to six monthly cash payments and up to 12 months of Medicaid benefits during a subsequent case year if:

(1) the family was eligible for and received a cash payment in the last month of eligibility of the preceding case year; and

(2) the family remains eligible for cash and/or Medicaid benefits, as specified in §3.3903 of this title (relating to Eligibility).

**§3.3906. AFDC-UP Medicaid Assistance Only (MAO).**

(a) **Purpose.** Clients receive AFDC-UP MAO when they are no longer receiving AFDC-UP payments because of time limitation.

(b) **Eligibility.** Clients must meet all AFDC-UP eligibility requirements while receiving AFDC-UP MAO. Clients who have been receiving AFDC-UP MAO and who then become ineligible are not eligible for TP 07 or TP 37 Medicaid.

(c) **Duration.** AFDC-UP MAO coverage stops at the end of the family's assigned case year. The family must reapply to again receive AFDC-UP benefits.

§3.3907. *Employment Services.* AFDC-UP clients must meet employment services requirements as specified in §3.1101 of this title (relating to Who Is Required to Participate). In addition, clients are subject to the Employment Services program as follows.

(1) A client receiving AFDC-UP MAO is exempt from participation in the Employment Services program.

(2) A client who lives in a non-JOBS county or who lives in a JOBS county but is too remote must register for employment as directed by DHS.

§3.3908. *Volunteering for JOBS.* In addition to the clients, specified in §3.1102 of this title (relating to Who May Volunteer), clients who live in a JOBS county and who receive AFDC-UP MAO may volunteer for Employment Services.

§3.3909. *Failure to Comply with JOBS.* AFDC-UP clients who do not comply with a JOBS requirement and cannot establish good cause are sanctioned as stipulated in 45 Code of Federal Regulations §250.34(a)(1) and §250.34(c)(2). This sanction can continue into the MAO period. Clients reestablish eligibility for AFDC-UP or AFDC-UP MAO according to procedures specified in §3.1105 of this title (relating to Reestablishing Eligibility).

§3.3910. *Eligibility for Type Program 07 Medicaid Services.* AFDC-UP clients who are denied AFDC-UP cash and medical benefits because of new or increased earnings of a parent or because of increased work hours of the principal wage earner parent are eligible for 12 months post Medicaid, as stipulated in the Social Security Act, 1925, and §3.2204 of this title (relating to Type Program 07 Medicaid).

§3.3911. *Eligibility for Type Program 37 Medicaid Services.* AFDC-UP clients who are denied because a parent or certified child is no longer eligible for the earned income disregard are eligible for up to 12 months post Medicaid as stipulated in the Social Security Act, 1925, and §3.2205 of this title (relating to Type Program 37 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 July 11, 1990.

TRD-9006995

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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*(Editor's note: The Texas Department of Human Services proposed the repeal and new §16.1514, published in the June 5, 1990, issue of the Texas Register (15 TexReg 3163) and (15 TexReg 3222). The proposed preamble and repeal were inadvertently printed among the new sections for Chapter 19. The section is reprinted here because it is likely readers may have missed it in the June 5 issue.)*

### 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 Communication 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

Proposed date of adoption: October 1, 1990

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

#### ◆ ◆ ◆ • 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 (Prolixin 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), Tranylcypromine (Parnate), Amitriptyline (Elavil, Endep), Amoxapine (Asenden), Desipramine (Pertofrane), Doxepin (Adapin, Sinequan), Trazodone (Desyrel), Fluoxetine (Prozac), Imipramine (Tofranil, Tofranil-PM, Janimine), Maprotiline (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 determine 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

## Chapter 24. Reimbursement Methodology

### Subchapter A. Determination of Payment Rates

#### • 40 TAC §24.102

The Texas Department of Human Services (DHS) proposes an amendment to §24.102, concerning determination of payment rates, in its reimbursement methodology chapter. The purpose of the amendment is to establish precise time frames for providers to submit amended cost reports and to allow the state to collect from providers the costs of out-of-state audits.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed section is in effect there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period will be an estimated increase in revenue of \$30,000 in fiscal year (FY) 1991; \$31,386 in FY 1992; \$32,700 in FY 1993; \$34,128 in FY 1994; and \$35,622 in FY 1995. There will be no fiscal implications for local government as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the establishment of clear time frames for providers and a reduction in the cost of conducting audits. There will be no effect on small businesses. For persons who are required to comply with the proposed section there will be an estimated additional cost per audit of \$5000 in fiscal year (FY) 1991; \$5,231 in FY 1992; \$5,450 in FY 1993; \$5,688 in FY 1994; and \$5937 in FY 1995.

Questions about the content of this proposal may be directed to Carolyn Pratt at (512) 450-4057 in DHS's Provider Reimbursement Division. Comments on the proposal may be submitted to Cathy Rossberg, Policy Communication Services-424, 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 provides the department with the authority to administer public and medical assistance programs.

#### §24.102. Methodology.

(a) (No change.)

(b) All contracted providers must submit cost reports to the Texas Department of Human Services (DHS) in a manner prescribed by the department. DHS accepts amended cost reports submitted on the request of the provider until 180 days after the due date of the cost report or 15 working days prior to the public hearing on proposed rates, whichever occurs first. Since this is a prospective reimbursement system without a provision for reconciliation, amended cost reports filed after this date have no effect on the rate and are not accepted. Amended cost report information that cannot be verified by 10 working days prior to the hearing will not be used in rate determination.

(c) As specified in §24.201 of this title (relating to Basic Objectives and Criteria for Desk Review of Cost Reports), DHS conducts desk reviews of all the cost reports that it receives. The department also conducts on-site audits of provider records and cost reports. Although the number of on-site audits performed each year may vary, the department seeks to maximize the number of on-site audited cost reports available for use in its cost projections. Whenever possible, the records necessary to verify information submitted to DHS on Medicaid cost reports, including related-party transactions and other business activities engaged in by the provider, must be accessible to DHS audit staff in the State of Texas. When records are not available to DHS audit staff within the state, the provider must pay the costs for DHS staff to travel and review the records out-of-state. If a provider fails to reimburse DHS for these costs within 30 days of the request for payment, DHS may request a hold be placed on the vendor payments until the costs are paid in full. As specified in §24.401 of this title (relating to Notification), providers may ask to be notified about exclusions and adjustments to reported expenses made during desk reviews and on-site audits.

(d)-(k) (No change.)

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

Issued in Austin, Texas on July 11, 1990.

TRD-9006990

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

## Chapter 46. Residential Care Program

### Support Documents

#### • 40 TAC §46.7001

The Texas Department of Human Services (DHS) proposes an amendment to §46.7001, concerning support documents, in its residential care program chapter. The purpose of the amendment is to establish precise time frames for providers to submit amended cost reports and to allow the state to collect from providers the costs of out-of-state audits.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed section is in effect there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period will be an estimated increase in revenue of \$25,000 in fiscal year (FY) 1991; \$26,155 in FY 1992; \$27,250 in FY 1993; \$28,440 in FY 1994; and \$29,685 in FY 1995. There will be no fiscal implications for local government as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the establishment of clear time frames for providers and a reduction in the cost of conducting audits. There will be no effect on small businesses. For individuals who are required to comply with the proposed section there will be an estimated additional cost per audit of \$5000 in fiscal year (FY) 1991; \$5231 in FY 1992; \$5450 in FY 1993; \$5688 in FY 1994; and \$5937 in FY 1995.

Questions about the content of this proposal may be directed to Carolyn Pratt at (512) 450-4057 in DHS's Provider Reimbursement Division. Comments on the proposal may be submitted to Cathy Rossberg, Policy Communication Services-424, 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 provides the department with the authority to administer public and medical assistance programs.

#### *§46.7001. Reimbursement Methodology for Residential Care.*

##### (a) Cost reporting.

(1)-(8) (No change.)

(9) Amended cost report due dates. All contracted providers must submit cost reports to the Texas Department of Human Services (DHS) in a manner prescribed by the department. DHS accepts amended cost reports submitted on the request of the provider until 180 days after the due date of the cost report or 15 working days prior to the public hearing on proposed rates, whichever occurs first. Since this is a prospective reimbursement system

without a provision for reconciliation, amended cost reports filed after this date have no effect on the rate and are not accepted. Amended cost report information that cannot be verified by 10 working days prior to the hearing will not be used in rate determination.

(10) Costs of out-of-state audits. Whenever possible, the records necessary to verify information submitted to DHS on Medicaid cost reports, including related-party transactions and other business activities engaged in by the provider, must be accessible to DHS audit staff in the State of Texas. When records are not available to DHS audit staff within the state, the provider must pay the costs for DHS staff to travel and review the records out-of-state. If a provider fails to reimburse DHS for these costs within 30 days of the request for payment, DHS may request a hold be placed on the vendor payments until the costs are paid in full.

(b)-(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 July 11, 1990.

TRD-9006991

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

## Chapter 48. Community Care for the Aged and Disabled

### Support Documents

#### • 40 TAC §48.9801 §48.9805

The Texas Department of Human Services (DHS) proposes amendments to §48.9801 and §48.9805, concerning support documents, in its community care for the aged and disabled chapter. The purpose of the amendments is to establish precise time frames for providers to submit amended cost reports and to allow the state to collect from providers the costs of out-of-state audits.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed sections are in effect there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period will be an estimated increase in revenue of \$25,000 in fiscal year (FY) 1991; \$26,155 in FY 1992; \$27,250 in FY 1993; \$28,440 in FY 1994; and \$29,685 in FY 1995. There will be no fiscal implications for local government persons as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the sections are in

effect the public benefit anticipated as a result of enforcing the sections will be the establishment of clear time frames for providers and a reduction in the cost of conducting audits. There will be no effect on small businesses. For persons who are required to comply with the proposed section there will be an estimated additional cost per audit of \$5000 in fiscal year (FY) 1991, \$5,231 in FY 1992; \$5,450 in FY 1993; \$5,688 in FY 1994; and \$5,937 in FY 1995.

Questions about the content of this proposal may be directed to Carolyn Pratt at (512) 450-4057 in DHS's Provider Reimbursement Division. Comments on the proposal may be submitted to Cathy Rossberg, Policy Communication Services-424, Texas Department of Human Services 454-W, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

#### *§48.9801. Reimbursement Methodology for Special Services for Handicapped Adults-Shared Attendant Care.*

##### (a) Cost reporting.

(1)-(8) (No change.)

(9) Amended cost report due dates. All contracted providers must submit cost reports to the Texas Department of Human Services (DHS) in a manner prescribed by the department. DHS accepts amended cost reports submitted on the request of the provider until 180 days after the due date of the cost report or 15 working days prior to the public hearing on proposed rates, whichever occurs first. Since this is a prospective reimbursement system without a provision for reconciliation, amended cost reports filed after this date have no effect on the rate and are not accepted. Amended cost report information that cannot be verified by 10 working days prior to the hearing will not be used in rate determination.

(10) Costs of out-of-state audits. Whenever possible, the records necessary to verify information submitted to DHS on Medicaid cost reports, including related-party transactions and other business activities engaged in by the provider, must be accessible to DHS audit staff in the State of Texas. When records are not available to DHS audit staff within the state, the provider must pay the costs for DHS staff to travel and review the records out-of-state. If a provider fails to reimburse DHS for these costs within 30 days of the request for payment, DHS may request a hold be placed on the vendor payments until the costs are paid in full.

(b)-(f) (No change.)



**§48.9805. Reimbursement Methodology for Congregate and Home-Delivered Meals.**

(a) Cost reporting. Provider agencies must submit financial and statistical information at least annually in a cost report prescribed by the department or on facsimiles which are formatted according to DHS specifications and are preapproved by DHS staff.

(1)-(14) (No change.)

(15) Amended cost report due dates. All contracted providers must submit cost reports to the Texas Department of Human Services (DHS) in a manner prescribed by the department. DHS accepts amended cost reports submitted on the request of the provider until 180 days after the due date of the cost report or 15 working days prior to the public hearing on proposed rates, whichever occurs first. Since this is a prospective reimbursement system without a provision for reconciliation, amended cost reports filed after this date have no effect on the rate and are not accepted. Amended cost report information that cannot be verified by 10 working days prior to the hearing will not be used in rate determination.

(16) Costs of out-of-state audits. Whenever possible, the records necessary to verify information submitted to DHS on Medicaid cost reports, including related-party transactions and other business activities engaged in by the provider, must be accessible to DHS audit staff in the state of Texas. When records are not available to DHS audit staff within the state, the provider must pay the costs for DHS staff to travel and review the records out-of-state. If a provider fails to reimburse DHS for these costs within 30 days of the request for payment, DHS may request a hold be placed on the vendor payments until the costs are paid in full.

(b)-(f) (No change.)

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

Issued in Austin, Texas on July 11, 1990.

TRD-9006993 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



**Chapter 52. Emergency Response Services**

**Claims**

**• 40 TAC §52.502**

The Texas Department of Human Services (DHS) proposes an amendment to §52.502, concerning claims, in its emergency response services chapter. The purpose of the amendment is to establish precise time frames for providers to submit amended cost reports and to allow the state to collect from providers the costs of out-of-state audits.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The effect on state government for the first five-year period will be an estimated increase in revenue of \$25,000 in fiscal year (FY) 1991; \$26,155 in FY 1992; \$27,250 in FY 1993; \$28,440 in FY 1994; and \$29,685 in FY 1995. There will be 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 the establishment of clear time frames for providers and a reduction in the cost of conducting audits. There will be no effect on small businesses. For individuals who are required to comply with the section as proposed there will be an estimated additional cost per audit of \$5,000 in FY 1991; \$5,231 in FY 1992; \$5,450 in FY 1993; \$5,688 in FY 1994; and \$5,937 in FY 1995.

