Texas Register

Volume 14, Number 92, December 19, 1989 Pages 6607-6689

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The *Texas Register*(ISN 0362-4781) is published twice each week 100 times a year except March 7, 1989, June 2, 1989, July 7, 1989, November 28, 1989, and December 29, 1989. Issues will be published by the Office of the Secretary of State.

POSTMASTER: Please send Form 3579 changes to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824.

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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Withdrawn Sections–sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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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The *Texas Administrative Code* (TAC) is the approved, collected volumes of Texas administrative rules.

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TAC stands for the *Texas Administrative Code;*

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

Texas Register Publications

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, Texas 78711-3824
512-463-5561

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Subscriptions-one year (96 regular issues), $90; six months (48 regular issues and two index issues), $70. Single copies of most issues are available at $4 per copy.

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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 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter M. Motor Bus Companies

• 16 TAC §5.217

The Railroad Commission of Texas adopts on an emergency basis an amendment to §5.217, concerning insurance. The amendment is adopted on an emergency basis because a previous amendment to the section was adopted without receiving the comments of numerous small bus companies. These smaller bus companies were unaware that the amendment had been proposed, and they will be adversely affected by the increased insurance levels. Some companies may be unable to obtain the higher levels, which would force them to cease operations, which poses an imminent peril to the public welfare.

The amendment returns the required level of liability insurance coverage to the previously required amount, $500,000 combined single limit. The previous amendment had raised the required levels to $1 million or $5 million, depending on the size of the bus.

The amendment is adopted under Texas Civil Statutes, Article 911a, which authorize the commission to regulate motor bus companies in all matters.

§5.217. Insurance. All motor bus companies shall be subject to and governed by the insurance requirements of Subchapter L of this chapter (relating to Insurance Requirements). The minimum amounts for each motor vehicle as referred to in §5.181 of this title (relating to Evidence of Insurance Required) are hereby prescribed as follows for motor bus companies.

(1) Combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to property of others (excluding cargo) **$500,000**[, for any vehicle with a seating capacity of 21 passengers or more $5 million].

(2) [Combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to property of others (excluding cargo), for any vehicle with a seating capacity of 20 passengers or less $1.5 million.

(3)] When a motor bus company is operating as a motor carrier of property, the motor bus company shall maintain cargo insurance in the amounts required by §5.183 of this title (relating to Minimum Limits).

Issued in Austin, Texas, on December 11, 1989.

TRD-8911906 • Kent Hance
Chairman
Railroad Commission of Texas

Effective date: December 11, 1989

Expiration date: April 10, 1990

For further information, please call: (512) 463-7094

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 97. Communicable Diseases

Control of Communicable Diseases

• 25 TAC §97.18

The Texas Department of Health adopts on an emergency basis new §97.18, concerning the fee to cover the cost of providing the HIV counseling and testing course. The new section implements the provisions of Senate Bill 959, 71st Legislature, 1989, which requires that the department provide the course and charge a reasonable fee to persons other than employees of entities receiving state or federal funds for HIV counseling and testing programs through a contract with the department. The section covers its purpose, course content, fee, and how to obtain information about the course.

The basis for the emergency adoption is that the section implements the provisions of Senate Bill 959, 71st Legislature, 1989, which requires the board of health to adopt rules concerning an HIV counseling and testing program. Senate Bill 959 became effective on September 1, 1989; therefore, the department is adopting the section on an emergency basis in order to comply with the time requirements in the bill. The department also is proposing the section for permanent adoption in this issue of the *Texas Register.*

The new section is adopted on an emergency basis under the Human Immunodeficiency Virus Services Act, Senate Bill 959, §1.07, which provides the board of health with the authority to adopt rules to implement the Act; §4.04, which provides the board with the authority to charge a fee for an HIV counseling and testing program; the Health and Safety Code, §12.001, which provides the board the authority to adopt rules for the performance of every duty imposed on the board, the department, and the commissioner of health; and Texas Civil Statutes, Article 6252-13a, §1.05, which give the board the authority to adopt rules on an emergency basis.

§97.18. Fee to Cover the Cost of providing the HIV Counseling and Testing Course.

(a) Purpose. The purpose of this section is to implement the provisions of Senate Bill 959, 71st Legislature, 1989, which requires that the department develop and offer a training course for persons providing HIV counseling, and charge a reasonable fee for the course.

(b) Content.

(1) The training course shall include information relating to the special needs of persons with positive HIV test results, including the importance of early intervention and treatment and recognition of psychosocial needs.

(2) The course titled "HIV Serologic Test Counseling and Partner Notification Techniques" is three full days and provides participants with a notebook of guides and reference material.

(c) Fee.

(1) The fee will be $150 for each participant whose affiliation is with a counseling and testing entity that does not contract with the department.

(2) Fees shall be made payable to the Texas Department of Health. All fees are non-refundable and must be received by department prior to participation in the course. Accepted form of payment shall include cashiers check or money order. No other form of payment will be accepted.

(d) Notice. Notice of the training courses will be announced through correspondence to contractors and other appropriate entities from our regional coordinators (HIV trainers). The training course schedule and the contact person will also be published quarterly in the *Texas Register.*

Issued in Austin, Texas, on December 11, 1989.

TRD-8911871 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Effective date: December 11, 1989.

Expiration date: April 10, 1990

For further information, please call: (512) 458-7209

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TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 7. Corporate and Financial Regulation

Subchapter A. Examination and Corporate Custodian and Tax

- **28 TAC §7.32**

The State Board of Insurance adopts on an emergency basis new §7.32, concerning reinsurance ceded to assuming insurers not licensed to do business in Texas. The new section is necessary to facilitate implementation of amendments to the Insurance Code, Articles 3.10 and 5.75-1, occasioned by the passage of Senate Bill 255 into law during the 71st legislature. An imminent peril to the public welfare requires adoption of this new section on an emergency basis in order to provide proper functioning of administrative regulation of the business of insurance and related matters in Texas. The new section will clarify requirements for accounting and reserves for reinsured risks and liabilities. Thus the new section will provide additional protection for policyholders by safeguarding the solvency of the ceding insurer. New §7.32 establishes requirements for allowing credit in the accounting and financial statements of a ceding insurer for reinsurance of insurance policies or reinsurance reserves ceded to a nonadmitted assuming reinsurer. The new section will provide guidance to insurers relating to reinsurance reserve credits for the proper reduction of liabilities or establishment of assets for reinsurance ceded during the transitional period from the date of repeal of the Insurance Code, Articles 3. 10A and 5.75-2, to the effective application date to reinsurance agreements of amended Articles 3.10 and 5.75-1 and permanent rules. New §7.32 provides companies with the requirements for allowing reinsurance reserve credit when reinsurance is ceded to a nonadmitted reinsurer.

The new section is adopted on an emergency basis under the Insurance Code, Articles 1.04, 3.10, and 5.75-1, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 1.04, authorizes the State Board of Insurance to determine rules in accordance with the laws of this state. The Insurance code, Articles 3.10 and 5.75-1, authorizes the board to adopt rules implementing provisions of the Insurance Code concerning reinsurance. Texas Civil Statutes, Article 6252-13a, §4, authorize and require each state agency to adopt rules of practice setting forth the nature and requirements of available procedures. Section 5 prescribes the procedure for adoption of rules by a state administrative agency.

§7.32. Reinsurance Ceded to Nonadmitted Reinsurers.

(a) As used in this section, the term "asset" means any asset or investment authorized by the Insurance Code to be counted for reserve fund purposes in the financial statements of a domestic insurance company.

(b) No credit shall be given, either as an asset or as a deduction from a liability, in the accounting and financial statements of any ceding insurer on account of any reinsurance of insurance policies or reinsurance reserves ceded to an assuming insurer that is not licensed to do business in this state, unless:

(1) pursuant to a written agreement between the ceding insurer and the assuming insurer, assets equal to the reserves required to be established by the ceding insurer on the reinsured business are deposited by or are withheld from the assuming insurer and are in the custody of the ceding insurer as security for the payment of the assuming insurer's obligations under the reinsurance agreement and the assets are held subject to withdrawal by and under the control of the ceding insurer; or

(2) pursuant to a written agreement between the ceding insurer and the assuming insurer, assets equal to the reserves required to be established by the ceding insurer on the reinsurance business either are placed in a trust account for that purpose with a bank that is a member of the Federal Reserve System or are represented by an irrevocable letter of credit to the benefit of the ceding insurer from a bank that is a member of the Federal Reserve System; provided withdrawals from the trust account or reductions in the amount of the letter of credit cannot be made without the consent of the ceding insurer;

(3) for those ceding insurers writing any line of insurance regulated by the Insurance Code, Chapter 5, the assuming insurer has given a bond with an admitted insurer as surety payable to the ceding insurer in an amount at least equal to the reserves required to be established by the ceding insurer on account of any reinsurance ceded to the assuming insurer, and the bond is conditioned that the assuming insurer will well and truly perform its obligations to the ceding insurer, and the bond will continue in full force and effect until any and all obligations of the assuming insurer are met; or

(4) for those ceding insurers writing any line of insurance regulated by the Insurance Code, Chapter 5, the assuming insurer:

(A) is a group of alien individual unincorporated insurers writing insurance on the so-called Lloyd's plan;

(B) is licensed to do business in a state of the United States;

(C) maintains funds held in trust for the protection of United States policyholders and beneficiaries in a bank or trust company that is organized under the laws of the United States or of any state of the United States and that is a member of the Federal Reserve System; and

(D) has trust funds that amount to at least $50 million, invested in assets as provided by the Insurance Code, Article 2.08.

(c) The commissioner of insurance may examine any of the reinsurance agreements, deposit arrangements, or letters of credit at any time in accordance with the authority to make examinations of insurance companies as provided by the Insurance Code.

(d) Subsections (a)-(c) of this section apply to all reinsurance agreements during the transitional period from September 1, 1989, the effective date of the amendments to the Insurance Code, Articles 3.10 and 5.75-1, pursuant to Acts of the 71st Legislature, 1989, to the inception, anniversary, or renewal date not less than four months after the effective date of the amendments.

Issued in Austin, Texas, on December 13, 1989.

TRD-8911955 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: December 13, 1989

Expiration date: April 12, 1990

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION.

Part IX. Texas Water Commission.

Chapter 321. Control of Certain Activities by Rule

Subchapter B. Livestock and Poultry Production Operations

- **31 TAC §§321.42-321.46**

The Texas Water Commission adopts on an emergency basis §§321.42-321.46, concerning registration and interim waste manage-

ment practices for dairy operations. The commission finds that an urgent need exists to adopt the new sections on an emergency basis because of the imminent peril to the public health and welfare and in order to immediately address waste management practices for dairies and to gather the necessary information on all dairy operations in the state to implement a plan which establishes a set of priorities for both permitting and enforcement.

The new sections are adopted on an emergency basis under the authority of the Texas Water Code, §5.103 and §5.105, and the Administrative Procedure and Texas Register Act, which provide the commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state and to establish and approve all general policies of the commission.

§321.42. Registration. By February 1, 1990, all dairies operating as concentrated animal feeding operations shall notify the executive director of their business name, owner/operator name, physical location including a map or hand drawn sketch, mailing address, and number of milking head. Such notification shall be in writing.

§321.43. Best Management Practices. The following best management practices (BMPs) shall be utilized by concentrated animal feeding dairy owners/operators, as appropriate based upon existing physical and economic conditions, opportunities and constraints, until a finally effective permit is issued by the commission or until a waste management plan is approved by the executive director.

(1) Practices to decrease lot runoff volume:

(A) divert runoff from clean areas above lot:

(i) construct ditches, terraces, and waterways above an open lot;

(ii) install gutters, downspouts, and buried conduits to divert roof drainage; and

(iii) provide more roofed area;

(B) decrease open lot surface area:

(i) increase animal density to reduce lot size;

(ii) improve lot surfacing to support increase animal density;

(iii) provide more roofed area;

(iv) collect manure more frequently; and

(v) eliminate areas that slope in directions such that wastewater/rainfall cannot be collected.

(2) Practices to decrease water volume:

(A) repair or adjust waterers and water systems to minimize water wastage;

(B) use practical amounts of water for cooling;

(C) use practical amounts of water for cleaning equipment;

(D) recycle water to flush manure from paved surfaces outside the milking parlor if practical and applicable.

(3) Practices to decrease lot runoff and wastewater discharges to watercourses:

(A) collect and allow wastewater to evaporate;

(B) collect and evenly apply wastewater to land;

(4) Practices to minimize solid manure transport to watercourses:

(A) don't stockpile manure near watercourses;

(B) provide adequate manure storage capacity based upon manure and waste production and land availability;

(C) apply solid manure to suitable land at appropriate times and rates:

(i) adjust timing and rate of applications to crop needs, assuming usual nutrient losses, expected precipitation, and soil conditions;

(ii) avoid applications on frozen or saturated soils; and

(iii) avoid land subject to excessive erosion;

(D) use edge-of-field, grassed strips to separate eroded soil and manure particles from the field runoff.

(E) utilize off-site areas for manure application in a manner consistent with paragraphs (1)-(4) of this section.

§321.44. Wastewater Retention.

(a) Until issuance of a permit, a dairy owner/operator shall manage any waste control facilities so as to contain 70% of the rainfall and rainfall runoff collected from a 25-year, 24-hour rainfall event. If multiple rainfalls occur within a seven-day period, an owner/operator shall contain rainfall and rainfall runoff equivalent to 50% of the 25-year, 24-hour rainfall event.

(b) Until issuance of a permit, a dairy owner/operator shall manage any waste control facilities to retain all waste and process generated wastewater produced during a time not less than 75% of the minimum storage period value obtained from Exhibit 2 of §321.41 of this title (relating to Appendix A).

§321.45. Permit or Commission Authorization Required. No dairy owner/operator may commence physical construction and/or operation of a new dairy's waste management facilities without first having submitted a permit application and receiving a finally effective permit or other commission authorization, or, if no permit is required, approval of a waste management plan.

§321.46. Permit Application within 90 days of Commission Notification. The dairy owner/operator shall submit a complete permit application within 90 days of notification from the executive director that a permit is required.

Issued in Austin, Texas, on December 13, 1989.

TRD-8911944 Jim Haley
Director, Legal Division
Texas Water Commission

Effective date: December 13, 1989

Expiration date: April 12, 1990

For further information, please call: (512) 463-8087

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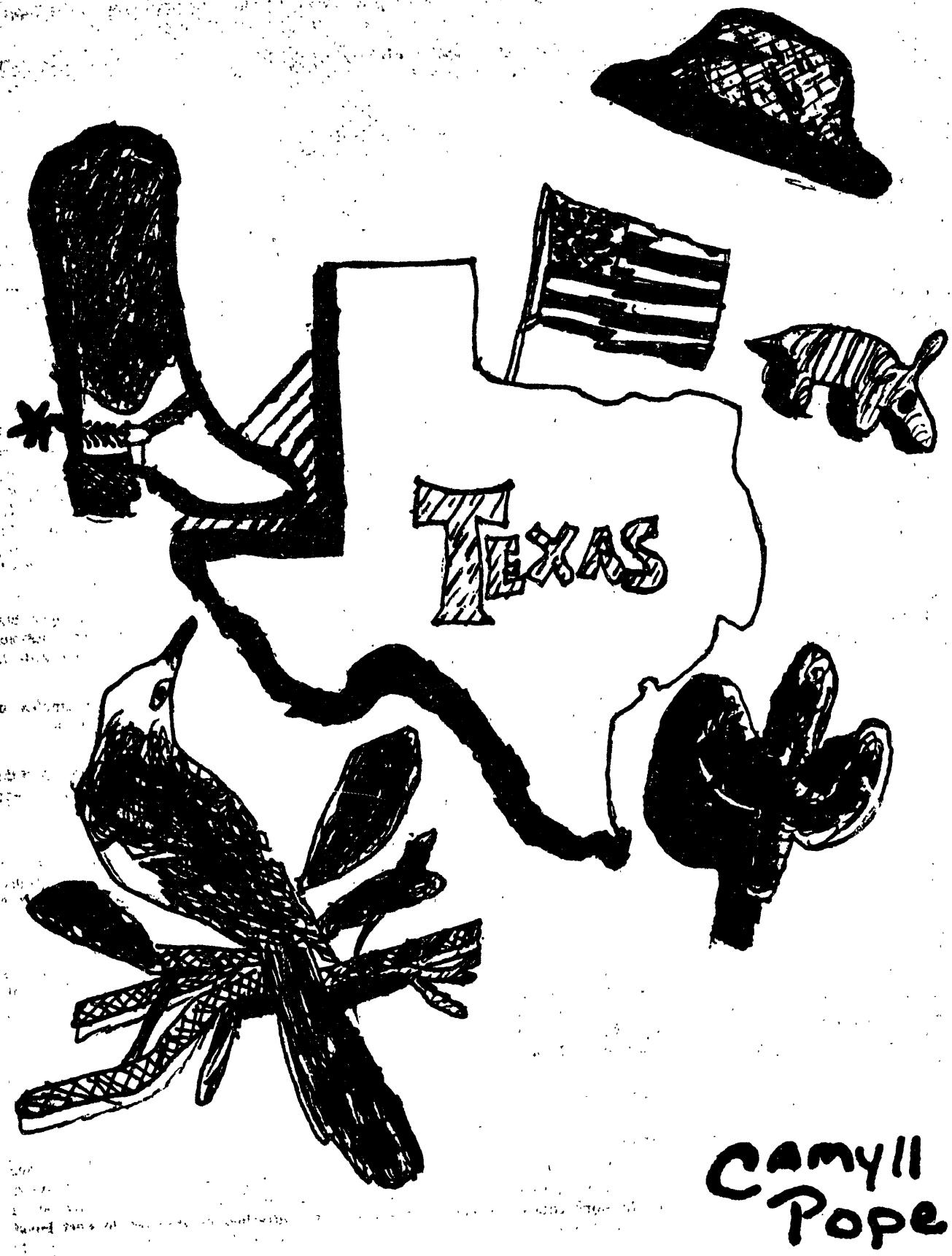

Name: Camylle Pope

Grade: 8

School: Clear Lake Intermediate, Clear Creek

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 VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Definitions

• 7 TAC §91.2

The Credit Union Commission proposes an amendment to §91.2, concerning the authority for approving amendments to a credit union's field of membership.

John R. Hale, commissioner, 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. Hale, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that parity with the National Credit Union Administration in regulating field of membership will be established. There will be no effect on small businesses as a result of enforcing the section. the anticipated economic cost to individuals who are required to comply with the section as proposed will be nominal.

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

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

§91.2. Interpretations. The following interpretations of provisions of the Texas Credit Union Act shall be applied uniformly in all instances to which they relate.

(1) Field of Membership. One of the stated purposes of the Act is to delegate rulemaking and discretionary authority to the commission in order to assure that credit unions operating under the Act may be sufficiently flexible and readily responsive to changes in economic conditions and practices within the credit union industry. Furthermore, the Act, §4.03, vests in the commission the power to authorize credit unions doing business under the Act to engage in any activity in which such a credit union could engage or exercise any power which it could exercise were it a federal credit union. The competitive [expanding] economic conditions prevalent in Texas today and the greater demands placed upon credit unions for financial services brought about by increased diversification in the services and products offered to the public by all financial institutions and by many nonfinancial institutions support an increasing need for prudent regulation of fields of membership in order to preserve the integrity of the credit union industry and to maintain public confidence in credit unions. In addition, increasing conflicts resulting from overlapping fields of membership and increasing requests for expansions of fields of membership necessitate the promulgation of specific standards for regulating fields of membership. This need has been heightened by the recent adoption of field of membership standards by the National Credit Union Administration that are applicable to federal credit unions nationwide. The commission deems it appropriate that there be parity between the Credit Union Department and National Credit Union Administration in regulating fields of membership for Texas credit unions. Accordingly, the commissioner is hereby authorized to approve field of membership for credit unions organized under the Act or changes in the fields of membership for credit unions authorized to do business under the Act consistent with the principles or requirements presented in this section and in §91.203 and §91.206 of this title (relating to Incorporation Procedures and Amendments to Articles of Incorporation and Bylaws). The following guidelines and standards shall be considered by the commissioner in evaluating requests for field of membership expansions.

(A) Occupational common bond.

(i) The department has limited this common bond to employment by the same enterprise. Persons sharing this common bond may be geographically dispersed. Employees of a parent corporation and its wholly-owned subsidiaries and persons under contract to work regularly for an enterprise may be considered under a single occupational bond. Each category to be served (e.g., subsidiaries, contractors) must be separately listed. Persons with different employers, even if closely related geographically–persons working at a single shopping center, industrial park, or office building, for example–are not treated as having a single common bond, but will be considered under the department's community or multiple-group charter policies.

(ii) All occupational common bonds will include a geographic definition: e.g., "employees, officials, and persons who work under contract regularly for ABC Corporation or any of its subsidiaries, who work in Houston, Texas." Other acceptable geographic definitions are "employees * * * who are paid from * * * * "or "employees * * * who are supervised from * * * *."

(iii) The employer may also be included in this common bond–e.g., "ABC Corporation and its subsidiaries."

(iv) Some examples of occupational group definitions are:

(I) "Employees of the Scott Manufacturing Company who work in El Paso, Texas * * *."

(II) "Employees and elected and appointed officials of municipal government in Tyler, Texas * * * *."

(III) "Employees of Sharp Drillbit Company and its majority-owned subsidiary, Drillbit Salvage Company, who work in Midland or Houston, Texas * * *."

(IV) "Personnel of fleet units of the U.S. Navy home port at Ingleside, Texas * * *."

(V) "Civilian and military personnel of the U.S. Government who work or are stationed at, or are attached or assigned to Fort Hood, Texas, or those who are retired from, or their dependents or dependent survivors who are eligible by law or regulations to

receive and are receiving benefits or services from that military installation * * *."

(VI) "Employees of these contractors who work regularly at U.S. Naval Shipyard in Ingleside, Texas * * *."

(VII) "Employees, doctors, medical staff, technicians, medical and nursing students who work at Galveston Medical Center at the locations stated: * * *."

(VIII) "Employees and teachers who work for the Fort Worth Independent School District in Fort Worth, Texas * * *."

(v) Some examples of insufficiently defined occupational groups are:

(I) "Employees of engineering firms in Houston, Texas." (No common employer; names of firms must be stated; however, may be the basis for a multiple group.)

(II) "Persons employed or working in Dallas, Texas." (No common employer; names of firms must be stated.)

(III) "Persons working in the entertainment industry in Texas." (No common employer names; of firms must be stated.)

(B) Associational common bonds.

(i) The department limits this common bond to groups consisting primarily of individuals (natural persons) who participate in activities developing common loyalties, mutual benefits, and mutual interest. Qualifying associational groups must hold meetings open to all natural person members at least once a year, must sponsor other activities providing for contact among natural person members, and must have an authoritative definition of who is eligible for membership–usually, this will be the associations' constitution and bylaws. The clarity of the associational group's definition and compactness of its membership will be important criteria in reviewing the application. The department policy is to organize associational charters at the lowest organizational level which is economically feasible.

(ii) Student groups constitute an associational common bond and may qualify for a credit union charter.

(iii) Associations formed primarily to obtain a credit union charter do not have a sufficient associational common bond; nor do associations based on a client or customer relationship–an insurance company's customers or a buyer's club, for example.

(iv) The department normally charters associational credit unions consisting of natural person members. In certain instances, the department will allow nonnatural persons (e.g. corporate sponsor or organizations of members) to be eligible for membership.

(v) Moreover, the common bond extends only to the association's members. The employees of a member of local chamber of commerce, for example, do not have a sufficiently close tie to the association to be included. A proposal to include these persons among those to be served by the credit union will be considered as a multiple-group charter application.

(vi) Homeowner associations, tenant groups, electric co-ops, consumer groups, and other groups of persons having an interest in a particular cause and certain consumer cooperatives may be eligible to receive a charter; however, they must make a strong showing of common activities and economic viability. Newly-organized associations must make a similar showing; experience has shown that a new group's efforts are best focused on solidifying member interest before attempting to offer credit union service.

(vii) All associational common bonds will include a definition of the group and a geographic or operational area limitation–unless the constitution or bylaws of the associational group limit the geographical area–e.g., "Members of the Small Businessmen Association living or working in Dallas, Texas who qualify for membership in accordance with its constitution and bylaws in effect on January 21, 1989."

(viii) The association itself may also be included in the field of membership–e.g., "ABC Association."

(ix) Some examples of associational group definitions are:

(I) "Regular members of Locals 10 and 13, IBEW Union, Houston, Texas, who qualify for membership in accordance with their constitution and bylaws in effect on May 20, 1989."

(II) "Members of the Texas Farm Bureau who live or work in Williamson or adjacent counties, who qualify for membership in accordance with its constitution and bylaws in effect on March 7, 1980."

(III) "Members of the Catholic Church who live or work in Del Rio, Texas."

(IV) "Members of the First Baptist Church in Georgetown, Texas."

(V) "Regular members of the Corporate Executives Association, located in Dallas, Texas, who live or work in Dallas, Texas, who qualify for membership in accordance with its constitution and bylaws in effect on December 1, 1985."

(VI) "Members of the Lower Colorado River Authority located in Austin, Texas."

(x) Some examples of insufficiently defined associational group definitions are:

(I) "Members of military service clubs in the State of Texas." (No single associational tie; specific clubs and locations must be named; may be considered as multiple group).

(II) "Veterans of U.S. military service."

(xi) Some examples of unacceptable associational common bonds are:

(I) "ABC Buyers Club." (An interest in purchasing only does not meet associational standards.)

(II) "Customers of ABC Insurance Company." (Policyholders or customer/client relationships do not meet associational standards.)

(C) Community common bonds.

(i) The commission has determined that a credit union charter will be based on a tie to a specific geographic location be limited to "a well-defined neighborhood, community, or rural district." The department policy is to limit the community to a single, compact, well-defined area where residents commingle and interact regularly. The department recognizes two types of affinity on which a community charter bond can be based: residence and employment. Business and other legal entities within the community boundaries may also qualify for membership. Given the diversity of community characteristics throughout the country and the department's goal of making credit union service available to all eligible groups who

wish to have it, the department has established the following common bond requirements:

(I) the geographic area's boundaries must be clearly defined; and

(II) the charter applicant must establish that the area is recognized by those who live and work there as a distinct "neighborhood, community, or rural district."

(ii) A typical definition of a community-based common bond is: "Persons who live or work in and businesses and other legal entities located in ABC, the area of XYZ City bounded by Fern Street on the north, Long Street on the east, Fourth Street on the south, and Elm Avenue on the west."

(iii) If the community is also a recognized legal entity, it may also be included in the field of membership–e.g., "DEF Township."

(iv) Additional criteria to be considered for application to convert to or expand an existing community common bond may include, but are not limited to, the following.

(I) The area within a three-mile radius of the applicant's existing or proposed branch office must constitute a majority of the new area to be served.

(II) The applicant's estimated solvency ratio (ESR) at the most recent examination by the department must be at least 105 and stable, unless extenuating circumstances are present.

(III) The applicant's management (officials and staff) must be rated by the department at the most recent examination to be at least a Component Code 2 under the CAMEL Rating System, or a lesser rating if warranted.

(IV) The proposed area must be without community credit union service within three miles of the proposed office location.

(V) A protective exclusion for honoring existing credit unions in the area will be used as needed (e.g. "... excluding members of any credit union and all persons eligible for primary membership in any occupation- or association-based credit union serving the geographic area of this credit union."

(VI) The applicant recognizes and agrees that conversion to a community-base field of membership relinquishes any exclusive right of the credit union to serve any occupational or associational group heretofore served.

(v) Some examples of community common bond definitions are:

(I) "Persons who live or work in Brown County, Texas."

(II) "Persons who live or work in and businesses and other legal entities located in Spring Branch Independent School District, Houston, Texas."

(III) "Persons who live or work within a ten-mile radius of El Campo, Texas" (Rural areas only.)

(vi) Some examples of insufficiently defined community common bond definitions are:

(I) "Persons who live or work within and businesses located within a ten-mile radius of Dallas, Texas." (Not a recognized "neighborhood, community, or rural district.")

(II) "Persons who live or work in the ship channel section of Houston, Texas."

(D) Multiple-group charters.

(i) The department may charter a credit union to serve a combination of distinct, definable occupational and/or associational groups. However, the department will not charter as a single credit union multiple groups which include one based on a community common bond.

(ii) In addition to general chartering requirements, special requirements pertaining to multiple-group applications must be satisfied before the department will grant such a charter.

(I) Each group to be included in the proposed field of membership of the credit union must have its own common bond.

(II) Each group must individually request inclusion in the proposed credit union's charter.

(III) All groups must be within the operational area of a planned home or branch office of the proposed credit union. "Operational area" is an area surrounding the home or a branch office that can be reasonable (e.g. within a 25-mile radius) served by the applicant as determined by the department. For chartering purposes, "branch office" means any office of a credit union where an employee accepts payment on shares and disburses loans. An ATM or similar cash disbursing machines does not qualify as a "branch office."

(iii) An example of a multiple-group field of membership is: "The field of membership of this credit union shall be limited to those having the following common bond:"

(I) "Employees of Texaco Corp. and its subsidiary companies who work in Houston, Texas;"

(II) "Partners and employees of the law firm of Smith & Jones and wholly-owned subsidiaries who work in Austin, Texas;"

(III) "Members of the GHI Associations who live in San Antonio, Texas, and qualify for membership in accordance with its constitution and bylaws. "

[greater flexibility and a broader interpretation of what may constitute the field of membership of credit unions than may have been the case in the past. Evidence of this is indicated by the broader interpretations placed upon fields of membership applicable to federal credit unions by the National Credit Union Administration. Therefore, in response to the broader economic demands placed upon credit unions and to the increased flexibility now afforded federal credit unions in defining fields of membership, the commission has determined that the Act, §3.01, defines membership in credit unions to include individuals and other persons, including groups of persons consisting of incorporated or unincorporated organizations which share communities of interest based upon occupation, association or residence. The commissioner is hereby authorized to approve fields of membership for credit unions organized under the Act or changes in fields of membership for credit unions authorized to do business under the Act consistent with the interpretation of §3.01 as set forth herein.]

(2) (No change.)

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

Issued in Austin, Texas, on December 13, 1989.

TRD-8911959

John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption: January 19, 1990

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

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Organization Procedures

• 7 TAC §91.206

The Credit Union Commission proposes an amendment to §91.206, concerning amendments of articles of incorporation and bylaws, including the consideration of possible overlaps in fields of membership when determining whether to approve or deny an amendment.

John R. Hale, commissioner, 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. Hale also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that standard amendments of fields of membership which do not result in overlaps with other credit unions can be immediately effected upon receipt of a completed standard application for amendment of the bylaws. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

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

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

§91.206. Amendments to Articles of Incorporation and Bylaws.

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

(c) The commissioner shall review the application to determine whether the expansion of the field of membership creates an overlap. The commissioner shall consider the extend and the effect of the overlap. The commissioner may require the applicant credit union to limit or eliminate the overlap in order to achieve the purposes of the Act and promote the welfare and stability of the applicant and the existing state or federal credit unions. For an application to expand a field of membership, the commissioner shall require that notice be given by first class mail to each credit union identified in the application whose field of membership might overlap if the application is approved. The commissioner may require notice be given to any other credit union or credit unions which the commissioner deems appropriate to receive notice. The commissioner shall also publish notice of an application to expand a field of membership in the commissioner's newsletter once the application is complete. The commissioner shall allow at least 30 days after the date of the commissioner's newsletter in which the notice is published for any affected credit union or credit unions to respond to the application prior to taking final action approving or denying the application. This subsection shall not apply to **applications for standard optional field of membership provisions (1), (2), and (3) as contained in the *Standard Bylaws for State Chartered Credit Unions* (revised July 14, 1986), standard optional provision (4) with any radius up to 10 miles or** any application submitted to accomplish a supervisory merger or consolidation pursuant to the Act, §10.03(f), unless the application encompasses a field of membership not presently served by the credit unions that are being merged or consolidated.

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

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

Issued in Austin, Texas, on December 13, 1989.

TRD-8911958 John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption: January 19, 1990

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

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Chapter 93. Administrative Proceedings

The Commission

• 7 TAC §93.91

The Credit Union Commission proposes an amendment to §93.91, concerning who shall preside at a commission meeting in the absence of the chairman.

John R. Hale, commissioner, 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. Hale also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the sections will be that the existing section will be amended to be consistent with a related statute (the Texas Credit Union Act, §11.06). There will be no effect on small businesses as a result of enforcing the section. The anticipated economic cost to individuals who are required to comply with the section as proposed will be nominal.

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

The amendment is proposed under Texas Civil Statutes, Article 2461-11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act, and Article 2461-11.06, which provide the Credit Union Commission with authority to adopt reasonable rules governing the conduct of all meetings.