Questions about the content of this proposal may be directed to Carolyn Pratt at (512) 450-4057 in DHS's Provider Reimbursement Division. Comments on the proposal may be submitted to Cathy Rossberg, Policy Communication Services-424, 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.

**§52.502. Reimbursement Methodology for Emergency Response Services.**

(a) Cost reporting.

(1)-(8) (No change.)

(9) Amended cost report due dates. All contracted providers must submit cost reports to the Texas Department of Human Services (DHS) in a manner prescribed by the department. DHS accepts amended cost reports submitted on the request of the provider until 180 days after the due date of the cost report or 15 working days prior to the public hearing on proposed rates, whichever occurs first. Since this is a prospective reimbursement system

without a provision for reconciliation, amended cost reports filed after this date have no effect on the rate and are not accepted. Amended cost report information that cannot be verified by 10 working days prior to the hearing will not be used in rate determination.

(10) Costs of out-of-state audits. Whenever possible, the records necessary to verify information submitted to DHS on Medicaid cost reports, including related-party transactions and other business activities engaged in by the provider, must be accessible to DHS audit staff in the State of Texas. When records are not available to DHS audit staff within the state, the provider must pay the costs for DHS staff to travel and review the records out-of-state. If a provider fails to reimburse DHS for these costs within 30 days of the request for payment, DHS may request a hold be placed on the vendor payments until the costs are paid in full.

(b)-(f) (No change.)

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

Issued in Austin, Texas, on July 11, 1990.

TRD-9006992 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

◆ ◆ ◆  
**Chapter 53. Family Care Program**

**Claims**

**• 40 TAC §53.502**

The Texas Department of Human Services (DHS) proposes an amendment to §53.502, concerning claims, in its family care program chapter. The purpose of the amendment is to establish precise time frames for providers to submit amended cost reports and to allow the state to collect from providers the costs of out-of-state audits.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The effect on state government for the first five-year period will be an estimated increase in revenue of \$25,000 in fiscal year (FY) 1991; \$26,155 in FY 1992; \$27,250 in FY 1993; \$28,440 in FY 1994; and \$29,685 in FY 1995. There will be no fiscal implications for local government as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result

of enforcing the section will be the establishment of clear time frames for providers and a reduction in the cost of conducting audits. There will be no effect on small businesses. For persons who are required to comply with the section as proposed there will be an estimated additional cost per audit of \$5,000 in FY 1991; \$5,231 in FY 1992; \$5,450 in FY 1993; \$5,688 in FY 1994; and \$5,937 in FY 1995.

Questions about the content of this proposal may be directed to Carolyn Pratt at (512) 450-4057 in DHS's Provider Reimbursement Division. Comments on the proposal may be submitted to Cathy Rossberg, Policy Communication Services-424, 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.

*§53.502. Reimbursement Methodology for Family Care Services.*

(a) Cost reporting. Provider agencies must submit financial and statisti-

cal information at least annually in a cost report prescribed by the department.

(1)-(13) (No change.)

(14) Amended cost report due dates. All contracted providers must submit cost reports to the Texas Department of Human Services (DHS) in a manner prescribed by the department. DHS accepts amended cost reports submitted on the request of the provider until 180 days after the due date of the cost report or 15 working days prior to the public hearing on proposed rates, whichever occurs first. Since this is a prospective reimbursement system without a provision for reconciliation, amended cost reports filed after this date have no effect on the rate and are not accepted. Amended cost report information that cannot be verified by 10 working days prior to the hearing will not be used in rate determination.

(15) Costs of out-of-state audits. Whenever possible, the records necessary to verify information submitted to DHS on Medicaid cost reports, including related-party transac-

tions and other business activities engaged in by the provider, must be accessible to DHS audit staff in the State of Texas. When records are not available to DHS audit staff within the state, the provider must pay the costs for DHS staff to travel and review the records out-of-state. If a provider fails to reimburse DHS for these costs within 30 days of the request for payment, DHS may request a hold be placed on the vendor payments until the costs are paid in full.

(b)-(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 July 11, 1990.

TRD-9006994 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



# Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

## TITLE 7. BANKING AND SECURITIES

### Part II. Banking Department of Texas

#### Chapter 11. Miscellaneous

##### Retention of Records

###### • 7 TAC §11.63

The Banking Department of Texas has withdrawn from consideration for permanent adoption a proposed new §11.63 which appeared in the January 26, 1990, issue of the *Texas Register* (15 TexReg 411). The effective date of this withdrawal is July 10, 1990.

Issued in Austin, Texas, on July 10, 1990

TRD-9006977      Ann Graham  
                            General Counsel  
                            Banking Department of  
                            Texas

Effective date: July 10, 1990

For further information, please call: (512)  
479-1200

###### • 7 TAC §11.64

The Banking Department of Texas has withdrawn from consideration for permanent adoption a proposed repeal §11.64 which appeared in the January 26, 1990, issue of the *Texas Register* (15 TexReg 411). The effective date of this withdrawal is July 10, 1990.

Issued in Austin, Texas, on July 10, 1990

TRD-9006975      Ann Graham  
                            General Counsel  
                            Banking Department of  
                            Texas

Effective date: July 10, 1990

For further information, please call: (512)  
479-1200

◆                      ◆                      ◆  
The Banking Department of Texas has withdrawn from consideration for permanent adoption a proposed new §11.64 which appeared in the January 26, 1990, issue of the *Texas Register* (15 TexReg 412). The effective date of this withdrawal is July 10, 1990.

Issued in Austin, Texas, on July 10, 1990

TRD-9006974      Ann Graham  
                            General Counsel  
                            Banking Department of  
                            Texas

Effective date: July 10, 1990

For further information, please call: (512)  
479-1200

###### • 7 TAC §11.65

◆                      ◆                      ◆  
The Banking Department of Texas has withdrawn from consideration for permanent adoption a proposed repeal §11.65 which appeared in the January 26, 1990, issue of the *Texas Register* (15 TexReg 420). The effective date of this withdrawal is July 10, 1990.

Issued in Austin, Texas, on July 10, 1990

TRD-9006976      Ann Graham  
                            General Counsel  
                            Banking Department of  
                            Texas

Effective date: July 10, 1990

For further information, please call: (512)  
479-1200

The Banking Department of Texas has withdrawn from consideration for permanent adoption a proposed new §11.65 which appeared in the January 26, 1990, issue of the *Texas Register* (15 TexReg 420). The effective date of this withdrawal is July 10, 1990.

Issued in Austin, Texas, on July 10, 1990

TRD-9006973      Ann Graham  
                            General Counsel  
                            Banking Department of  
                            Texas

Effective date: July 10, 1990

For further information, please call: (512)  
479-1200

## ◆                      ◆                      ◆ Part I. State Finance Commission

### Chapter 3. Banking Section

#### Subchapter B. General

##### • 7 TAC §3.22

The State Finance Commission has withdrawn from consideration for permanent adoption a proposed new §3.22 which appeared in the May 4, 1990, issue of the *Texas Register* (15 TexReg 2549). The effective date of this withdrawal is July 10, 1990.

Issued in Austin, Texas, on July 10, 1990

TRD-9006968      Ann Graham  
                            General Counsel  
                            State Finance Commission

Effective date: July 10, 1990

For further information, please call: (512)  
479-1200



Name: Keith Steinkoenig

Grade: 12

School: Berkner High School, Richardson ISD

# Adopted Sections

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

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

## TITLE 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

#### Chapter 5. Transportation Division

##### Subchapter Z. Base Rates, Deviations, and Suspensions

###### • 16 TAC §5.582

The Railroad Commission of Texas adopts an amendment to §5.582, with changes to the proposed text as published in the January 16, 1990, issue of the *Texas Register* (15 TexReg 251). The amendment had been published pursuant to a petition from Temple-Inland Forest Products Corporation. The amendment expands the allowable percentages of deviations from base rates and charges only for shipments of general commodities weighing more than 10,000 pounds.

The amendment is adopted in order to relax the strict limits on variations in truckload rates, to encourage efficient operations by motor carriers, and to increase economic development in the State of Texas, while still providing sufficient controls to prevent instability in the market.

The amendment as proposed would have increased the allowable levels of deviations to 40% for all shipments of general commodities weighing more than 500 pounds. As adopted, the amendment will allow deviations of up to 25% on shipments weighing 10,000 pounds or more. No change is made to the provisions for shipments weighing from 501 to 9,999 pounds. Deviations of up to 5.0% will still be allowed on shipments from 501 to 9,999 pounds.

Over one thousand comments were received, both in favor of and in opposition to the proposed amendment. Comments in favor of the proposed section stressed that economic development would be promoted by allowing lower rates, that relaxed regulation would improve the transportation system, and that Texas businesses were at a disadvantage due to disparities between interstate and intrastate rates. Supporters argued that perceived difficulties with relaxed regulation had not occurred on the interstate level, and that the predatory pricing provisions of the existing regulatory system provide a sufficient protection against price discrimination or predatory pricing.

The comments in opposition to the proposed section argued that the existing carriers cannot absorb the reduction in revenue that

would result from allowing larger deviations, that safety and quality of service would deteriorate, and that the benefits of lower rates would accrue only to larger shippers and larger locations, to the detriment of smaller shippers and small towns. Commenters also stated their belief that the proposed amendment could result in carriers going out of business, with the resulting loss in jobs and economic vitality.

Comments in favor of the proposed rule were filed by the Greater Dallas Chamber, the Houston Port Bureau, the National Industrial Traffic League, the National Small Shipments Traffic Conference, Inc. the Health and Personal Care Distribution Conference, Inc., the Oilfield Supply Traffic Association, the Shippers Oil Field Traffic Association, the Texas Retailers Association, the West Gulf Maritime Association, the Texas Association of Warehousemen, and the Texas Association to Improve Distribution. Comments in opposition to the proposed section were filed by the Common Carrier Motor Freight Association, Inc., the Southwest Warehouse and Transfer Association, Texas Shippers for Fair, Uniform and Non-Discriminatory Truck Rates, the Texas Motor Transportation Association, and the Sand and Gravel Motor Carriers Association, Inc.

The commission agrees with the comments in opposition to the proposed section insofar as they oppose an extension to the full 40%, and insofar as they oppose the increase in allowable deviations for less-than-truckload (LTL) traffic. Otherwise the commission disagrees with the comments in opposition to the rule. The prohibition against predatory pricing should act to curb the bulk of possible abuses under the rule as proposed. Further, the goals of economic development require that regulatory barriers be lowered insofar as is consistent with the legislative mandate to ensure a non-discriminatory transportation system for the public as a whole.

The amendment is adopted under the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, which authorize the commission to regulate motor carriers in all matters.

###### §5.582. Deviations from Base Rates.

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

(c) Motor carriers (other than specialized motor carriers and other than contract carriers subject to commission-prescribed tariffs governing transportation of specialized commodities) shall be permitted to deviate by an amount not to exceed 25% above or below the applicable base rate or charge for shipments of general commodities weighing 10,000 pounds or more.

(d)-(g) (No change.)

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

Issued in Austin, Texas, on July 9, 1990.

TRD-9006957

Kent Hance  
Chairman  
Railroad Commission of  
Texas

Effective date: July 31, 1990

Proposal publication date: January 16, 1990

For further information, please call: (512) 463-7094

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 123. Respiratory Care Practitioner Certification

###### • 25 TAC §§123.1, 123.2, 123.4-123.10, 123.12-123.14

The Texas Department of Health adopts amendments to §§123.1, 123.2, 123.4-123.10, 123.12 and 123.14. Sections 123.2, 123.7, 123.10, 123.12, and 123.14 are adopted with changes to the proposed text as published in the March 13, 1990, issue of the *Texas Register* (15 TexReg 1369). Sections 123.1, 123.4-123.6, 123.8, 123.9, and 123.13, are adopted without changes and will not be republished.

The amendments bring certain sections into compliance with and further clarify provisions of Texas Civil Statutes, Article 4512I.

The amendments authorize the department to issue two temporary permits valid for six months each not to exceed 12 months, require six hours of continuing education per year rather than 18 hours per three year period, and clarify existing language in other sections. In addition, the amendments authorize the department to refund certain fees if applications and renewals are not processed by the department in specific timeframes in accordance with Texas Civil Statutes, Article 6252-13b.1.

The following comments were received concerning the proposed amendments.

Concerning §123.2, a commenter suggested moving language that sets out criteria for determining medical direction from §123.14(c)(8) to §123.2 relating to definitions. The department agrees and the language has

been moved to the section relating to definitions. In addition, it was recommended that language be added to §123.12(2) relating to Professional and Ethical Standards to further clarify the medical direction requirement and new subparagraph (l) has been added.

Concerning §123.10, a commenter noted that since the continuing education requirement was changing from 18 hours every three years to six hours per year that the continuing education extension should be changed from one year to 90 days. The department agrees and has amended that language.

Concerning §123.10, one commenter suggested adding Neonatal Advanced Life Support and Pediatric Advanced Life Support and programs approved by the Texas Department of Health that relate to respiratory care. Specific reference was made to programs approved by the Bureau of Emergency Management. The department agrees and has amended that language.

Minor grammatical editorial changes were made in §123.7.

All comments were submitted by department personnel and the Respiratory Care Practitioner Advisory Board and there were not any comments against the proposed amendments.

The amendments are adopted under Texas Civil Statutes, Article 4512l, which provides the Texas Department of Health with the authority to establish minimum standards for issuing, renewing, suspending, or revoking any certificate or temporary permit and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Department of Health and the commissioner of health.

*§123.2. Definitions.* The following words and terms when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Act—Texas Civil Statutes, Article 4512l, as amended.

Respiratory care practitioner (R.C.P.)—A person permitted or certified under the Act to practice respiratory care.