§93.91. Chairman to Preside. The chairman shall preside over all meetings of the commission, **and the vice-chairman shall preside in the absence of the chairman. If both the chairman and vice-chairman are absent from a meeting, the most senior member of the commission in attendance at the meeting shall serve as acting chairman** [at which he is present. In his absence, the commissioner shall preside; however, the commissioner may not vote.]

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

Issued in Austin, Texas, on December 13, 1989.

TRD-8911957 John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption: January 19, 1990

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

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Chapter 95. Texas Share Guaranty Credit Union

Finance and Accounts

• 7 TAC §95.301

The Credit Union Commission proposes an amendment to §95.301, concerning Texas Share Guaranty Credit Union's sole discretion to accept or refuse to accept a credit union as a provisional or regular member.

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

Mr. Hale also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that appropriate authority will be provided to Texas Share Guaranty Credit Union for declining an application for membership in Texas Share Guaranty Credit Union, thereby helping preserve its financial integrity. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The amendment is proposed under Texas Civil Statutes, Article 2461-11.07, which provide the Credit Union Commission with the

authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

§95.301. Application. Credit Unions newly organized and chartered by the department shall:

(1) apply for share and deposit guaranty with the TSGCU or the National Credit Union Administration within 90 days of issuance of a charter by the commissioner. When application is made by a newly organized credit union to become a member credit union of the TSGCU, the TSGCU, in its sole discretion, may accept or refuse to accept the credit union as a provisional member. If the TSGCU accepts the credit union as a provisional member, provisional [the applying credit union shall be accepted for provisional membership in the TSGCU 30 days after receipt by the TSGCU of the application. Provisional] membership shall extend to said member credit union for a period of one year from the date of receipt of the application for membership. A credit union holding provisional membership shall become a regular member when it has fully paid to the TSGCU all duly authorized shares and assessments and when it attains the requisite estimated solvency ratio as declared in writing by the commissioner from time to time, provided that TSGCU, in its sole discretion, accepts the credit union as a regular member. The commissioner or his duly authorized representative shall compute the estimated solvency ratio of a credit union holding provisional membership to determine whether it has attained the requisite level. Not less than 60 days prior to the expiration of a period of provisional membership, the board of the directors of the TSGCU shall ascertain whether a credit union holding such provisional membership has qualified for regular membership. If at that time such credit union has failed to qualify for regular membership, the TSGCU board of directors may, by majority vote, renew the credit union's provisional membership for a period not to exceed one year. The board of directors may not renew any one credit union's provisional membership more than three times without the approval of the commissioner. In the event that a credit union's provisional membership is not renewed and it is not accepted [does not qualify] for regular membership, the TSGCU shall promptly notify it of the date upon which its membership in the TSGCU shall terminate and the credit union shall give prompt and reasonable notice to all its members and depositors whose shares and deposits are guaranteed that its membership in the TSGCU will terminate on that effective date. In the event of failure to give such notice, the commissioner shall so notify the members and depositors of such credit union. After such termination of membership, and unless and until the credit union secures share and deposit insurance protection, the shares and deposits of such credit union's members shall continue to be guaranteed for a period of one year from such effective date approved by the commissioner in accordance with the Texas Credit Union Act and the rules thereunder and only to the extent that they were guaranteed on the effective date of such termination, less any amounts thereafter withdrawn which reduce the amounts of such shares and deposits below the amount guaranteed on the effective date of such termination. No shares or deposits made after the effective date of such termination shall be guaranteed by the TSGCU. The credit union shall continue to make any and all share and assessment payments to the TSGCU during such one-year period after the effective date of such termination as in the case of all member credit unions, and it shall, in all other respects, be subject to the duties and obligations of a member credit union until the expiration of such one-year period. Failure of a credit union to be accepted by TSGCU [qualify] for regular membership at the expiration of a provisional membership period or any renewal thereof, or to satisfy the duties and obligations of a member credit union shall constitute the conduct of the business of the credit union in an unsafe, unsound, and unauthorized manner, and shall be grounds for sanctions imposed by the Texas Credit Union Act, Chapter 5 and Chapter 10;

(2) pay, at the time it is accepted as a provisional [makes application to become a] member of the TSGCU, an initial membership investment share of 1.0% of the total aggregate amount of its shares as reflected in its charter application filed with the department or $25, whichever is greater. Thereafter, at the end of each calendar quarter, such member credit union shall pay to the TSGCU such amounts as may be necessary to bring the aggregate membership investment shares of such member credit union up to 1.0% of its share and deposit capital as of the end of such calendar quarter, until the member credit union has been a member credit union for one full year. Thereafter, it shall make membership investment payments in the same manner as all other member credit unions.

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

Issued in Austin, Texas, on December 13, 1989.

TRD-8911956 John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption: January 19, 1990

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

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TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Community Affairs

Chapter 5. Community Services Program

• 10 TAC §5.1

The Texas Department of Community Affairs proposes new §5.1 concerning the Community Services Block Grant (CSBG) Program. As proposed the new section would establish required assurances for the administration of the CSBG Program. These assurances are required by the CSBG Act, 42 United States Code §9901 et seq.

Roger A. Coffield, general counsel, has determined that for the first five-year period the proposed section will be in effect there will no fiscal implications for state or local government.

Mr. Coffield also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be that the state will be assured of continued CSBG funding by compliance with these federal mandates. 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 Roger A. Coffield, General Counsel, P.O. Box 13166, Austin, Texas 78711-3166.

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

§5.1. Assurances for the Community Services Block Grant Program.

(a) Purpose. This section establishes a variation from the standard assurances of the Uniform Grant and Contract Management Standards (UGCMS) adopted by the Office of the Governor in 1 TAC §5.141 et seq.

(b) Applicability. This section applies to all recipients (grantees) of Community Service Block Grant (CSBG) funds.

(c) Variations. Each recipient of CSBG funds assures and certifies that it will comply with the standard assurances of UGCMS and the following non-standard assurances.

(1) In the case of a community action agency or non-profit private organization. the recipient's board of directors will be constituted so as to assure that one-third of the directors are elected public officials, currently holding office, or their designated representatives, at lease one-third of the directors are persons chosen in accordance with democratic selection procedures adequate to assure that they are repre-

sentative of the poor in the area served; and the remainder of the directors are officials or members of business, industry, labor, religious, welfare, education, or other major groups and interests in the community. Additional guidance on this requirement is contained in CSBG Issuance 90-2.1 which is adopted herein by reference. A copy of the issuance may be obtained from the Planning and Program Support Section. Texas Department of Community Affairs, P.O. Box 13166, Austin, Texas 78711-3166.

(2) For purposes of 5 United States Code, Chapter 15 (the Hatch Act). any nonprofit private organization receiving CSBG funds which has responsibility for planning, developing, and coordinating community antipoverty programs shall be deemed to be a state or local agency. For purposes of clauses (1) and (2) of 5 United States Code, §1502(a), any nonprofit private organization receiving assistance under the CSBG program shall be deemed to be a state or local agency. Additional guidance on this requirement is contained in CSBG Issuance 90-8.1 which is adopted herein by reference. A copy of the issuance may be obtained from the Planning and Program Support Section, Texas Department of Community Affairs, P.O. Box 13166, Austin, Texas 78711-3166.

(3) Recipients may not engage in any activities to provide voters and prospective voters with transportation to the polls or provide similar assistance in connection with an election or any voter registration activity.

(4) Recipients may not use any CSBG funds for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy-related home repairs) of any building or other facility unless a waiver is granted pursuant to 42 United States Code, §9909(b).

(d) Authority. These variations from the standard assurances of UGCMS are required by the provisions of Title 42, United States Code, Chapter 106.

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

Issued in Austin, Texas on December 8, 1989.

TRD-8911843 Roger A. Coffield
General Counsel
Texas Department of
Community Affairs

Earliest possible date of adoption: January 19, 1990

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

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TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 3. State Documents Depository Program

• **13 TAC §§3.1-3.7**

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

The Texas State Library and Archives Commission proposes the repeal of §§3.1-3.7, concerning collection and distribution of state publications, definition of a state publication, designation of depository libraries, and responsibilities of depository libraries and state agencies. The chapter will be replaced by a new chapter.

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

Mr. Hitt also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be to allow for the reorganization, expansion, and clarification of rules governing the State Publications Depository Program. New rules will enable the State Publications Depository Program to function as a practical and economical means for citizens to monitor the activities of state government through its publications. The program will provide a mechanism by which state agencies can make their publications available to all citizens of the state at a minimum cost and effort, and will preserve a record of the state's history through its state publications. Specifically, the new rules will fulfill the intent of the Depository Law, Government Code, Chapter 441, §101 et. seq., and create the Texas State Publications Clearinghouse as a unit under the Texas State Library and Archives Commission to act as the central collection and distribution center for state publications. There will be no effect on small businesses as a result of enforcing the repeals. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Raymond Hitt, Assistant State Librarian, Texas State Library, P.O. Box 12927, Austin, Texas 78711.

The repeal is proposed under the Government Code, Chapter 441, §102, which provides the Texas State Library and Archives Commission with authority to establish rules for distribution of state publications to depository libraries.

§3.1. Definitions.

§3.2. Texas State Publications Clearinghouse.

§3.3. Publications To Be Deposited.

§3.4. Publications Contact Person.

§3.5. List of Publications.

§3.6. Receipt for Publications.

§3.7. Waivers.

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

Issued in Austin, Texas, on December 11, 1989.

TRD-8911856 Raymond Hitt
Assistant State Librarian
Texas State Library and
Archives Commission

Earliest possible date of adoption: January 19, 1990

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

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• **13 TAC §3.1-3.10**

The Texas State Library and Archives Commission proposes new §§3.1-3.10, concerning collection and distribution of state publications, definition of a state publication, designation of depository libraries, and responsibilities of depository libraries and state agencies. This proposed chapter replaces the State Documents Depository Program chapter which is proposed for repeal.

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

Mr. Hitt 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 reorganize, expand, and clarify rules governing the State Publications Depository Program. New rules will enable the State Publications Depository Program to function more effectively as a practical and economical means for citizens to monitor the activities of state government through its publications. The program will provide a mechanism by which state agencies can make their publications available to all citizens of the state at a minimum cost and effort, and will preserve a record of the state's history through its state publications. Specifically, the new rules will fulfill the intent of the Depository Law, Government Code, Chapter 441, §101 et seq., and create the Texas State Publications Clearinghouse as a unit under the Texas State Library and Archives Commission to act as the central collection and distribution center for state publications. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Raymond Hitt, Assistant State Librarian, Texas State Library, P.O. Box 12927, Austin, Texas 78711.

The new section is proposed under the Government Code, Chapter 441, §102, which provides the Texas State Library and Archives Commission with authority to establish rules for distribution of state publications to depository libraries.

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

Clearinghouse–The Texas State Publications Clearinghouse, a unit of the Texas State Library responsible for collecting, preserving, and distributing state publications, and promoting their use by the citizens of Texas and the United States. These responsibilities are accomplished through the State Publications Depository Program. All inquiries, correspondence, and publications should be directed to the clearinghouse at the following address: Texas State Publications Clearinghouse, Texas State Library, P.O. Box 12927, Austin, Texas 78711.

Commission–The Texas State Library and Archives Commission.

Depository library–The Texas State Library, the Legislative Reference Library, the Library of Congress, the Center for Research Libraries, or any other library that the commission designates as a depository library for state publications.

State agency–Any entity established or authorized by law to govern operations of the state such as a state office, department, division, bureau, board, commission, legislative committee, authority, institution, regional planning council, university system, institution of higher education as defined by the Texas Education Code, §61.003, or a subdivision of one of those entities.

State librarian–Executive and administrative officer of the Texas State Library and Archives Commission.

State publication–Printed matter which originates in or is produced by the authority or at the total or partial expense of a state agency, and which is distributed on demand or in multiple copies to government, its officers, or other persons outside of the creating agency. The term includes:

(A) a publication sponsored by or purchased for distribution by a state agency or released by a research firm, consulting firm, or other similar private institution under contract with a state agency; or

(B) a publication distributed on microfiche or microfilm. The term does not include correspondence, an interoffice memorandum a routine form, or other government record which is compiled or produced solely to meet the internal operating needs of a state agency.

Texas State Library–The staff, collections, archives, and property of the Texas State Library and Archives Commission organized to carry out the commission's responsibilities.

§3.2. Standard Deposit Requirements. State agencies must deposit 65 copies of all annual and biennial reports with the clearinghouse. All other publications shall be deposited in the following quantities.

Copies produced by agency	Copies to be deposited with clearinghouse
300 or more	65
100 to 299	20
20 to 99	6
1 to 19	3

§3.3. Exemptions. Upon written application, the state librarian may exempt a publication which is inappropriate for the state publications depository program. When an exemption is granted, a state agency is not required to deposit any copies of the publication with the clearinghouse.

§3.4. Waivers. Upon written application, the state librarian may reduce the number of copies of a publication to be deposited with the clearinghouse to no less than three copies if full compliance would be prohibitively expensive to an agency.

§3.5. Publications Contact Person. Each state agency shall designate in writing one or more persons to serve as a liaison with the clearinghouse. The liaison shall deposit all state publications of the agency, provide information and resolve problems about them, negotiate exemptions and waivers from deposit requirements, and submit monthly publications lists.

§3.6. Monthly List of Publications. The publications contact person must submit to the clearinghouse on or before the 15th of each month, a list of all publications produced by that agency during the preceding month. Agencies will report on forms supplied by the clearinghouse even when no agency publications have been issued during a month.

§3.7. Distribution Priorities. The Legislative Reference Library, the Library of Congress, and the Center for Research Libraries receive priority in the distribution of publications. Depository libraries designated by the commission will receive copies of state publications when state agencies deposit sufficient quantities for distribution.

§3.8. Designation of Depository Library Status. The director of a library in Texas may apply in writing to the state librarian for depository library status. The state librarian shall make a recommendation to the commission after considering the need for additional access to state publications by the public and number of copies of publications available for distribution to the depository libraries. Upon the comission's approval, the state librarian shall execute a contract with the library setting forth the responsibilities of the clearinghouse and the responsibilities of the depository library.

§3.9. Termination of Designated Depository Library Status. Depository status may be terminated by either party upon six-month's written notice. In the event of termination, title to the collection shall be retained by the Texas State Library, which may remove the collection to the clearinghouse or another depository library.

§3.10. Minimum Standards for Designated Depository Libraries. The designated depository library must:

(a) process and shelve deposited publications within 30 days of receipt;

(b) check all shipping lists to insure that depository items are received, and if not, promptly claimed;

(c) mark and date publications received in depository shipments to distinguish them from publications received from other sources;

(d) provide an orderly, systematic record of depository holdings and subsequent arrangement of publications;

(e) furnish a minimum of 400 linear feet of shelving for state publications;

(f) designate a professional librarian to be responsible for the collection and to act as liaison with the Texas State Library;

(g) provide reference service from state publications to all Texas residents;

(h) provide access to the collection through reference tools, public catalogs, and national, state, and local computer networks which is comparable with that of similar collections in the library;

(i) implement a circulation and interlibrary loan policy for the collection which is consistent with the institution's general loan policy;

(j) retain depository publications for a minimum of 5 years unless otherwise instructed, and submit a disposal list to the Texas State Library for distribution before such publications are discarded;

(k) provide appropriate equipment for the use and storage of all state publications;

(l) publicize the depository collection through displays and announcements of significant new publications; and

(m) display a sign, identifying the library's depository status.

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

Issued in Austin, Texas, on December 11, 1989.

TRD-8911855 Raymond Hitt
Assistant State Librarian
Texas State Library and
Archives Commission

Earliest possible date of adoption: January 19, 1990

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

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Chapter 7. Local Records

Regional Historical Resource Depositories and Regional Research Centers

- **13 TAC §§7.1-7.9**

The Texas State Library and Archives Commission proposes new §§7.1-7.9, concerning rules for the designation and operation of regional historical resource depositories and regional research centers. The new sections set standards and define responsibilities of the State Library and of depositories and research centers, provide for termination of depositories, and continue depositories designated under prior law.

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

Ms. Kohl 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 continuation of statewide system to preserve local historical resources and make them available for research. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Marilyn von Kohl, Director, Local Records Division, Texas State Library, Box 12927, Austin, Texas 78711.

The new section is proposed under the Government Code, Title 4, Chapter 441, Subchapter J, §153 and §154, which provides the Texas State Library and Archives Commission with the authority to adopt rules for the designation and administration of regional historical resource depositories and for the care and management of materials in regional historical resource depositories and regional research centers.

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

Historical resources–Books, publications, newspapers, manuscripts, papers, documents, memoranda, records, maps, artworks, photographs, microfilm, sound recordings, or other materials of historical interest or value, to which title and custody have been transferred to and accepted by the Texas State Library and Archives Commission, including local government records of permanent value transferred to the custody of the commission under the Local Government Code, Title 6, Subtitle C.

Commission–The Texas State Library and Archives Commission.

Depository–A regional historical resource depository established under the Government Code, §441.153.

Regional research center–A regional research center established under the Government Code, §441.154.

§7.2. Designation of Depositories.

(a) The commission will consider designation of an existing or proposed library or archives as a depository when in the opinion of the commission such designation would enhance its ability to carry out its responsibilities under the Government Code, Title 4, Chapter 441, Subchapter J, or the Local Government Code, Title 6, Subtitle C, and when the chief executive officer of an archives or library requesting depository designation agrees in writing to these rules and to such other terms as the commission may determine are necessary. Agreements between the commission and requesting archives and libraries shall be in a form to be established by the commission.

(b) The commission will specify the geographical area of the state to be served by a depository at the time it is designated; however, the commission retains the specific right under the Government Code, §441. 153(d), to change the boundaries of depository regions. A depository region must comprise at least one county, with a population of no fewer than 85,000, and all local government offices within the counties served.

§7.3. Minimum Requirements for Depositories.

(a) The depository must maintain regular hours of operation and be open to the public and staffed at least 40 hours per week.

(b) The depository must provide a fire resistive stack area with installed metal shelving designed for record storage containers and an area suitable for processing records, heat, air conditioning, janitorial and maintenance service, and professional supervision for the storage, protection, and reference service of historical resources placed in the depository. The shelving area for historical resources shall be sufficiently separated, either physically or by clearly marked shelf labeling, from that used for the depository's own materials, to avoid accidental interfiling. Stack and processing areas must be closed to the public at all times and locked after operating hours.

(c) The depository must provide at least one staff member to assist patrons in the use of historical resources and to handle loan requests for historical resources; however, the staff member may provide such assistance in addition to other regular duties. The depository must provide depository materials to researchers and must monitor their use so as to avert destructive handling or theft, but is not required nor expected to perform research for patrons.

(d) The depository must provide suitable research space, tables, and chairs for depository patrons and provide other facilities and equipment, such as microfilm readers, necessary to use and copy historical resources.

(e) The depository must enforce commission policies concerning researchers' access to and proper handling of historical resources.

(f) Regardless of whether the depository is publicly or privately funded, it must make historical resources equally available to all persons 15 years of age or older who request them or to a person aged 12 to 15 who is accompanied by an adult. However, this requirement shall not prevent a depository from denying access to any person whose actions endanger the records or who causes a public danger or disturbance. One adult per juvenile researcher is required, and that person will be held responsible for the child's handling of depository materials. Persons under 12 may not use depository materials.

(g) The depository must make historical resources available to researchers free of charge, but a charge may be made for photocopies of historical resources made on depository equipment, or to reimburse the depository for postage or other direct costs incurred in assisting a person, unless prohibited by law.

(h) The depository staff must not make any inquiry of any person who applies for inspection or copying of historical resources beyond the purpose of establishing proper identification and the records being requested, and must otherwise comply with state statutes governing access to public information.

(i) If the commission deems it necessary or advisable to assure proper care and availability of historical resources, it may establish additional requirements for specific institutions prior to signing agreements designating them as regional depositories.

§7.4. Management of Depositories and Regional Research Centers.

(a) A depository may establish hours for historical resources to be available to the public to coincide with the hours of its own operation, so long as these include at least 32 hours between 7:30 a.m. and 6:30 p.m. Mondays-Fridays and no fewer than 40 total hours each week. The depository may be kept open longer provided the institution at which it is located insures the security of historical resources as required under these rules.

(b) Historical resources may be made available for research or exhibit by temporary transfer to a depository or regional research center or to the Texas State Library. Records may not be transferred or loaned to any other institution or to a person. Historical resources may not be transferred or loaned if in the opinion of commission staff the transfer or loan would endanger them. If the cost of providing photocopies to a researcher would be less expensive than the cost of transporting the historical resources, the commission may require that photocopies be provided instead of transferring or loaning the historical resources.

(c) Transfers of historical resources shall be scheduled as much as possible to coincide with other planned travel of state library staff and at the lowest cost compatible with security of the materials.

(d) Requests for loan of historical resources must be submitted on forms prepared for that purpose by the commission and countersigned by a staff member of the commission or of a depository. If countersigned by depository staff, a commission staff member must sign approval on the loan form.

(e) Transporting of historical resources must be by a member of the commission staff or, on request and authorization of commission staff, by depository staff, except that they may be shipped by air when a commission or depository staff member delivers them to the originating airport and another is on hand at arrival of the plane to take custody of them.

(f) Historical resources may be loaned for a period of up to 60 days, and the loan may be renewed for one additional period of up to 30 days, if no other request for them has been received.

(g) Historical resources which are on microfilm may be requested through either regular interlibrary loan or through interdepository loan. Interlibrary loan requests for historical resources may be handled by a depository in the same manner as other interlibrary loan requests it processes. Commission staff approval of interlibrary or interdepository loan requests for microfilm is not required and microfilm may be shipped by mail. Microfilm may be loaned for a two week period, and may be renewed for an additional two weeks if no other request for them has been received.

(h) The commission may remove historical resources from a depository or regional research center if in its opinion such removal is necessary for their protection or would make them more available to researchers.

§7.5. Commission Staff at Depositories.

(a) Provided the depository is able to make available an office; furniture; mail and telephone service; copying facilities; and sufficient work space for processing records, the commission may, pursuant to the Government Code, §441.153(e), station one or more staff members, who may be full or part time employees of the commission, at a depository for a period of time determined by the commission.

(b) Commission staff may not provide reference or arrangement and description services for materials to which the commission does not hold title, nor be responsible for security of such materials, nor may they represent a depository in negotiations for accessions to its holdings or in other matters.

(c) Working hours for commission staff stationed at a depository will be established by the commission. The depository must ensure commission staff access to the depository office and stack areas when needed to place new accessions in them, including after normal operating hours, by furnishing a key or providing a staff member to open the area.

(d) The depository must make a staff member available to answer the telephone and take messages when the commission staff member is away from the office.

§7.6. Financial Responsibilities.

(a) The commission will not pay for:

(1) purchase or installation of shelving or other equipment or facilities that would remain at a depository if depository status were terminated;

(2) direct grants to depositories, unless funds are specifically appropriated or donated to the commission for that purpose.

(b) The commission will pay for:

(1) travel or other expense of transferring accessions to depositories and of interdepository loans of historical resources other than microfilm;

(2) long distance phone calls made by commission staff.

§7.7. Title to Materials.

(a) In accordance with state statutes concerning public records, to guarantee continuity of responsibility for the materials transferred to the commission, and to provide statewide uniformity in their administration, title to all materials given, donated, or transferred to the commission and placed in a depository shall reside in the commission.

(b) Historical resources may be accessioned, and accessions negotiated, only by commission staff members. However, depository staff may, on request and authorization of the commission, physically transport to a depository historical resources which have previously been accepted by commission staff.

§7.8. Termination of Depositories. Depository status may be terminated by either the commission or a depository on one year's notice in writing to the other party. In the event of termination, title to all materials placed in the depository will remain with the commission.

§7.9. Depositories Designated Under Prior Law. Depositories designated under laws in effect prior to September 1, 1989, are continued in existence and will be governed by these rules as of their effective date. The commission will provide each depository with a copy of these rules.

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

Issued in Austin, Texas on December 11, 1989.

TRD-8911854

Raymond Hitt
Assistant State Librarian
Texas State Library and
Archives Commission

Earliest possible date of adoption: January 19, 1990

For further information, please call: (512) 463-5460

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter M. Motor Bus Companies

- **16 TAC §5.217**

The Railroad Commission of Texas proposes an amendment to §5.217 concerning insurance. The amendment would reduce the required level of liability insurance for motor bus companies for vehicles with a seating capacity of 20 or less, varying the required levels according to the number of seats in the bus. The section as published sets the required amount at $50,000 per seat, though the commission will consider different amounts for final adoption.

The commission may adopt an amendment which differs substantially from the version as proposed. The commission may adopt an amendment which would set the required level of liability insurance coverage for all smaller vehicles at a given amount, change the dividing line between the small and large buses, or set the amounts at different levels. The commission will consider the comments received in determining which option to choose for adoption. The commission is also simultaneously adopting an emergency amendment which reduces the required levels of insurance coverage to $500,000 for all sizes of buses.

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.

Ronald D. Stutes, 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 a reduction in insurance costs for motor bus companies that operate smaller buses. 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.

Public comment may be submitted within 60 days to Ronald D. Stutes, Hearings Examiner, Legal Division, and Raymond Bennett, Director, Transportation/Gas Utilities Division, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711.

The amendment is proposed under the Texas Motor Bus Act, Texas Civil Statues, Article 911a, which authorizes the commission to regulate motor bus companies in all matters.

§5.217. Insurance. All motor bus companies shall be subject to and governed by the insurance requirements of Subchapter L of this chapter (relating to Insurance Requirements). The minimum amounts for each motor vehicle as referred to in §5.181 of this title (relating to Evidence of Insurance Required) are hereby prescribed as follows for motor bus companies.

(1) (No change.)

(2) Combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to property of others (excluding cargo), for any vehicle with a seating capacity of 20 passengers or less **$50,000** per seat [$1.5 million].

(3) (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 December 11, 1989.

TRD-8911907 Cril Payne
Assistant Director, Legal Division, General Law
Railroad Commission of Texas

Proposed date of adoption: February 17, 1990

For further information, please call: (512) 463-7094

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TITLE 22. EXAMINING BOARDS

Part XXIII. Texas Real Estate Commission

Chapter 533. Practice and Procedure

- **22 TAC §§533.1, 533.15-533.17, 533.21, 533.22, 533.27, 533.29, 533.30**

The Texas Real Estate Commission proposes amendments to §§533.1, 533.15–533.17, 533.21, 533.22, 533.27, 533.29 and 533.30, concerning practice and procedure in rulemaking and contested cases. The amendments bring the agency's procedural sections into conformity with recent amendments to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, concerning notice of final decisions and clarify the application of the sections to the several licensing statutes administered by the agency. Sections originally derived from Texas Civil Statutes, Article 6252-13a are reworded to track that statute more closely. The proposed amendment to §533.29, concerning motions for rehearing, would require a motion for rehearing to set forth specific grounds and be sufficiently definite to apprise the agency of any error claimed.

Mark A. Moseley, 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 or a local employment impact as a result of enforcing or administering the sections.

Mr. Moseley 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 conforming the agency's sections with the law governing contested cases and rulemaking. There will be no effect on small businesses and no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Civil Statutes, Article 6573a, §5(h) , which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

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

Complaining witness–Any person who has made a written [an oral or written] complaint to the agency against any person subject to the jurisdiction of the agency.

Contested case–A proceeding in which the legal rights, duties, or privileges of a party are to be [or may be] determined by the agency after an opportunity for [through an] adjudicative hearing.

Party–The agency and each person named or admitted as a party [any person whose rights, duties, or privileges under the Texas Real Estate License Act are to be determined in a contested case].

§533.15. Contested Case: Disapproval of an Application for a License [Licensure]. Notice and hearings relating to disapproval of an application for a license issued by the agency shall be governed by the statute under which the application was filed and by Texas Civil Statutes, Article 6252-13a. [The agency shall give immediate written notice of its disapproval of an application for broker licensure to the applicant, and to the sponsoring broker and proposed salesman in the case of an application for salesman licensure. The applicant is entitled to a hearing if a request therefor is filed in writing within 10 days after the receipt of the notice of the disapproval of licensure. The hearing shall be held within thirty days after the request is filed, but may be continued by agreement of the parties.] The agency shall also notify a sponsoring broker of the disapproval, but a [A] sponsoring broker is not required to request a hearing [be a party to the request for hearing and to] or to be named or admitted as a party in the proceeding before the agency. A hearing pursuant to this section shall be held at a place designated by the agency. Failure to [timely] request a hearing timely waives judicial appeal, and the agency determination becomes final and unappealable.

§533.16. Contested Case: Suspension and Revocation of a License [Licensure]. A license issued by the agency may not be suspended or revoked except after notice and opportunity for hearing pursuant to statutory obligation and these sections. If a real estate salesman is a respondent, the agency will also notify the salesman's sponsoring broker of the hearing. [The licensee and the sponsoring broker in the case of a salesman licensee are entitled to notice]. The hearing shall be held at a time and place designated by the agency, except that upon the written request of a [the] respondent licensed as a Texas real estate broker or salesman filed within five days after receipt of the notice of hearing, the hearing shall be held in the county where the principal place of business of the respondent is maintained. If the respondent is a real estate licensee who does not reside within this state, the hearing may be held in any county within this state.

§533.17. Contested Case: Notice of Hearing. The notice of hearing shall be served by personal service or certified mail not less than 10 days prior to the date set for the hearing. The notice must include a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held [of the agency]; a reference to the particular sections of the statutes and rules involved [section of the Texas Real Estate License Act and the Texas Real Estate Commission rules involved]; and a short and plain statement of the matters asserted [brief and concise statement of the allegations], or, if the agency is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, on timely written application, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing [In the event that the initial notice is limited to a statement of the issues involved, on timely written application, a more definite and detailed statement must be furnished not less than three days prior to the date set for hearing].

§533.21. Contested Case: Persons Designated Presiding Officer; Ex Parte Consultations. Any person designated by the agency as a presiding officer in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or his representative except on notice and opportunity for all parties to participate. Any person designated by the agency to render a final decision or to make findings of fact and conclusions of law in a contested case may communicate ex parte with employees of the agency who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the agency and its staff in evaluating the evidence.

§533.22. Contested Case: Subpoenas; Depositions. The issuance of subpoenas and commissions and the taking and use of depositions in a contested case shall be governed by the Administrative Procedure and Texas Register Act, §14 (Texas Civil Statutes, Article 6252-13a) [and the Real Estate License Act, §17]. Subpoenas and commissions may be issued by the presiding officer.

§533.27. Contested Case: Final Decisions and Orders. A final decision or order adverse to a party in a contested case must be in writing or stated in the record. A [The] final decision must include findings of fact [, accompanied by a concise statement of the underlying facts,] and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by first class mail of any decision or order. When the agency issues a final decision or order ruling on a motion for rehearing, the agency shall send a copy of that final decision or order by first class mail to the attorneys of record and shall keep an appropriate record of that mailing. If a party is not represented by an attorney of record, then the agency shall send a copy of a final decision or order ruling on a motion for rehearing by first class mail to that party, and the agency shall keep an appropriate record of that mailing. A party or attorney of record notified by mail of a final decision or order as required by this section shall be presumed to have been notified on the date such notice is mailed. A final decision must [It shall] be rendered within 60 days after the date the hearing is finally closed. [The agency shall give notice to the other parties of the decision or order. On written request, the agency shall deliver a copy of the decision to any party and his attorney of record.]

§533.29. Contested Case: Prerequisite to Judicial Review. Except in the case of an emergency decision or order, a motion for rehearing is a prerequisite to judicial review. A motion for rehearing must set forth specific grounds upon which the motion is based and must be sufficiently definite to apprise the agency of any error claimed. If the party filing the motion for rehearing is entitled to request a rehearing by the commission itself, and the party desires to make such a request, the party shall include in the motion for rehearing a request for a rehearing conducted by the members of the commission. A motion for rehearing that does not include an express request for a rehearing conducted by the members of the commission is deemed to be a request for a rehearing conducted by a presiding officer. If the party filing the motion for rehearing is entitled to request a rehearing by the commission itself but does not include such request in the motion for rehearing, the party need not file any additional motions for rehearing as a prerequisite for judicial review. A motion for rehearing must be filed within 20 [15] days after the date the party or his attorney of record is notified [of rendition] of the final decision or order. Replies to a motion for rehearing must be filed with the agency within 30 [25] days after the date the party or his attorney of record is notifed [of rendition] of the final decision or order. The presiding officer or the commission itself, as appropriate, must act on the motion within 45 days after the date the party or his attorney of record is notified [rendition] of the final decision or order. The presiding officer or the commission itself, as appropriate, may, by written order, extend the period of time for filing, replying to, and taking action on a motion for rehearing, not to exceed 90 days after the date the party or attorney of record is notified [of rendition] of the final decision or order. In the event of an extension of time, the motion for rehearing is overruled by operation of law on the date fixed by the written order of extension, or in the absence of a fixed date, 90 days after the date the party or his attorney of record is notified [the rendition] of the final decision or order. The presiding officer or the commission itself, as appropriate, may modify this schedule with the consent of the parties.