Respiratory therapist—A person permitted or certified under the Act to practice respiratory care.

Temporary permit—A permit issued in accordance with §123.7(d) of this title (relating to Types of Certificates, Temporary Permits, and Applicant Eligibility) for a period of six months.

Under the direction—Assuring that established policies are carried out; monitoring and evaluating the quality, safety, and appropriateness of respiratory care services and taking action based on findings; and providing consultation whenever required, particularly on patients receiving continuous ventilatory or oxygenation support.

*§123.7. Types of Certificates and Temporary Permits and Applicant Eligibility.*

(a) (No change.)

(b) Issuance of certificates and permits.

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

(3) Upon receiving the approved applicant's form and fee, the department shall issue the person a certificate or temporary permit and identification card(s) with a certificate or permit number.

(4) If the department does not receive the prorated certificate or temporary permit fee requested within 30 days of the department's second notice of approval, the department may invalidate the application. In order to become permitted or certified, such persons must reapply and shall submit appropriate fees and proof satisfactory to the department, of compliance with all the rules of the board and the provisions of the Act in effect at the time of reapplication.

(c) (No change.)

(d) Applicant eligibility.

(1) Temporary permit. The department shall issue a temporary permit to practice respiratory care to:

(A) an applicant who has applied on the forms prescribed by the department, who has paid the prescribed application fee, who will complete a respiratory care educational program within 30 days of the date of issuance of the permit, and who meets all qualifications for a certificate except taking the written examination prescribed by the department for certification. An applicant may file an application if he or she is within 45 days prior to graduation. A temporary permit is valid for six months from date of issuance by the department. After the applicant passes the examination, as set out in §123.8 of this title (relating to Examination), and pays the prescribed fee, a regular certificate shall be issued and the temporary permit shall become null and void;

(B) an applicant who has applied on the forms prescribed by the department; who has paid the prescribed application fee; who is currently practicing respiratory care or has within the 12-month period immediately preceding the date of the application to the department practiced respiratory care in another state, territory, or country; who holds a valid license or other form of registration to practice respiratory care in that state, territory, or country; who is in good standing in that state, territory, or country and who is not recognized, at the time of application to the department, as a certified respiratory therapy technician or registered respiratory therapist by the National Board for Respiratory Care, Inc. (NBRC). A regular certificate may be issued by the department upon approval of the application and payment of prescribed fees to an applicant who submits evidence,

satisfactory to the department, that he or she has passed the examination, as set out in §123.8 of this title (relating to Examination), and is in good standing with the agency or organization with which they are licensed or registered to practice respiratory care. Applicants for a temporary permit under this paragraph who have not passed the examination, as set out in §123.8 of this title (relating to Examination), shall not be issued a regular certificate; or

(C) an applicant who holds a valid temporary permit pending reexamination who has applied for an extension of the temporary permit on the form prescribed by the department and who has paid the additional prescribed fee. This temporary permit shall expire not more than 12 months from the date of issuance of the original permit. A temporary permit holder is not entitled to an extension if the person has not submitted a certificate of completion from a respiratory care education program in accordance with §123.6(c)(2)(C) of this title (relating to Application Requirements and Procedures). After the applicant passes the examination as set out in §123.8 of this title (relating to Examination) and has paid the prescribed fee, a regular certificate shall be issued and the temporary permit shall become null and void.

(2) Regular certificate. The department shall issue a regular certificate to practice respiratory care to an applicant who has applied on a form prescribed by the department, who has paid the prescribed application fee and who:

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

(C) holds a valid temporary permit and who has passed, prior to the expiration of the temporary permit, the examination as set out in §123.8 of this title (relating to Examination); or

(D) has completed the education requirements as set out in §123.6 of this title (relating to Application Requirements and Procedures) and who has passed the examination as set out in §123.8 of this title (relating to Examination).

(3) Reciprocity. The department shall issue a regular certificate to practice respiratory care to an applicant who is in good standing and holds a valid license or other form of registration to practice respiratory care in another state, territory, or country, whose requirements for licensure or certification were at the time of approval substantially equal to the requirements set forth in the Act and this chapter, and who:

(A) has applied on forms prescribed by the department;

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

(D) has passed the examination, as set out in §123.8 of this title (relating to Examination), with a score equal to or exceeding the pass rate determined by the department at the time the application for certification is submitted to the department;

(E) has submitted satisfactory evidence on a form prescribed by the department that the applicant is currently practicing or has within the 12-month period immediately preceding the date of application to the department practiced respiratory care in the state, territory, or country in which the applicant is licensed or otherwise regulated if the applicant is not recognized, at the time of application to the department, as a certified respiratory therapy technician or registered respiratory therapist; and

(F) (No change.)

**§123.10. Continuing Education Requirements.**

(a) (No change.)

(b) **Deadlines.** Continuing education requirements for renewal shall be fulfilled each renewal year.

(1) The initial period shall begin with the date the department receives the prorated certificate fee and end on the last day of the second birth month occurring after issuance of the certificate.

(2) At the time the certificate is mailed, each practitioner shall be notified of the beginning and ending dates of the continuing education period and shall be provided with continuing education report forms, described in subsection (g) of this section.

(c) Hour requirements for continuing education. A practitioner must complete six clock hours of continuing education acceptable to the department during each renewal year as described in subsection (b) of this section. The requirement to complete six hours per year will become effective on September 1, 1990. All renewals occurring before that date must comply with the 18 hours per three year requirement as described in this chapter prior to the adoption of the six hours per renewal year requirement.

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

(d) Types of acceptable continuing education. Continuing education undertaken by a practitioner for renewal shall be acceptable if the experience falls in one or more of the following categories:

(1) (No change.)

(2) participation in any program

(e.g., in-service educational training programs, institutes, seminars, workshops and conferences) which is:

(A) directly related to the profession of respiratory care;

(B) instructor directed; and

(C) approved by one or more of the following agencies and organizations: the AARC (Category I only), the TSRC, the Texas Thoracic Society, the American Thoracic Society, the American College of Cardiology, the American College of Chest Physicians, the American Society of Anesthesiologists, the Texas Society of Anesthesiologists, the American Medical Association (Category I only), the Texas Medical Association, the American Nurses Association, the Texas Nurses Association, the Texas Department of Health, or the Texas Education Agency; or

(3) (No change.)

(e) (No change.)

(f) Determination of clock hour credits. The department shall credit continuing education experiences as follows.

(1) (No change.)

(2) Parts of programs, activities, workshops, seminars, sessions, etc., which meet the criteria of subsections (d)(1) or (2) of this section shall be credited on a one-for-one basis with one clock hour credit for each clock hour spent in the continuing education activity.

(3) Teaching in programs which meet the department's criteria as set out in subsection (d)(3) of this section shall be credited on the basis of two clock hour credits for each hour actually taught.

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

(7) Passing the advanced cardiac life-support, pediatric advanced life-support, or the neonatal advanced life support course issued by or through the American Heart Association shall be credited on the basis of eight clock hour credits.

(8) (No change.)

(g) (No change.)

(h) Activities unacceptable as continuing education. The department may not grant continuing education credit to any practitioner for:

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

(5) any continuing education activity completed before or after the renewal year for which the continuing education credit is submitted except as allowed under subsection (i)(1) of this section;

(6)-(7) (No change.)

(i) Failure to complete required continuing education.

(1) A practitioner who has failed to complete the requirements for continuing education as specified in subsection (c) of this section may be granted up to a 90-day extension to a reporting period at the time of renewal or reinstatement, but not more than 120 days after the date the practitioner's certificate expired. The 90-day extension is the maximum that may be granted and there will be no exceptions.

(A) (No change.)

(B) If the deficiency is made up prior to the end of the extension, the department will notify the practitioner that the next reporting period commences on the day following the completion of the credits to correct the deficiency. The new reporting period shall end on the next renewal date. In other words, whenever an extension is granted, the time is borrowed from the next reporting period.

(C)-(D) (No change.)

(2) A practitioner who has failed to complete the requirements for continuing education as specified in subsection (c) of this section and who has not renewed the certificate within 120 days of expiration shall return the certificate and identification cards to the department and shall not advertise or represent himself or herself as a respiratory care practitioner in any manner.

(j)-(k) (No change.)

**§123.12. Professional and Ethical Standards.** The purpose of this section shall be to establish the standards of professional and ethical conduct required of a practitioner pursuant to the Act, §11(b)(4).

(1) (No change.)

(2) Relationships with patients/clients.

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

(C) A practitioner shall disclose to patients or clients any interest in commercial enterprises which the practitioner promotes through patients or clients for the purpose of direct or indirect personal gain or profit.

(D)-(H) (No change.)

(I) A practitioner shall practice respiratory care only under the direction of a qualified medical director or other physician licensed by the Texas State Board of Medical Examiners.

**§123.14. Violations, Complaints, and Subsequent Actions.**

(a) (No change.)

(b) Types of offenses and prohibited actions. A person is guilty of a Class B misdemeanor if:

(1)-(10) (No change.)

(c) Disciplinary action. The department, on behalf of the board, shall take disciplinary action if it determines that a person who holds a certificate or permit:

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

(8) has practiced respiratory care other than under the direction of a qualified medical director or other physician licensed by the BME.

(d)-(g) (No change.)

(h) Formal hearing.

(1) (No change.)

(2) The formal hearing shall be conducted according to the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health) or §123.13 of this title (relating to Certifying or Permitting Persons with Criminal Backgrounds to be Respiratory Care Practitioners).

(3) Prior to institution of formal proceedings to revoke or suspend a permit or certificate, the program administrator shall give written notice to the permit or certificate holder by certified mail, return receipt requested, of the facts or conduct alleged to warrant revocation or suspension, and the person shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(4) To initiate formal hearing procedures, the administrator shall give the practitioner written notice of the opportunity for hearing. The notice shall state the basis for the proposed action. Within 10 days after receipt of the notice, the practitioner shall give written notice to the administrator that he or she either waives the hearing or wants the hearing.

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

(i) (No change.)

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

Issued in Austin, Texas, on July 10, 1990.

TRD-9006958 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Effective date: July 31, 1990

Proposal publication date: March 13, 1990

For further information, please call: (512) 458-7631

## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

#### Chapter 3. Tax Administration

##### Subchapter O. State Sales and Use Tax

###### • 34 TAC §3.345

The Comptroller of Public Accounts adopts the repeal of §3.345, without changes to the proposed text as published in the June 8, 1990, issue of the *Texas Register* (15 TexReg 3320).

The sales tax exemption for solar energy devices will be taxable as is other tangible personal property.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

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

Issued in Austin, Texas on July 9, 1990.

TRD-9006927 Bob Bullock  
Comptroller of Public  
Accounts

Effective date: July 30, 1990

Proposal publication date: June 8, 1990

For further information, please call: (512) 463-4004

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 29. Purchased Health Services

##### Subchapter L. General Administration

###### • 40 TAC §29.1126

The Texas Department of Human Services (DHS) adopts an amendment to §29.1126, without changes to the proposed text as published in the May 29, 1990, issue of the *Texas Register* (15 TexReg 2998).

The justification for 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.

The amendment will function by 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.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

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

Issued in Austin, Texas, on July 11, 1990.

TRD-9006998 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Effective date: August 1, 1990

Proposal publication date: May 29, 1990

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

## Subchapter Y. Federally Qualified Health Center Services

### • 40 TAC §§29.2401-29.2404

The Texas Department of Human Services (DHS) adopts new §§29.2401-29.2404. Section 29.2403 is adopted with changes to the proposed text as published in the May 29, 1990, issue of the *Texas Register* (15 TexReg 2998). Sections 29.2401, 29.2402, and 29.2404 are adopted without changes and will not be republished.

The justification for the new sections is to implement payment to Federally qualified health centers (FQHC) for services provided on or after April 1, 1990, as directed by the Omnibus Budget Reconciliation Act of 1989. FQHCs are facilities or programs more commonly known as community health centers, migrant health centers, and health care for the homeless.

The sections will function by providing a larger range of FQHC services to the Medicaid-eligible population. FQHC services include services provided by physicians, physician assistants, nurse practitioners, clinical psychologists, and clinical social workers.

The department held a public hearing on June 21, 1990, in Austin. Testimony was received from one commenter, The Texas Association of Community Health Centers, Inc.

The commenter generally supported the proposed sections, however, two suggestions were made to clarify the language in §29.2403(b) and (g)(9) concerning reimbursement. The department agrees and has revised the text to reflect these changes.

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to



administer public and medical assistance programs.

**§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 or encounter 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 or encounter rate during the FQHC's fiscal year if the FQHC submits data that validates an adjustment of at least 10%.

(c) Except as specified in subsection (g) of this section, DHS or its designee uses the principles described in 42 Code of Federal Regulations (CFR), Part 413 to determine each FQHC's reasonable costs.

(d) FQHCs must submit cost reports/surveys and other data as required by DHS or its designee to verify the FQHC's reasonable costs. DHS or its designee prescribes the format of the cost report/survey. The FQHC must submit the cost report/survey within 90 days of the end of the FQHC's fiscal year or within 45 days of a change in ownership.

(e) DHS or its designee conducts audits of cost reports/surveys provided by FQHCs to determine each FQHC's reasonable costs. DHS or its designee may also conduct on-site audits.

(f) DHS or its designee completes the cost settlement reconciliation process within six months of receipt of a properly completed cost report/survey and notifies the FQHC of the results.

(g) Unallowable costs. Unallowable costs are expenses which are incurred by an FQHC, and which are not directly or indirectly related to the provision of covered services according to applicable laws, rules, and standards. An FQHC may expend funds on unallowable cost items, but those costs must not be included in the cost report/survey, and they are not used in calculating a rate determination. Unallowable costs include, but are not necessarily limited to, the following:

(1) compensation in the form of salaries, benefits, or any form of compensation given to individuals who are not directly or indirectly related to the provision of covered services;

(2) personal expenses not directly related to the provision of covered services;

(3) management fees or indirect costs that are not derived from the actual cost of materials, supplies, or services

necessary for the delivery of covered services, unless the operational need and cost effectiveness can be demonstrated;

(4) advertising expenses other than those for advertising in the telephone directory yellow pages, for employee or contract labor recruitment, and for meeting any statutory or regulatory requirement;

(5) business expenses not directly related to the provision of covered services. For example, expenses associated with the sale or purchase of a business or expenses associated with the sale or purchase of investments;

(6) political contributions;

(7) depreciation and amortization of unallowable costs, including amounts in excess of those resulting from the straight line depreciation method; capitalized lease expenses, less any maintenance expenses, in excess of the actual lease payment; and goodwill or any excess above the actual value of the physical assets at the time of purchase. Regarding the purchase of a business, the depreciable basis will be the lesser of the historical but not depreciated cost to the previous owner, or the purchase price of the assets. Any depreciation in excess of this amount is unallowable;

(8) trade discounts and allowances of all types, including returns, allowances, and refunds, received on purchases of goods or services. These are reductions of costs to which they relate and thus, by reference, are unallowable;

(9) donated facilities, materials, supplies, and services including the values assigned to the services of unpaid workers and volunteers whether directly or indirectly related to covered services, except as permitted in 42 Code of Federal Regulations 413;

(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.

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

Issued in Austin, Texas, on July 11, 1990.

TRD-9006997

Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

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Proposal publication date: May 29, 1990

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

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**Chapter 33. Early and Periodic  
Screening, Diagnosis, and  
Treatment**

**Subchapter I. Periodicity**

The Texas Department of Human Services (DHS) adopts amendments to §§33.122-33.124, 33.131, 33.134, and new 33.132. Sections 33.131 and 33.132 are adopted with changes to the proposed text as published in the May 25, 1990, issue of the *Texas Register* (15 Tex Reg 2905). Sections 33.122-33.124 and 33.134 are adopted without changes and will not be republished.

The justification for the amendments is to clarify and update the sections to conform with the federal mandates in the Omnibus Budget Reconciliation Act of 1989 (OBRA '89).

The sections will function by extending increased amount, duration, and scope of

Medicaid services to EPSDT eligible individuals who are found at an EPSDT medical screening to have conditions in need of diagnosis and/or treatment.

During the public comment period, DHS received written comments from the Texas Department of Health (TDH), the Texas Maternal and Child Health Coalition (TMCHC), Mental Health Association in Texas (MHAT), and Mental Health Association of Tarrant County (two comment letters). The following are comments, recommendations, and DHS responses.

TDH and TMCHC expressed concern that §33.122 did not include changes to the EPSDT medical screening periodicity schedule and, specifically, the adoption of the American Academy of Pediatric (AAP) guidelines. TDH also recommended the use of specific periodicity schedules for categories of recipients who deviate from the norm. Since the AAP guidelines are not mandated, DHS prefers to evaluate changes to the medical periodicity schedule at a later date following consultation with representatives of state medical organizations. TMCHC further questioned the provision of separate periodicity schedules for dental, vision, and hearing services. DHS has a separate periodicity schedule for dental services. Under OBRA '89, vision and hearing screening requirements are defined as diagnosis and treatment for defects in vision and hearing including eyeglasses and hearing aids. These services are already provided on a periodic basis and when medically necessary under the Medicaid program. TMCHC was also concerned about consultation with statewide medical organizations regarding DHS's periodicity schedule. Both the current medical and dental periodicity schedules were developed in consultation with representatives of professional medical and dental organizations.

Both TDH and MHAT questioned why medically necessary "interperiodic screening" services required under OBRA '89 were not addressed in §33.124. Under OBRA '89, "screening" as used in conjunction with "interperiodic" services, relates to medically necessary services required to evaluate and treat suspected physical or mental illnesses or conditions. These types of services are already covered under the Texas Medicaid program. TDH also assumed these services would be handled as an exception to periodicity, while another commenter (TMCHC) indicated that prior authorization for such services was prohibited. DHS does not require prior authorization for such medically necessary services. The exceptions to periodicity are limited to DHS's medical screening periodicity schedule whereby regular health check-ups are encouraged for children at periodic intervals based on the child's age. TDH expressed concern regarding the omission of a definition of medical necessity. The definition is cited in the Texas Administrative Code, Title 40, §43.25.

Both TDH and the MHAT, including the Tarrant County association, suggested the addition of the words "physical and mental" and "comprehensive" to clarify the health and developmental history screening component. TDH further recommended the word "comprehensive" also be used to describe the physical exam. DHS agrees and has added clarifying language to §33.131 accordingly.

TDH recommended that §33.132 include a list of all the services specified in the Social Security Act, §1905(a), so that both clients and providers would know what services are covered and payable under this EPSDT service expansion. The service categories identified in the Social Security Act, §1905(a) lack sufficient detail to compile a comprehensive listing. DHS does not wish to place any arbitrary limitations on Medicaid allowable services prior to consideration on an individual case basis. TMCHC expressed concern that prior authorization will be required in each case. Since OBRA '89 does not prohibit prior authorization, DHS is using this procedure to assure coverage of all allowable services, medical necessity, quality control, retroactive payment capability, timely implementation, and cost-effective service delivery.

TDH recommended that §33.134 address provider qualifications. Upon implementation, provider participation requirements will be made available upon request to DHS's health insuring agent. At this time, DHS does not want to limit participation by prematurely attempting to identify all the newly qualified types of providers that may wish to participate in this EPSDT program expansion. TMCHC also recommended that the rule change clarify that the state cannot limit provider participation by class or number of services. The inclusion of all Medicaid qualified diagnostic and treatment service providers is synonymous with the implementation and provision of the comprehensive care services proposed in §33.132. This commenter also suggested that the rules include a statement concerning DHS's coordination with other child health agencies and programs. DHS is already involved in a broad array of such coordination activities. DHS does not have standardized coordination procedures since this important function must be specific to each individual agency or program.

The title of §33.132 was shortened for clarity.

No testimony was presented at DHS's public hearing on June 11, 1990.

#### • 40 TAC §§33.122-33.124

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

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

Issued in Austin, Texas, on July 11, 1990.

TRD-9006999

Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

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Proposal publication date: May 25, 1990

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

## Subchapter J. Medical Phase

### • 40 TAC §33.131, §33.134

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

**§33.131. Medical Screening Services.** Medical screening services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program to ensure that Medicaid recipients under 21 years of age have continuous preventive health care. The objectives of screening are the early detection of suspected health problems and the referral for definitive diagnosis/treatment if indicated by the screening. The components of medical screening services are:

- (1) comprehensive health and developmental history (including physical and mental);
- (2) comprehensive unclothed physical examination;
- (3) developmental assessment;
- (4) immunizations appropriate for age and health history;
- (5) assessment of nutritional status;
- (6) vision testing;
- (7) hearing testing;
- (8) laboratory tests appropriate to age and risk;
- (9) health education (includes anticipatory guidance);
- (10) referral to a dentist for diagnosis and treatment, for recipients three years old and older.

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

Issued in Austin, Texas, on July 11, 1990.

TRD-9007000

Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

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Proposal publication date: May 25, 1990

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

## Subchapter J. Medical Phase

### • 40 TAC §33.132

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

**§33.132. Medical Diagnosis and Treatment Services.**

(a) The department or its designee will consider payment on an exception basis for any service the department is allowed to provide with Medicaid/Title XIX federal matching funds when required to diagnose or treat a condition identified during an EPSDT medical screening performed on or after April 1, 1990, whether or not the service is currently included in the Title XIX State Plan. Services exceeding the Title XIX State Plan coverage are subject to the following limitations.

(1) Service coverage is determined on an individual basis, requires prior approval for payment by the department or its designee, and is subject to periodic reassessment.

(2) Services must be medically necessary.

(3) Clients must be under age 21 and eligible for Medicaid on the date of service.

(4) Payment for services will be made only to approved providers enrolled in the Texas Medicaid Program.

(b) Reimbursement for EPSDT medical diagnosis and treatment services will be based on existing Medicare and Medicaid fee schedules/profiles.

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

Issued in Austin, Texas, on July 11, 1990.

TRD-9007001 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Effective date: August 1, 1990

Proposal publication date: May 25, 1990

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

**Chapter 48. Community Care for Aged and Disabled**

**Eligibility**

**• 40 TAC §48.2916**

The Texas Department of Human Services (DHS) adopts amendments to §48.2916, without changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register* (15 Tex Reg 3328).

The justification for the amendment is to re-define priorities and time frames for face-to-face contact to align them appropriately with the severity and immediacy of the real or potential harm reported.

The amendments will function by establishing clear priorities for serving individuals with urgent needs.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provide the department with the authority to administer public and medical assistance programs.

**§48.2916. Protective Services Priorities.** Aged and disabled adults receive protective services according to the following priorities.

(1) Priority I—Reports which allege that the victim is in a state of serious harm or is in danger of death from abuse or neglect.

(2) Priority II—Reports which allege that the victim is abused, neglected, or exploited and, as a result, is at risk of serious harm.

(3) Priority III—All other reports which allege that the victim is in a state of abuse or neglect.

(4) Priority IV—Reports which allege exploitation when there is no danger of imminent impoverishment or deprivation of basic needs.

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

Issued in Austin, Texas, on July 11, 1990.

TRD-9006996 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

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Proposal publication date: June 5, 1990

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

**Chapter 49. Child Protective Services**

**Subchapter O. Foster and Adoptive Home Development**

**• 40 TAC §49.1501, §49.1502**

The Texas Department of Human Services adopts amendments to §49.1501 and §49.1502, without changes to the proposed text as published in the January 23, 1990, issue of the *Texas Register* (15 TexReg 325).

The amendments are justified to promote uniformity in the treatment of children in the department's managing conservatorship and to reduce the likelihood of physically abusive discipline.

The amendments will function by establishing a uniform policy regarding discipline of children who are in placement with nonrelatives.

The department received four written comments on the proposed amendments

during the public comment period and three spoken comments at a public hearing on February 12, 1990. The commenters included two individuals and representatives of the following organizations: the Hendrik Home for Children, the National Foster Parents Association, the Sherwood and Myrtie Foster Home for Children, and Texas State Foster Parents, Inc. A summary of the comments and the department's responses follows.

All of the commenters supported the amendments as proposed. Two of the commenters additionally recommended that the department strengthen the proposed policy by prohibiting all physical discipline of children in the department's managing conservatorship. Four of the commenters recommended that the department refrain from prohibiting physical discipline.

Of the commenters who favored prohibiting physical discipline of children in the department's conservatorship, one pointed out that each of the department's regional offices already prohibits physical discipline in its region. The commenter noted that the department offers, to foster parents, training in alternative forms of discipline; and the commenter added that a statewide prohibition would help to shelter foster parents from accusations of abuse. The commenter encouraged the department to offer liability insurance to foster parents if the department decides not to prohibit physical discipline statewide. In conclusion, the commenter stated that, when children have a history of abuse or neglect, physical discipline reinforces the damaging experiences of their past.

The other commenter who recommended prohibiting physical discipline did so for several reasons. The commenter argued that it is unfair for "big people" to strike "little people," that it is inappropriate for language-speakers to rely on a nonverbal form of discipline, and that it is wrong to deliberately inflict pain. The commenter cited a study by Ralph S. Welch, Ph.D., who found that nearly all the youths he evaluated on behalf of a Connecticut juvenile court over an 10-year period had been struck with a belt or its equivalent in their formative years. Dr. Welch's study concluded that severe parental punishment is probably the single most significant predictor of delinquency that has been found. The commenter also cited a 1989 study by the United States Children's Bureau which found that licensing requirements in 39 states prohibit corporal punishment. Finally, the commenter attached two supporting documents: a statement by the San Diego County, California, Department of Social Services that defends California's prohibition of physical discipline of children in foster care; and a National Foster Parent Association resolution that urges the universal abolition of corporal punishment of children.

Of the commenters who opposed prohibiting physical discipline of children in the department's conservatorship, one stated that the responsibility for deciding on appropriate forms of discipline should rest with the caregiver rather than with the state.

Another commenter opposed a prohibition on the grounds that it would unrealistically tie the hands of foster parents. The commenter added that spankings can be administered in

love and that they can help to establish boundaries. Finally, the commenter noted that prohibiting the spanking of foster children would create a stressful dual-discipline policy in foster families in which the parents spank their natural children.

Another commenter opposed a ban on physical discipline as unrealistic, impractical, and unbiblical. The commenter stated that discipline should be based on individual needs rather than on a blanket policy.

Another commenter supported the proposed amendments because they standardize the department's policies for discipline of children in conservatorship. The same commenter appeared to oppose prohibiting physical discipline on the grounds that discipline problems are the cause of more than 50% of the breakdowns in foster home placements.

All of the comments-pro and con-addressed the question of whether or not to prohibit physical discipline of children in the department's managing conservatorship. This issue is not directly raised in the proposed amendments. Accordingly, the department is not revising the proposed amendments in response to the comments. However, the department will take the comments into account in its future considerations of discipline policies for children in conservatorship.

The amendments are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs, and Chapter 41, which authorizes the department to enforce laws for the protection of children. The amendments are

also proposed under the Texas Family Code, Title 2, which authorizes the department to enforce laws and regulations governing the parent-child relationship.

Issued in Austin, Texas, on July 9, 1990.