§533.30. Contested Case: Judicial Review. A person who has exhausted all administrative remedies, and who is aggrieved by a final decision in a contested case [from which appeal may be taken] is entitled to judicial review. The petition shall be filed in a district court of Travis County, Texas or, if the contested case relates to the licensing of a real estate broker or salesman by the agency, in a district court of the county in which the hearing was held within 30 days after the decision or order of the agency is final and appealable. A copy of the petition must be served on the agency and any other parties of record. After service of the petition on the agency and within the time permitted for filing an answer (or such additional time as may be allowed by the court), the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding. If the court orders new evidence to be taken before [presented to] the agency, the agency may modify its findings and decision [or order] by reason of the additional [new] evidence, and shall file such evidence and any modifications, new findings, or decisions with the reviewing court [transmit the additional record to the court].

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

Issued in Austin, Texas, on December 8, 1989.

TRD-8911853 Mark A. Moseley
General Counsel
Texas Real Estate Commission

Earliest possible date of adoption: January 19, 1990

For further information, please call: (512) 465-3960

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Chapter 535. Provisions of the Real Estate License Act

General Provisions Relating to the Requirement of Licensure

• 22 TAC §535.1

The Texas Real Estate Commission proposes an amendment to §535.1, concerning requirement of real estate licensure. The amendment is necessary to conform the section with a recent amendment to Texas Civil Statutes, Article 6573a, §2, eliminating the requirement of a Texas real estate license for a partnership. The amendment clarifies that partners or employees who promote real estate brokerage services would be required to be licensed as real estate brokers or salesmen.

Mark A. Moseley, 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 or a local employment impact as a result of enforcing or administering the section.

Mr. Moseley 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 conforming the agency's sections with current law. There will be no effect on small businesses and no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§535.1. License Required.

(a)-(g) (No change.)

(h) Real estate licensure is not required of a partnership acting as a real estate broker in Texas. [, provided that each individual] A partner or nonpartner employee who acts as a real estate agent in the partnership's name **must be** [is] licensed as a real estate broker or salesman. [However, a partnership may apply for Texas real estate broker licensure by complying with the requirements set forth for corporations in the Real Estate License Act, §6(c).

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

Issued in Austin, Texas on December 8, 1989.

TRD-8911852 Mark A. Moseley
General Counsel
Texas Real Estate Commission

Earliest possible date of adoption: January 19, 1990

For further information, please call: (512) 465-3960

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Definitions

• 22 TAC §535.18

The Texas Real Estate Commission proposes an amendment to §535.18, concerning auctions. The amendment is necessary to conform the section with a recent amendment to Texas Civil Statutes, Article 6573a, §3, providing an exemption for persons conducting a real estate auction under the authority of a license issued by another state agency. The amendment clarifies that a real estate license is required unless the person is acting under the authority of another license issued by this state.

Mark A. Moseley, 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 or a local employment impact as a result of enforcing or administering the section.

Mr. Moseley 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 conforming the agency's sections with current law. There will be no effect on small businesses and no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§535.18. Auctions.

[(a)] The Real Estate License Act requires Texas real estate licensure of one who **auctions** [engages in auctioning of] real property for another and for compensation [if such activity is carried on] in this state **unless the person conducting the auction is acting under the authority of another license issued by this state.**

[(b) In Texas, an auctioneer must have both a real estate license and an auctioneer's license to be authorized to auction real estate.

[(c) An auctioneer who is not a real estate licensee may not call an auction even though a licensee stands beside him and accepts or rejects the bids.]

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

Issued in Austin, Texas on December 8, 1989.

TRD-8911851 Mark A. Moseley
General Counsel
Texas Real Estate Commission

Earliest possible date of adoption: January 19, 1990

For further information, please call: (512) 465-3960

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Exemptions to Requirement of Licensure

• 22 TAC §535.31

The Texas Real Estate Commission proposes an amendment to §535.31, concerning attorneys. The amendment is necessary to conform the section with recent amendments to Texas Civil Statutes, Article 6573a, prohibiting the sharing of commissions with attorneys. The amendment removes those subsections which concern an attorney's coopertion with real estate licensees or entitlement to real estate commissions. Remaining subsections are renumbered.

Mark A. Moseley, 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 or a local employment impact as a result of enforcing or administering the section.

Mr. Moseley 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 conforming the agency's sections with current law. There will be no effect on small businesses and no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§535.31. Attorneys at Law.

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

[(f) Texas-licensed real estate brokers may enter working agreements with Texas-licensed attorneys the same as they may with Texas-licensed brokers. No notification to the commission is required.

[(g) Texas-licensed attorneys are exempt from real estate licensure requirements and are permitted by statute to maintain lawsuits for earned real estate commissions.

(f)[(h)] This provision is not a waiver of the standards of eligibility and qualification elsewhere established in this Act. Law school credits may fulfill eductional requirements.

(g)[(i)] This Act does not govern an attorney's eligibility for trade association or organization membership. Whether an attorney who is not licensed as a real estate broker is eligible for such membership would be determined by the association's or organization's requirements or restrictions.

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

Issued in Austin, Texas, on December 8, 1989.

TRD-891845 Mark A. Moseley
General Counsel
Texas Real Estate Commission

Earliest possible date of adoption: January 19, 1990

For further information, please call: (512) 465-3960

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The Commission

• 22 TAC §535.42

The Texas Real Estate Commission proposes an amendment to §535.42, concerning the jurisdiction and authority of the commission.

The amendment removes or revises subsections which have become obsolete or inaccurate as they concern the extent of the commission's responsibilities due to the agency's administration of additional statutes regulating real estate inspectors, timeshare developers, and residential service companies. The amendment also clarifies that agency employees authorized by the commission pursuant to Texas Civil Statutes, Article 6573a, §5(t), to conduct hearings and render final decisions in contested cases may enter orders suspending, revoking, or reprimanding a licensee or placing a licensee on probation.

Mark A. Moseley, 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.

Mr. Moseley 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 conforming the agency's sections with current law. There will be no effect on small businesses and no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§535.42. Jurisdiction and Authority.

[(a) The Texas Real Estate Commission regulates only the real estate agency business and does not keep any records concering the ownership of real property.]

(a)[(b)] The commission can advise with reference to the laws it administers [the Real Estate License Act, the only law which the commission administers], but questions regarding other laws should be directed to the approprite agency or to a private attorney.

[(c) The commission regulates licensure of real estate agents but does not otherwise regulate the sale of real property.]

(b)[(d)] The Real Estate License Act does not require the registration of subdivisions offered for sale or other disposition within Texas.

(c)[(e)] The commission does not mediate disputes between or among licensees concerning entitlement to sales commissions.

(d)[(f)] The commission does not recommend individual licensees to the public.

(e) An employee of the commission specifically authorized by it pursuant to the Act, §5(t), to conduct hearings and render final decisions in contested cases may suspend or revoke a license or reprimand or place on probation a licensee for a violation of the Act or a rule of the commission.

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

Issued in Austin, Texas, on December 8, 1989.

TRD-8911846 Mark A. Moseley
General Counsel
Texas Real Estate Commission

Earliest possible date of adoption: January 19, 1990

For further information, please call: (512) 465-3960

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Education, Experience, Educational Programs, Time Periods, and Type of License

• 22 TAC §535.61

The Texas Real Estate Commission proposes an amendment to §535.61, concerning licensing examinations. The amendment conforms the section with a recent amendment to Texas Civil Statutes, Article 6573a, §7(a), decreasing the time during which an applicant must successfully complete an examination from one year to six months.

Other substantive changes prohibit the use of calculators with alphabetic keyboards, authorize dismissal of an examinee with a failing grade for giving or receiving unauthorized assistance or answers to examination questions, and clarify that removal of any written material furnished by the agency for the examination may be considered theft. The amendment also makes nonsubstantive changes in wording to conform the section with the current terminology used by the agency.

Mark A. Moseley, 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 or a local employment impact as a result of enforcing or administering the section.

Mr. Moseley 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 conforming the agency's sections with current law and enhancing the security of the agency's examination program. There will be no effect on small businesses and no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Don Roose, Education Officer, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§535.61. Competency: Examinations.

(a) To be authorized for admittance to a real estate licensure examination, either for salesman or broker licensure, the applicant must present to the examination proctor a certificate of eligibility issued by the commission [letter of authorization] for an initial examination or [a letter of authorization] for a reexamination. Certificates of eligibility [Subject letters] will be furnished [by the Real Estate Commission] to the sponsoring broker for [in the case of] salesman applicants, or directly to the applicant [in the case of those applying] for broker licensure.

(b) Certificates of eligibility [Subject letters] will specify a date six months

[one year] from the date the application was received by the commission, prior to which the examination may be taken, and certificates [the letters] will not be valid beyond that date.

(c) In addition to the certificate of eligibility [letter of authorization], examination proctors shall require official photo bearing personal identification of individuals appearing for an examination and shall deny entrance to anyone who cannot provide adequate identification.

(d)-(g) (No change.)

(h) Examinees are permitted to use slide rules or silent, battery-operated, electronic, pocket sized calculators which are nonprogrammable. If a calculator has printout capability, the use of such calculator must be approved by the examination proctor prior to the examination. Calculators with alphabetic keyboards will not be approved.

(i) Examination schedules for both salesman and broker licensure examinations are published periodically and reflect the dates, times, and locations throughout the state that the examinations will be administered. Such schedules will be furnished to applicants [the applicant] for their [his or her] determination of a location at which to take the examination. The examination may be taken at any location shown on the schedule within the time authorized by the applicant's certificate of eligibility [letter of authorization].

(j) Special examinations based on verified physical limitations or other good cause as determined by the commission can be arranged for individuals through the education division of the commission [Real Estate Commission]. Normally, all special examinations are administered at the commission headquarters in Austin by staff personnel. Deviations from this policy would be limited to cases in which an applicant is physically incapable of traveling to Austin or of being transported to Austin. Such cases would be handled individually, requiring complete verification by medical authorities, or confirmation by staff members that such an examination is justified should the nature of the incapacity be so obvious as to not require medical verification.

(k) The method of special examination, oral or written, will be determined by the staff personnel based on the particular circumstances of each case.

(l) (No change.)

(m) A person taking an examination for a license issued by the commission shall abide by the instructions shown on the examination schedule, any other related correspondence from the commission, the instruction sheet for [on] the examination, the instructions on the examination booklet, and the [verbal] instructions of the examination proctor.

(n) An examinee observed by the proctor giving or receiving or attempting to give or receive unauthorized assistance or answers to examination questions may have [his] examination materials confiscated by the proctor and [such person] shall be dismissed from the examination session with a failing grade. Dismissal may result in disapproval of an application for licensure. A person having an [his] application disapproved for these reasons may appeal the disapproval in accordance with the Act, §10 [the prescribed manner].

(o) The commission may file theft charges against any person [an examinee] who removes or attempts to remove an examination or any portion thereof or any written material furnished with the examination whether by actual physical removal or by transcription.

(p)-(ee) (No change.)

(ff) A person should satisfy educational and experience requirements prior to filing an application for licensure. Applications which do not meet such requirements will be held by the commission, and the applicant will be notified in writing of any deficiencies. Deficiencies must be cured, and the competency examination must be passed within six months [one year] from the filing of the application. Application and transcript evaluation fees are not refundable.

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

Issued in Austin, Texas, on December 8, 1989.

TRD-8911850 Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Earliest possible date of adoption: January 19, 1990

For further information, please call: (512) 465-3960

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Fees

• 22 TAC §535.101

The Texas Real Estate Commission proposes an amendment to §535.101, concerning fees. The amendment is necessary to conform terminology used in the section with recent amendments to Texas Civil Statutes, Article 6573a, relating to license renewals. The amendment removes references to licensure certification.

Mark A. Moseley, 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.

Mr. Moseley 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 conforming the agency's sections with current law. There will be no effect on small businesses and no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§535.101. Fees.

(a) The obligation for payment of fees for the issuance of licenses reflecting a change or addition of place of business or change of sponsoring broker accrues when requests for such licenses are received. Requests for changes or additions made during the annual renewal [certification] period will require the payment of the prescribed fee(s) in addition to the appropriate renewal [certification] fee.

(b) Any request requiring the payment of a fee as set out in this section which is not accompanied by payment in full of such fee shall be returned to the person making such request. No other action will be taken on such requests until returned with the proper fee.

(c) [The fees for annual licensure certifiction shall be established by the commission before each certifiction period.] All [other] fees shall be established, subject to the limitations contained in this section, at such times as the commission deems appropriate.

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

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

Issued in Austin, Texas, on December 8, 1989.

TRD-8911849 Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Earliest possible date of adoption: January 19, 1990

For further information, please call: (512) 465-3960

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Termination of Salesman's Association with Sponsoring Broker

• 22 TAC §535.121

The Texas Real Estate Commission proposes an amendment to §535.121, concerning inactive licenses. The amendment is necessary to conform terminology used in the section with recent amendments to Texas

Civil Statutes, Article 6573a, relating to license renewals.

Mark A. Moseley, 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.

Mr. Moseley 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 conforming the agency's sections with current law. There will be no effect on small businesses and no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§535.121. Inactive License.

(a) If an application for **renewal** [certification] of **a license** [licensure status] has not been timely filed, an original application for **a license** [licensure privileges] must be filed and approved by **the commission for the applicant** to regain licensure.

(b) Death of a sponsoring broker places the salesman's license on inactive status, and the salesman is not authorized to act as a salesman until **the salesman** [he] becomes sponsored by another broker.

(c) Upon termination of the broker's sponsorship of a salesman, the broker is required immediately to return the license concerned to the **commission** [Real Estate Commission]. The broker shall advise the salesman in writing that such has been done.

(d) (No change.)

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

Issued in Austin, Texas, on December 8, 1989.

TRD-8911848 Mark A. Moseley
General Counsel
Texas Real Estate Commission

Earliest possible date of adoption. January 19, 1990

For further information, please call: (512) 465-3960

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Suspension or Revocation of Licensure

• 22 TAC §535.143

The Texas Real Estate Commission proposes an amendment to §535.143, concerning fraudulent procurement of licenses. The amendment conforms the section with the renumbering of Texas Civil Statutes, Article 6573a, §15(a)(2).

Mark A. Moseley, 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 or a local employment impact as a result of enforcing or administering the section.

Mr. Moseley 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 conforming the agency's sections with current law. There will no effect on small businesses and no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§535.143. Fraudulent Procurement of License.

(a) A violation of the Act, **§15(a)(2)** [§15(2)] occurs if an applicant for licensure for himself or a salesman makes material misstatements, written or oral, in connection with the filing of an application to obtain licensure. This does not include an unintentional mistake of fact; however, a broker submitting an application as sponsor of a proposed salesman has an affirmative duty to ascertain that all information called for in the application is given and is true, correct, and complete, whether the application is filled out by him or the prospective salesman.

(b) A violation of the Act, **§15(a)(2)** [§15(2)] occurs if pertinent information is omitted from an application, and that omission causes the application to be inaccurate in any material particular.

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

Issued in Austin, Texas, December 8, 1989.

TRD-8911847 Mark A. Moseley
General Counsel
Texas Real Estate Commission

Earliest possible date of adoption: January 19, 1990

For further information, please call: (512) 465-3960

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 97. Communicable Diseases

Control of Communicable Diseases

• 25 TAC §97.18

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

The Texas Department of Health proposes new §97.18, concerning the fee to cover the cost of providing the HIV counseling and testing course. The new section will implement the provisions of Senate Bill 959, 71st Legislature, 1989, which requires that the department provide the course and charge a reasonable fee to persons other than employees of entities receiving state or federal funds for HIV counseling and testing programs through a contract with the department. The section covers its purpose, course content, fee, and how to obtain information about the course.

Robert A. MacLean, M.D., deputy commissioner for professional services, 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 department will receive revenue of approximately $25,000 each year in fees to cover the cost of administering the course. There will be no effect on local government as a result of enforcing or administering the section and there will be no impact on local employment.

Dr. MacLean 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 enforcng the section will be that course will be available for providing HIV counseling and testing. There will be no effect on small businesses as a result of enforcing the section. There will be a cost of $150 to each person taking the course who is not an employee of an entity receiving state of federal funds for HIV counseling and testing programs through a contract with the department

Oral and written comments on the proposal may be submitted to Christie Reed, Director, HIV Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7209. Comments will be accepted for 30 days after the proposal has been published in the *Texas Register*.

The new section is proposed under the Human Immunodeficiency Virus Services Act, Senate Bill 959, §1.07, which provides the board of health with the authority to adopt

rules to implement the Act; §4.04, which provides the board with the authority tc charge a fee for an HIV counseling and testing program; and the Health and Safety Code, §12.001, which provides the board the authority to adopt rules for the performance of every duty imposed on the board, the department, and the commissioner of health.

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

Issued in Austin, Texas, on December 11, 1989.

TRD-8911870 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Proposed date of adoption: February 25, 1990.

For further information, please call: (512) 458-7209

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Chapter 115. Home Health Care Agencies

Licensing and Regulation

• 25 TAC §115.18

The Texas Department of Health proposes an amendment to §115.18, concerning training, experience, examination, and qualifications required of home dialysis technicians and nurses employed by a home health agency.

Stephen Seale, Chief Accountant III, has determined that for the first five-year period the section will be in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the section as proposed. There will be no effect on local employment as a result of administering the section.

Mr. Seale also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be to assure home health agencies providing home dialysis can recruit and employ qualified home dialysis technicians and nurses. There will be no effect on small businesses as a result of enforcing the section. There will be no economic cost to individuals who are required to comply with the section as proposed.

Written and oral comments on the proposal may be submitted to Nance Kerrigan, R.N., M.S.N., Director, Health Facility Licensure and Certification Division, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7245. Public comments will be accepted for 30 days after publication of the section in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, §142.012 which provides the Texas Board of Health with the authority to adopt rules governing home health care agencies and the Health and Safety Code; and §12.001 which provides the Texas Board of Health with the authority to adopt rules for performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

§115.18. Standards for Home Dialysis Designation.

(a)-(q) (No change.)

(r) A qualified dialysis technician shall be employed by or under contract with the agency and shall meet the following requirements.

(1) A qualified home dialysis technician shall have:

(A) a minimum of a high school education or GED and two [three] years of full time dialysis experience; or

(B) a minimum of a high school education or GED and one year [or two years] full time dialysis experience with one additional year of direct patient care in a hospital.

(2) If the dialysis technician is performing peritoneal dialysis (i.e., intermittent peritoneal dialysis, continuous ambulatory peritoneal dialysis, or continuous cycles peritoneal dialysis), one of the two [three] years of full time experience shall be with peritoneal dialysis.

(3) (No change.)

(s)-(t) (No change.)

(u) The requirements concerning an orientation/training period are as follows.

(1) The agency shall develop an 80-hour written orientation [training] program including classroom (theory, etc.) and direct observation of the dialysis technician or nurse performing procedures on the patient in the home. The orientation program [training] shall be provided by a qualified registered nurse. A written skills examination or competency evaluation shall be administered to the dialysis technician or nurse at the conclusion of the orientation program and prior to the time the nurse or technician delivers independent patient care. The department shall approve the agency's written skills examination or competency evaluation prior to testing the home dialysis technician or nurse. The department shall set the passing grade for each agency's written skills examination or competency evaluation.

(2) If the nurse or dialysis technician is able to demonstrate mastery of the required theory [, (subsection (s)(1)-(17) of this section),] of the classroom component (subsection (s)(1)-(17) of this section), the orientation [training] program may be waived by written examination as described in subsection (u)(1).

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

(v)-(dd) (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 December 12, 1989.

TRD-8911920 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Proposed date of adoption: February 25, 1990.

For further information, please call: (512) 458-7245

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Chapter 289. Occupational Health and Radiation Control

Texas Regulations for Control of Radiation

• 25 TAC §289.123

The Texas Department of Health proposes an amendment to §289.123, which adopts by reference Part 43 of the Texas Regulations for Control of Radiation. Part 43 is titled "Licensing of Uranium Recovery Facilities."

The amendment to Part 43 will include technical requirements and groundwater protection standards compatible with federal standards. The amendment will allow the department to comply with an agreement with the Nuclear Regulatory Commission regarding licensing of uranium recovery facilities by implementing the groundwater protection standards in Title 10, Chapter 1, Code of Federal Regulations, Part 40. The amendment is also in accordance with Senate Bill 856, 71st Legislature, Regular Session, which directs the department to adopt and enforce groundwater protection standards compatible with federal standards.

The amendment will also update and clarify Memoranda of Understanding (MOU) between the department and the Texas Water Commission (TWC)–(Appendix 43-B), and the Railroad Commission of Texas (RRC)–(Appendix 43-C), concerning uranium surface mining and milling.

Stephen Seale, Chief Accountant III, has determined that for the first five year period that the section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. The department has been involved in the licensing, inspection, and monitoring of these facilities for many years. The incorporation of these criteria in the section does not alter the fiscal commitment of the state. There is no fiscal implication for small businesses, since no small businesses currently come under the section. No impact is anticipated on local employment as a result of implementing the section. However, the anticipated economic costs to large businesses to comply with this section as proposed will vary. Should additional monitor wells be required, the costs may be $5,000 each. The additional wells will be determined by the geology of the area and the scope of operations of the licensee. The cost for laboratory chemical analysis is estimated to be approximately $10,000 each year for fiscal years

1990–1994; and the cost for staff time for implementation and recordkeeping is estimated to be approximately $20,000 each year for fiscal years 1990–1994.

Mrs. Ruth E. McBurney, C.H.P., director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be achievement of compatibility with Nuclear Regulatory Commission (NRC) standards which adopt the groundwater protection standards of the Environmental Protection Agency. This compatibility is a requirement of the agreement between the agency and the NRC. Implementation of the MOUs facilitates the regulation of these facilities in areas of overlapping jurisdiction and concurrent statutory authority. The MOUs clarify the areas of jurisdiction and reduce duplication of effort.

Comments on the proposal may be presented in writing to the Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Public comments will be accepted for 30 days following publication of this proposed amendment in the *Texas Register*. In addition, a public hearing on the rules will be held at 10 a.m., Thursday, January 4, 1990, at the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin.

The amendment is proposed under Health and Safety Code, §§401.051, 401.052, 401.103, and 401.104, which provides the Board of Health with the authority to adopt rules concerning the regulation of radioactive materials and other sources of radiation; §401.069, which provides the board with the authority to adopt by rule any memorandum of understanding between the department and another state agency; §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; and Senate Bill 1116, 71st Legislature, 1989, which provides the Commissioner of Health with the authority to grant, deny, renew, revoke, suspend, or withdraw licenses for the disposal of radioactive waste from other persons, for the processing of such waste, and for uranium recovery and processing, including the disposal of uranium mill tailing.

§289.123. Licensing of Uranium Recovery Facilities.

(a) The Texas Department of Health adopts by reference Part 43, "Licensing of Uranium Recovery Facilities" of the department's document titled Texas Regulations for Control of Radiation, as amended in **February 1990** [April 1988].

(b) (No change.)

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

Issued in Austin, Texas, on December 12, 1989.

TRD-8911921 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Proposed date of adoption: February 25, 1990.

For further information, please call: (512) 835-7000

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 15. Medicaid Eligibility

Subchapter A. General Information

The Texas Department of Human Services proposes amendments to §§15.100, 15.415, and 15.455, concerning Medicaid-qualifying trusts, in its Medicaid Eligibility chapter. Based on Public Law 99-272, the Health Care Financing Administration issued directives concerning the treatment of Medicaid-qualifying trusts. The amendments provide for distributions from Medicaid-qualifying trusts to be considered available to the client, regardless of whether payment was actually made.

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 for state government as a result of enforcing or administering the sections. The estimated reduction in cost to state government as a result of enforcing the sections will be $155,638 in fiscal year (FY) 1990; $172,302 in FY 1991; $178, 032 in fiscal year (FY) 1992; $188,162 in FY 1993; and $202,393 in FY 1994. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the section will be that people with excess resources will be ineligible for Medicaid. There will be no effect on small businesses as a result of enforcing the sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Cathy Rossberg, Policy Communication Services-752, Texas Department of Human Services 222-E, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

• 40 TAC §15.100

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.

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

Medicaid-qualifying trusts–A Medicaid-qualifying trust is one that the client, his spouse, guardian, or anyone holding his power of attorney establishes using the client's money. The client is the beneficiary of a Medicaid-qualifying trust.

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

Issued in Austin, Texas, on December 13, 1989.

TRD-8911947 Cathy Rossberg
Agency Liaison, Policy Communication Services
Texas Department of Human Services

Proposed date of adoption: March 15, 1990.

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

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Subchapter D. Resources

• 40 TAC §15.415

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.

§15.415. Ownership and Accessibility.

(a)-(g) (No change.)

(h) Public Law 99-272 states that distributions from Medicaid-qualifying trusts are considered available to the client whether or not distributions are actually made. The amount available is the maximum amount the trustee could disburse if he used his full discretion under terms of the trust. If distribution is not made, the maximum amount the trustee may distribute if he used his full discretion under terms of the trust is considered an available resource. If trusts do not specify an amount for distribution, and if the trustee has access to and use of the principal or the income from the trust, then the entire amount is considered an available resource that may be used for the client's benefit.

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

Issued in Austin, Texas, on December 13, 1989.

TRD-8911948 Cathy Rossberg
Agency Liaison, Policy Communication Services
Texas Department of Human Services

Proposed date of adoption: March 15, 1990.

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

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Subchapter E. Income

• 40 TAC §15.455

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.

§15.455. Unearned Income.

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

(e) Other unearned income. Other sources of unearned income include

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

(9) income from Medicaid-qualifying trusts. [Payments that could be made from Medicaid-qualifying trusts are considered as income available to the client, regardless of whether payment is actually made.] **Amounts distributed from the trust to the client or used for the client's health, personal, or other maintenance needs are countable income.**

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

Issued in Austin, Texas, on December 13, 1989.

TRD-8911949 Cathy Rossberg
Agency Liaison, Policy Communication Services
Texas Department of Human Services

Proposed date of adoption: March 15, 1990.

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

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Subchapter F. Budget and Payment Plans

• 40 TAC §15.506

Texas Department of Human Services proposes new §15.506, concerning mandatory payroll deductions from earned income. Section 15.506 is being proposed new to include a clarification from the Health Care Financing Administration. The clarification states that mandatory payroll deductions from earned income may be excluded from a client's total income when determining what he pays to a long-term care facility.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state or local governments or small businesses as a result of enforcing or administering the section. The anticipated cost to the state as a result of enforcing or administering the section will be $28,845 for FY 1990; $29,305 for FY 1991; $30,183 for FY 1992; $31,860 for FY 1993; and $34,265 for FY 1994.

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 that some clients will be allowed to keep their full personal needs allowances. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Cathy Rossberg, Policy Communication Services-753, Texas Department of Human Services 222-E, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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.

§15.506. Mandatory Payroll Deductions from Earned Income. Net earned income each month before averaging by subtracting the following mandatory payroll deductions:

(1) income tax;

(2) Social Security tax;

(3) required retirement withholding; and

(4) required uniform expenses.

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

Issued in Austin, Texas, on December 13, 1989.

TRD-8911950 Cathy Rossberg
Agency Liaison, Policy Communication Services
Texas Department of Human Services

Proposed date of adoption: March 15, 1990.

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

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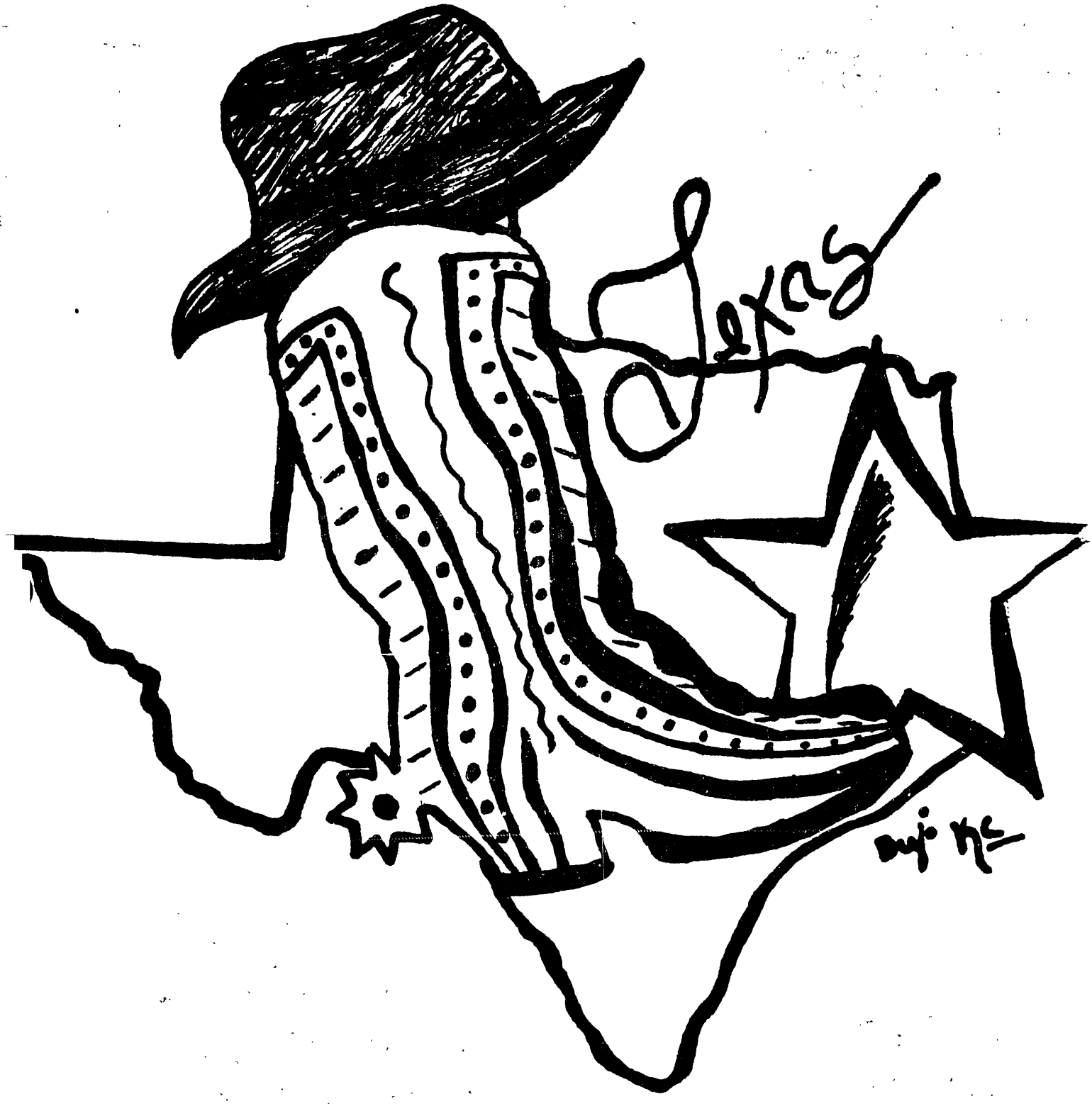
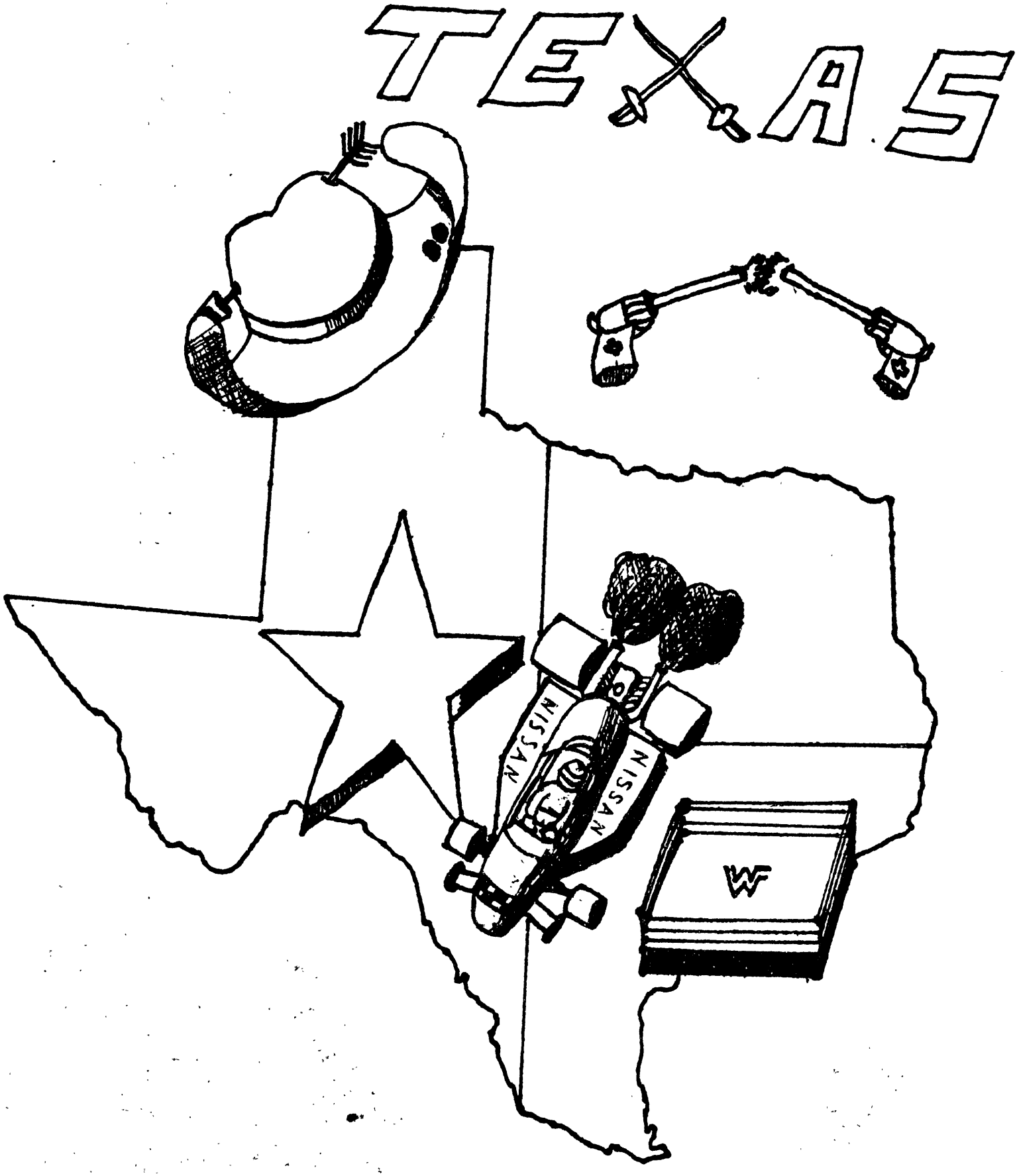


Name: K. C. Cornwell

Grade: 8

School: Clear Lake Intermediate, Clear Creek



Name: Vincent Gonzales

Grade: 7

School: Clear Lake Intermediate, Clear Creek

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 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 21. Practice and Procedure

Docketing and Notice

• 16 TAC §21.22

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91. 24(b), the proposed amendment to §21.22, submitted by the Public Utility Commission of Texas has been automatically withdrawn, effective December 12, 1989. The amendment as proposed appeared in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2740).

TRD-8911918

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Chapter 23. Substantive Rules

Rates

• 16 TAC §23.23

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91. 24(b), the proposed amendment to §23.23, submitted by the Public Utility Commission of Texas has been automatically withdrawn, effective December 12, 1989. The amendment as proposed appeared in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2740).

TRD-8911917

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Customer Service and Protection

• 16 TAC §23.46

The Public Utility Commission of Texas has withdrawn from consideration for permanent adoption a proposed amendment §23.46 which appeared in the June 13, 1989, issue of the *Texas Register* (14 TexReg 2939). The effective date of this withdrawal is December 13, 1989.

Issued in Austin, Texas, on December 13, 1989.

TRD-8911954 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Effective date: December 13, 1989

Proposal publication date: June 13, 1989

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

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 119. Health Maintenance Organizations

• 25 TAC §119.2, §119.15

The Texas Department of Health withdraws the emergency effectiveness of the amendment to §119.2 and new §119.15 which was published in the September 26, 1989 issue of the *Texas Register* effective 20 days from this filing.

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 December 12, 1989.

TRD-8911926 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Effective date: January 2, 1990.

Proposal publication date: September 26, 1989.

For further information, please call: (512) 458-7245

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 3. Energy Resources

• 31 TAC §§3.1-3.12, 3.14, 3.15, 3.21-3.25, 3.31-3.34, 3.41-3. 43, 3.51, 3.52, 3.61, 3.71

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91. 24(b), the proposed amendment to §§3.1-3.12, 3.14, 3.15, 3.21-3.25, 3.31-3.34, 3.41-3.43, 3.51, 3.52, 3.61, 3.71, submitted by the General Land Office has been automatically withdrawn, effective December 12, 1989. The amendment as proposed appeared in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2774).

TRD-8911916

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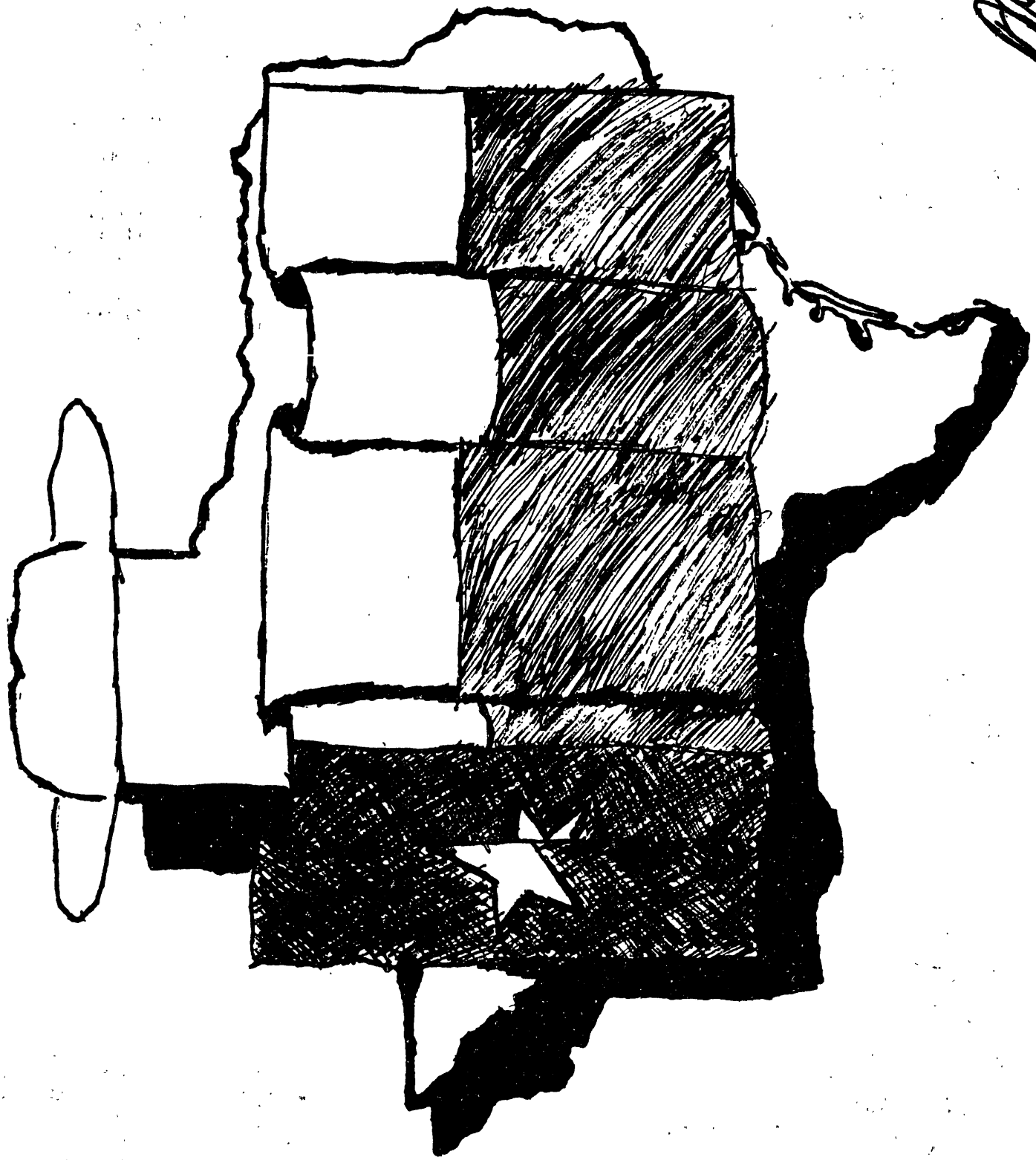

Name: Adrian Loftin

Grade: 8

School: Clear Lake Intermediate, Clear Creek

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 10. COMMUNITY DEVELOPMENT

Part II. Texas Department of Commerce

Chapter 176. Enterprise Zone Program

- **10 TAC §§176.1-176.10**

The Texas Department of Commerce (Commerce) adopts amendments to 10 TAC §§176.1-176.9 and new §176.10. Sections 176.1, 176.3, 176.4, 176.6, 176.7, 176.9, and 176.10 are adopted with changes to the proposed text as published in the September 26, 1989, issue of the *Texas Register* (14 TexReg 4963). Sections 176.2, 176.5, and 176.8, are adopted without changes and will not be published.

The amendments and new section cover requirements adopted by the 71st Legislature in Senate Bill 1205, Senate Bill 1159, and House Bill 1953. The amendments also cover clarification of requirements and procedures for submission of applications and the disposition of those applications by the department pursuant to the Texas Enterprise Zone Act, Texas Civil Statutes, Article 5190.7.

The amendments and new section cover requirements adopted by the 71st Legislature in Senate Bill 1205, Senate Bill 1159, and House Bill 1953 to provide or clarify eligibility requirements, application, and administration procedures for applicants and Commerce in the implementation of the Enterprise Zone Program.

Written comments were received from Upshur County, and a private consultant. The comments were neither for nor against the amendments, but had suggestions or comments regarding specific language. Commerce's decisions concerning incorporation of such suggestions are stated in the discussion of each comment. Comments were received on the following sections.

Section 176.1(8) received one comment of dissatisfaction with qualification criteria for enterprise zone designation and proposed one criteria of 1.5 times the national unemployment rate replace the now statutorily required two of a possible seven qualification criteria alternatives. Commerce disagrees because the proposal represents minimal distress in zone areas instead of severe distress pursuant to the purposes of the Texas Enterprise Zone Act (the Act), Texas Civil Statutes, Article 5190.7.

In §176.2(d)(1)-(2) objection was received about changes proposed for application processing time, specifically to giving Commerce 15 instead of 10 business days to notify applicant of errors and applicant response time to correct applications as notified by Commerce. Commerce proposed the amendment to give staff realistic review time to match increased program volume with available human resources. The change does not reduce applicant's 30 days to make corrections. Opposition was also made to Commerce's requiring receipt of an enterprise project application 15 days before a published deadline if a preliminary review is to be conducted and opposition to seven days notification to applicant of application deficiencies. Commerce accepts enterprise project applications any time before a project deadline. The 15 day requirement is to help applicants be assured of entering a completed application for competition. Applications received more than 15 days before deadlines may receive more than seven days notice of deficiencies.

Section 176.3(c)(1)–Commerce agrees with a comment received that current documented need not be cancelled by obsolete data as long as that documentation does not create methods inconsistent with statewide application and is not unduly burdensome for the applicant to conduct and for Commerce to verify. The proposed rules have been changed to allow partial local surveys for unemployment data under defined conditions. Local surveys are currently allowed to document distress criteria other than unemployment pursuant to requirements of the Act in §176.3(c)(2)-(5).

Section 176.4(2)(B)–objection was given to the requirement that a zone be nominated by ordinance rather than by resolution. An ordinance is required by Commerce to nominate an enterprise zone to be consistent with the Texas Tax Code, Chapter 312, that requires an ordinance to designate a reinvestment zone.

Section 176.4(5)(C)–objection was given to the requirement for applicant to certify the geographic makeup of proposed enterprise zones. The geographic makeup is required by Commerce to assure what jurisdiction is entitled to nominate the zone and to analyze zone activity and effectiveness.

Section 176.6(3)(B)(i)–benefit of state sales tax refunds for commitment to retention of jobs was proposed by one commentor. State sales tax refunds for designated enterprise projects is clearly defined in the Act to be for new jobs only.

The amendment is adopted under Texas Civil Statutes, Article 5190.7, which provides the Texas Department of Commerce with the authority to adopt rules for the administration and implementation of the Texas Enterprise Zone Program.

§176.1. General Provisions.

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

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

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

(8) Depressed area– An area within the jurisdiction of a county or municipality designated by ordinance or resolution that is an area with pervasive poverty, unemployment, and economic distress An area is an area of pervasive poverty, unemployment, and economic distress if:

(A) the average rate of unemployment in the area during the most recent 12-month period for which data is available was at least one and one-half times the local, state, or national average for that period or if the area has had at least a 9.0% population loss during the most recent six-year period or an annualized population loss of at least 1.5% for the most recent six-year period; and

(B) the area meets one or more of the following criteria:

(i) (No change.)

(ii) the area is in a jurisdiction or pocket of poverty eligible for urban development action grants under federal law;

(iii)-(iv) (No change.)

(9) Economically disadvantaged individual An individual who for at least six months before obtaining employment with a qualified business:

(A) was unemployed;

(B) received public assistance benefits, such as welfare payments and food stamp payments, based on need and intended to alleviate poverty. An individual is unemployed if the individual is not employed and has exhausted all unemployment benefits, whether or not the individual is actively seeking employment; or

(C) was an economically disadvantaged individual, as defined by the Job Training Partnership Act, §4(8), (29 United States Code, §1503(8)).

(10)-(12) (No change.)

(13) Extraterritorial jurisdiction–Territory in the extraterritorial jurisdiction of a municipality that is considered to be in the jurisdiction of the municipality. Except in a county with a population of 750, 000 or more, according to the most recent federal census, the governing body of a county may not nominate territory in a municipality or in the extraterritorial jurisdiction of a municipality to be included in an enterprise zone unless the governing body of the municipality also nominates the territory pursuant to a joint application made with the county.

(14)-(16) (No change.)

(17) New job–A new employment position created by a qualified business that has provided employment to a qualified employee of at least 1,040 hours annually.

(18) Qualified business–A person, including a corporation or other entity that the department certifies to have met the following criteria:

(A) the person is engaged in or has provided substantial commitment to initiate the active conduct of a trade or business in the zone;

(B) at least 25% of the business's employees in the zone are residents of any zone within the governing body's or bodies' jurisdiction or economically disadvantaged individuals; and

(C) if a business that is already active within the enterprise zone at the time it is designated and that operates continuously after that time, the business has hired residents of any enterprise zone within the governing body's or bodies' jurisdiction or economically disadvantaged workers after the 91st day preceding the date the enterprise project is designated so that those individuals constitute at least 25% of the business's new or additional employees in the zone.

(D) (No change.)

(19)-(21) (No change.)

(d)-(g) (No change.)

§176.3. Eligibility Requirements for Designation of an Enterprise Zone.

(a) An applicant may make written application to the department for designation of an area within the applicant's jurisdiction as an enterprise zone if such area meets the following eligibility criteria:

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

(3) the area is an area with pervasive poverty, unemployment, and economic distress which meets the following criteria:

(A) the average unemployment in the area during the most recent 12-month period for which data is available was at least one and one-half times the local, state or national average for that period or if the area has had at least a 9.0% population loss during the most recent six-year period or an annualized population loss of at least 1.5% for the most recent six-year period; and

(B) the area meets one or more of the following criteria:

(i) (No change.)

(ii) the area is in a jurisdiction or pocket of poverty and is certified by the United States Department of Housing and Urban Development as eligible at the time of enterprise zone or enterprise project application for urban development action grants under federal law;

(iii)-(iv) (No change.)

(b) (No change.)

(c) Documentation. For the purpose of showing that an area is qualified to be designated as an enterprise zone, the applicant must submit documentation, including the source, methodology and certification of the data by the person or persons responsible for its preparation. The applicant may, subject to the prior approval of the department, submit data, analysis, or other information which is generated locally by the applicant or on behalf of the applicant. The department will consider current any documentation, if at the time an application is received by the department, such documentation was the most current data that was available not more than 90 days preceding the date the application was received by the department.

(1) Unemployment data. The average rate of unemployment for the area nominated during the most recent 12-month period for which data is available from the Texas Employment Commission must be at least one and one-half times the local, state, or national average for that period. Computation of the average unemployment rate for the proposed enterprise zone area will require choosing the smallest area that contains the zone for which unemployment data is available from the Texas Employment Commission or by local survey. Unemployment data obtained by local survey may be used to meet unemployment criteria only if the area to be surveyed represents no more than 25% of the proposed zone and the Texas Employment Commission certifies that it cannot provide data for that area. An applicant must use the survey instruments provided by the department. A 100% effort with an 80% response rate is required.

(2) Loss of population. Loss of population may be calculated using population estimates for the applicant's jurisdiction produced by the Texas State Data Center or by other methods approved by the department. The total loss of population is the accumulated population loss experienced during the most recent six-year period for which data is available. The annualized population loss is the average annual loss of population experienced during the most recent six-year period for which data is available.

(3) Income data. If a proposed zone includes portions of more than one city or county, the median income should be calculated using figures for each city or county which includes part of the zone. In order to meet the low-income criteria, the smallest number of census tracts or enumeration districts that entirely contain the zone must reflect that at least 70% of the households in that zone have below 80% of the median household income for the locality or state, whichever is lower. To determine a low-income poverty area, at least 20% of the residents of the zone must have an income below the national poverty level as determined by the most recent available census data that contains the zone area. Census tracts or other comparable areas may be used to show poverty rates.

(4) Chronic abandonment or demolition. To qualify, the applicant must demonstrate to the department that 25% or more of the structures in such area are found by the governing body to constitute substandard, slum, deteriorated, or deteriorating structures as defined by local law. If local law does not define what constitutes a substandard, slum, deteriorated, or deteriorating structure, the governing body of the applicant may consider as substandard a structure which:

(A)-(F) (No change.)

(5) Substantial tax arrearages. The applicant must certify and submit evidence that within the proposed zone area, commercial or residential tax arrearages are at least 25% higher than tax arrearages for the jurisdiction as a whole and that such tax arrearages have been delinquent for at least one year. For purposes of determining substantial tax arrearages, the tax rolls of the applicable city or county nominating an area as an enterprise zone must be used.

(d) Citizen participation The department will not approve the designation of an area as an enterprise zone unless:

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

§176.4. Application Contents for Designation of Enterprise Zones.

(a) Each application for designation of an enterprise zone must contain the following information and documentation, as applicable, and numerically tabbed in the order listed below. If a certain tab is not applicable, please state.

(1) The participants. The application must list the name, street, mailing address, and telephone number of each of the following:

(A) (No change.)

(B) the applicant governing body's or bodies' designated liaison to communicate and negotiate with the department, the administrative authority, if any, an enterprise project, and other entities in or affected by an enterprise zone;

(C) if any, the administrative authority, the administrative authority's representative; and

(D) if any, the neighborhood enterprise association, neighborhood enterprise association's representative.

(2) The applicant. If a joint application is being submitted by a municipality, county, or combination of municipalities or counties, the information must be provided for each entity. The application must contain the following information and documentation concerning the applicant:

(A) a statement signed by the applicant certifying that the contents of the application are true and correct to the best information and belief of the applicant and that the applicant has read the Act and this chapter and is familiar with the provisions of the enterprise zone program;

(B) a certified copy of the ordinance of the governing body of the applicant nominating the area within its jurisdiction as an enterprise zone under the Act, containing the information set forth in the Act, §6, and designating a liaison in accordance with subsection (a)(1)(B) of this section. The ordinance may include nomination of more than one zone area within the limits of the Act and within the jurisdiction of the applicant governing body to be filed with separate zone applications; and

(C) if a joint application, a description and certified copy of the agreements between joint applicants providing for the joint administration of the zone.

(3) Zone administration. The application must contain the following information and documentation concerning administration of the zone:

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

(C) a description of the administrative authority, if any, including a list of members with representation as set forth in the Act, §22, street, mailing address, and telephone number of each member; and

(D) a description of the functions and duties of the administrator or administrative authority, if any, including decision-making authority and the authority to negotiate with affected entities.

(4) (No change.)

(5) The zone. The application must contain the following information and documentation concerning the proposed zone:

(A) a map of the proposed enterprise zone location which clearly shows zone boundaries, including existing streets and highways, rail and air facilities;

(B) an official census map of the proposed enterprise zone area that clearly identifies and reflects the census data areas within the proposed zone boundaries applicable to the eligibility criteria referenced in the application;

(C) certification of the total square miles of each applicant's jurisdiction, the total square miles inside its city limits, and inside its extraterritorial jurisdiction or, if a joint application, outside its jurisdiction in the county and the respective total square miles in the proposed enterprise zone;

(D)-(E) (No change.)

(F) an annualized seven-year estimate of the economic impact of the zone that reflects at least the number of jobs and capital investment expected as a result of the designation of the zone, considering all of the tax incentives, financial benefits, and programs contemplated, on the revenues of the municipality or county. The estimate must be provided in tabular form and describe the basis and assumptions used.

(6) The local business incentives. For the purposes of tax abatement under the Property Redevelopment and Tax Abatement Act (the Tax Code, Chapter 312), an enterprise zone designated after August 28, 1989, is considered to be a reinvestment zone without further designation. The application must contain the following information and documentation concerning any incentives to be provided by the local government:

(A) a statement detailing any tax, or other incentives to be provided in the zone, as described in the ordinance nominating the area as an enterprise zone; and

(B) a statement detailing any incentives or benefits and any programs to be provided by the municipality or county to business enterprises in the zone, other than those provided in the designating ordinance, that are not to be provided throughout the municipality or county.

(7) Public hearings. The application must contain a transcript or tape recording of all public hearings on the zone, including copies of the published notices and copies of the publisher's affidavits.

(b) (No change.)

§176.6. Application Contents for Designation of an Enterprise Project. The application for designation of an enterprise project must contain the following information and documentation, as applicable. If a joint application is being filed by one or more municipalities or counties, the information must be included for each applicant governing body.

(1) The participants. The application must contain the name, street, mailing address, and telephone number for each of the following involved in the designation of qualified businesses as enterprise projects

(A) the applicant governing body, applicant governing body's representative, and its designated enterprise zone liaison:

(B)-(D) (No change.)

(2) The applicant. The application must contain the following information and documentation concerning the applicant:

(A) a statement signed by the qualified business and a statement signed by the applicant governing body certifying that the contents of the application are true and correct to the best information and belief of the qualified business and that the qualified business has read the Act and this chapter and is familiar with the provisions thereof;

(B) (No change.)

(C) a complete description of the conditions in the zone that constitute pervasive poverty, unemployment, and economic distress for purposes of the Act, §4(b);

(D)-(E) (No change.)

(3) The project. The application must contain the following information and documentation concerning the proposed project. Any analysis or breakdown, where applicable, should show benefits to economically disadvantage individuals:

(A) (No change.)

(B) an economic analysis of the plans of the qualified business for expansion, revitalization, or other activity in the zone for at least the first two years of the project, including:

(i) the anticipated number of new jobs it will create, including a statement indicating the number of full-time employees working for the business and the number of new or additional employees that the qualified business commits to hire and the percentage of new or additional employees expected to be residents of any zone within the governing body's or bodies' jurisdiction or employees that are economically disadvantaged individuals;

(ii)-(iii) (No change.)

(iv) estimated total annual payroll of new and retained jobs and new jobs by job types or classifications;

(v)-(vii) (No change.)

(C) documentation for project viability including:

(i)-(ii) (No change.)

(4) The zone. The application must contain the following information concerning the zone:

(A) an analysis and any supporting documents demonstrating that the project is located in a zone with an unemployment rate of not less than one and one-half times the average state unemployment rate or a population loss of at least 12% during the most recent six-year period or an annualized population loss of at least 2.0% for the most recent six-year period at the time the enterprise project application is submitted to the department;

(B) a brief historical description of the trade or business conducted in the zone and its function or, if a qualified business making substantial commitment to locate in a zone, a brief historical description of its business in other locations with respect to its location in the zone and its functions; and

(C) a description which includes the types of projects that have been completed within the last year of designation of the zone or within the last year prior to designation of the zone, if the zone has been designated for less than one year, demonstrating the cooperation among the public and private sectors; and information on the number of jobs created and revenue generated as a result of the projects.

§176.7. Certification of Neighborhood Enterprise Associations.

(a) Individuals residing in an enterprise zone may establish, under the Act, §21, a neighborhood enterprise association. Following organization of the association, its board of directors must apply to the governing body for certification as a neighborhood enterprise association.

(b) The application for certification of a neighborhood enterprise association must include the following:

(1) a certified statement signed by chief executive officer of the association which contains the following information:

(A)-(D) (No change.)

(E) that the incorporators have published in a newspaper of general circulation in the municipality or county an explanation of the proposed new association and their rights in it and that a copy of the association's articles of incorporation and bylaws are available for public inspection at the office of the city manager or comparable municipal officer or at the county judge's office, as applicable.

(i)-(ii) (No change.)

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

(c) Neighborhood enterprise association project approval. The neighborhood enterprise association may implement projects, other than those enumerated in the Act by submitting an application to the governing body for approval of the specific project or activity. Applications submitted for approval to the governing body must describe the nature and benefit of the project, including:

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

§176.9. Reporting Requirements.

(a) Annual reports.

(1) Each municipality, county, or combination of municipalities or counties that authorized the creation of an enterprise zone shall submit an annual report to the department on or before October 1 of each year. The report must be in a form prescribed by the department and contain the information listed in the Act, §23. If such report is not received by the deadline, the department may, following a public hearing, consider termination of the designation of the enterprise zone.

(b) Other reports or documents. The applicant shall furnish additional information reports, or statements as the department may from time to time request in connection with the Act and this chapter.

§176.10. Boundary Amendments.

(a) If an enterprise zone has been lawfully designated, the original nominating governing body or bodies, by resolution or ordinance adopted following a public hearing, may amend the original boundaries subject to the following limitations.

(1) The boundaries as amended must not exceed the original size limitations and boundary requirements set by the Act and may not exclude any part of the zone within the boundaries as originally designated.

(2) The enterprise zone must continue to meet all unemployment and economic distress criteria throughout the zone as required by the Act.

(3) The governing body or bodies may not make more than one boundary amendment annually during the life of the zone.

(b) The governing body or bodies must provide certifications and evidence of public hearings and notices with respect to the boundary changes in the same form as required in the original application for enterprise zone designation. No area may be added to the proposed enterprise zone after a public hearing unless that area is first held out to the public in a subsequent public hearing for inclusion into the enterprise zone.

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 December 6, 1989.

TRD-8911783

W. Taylor
Executive Director
Texas Department of Commerce

Effective date: January 1, 1990

Proposal publication date: September 26, 1989

For further information, please call: (512) 472-5059

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TITLE. 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Customer Service and Protection

- **16 TAC §23.45**

The Public Utility Commission of Texas adopts amendments to §23.45, with changes to the proposed text as published in the June 13, 1989, issue of the *Texas Register* (14 TexReg 2939).

The amendment is adopted to clarify procedures relating to backbilling a customer for past due accounts. The amendment as changed, permit, rather then require, transfers of past due amounts to a current account. All rules pertaining to billing and disconnection of service will apply to this type of backbilling with the exception of §23.45(a).

The amendment to §23.45(f)(1)(B) is adopted to decrease the average length of service interruptions for telephone utilities during weekends and holidays.

The amendment makes clear that current utility service may not be disconnected for a delinquency incurred at a different time and place until the customer is given an opportunity to request further clarification about the past due amount in the event the bill is disputed and the customer is notified of alternative payment programs or payment assistance programs. The amendment to §23.45(f)(1)(B) changes the time that must elapse before a telephone utility is obliged to provide the customer with a credit adjustment from the current eight normal working hours to 24 hours.

Comments were received from the telephone industry, the electric industry and Consumer's Union. Generally, the utilities opposed the proposed change because of the higher administrative expense associated with implementing the billing required by the proposed changes and because of the potential for a higher level of uncollectibles several utilities indicated they already have in place an adequate backbilling procedure. Finally, several groups opposed the change to the service interruption rule citing the increased expense associated with providing 24 hour telephone repair coverage.

Parties that submitted comments concerning the proposed changes are: Houston Lighting & Power Company; Southwestern Public Service Company; Texas Electric Coops, Inc.; Texas Utilities Electric Company; West Texas Utilities Company, Central Power & Light Company and Southwestern Electric Power Company submitted joint comments; Contel of Texas, Inc ; Southwestern Bell Telephone Company, John Staurulakis, Inc. submitted comments on behalf of eight local exchange carriers, Texas Telephone Association; United Telephone Company of Texas; and Consumer's Union submitted a comment generally in support of the proposed change.

Changes to the proposed section recognize that applying the billing and disconnection protections to such accounts will create greater opportunities for the utility and the customer to resolve any outstanding dispute through a number of alternative arrangements, such as deferred payments or other arrangements. Finally, changes to the service interruption rule are called for in order to clarify that the requirements relating to telephone repair coverage apply around-the-clock and not just during the normal work week. This change in coverage bring Texas in line with the industry standard in other states

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

§23.45. Billing.

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

(f) Rendering and form of bills.

(1) Telephone utilities.

(A) Bills for telephone service shall normally be rendered monthly; shall show the period of time covered by the billings; and shall show a clear listing of all charges due and payable, including outstanding amounts in the same customer class the utility has chosen to transfer from a customer's prior delinquent account(s). The utility shall provide the customer with a breakdown of local service charges upon written request. Itemized toll statements shall be included in each bill. Customer billing sent through the United States mail shall be sent in an envelope.

(B) In the event a customer's service is interrupted other than by the negligence of willful act of the customer, and it remains out of order for 24 hours or longer after access to the premises is made available and after being reported to be out of order, appropriate adjustment of refunds shall be made to the customer. The amount of adjustment or refund shall be determined on the basis of the known period of interruptions, generally beginning from the time the service interruption is first reported. The refund to the customer shall be the pro rata part of the month's flat rate charges for the period of days that portion of the service facilities was rendered useless or inoperative. The refund may be accomplished by a credit on a subsequent bill for telephone service.

(2) Electrical utilities.

(A) (No change.)

(B) The customer's bill shall show all the following information:

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

(iv) the total amount due for services provided, including outstanding amounts in the same customer class the utility has chosen to transfer from a customer's prior delinquent account(s). Such transferred accounts shall not include continuation of service from one address to another within the same utility serving area, or contracts of guarantee involving a written agreement between a utility and its guarantor if a customer defaults.

(v)-(viii) (No change.)

(3) Past due balance. All rules pertaining to billing and disconnection of service shall apply to backbilling, with the exception of §23.45(a).

(g)-(1) (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 December 12, 1989.

TRD-8911953 Jo Campbell
Commissioner
Public Utility Commission
of Texas

Effective date: January 3, 1990

Proposal publication date: June 13, 1989

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

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TITLE 22. EXAMINING BOARDDS

Part XXII. Texas State Board of Public Accountancy

Chapter 511. Certification as CPA

Certification by Examination

• 22 TAC §511.28

The Texas State Board of Public Accountancy adopts new §511.28, without changes to the proposed text as published in the September 26, 1989, issue of the *Texas Register* (14 TexReg 4976).

The adoption of this new section will ensure conformity with recent amendments to the Act.

The adoption of this new section will permit the board to charge a fee for each subject a candidate is eligible to retake.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 41a-1, which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to reexamiation fees.

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 December 8, 1989.

TRD-8911898 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: January 1, 1990

Proposal publication date: September 26, 1989

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

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CPA Examination

• 22 TAC §511.87

The Texas State Board of Public Accountancy adopts new §511.87, without changes to the proposed text as published in the October 20, 1989, issue of the *Texas Register* (14 TexReg 5611)

The adoption of this new section will ensure conformity with new amendments to the Act.

The adoption of this new section will provide for forfeiture of grades if a candidate does not pass the entire examination within the prescribed time. In addition, this section requires

the board to notify a candidate when he or she may be subject to such forfeiture.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 41a-1, which provide the Texas State Board of Public Accountancy with the authority to promulgate rules concerning forfeiture of grades.

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 December 8, 1989.

TRD-8911895 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: January 1, 1990

Proposal publication date: October 20, 1989

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

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Experience Requirements

• 22 TAC §511.121

The Texas State Board of Public Accountancy adopts an amendment to §511. 121, without changes to the proposed text as published in the September 26, 1989, issue of the *Texas Register* (14 TexReg 4978).

The adoption of this section will ensure conformity with recent amendments to the Act.

The adoption of this section will require an applicant to meet the work experience requirement under the Act in which the applicant initially qualified In addition, this section prohibits advance board rulings on experience.

No comments were received regarding adoption of the amendment

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding the granting of a certificate to an applicant who meets the work experience requirements.

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 December 8, 1989.