TRD-9006917

Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Effective date: August 15, 1990

Proposal publication date: January 23, 1990

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

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# Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

**Emergency meetings and agendas.** Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

## Texas Department of Agriculture

**Tuesday, July 24, 1990, 10 a.m.** The Texas Department of Agriculture will meet at the Texas Department of Agriculture District Office, Expressway 83, 2 Blocks West of Morningside Road, San Juan. According to the complete agenda, the department will conduct an administrative hearing to review alleged violation of Texas Agriculture Code Annotated, Section 103.001, et. seq. by Ruiz Produce as petitioned by Travis Keith Venable.

**Contact:** Bruce B. Fant, P.O. Box 12847, Austin, Texas 78711, (512) 463-7589.

**Filed:** July 11, 1990, 10:16 a.m.

TRD-9007011

**Tuesday July 24, 1990, 1 p.m.** The Texas Department of Agriculture will meet at the Texas Department of Agriculture District Office, Expressway 83, 2 Blocks West of Morningside Road, San Juan. According to the complete agenda, the department will conduct an administrative hearing to review alleged violation of Texas Agriculture Code Annotated Section 103.001, et. seq. by Rio Grande Foods, Inc., as petitioned by Gregorio Torres.

**Contact:** Bruce B. Fant, P.O. Box 12847, Austin, Texas 78711, (512) 463-7589.

**Filed:** July 11, 1990, 10:16 a.m.

TRD-9007010

**Tuesday, July 31, 1990, 10 a.m.** Texas Department of Agriculture will meet at the Texas Department of Agriculture District Office, 122 Heiman Street, First Floor, San Antonio. According to the complete agenda, the department will conduct an administrative hearing to review alleged violation of Texas Agriculture Code Annotated Section 103.001 et. seq. by Bomer Produce Company as petitioned by River City Produce Company, Inc.

**Contact:** Bruce B. Fant, P.O. Box 12847, Austin, Texas 78711, (512) 463-7589.

**Filed:** July 11, 1990, 10:16 a.m.

TRD-9007009

**Thursday, September 6, 1990, 1 p.m.** The Texas Department of Agriculture will meet at the Texas Department of Agriculture District Office, #2 Civic Center Plaza, Sixth Floor, El Paso. According to the complete agenda, the department will conduct an administrative hearing to review alleged violations of Texas Agriculture Code and/or Title IV of the Texas Administrative Code by Travis Lee Perkins, holder of commercial applicator license.

**Contact:** Chris Hanger, P.O. Box 12847, Austin, Texas 78711, (512) 463-7703.

**Filed:** July 11, 1990, 10:16 a.m.

TRD-9007008

## Texas Alcoholic Beverage Commission

**Thursday, July 26, 1990, 4:30 p.m.** The Texas Alcoholic Beverage Commission will meet at the Jefferson Building, 1600 West 38th Street, Room 320, Austin. According to the complete agenda, the commission will approve minutes of June 25, 1990, meeting; discuss administrator's and staffs' report of agency activity; and approve affidavit of destruction of tested alcoholic beverages.

**Contact:** W. S. McBeath, P.O. Box 13127, Capitol Station, Austin, Texas 78711, (512) 458-2500.

**Filed:** July 10, 1990, 10:51 a.m.

TRD-9006953

## Bond Review Board

**Friday, July 13, 1990, 10 a.m.** The Staff Planning Meeting of the Bond Review Board met at the State Capitol, Sergeant's Committee Room, Austin. According to the emergency revised agenda summary, the board added application of Texas Water Commission-lease-purchase of computer hardware and software; and (Correction) Discussion of proposed rules for public school facilities funding program (Act). The emergency status was necessary because

late request for review of application submitted by the Texas Water Commission was granted.

**Contact:** Tom K. Pollard, 506 Sam Houston Building, 201 East 14th Street, Austin, Texas 78701, (512) 463-1741.

**Filed:** July 11, 1990, 4:21 p.m.

TRD-9007037

**Thursday, July 19, 1990, 2 p.m.** The Bond Review Board will meet at the State Capitol, Sergeant's Committee Room, Austin. According to the complete agenda, the board will approve minutes; consider application of Veterans Land Board-Series 1990; application of Texas Water Commission-lease-purchase of computer hardware and software; and consideration of proposed rules for public school facilities funding program; executive session: evaluation of executive director; and consideration of legislative appropriation request for board.

**Contact:** Tom K. Pollard, 506 Sam Houston Building, 201 East 14th Street, Austin, Texas 78701, (512) 463-1741.

**Filed:** July 11, 1990, 4:21 p.m.

TRD-9007038

## Court Reporters Certification Board

**Saturday, July 21, 1990, 9 a.m.** The Court Reporters Certification Board will meet in the Board Room, #104, Texas Law Center, 14th and Colorado Street, Austin. According to the complete agenda, the board will conduct a disciplinary hearing in Cause Number 90092502; hold a petition for reconsideration, file number 4029; review the duties of Assistant Attorney General in executive session; conduct a preliminary review in Cause Number 90138804; consider certification eligibility of file number 4610; consider status of applicant convicted of a criminal offense; consider proposed revision of application form; consider standing authorization request; review terms of board members expiring December 31, 1990; consider exam

and meeting dates for fiscal years 1992 and 1993; proposed operating budget for fiscal year 1991; review current expenditures; consider minutes from January 27, 1990 meeting; consider statistical information from January and April exams; and any other business that may come before the board.

Contact: Peg Liedtke, 510 South Congress Avenue, Suite 310, Austin, Texas 78704, (512) 463-1630.

Filed: July 11, 1990, 10:57 a.m.

TRD-9007017

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**Texas State Board of  
Examiners of Dietitians**

**Thursday, July 19, 1990, 3:30 p.m.** The Rules Committee of the Texas State Board of Examiners of Dietitians will meet at the Holiday Inn, 1503 Texas Avenue South, College Station. According to the agenda summary, the rules committee will consider and approve corrections or changes to proposed rules (22 TAC S. 711-1. 711.15); and set next meeting date.

Contact: Becky Berryhill, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7501.

Filed: July 10, 1990, 4:10 p.m.

TRD-9006981

**Friday, July 20, 1990, 10 a.m.** The Texas State Board of Examiners of Dietitians will meet at Texas A&M University Memorial Student Center, College Station. According to the agenda summary, the board will approve agenda; minutes of previous meeting; consider and possibly act on chairman's report; executive secretary's report (ratification of applications approved by executive secretary; preplanned experience programs; financial; filing systems); committee reports (proposed amendments to 22 TAC'S. 711.1-711.15; proposed detail of a renewal application; program approval; consumer information); applications for licensure, provisional licensure, and examination eligibility; 1990 CLEAR conference; 1990 ADA licensure meeting; elect vice-chair; approve standing committee appointments; present certificate; announcements and comments requiring no board action; and set next meeting date.

Contact: Becky Berryhill, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7501.

Filed: July 10, 1990, 4:08 p.m.

TRD-9006980

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**Texas Education Agency**

**Thursday, July 19, 1990, 9:30 a.m.** The Commission on Standards for the Teaching Profession-Committee on Recruiting and

Training Members of Visiting Teams and Committee on Standards and Procedures for Institutional Approval of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-110 and 1-104, Austin. According to the complete agenda, the committee will conduct a work session on visiting team policies and procedures (all commission members are invited).

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: July 11, 1990, 4:12 p.m.

TRD-9007036

**Thursday, July 19, 1990, 1 p.m.** The Commission on Standards for the Teaching Profession-Committee on Standards and Procedures for Institutional Approval of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-110, Austin. According to the complete agenda, the committee will review progress report on pilot program in English as a second language from Corpus Christi State University; discussion of letter regarding student teaching requirements.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: July 11, 1990, 4:12 p.m.

TRD-9007040

**Thursday, July 19, 1990, 2 p.m.** The Commission on Standards for the Teaching Profession-Committee on Certification Programs and Requirements of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-110, Austin. According to the agenda summary, the committee will review and discuss institutional programs (1987 standards); individual programs (1987 standards); report on certification testing; discussion of letter regarding national examinations for associate and school psychologists.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: July 11, 1990, 4:12 p.m.

TRD-9007039

**Thursday, July 19, 1990, 3:30 p.m.** The Commission on Standards for the Teaching Profession-Teacher Education Conference Planning Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-110, Austin. According to the complete agenda, the committee will discuss program for 43rd annual conference.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: July 11, 1990, 4:12 p.m.

TRD-9007041

**Friday, July 20, 1990, 8:10 a.m.** The Commission on Standards for the Teaching Profession-Executive of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-110, Austin. According to the complete agenda, the committee will review agenda items with committee chairmen.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: July 11, 1990, 4:12 p.m.

TRD-9007042

**Friday, July 20, 1990, 9 a.m.** The Commission on Standards for the Teaching Profession of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the agenda summary, the commission will review and discuss report on State Board of Education actions; report on legislative actions; report on work session on visiting team policies and procedures; progress report on pilot program in English as a second language; discussion of letter regarding student teaching requirements; institutional programs (1987 standards); individual programs (1987 standards); report on certification testing; discussion of letter regarding national examinations for associate and school psychologists; discussion of 43rd annual teacher education conference.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: July 11, 1990, 4:12 p.m.

TRD-9007035

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**Employees Retirement System of Texas**

**Tuesday, July 24, 1990, 8:30 a.m.** The Board of Trustees of the Employees Retirement System of Texas will meet at the Employees Retirement System Building Auditorium, 18th and Brazos Streets, Austin. According to the agenda summary, the board will approve minutes; review appeals of contested cases; consider/act on investment advisory committee appointment; certification to state comptroller/state treasurer of estimated state contribution amounts for retirement/insurance for fiscal year ending August 31, 1991; group insurance advisory committee appointment; final adoption of amendments to trustee rules 81. 3(d), 81.5(j), and 81.7(i); final adoption of amended trustee rules governing flexible benefits (cafeteria plan) program; proposed operating budget for fiscal year ending August 31, 1991; consider/act on trustee election process recommendations; acting executive director's report; executive session;

action resulting from executive session; and next trustee meeting date.

Contact: William S. Nail, 18th and Brazos Street, Austin, Texas 78701, (512) 476-6431.

Filed: July 11, 1990, 4:17 p.m.

TRD-9007034

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**State Firemen's and Fire Marshals' Association of Texas**

**Saturday, July 21, 1990, 1 p.m.** The Emergency Funding Board of the State Firemen's and Fire Marshals' Association of Texas will meet at the Industrial Classroom, Brayton Fireman's Training Field, Texas A&M campus, College Station. According to the complete agenda, the board will elect vice-chairman; appoint secretary; report for executive director, qualifications committee, and board action; report for executive director, applications committee, and board action; adopt seal; Bruce Miles TFS; Tom Foster TAMN; and other.

Contact: Neta Richardson, P.O. Box 13326, Austin, Texas 78711, (512) 441-7388.

Filed: July 11, 1990, 9:32 a.m.

TRD-9007003

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**Texas Health and Human Services Coordinating Council**

**Thursday, July 19, 1990, 3 p.m.** The Project Child Save Task Force of the Texas Health and Human Services Coordinating Council will meet at the Texas Department of Health, Room M653, 1100 West 49th Street, Austin. According to the complete agenda, the committee will review and approve statement of purpose for the Project Child Save Task Force; review of Project child save, targeted communities/cities; timelines for work product completion; subcommittee work plan revisions; old business; and new business.

Contact: Louis Worley, 311-A East 14th Street, Austin, Texas 78701, (512) 436-2195.

Filed: July 11, 1990, 12:40 p.m.

TRD-9007018

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**Lamar University System**

**Thursday, July 19, 1990, 3 p.m.** The Liaison Committee of the Lamar University System Board of Regents will meet at the Lamar University Port Arthur Campus, Monroe Building, 1520 Procter Street, Port

Arthur. According to the agenda summary, the committee will introduce new and former members; chairman's update, welcome and overview; open forum; and selection of future agenda items.

Contact: George McLaughlin, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: July 11, 1990, 2:11 p.m.

TRD-9007031

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**Texas Commission on Law Enforcement Officer Standards and Education**

**Thursday, July 26, 1990, 9 a.m.** The Design Committee of the Texas Peace Officers' Memorial Advisory Committee of the Texas Commission on Law Enforcement Officer Standards and Education will meet at the Doubletree Hotel, 6505 North IH-35, Austin. According to the complete agenda, the committee will recognize visitors; roll call of members; approve minutes of the June 29, 1990 design subcommittee meeting; report from Jim Pfluger, Advisory Architect; and discussion and action on Mr. Pfluger's report.

Contact: Tommy Honeycutt, 1606 Headway Circle, Suite 100, Austin, Texas 78754, (512) 834-9222.

Filed: July 11, 1990, 9:12 a.m.

TRD-9006987

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**Texas State Board of Medical Examiners**

**Saturday, July 28, 1990, 8 a.m.** The Ad Hoc Committee on HB 18 of the Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the committee will discuss rules regarding House Bill 18; executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1), and Op. A. G. 1974, Number H-484.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: July 10, 1990, 1:51 p.m.

TRD-9006964

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**Texas Board of Licensure for Nursing Home Administrators**

**Wednesday, July 18, 1990, 11 a.m.** The Texas Board of Licensure for Nursing Home Administrators will meet at 4800 North Lamar Boulevard, Suite 310, Austin. According to the complete agenda, the

board will approve agenda; approve April 18, 1990, minutes; discuss personal appearances; education committee report, Executive LAR Committee Report; ex officio reports (TDH, DHS, TDoA), executive director's report and disciplinary actions: Charles Moore, #6119, and Jimmie Moore, #4020, and chair's report.

Contact: Janet McNutt, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756, (512) 458-1955.

Filed: July 5, 1990, 10:48 a.m.