TRD-8911896 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: January 1, 1990

Proposal publication date: September 26, 1989

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

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Certification

• 22 TAC §511.162

The Texas State Board of Public Accountancy adopts the repeal of §511.162, without changes to the proposed text as published in the October 6, 1989, issue of the *Texas Register* (14 TexReg 5344).

The repeal of this section will allow for the adoption of a new section that will provide for a logical sequence of the certification rules.

The repeal of this section will allow for the adoption of a new section that will require all certificates to bear the signature of all board members and the board seal.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 41a-1, which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding the format of CPA candidates.

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 December 8, 1989.

TRD-8911893 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: January 1, 1990

Proposal publication date: October 6, 1989

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

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The Texas State Board of Public Accountancy adopts new §511.162, without changes to the proposed text as published in the October 6, 1989, issue of the *Texas Register* (14 TexReg 5345)

The adoption of this new section will clarify the procedure for certification application.

The adoption of this new section will set out the information which must be submitted to the board prior to issuance of a certificate.

No comments were received regarding adoption of the new section

The new section is adopted under Texas Civil Statutes, Article 41a-1, which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding the procedure for certification application.

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 December 8, 1989.

TRD-8911892 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: January 1, 1990

Proposal publication date: October 6, 1989

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

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• 22 TAC §511.168

The Texas State Board of Public Accountancy adopts new §511.168, without changes to the proposed text as published in the October 6, 1989, issue of the *Texas Register* (14 TexReg 5346).

The adoption of this new section will ensure conformity with the recent amendments to the Act.

The adoption of this new section will list the requirements which must be satisfied prior to application for reinstatement of a certificate.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 41a-1, which provide the Texas State Board of Public Accountancy with the authority to promulgate rules concerning reinstatement of a certificate.

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 December 8, 1989.

TRD-8911894 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: January 1, 1990

Proposal publication date: October 6, 1989

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

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• 22 TAC §511.170

The Texas State Board of Public Accountancy adopts new §511.170, without changes to the proposed text as published in the October 6, 1989, issue of the *Texas Register* (14 TexReg 5346).

The adoption of the new section will provide conformity with recent amendments to the Act.

The new section will permit the board to obtain criminal history information on examination applicants and to deny a certificate to an applicant who fails to provide a set of fingerprints upon request

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 41a-1, which provide the Texas State Board of Public Accountancy with the authority to promulgate rules concerning investigations of CPA candidates.

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 December 8, 1989.

TRD-8911897 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: January 1, 1990

Proposal publication date: October 6, 1989

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

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 1. Board of Health

State Employee Health Fitness and Education Programs

• 25 TAC §1.61, §1.62

The Texas Department of Health adopts new §1.161 and §1.162, without changes to the proposed text as published in the September 29, 1989 issue of the *Texas Register* (14 TexReg 5137). The new sections establish uniform criteria and procedures by which the department will approve health fitness and education programs which state agencies desire to implement.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 6252-28, §5, which provide the department with the authority to approve state agency health fitness and education programs; Health and Safety Code, §12.001, which provides the Board of Health with the authority to adopt rules to implement its programs; and Executive Order WPC-89-10, dated July 21, 1989, which designates the Commissioner of Health as the Governor's representative for approving state agency health fitness and education programs and which provides the department with the authority to adopt rules concerning the programs which require the expenditure of public funds.

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 December 12, 1989.

TRD-8911923 Robert A. MacLean, M.D.
Deputy Commissioner for
Professional Services
Texas Department of
Health

Effective date: January 2, 1990.

Proposal publication date: September 29, 1989.

For further information, please call: (512) 458-7405

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Public Health Promotion

• 25 TAC §1.104

The Texas Department of Health adopts new §1.104, with changes to the proposed text as published in the August 29, 1989, issue of the *Texas Register* (14 TexReg 4382). The new section implements the requirements of Senate Bill 115, 71st Legislature, 1989, that the department by rule determine the design and size of signs on the prohibition of the sale or provision of tobacco products to a minor under 18 years of age, and on request, to provide the sign without charge to any person who sells cigarette products.

Several supportive comments were received by convenience store owners who appreciated that the signs clarified the law for their employees and patrons. Another individual commented that he wished the legislature had not passed the law. One commenter requested that the signs be made on sticky paper so that they could be applied to the outside of the vending machine rather than on the inside of the glass. The department's response is that it should not be a requirement that all signs be on sticky paper; persons posting the signs have the option to use sticky paper if they choose to do so.

The Department has made some editorial changes to the proposed section for clarity.

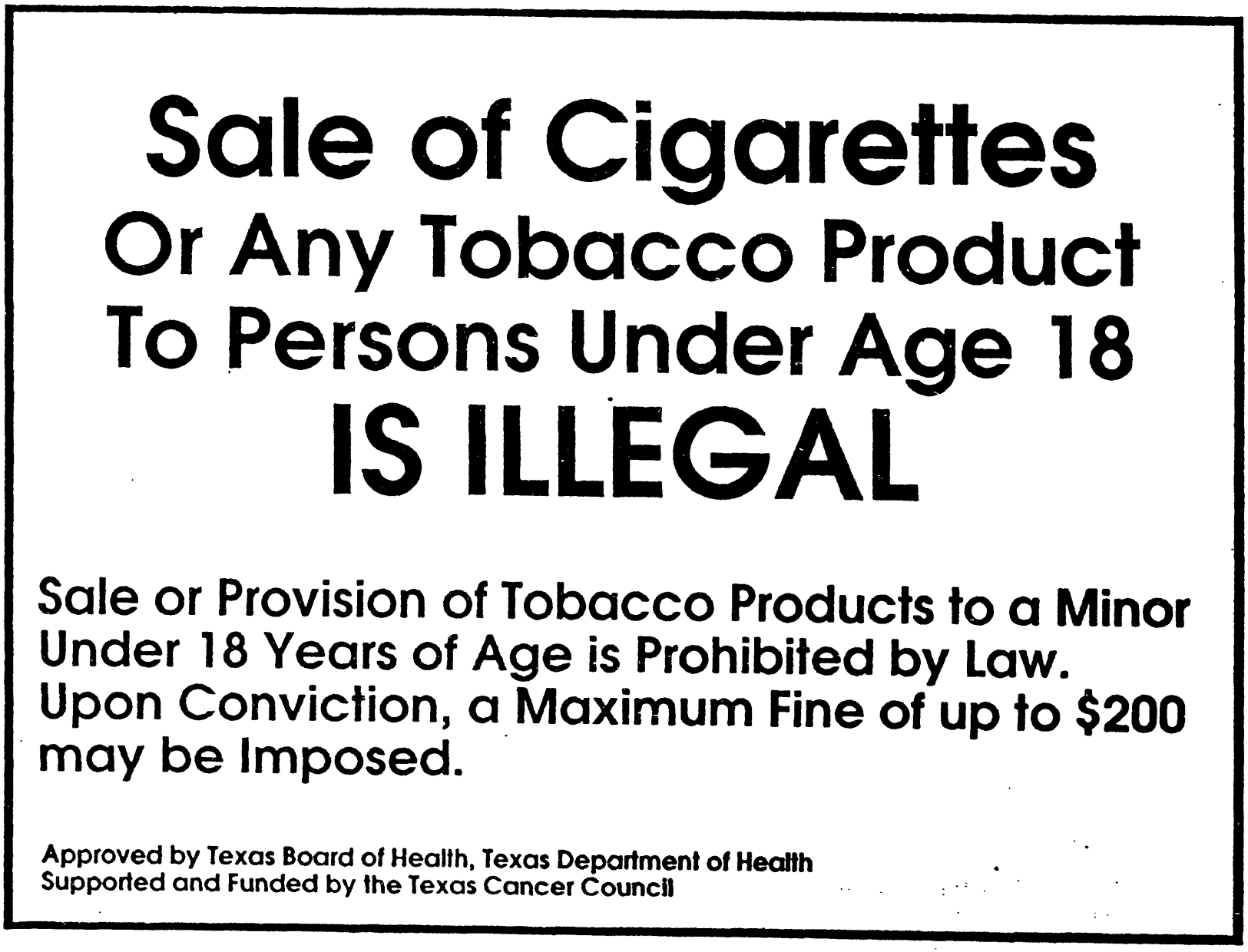
The only commenters were individuals; no group, agency or association commented.

The new section is adopted under Senate Bill 115, 71st Legislature, 1989, which provides the Board of Health with the authority to adopt rules concerning the design and size of signs on the prohibition of the sale or provision of tobacco products a minor under 18 years of age; and the Health and Safety Code, §12.001 which provides the Board of Health with authority to adopt rules for the performance of every duty placed by law on the board, the department, and the Commissioner of Health.

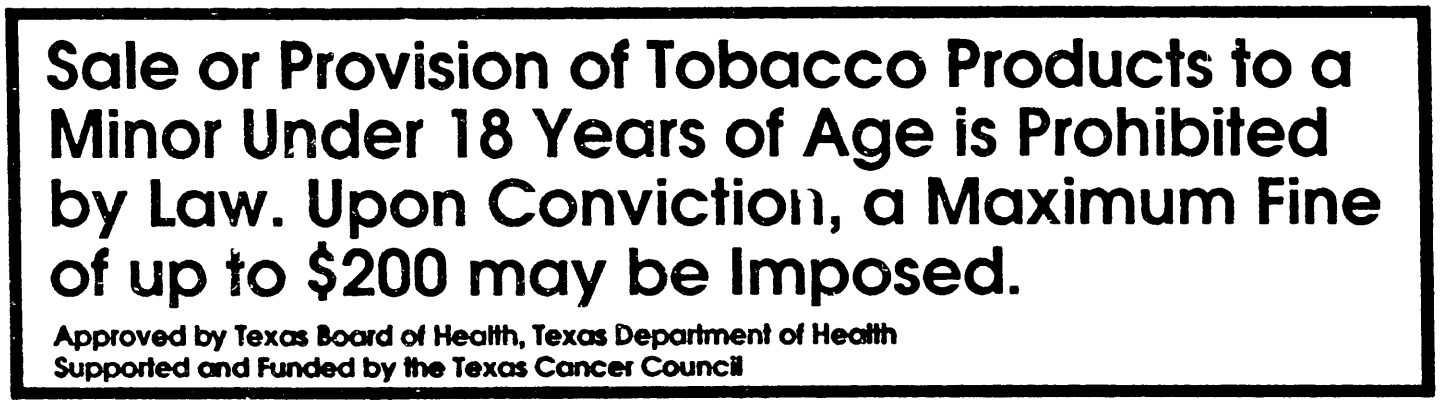
§1.104. Signs Covering the Prohibition of the Sale or provision of Tobacco Products to a Minor Under 18 Years of Age.

(a) The Health and Safety Code, §161.081 (Texas Civil Statutes, Article 4476-16), requires that each person who sells tobacco products at retail or by vending machine shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which the tobacco products may be purchased. Section 161.081 also requires the Board of Health to determine the design and size of the sign. To implement this provision, the Board of Health has approved a sign to be placed on vending machines and a sign to be placed close to a cash register or check-out stand. The design and minimum size of each sign are as follows:

(1) The minimum size of the sign to be posted close to cash register or check-out stand shall be 6 inches by 8 inches. The design of the sign, including wording and minimum print size, shall be as shown in the replica published as follows.



(2) The minimum size of the sign to be posted on the vending machine shall be 2 inches by 7 inches. The design of the sign, including wording and minimum print size, shall be as shown in the replica published as follows.



EDWIN FOO

Name: Edwin Foo

Grade: 7

School: Clear Lake Intermediate, Clear Creek

(b) The department on request shall provide the sign without charge to any person who sells tobacco products. The department will provide the sign without charge to distributors or wholesale dealers of tobacco products in this state for distribution to persons who sell tobacco products.

(c) Requests for signs shall be made to the Texas Department of Health, Literature and Forms Division, 1100 West 49th Street, Austin, Texas 78756. A requestor shall indicate the warehouse stock number, (#4-171 for vending machine signs, and #4-172 for cash register or check-out area signs), the number of signs desired, and the person and address to whom the signs are to be mailed.

(d) Retailers and wholesalers may develop their own signs provided they meet the minimum size specifications and the designs (including wording and minimum print size) for the signs as described in subsection (a) of this section. A wholesaler or retailer may submit a sample of its proposed sign for review to the department's Office of Smoking and Health, 1100 West 49th Street, Austin, Texas 78756.

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 December 12, 1989.

TRD-8911924 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Effective date: January 2, 1990.

Proposal publication date: August 29, 1989.

For further information, please call: (512) 458-7402

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Chapter 61. Chronic Diseases

Kidney Health Care Program Benefits

- **25 TAC §§61.1, 61.3, 61.4, 61.6-61.9, and 61. 11**

The Texas Department of Health adopts amendments to §§61 1, 61.3, 61. 4, 61.6-61 9, and 61 11. Section 61.6 is adopted with minor changes to the proposed text as published in the September 26, 1989, issue of the *Texas Register* (14 TexReg 5005). The other sections are adopted without changes and will not be republished

The amendments are adopted to clarify the language of the sections; delete the "Method II" method of payment for home dialysis and allow the program to establish a flat rate of payment for home dialysis; define filing deadlines for initial claims for contracted facilities; waive the $15,000/recipient limit for recipients not eligible for Medicare who receive a transplant during the first three months of treatment; define the criteria for program recipients who are covered by the Medicare Immunosuppressant Drug Program; grant provisional approval to recipients whose eligibility has lapsed and are reapplying for program benefits; allow the program to take sanctions against any provider(s) that is excluded from participation in Medicare, Medicaid, or other state health programs; and require that applicant financial data must be provided at the time of initial application to determine co-pay liability.

No comments were received regarding adoption of the amendments. However, minor changes have been made in §61.6. Subsections have been reorganized for clarity.

The amendments are adopted under the Texas Kidney Health Care Act, the Health and Safety Code, §42.003, which provides the Texas Department of Health with the authority to adopt rules to provide adequate kidney care and treatment for the citizens of the State of Texas and to carry out the purposes and intent of the Act; and the Health and Safety Code, §12.001, which provide 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.

§61.6. Documentation of Residency.

(a) Except as provided in subsection (c) of this section, an applicant may submit to the department for consideration the following documentary evidence of bona fide Texas residency: copies of three of the following documents, all in the applicant's name and current address. Exception: an applicant who is currently a Texas resident and has been approved to receive Texas Medicaid benefits and provides acceptable documentation of Texas Medicaid eligibility to the department is not required to provide additional residency verification.

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

(4) one of the documents in this paragraph may be used:

(A) a warranty deed or deed of trust to the applicant's abode;

(B) a mortgage payment receipt from any of the three months immediately preceding the date of the application;

(C) a rent payment receipt from any of the three months immediately preceding the date of the application;

(D) (No change.)

(5) a utility payment receipt from any of the three months immediately preceding the date of the application;

(6)-(7) (No change.)

(8) one of the documents in this paragraph may be used if the applicant's current address is imprinted on the document(s):

(A) a payroll or retirement check received within the three consecutive months immediately preceding the date of application;

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

(D) social security supplemental income or disability income records or social security retirement benefit records.

(b) If three of the documents listed in subsection (a) of this section cannot be provided, then copies of two of the documents listed in subsection (a) of this section may be provided along with a copy of one of the following documents (it must support Texas residency):

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

(6) one of the documents in this paragraph may be used:

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

(C) a complete copy of the forms issued to the applicant by INS as evidence of application for legal residency in the United States. Such forms may include, but are not limited to, Form I687L, Form I688A, or I688;

(c) Applicants/recipients must report changes in residency and legalization status with the INS to the program upon notification from the INS; a copy of the documents mentioned in paragraph (6)(C) of this subsection will be sufficient for reporting purposes.

(d) If the requirements of subsection (a)(1)-(9) of this section cannot apply to the applicant, an applicant seeking admission to the program as a bona fide resident under §61.5(5)-(8) of this title (relating to Residency) may submit documentation for consideration as follows:

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

(e) Applications submitted under subsection (d) of this section must also include documentary evidence of the relationship upon which the submission rests as illustrated by, but not limited to, the following:

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

(f) If the applicant is a parent residing with or being supported by their adult son or daughter, then residency documents in the son/daughter's name may be submitted to the program for consideration if they are accompanied by documentary evidence of relationship, as outlined in subsection (e) of this section. In addition, a notarized statement from the son/daughter must accompany the documents stating that the

son/daughter assumes some measure of support responsibility for the parent in matters concerning the program and attesting to the fact that the parent is a Texas resident and that the parent is residing with or being supported by them. A copy of the most recently completed tax year's IRS income tax return form showing the parent as a claimed dependent of the son/daughter may be submitted in lieu of the notarized statement.

(g) If there is a difference between the current name and address of the applicant and the name and address contained on any document submitted to support a determination of bona fide residency the application must be accompanied by additional documentation as follows:

(1)-(2) (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 December 12, 1989.

TRD-8911922 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Effective date: January 2, 1990.

Proposal publication date: September , 1989

For further information, please call: (512) 458-7796

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Chapter 97. Communicable Diseases

Control of Communicable Diseases

• 25 TAC §§97.1-97.5, 97.7, 97.10, 97.11, 97. 15

The Texas Department of Health adopts the amendments to §§97.1-97.5, 97.7, 97.10, 97.11, and new 97.15 without changes to the proposed text as published in the October 13, 1989, issue of the *Texas Register* (14 Tex 5474). The amendments will update and clarify the existing sections and implement requirements in Senate Bill 959, §23, 71st Legislature, 1989, concerning the inclusion of education and prevention as control measures for communicable diseases. The new section implements requirements in Senate Bill 959, §22, concerning the establishment of criteria that constitute exposure to reportable diseases, including HIV infection, and establishes minimum training qualifications for the department's designee who will judge whether an exposure has occurred.

No comments were received regarding adoption of the amendments and new section.

The amendments and new sections are adopted under the Communicable Disease Prevention and Control Act, Health and Safety Code, §81.004, which gives the Board of Health the authority to adopt rules to implement the Act; §12.001, which gives the board the authority to adopt rules to implement every duty imposed by law on the board, the department, and the Commissioner of Health; the Human Immunodeficiency Virus Services Act, Senate Bill 959, §21, which gives the board the authority by rule to prescribe the criteria that constitute exposure to reportable diseases, including HIV infection; and §23, which expands control measures for communicable diseases to include prevention and education.

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 December 11, 1989.

TRD-8911873 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Effective date: January 1, 1990.

Proposal publication date: October 13, 1989.

For further information, please call: (512) 458-7455

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• 25 TAC§97.16

The Texas Department of Health adopts new §97.16, without change to the proposed text as published in the September 26, 1989, issue of the *Texas Register* (14 TexReg 5010).

The new section implements the Texas HIV medication program as authorized by Senate Bill 959, Article III, 71st Legislature, 1989; and insures that the drug azidothymidine (AZT), and other drugs as they become approved, will continue to be available to AIDS or ARC patients for medication purposes The program will assist hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV-infected individuals in obtaining AZT The new section covers the purpose and scope of the program, participation and application requirements, confidentiality, payment, participating pharmacies, and procedure for disputes on funding or eligibility.

No comments were received regarding adoption of the new section.

The new section is adopted under Senate Bill 959, Article III, 71st Legislature, 1989, which authorizes the Board of Health to adopt rules concerning a Texas HIV medication program; Health and Safety Code, §12 001, which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the Department, and the Commissioner of Health.

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

Issued in Austin, Texas, on December 11, 1989.

TRD-8911874 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Human Services

Effective date: January 16, 1990.

Proposal publication date: September 26, 1989.

For further information, please call: (512) 458-7500

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Chapter 119. Health Maintenance Organizations

• 25 TAC §119.2, §119.15

The Texas Department of Health adopts amendments to §119.2 and new §119.15. New §119.15 is adopted with changes to the proposed text as published in the September 26, 1989, issue of the *Texas Register* (14 TexReg 4962). Section 119.2 is adopted without change and will not be republished.

The new section establishes the fees which the department will charge and collect for the review of an original application for an HMO certificate of authority. Also, the new section covers the department assessments against an HMO for the expenses which the department will incur for examining the HMO. The amendments permit the department to charge and collect a fee for the review of an application for a certificate of authority and for examination of an HMO to cover the expenses incurred by the department.

The following is a discussion of the public comments received and evaluated by department staff during the comment period.

Concerning §119.15(a)(3), a commenter recommended the paragraph be deleted citing reference to the State Board of Insurance rules which require that agency to determine the completeness of an original application. The department agrees and the paragraph has been deleted with appropriate changes to numerical reference.

Concerning §119.15(a)(4), a commenter indicated that excess costs cannot be assessed beyond the limit of the statute of $3000 for an original application. The department agrees and has added the language "with a maximum limit of $3000. "

Concerning §119.15(b)(2), a commenter requested clarification of the term "other expenses" and suggested changing the term to read "other administrative expenses incurred by the department which are directly attributable to the examination." The department agrees and has added the change for clarification

The department has deleted the word "to" in the phrases "concerning to Examinations" and "concerning to Fees" in §119.15(b)(1), and the word "or" before the word "personal" in §119 15(c)(1) for grammatical correctness.

The following organization commented on the sections. The Texas Health Maintenance Organization Association The commenter was not opposed to the sections in their entirety; however, the commenter offered suggestions concerning specific provisions as outlined in the summary of comments

The amendments and new section are adopted under the Texas Insurance Code, Health Maintenance Organization Act, Article 20A.32, which provides the Texas Board of Health with the authority to adopt rules con-

cerning fees and examination expenses relating to health maintenance organizations; 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.

§119.15. Fees and Assessments.

(a) Original application.

(1) The department will notify the applicant in writing within 10 working days of receipt from the State Board of Insurance of an original application for a certificate of authority.

(2) The applicant shall pay to the department an application fee in the amount of $850 within 10 working days of the applicant's receipt of the notice.

(3) The application fee is inclusive of all normal expenses of the department including application review, survey, travel, and administrative costs. Expenses incurred by the department in excess of $850 shall be assessed against the HMO applicant with a maximum limit of $3000.

(4) The department shall give written notification to the State Board of Insurance whether the proposed HMO meets the requirements of this chapter within 45 days of receipt of the completed application.

(b) Examination expenses and assessments.

(1) A HMO shall pay to the department the assessments described in this subsection for the examination expenses incurred under the Texas Insurance Code, Health Maintenance Organization Act, Article 20A.17 (concerning Examinations) and Article 20A.32(b) (1)(B) (concerning Fees). Examinations include on-site visits for complaint investigations, amendments to a certificate of authority which affect quality of health care services including service area expansion, and quality of care surveys under §119.2 of this title (relating to The Certification Procedure).

(2) The HMO will pay the actual salaries and expenses of the examiners allocable to the examinations. The HMO will be assessed that part of the annual salary attributable to each working day or portion thereof that the examiner is on-site or traveling to or from the HMO's premises. The cost allocable for expenses shall be those actually incurred by the examiner for transportation, meals, lodging and out-of-pocket expenses for the examination to the extent permitted by law and other administrative expenses incurred by the department which are directly attributable to the examination.

(3) The administrative expenses directly attributable to the specific examination shall be paid with the expenses described in paragraph (2) of this subsection.

(4) The examination expenses and assessments for a foreign HMO and a domestic HMO shall be calculated in the same manner.

(5) The department shall give written notice to the HMO examined of the amount due after completion of an examination. The HMO shall pay the amount within 30 days of receipt of the notice.

(c) Payment of fees.

(1) Any remittance submitted to the department in payment for a required fee or assessment must be in the form of a certified check, money order, personal or business check made out to the Texas Department of Health.

(2) All fees and assessments received by the department are non- refundable.

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 December 12, 1989.

TRD-8911925

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

Effective date: January 2, 1990.

Proposal publication date: September 26, 1989.

For further information, please call: (512) 458-7245

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Chapter 125. Special Care Facilities

• 25 TAC §§125.1-125.7

The Texas Department of Health adopts new §§125. 1-125.7. Sections 125.1, 125.2, and 125.6 are adopted with changes to the proposed text as published in the August 29, 1989, issue of the *Texas Register* (14 TexReg 4387). Sections 125 3, 125.4, 125.5, and 125.7 are adopted without changes and will not be republished.

The new sections implement the requirements of the Texas Special Care Facility Licensing Act, Texas Session Laws 1989, 71st Legislature, Chapter 1085, §16 (Senate bill 487, §16)

Special care facilities provide nursing or medical care or services primarily to persons with acquired immune deficiency syndrome or other terminal illnesses. The implementation of these sections allows the department to identify and license special care facilities which are currently operating. The new sections replace the existing rules on special care facilities which are described in the department's hospital licensing standards, which are adopted by reference in §133.21 of this title (relating to Hospital Licensing Standards) and which are being repealed in this issue of the *Texas Register.*

The summary of comments and reasons why the agency agrees or disagrees with the comments are as follows.

Concerning §125.1, a minor editorial change was made for clarification purposes.

Concerning §125.2(a), one commenter recommended that the documents be submitted with the application for license rather than at the time of the presurvey conference. The agency agrees and has changed the section accordingly.

Concerning §125.6(a)(2), one commenter recommended that all the facility's policies be reviewed and updated annually. The commenter also recommended the addition of a statement that the facility must comply with its own policies and procedures. The agency agrees and has made the appropriate additions to this paragraph as well as changes to subparagraphs (A) and (B).

Concerning §125.6(b)(3)(A)(i), several commenters requested the addition of another acceptable building code, specifically, the *"Uniform Building Code"* to the section. The agency agrees and has added the code to the section. The addition of the code required modifications and further clarification to clauses ii and iii, and the addition of clause v.

Concerning §125.6(f)(4)(E), one commenter recommended that the arrangement the facility makes with one or more physicians to provide emergency medical care be in written form. The agency agrees and has made the appropriate change.

Concerning §125.6(f)(7)(D)(i) and (ii), one commenter said the time periods for medical record retention are too stringent and recommended that they be reduced. The agency agrees. The retention periods were reduced and the two clauses were consolidated; the remaining clauses were renumbered.

Concerning §125.6(f)(7)(D)(iv), one commenter stated that the Natural Death Act pertains to the responsibilities of a person, not a facility. The commenter recommended that the clause be rephrased. The agency agrees and has corrected the clause.

Comments were received from city building and community development officials from the following cities: Abilene, Amarillo, Arlington, Austin, Carrollton, Dallas, Grapevine, Houston, Rowlett, and San Antonio. Comments were also received from Texas Department of Health staff. None of the commenters were against the sections in their entirity, but expressed concerns, offered suggestions, made comments, and raised questions concerning specific provisions of the proposed sections.

The department adopts the new sections under Texas Session Laws 1989, 71st Legislature, Chapter 1085, §16 (Senate bill 487, §16), which authorizes the board of health to adopt rules to implement the Special Care Facility Licensing Act, and the Health and Safety Code, §12.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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

Accident–An event occurring by chance or from unknown causes which may cause loss or injury to a resident, facility personnel, or volunteer.

Act–The Texas Special Care Facility Licensing Act, 71st Texas Legislature, 1989, Chapter 1085, §16 (Senate bill 487, §16).

Arrange–To provide for or come to a written agreement about providing needed care or services to a resident.

Assistance with medication or treatment regimen–Any needed ancillary aid provided to a resident in the resident's self-administered medication or treatment regimen, however, such ancillary aid shall not consist of direct application by the assistant of the medication by injection, inhalation, ingestion, or any other means to the body of the resident.

Attendant personnel–All staff persons or representatives who are responsible for a (direct) personal service to a resident and may include, but is not limited to, aides, housekeepers, volunteers, cooks, janitors, and managers if they are providing personal services.

Board–The Texas Board of Health.

Controlled substance–A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Texas Civil Statutes, Article 4476-15, §1.02(5), or the Federal Controlled Substance Act of 1970, Public Law 91-513.

Dangerous drugs–Any drug as defined in the Texas Dangerous Drug Act, Texas Civil Statutes, Article 4476-14, §2.

Department–The Texas Department of Health.

Dietitian–A person who is currently licensed by the Texas State Board of Examiners of Dietitians.

Director–The director of the Health Facility Licensure and Certification Division of the Texas Department of Health or his or her designee.

Drug–A drug is:

(A) any substance recognized as a drug in the official *United States Pharmacopoeia*, official *Homeopathic Pharmacopoeia of the United States*, or official *National Formulary*, or any supplement to any of them;

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

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

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

Facility–A special care facility.

Incident–An unusual or abnormal event or occurrence in, at, or affecting the facility or the residents of the facility.

Local health authority–The physician having local jurisdiction to administer state and local laws or ordinances relating to public health, as defined in Texas Civil Statutes, Article 4436b, §1.03.

Medical care–Care that is:

(A) required for improving life span and quality of life, for comfort, for prevention and treatment of illness, and for maintenance of bodily and mental function;

(B) under the continued supervision of a physician; and

(C) provided by a registered nurse or licensed vocational nurse available to carry out a physician's plan of care for a resident.

Nursing care–Services provided by nursing personnel as prescribed by a physician, including services to:

(A) promote and maintain health;

(B) prevent illness and disability;

(C) manage health care during acute and chronic phases of illness;

(D) provide guidance and counseling of individuals and families; and

(E) provide referrals to physicians, other health care providers, and community resources when appropriate.

Nursing personnel–All persons responsible for giving nursing care to residents. Such personnel includes registered nurses, licensed vocational nurses, therapists, nurses aides, and orderlies.

Outside resource–A qualified person, facility, or staff of an organization or entity that will provide needed care and/or treatment services to residents under an arrangement with the facility or residents.

Person–An individual, organization, establishment, or association of any kind.

Pharmacist–A person licensed by the Texas State Board of Pharmacy to practice pharmacy.

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

Poison–Any substance that federal or state regulations require the manufacturer to label as a poison and that is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally which contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a physician, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

Presurvey conference–A conference held with department staff and the applicant and/or his or her representative to review licensure standards and survey documents and provide consultation prior to the on-site licensure inspection.

Provide–To directly supply care or treatment services to residents by facility personnel or through arrangements with outside resources or volunteers.

Registered nurse (RN)–An individual currently licensed by the Board of Nurse Examiners for the State of Texas as a registered nurse in the State of Texas.

Resident–An individual accepted for care in a special care facility.

Responsible party–An individual authorized by the resident to act for him or her as an official delegate or agent. A responsible party is usually a family member, relative, or significant other, but may be a legal guardian.

Services–The provision of medical or nursing care, assistance, or treatment by facility personnel, volunteers, or other qualified individuals, agencies, or staff of any organization or entity to meet a resident's medical, nursing, social, spiritual, and emotional needs.

Shall–The word to signify a mandatory provision.

Should–The word to signify a nonmandatory but recommended provision.

Special care facility–An institution or establishment that provides a continuum of nursing or medical care or services primarily to persons with acquired immune deficiency syndrome or other terminal illnesses. The term includes a special residential care facility.

§125.2. Application and Issuance of License for First Time Applicants.

(a) Upon written request, the director shall furnish a person with an application form for a special care facility license. The applicant shall be at least 18 years of age, and shall submit to the director a separate and accurate application form for each license, required documentation, and the license application fee. The applicant shall retain a copy of all documentation that is submitted to the director. The address provided on the application must be the address from which the facility will be operating. The applicant shall submit the following documents with the application for license:

(1) a list which includes the names of all of the owners of the proposed facility;

(2) if an applicant is a corporation, a certificate from the state comptroller's office which states that the corporation that operates the facility is not delinquent in tax owed to the state under the Tax Code, Texas Codes Annotated, Chapter 171, or that the corporation is ex-

empt from the payment of the tax and is not subject to the Tax Code, Chapter 171;

(3) a proposed budget covering the period of time of the license and a notarized affidavit attesting to the following:

(A) that neither the facility nor any of its owners have been adjudged insolvent or bankrupt in a state or federal court;

(B) that neither the facility nor any of its owners are parties in a state or federal court to a bankruptcy or insolvency proceeding with respect to the facility or any of its owners; and

(C) that the facility has the financial resources to meet its proposed budget, and to provide the services required by the Act and this chapter during the term of the license;

(4) an organizational structure, a list of management personnel, and a job description of each administrative and supervisory position. The job description must contain at a minimum the job title, qualifications including education and training, job responsibilities, and a plan to provide annual continuing education and training;

(5) a written plan for the orderly transfer of care of the applicant's clients and clinical records if the applicant is unable to maintain or deliver services under the license;

(6) a notarized statement attesting that the applicant is capable of meeting the minimum state licensing standards for the provision of services under the Act;

(7) a written policy and procedure document detailing the overall operating policies and procedures. The document shall include information on admission and admission agreements, resident care services, charges or reimbursement for services, expectations of residents, transfers, discharges, complaint procedures, use of volunteers, protection of residents' personal property, and residents' rights;

(8) a written resident care policies document detailing the care provided and related services. These policies shall include provision for an interdisciplinary assessment of resident need and the development of a plan for promoting self-care and independence;

(9) written personnel policies and procedures;

(10) a written agreement with at least one licensed hospital and at least one nursing home permitting the prompt transfer to and the admission by the receiving hospital or nursing home in a medically appropriate manner of any patient when special services are needed but are unavailable at the facility;

(11) if a facility does not employ a person qualified to provide a required or needed service, copies of arrangements with an outside resource that has the necessary qualifications to provide the service directly to residents or to act as a consultant to the facility. Facility policies shall state the methods used to provide required or needed services;

(12) documentation regarding development for staff and/or volunteers and scheduling of periodic training to update their knowledge and skills in providing care to residents. Training must include the facility's policy on confidentiality of patient's medical record;

(13) written guidelines to volunteers concerning areas such as confidentiality, infection control and sanitation, and security;

(14) documentation regarding volunteer orientation to the facility, which will include at a minimum location of fire alarm system; emergency procedures, including emergency phone numbers; evacuation plan; availability of counseling programs, support groups, and advocacy information; the facility's policy on confidentiality of medical records and information pertaining to patients' diagnosis, treatment, and identification; and the general mission statement of the facility; and

(15) written approval by the local fire marshal and a copy of the certificate of occupancy granted by the local building official.