TRD-9006771

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*(Editor's note: The Board of Nurse Examiners open meetings were published in the July 13, 1990, issue out of sequence, therefore they are being republished correctly.)*

**Texas Board of Nurse Examiners**

**Monday, July 23, 1990, 3:30 p.m.** The Operations Committee of the Texas Board of Nurse Examiners will meet at 9101 Burnet Road, Suite 104, Austin. According to the agenda summary, the committee will receive the minutes from the May 14 and 15, 1990 meeting; receive financial reports for May and June 1990, Legislative Appropriations Request for 1992-93 and discuss strategic planning and committee structure.

Contact: Louise Waddill, R.N., Ph.D., P.O. Box 140466, Austin, Texas 78714, (512) 835-8650.

Filed: July 6, 1990, 2:03 p.m.

TRD-9006872

**Tuesday, July 24, 1990, 8:30 a.m.** The Practice Committee of the Texas Board of Nurse Examiners will meet at the Red Lion Hotel, 6121 North IH-35 at Highway 290, Austin. According to the agenda summary, the committee will receive the minutes from the May 15, 1990 meeting; minutes of the July 13, 1990 ANP Committee meeting; receive information on the status of the prescriptive drug orders which includes the progress being made by the Medical Board, an update on approval of ANP applicants and a report of the TDH Advisory Committee on HB 18; receive information on the Task Force on Foreign Nurse Graduates; consider criteria for refresher courses; and updates on the speaking tour of Texas workshop, status of the continuing education advisory committee and consider a petition to accept Arkansas ANP programs.

Contact: Louise Waddill, R.N., Ph.D., P.O. Box 140466, Austin, Texas 78714, (512) 835-8650.

Filed: July 6, 1990, 2:04 p.m.

TRD-9006871

**Tuesday, July 24, 1990, 9:30 a.m.** The Education Committee of the Texas Board of Nurse Examiners will meet at the Red Lion Hotel, 6121, North IH-35 at Highway 290, Austin. According to the agenda summary, the committee will receive the minutes from the May 15, 1990 meeting; reports from three survey visits; consider time line for tactical objectives and action plans; receive information regarding the evaluations of survey visits, faculty petitions, and the survey visit schedule for academic year 1990-91. The board will hold public hearings on July 24, 1990 for the following: at 10 a.m. to consider the request of The University of Texas Health Science Center at Houston to establish a generic MSN program; at 10:15 a.m. to consider the request of Victoria College to establish an extended campus at Seguin, ADN program; and at 10:30 a.m. to consider the request of Amarillo College, ADN program to establish an extended campus at Vernon.

**Contact:** Louise Waddill, R.N., Ph.D., P.O. Box 140466, Austin, Texas 78714, (512) 835-8650.

**Filed:** July 6, 1990, 2:04 p.m.

TRD-9006870

**Tuesday-Thursday, July 24-26, 1990, 8 a.m.** The Board of Nurse Examiners will meet at the Red Lion Hotel, 6121 North IH-35 at Highway 290, Austin. The board will consider the minutes of the May 15-17, 1990 meeting; hold an open forum on July 24, 1990 at 1:30 p.m. to receive input from interested parties; consider possible action on disciplinary hearings and other action as recommended by the executive director in relation to hearings and consider seven reinstatement requests. The board will receive reports from various committees; consider adoption of peer assistance rule change; and receive reports from three meetings/conventions attended by staff.

**Contact:** Louise Waddill, R.N., Ph.D., P.O. Box 140466, Austin, Texas 78714, (512) 835-8650.

**Filed:** July 6, 1990, 2:03 p.m.

TRD-9006873

## Texas Parks and Wildlife Department

**Thursday, July 19, 1990, 3 p.m.** The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet at the A. E. Wood State Fish Hatchery, Staples Road, San Marcos. According to the agenda summary, the commission will discuss fish and wildlife concerns common to the two states such as: size and bag limits of fish; consistent fishing regulations in waters bordering the two states; red snapper, shrimp, and shark regulations; cooperative wildlife programs; administrative issues such as licenses; a Texas report on the freeze last winter on the

coast and the economic impacts on the fishery; and questions from the public.

**Contact:** Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

**Filed:** July 11, 1990, 12:15 p.m.

TRD-9007020

## Texas State Board of Pharmacy

**Wednesday-Friday, July 18-20, 1990, Wednesday 1 p.m., Thursday-Friday, 9 a.m.** The Texas State Board of Pharmacy will meet at the Barton Creek Conference Center, 8212 Barton Club Drive, Austin. According to the complete agenda summary, the board will consider approval of minutes of April 18, 1990 business meeting; review and approve the FY91-94 strategic plan; FY1991 goals and objectives, TPA impaired pharmacist program contract for FY1991; hearing officer contract for FY1991, ACPE approved college of pharmacy programs; Texas colleges of pharmacy internship programs; hear a presentation on the results of the consumer/pharmacist survey; discuss the FY1993 Sunset Advisory Comm. review, upcoming meetings; issues for 72nd legislative session, pharmacy sales of syringes, board policy regarding procedures for pharmacist name change; hear fiscal reports, report on status of FY1992-1993 budget request, hear reports on TPA's 111th annual meeting; consider for final adoption rules 281.24, 281.24(a) (28), 281.33, 281.51, 291.31-36, 291.71-76; consider proposed rules 291.31, 291.34, and 309.3 relating to FAXed Rx drug orders; elect FY91 officers; consider and act on proposed agreed board orders; consider a motion for rehearing; executive session to discuss pending litigation and personnel matters; and update on board's liability insurance.

**Contact:** Fred S. Brinkley, Jr., 8505 Cross Park Drive, #110, Austin, Texas 78754, (512) 832-0661.

**Filed:** July 10, 1990, 11:43 a.m.

TRD-9006954

## Texas State Board of Accountancy

**Thursday, July 12, 1990, 10 a.m.** The Quality Review Committee of the Texas State Board of Public Accountancy met in an emergency meeting, (rescheduled from July 13 1990, at 10 a.m.) at 1033 La Posada, Suite 340, Austin. According to the complete agenda, the committee reviewed possible substantive rules for quality review program. The emergency meeting was necessary as this was the only date that all committee members could meet.

**Contact:** Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

**Filed:** July 11, 1990, 1:43 p.m.

TRD-9007025

**Monday, July 23, 1990, 8:30 a.m.** The Examination Committee of the Texas State Board of Public Accountancy will meet at 1033 La Posada, Suite 340, Austin. According to the agenda summary, the committee will review information relating to the May, 1990 examination, November, 1990 examination, to future examinations, and to reformatting the CPA exam; consideration of recommended amendments to the Public Accountancy Act of 1979 as amended in 1989; report on comparison of Austin site exam scores; review of internal staff audit of the November, 1989 and May, 1990 examinations; review of accounting course requirements of other boards of accountancy; review of board records of candidates who have not sat for the examination within the past 10 years; correspondence; and other.

**Contact:** Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

**Filed:** July 11, 1990, 10:58 a.m.

TRD-9007016

## Public Utility Commission of Texas

**Wednesday, July 18, 1990, 9 a.m.** The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda summary, the commission will consider the following dockets and projects: 8771, 9004, 8660, 8684, and 8719, 8900, 8374, 9099, and P9589.

**Contact:** Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** July 10, 1990, 3:05 p.m.

TRD-9006962

**Wednesday, July 18, 1990, 1 p.m.** The Administrative of the Public Utility Commission will meet for an administrative meeting at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda summary, the commission will discuss reports; discussion and action on budget and fiscal matters including a discussion of first submission appropriation assumptions; progress report on dual-party relay service; report on earnings monitoring reports for calendar year 1989; adjournment for executive session to consider litigation and personnel matters; reconvene for discussions and decisions on matters considered in executive session; and set time and place for next meeting.



**Contact:** Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** July 10, 1990, 3:05 p.m.

TRD-9006963

**Friday, July 20, 1990, 1:30 p.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a hearing on the merits in docket 8783; complaint of Hilltop Lakes Resort City against Navasota Valley Electric Cooperative, Inc., concerning line extension charges.

**Contact:** Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** July 11, 1990, 3:22 p.m.

TRD-9007027

**Wednesday, August 1, 1990, 3 p.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a prehearing conference on Docket Number 9571, to hear Tarrant County Water Control and Improvement District Number 1 complaint against Navarro County Electric Cooperative, Inc., and Brazos Electric Power Cooperative, Inc.

**Contact:** Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** July 11, 1990, 3:21 p.m.

TRD-9007030

**Friday, August 17, 1990, 1 p.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a prehearing conference on Docket Number 9476, to review application of Southwest Arkansas Telephone Cooperative, Inc. for exemption from filing the earnings reports required by Public Utility Commission Substantive Rule 23.11 and 23.12.

**Contact:** Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** July 11, 1990, 3:21 p.m.

TRD-9007029

**Friday, August 17, 1990, 3 p.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800

Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a prehearing conference on Docket Number 9471, to review application E.N.M.R. Telephone Cooperative, Inc. for exemption from filing the earnings reports required by Public Utility Commission Substantive Rule 23.11 and 23.12.

**Contact:** Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** July 11, 1990, 3:21 p.m.

TRD-9007028

**Monday, September 17, 1990, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a hearing on the merits in Docket Number 9496, to review and discuss request of Mobil Producing Texas and New Mexico, Inc. for investigation of the uses and proposed uses of reimbursed funds by Brazos Electric Power Cooperative, Inc.

**Contact:** Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** July 11, 1990, 3:22 p.m.

TRD-9007026

### Texas Racing Commission

**Monday, July 23, 1990, 10:30 a.m.** The Greyhound Racing Section of the Texas Racing Commission will meet at the Wyndham Hotel, Corpus Christi Ballroom A, 900 North Shoreline Drive, Corpus Christi. According to the agenda summary, the section will meet to consider and vote on the renewal license application of Corpus Christi Greyhound Park in Nueces County; discuss issues relating to kennel contracts for Valley Greyhound Park and Corpus Christi Greyhound Park; consider and vote on motions filed by Lone Star Greyhound Park in Galveston County; old business; and new business.

**Contact:** Paula Cochran Carter, P.O. Box 12080, Austin, Texas 78711, (512) 476-7223.

**Filed:** July 11, 1990, 2:32

TRD-9007022

### Texas Rehabilitation Commission

**Thursday, July 19, 1990, 9:30 a.m.** The Texas Planning Council for Developmental Disabilities Planning and Evaluation Committee of the Texas Rehabilitation will meet at the Texas Rehabilitation Commission, Room 4240, Fourth Floor, 4900 North

Lamar Boulevard, Austin. According to the complete agenda, the committee will approve April 26-27, 1990 summary report; review FY 1991 funding activities; review of grant application and proposal review process; request by United Cerebral Palsy-TX to modify intent of supported living grant; executive director's report; discussion on children aging out of state conservatorship; and public comments.

**Contact:** Roger A. Webb, 4900 North Lamar Boulevard, Austin, Texas 78751-2316, (512) 483-4081.

**Filed:** July 11, 1990, 4:10 p.m.

TRD-9007033

**Friday, July 20, 1990, 8:30 a.m.** The Texas Planning Council for Developmental Disabilities Executive Committee of the Texas Rehabilitation Commission will meet at the Texas Rehabilitation Commission, Room 4240, 4900 North Lamar Boulevard, Austin. According to the complete agenda, the committee will approve summary report of May 17-18, 1990; hear chairman's report; executive director's report; review of consumer stipends RFP applications; review of policy (bylaws) revisions; budget status review; and discussion of coffee/beverages at council meetings.

**Contact:** Roger A. Webb, 4900 North Lamar Boulevard, Austin, Texas 78751-2316, (512) 483-4081.

**Filed:** July 11, 1990, 4:10 p.m.

TRD-9007032

### Interagency Council on Sex Offender Treatment

**Friday, July 20, 1990, 1 p.m.** The Board of the Interagency Council on Sex Offender Treatment will meet at 2015 South IH-35, Austin. According to the agenda, the board will approve minutes of May 11, 1990; report by executive director; discuss and approve grievance procedure; discussion and approval of method of expenditure of Council appropriation; cost benefit study; treatment provider registry criteria; biennial report to legislature; discussion and approval of public opinion survey; and public comment.

**Contact:** Bill Bownds, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-5146.

**Filed:** July 10, 1990, 4:13 p.m.

TRD-9006982

### University of Texas Health Science Center at San Antonio

**Wednesday, July 18, 1990, 3 p.m.** The Institutional Animal Care and Use Commit-

tee of the University of Texas Health Science Center at San Antonio will meet at the Dental Dean's Conference Room 4.320R, 7703 Floyd Curl Drive, San Antonio. According to the agenda summary, the committee will approve minutes; protocols for review; discuss subcommittee reports; and other business.

Contact: Molly Greene, 7703 Floyd Curl Drive, San Antonio, Texas 78284-7722, (512) 567-3717.

Filed: July 10, 1990, 4:23 p.m.

TRD-9006983

### Texas Southern University

Tuesday, July 17, 1990, 12 p.m. The Board of Regents of Texas Southern University will meet at Texas Southern University Library, 5th Floor, Houston. According to the complete agenda, the board will consider personnel matters.

Contact: Mr. Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: July 11, 1990, 8:49 a.m.

TRD-9006986

### Texas State Treasury Department

Friday, July 27, 1990, 1:30 p.m. The TexPool Advisory Board of the Texas State Treasury Department will meet at the State Treasury, 2028 East Ben White Boulevard, Fourth Floor Conference Room, Austin. According to the complete agenda, the board will discuss operations report; investment report; FY 1991 budget; review participant survey; discuss fall conference; audit update; program development-system and enrollment; and other new business.

Contact: Richard Scott, P.O. Box 12608, Austin, Texas 78711, (512) 440-4744.

Filed: July 11, 1990, 9:43 a.m.