(b) Upon receipt of the application, including the required documentation and the fee, the director shall review the material to determine whether it is complete. All documents submitted with the original application shall be certified copies and/or originals.

(c) Once the application is complete and correct, a presurvey conference may be held at the office designated by the department. All applicants are required to attend a presurvey conference unless the designated survey office waives the requirement. The surveyor shall verify compliance with the applicable provisions of this chapter and may recommend that the facility be issued a license or that the application be denied pursuant to §125.7 of this title (relating to License Denial, Suspension, or Revocation, and Criminal Penalties).

(d) If the facility is in compliance with the provisions of this chapter, a license shall be issued.

(e) If the facility is approved for occupancy by local authorities, a license may be issued if the facility submits a plan of correction acceptable to the director to bring the facility into full compliance with the provisions of this chapter. The plan may reflect dates for compliance occurring after issuance of the license if approved by the director.

(f) If the director determines that compliance with the provisions of this chapter is not substantiated, the director may propose to deny the license and shall notify the applicant of a license denial as provided in §125.7 of this title (relating to License Denial, Suspension, or Revocation and Criminal Penalties).

(g) The director shall mail the license to the licensee. A license shall not be materially altered. Continuing compliance with the minimum standards and the provisions of this chapter is required during the licensing period.

(h) A facility licensed on or before August 31, 1989, under Chapter 12 of the Hospital Licensing Standards (concerning rules governing special care facilities including care and treatment of residents) as adopted by reference in §133.21 of this title (relating to Adoption by Reference) is deemed to be a special care facility under this chapter.

§125.6. Standards.

(a) Administrative management.

(1) General requirements.

(A) The license will specify the maximum number of residents who can be cared for at any one time.

(B) Copies of this chapter shall be available to the personnel and residents of the facility upon request.

(C) The facility management upon request shall make available to the department representatives copies of pertinent facility documents or records which in the opinion of the representatives contain evidence of conditions that threaten the health and safety of residents. Such documents and records are residents' medical records including health care notes, pharmacy records, medication records, physicians' orders, and incident/accident reports concerning residents.

(D) Each facility shall conspicuously and prominently post the facility license.

(E) All accidents, whether resulting in injury, and any unusual incidents or abnormal events, including allegations of mistreatment of residents by staff, personnel, or visitors, shall be described in separate administrative records filed in the director's office. Certain procedures regarding accidents, unusual incidents, and abnormal events shall be observed as directed by the department.

(F) Within 72 hours of admission, the facility must prepare a written

inventory of the personal property a resident brings to the facility. The facility does not have to inventory the resident's clothing. If requested by the resident or responsible party, the inventory shall be updated. The facility should have a mechanism to protect resident clothing.

(G) Grounds for denial, revocation, or suspension of the license in accordance with §125.7 of this title (relating to License Denial, Suspension, or Revocation and Criminal Penalties) may exist when there is substantiated evidence of the owner, director, or any employee willfully inflicting injury, physical suffering, or mental anguish on any resident in a facility; the failure of management, who is knowledgeable of a substantiated case of physical or mental abuse or neglect, to take corrective action; or the failure of management, who has cause to believe that a resident's physical or mental health or welfare has been or may be adversely affected by abuse or neglect caused by another person, to report it to the department.

(H) A license may not be transferred or assigned.

(2) Operating policies and procedures. The facility shall comply with its own written policies and procedures. All policies shall be reviewed and updated annually.

(A) The facility shall have a written policy and procedure document detailing the overall operating policies and procedures. The document shall include information on admission and admission agreements, resident care services, charges or reimbursement for services, expectations of residents, transfers, discharges, complaint procedures, use of volunteers, protection of residents' personal property, and resident's rights.

(B) The facility shall have a written resident care policies document detailing the care provided and related services. These policies shall include provision for an interdisciplinary assessment of resident need and the development of a plan for promoting self-care and independence. The residents of the facility shall participate in the annual review and update of the resident care policy.

(C) The facility shall have written personnel policies and procedures. These policies and procedures must be explained to employees when first employed and available to them.

(D) In accordance with personnel policies, the facility may hire and retain employees with certain communicable diseases based on their abilities to perform on the job adequately and safely and on their willingness to follow prescribed measures to prevent the transmission of infections. Questions of employee infectious status and ability to perform duties should be resolved by consultation with a physician and/or local health authorities (also see *Morbidity and Mortality Report*, supplement of August 21, 1987 CDC, Atlanta, Georgia). Should any facility staff have a communicable disease, the facility shall report as specified in subparagraph (F) of this paragraph.

(E) The requirements of subparagraph (D) of this paragraph shall apply to staff from outside resources and to volunteers.

(F) When the facility is ready for initial opening and operation, and when any newly acquired reportable communicable disease may become evident in a resident, staff member, outside resource person, or volunteer, the facility shall report in accordance with the Communicable Disease and Prevention Act, Texas Civil Statutes, Article 4419b-1, or as specified in §97.1-97.13 of this title (relating to Control of Communicable Diseases) and §97.131-97.136 of this title (relating to Sexually Transmitted Diseases), (revised February 1988), and Reportable Diseases in Texas, Publication 6-101a (revised September 1987). After notification to the local health authority, appropriate infection control measures shall be implemented as directed by that authority and in accordance with facility policy.

(G) The facility shall ensure that personnel records are correct and contain sufficient information to support placement in the assigned position (including a resume of training and experience). Where applicable, a current copy of the person's license or permit shall be in the file.

(H) If the resident or the resident's responsible party entrusts the handling of cash to the facility, simple accounting records of receipts and expenditures of such cash shall be maintained. These funds must be separate from the facility's operating accounts.

(I) The facility shall enter into written agreements with at least one licensed hospital and at least one licensed nursing home permitting the prompt transfer to and the admission by the receiving hospital or nursing home in a medically appropriate manner of any patient when special services are needed but are unavailable at the facility.

(J) The facility is encouraged to provide assistance to the residents in their securing or arranging for transportation to meet the residents' transportation needs.

(K) In the case of an acute episode, a serious change in the resident's condition, or death, the resident's responsible party shall be notified as soon as possible.

(L) If a facility does not employ a person qualified to provide a required or needed service, it shall have arrangements with an outside resource that has the necessary qualifications to provide the service directly to residents or to act as a consultant to the facility. Facility policies shall state the methods used to provide required or needed services. The facility may employ personnel or use appropriate volunteer services or arrange with outside resources to provide services to residents or to act as consultants to the facility. Regardless of the method or combinations of methods used, staff performing services must be appropriately qualified or supervised.

(3) Legal responsibility. There shall be a governing body which assumes full legal responsibility for the overall conduct of the facility. The person(s) legally responsible for the conduct of the facility shall carry out or have carried out the provisions of this chapter pertaining to the governing body.

(4) Compliance with laws and standards. The governing body shall be responsible for compliance with all applicable laws and with applicable rules and standards of the department.

(5) Facility director.

(A) The governing body shall appoint a facility director to be accountable for the overall management of the facility. The governing body shall delegate in writing to the director full authority for the internal operation of the facility in accordance with established policy.

(B) The director's responsibilities for procurement and direction of competent personnel shall be clearly defined.

(C) If the facility can be successfully managed with less than the director's full-time management, the director may be less than full-time. In such instances, the director shall assign another responsible individual who can perform management tasks so that there is administrative management essentially for the usual and customary 40-hours-per-week business operations.

(D) There shall be a competent individual authorized to be in charge of the facility when the director is absent.

(E) The director may be a member of the governing body.

(F) The director shall be at least 18 years of age and shall be physically, mentally, and emotionally able to perform the duties of operating the facility. It is desirable for the director to have had training in administrative management.

(6) Medical care. The facility shall provide appropriate care that is:

(A) required for improving life span and quality of life, for comfort, for prevention and treatment of illness, and for maintenance of bodily and mental function;

(B) under the continued supervision of a physician; or

(C) provided by a registered nurse or licensed vocational nurse available to carry out a physician's plan of care for a resident.

(7) Staff development. Staff and/or volunteers shall be oriented to the basic philosophy of the facility and shall be given periodic training to update their knowledge and skills in providing care to residents. Training must include the facility's policy on confidentiality of patient's medical records. Training may be provided by the facility or by another appropriate entity.

(8) Volunteer services.

(A) The facility shall provide written guidelines to volunteers concerning areas such as confidentiality, infection control and sanitation, and security. It is recommended that volunteers sign a confidentiality agreement.

(B) Volunteers may be utilized in the following areas and in any other area in which they have the necessary qualifications for the assignment such as peer counseling, support groups, advocacy, information and referral, assistance with activities of daily living, spiritual support, grief work for both resident and significant others, recreational programs, errands, transportation, and facility housekeeping and maintenance.

(C) All volunteers will receive documented orientation to the facility which will include at a minimum location of fire alarm system; emergency procedures, including emergency phone numbers; evacuation plan; availability of counseling programs, support groups, and advocacy information; the facility's policy on confidentiality of medical records and information pertaining to patients diagnosis, treatment, and identification; and the general mission statement of the facility.

(D) All volunteers will receive documented training on job specifics of all assigned tasks. A detailed job description will be developed for each category of volunteer and be signed by the volunteer acknowledging that they have read and understand the requirements and limitations of their assigned duties, and the facility's policy regarding the confidentiality of patient identity and information contained in medical records.

(E) All volunteers who are performing duties that require licensure, certification, or registration must currently be licensed, certified, or registered by the appropriate board or agency and a copy of their credentials shall be kept on file in the facility.

(b) Building construction.

(1) Applicability of requirements of construction and life safety.

(A) All buildings or structures, new or existing, used as a licensed facility shall be in accordance with these standards.

(B) For existing buildings and structures which are converted to facility occupancy, the department may modify those requirements, which, if strictly applied, would clearly be impractical in the judgment of the department. Any such modifications will be allowed only to the extent that reasonable accommodations and life safety against the hazards of fire, explosion, structural, or other building failure and panic are provided and maintained. Residents are not to be admitted until all standards are met and approval for occupancy is granted by the department.

(2) Planning, construction, procedures, and approvals.

(A) Submission of plans. When construction is contemplated for new buildings, additions, conversion of buildings not licensed by the department, or remodeling of existing licensed facilities, one copy of the preliminary proposed plans shall be submitted to the department for review and approval prior to construction or occupancy. The plans shall be drawn to scale; shall include a plot plan; and shall indicate the usages of all spaces, sizes of areas and rooms, and the kind and location of fixed equipment.

(B) The plot plan shall show all structures within 20 feet of the facility. If the local governmental unit has a building official charged with the enforcement of a local code, that authority's review of the drawings and specifications is required.

(C) The facility shall pay the required fee for plan review and inspection of construction at the time the proposed plans are submitted.

(D) No major construction shall be started until the working drawings and specifications are approved by the department.

(E) All construction shall be done in accordance with the approved plans. Any deviations therefrom must have prior approval of the department.

(F) Before licensing, the facility shall be approved by the local fire marshal having jurisdiction for compliance with local ordinances or requirements. These approvals shall be provided to the department at the time of final inspection of construction for licensure purposes.

(G) On prior approval of the department, alternative building arrangements may be made, commensurate with the resident's needs or desires.

(3) Requirements of construction.

(A) New construction shall be subject to local codes covering construction and electrical/mechanical systems for this occupancy (the description of the occupancy may vary with the local codes). In the absence of, or absence of enforcement of such local codes, the department will require general conformance to the fundamentals of the following codes:

(i) nationally recognized building codes, such as the *Standard Building Code 1984* of the Southern Building Code Congress, International, Inc., or the *Uniform Building Code* (1988) of the International Conference of Building Officials (ICBO). Such nationally recognized codes, when used, shall all be publications of the same group or organization so as to assure the intended continuity;

(ii) the *Handbook of Fundamentals* of the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE);

(iii) the *National Electrical Code* of the National Fire Protection Association, (NFPA 70);

(iv) for handicap provisions, Standard A117.1–1980 of the American National Standards Institute (ANSI) and the requirements of the State Purchasing and General Services Commission, if applicable; and

(v) the *National Standard Plumbing Code* (1983) of the National Association of Plumbing Heating Cooling Contractors (PHCC).

(B) An existing building converted to this occupancy shall meet all local requirements pertaining to that occupancy. The department may require the facility owner or licensee to submit evidence that local requirements are satisfied.

(C) An existing building converted to this occupancy shall have all electrical and mechanical systems safe and in working order. The department may require the facility owner or licensee to submit evidence to this effect, consisting of a report of the fire marshal or city/county building official having jurisdiction, or a report of a registered professional engineer.

(D) The facility shall conform to all applicable state laws and local codes and ordinances. When such laws, codes, and ordinances are more stringent than the provisions of this chapter, the more stringent requirements shall govern. Should state laws or local codes or ordinances be in conflict with the requirements of these standards, the department shall be informed so that these conflicts may be legally resolved.

(4) Separation from other occupancies. A common wall between a facility and another occupancy shall be not less than a two-hour noncombustible fire rated partition, unless approved otherwise by the department (definition of such a partition shall be in accordance with the National Fire Protection Association standards). A licensed hospital, nursing home, custodial care home, or personal care home is not considered another occupancy for this purpose.

(5) Facility location.

(A) The facility shall be located so as to promote at all times the health, comfort, safety, and well-being of the residents.

(B) The facility shall be serviced by a paid or volunteer fire fighting unit as approved by the department. Water supply for fire fighting purposes shall be as required or approved in writing by the fire fighting unit serving the area.

(C) Any site conditions that can be considered a fire hazard, health hazard, or physical hazard shall be corrected by the facility as determined by the department.

(c) Personal safety and comfort.

(1) Fire alarm and smoke detection system. A manual alarm initiating system with manual pulls at exit doors shall be provided and be supplemented by an automatic smoke detection and alarm initiation system. Smoke detectors shall be installed in habitable areas, such as resident bedrooms, corridors, hallways, public areas, and staff areas. Service areas such as kitchens, utility rooms, and attached garages used for car parking shall have heat detectors. The primary power source for the complete fire alarm system must be commercial electric. Emergency power source shall be from storage batteries or on-site engine-driven generator set. The manual operation of any alarm initiating device will sound an alarm(s) at the site that is audible and visual. The fire alarm panel shall be located in direct view of staff. The facility shall have a written contract with a fire alarm company or person licensed by the State of Texas to maintain the fire alarm system semi-annually.

(2) Portable fire extinguishers. Portable fire extinguishers shall be provided as required by the local fire marshal having jurisdiction. Water pressure types should be provided at resident bedroom areas.

(3) General fire safety.

(A) General fire safety shall be observed at all times.

(B) Storage items shall be neatly arranged and placed to minimize fire hazard. Gasoline, volatile materials, paint, and similar products shall not be stored in the building housing the residents. Accumulations of extraneous material and refuse shall not be permitted.

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

(D) All fires shall be reported to the department within 72 hours; however, any fire causing injury or death to a resident shall be reported immediately. A telephone report shall be followed by a written report on a form which will be supplied by the department.

(E) All personnel shall be familiar with the locations of fire- fighting equipment. There shall be a fire drill of personnel as required by NFPA 101, including the turning in of alarms, simulated evacuation of residents and other occupants, and the use of equipment.

(4) Waste and storage containers.

(A) Metal wastebaskets of substantial gauge or Underwriters Laboratories, Inc. (U.L.) approved plastic trash containers shall be provided for bedrooms, offices, staff areas, lounges, and similar locations.

(B) Garbage, waste, or trash containers provided for kitchens, janitor closets, laundries, general storage, and similar places must be made of steel, have a close fitting steel cover, and have at least a 1/2 inch air space between the floor and the bottom of container. Disposable plastic liners may be used in these containers for sanitation. Certain plastic containers meeting U.L. standards may be used in place of metal.

(C) Plastic containers with lids are acceptable for storage of staple foods in the pantry. Dishwashing chemicals used in the kitchen may be stored in plastic containers provided they are the original containers in which the manufacturer packaged the chemicals.

(D) All infectious waste and waste disposal procedures must comply with the department's rules and regulations concerning definition, treatment, and disposal of special waste from health-care related facilities, under Chapter 1 of this title (relating to Texas Board of Health) which became effective April 4, 1989.

(5) Other requirements of safety and comfort.

(A) All new carpet installed after the initial inspection of the department shall have a maximum flame spread rate of 75 based on the ASTM "tunnel test" method or equivalent under the "radiant panel test." Proper documentation must be provided on the letterhead of the testing company.

(B) Open flame heating devices are prohibited. All fuel burning heating devices shall be vented. Working fireplaces are acceptable if they are of safe design and construction and if enclosed with a glass enclosure that will withstand 650 degrees Fahrenheit temperature.

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

(D) The facility shall develop and conspicuously post throughout the facility an emergency evacuation plan approved by the local fire marshal having jurisdiction and the department.

(E) There shall be at least one non-coin operated telephone in the facility available to both staff and residents use in case of emergency. Emergency telephone numbers shall be posted conspicuously at or near the telephone in a place that can be read while using the telephone.

(F) An annual pressure test of facility gas lines from the meter shall be provided by a licensed plumber. Any unsatisfactory conditions shall be corrected promptly.

(G) Storage of hazardous items such as janitor supplies and equipment shall be provided in closets or spaces separate from resident-use areas. Closets or spaces shall be maintained in a safe and sanitary condition and ventilated in a manner commensurate with the use of the closet or space.

(H) All exterior site conditions shall be designed, constructed, and maintained in the interest of resident safety. Newly constructed ramps shall not exceed 1:12 slope. Ramps, walks, and steps shall be of slip-resistive texture and be smooth and uniform, without irregularities. At least one ramp shall be provided for handicap use. Guard rails, fences, and hand rails shall be provided where needed. Grounds, grass, shrubbery, trees, and other site features shall be maintained in a neat and attractive manner in the interest of health and safety.

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

(J) All lavatories and bathing units shall be supplied with hot water in quantities to meet the needs of the residents. Hot water shall be controlled not to exceed 125 degrees Fahrenheit.

(K) Cooling and heating shall be provided for resident comfort. Conditioning systems shall be capable of maintaining the comfort ranges of heating and cooling.

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

(M) Illumination, either natural or artificial, shall be provided to supply the needs of the residents and staff without eye strain or glare.

(N) A passenger elevator shall be provided in the facility for resident bedroom and use areas which are on the third floor or higher, the street floor being considered the first floor. Applicable codes shall be observed in the design and construction of elevators.

(O) It is desirable that finish materials, colors, decorations, and furnishings contribute to physical and emotional comfort. Furniture shall be substantial and stable and of design commensurate with its function and use. Loose rugs creating a hazard shall not be permitted. Building features, furnishings, and furniture shall be provided and maintained free of hazardous conditions and in the interest of continuing resident benefit.

(P) There shall be no occupancies or activities undesirable to the health and safety of the residents in the buildings or on the premises of the facility.

(d) Sanitary environment.

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

(2) Water supply shall be as approved by the department. Quantity and pressure shall be as necessary to serve the needs of the facility.

(3) Waste, trash, and garbage shall be disposed from the premises at regular intervals in accordance with state and local practices. Excessive accumulations are not permitted. Outside containers shall have tight fitting lids left in closed position. Containers shall be cleaned regularly.

(4) The building and grounds shall be kept neat and free of refuse, litter, extraneous materials, and unsightly or injurious accumulations.

(5) The facility will make every effort possible to guard against insects, rodents, rainwater, and other conditions adversely affecting a sanitary environment or the well-being of the residents.

(6) Operable windows shall be insect screened.

(7) An effective, safe, and continuing pest control program shall be provided. Pesticides, if used, shall be applied in accordance with all applicable laws and regulations, and shall be utilized and stored in a manner that is not hazardous to residents.

(8) All bathrooms, toilet rooms, and other odor-producing rooms or areas for soiled and unsanitary operations shall be ventilated for odor control by means of operable windows or powered exhaust approved by the department.

(9) In kitchens and laundries, there shall be adequate equipment and procedures to avoid cross contamination.

(10) The facility shall be kept free of offensive odors, accumulations of dirt, rubbish, dust, and hazards. Floors shall be maintained in good condition and cleaned regularly; walls and ceilings shall be structurally maintained, repaired, and repainted or cleaned as needed. Storage areas, attics, and cellars shall be free of refuse and extraneous materials.

(11) The quantity of available linen shall meet the sanitary and cleanliness needs of the residents. Clean linens shall be stored in clean linen storage areas.

(e) Accommodations.

(1) Resident bedrooms.

(A) Bedrooms shall be arranged and equipped for adequate delivery of services and for comfort and privacy.

(B) Useable bedroom floor space shall be not less than 80 square feet for a one-bed room and not less than 60 square feet per bed for a multiple-bed room. Larger rooms are recommended for those residents needing nursing care. A bedroom shall be not less than eight feet in the smallest dimension, unless specifically approved otherwise by the department.

(C) No more than four beds shall be in any bedroom unless approved otherwise by the department.

(D) In the bedrooms and for each resident there shall be a bed, comfortable chair, table or dresser, and closet space or wardrobe providing security and privacy for clothing and personal belongings.

(E) Each resident room shall have at least one operable outside window which can be readily opened from the inside without the use of tools. The height of the window sill shall not exceed 44 inches from the floor. Operable window sections may be restricted for security or safety reasons, but the required one operable section shall not be restricted to less than six inches. Each window shall be provided with a flame-retardant shade, curtain, or blind.

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

(2) Resident toilet and bathing facilities.

(A) All bedrooms shall be served by separate private, connecting, or general toilet rooms for each sex (if the facility houses both sexes). The general toilet room or bathing room shall be accessible from a corridor or public space. A lavatory shall be readily accessible to each water closet. The facility shall provide at least one full bath on each resident sleeping floor.

(B) One water closet and one lavatory shall be provided for each four occupants or fraction thereof. Where the needs of residents require, the facility may supplement this number by using bedside commodes, although water closets are preferable. One tub or one shower shall be

provided for each six occupants or fraction thereof.

(C) Privacy partitions and shields shall be provided at water closets and bathing units in rooms for multi-resident use.

(D) Sanitary handwashing and drying provisions for residents shall be maintained.

(3) Recreation, living, and day room.

(A) Recreation, living, and day room space and furniture shall be provided to allow seating of all residents at one time. Each facility shall have at least one space of not less than 144 square feet. The first eight residents shall be provided with at least 144 square feet; for each additional resident 10 square feet shall be additionally provided.

(B) At least one of the recreation, living, and day room areas shall have exterior windows providing a view to the outside.

(4) Miscellaneous. The facility is encouraged to provide or arrange for nearby functional parking space for private vehicles of residents who drive, and is encouraged to provide nearby parking arrangements for visitors.

(f) Care and services.

(1) Admission.

(A) The facility shall have admission policies consonant with the mission of the facility in the care of persons. The facility may have restrictions on admission and retention of persons who use illegal drugs, who abuse alcohol, or whose actions are a threat to the health or safety of others.

(B) Each resident on admission shall have a current medical history, including medications, and a physical examination performed by a physician. The history and physical examination shall have been performed within 14 days prior to admission or shall be performed within seven days after admission. The history and physical examination shall be of sufficient detail for the attending physician to evaluate the resident's immediate and long-term needs, and shall include all diagnoses and any other information that may be needed for the care of the resident.

(C) Upon admission, the resident, responsible party, or facility responsible for the placement of the resident shall see that arrangements are made for the medical care of the resident by a designated attending physician or alternate physician.

(D) The facility shall secure at the time of admission appropriate identifying information, including full name; sex; date of birth; usual occupation; social security number; family/friend name, address, and telephone number; and physician names and telephone numbers including emergency numbers.

(E) There shall be in easily understood wording a written admission agreement between a facility and a resident. The agreement shall specify such details as services to be provided and how services will be reimbursed, and shall be based on the operational policies.

(F) The facility shall maintain a chronological register of all residents admitted to and discharged from the facility. The register shall contain at least the name of the resident, date of birth, date of admission, date of discharge/death, and disposition (where resident went including address).

(2) Care plans and provision of services.

(A) The facility shall develop for each resident a care plan that identifies the functional capabilities and needs of the resident, the services that will be provided or arranged for by the facility in or toward meeting those needs, and the services or assistance the resident will self-perform or self-arrange. The initial care plan shall be written at the time of admission or as soon thereafter as possible, but not to exceed 14 days after admission. The care plan shall be reviewed and updated as the condition of the resident changes but not to exceed quarterly in any case.

(B) Care plans shall be developed in concert with the attending physicians' orders of care and treatments. Assessment of needs shall be determined and care plans shall be developed by qualified persons representing nursing, dietary, and social service disciplines, and other disciplines as may be appropriate or indicated.

(C) The facility shall provide, arrange for, or assist as the case may be in the provision of services that are called for by the care plans to be the responsibilities of the facility. All such services shall meet applicable professional standards of quality, be in accordance with all governing laws and regulations, and as specified in this chapter.

(3) Staffing.

(A) The facility shall be staffed with personnel or shall arrange through outside resources or volunteers for personnel in the quantity and of the disciplines, professions, or types necessary for the facility to provide the care and services required under the care plans of the individual residents and as called for in these standards. The personnel shall be commensurate with the intent of the types and kinds of services stated in the policies of the facility.

(B) For a resident requiring only personal care, including assistance in self-administration of medications, direct care personnel may be facility, outside resource, or volunteer attendant personnel.

(C) For residents requiring nursing care, including administration of medications, direct care facility personnel shall be qualified nursing personnel or may be outside resource personnel or volunteers with the required qualifications.

(D) There shall be personnel as needed to maintain cleanliness, sanitation, and safety; to prepare and serve meals; to keep a supply of clean linen; and to assure that each resident receives the kind and amount of supervision and care required to meet his or her basic needs. These personnel may be employees, be arranged for, be volunteers, or, where appropriate, be residents themselves, depending on the policies of the facility. In some facilities, these personnel may perform these functions on a periodic, as compared to an ongoing, basis.

(E) At least one or more appropriate staff person(s) as needed shall be on duty at all times. Each shift or tour of duty shall have an appropriate staff person designated in charge. This person shall be qualified to recognize and respond to obvious sudden changes in a resident's condition and obtain necessary consultation or direct assistance by others.

(F) The facility shall provide or arrange for a registered nurse or other qualified person, such as a physician or physician assistant, to check each resident on a periodic basis frequent enough to note any unrecognized or subtle change in the resident's condition.

(G) All staff shall be physically, mentally, and emotionally able to perform the duties to which they are responsible or have been assigned.

(4) Physician services.

(A) Each resident admitted shall have a current medical history and physical examination as described in paragraph (1)(B) of this subsection.

(B) Each resident shall have a designated attending physician who is in charge of the medical care of the resident.

(C) The facility shall provide a medical records service which facilitates attending physicians' entering of orders and progress notes.

(D) In the event of an acute illness, condition, or accident requiring medical and/or nursing care beyond the capabilities of the facility, the resident shall be transferred to a hospital or other health care facility as appropriate where needed services and facilities are available; provided, however, until said transfer is made the facility personnel shall have authority to carry out emergency procedures as prescribed by a licensed physician. In case of an illness which does not necessitate transfer of a resident from the facility, appropriate nursing personnel shall keep a necessary record of medications and vital signs in order to keep the attending physician fully informed relative to the health status of the individual resident. Administration of medications shall be done in accordance with applicable laws and regulations.

(E) Every facility shall have a written arrangement with one or more physicians to provide emergency medical care as needed.

(5) Nursing services.

(A) Nursing services shall be provided as necessary for those residents needing nursing care. The nursing services shall be provided to meet the needs of the residents and in accordance with standard recognized practices of nursing care.

(B) Licensed nurses shall function consistent with the nursing practices recognized and authorized by their licensing boards in Texas.

(C) A licensed nurse shall be designated to be responsible for the nursing service. This person shall be on duty or on call as needed.

(D) When nursing services are needed, nursing personnel shall assure that residents requiring nursing care receive treatments, medications, and diets as prescribed; receive preventive care to discourage decubiti; are kept comfortable, clean, and well-groomed; are protected from accident and injury by adoption of indicated safety measures; and are treated with kindness and respect. Duties of nursing personnel consist of direct resident care and services.

(E) Nursing or attendant personnel on duty shall be responsible to obtain emergency medical care when a resident's condition so requires and shall notify the applicable attending physician.

(6) Infection control. The facility shall have written policies and procedures for the control of communicable diseases and infections in personnel, residents, volunteers or visitors, and for a safe and sanitary environment. These policies and procedures shall include the *Recommendations for Prevention of HIV Transmission in Health-Care Settings* as published by the United States Department of Health and Human Services, Centers for Disease Control, Atlanta, Georgia, and as revised; and "Infection Control for the Nursing Home", Texas Preventable Disease News Volume 46 Number 33, August 16, 1986, Texas Department of Health. The Immunization Section of this newsletter will have to be carefully applied on an individual basis as determined by the patient's physician.

(7) Medical records.

(A) The facility shall maintain for each resident admitted, a separate medical record with all entries kept current, dated, and signed by the recorder. The record shall include:

(i) identification data as identified in of paragraph (1)(D) of this subsection;

(ii) medical history and physical exam reports;

(iii) any physician orders and progress notes;

(iv) any documentation of the resident's change in health condition requiring emergency procedures and/or health services provided by facility personnel;

(v) if appropriate, documentation of assistance with medications as stated in pharmacy services;

(vi) other documents or reports related to the care of the resident as required by facility policy;

(vii) if appropriate, documentation of nursing services provided and nursing staff observation as required by facility policy; and

(viii) a separation or discharge report completed at the time of the resident's discharge. The report shall include date of departure, destination, reason for leaving, resident's health status, referral information, if any, and how to be contacted, if appropriate.

(B) The director shall be responsible for the organization and management of the medical records.

(C) The facility will protect medical records against loss, damage, destruction, and unauthorized use by:

(i) safeguarding the confidentiality of medical record information and allowing access and/or release only under court order; by written authorization of the resident unless the physician has documented in the record to do so would be harmful to the physical, mental, or emotional health of the resident; as allowed by law and rules for licensure inspection purposes and reporting of communicable disease information; or as specifically allowed by federal and state laws relating to facilities caring for residents with AIDS or related disorders;

(ii) maintaining records in an organized manner, storing them in a protective device (manila folder, ring binder, envelope, etc.), and filing them using an organized system;

(iii) recording entries in ink, computer, or typewritten format and keeping original reports and records; and

(iv) storing records in a lockable area during non-use and after resident's discharge.

(D) The following pertains to medical records.

(i) Medical records must be retained for at least five years after services end. In the case of a minor, the medical records must be retained for at least three years after the minor reaches majority under state law.

(ii) The facility may not destroy medical records that relate to any matter that is involved in litigation if the facility knows the litigation has not been finally resolved.

(iii) Each resident of the facility shall have an opportunity to comply with the provisions of the Natural Death Act, Texas Civil Statutes, Article 4590h, if the resident desires to execute a directive under the act.

(iv) In the event of change of ownership, the new management shall maintain proof of the medical information required for the continuity of services of residents.

(8) Pharmacy services.

(A) Pharmacy services shall be provided as required for those residents on a physician-ordered medication therapy regimen.

(B) Upon admission, and as part of the care plan, the admitting physician shall determine whether a resident can self-administer his or her medications or will require administration by qualified nursing personnel.

(C) Each resident's health status shall be reviewed at least quarterly,

or more often if indicated, to determine if any changes are necessary in the medication administration procedures.

(i) The appropriateness for a resident to self-administer medications shall be reviewed by the facility director, attending physician, and a licensed nurse.