TRD-9007006

### Texas Water Commission

Wednesday, August 8, 1990, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress, Room 118, Austin. According to the complete agenda, the commission will consider application by Jay D. and Deborah Mills, application number 5295 for a water use permit to divert and use 100 acre-feet of water per annum from a dam and reservoir (Number 1) on Crockett Creek, tributary of Indian Camp Creek, tributary of Richardson Creek, tributary of the Paluxy River, tributary of the Brazos River, Brazos River Basin and 100 acre-feet of water per

annum from a dam and reservoir (Number 2) on Richardson Creek in Erath County, northeast of Stephenville.

Contact: Terry Slade, P.O. Box 13087, Austin, Texas 78711, (512) 371-6386.

Filed: July 10, 1990, 1:17 p.m.

TRD-9006955

July 11, 1990, 11:30 p.m. The Texas Water Commission met at the Stephen F. Austin Building, Room 118, Austin. According to the agenda summary, the commission met in emergency meeting and considered actions needed to be taken pursuant to Texas Water Code §12.081; and Texas laws 1987, chapter 629, to assure proper management of Edwards Underground Aquifer water resources during the current hydro-geologic and climate conditions. The emergency meeting was necessary due to current conditions of the Edwards Aquifer that presents an imminent threat to public health and the environment due to concerns about impacts on public water supply.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: July 11, 1990, 9:39 a.m.

TRD-9007007

Wednesday, August 29, 1990, 9 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Longview City Hall, Council Chambers, 300 West Cotton, Longview. According to the agenda summary, the examiner will review application by Virdell W. Johnson for renewal of Permit number 12893-01 authorizing discharge of treated domestic wastewater effluent into an unnamed creek; thence to Mason Creek; thence to the Sabine River in Segment Number 0505 of the Sabine River Basin.

Contact: Bill Zukauckas, P.O. Box 13087, Capitol Station, Austin, Texas 78711, (512) 463-7875.

Filed: July 11, 1990, 3:45 p.m.

TRD-9007044

Wednesday, September 19, 1990, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the complete agenda, the committee will review application by S R S Farms, a partnership, Application Number 5300, for an 11. 121 water use permit to divert and use water from the North Floodway Pilot Channel, tributary of Laguna Madre in the Nueces-Rio Grande Coastal Basin for irrigation of 50 acres in Hidalgo County, 20 miles east of Edinburg.

Contact: Pete Hawthorne, P.O. Box 13087, Austin, Texas 78711, (512) 371-6388.

Filed: July 11, 1990, 3:46 p.m.

TRD-9007043

### Texas Water Resources Finance Authority

Thursday, July 19, 1990, 9 a.m. The Texas Water Resources Finance Authority will meet at the Adams Street Community Center, 511 East Adams Street, Brownwood. According to the complete agenda, the authority will elect officers as needed to fill the positions of chairman and secretary/treasurer, vacated by the expiration of the terms of two former members; consider approval of the minutes of the regular meeting of January 18, 1990; and consider adoption of the budget for the Texas Water Resources Finance Authority for payment of expenses incurred from August 16, 1990, through February 15, 1991.

Contact: G. E. Kretzschmar, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: July 10, 1990, 2:15 p.m.

TRD-9006960

### Texas Water Development Board

Thursday, July 19, 1990, 9 a.m. The Texas Water Development Board will meet at the Adams Street Community Center, 511 East Adams Street, Brownwood. According to the agenda summary, the board will consider minutes; Stuart Coleman resolution; Development fund Manager's report; commitment extensions for cities of Blossom, El Paso, Reno, Blum, Denver City, Runge, Bellaire, Clyde, Devine, Laredo, and Mount Pleasant, Greater Texoma Utility Authority, Victoria County WC&ID #2, Upper Trinity Regional Water District and North Channel Water Authority; renegotiating San Jacinto River Authority's price to purchase Lake Conroe; financial assistance for cities of Barlett, Brady, and Starr county WC&ID #2; increase to IAC with Texas Department of Health; proposal from Colorado River MWD; facility engineering application from city of Mission; adoption of new rule 31 TAC §363.5; relocation of board offices; and release of draft revision of state water plan.

Contact: G. E. Kretzschmar, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: July 10, 1990, 2:15 p.m.

TRD-9006961

### Regional Meetings

#### Meetings Filed July 10, 1990

The Bastrop County Appraisal District Appraisal Review Board will meet at the Bastrop County Appraisal District, 1200 Cedar Street, Bastrop, July 28, 1990, at

8:30 a.m. Information may be obtained from Lorraine Perry, P.O. Box 578, Bastrop, Texas 78602, (512) 321-3925.

The Brazos River Authority Board of Directors met at 4400 Cobbs Drive, Waco, July 16, 1990, at 9 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441.

The Deep East Texas Regional Mental Health Mental Retardation Services Board of Trustees will meet at the Ward R. Burke Community Room-Administration Facility, 4101 South Medford Drive, Lufkin, July 17, 1990, at 3:30 p.m. Information may be obtained from Sandy Varn, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141.

The Deep East Texas Regional Mental Health Mental Retardation Services Board of Trustees will meet at the Ward R. Burke Community Room-Administration Facility, 4101 South Medford Drive, Lufkin, July 17, 1990, at 3:30 p.m. Information may be obtained from Sandy Varn, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141.

TRD-9006952

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Meetings Filed July 11, 1990

The Bastrop County Appraisal District Appraisal Review Board will meet at the Bastrop County Appraisal District, 1200 Cedar Street, Bastrop, July 18, 1990, at 7 p.m. Information may be obtained from Lorraine Perry, P.O. Box 578, Bastrop, Texas 78602, (512) 321-3925.

The Bastrop County Appraisal District Appraisal Review Board will meet at the Bastrop County Appraisal District, 1200 Cedar Street, Bastrop, July 19, 1990, at 7:30 p.m. Information may be obtained from Lorraine Perry, P.O. Box 578, Bastrop, Texas 78602, (512) 321-3925.

The Brazos River Authority Board of Directors met at 4400 Cobbs Drive, Waco, July 16, 1990, at 9 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441.

The Brazos River Authority Board of Directors, Search Committee will meet at the Hyatt Regency DFW Hotel, West Tower, Room 205, Dallas-Fort Worth Airport, July 30, 1990, at 10 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas, (817) 776-1441.

The Burnet County Appraisal District Board of Directors will meet at 223 South Pierce Street, Burnet, July 19, 1990, at 6:30 p.m. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291.

The Central Counties Center for Mental Health Mental Retardation Services Board of Trustees will meet at 304 South 22nd Street, Temple, July 17, 1990, at 7:45 p.m. Information may be obtained from Michael K. Muegge, 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841.

The Central Texas Council of Governments Transportation Planning Committee will meet at The Fabulous West, 1614 South F.M. 116, Copperas Cove, July 17, 1990, at 10 a.m. Information may be obtained from Gerald B. Bunker, P.O. Box 729, Belton, Texas 76513, (817) 939-1801.

The Denton Central Appraisal District Board of Directors Meeting will be at 3911 Morse Street, Denton, July 19, 1990, at 4 p.m. Information may be obtained from John D. Brown, 3911 Morse Street, Denton, Texas 76205, (817) 566-0904.

The Erath County Appraisal District Appraisal Review Board will meet at the Board Room, 1390 Harbin Drive, Stephenville, July 17-20, 1990, at 1 p.m. Information may be obtained from Treacia Perales, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 065-5434.

The Golden Crescent Regional Planning Commission Executive Committee met at the Regional Planning Commission Conference Room, Regional Airport, Building 102, Victoria, July 16, 1990, at 5 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.

The Guadalupe-Blanco River Authority Board of Directors will meet at the Authority's offices located at 933 East Court Street, Seguin, July 19, 1990, at 10 a.m. Information may be obtained from John H. Specht, P.O. Box 271, Seguin, Texas 78156-0271, (512) 379-5822.

The Harris County Appraisal District Board of Directors will meet at 2800 North Loop West, Eighth Floor, Houston, July 18, 1990, at 1:30 p.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292, (713) 957-5291.

The Henderson County Appraisal District Board of Directors will meet at 1751 Enterprise, Athens, July 16, 1990, at 7:30 p.m. Information may be obtained

from Helen Marchbanks, 1751 Enterprise, Athens, Texas 75751, (214) 675-9296.

The Lavaca County Central Appraisal District Board of Directors will meet at the Lavaca County Central Appraisal District, 113 North Main Street, Hallettsville, Texas 77964, (512) 798-4396.

The Lee County Appraisal District Appraisal Review Board will meet at 218 East Richmond Street, Giddings, Texas 78942. Information may be obtained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618.

The Mason County Appraisal District will meet at 206 Ft. McKavitt Street, Mason, July 18, 1990, at 7 p.m. Information may be obtained from Neal Little, P.O. Box 1119, Mason, Texas 76856, (915) 347-5989.

TRD-9006985

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Meetings Filed July 12, 1990

The Golden Crescent Service Delivery Area Private Industry Council, Inc. met at 2401 Houston Highway, Victoria, July 16, 1990, at 7 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872.

The Golden Crescent Service Delivery Area Private Industry Council, Inc. will meet at 2401 Houston Highway, Victoria, July 17, 1990, at 7 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872.

The Golden Crescent Service Delivery Area Private Industry Council, Inc. will meet at 2401 Houston Highway, Victoria, July 18, 1990, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872.

The Henderson County Appraisal District Appraisal Review Board will meet at 1751 Enterprise, Athens, July 18, 1990, at 8:30 a.m. Information may be obtained from Helen Marchbanks, 1751 Enterprise, Athens, Texas 75751, (214) 675-9296.

The Henderson County Appraisal District Appraisal Review Board will meet at 1751 Enterprise, Athens, July 19, 1990, at 8:30 a.m. Information may be obtained from Helen Marchbanks, 1751 Enterprise, Athens, Texas 75751, (214) 675-9296.

TRD-9007045

# In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## Texas Department of Health

### Municipal Solid Waste Disposal Site Public Hearing

The Department will conduct a public hearing on the following municipal solid waste disposal site.

Cougar Disposal, Inc. has filed Application Number 1921 with the Texas Department of Health for a permit to operate a proposed Type IV (brush, construction-demolition wastes, and rubbish only) municipal solid waste disposal site to be located at 8627 East Mount Houston Road, Houston, Texas 77050 in Harris County.

The site consists of approximately 117.778 acres of land, and is to daily receive approximately 1,500 cubic yards of brush, construction-demolition wastes, or rubbish under the regulatory jurisdiction of the Texas Department of Health when disposed of or otherwise processed in accordance with the Department's Municipal Solid Waste Management Regulations.

Pursuant to the provisions of the Texas Solid Waste Disposal Act, Health and Safety Code, the Department's said regulations, and the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a), a public hearing on the aforesaid application will be held at the Days Inn-Intercontinental Airport, 17607 Eastex Freeway, Houston, at 9:30 a.m. on Wednesday, August 29, 1990 in the Wildcat Room. The purpose of the hearing is to receive evidence for and against the issuance of a permit for the aforesaid application. The hearing will be conducted and the final decision will be rendered in accordance with the applicable rules contained in the department's said regulations, including all changes in effect as of May 10, 1988. All parties having an interest in this matter shall have the right to appear at the hearing, present evidence and be represented by counsel. Pursuant to Texas Civil Statutes, Article 6252-13a, and the department's Formal Hearing Procedures, the cost of a written hearing transcript may be assessed against one or more of the designated parties.

A copy of the complete application may be reviewed at the Texas Department of Health, 1100 West 49th Street, Austin, or at the Department's Public Health Region 4 office located at 10500 Forum Place, Suite 200, Houston, Texas 77036, (713) 995-1112.

Issued in Austin, Texas, on July 10, 1990.

TRD-9006965 Robert A. MacLean, M.D.  
Deputy Commissioner for Professional  
Services  
Texas Department of Health

Filed: July 10, 1990

For further information, please call: (512) 458-7271

### Notice of Contract Award

In compliance with the provisions of Texas Civil Statutes,

Article 6252-11c, the Texas Department of Health furnishes this notice of contract award.

**Publication Date.** The request for proposals was published in the January 23, 1990, issue of the *Texas Register* (15 TexReg 380).

**Description of Services.** The request was for a contractor to collect, analyze, and report data on the uncompensated costs, incidence, and severity of trauma in Texas.

**Name and Address.** A contract has been awarded to Udell Research Associates, Inc., 3111 South Dixie Highway, Suite 222, West Palm Beach, Florida 33405.

**Value and Dates of Contract.** The total dollar value of the contract is \$305,184. The contract period extends from May 16, 1990-February 28, 1991, by which date all work associated with this contract must be completed.

Issued in Austin, Texas, on July 11, 1990.

TRD-9006984 Robert A. MacLean, M.D.  
Deputy Commissioner for Professional  
Services  
Texas Department of Health

Filed: July 11, 1990

For further information, please call: (512) 458-7271

## Texas Department of Human Services Request for Proposal

The Texas Department of Human Services (DHS) is inviting proposals for Job Opportunity and Basic Skills (JOBS) and related supportive services for aid to families with dependent children (AFDC) recipients. The Human Resources Code, Chapter 22, as well as the Family Support Act of 1988, gives DHS the authority to contract with other entities for the provision of JOBS services to eligible AFDC recipients. DHS may purchase JOBS services only if the services are not available on a non-reimbursable basis. JOBS funds may be used to supplement other resources, but may not be used to supplant them.