(ii) The appropriateness for a resident to have qualified nursing personnel administer medications shall be reviewed by the facility director, attending physician, registered nurse, and a pharmacist.

(iii) A resident's drug regimen review shall be incorporated into the individual's plan of care.

(D) Residents self-administering their medications may:

(i) keep them in their possession;

(ii) use lockable cabinets for medication storage provided by the facility for each resident in the resident's room. Only the resident and authorized facility staff shall have access to the lockable cabinet; or

(iii) allow the facility to keep residents' medications in a central medication storage area under control of facility staff.

(E) The central medication storage shall be lockable and shall be kept locked when facility staff is not actually in or at the storage area.

(F) Residents may be permitted entrance or access to the storage area for the purpose of self-administering their medications or treatments or receiving assistance with their medication or treatment regimen. A facility staff member shall remain in or at the storage area the entire time any resident is in the storage area.

(G) Lockable, individual resident-storage cabinets, securely fastened or attached to a wall or permanent fixture shall be available at a central location.

(H) Each resident is responsible for keeping any record for taking his or her medications.

(I) If administration of medications to residents is performed by qualified nursing personnel the following shall apply.

(i) There shall be a specific room area designated as a medication room that is:

(I) sufficient in size and/or space for the storage of all medications that are being administered to residents and for the preparation of medications for administration to residents;

(II) lockable and shall be maintained locked at all times when not occupied;

(III) accessible only to persons authorized to administer medications to residents;

(IV) equipped with a sink having hot and cold water available at all times; and

(V) adequately ventilated and temperature controlled.

(ii) A medication storage cart may be used in addition to the medication room for the storage of residents' medications.

(I) The medication cart shall conform to the department guidelines for implementation and use of a medication storage cart.

(II) When not in use, the medication storage cart must be kept locked in the locked medication room or in the designated locked storage room that shall be used only for the storage of the cart.

(iii) All medications administered to residents shall be upon written orders or verbal orders subsequently verified in writing by the treating physician.

(iv) Medications shall be administered only by personnel licensed or permitted to administer medications and shall be done in conformance with all laws, regulations, and recognized professional standards of practice.

(v) The facility shall have readily available items necessary for the proper administration of all medications.

(vi) The person administering medications shall properly record in the appropriate medical record the medications administered.

(vii) A pharmacist arranged for by the facility shall review each resident's medication regimen at least monthly for all residents being administered their medications.

(I) The pharmacist shall furnish to the facility's nurse-in-charge and director a separate written report on each resident indicating the date of the review, and any irregularities.

(II) The pharmacist shall sign each drug regimen review.

(J) Pharmaceutical service policies and procedures shall be developed and maintained current.

(K) Policies and procedures are to be developed by the facility's pharmacist, nurse-in-charge, director, and a physician.

(L) Appropriate documentation shall assure that policies and procedures are reviewed at least annually.

(M) Medication requiring refrigeration shall be stored in the medication room, used only for medicine storage, supplemental feedings, and substances specifically ordered by the resident's physician that require refrigeration.

(N) Medication under storage control of the facility shall be returned to the resident upon dismissal from the facility.

(O) Medications no longer in use remaining in the facility after 90 days shall be destroyed in accordance with regulation governing the destruction of dangerous or controlled drugs by the Texas State Board of Pharmacy.

(P) Controlled drugs under storage control of the facility shall be kept separately locked in a permanently affixed compartment within the medicine room or medication storage cart.

(i) A separate record must be maintained for each controlled drug.

(ii) The record shall include, but not be limited to, prescription number, name and strength of drug, date received by the facility, date and time each dose is administered, signature of person administering dose, name of resident, and the original amount received with the balance verifiable by drug inventory at least daily.

(Q) Appropriate facility staff shall be responsible for ordering and reordering medications from the pharmacy for those residents having their medications administered to them by facility staff.

(R) All residents' medications shall be properly dispensed and/or labeled in accordance with applicable laws and regulations.

(9) Dietary services.

(A) A dining room, rooms, or space with appropriate furnishings shall be provided. Dining facilities shall not dou-

ble as required living and day room areas. Ideally, the dining space and furnishings should allow the residents who can come to the dining room to dine at one sitting. Where alternate or second meal services are employed, those services must be equal in quantity, quality, and sanitation to the first serving.

(B) The facility shall have a kitchen or dietary area to meet the food service needs of the residents. It shall include provisions for the storage, refrigeration, preparation, and serving of food; for dish and utensil cleaning; and for refuse storage and removal.

(C) Meal service shall be provided or arranged to be commensurate with the needs of the residents. Meals shall be palatable and meet the nutritional needs of the residents.

(D) Procedures to prevent cross contamination shall be observed in the storage, preparation, and distribution of food; in the cleaning of dishes, equipment, and work area; and in the storage and disposal of waste.

(E) All dishes and utensils shall be washed in an automatic dishwasher.

(F) Sanitary handwashing and drying provisions shall be provided in the kitchen area.

(G) If the attending physician specifies a therapeutic diet that cannot customarily be provided in a home or family setting, the facility shall make arrangement for the service of a dietitian in order to provide the resident with the appropriate diet.

(10) Social services/pastoral care.

(A) The care plan of each resident shall identify that resident's social, spiritual, and emotional needs.

(B) Services to meet identified social, spiritual, and emotional needs shall be offered to the resident, the resident's family or responsible party, the resident's friend, and significant other persons. Acceptance of these services will be at the option of the resident. Services may include but are not limited to:

(i) issues of death or dying;

(ii) individual and group counseling;

(iii) grief work including follow-up care to survivors of patients;

(iv) unresolved issues of sexual identity and responsible sexual activity;

(v) issues related to employment, and acceptance by the community at large;

(vi) use of health resources and options;

(vii) substance or alcohol abuse; and

(viii) appropriate and inappropriate behavior.

(C) Social services staff should be available to assist with discharges and in locating alternative arrangements should the need exist.

(11) Personal care services.

(A) The facility shall provide personal care services required of residents to assist them in their day-to-day living.

(B) All residents will need the following basic personal care services:

(i) a safe, comfortable, and sanitary environment;

(ii) a food service which provides wholesome and satisfying meals meeting general nutritional needs; and

(iii) humane treatment, including responsible communication.

(C) Some residents may need personal care services such as:

(i) assistance with the self-administration of their medication regimen;

(ii) assistance with hygiene;

(iii) assistance with grooming, including clothing;

(iv) assistance with ambulation; and

(v) emotional support.

(D) Some residents may be able to be cared for through personal care services without reliance on nursing services.

12) Humane treatment and resident rights.

(A) As home-like an atmosphere as possible shall be provided. Restrictive rules shall be kept to a minimum. While some rules are necessary in group living to maintain a balance between individual wishes and group welfare, they shall not infringe upon a resident's rights of self-determination, privacy of person or thought, and personal dignity. General rules affecting all residents should be based on the premise that residents have the capacity to function as adult individuals.

(B) Through action and attitudes the facility staff shall help the residents develop and maintain self-respect, confidence, self-fulfillment, and meaningful relationships with other residents and staff.

(C) All facility staff, including management staff and volunteers, shall, in the course of their tasks, provide emotional support.

(i) Staff shall provide observation and precautionary measures to promote safety and protection from falling

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 December 11, 1989.

TRD-8911875

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

Effective date: January 1, 1990.

Proposal publication date: August 29, 1989.

For further information, please call: (512) 458-7500

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Chapter 133. Hospital Licensing

Standards

• 25 TAC §133.21

The Texas Department of Health adopts an amendment to §133.21, without change to the proposed text as published in the August 29, 1989, issue of the *Texas Register*. The section adopts by reference the department's hospital licensing standards. The amendment repeals the existing sections on special care facilities described in Chapter 12 of the standards. The existing sections on special care facilities are being replaced and updated by new Chapter 125 of this title (relating to Special Care Facilities), which is being adopted in this issue of the *Texas Register*.

The department adopts the amendment to implement the requirements of the Texas Special Care Facility Licensing Act, Texas Session Laws 1989, 71st Legislature, Regular Session, Chapter 1085, §16 (Senate bill 487, §16) which became effective September 1, 1989.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Health and Safety Code, §241.026, which provides authorization for the Texas Board of Health to adopt minimum standards for staffing by physicians and nurses, hospitals services relating to patient care, and fire prevention, safety, and sanitary provisions of hospitals in Texas,

and the Health and Safety Code, §12.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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

Issued in Austin, Texas, on December 11, 1989.

TRD-8911872 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Effective date: January 1, 1990.

Proposal publication date: August 29, 1989.

For further information, please call: (512) 458-7538

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Chapter 141. Massage Therapists

The Texas Department of Health adopts the repeal of existing §§141.1-141.17 and new §§141.1-141.21. Sections §§141.3, 141.6, 141.9, 141.10, 141.12, 141.13, are adopted with changes to the proposed text as published in the September 29, 1989 issue of the *Texas Register* (14 TexReg 5143). Sections 141.1, 141.2, 141.4, 141.5, 141,7, 141.8, 141.11, and 141.14-141.21 are adopted without changes and will not be republished.

The new sections replace and update the repealed sections and implement the provisions of Texas Session Laws 1989, 71st Legislature, Chapter 248, (House Bill 2600).

The sections include the registration and regulation of massage schools, massage therapy instructors, and massage establishments; a written and practical examination to qualify applicants for registration; temporary registrations for qualified applicants; and hourly course requirements.

The following comments were received concerning the proposed sections.

Concerning §141.1, a commenter requested that the word "processes" be changed to the word "functions" in the physiology definition. Both definitions are acceptable; therefore, the department did not change the definition.

The department has made changes in §141.3, §141.9, and §141.10 to simplify the issuance of initial registrations. Each applicant whose application has been approved and who has passed the written and practical examination shall be issued a registration certificate and identification card. The requirement to complete a registration form and pay the prorated registration fee has been deleted. The initial registration will be valid until the registrant's next birth month. This procedural change will provide cost and time savings for both the registrant and the department. The application and prorated fee have been combined into a single application fee.

Regarding §141.3, a commenter stated both the fees and registration of instructors is unreasonable. The department is required by statute to register massage therapy instructors and set fees to cover the expenses to implement the program.

In §141.6(j), a commenter suggested additional equipment and specifications for the equipment. The department changed the towel requirement to allow the applicant to select the appropriate type towel. The department determined the other changes were not necessary.

Regarding §141.12(h), a commenter stated it was ambiguous to require instructors to be licensed (if applicable) with the appropriate professional regulating board or agency because the department regulates instructors. The department registers Swedish massage therapy technique course instructors. This section sets out qualifications for instructors that teach the other courses required for registration. The department does not register these instructors.

Regarding §141.13, the commenter stated the department should adopt the Texas Education Agency and federal guidelines for proprietary schools. The advisory council and department reviewed these requirements and used them as a basis for these rules. Some changes were made to fit the profession. Reputation and character are subjective and will not be added as massage therapy instructor qualifications.

Regarding §141.13(a)(2), two commenters requested Texas Education Agency approval be changed to Texas Department of Health approval. The department has statutory authority to regulate only the 250-hour course of instruction. Schools which offer courses in excess of the course hours required for registration are subject to Texas Education Agency regulation.

A commenter stated the requirement in §141.13(a)(3) for instructors to have attended a course on teaching adult learners to be unnecessary. This requirement is a standard requirement for teaching of adult learners. The department requires it in several regulatory programs. The department does have the authority to establish minimum standards for schools and instructors.

A commenter pointed out that §141.13(b)(1)(B) would restrict massage therapy instructors with dual registrations. The department has added language to clarify the locations where massage therapy instructors may instruct.

Regarding §141.13(b)(2)(E), a commenter stated other professionals should be allowed as instructors. The department disagrees. This subsection establishes requirements for non-school-based programs. An instructor approved under this section may teach the subjects for which the instructor is approved. Other professionals are allowed to teach some courses in massage schools.

A commenter stated the department did not have the authority to control curriculum. The advisory council has adopted a basic curriculum course outline so applicants will know the minimal competencies covered in the basic 250-hour course. These competencies are the basis for constructing the written and practical skills examination. The course outline does not address teaching methods, but does specify areas of instruction that are considered essential.

A commenter stated the code of ethics in §141.18 is misguided and was an attempt to regulate prostitutes. The department has legal authority to adopt a code of ethics to regulate massage therapists.

Numerous commenters protested deleting the requirement prohibiting registered massage therapists from working in a sexually oriented business. The statute allows sexually oriented businesses to register as massage establishments. Therefore, the department can no longer prohibit registered massage therapists from working in a registered massage establishment that may also be a sexually oriented business.

A commenter requested the rules require an annual review of the basic curriculum course outline. Department policy provides for an annual review of the course outline; therefore, it was not added to the rules.

A commenter noted both Texas Education Agency and the central education agency were used in different sections of the rules. The department agrees and changed all references to the Central Education Agency.

Regarding §141.16(d), a commenter stated this is not in the statute. The department has authority to adopt rules to implement the statute.

A commenter recommended an exclusion for other professionals be added to §141.17. The department disagrees. Professionals practicing within the scope are exempted from registration and this section does not apply to them.

A commenter stated §141.18(a)(8) dictated personal as well as professional conduct. The department disagrees. This section sets out unprofessional conduct in the practice of massage therapy.

A commenter objected to the registration of massage therapy instructors and schools and asked that two school levels be established. The rules implement the statutory requirements.

No comments were received from groups and associations; all the commenters were individuals.

• 25 TAC §§141.1-141.17

The repeals are adopted under Texas Civil Statutes, Article 4512k, §7, which provide the Texas Board of Health with the authority to adopt rules concerning the regulation and registration of massage therapists, massage instructors, massage schools, and massage establishments; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

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

Issued in Austin, Texas, on December 12, 1989.

TRD-8911927 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Effective date: January 2, 1990.

Proposal publication date: September 29, 1989.

For further information, please call: (512) 458-7512

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• 25 TAC §§141.1-141.21

The new sections are adopted under Texas Civil Statutes, Article 4512k, §7, which provide the Texas Board of Health with the authority to adopt rules concerning the regulation and registration of massage therapists, massage instructors, massage schools, and massage establishments; House Bill 2600, 71st Legislature, 1989, relating to the regulation of massage thereapy; 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.

§141.3. Fees.

(a) The schedule of fees is as follows:

(1) massage therapists:

(A) application fee (includes temporary registration)–$53;

(B) examination fee:

(i) department administered–$75; or

(ii) to be determined by the agency approved by the department to administer the examination at the time the application is scheduled for an examination;

(C) re-examination fee:

(i) department administered:

(I) written section–$30;

(II) practical section–$45;

(III) written translation fee–the actual costs to the department of translating or having the examination translated into a foreign language, including salaries, travel expenses, and out-of-pocket expenses; or

(ii) to be determined by the agency approved by the department to administer the examination at the time the applicant is to be rescheduled for an examination;

(D) renewal fee–$24;

(E) late penalty fee (includes renewal fee)–$36;

(2) massage establishments:

(A) massage establishment registration fee–$150;

(B) renewal fee–$150;

(C) late penalty fee (includes renewal fee)–$225;

(3) massage therapy schools:

(A) massage school registration fee–$300;

(B) massage school renewal–$300;

(C) late penalty fee (includes renewal fee)–$450;

(4) massage therapy instructors:

(A) registration fee–$100;

(B) renewal fee–$100;

(C) late penalty fee (includes renewal fee)–$150;

(D) additional endorsement to previously approved registration–$50;

(5) general:

(A) certificate replacement fee–$10; and

(B) identification card replacement fee–$10.

(b) All fees are nonrefundable.

(c) All fees shall be submitted in the form of a certified check for guaranteed funds or a money order payable to the department.

§141.6. Examinations.

(a) Purpose. This section sets out provisions governing the administration, content, grading, and other procedures for examination for registration as a massage therapist.

(b) Examination. The examination shall consist of a written section and a practical section.

(c) Application for examination.

(1) A holder of a temporary registration or an applicant meeting the requirements of §141.5 of this title (relating to Massage Therapist Registration Requirements) is allowed to take the examination provided the holder or applicant complies with the requirements of this section.

(2) The department shall notify an applicant whose application has been approved at least 30 days prior to the next scheduled examination. Applications which are received incomplete or late may cause the applicant to miss the examination deadline. The notice shall include the examination registration form and a model eligibility form.

(3) An examination registration form must be completed and returned to the department by the applicant with the required examination fee at least 15 days prior to the date of the examination.

(4) The examination will be conducted in the English language. Exceptions will be made when English is not the native or first language of the applicant. The written exam may be taken in his or her native language if the individual notifies the department at least 60 days in advance, so that the written test would be available. Applicants with learning disabilities, dyslexia, and those who are emotionally disturbed or blind will be extended the service of oral, tape recorded, or reader services exams with valid proof of condition. The applicant will be responsible for any fee or consideration to be paid to an acceptable interpreter and/or translator whose services are necessary for the examination. If the applicant can make arrangements that are acceptable, the examination will be given at the first time available.

(d) Date and location. Examinations will be held on dates and in locations to be announced by the department.

(e) Grading. Examinations will be graded by the department or its designee.

(f) Notice. The department shall notify each examinee of the results of the examination within 30 days of the date of the examination.

(g) Failures. A person who fails the written examination or the practical examination may retest twice on the failed portion of the examination after paying another examination fee. All retests must be completed no later than two years after the initial date of examination eligibility or the person's application will be voided.

(h) Failure to apply. Any applicant who fails to apply for and take the examination within a period of one year after an examination approval notice is mailed to him or her by the department may have such approval voided by the department.

(i) Refunds. No refunds will be made to examination candidates who fail to appear for an examination.

(j) Equipment for examination. Each applicant taking the practical portion of the examination will serve as a model for another applicant taking the practical portion of the examination on the same day.

Applicants will bring massage lubricant in an unbreakable container, two towels, two twin-sized sheets, and a completed model eligibility form provided by the department. A massage table will be provided for the applicant at the examination site.

§141.9. Massage Therapist Registration.

(a) Purpose. The purpose of this section is to set out the massage therapist registration procedures of the department.

(b) Issuance of registrations.

(1) The department will send each applicant whose application has been approved and who has passed the written and practical examination a registration certificate and a registration identification card containing a registration number.

(2) Any registration certificate or identification card issued remains the property of the department and must be surrendered on demand of the department.

(c) Display of certificate.

(1) A certificate must be displayed in an appropriate and public manner as follows.

(A) The certificate shall be displayed in the primary office or place of employment of the registrant. A photograph of the registrant approximately 1 1/2 inches by 1 1/2 inches shall be attached to the front of the certificate.

(B) In the absence of a primary office or place of employment, the registrant shall carry a current identification card.

(2) Neither the registrant nor anyone else shall display a photocopy of a certificate or carry a photocopy of a identification card in lieu of the original document.

(3) Neither the registrant nor anyone else shall make any alteration on a certificate or identification card issued by the department.

(d) Replacement certificate. The department will replace a lost, damaged, or destroyed certificate, temporary registration certificate, or identification card upon written request from a registrant and payment of the appropriate replacement fee. The request shall include a statement detailing the loss or destruction of the original certificate or identification card, or be accompanied by the damaged certificate or card.

§141.10. Massage Therapist Registration Renewal.

(a) Purpose. The purpose of this section is to set forth the rules governing registration renewal for massage therapists.

(b) General.

(1) When issued, a registration is valid until the registrant's next birth month.

(2) A registrant must renew the registration annually.

(3) The renewal date of a registration shall be the last day of the registrant's birth month.

(4) Each registrant is responsible for renewing the registration before the expiration date and shall not be excused from paying the late penalty fee. Failure to receive notification from the department prior to the expiration date of the registration will not excuse failure to file for renewal or late renewal.

(5) The department will not renew the registration of the registrant who is in violation of the Act or this chapter at the time of application for renewal.

(6) Notices of renewal approval, disapproval or deficiency shall be in accordance with §141.21 of this title (relating to Processing Applications).

(c) Staggered renewals. The department shall use a staggered system for registration renewals.

(d) Registration renewal.

(1) At least 30 days prior to the expiration date of a person's registration, the department will send notice to the registrant at the address in the department's records of the expiration date of the registration, the amount of the renewal fee due and a renewal form which the registrant must complete and return to the department with the required renewal fee.

(2) The renewal form for all registrants shall require the provision of the preferred mailing address, primary employment address and telephone number, category of employment, and a statement of all misdemeanor and felony offenses for which the registrant has been convicted of, entered a plea of nolo contendere to, or received deferred adjudication to crimes or offenses involving prostitution or sexual offenses.

(3) A registrant has renewed the registration when the registrant has mailed the renewal form and the required renewal fee to the department prior to the expiration date of the registration. The postmark date shall be considered as the date of mailing.

(4) The department shall issue to a registrant who has met all requirements for renewal, a renewal validation card and identification card.

(e) Late renewal.

(1) The department, by certified mail, shall inform a person who has not renewed a registration within 30 days following the expiration of the registration of the amount of the renewal fee required for renewal and the date the registration expired.

(2) A person whose registration has expired for not more than 90 days may renew the registration by submitting to the department the registration renewal form and the late renewal penalty fee. The renewal is effective if it is mailed to the department not more than 90 days after the expiration date of registration. The postmark date shall be considered as the date of mailing.

(3) A person whose registration has been expired for more than 90 days may not renew. The person may obtain a new registration by submitting to reexamination and complying with the then current requirements and procedures for obtaining a registration.

(f) Expiration of registration.

(1) A person whose registration has expired may not hold himself or herself out as a massage therapist, imply that he or she has the title of "registered massage therapist" or "massage therapist", or use "RMT" or "MT" or any facsimile of those titles in any manner.

(2) A person whose registration has expired may not perform the activities of a massage therapist.

(3) A person who fails to renew a registration is required to surrender the registration certificate and identification card to the department after 90 days from expiration of the registration or upon demand.

§141.12. Massage School Requirements.

(a) A school is subject to inspection by personnel authorized by the department at any reasonable time. An inspector will file a written report with the department which will specify strengths and, if applicable, deficiencies of the school. Such report will be provided to the school. Failure to correct deficiencies may be a reason for registration revocation or suspension.

(b) Each student shall be clearly identified as a student during the clinical experience portion of the course.

(c) Each course shall primarily provide educational and training opportunity for the student rather than primarily provide massage therapy or related services to the school, its instructors, or clients.

(d) A change in any information presented by a school in an approved application including, but not limited to, ownership, location, instructorship, or facilities must be approved by the department prior to the school's effective date of the change. If, due to special circumstances, a school cannot notify the department of a change prior to the effective date of the change, the department shall be notified immediately and shall approve the change if the change complies with the Act and this chapter.

(e) The instructor must be physically present with the student at all times.

(f) The graduates' success rate on the examination will be monitored by the department and may be utilized as a criteria for denial of renewal, suspension, or revocation of school registration.

(g) The school shall have at least two instructors that teach the required course of instruction at least one of which must be a registered massage therapy instructor.

(h) Qualified personnel may participate as instructors. Instructors other than an MTI shall have as a minimum a high school diploma or a general equivalence diploma and two years of experience and/or education in the field in which they are teaching. These instructors must be licensed (if applicable) with the appropriate professional regulatory board or agency. An instructor's qualifications must be acceptable to the school director. A person shall not instruct Swedish massage therapy classes unless registered as an MTI.

(i) A person who is otherwise approved by the state to teach in an area of study included in the required course of instruction or holds a teaching certification in the area of study from the Central Education Agency is not required to comply with the qualifications described in this section.

§141.13. Massage Therapy Instructor Application and Approval.

(a) An MTI shall instruct the Swedish massage therapy technique course of study, shall be a registered massage therapist, and shall have the following qualifications:

(1) a high school diploma or a general equivalence diploma;

(2) a minimum of two years of practice as a massage therapist. Completion of 100 hours above the basic course requirements at a proprietary school approved by the central education agency or a state approved educational institution may be substituted for six month's experience with a maximum substitution of one year; and

(3) have attended a course on teaching adult learners or have demonstrated competency in teaching adult learners. Courses attended may include an instructional certification program, a college level course in teaching adult learners, or a continuing education course in teaching adult learners. Demonstrated competency in teaching adult learners may be verified by a letter of reference. Teaching experience may include formal or informal teaching of varied subjects to adult learners.

(b) An MTI shall complete the department's application for massage therapy instructor approval.

(1) In a school-based program, the MTI application shall contain:

(A) a statement that the MTI has read the Act and this chapter and agrees to abide by them;

(B) a statement that the MTI shall teach courses in Swedish massage therapy techniques intended to meet the requirements of the Act; §2(b)(1), only in a registered or exempt massage school; and

(C) a statement that the MTI will follow the curriculum established by the department.

(2) In a non-school-based program, the MTI application shall:

(A) contain a statement that the MTI has read the Act and this chapter and agrees to abide by them;

(B) contain a statement that the MTI will follow the curriculum established by the department;

(C) provide the information required of schools in §141.11 of this title (relating to Massage School Application and Approval);

(D) list the course(s) which the MTI will teach; and

(E) contain a statement that the MTI will be the only person providing instruction in the listed courses to the student.

(c) An MTI approved for a school-based program may teach in a non-school-based program only if approved under subsection (b)(2) of this section.

(d) The department shall follow §141.16 of this title (relating to Determination of Eligibility of Massage Therapy Instructors, Massage Schools, and Massage Establishments).

(e) No student shall be solicited or instructed until the department has approved the instructor.

(f) A person who is otherwise approved by the state to teach massage therapy or holds a teaching certificate in massage therapy from the central education agency is not required to be registered as a massage therapy instructor.

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 December 12, 1989.

TRD-8911928

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

Effective date: January 2, 1990.

Proposal publication date: September 29, 1989.

For further information, please call: (512) 458-7512

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Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter D. Standards of the Texas Department of Mental Health and Mental Retardation–Quality Assurance

- **25 TAC §§401.341, 401.343-401.345, 401.348, 401.349**

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts amendments to §§401.341, 401.343-401.345, 401.348, and 401.349. Section 401.344 is adopted with changes to the proposed text as published in the August 22, 1989, issue of the *Texas Register* (14 TexReg 4217). Sections 401.341, 401.343, 401.345, 401.348, and 401.349 are adopted without changes and will not be republished.

The amendments reflect the TDMHMR's adoption of the most recent editions of standards of the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) and the *Life Safety Code* of the National Fire Protection Association (NFPA). The policy manual of the Texas Board of Mental Health and Mental Retardation, which is adopted by reference in §401.344, concerning scope, is revised to reflect changes that have occurred since it was previously published. Language throughout the section has been amended to reflect current usage of the term "persons with mental illness or mental retardation" rather than the term "clients."

Amendments to §§401.341, 401.343, 401.344, 401.345, and 401.348 update terminology. The amendments to §401.345 deletes the *TDMHMR Community Standards*, which has been replaced by separate standards for mental health and mental retardation services (which are also referenced in the section). The Medicare reference in the section has been updated to reflect the most recent edition. The amendment to §401.349 reflects these changes and additionally reflects the most recent editions of the JCAHO manuals and the NFPA *Life Safety Code*.

A commenter suggested that given fiscal limitations, it is impossible for TDMHMR to achieve "assuring the highest quality service," and that §401.344(2) should be rephrased "promoting the highest quality service...." The department responds that language has been revised as suggested.

It was suggested that in §401.349, reference be made to a memorandum outlining parameters for levels of compliance. The commenter suggests that the deletion of such a reference suggests an expectation of total compliance.

The department responds that it is outside the scope of the subchapter to reference interpretive memoranda or guidelines promulgated by TDMHMR or other state, federal, or private agencies and organizations, i.e., compliance information is not referenced for the standards enumerated in the subchapter.

A commenter suggested that the term "client" is less stigmatizing than the proposed language, "person with mental illness or mental retardation." The commenter observes that the change in terminology could result in economic cost to agencies required to amend forms and other documents. The department responds that there is no requirement for agencies in its purview to undertake massive revision of existing materials for the sole purpose of enacting a change in terminology. Historically it has been difficult to reach consensus in both mental health and mental retardation fields concerning terminology. The underlying issue is the department's commitment to the recognition of the people it serves as individuals, and the precise terminology used to convey that principle may vary.

Public comments concerning the proposal were received from the Life Management Center, El Paso, and Denton County MHMR Center, Denton.

The amendments are adopted under Texas Civil Statutes, Article 5547-202, §2. 11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§401.344. Scope. The Texas Department of Mental Health and Mental Retardation assumes responsibility for:

(1) pursuing high quality in services and improvement in the level of service in facilities and programs affecting persons with mental illness or mental retardation through an integrated quality assurance program;

(2) promoting highest quality service to persons with mental illness or mental retardation delivered in community mental health and community mental retardation centers through performance contracting and standards compliance monitoring;

(3) providing for the establishment of a safe living environment for persons with mental illness or mental retardation, a safe working environment for staff, and safety for visitors to facilities/centers;

(4) minimizing the risk events in treatment/training which give rise to malpractice/negligence lawsuits and reducing the negative effects on persons with mental illness or mental retardation of such events through risk management;

(5) (No change.)

(6) providing evidence (e.g., accreditation, certification, licensure, delegated review status, summary data from quality of care reviews and utilization reviews, and documentation of service improvement resulting from quality assurance activities) to persons served and their families and funding agencies of an effort to deliver an optimal level of service to all persons served at facilities/centers;

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

(9) actively pursuing compliance with court agreements concerning services to persons with mental illness or mental retardation;

(10) providing program and services evaluation on a systematic basis for all services to persons with mental illness or mental retardation at TDMHMR facilities;

(11)-(13) (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 November 10, 1989.

TRD-8911889 Pattilou Dawkins
Chairman
Texas Board of Mental Health and Mental Retardation

Effective date: January 1, 1990

Proposal publication date: August 22, 1989

For further information, please call: (512) 465-4670

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Chapter 402. Client Assignment and Continuity of Services

Subchapter B. Continuity of Services--Mental Health

• 25 TAC §402.44

The Texas Department of Mental Health and MentalRetardation (TDMHMR) adopts the amendment of §402.44, with changes to the proposed text as published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2773).

The amendment adopts by reference procedures for aftercare for persons aged 65 and over who are discharged from mental health (MH) facilities and mental health authorities (MHAs) into nursing homes.

The section has been modified to delete the term "client" from subsections otherwise amended.

The title and text of the procedures which are adopted by reference have been revised to delete the term "client"; to replace the term "alternate" with "alternative" as appropriate; to define "discharge" and "furlough" consistent with the terminology of the department's computerized client assignment and registration system(CARE); to require a memorandum of agreement among involved parties if the alternative placement is funded in whole or part by TDMHMR or a community mental health and mental retardation center; and to change the way in which aftercare activities are documented on the CARE database. The mandatory requirement for a 30-day furlough to the proposed placement prior to discharge has been deleted.

Several reviewers commented that the fiscal note of $89,000 is insufficient to meet increased requirements for computerization of documentation and aftercare services. The department responds that the requirement for face-to-face visits in the procedures is potentially less stringent than existing requirements and that cost savings associated with reduced visits is anticipated to offset any increased costs caused by the new method of computerized documentation. The fiscal note reflects costs in addition to the costs of currentpractice, not total costs for after care of geriatric persons. The new system for computerized documentation of services is intended to clarify the extent of aftercare services being provided and will be used to evaluate the adequacy of current funding for this purpose.

One commenter noted that the section generally calls for a "goodfaith effort" to provide nonclinical support, e.g., food, clothing, shelter, and that Exhibit B indicates that the mental health authority may purchase an alternative placement in full or in part. The commenter questioned whether the department would provide additional funds to achieve these purposes. The department responds that both areas in question have been departmental procedure for sometime and that the necessity for funds to achieve these purposes should be discussed at the time of budget negotiations. Several changes were made to the procedures in response to technical questions and comments of the public and staff: in §II(b)(3), language requiring the identification of "special needs" was deleted as being redundant; in §IV(b)(1)(A), reference to "natural environment," which was undefined in the proposal, was deleted as unnecessary to meaning; in §IV(b)(2), reference to "level of functioning" was deleted and replaced with the term "ability to function"; in §IV(c), language was added to clarify that responsibility for preplacement activities is shared jointly by the mental health facility and the mental health authority, or separately by agreement; in §IV(d)(2) and §VI(c)(1), instructions for entering information on the CARE database was revised; in §IV(d)(3)(D), language was added to clarify that the treatment plan referenced is the treatment plan of the mental health authority, not the mental health facility; in §VI(c)(2)(B)(i), the *Physician's Desk Reference* was deleted as a standard for evaluation of polypharmacy or dose or dosage level, with the *TDMHMR Drug Formulary* to serve as the standard; in §VI(c)(2)(E), reference to MHA policies and procedures was deleted to emphasize the necessity for immediate action without regard to the existence of formal guidelines when the health or safety of a person is in jeopardy; and new §VI(c) was added to require staff to report any unusual situations observed on visits to nursing homes to the Texas Department of Health.