**Description of services.** The JOBS program seeks to move low-income families from dependency to self-sufficiency through education, training, and employment, and to create a better educated and more flexible workforce. A case management system will be used to support and strengthen the JOBS participant's capacity to become self-supporting and to aid in assuring that participants and their families have access to the resources and opportunities required for self-support. The case management system encourages the development of a plan of action that will move JOBS participants into employment which allows them to remain independent of welfare. This procurement seeks contractors to provide case management services, JOBS component services, and supportive services to Service Level I participants. In addition, the contractors shall provide JOBS component services and supportive services for Service Level II par-

ticipants whose case management is provided by DHS's staff, and in limited cases, supportive services for Service Level III participants.

**Case management services.** The steps in the case management process are assessment and evaluation; eligibility verification; employability and service planning; arrangement of services; provision of services; oversight over service delivery and service plan attainment; and reporting participation, progress, and cost.

**JOBS component services.** The allowable JOBS component services that may be funded by DHS are assessment and employability planning, ancillary assessment services for Service Level II participants, job readiness activities, job development activities, group or individual job search, and life skills training.

**JOBS supportive services.** The allowable JOBS supportive services that may be funded by DHS are transportation disbursement and one-time work-related expenses.

**Procurement process.** DHS shall use competitive negotiation to select JOBS and Supportive Services contractors. To be considered for contract award, potential contractors must submit a separate proposal for each geographic area the offeror proposes to serve. The proposal must be made on forms supplied by DHS and the proposal must conform to the instructions specified by DHS in the request for proposal (RFP) packages. RFP packages should be available from regional contact people by July 6, 1990.

**Closing date.** Proposals must be received by the DHS contact person in each region no later than 5 p.m. on August 3, 1990, to be considered for award.

**Evaluation criteria.** The evaluation criteria and their weights are: capacity to meet need and service accessibility-25%; service delivery approach-35%; agency organization and administration-15%; and, cost-25%.

**Minimum contract requirements.** To contract with DHS, the JOBS and supportive services contractor must agree to comply with applicable federal and state laws, regulations, rules, contractual terms, and contractor manual policies and procedures.

**Term of contract.** The initial contract period for JOBS and supportive services contracts will be from October 1, 1990-August 31, 1990. At its option, DHS may renew or extend the contracts on a non-competitive basis for additional periods. Unless a waiver is obtained, the competitive procurement process must be conducted at least every 48 months.

**For more information.** Staff in each of DHS's administrative regions are responsible for conducting procurements for the geographic service areas in the regions. If you want to obtain JOBS and supportive services procurement information, please call, write, or visit the regional contact person listed below for the area in which you are interested. If you are interested in submitting proposals for areas in more than one region, you must call or write the contact person in each respective region.

**Regional contact people.** Region 1/2: Gloria Murillo, Contract Specialist, Texas Department of Human Services (005-2), P.O. Box 3700, 701 South Fillmore, Amarillo, Texas 79116-3700, (806) 374-1532. Region 3: Melinda Read, Contract Specialist, Texas Department of Human Services (111-1), P.O. Box 10276, 1300 Golden Key Circle, El Paso, Texas 79994, (915) 595-1700. Region 12: Landre Doan, Contract Specialist, Texas Department of Human Services (366-1), P.O. Box 4636, 3601 Andrews Highway, Odessa, Texas 79760, (915) 367-7201. Region

4: Dru Cory, Program Director for Purchased Services, Texas Department of Human Services (001-1), P.O. Box 6635, 4380 Spindletop Dr., Abilene, Texas 79608, (915) 695-5750. Region 5: Joan Graham, Program Director for Purchased Services, Texas Department of Human Services (395-1), 3131 Fish Trap Road, Dallas, Texas 75212, (214) 630-4411. Region 6: Ann Glenn, Program Director for Purchased Services, Texas Department of Human Services (016-1), P.O. Box 15995, 7901 Cameron Road, Building 2, Austin, Texas, 78761, (512) 835-2350. Region 7: Cynthia Rhodes, Procurement Officer, Texas Department of Human Services (256-3), P.O. Box 9039, 4315 Bonham, Paris, Texas 75461-9039, (214) 784-0841. Region 8: Silvestre Rodriguez, Program Director for Client Self-support Services, Texas Department of Human Services (108-1), P.O. Box 960, 2524 North Closner, Edinburg, Texas 78539, (512) 383-5344. Region 9: John Avant, Procurement Officer, Texas Department of Human Services (278-5), P.O. Box 23990, 745 E. Mulberry, San Antonio, Texas 78223-0990, (512) 731-3603 (direct line) (512) 731-1334 (switchboard). Region 10: Kaye Brown, Contract Specialist, Texas Department of Human Services (028-1), 285 Liberty Street-17th Floor, Beaumont, Texas 77701, (409) 880-3403. Region 11: Deborah Moore, Program Director for Purchased Services, Texas Department of Human Services (175-4), P.O. Box 16017, 1461 East 40th Street, Houston, Texas, 77222.

Issued in Austin, Texas on July 11, 1990.

TRD-9007002 Cathy Rossberg  
Agency liaison, Policy Communication  
Services  
Texas Department of Human Services

Filed: July 11, 1990

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

## State Purchasing and General Services Commission

### Correction of Error

The State Purchasing and General Services Commission submitted a proposed amendment which contained an error as published in the June 29, 1990, issue of the *Texas Register* (15 TexReg 3731).

In §113.3(a)(1), language which should have been in bold face to designate new language was not in bold face. The paragraph should read as follows. "(1)... the **commisslon purchaser** [it] may not return the requisition to the agency prior to [for that reason..."

## Texas Water Commission Public Hearing Notice

The Texas Water Commission will conduct a public hearing beginning at 10 a.m., August 10, 1990, Room 1111A, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, in order to receive testimony concerning the revisions to the Continuing Planning Process (CPP) document. The public hearing shall be conducted in accordance with the Texas Water Code, §26.011 and §26.012.

Required by the federal Clean Water Act, §303(e), the continuing planning process constitutes policies and procedures by which the commission operates water quality management programs. As the primary water quality management agency in the state, the commission

develops programs to control water pollution, using regulations contained in the Clean Water Act and Texas Water Code as guidance. The commission has a certain amount of flexibility in interpreting these regulations and in determining management processes. The narratives contained in the CPP document are more descriptive in nature rather than prescriptive; they describe programs rather than provide detail on each required program action. Further detail on individual programs contained in this document is available from the commission, upon request.

The public is encouraged to attend the hearing and to present relevant evidence or opinions concerning the continuing planning process. Written testimony which is submitted prior to or during the public hearing will be included in the record. The commission would appreciate receiving a copy of all written testimony at least five days before the hearing. Copies of written testimony and questions concerning the public hearing should be addressed to Daniel E. Beckett, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087 or call (512) 463-8452.

A limited number of copies of the draft Continuing Planning Process are available for review in the Texas Water Commission Library, Room B-20 of the Stephen F. Austin Building, 1700 North Congress Avenue in Austin; or may be obtained by writing to David Meesey, P.O. Box 13087, Austin, Texas 78711-3087, or call (512) 463-8443. There are no charges for the pre-hearing draft copies of the Continuing Planning Process, however, a fee will be charged for the finalized post-hearing copies.

Issued in Austin, Texas, on July 11, 1990.

TRD-9007005 James F. Haley  
Director, Legal Division  
Texas Water Commission

Filed: July 11, 1990

For further information, please call: (512) 463-8452

## Request for Proposals

The Texas Water Commission (TWC) hereby solicits proposals for consulting service for the search and identification of aboveground storage tanks (ASTs) in Texas that are subject to regulation under rules promulgated by the TWC.

**Services to be Performed.** The selected contractor shall review and understand all pertinent legislation and regulations pertaining to ASTs as proposed and/or adopted by the TWC. This would include, but not necessarily be limited to the following: House Bill 1588, 71st Legislature, Regular Session; Subchapter I, Chapter 26, Texas Water Code; and Title 31, Texas Administrative Code, Subchapters A, B, and F; obtain copies of databases from the TWC that include AST information from the Texas Air Control Board, the Texas Department of Agriculture, and the Texas Employment Commission; obtain tank owners' names and addresses, as well as tank facility addresses from the databases of the Texas Air Control Board and the Texas Department of Agriculture. Where available, other tank information shall also be included. Such information shall include the number of ASTs at each facility, the size of each AST (in gallons), and the nature and quantity of the contents of each AST; select records from the Texas Employment Commission database that include Standard Industry Codes (SIC) that are indicative of businesses likely to own and/or operate ASTs. The TWC will specify the appropriate SICs to be used. For each of these selected records, contact the firm

or individual listed and obtain the business name, mailing address, and phone number for the businesses and/or individuals who would be the AST owner in each case. With this information, include any available tank information such as the number of ASTs at each facility, the size of each AST (in gallons), and the nature and quantity of the contents of each AST; compile a listing of each of the potential AST owners collected by the above procedures. Evaluate each owner and tank facility in this compiled list for applicability of pertinent TWC rules and regulations for ASTs. Exempt/excluded owners or facilities will be dropped from the list; compare all compiled AST data from the compiled list for duplication of records. Compare compiled AST data to existing PST storage tank registration database and eliminate any records already included on the TWCs database. Compiled data must be formatted so that data is compatible with the PST storage tank registration database; and submit new AST information to TWC Petroleum Storage Tank Division within eight weeks, as specified in the terms of the contract.

The contractor will be responsible for being familiar with the format and contents of the PST storage tank registration database. The data to be delivered to the TWC shall be in a format that is compatible with the PST storage tank registration database and ready for direct entry.

**Type Of Contract.** The contract established under this RFP will provide for compensation on a lump sum basis.

**Obtaining Request for Proposal.** Copies of the request for proposal, including proposal guidelines and an explanation of the scoring criteria, may be obtained in any of the following manners: by sending a regular or certified letter requesting a copy of the IFB package to: Jacqueline Hardee, P.E., PST-Registration Section, Texas Water Commission, 1700 North Congress Avenue, P. O. Box 13087, Austin, Texas 78711-3087; by sending an overnight or expedited delivery letter requesting a copy of the IFB package with a prepaid, self-addressed, overnight, or expedited delivery return envelope to: Jacqueline Hardee, P.E., 8900 Shoal Creek Boulevard, Suite 200, Austin, Texas 78758; by appearing in person with a signed letter of receipt at 8900 Shoal Creek Boulevard, Suite 200, Austin, Texas 78758.

**Submittal Information.** Two copies of the proposal must be received at the following address before 12 noon local time on August 7, 1990, in one of the following manners: by certified mail to: Jacqueline Hardee, P.E., PST-Registration Section, Texas Water Commission, 1700 North Congress Avenue, P. O. Box 13087, Austin, Texas 78711-3087; by express or personal delivery to: Jacqueline Hardee, P.E., 8900 Shoal Creek Boulevard, Suite 200, Austin, Texas 78758.

**Selection Procedure.** Proposals will initially be evaluated using a point system to generate a preliminary ranking of proposers. The TWC staff will then develop a shortlist consisting of the four firms with the highest number of points, and will recommend those proposers to the commissioners. Numerical scores will be used only to generate the shortlist; the numerical scores will not be presented to the commissioners. The commissioners will solicit needed information concerning each short listed proposer's competence and qualifications during an oral presentation. The commissioners will then select the successful consultant based on the proposers' competence, knowledge and qualifications as demonstrated during the oral presentations.

Issued in Austin, Texas on July 11, 1990.

TRD-9007004

James F. Haley  
Director, Legal Division  
Texas Water Commission

Filed: July 11, 1990

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

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**Texas Water Development Board**  
**Applications Received**

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the board.

City of Bartlett, P.O. Drawer H, Bartlett, Texas 76511, received June 7, 1990, application for financial assistance in the amount of \$585,000 from the water quality enhancement account of the Texas water development fund.

City of Brady, P.O. Box 351, Brady, Texas 76825, received December 18, 1989, application for an increase in financial assistance from \$1,655,000 to an amount not to

exceed \$1,940,000 from the state water pollution control revolving fund.

Starr County WC&ID #2, 500 East Main Street, Rio Grande City, Texas 78582, received March 15, 1989, application for financial assistance in the amount of \$1,750,000 from the state water pollution control revolving fund.

Colorado River Municipal Water District, P.O. Box 869, Big Spring, Texas 79721-0869, received June 25, 1990, proposal for research in an amount not to exceed \$46,837 from the research and planning fund.

Additional information concerning this matter may be obtained from G. E. Kretzschmar, Executive Administrator, P.O. Box 13231, Austin, Texas 78711.

Issued in Austin, Texas on July 10, 1990.

TRD-9006959

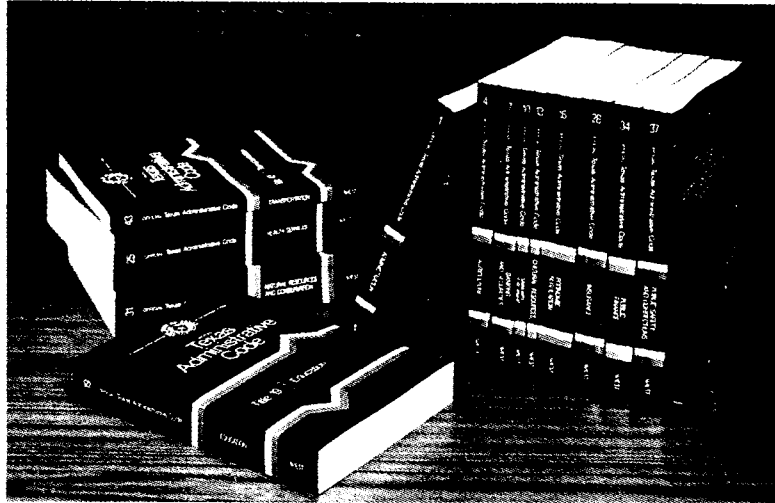
G. E. Kretzschmar  
Executive Administrator  
Texas Water Development Board

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