Public comment concerning the proposal was received from MHMR Services for the Concho Valley, San Angelo; Concho Valley Center for Human Advancement, San Angelo; Denton County MHMR Center, Denton; Nueces County MHMR Community Center, Corpus Christi; and Tri-County Mental Health Mental Retardation Services, Conroe.

The amendment is adopted under Texas Civil Statutes, Article 5547-202, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§402.44. Areas of Responsibility.

(a) (No change.)

(b) The department shall have a contract with each MHA which requires that the MHA provide the following:

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

(4) a good faith effort to make available case management services to those persons who qualify according to TDMHMR criteria, with documentation of any exceptions;

(5) a good faith effort to arrange for nonclinical support such as food, clothing, and shelter in cases in which the department's assessment indicates that long-term hospitalization, and chronicity of mental illness, justify such action. This provision will apply only in situations in which no other resources are available. Documentation of the assessment of each person's need for nonclinical support services will be filed in the plan of service using the form herein adopted by reference as Exhibit A. Copies of Exhibit A are available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668; and

(6) adherence to the procedures contained in "Alternative Placement and Aftercare for Geriatric Persons with Mental Illness," which is herein adopted by reference as Exhibit B and which is available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668.

(c)-(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 December 8, 1989.

TRD-8911888 Pattilou Dawkins
Chairman
Texas Board of Mental Health and Mental Retardation

Effective date: March 1, 1990

Proposal publication date: June 9, 1989

For further information, please call: (512) 465-4670

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TITLE 28. INSURANCE

Part II. Industrial Accident Board

Chapter 42. Medical Benefits

Subchapter B. Medical Cost Evaluation

28 TAC §42.137

The Industrial Accident Board adopts new §42.137, with changes to the proposed text as published in the October 6, 1989, issue of the *Texas Register* (14 TexReg 5346).

The adopted section, incorporated into Chapter 42, concerning medical benefits, is necessary to assist parties to workers' compensation claims in resolving disputes over preauthorization of medical treatment. The adopted section provides a procedure whereby the injured worker and the insurance carrier may agree to request the board to review and make an informal, nonbinding determination regarding the necessity of proposed treatment.

The section is changed by deleting the reference to review of rendered medical treatment.

Public comment was received in writing and at a public hearing held by the board on October 10, 1989. Comment was received supporting the proposed section. Clarification was requested on whether the board would use professional review organizations with reviewers licensed in the same field or specialty as the provider under review, as required by law. One commenter recommended that health care providers be permitted to request review under this section.

Several commenters criticized the section as ineffectual, citing the improbability of joint, concerted action by attorney and carrier.

Commenters included: senior hearing representative, Wausau Insurance Companies, Austin; associate director, Legislative Affairs Division, Texas Medical Association, Austin; McLarty & McLarty, Lubbock; claims adjuster, Texas Employers Insurance Association; Texas Chiropractic Association, Austin.

The board determined that the proceeding provided by the section is needed, and that parties could reach the consensus required to obtain review. Giving health care providers standing was deemed inappropriate at this time. Clarification regarding who would perform the review will be provided when procedures implementing the section are developed.

The new section is adopted under Texas Civil Statutes, Article 8307, §4(a), which authorize the board to adopt rules necessary to administer the workers' compensation laws, and Article 8306, §7b, which specifically authorize the board to adopt rules to implement the guidelines for medical fees, charges, and treatment.

§42.137. Utilization Review.

(a) The claimant and the carrier may jointly request the board for an informal review and determination of the necessity of proposed medical treatment.

(b) The application shall be accompanied by supporting documentation from one or more health care providers.

(c) The determination of necessity shall be informal, for the purpose of resolving disputes, and shall not be binding on either party.

(d) The carrier shall bear the cost of a review provided under this section.

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 December 11, 1989.

TRD-8911899 Richard Fulcher
Acting Executive Director
Industrial Accident Board

Effective date: January 1, 1990

Proposal publication date: October 6, 1989

For further information, please call: (512) 448-7960

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Chapter 51. Award of the Board

• 28 TAC §§51.35, 51.40, 51.45

The Industrial Accident Board adopts the repeal of §§51.35, 51.40, and 51. 45, without changes to the proposed text as published in the September 15, 1989, issue of the *Texas Register* (14 TexReg 4680).

The repeal is necessary for reorganization of the board's rules, allowing adoption of new Chapter 64, concerning representing claimants before the board, relating to the same subject matter.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 8307, §4(a), which authorize the board to adopt rules necessary to administer the workers' compensation laws.

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 December 11, 1989.

TRD-8911905 Richard Fulcher
Acting Executive Director
Industrial Accident Board

Effective date: January 1, 1990

Proposal publication date: September 15, 1989

For further information, please call: (512) 448-7960

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Chapter 53. Carrier's Report of Initiation and Suspension of Compensation Payments

• 28 TAC §53.20

The Industrial Accident Board adopts an amendment to §53.20 with changes to the proposed text as published in the October 6, 1989, issue of the *Texas Register* (14 TexReg 5346).

The section as amended is necessary to facilitate prompt negotiation of workers' compensation benefits checks.

The section has been changed by deleting the proposed requirement that all compensation checks be drawn on financial institutions located in the 11th district of the Federal Reserve System. Under the section as adopted,

carriers may continue to use out-of-state checks, but must facilitate negotiation of such checks by arrangement with a Texas financial institution, identified to the board, and by accompanying such checks with written instructions to the claimant regarding negotiation.

The proposed section retitles the section, requires insurance carriers paying income benefits by out-of-state check to arrange for in-state negotiation, and to instruct claimants accordingly, and permits payment of income benefits by direct deposit into an account designated by the injured worker.

Public comment was received in writing and at a public hearing held by the board on October 10, 1989. Comment was received supporting the proposed section. One commenter asserted that the proposed procedures would benefit claimants. Certain revisions were suggested. Selective application of the proposed section was suggested, e.g., only to those carriers able to provide direct deposit, or alternatively, only to insurers who fail to make timely payments. One suggested revising the section to require that checks be "payable at" a Texas bank.

Comment was received opposing the provision requiring carriers to use in-state financial institutions. Carrier representatives criticized this provision as costly, inefficient, error prone, and likely to delay delivery of benefits. Witnesses suggested that difficulty in negotiating benefits checks could be attributed to other reasons, e.g., banking procedures, both individual and system-wide, are often onerous; claimants frequently do not have bank accounts; and claimants may be more prone to use commercial check cashing services.

The extent of the problem was questioned, as was the adequacy of the proposed "cure." One witness testified that the federal regulation requiring expedited handling applied only to institutions in the Federal Reserve Routing System, not to all institutions located within the 11th District of the Federal Reserve System. Another opined that the proposed section would only benefit claimants who live in the city where the financial institution is located. One commenter suggested that the only beneficiary of the proposed change would be the local banking industry. Another declared a lack of confidence in Texas banks. It was also suggested that increased state regulatory action could lead to an increased demand for federal regulation of the banking industry.

The board was advised that promptness of payment could be more effectively enforced by sanctions.

One commenter advised the board to confer with carriers to craft a less onerous solution, offering corporate resources and personnel for this purpose. One carrier described as effective its practice of handling check-cashing problems individually, contacting the bank directly and vouching for the check. It was noted that employers, if asked, are often willing to make arrangements to help claimants who do not have a bank of their own. One witness testified that similar attempts at regulation in other jurisdictions have not improved services to claimants.

Commenters included: Aetna Casualty, Austin; general counsel, Central Insurance Companies, Van Wert, Ohio; senior hearing representative, Wausau Insurance Companies, Austin; vice president-claims, Lumbermen's Underwriting Alliance, Boca Raton, Florida; home office legal and intergovernmental affairs, Liberty Mutual, Austin; claims manager, Employers Mutual Companies, Richardson; manager of corporate communications and industry relations, Federated Insurance, Owatonna, Minnesota; associate counsel, Pennsylvania National Insurance Companies, Harrisburg, Pennsylvania; Harris and Harris, Austin; manager for governmental affairs, Lumbermen's Underwriting Alliance, Boca Raton, Florida; vice president, Wausau Insurance Companies, Wausau, Wisconsin; Liberty Mutual, Dover, New Hampshire; assistant to Southwest Division claims manager, Liberty Mutual, Austin; Hammerman & Gainer, Austin; McLarty & McLarty, Lubbock; claims adjuster, Texas Employers Insurance Association; assistant general counsel, CNA Insurance Companies, Chicago, Illinois; vice president, Utica National Insurance Group, Dallas; vice president, Southwestern Region, Alliance of American Insurers, Austin; vice president-home office staff, Lumbermen's Underwriting Alliance, Boca Raton, Florida; senior vice president, Kemper Group, Long Grove, Illinois.

The board responded to public comment by deleting the proposed requirement that carriers pay income benefits by checks drawn on local financial institutions, while adding requirements to facilitate negotiation of out-of-state checks.

The amendment is adopted under Texas Civil Statutes, Article 8307, §4, which authorize the board to adopt rules necessary to administer the workers, compensation laws.

§53.20. Notice of Initiation of Compensation; Mode of Payment of Compensation.

(a) Every insurance Carrier shall report to the Industrial Accident Board and to the claimant or the claimant,s attorney on Form A-1 the initial payment of compensation to the claimant within 10 days from the date of:

(1) issuance of a draft, check, or other evidence of payment; or

(2) transfer of funds electronically to the claimant's account.

(b) If such payment represents both initial and final payment, that fact shall be stated on the face of the Form A-1.

(c) Except as otherwise provided, all payments of compensation, whether periodic payments, advances, A-2 lump sum payments, or settlement payments, shall be by United States legal tender, checks, or negotiable drafts drawn on a Texas financial institution.

(d) The claimant and the carrier may agree to payment of income benefits by electronic transfer of funds from any financial institution in the United States directly into an account designated by the claimant.

(e) A carrier which routinely pays benefits by instruments drawn on out-of-state financial institutions shall:

(1) arrange for negotiation of said instruments with a Texas financial institution having offices in the major Texas cities; and

(2) file the name and locations of this financial institution with the board.

(f) Whenever a payment of compensation is made through the use of a negotiable draft or a check drawn on an out-of-state bank, the carrier shall accompany the instrument with written advice to the claimant of the carrier's office location and phone number where the claimant may call, at carrier's expense, to obtain help if necessary in cashing the instrument.

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 December 11, 1989.

TRD-8911904 Richard Fulcher
Acting Executive Director
Industrial Accident Board

Effective date: January 1, 1990

Proposal publication date: October 6, 1989

For further information, please call: (512) 448-7960

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• 28 TAC §53.47

The Industrial Accident Board adopts new §53.47, with changes to the proposed text as published in the October 6, 1989, issue of the *Texas Register* (14 TexReg 5346).

The new section is necessary to provide procedures for payment of partial income benefits. The new section requires the treating doctor to establish a medical disability rating when the injured worker reaches maximum medical improvement; requires a workers, compensation insurance carrier to initiate payment of partial benefits based on the disability rating; establishes pro- cedures for requesting a second opinion; and provides for a hearing to resolve disputes.

The section is changed by specifying that the treating physician provide a medical disability rating; by substituting the term "hearing" for "show-cause hearing"; by correcting an erroneous reference to a chapter of the board's rules; and by adding a subsection establishing guidelines for rating medical disability.

Public comment was received in writing and at a public hearing held by the board on October 10, 1989. Comment was received supporting the proposed section. One commenter affirmed the need for a procedure for initiating payment of partial benefits. He stated that carriers would prefer to continue periodic payments in many claims, but did not believe they had the right to do so. Although reducing benefits from total to partial when conditions warrant is not precluded by law, long-standing practice has been to use termination of total temporary disability as the occurrence to resolve the claim by settlement. This witness opined that the board had clear statutory authority to regulate in this area.

Comment was received suggesting revisions to the proposed section. Several individuals endorsed the proposal, but suggested that it

be discretionary, rather than mandatory, either to both parties, or to the claimant alone. It was noted that the proposed section established no penalty for carrier noncompliance after the show-cause hearing, nor did it provide for resolution of coverage, liability, or extent and duration disputes.

Comment was received opposing the proposed section. It was asserted that this was a policy matter for the legislature to address, and that the board was without authority to regulate in this area. One person foresaw increased cost to the system. Some commenters criticized calculating benefits on disability rating, rather than lost wage earning capacity. Regarding impact on carriers, it was suggested that placing the burden of proof on the carrier rather than the claimant was unjust. Regarding impact on claimants, one commenter foresaw that claimants would suffer because carriers could use their choice of provider to render low disability ratings. Another asserted that claimants who elected to receive periodic partial payments would be unable to obtain legal representation, since there was no provision for payment of attorney fees on such benefits.

Regarding disability ratings, one person suggested that the better term was "impairment rating"; another noted that the American Medical Association's definitions for body parts do not correspond to those provided under Texas law.

Commenters included: one individual commenter; senior hearing representative, Wausau Insurance Companies, Austin; Harris & Harris, Austin; Hammerman & Gainer, Austin; McLarty & McLarty, Lubbock; Flahive, Ogden and Latson, Austin; Texas Trial Lawyers Association, San Angelo; Colbert, Freeman & Stribling, Austin.

After considering public comment, the board specified that the disability rating be "medical disability rating." Determining the section to be appropriate as adopted, the board declined to incorporate other suggested revisions.

The new section is adopted under Texas Civil Statutes, Article 8307, §4(a), which authorize the board to adopt rules necessary to administer the workers, compensation laws; Article 8306, §18, which provide for weekly payment of benefits; and Article 8306, §12, which provide for payment of benefits for partial incapacity to a specific member.

§53.47. Payment of Partial Benefits for Specific Injuries.

(a) When a claimant who has incurred a specific injury reaches maximum medical improvement, as established by the claimant's treating physician, the treating physician shall file a medical disability rating in writing with the carrier, and send a copy to the board and to the claimant.

(b) No later than 10 days after receiving the treating physician's disability rating, the carrier shall:

(1) pay partial benefits based on the treating physician's disability rating, periodically or in a lump sum, filing the appropriate notice with the board; or

(2) request a second disability rating, either by medical examination order, pursuant to Chapter 69 of this title (relating to Unethical or Fraudulent Claims Practices), or by a board-selected health care provider.

(c) No later than 10 days after receiving the second disability rating, the carrier shall pay partial benefits based on the lower disability rating, periodically or in a lump sum, filing the appropriate notice with the board.

(d) If the carrier fails or refuses to comply with this section, the claim shall be set for a hearing on the board's next available formal hearing docket.

(e) Physicians will adhere to and follow the instructions set out in the latest edition of the American Medical Association's *Guides to Evaluation of Permanent Impairment* when rating medical disability as provided in this section.

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 December 11, 1989.

TRD-8911903 Richard Fulcher
Acting Executive Director
Industrial Accident Board

Effective date: January 1, 1990

Proposal publication date: October 6, 1989

For further information, please call: (512) 448-7960

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• 28 TAC §53.48

The Industrial Accident Board adopts new §53.48, with changes to the proposed text as published in the October 6, 1989, issue of the *Texas Register* (14 TexReg 5346).

The new section is necessary to provide procedures for payment of partial income benefits. The new section requires a workers' compensation insurance carrier to initiate payment of partial benefits when certain conditions arise; requires notice to the board; and provides for a hearing to resolve disputes.

The section is changed by deleting the terms "good faith" and "show-cause."

Public comment was received in writing and at a public hearing held by the board on October 10, 1989. Comment was received supporting the proposed section. One commenter affirmed the need for a procedure for initiating payment of permanent partial benefits. He stated that carriers would prefer to continue periodic payments in many claims, but did not believe they had the right to do so. Although reducing benefits from total to partial when conditions warrant is not precluded by law, long-standing practice has been to use termination of total temporary disability as the occurrence to resolve the claim by settlement.

This witness opined that the board had clear statutory authority to regulate in this area.

Comment was received suggesting revisions to the proposed section. One commenter requested guidelines to assist the carrier in determining lost wage earning capacity, and suggested pre-injury average weekly wage minus post-injury average weekly wage. Another discussed a number of factors contributing to lost wage earning capacity, and suggested they be addressed by the board. It was asked whether partial benefits would have to be recalculated every time the claimant's lost wage earning capacity changed.

Comment was received opposing the proposed section. One commenter asserted that the board had no authority to regulate in this area. Another declared that calculation of lost wage earning capacity was the duty of the board, and could not be transferred to the carrier.

Regarding impact on claimants, it was noted that the claimant would have no opportunity to challenge the carrier's determination of lost wage earning capacity. Claimants would be particularly disadvantaged by the combined effects of this section and proposed 28 TAC §61.10, postponing settlement pre-hearing conferences under certain conditions. Several commenters expressed concern that claimants who elected to receive periodic partial payments would lack legal representation, since there was no provision for payment of attorney fees on such benefits.

Regarding the term "good faith," one commenter described it as inflammatory and requested substitution of another term.

Commenters included: two individual commenters; senior hearing representative, Wausau Insurance Companies, Austin; Harris & Harris, Austin; Hammerman & Gainer, Austin; McLarty & McLarty, Lubbock; Flahive, Ogden and Latson, Austin; Texas Trial Lawyers Association, San Angelo; Colbert, Freeman & Stribling, Austin.

The board responded to public comment by deleting the reference to bad faith, as noted previously. The board declined to incorporate other comments, determining that the section was appropriate as adopted.

The new section is adopted under Texas Civil Statutes, Article 8307, §4(a), which authorize the board to adopt rules necessary to administer the workers, compensation laws; Article 8306, §18, which provide for weekly payment of benefits; and Article 8306, §11, which provide for payment of benefits for partial incapacity resulting from a general injury.

§53.48. Payment of Partial Benefits for General Injuries.

(a) When a carrier believes that a claimant is no longer entitled to temporary total benefits because the claimant has returned to work, or has been released to return to work without restrictions, the carrier shall:

(1) initiate payment of partial benefits based on a determination of the claimant's lost wage earning capacity, either periodically or in a lump sum; and

(2) file the appropriate notice with the board.

(b) If the carrier fails or refuses to comply with this section, the claim shall be set for a hearing on the board's next available formal hearing docket.

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 December 11, 1989.

TRD-8911902 Richard Fulcher
Acting Executive Director
Industrial Accident Board

Effective date: January 1, 1990

Proposal publication date: October 6, 1989

For further information, please call: (512) 448-7960

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Chapter 55. Lump Sum Payments

• 28 TAC §55.3

The Industrial Accident Board adopts new §55.3, with changes to the proposed text as published in the September 22, 1989, issue of the *Texas Register* (14 TexReg 4889).

The new section is necessary to provide a procedure for obtaining advances of compensation benefits. The new section defines conditions for eligibility for advances; establishes procedures for informally requesting advances from the carrier, and for appealing to the board to direct the carrier to make advances.

The section is changed by substituting the terms "compensation benefits" for "indemnity benefits", and "request" for "petition." The requirement that the claimant,s request for advance be notarized has been deleted. The time for the carrier to respond to a request for an advance has been abbreviated to 10 days, from the proposed 15. The board's authority to set a hearing on an advance has been changed from mandatory to discretionary. A new subsection has been added providing for expedited handling of a request for an advance made at a pre-hearing conference. Finally, proposed subsection (e), limiting the number and amount of advances, has been deleted.

Public comment was received in writing and at a public hearing held by the board on September 22, 1989. Comment was received supporting the proposed section. Certain revisions were suggested. One witness suggested that a monetary, not numerical, limit be placed on advances. Another requested guidelines for determining that future income benefits exceed the requested advance. One commenter suggested that factors such as the extent of disability be taken into account before setting a case for formal hearing.

Comment was received opposing the proposed section. Several commenters challenged the board's authority to direct advances. Carrier representatives questioned their right to appeal such directives, and suggested that they would not receive credit for advances when the claim was finally resolved. It was speculated that the procedure would result in higher costs, by decreasing the volume of settlements, and correspondingly increasing the volume of awards.

One commenter suggested that the section, if applied to the state as an employer, would conflict with laws governing allowable advances to state employees.

One commenter asserted that advances should remain discretionary to the carrier. As an alternative, he suggested the creation of a state-administered hardship fund to provide advances, and which would be entitled to reimbursement when the claim was resolved.

The form petition for advance was criticized. It was suggested that the requirement that it be notarized was too onerous for claimants. It was questioned whether a claimant could perjure himself or herself by completing the form erroneously. One commenter declared that the form was too complicated to be completed by unrepresented claimants.

Commenters included: several individual commenters; Kugle, Stewart, Dent and Frederick, San Antonio; deputy engineer-director, State Department of Highways and Public Transportation, Austin; Texans for Civil Justice, Austin; senior hearing representative, Wausau Insurance Companies, Austin; Harris & Harris, Austin; vice president, Texas Association of Business, Austin; Hammerman & Gainer, Austin; McLarty & McLarty, Lubbock; claims adjuster, Texas Employers Insurance Association, Colbert, Freeman & Stribling, Austin.

The board responded to public comment by deleting the proposed limitations on advances, and the requirement that the form request for advance be notarized. The form is presently being redrafted to simplify it. The board is considering the comments relating to advances for state employees, and will take action to respond appropriately in the near future. The suggestion for creation of a state-administered hardship fund is innovative, but does not fall within the board's authority. Regarding its authority to direct advances, the board relies on Texas Civil Statutes, Article 8309, §4.

The new section is adopted under Texas Civil Statutes, Article 8307, §4, which authorize the board to adopt rules necessary to administer the workers, compensation laws; and Article 8309, §4, which authorize the board to direct advances of compensation.

§55.3. Request for Advance Payment of Compensation.

(a) A claimant who suffers financial hardship because of loss of wages due to an uncontested injury may request of the carrier an advance payment of compensation ("advance") to be credited against future compensation benefits.

(b) A request for an advance shall be:

(1) prepared on a board-approved form;

(2) signed by the claimant unless waived for good cause; and

(3) submitted in the original to the carrier, with a copy filed with the board.

(c) If, within 10 days of receipt of the request, the carrier fails to tender an advance, the board may set a hearing and notify the parties in writing.

(d) If an advance is sought at a pre hearing conference, in the absence of formal request for an advance under this section, and the advance is either denied by the adjuster at that time or deemed inadequate by the claimant, the board may set a hearing on the first available formal hearing docket.

(e) After the hearing the board may direct the carrier to make an advance if the board determines that:

(1) an emergency or impending necessity exists; and

(2) the future compensation benefits due the claimant exceed the amount of the advance directed.

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 December 11, 1989.

TRD-8911900 Richard Fulcher
Acting Executive Director
Industrial Accident Board

Effective date: January 1, 1990

Proposal publication date: September 22, 1989

For further information, please call: (512) 448-7960

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Chapter 64. Representing Claimants Before the Board

• 28 TAC §64.10

The Industrial Accident Board adopts new §64.10, with changes to the proposed text as published in the September 15, 1989, issue of the *Texas Register* (14 TexReg 4681).

The proposed section is necessary to clarify requirements and procedures for receiving fees for legal representation of claimants in proceedings before the board.

The proposed section sets out the board's statutory authority to approve attorney fees; establishes conditions for eligibility for fees and the amount of the fee; and sets out procedures for presenting requests for fees to the board.

Section 64.10 is changed by reordering the subsections; altering the definition of "claimant's recovery"; deleting the concepts of contested liability and unusual circumstances as bases for establishing the percentage of the fee; altering the conditions for filing a record of time; and deleting the subsection requiring carriers to report settlement offers made to unrepresented claimants.

Public comment was received in writing and at a public hearing held by the board September 15, 1989. Comment was received supporting the proposed section. One commenter noted that fees should not exceed

the statutory maximum and that they should reflect an attorney's efforts at and success in obtaining benefits for the claimant which are otherwise being offered or rendered by the carrier. Another favored the proposal as going a long way toward reducing the costs of workers' compensation claims. One commenter recommended that the board additionally regulate attorneys' use of paralegals, particularly at pre- hearing conferences.

Comment was received which was critical of the proposal to stagger fees. Commenters opined that a staggered fee: (1) was bad public policy, because it would result in a projected reduction in attorney earnings of 40%, and would thus drive competent attorneys out of the system; and (2) would increase the volume of appeals.

Commenters expressed widely varying perceptions of the extent of the board's authority to set fees. Many commenters believed that the board's authority was unlimited, but recommended that this authority be exercised case-by-case, by applying such factors as skill, reputation, time actually spent on the claim, and amount of benefit accruing to the claimant. Other commenters believed that fee regulation exceeded the board's statutory authority. One commenter declared that this was a policy matter for the legislature to address. One commenter asserted that the board had no authority to set the fee, only to ratify the parties, contractual fee. Others construed the law to give the board the discretion to either ratify the contractual fee, or to approve a zero fee. Several speakers foresaw court challenges to the proposed section, if adopted.

Constitutional questions, including fundamental fairness, adequate representation of counsel, and equal protection, were raised.

Several commenters rejected basing the fee on the criterion of admitted liability, pointing out that even when the carrier admits liability, an attorney may still expend a great deal of time on the case. The concept of unusual circumstances was criticized as unclear and difficult to administer.

Regarding other aspects of the section, two commenters deplored the provision for a fee based on time, one asserting that a time fee would be higher than a contingency fee; the other arguing that a time fee would be lower, thus discouraging competent representation.

Regarding §64.10(d), requiring carriers to file offers made to unrepresented claimants, three individuals testified in favor of this proposal.

Commenters included: several individual commenters; senior hearing representative, Wausau Insurance Companies, Austin; Kugle, Stewart, Dent & Frederick, San Antonio; workers' compensation advisor and regional liaison, United States Department of Labor, Dallas; Hardberger & Rodriguez, San Antonio; vice president, Texas Association of Business, Austin; Hammerman & Gainer, Austin; Texas Trial Lawyers Association, Wichita Falls.

The board responded to public comment by deleting the concepts of contested liability and unusual circumstances as bases for establishing the percentage fee; and by altering the conditions requiring filing of a record of time. The board deleted the subsection requiring carriers to report offers of settlement made to unrepresented claimants because it was not appropriately located in this section and chapter; the board will propose a similar section to appear in a different chapter in the near future. After consideration, the board determined that the section was appropriate as adopted, and declined to incorporate other suggested revisions.

The new section is adopted under Texas Civil Statutes, Article 8307, §4(a), which authorize the board to adopt rules necessary to administer the workers' compensation laws; and Article 8306, §7c, which provide that all attorney fees are subject to the approval of the board.

§64.10. Attorney Fees.

(a) Approval of the board. All attorney fees are subject to the approval of the board and shall be paid from the claimant's recovery. The claimant's recovery is the total of all indemnity or death benefits recovered by the claimant minus approved attorney expenses, benefits paid periodically, benefits voluntarily paid, and/or benefits offered to be paid prior to the attorney filing notice of representation under §64.5 of this title (relating to Requirement for Written Contract).

(b) Eligibility for fee. A fee may only be paid to an attorney licensed to practice law in Texas who has a contract on file with the board as provided in §64.5 of this title (relating to Requirement for Written Contract).

(c) Amount of fees.

(1) Attorney fees shall not total more than 25% of the claimant's recovery.

(2) A percentage fee of more than 15% of the claimant's recovery will not be approved unless the board determines that a higher percentage is justified by the time expended by an attorney on the claim.

(d) Record of time. In the following cases, in order to be eligible for a fee, an attorney must provide the board with a detailed record of time expended on behalf of the claimant:

(1) when an attorney requests a percentage fee higher than 15%;

(2) when an attorney has been discharged from representation or undertakes representation of a claimant who has previously employed an attorney;

(3) in claims for fatal or lifetime benefits;

(4) in claims involving the second injury fund.

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 December 11, 1989.

TRD-8911901 Richard Fulcher
Acting Executive Director
Industrial Accident Board

Effective date: January 1, 1990

Proposal publication date: September 15, 1989

For further information, please call: (512) 448-7960

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and Use Tax

• **34 TAC §3.295**

The Comptroller of Public Accounts adopts an amendment to §3.295, with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3683).

The amendment changes the date on which electricity used by nursing homes is considered residential use. The proposed section provided a date beginning after December 31, 1988. The adopted section considers the use of such electricity to be residential use for periods beginning after December 31, 1987.

No comments against adoption were received.

One attorney representing an undisclosed nursing home commented that there has been no legislation mandating the change in the classification of gas and electricity used by nursing homes. Therefore, the Comptroller has no authority to limit the effective date and must make the change retroactive for the four-year statute period of limitation.

However, the Comptroller believes that under the Tax Code, §151.022, he may specify the retroactive effect of a section. The Comptroller has interpreted the term "residential real property" to include nursing homes for purposes of the sales tax on real property repair and remodeling services that went into effect on January 1, 1988. To provide uniformity and for ease in administration of the sales tax, the Comptroller has determined that from January 1, 1988, nursing homes are residential for purposes of the sales tax on gas and electricity also.

The amendment 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.

§3.295. Natural Gas and Electricity. (Texas Tax Code, §151.317).

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

(1) Commercial use–Use by persons engaged in selling, warehousing, or distributing a commodity or use by persons engaged in selling a service, either professional or personal, including uses by the wholesale and retail trade, hotels, office buildings, preparation or storage of food for immediate consumption, and those persons providing taxable services.

(2) Electric utility–Any entity owning or operating for compensation in this state equipment or facilities for producing, generating, transmitting, distributing, selling, or furnishing electricity whose rates for the sale of electric power are set by the Public Utilities Commission under the Public Utility Regulatory Act. The term does not include:

(A) a qualifying small power producer or qualifying co-generator, as defined in the Federal Power Act, §3(17)(D) and §3(18)(C), as amended (16 United States Code §796(17)(D) and §796(18)(C)); or

(B) any person not otherwise a public utility that owns or operates in this state equipment or facilities for producing, generating, transmitting, distributing, selling, or furnishing electric energy to an electric utility, if the equipment or facilities are used primarily for the production and generation of electric energy for the person's own consumption.

(3) Fabrication–To make, build, create, produce, or assemble components of tangible personal property, or to make tangible personal property work in a new or different manner.

(4) Manufacturing–Every operation commencing with the first stage of production of tangible personal property and ending with the completion of tangible personal property. The first production stage means the first act of production and it does not include acts in preparation for production. For example, a manufacturer gathering, arranging, or sorting raw material or inventory is preparing for production. When production is completed, maintaining the life of tangible personal property or preventing its deterioration is not a part of the manufacturing process. Tangible personal property is complete when it has the physical properties, including packaging, if any, that it has when transferred by the manufacturer to another. For the purposes of this section, direct use of natural gas or electricity in manufacturing, which includes fabricating and processing, will be referred to as noncommercial use. Also see §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).

(5) Other noncommercial uses include:

(A) exploration for or production or transportation of material extracted from the earth;

(B) agriculture, including dairy or poultry operations and pumping water for farm and ranch irrigation;

(C) electrical processes such as electroplating, electrolysis, and cathode protection; or

(D) direct or indirect use, consumption, or loss of electricity by an electric utility engaged in the purchase of electricity for resale.

(6) Remodeling–To make tangible personal property belonging to another over again without causing a loss of its identity, or without causing the property to work in a new or different manner.

(7) Processing–The physical application of the materials and labor necessary to modify or to change the characteristics of tangible personal property. The repair of tangible personal property by restoring it to its original condition is not considered processing of that property. The property being processed may belong either to the processor or the customer, the only tests being whether the property is processed and whether it will ultimately be sold. The mere packing, unpacking, or shelving of a product to be sold will not be considered to be processing of that product. Direct use of natural gas or electricity in processing will be referred to as noncommercial use. Processing does not include remodeling or any action taken to prolong the life of tangible personal property or to prevent a deterioration of the tangible personal property being held for sale.

(8) Residential use–Use in a family dwelling or in a multifamily apartment complex or housing complex or nursing home or in a building or portion of a building occupied as a home or residence. For purposes of the exemption for residential use of natural gas and electricity, nursing homes qualify for exemption only for periods beginning after December 31, 1987.

(b) Sales tax applicable. The furnishing of natural gas or electricity is a sale of tangible personal property. All the provisions in the Tax Code, Chapter 151, applying to the sale of tangible personal property, apply to the sale of natural gas or electricity.

(c) Commercial uses taxable; noncommercial uses exempt. The tax imposed by the Tax Code, Chapter 151, must be collected on the sale of natural gas or electricity for commercial use. The sale of natural gas or electricity for residential use or for use directly in manufacturing, processing, or for other noncommercial uses is exempt.

(d) Predominant use.

(1) Natural gas or electricity used during a regular monthly billing period for both exempt and taxable purposes under a single meter is totally exempt or taxable based upon the predominant use of the natural gas or electricity measured by that meter. A person who performs a processing, manufacturing, or other noncommercial function continually must establish predominant use on 12 consecutive months of use.

(2) If, in the regular course of business, a person performs a processing, manufacturing, or other noncommercial function only part of the year and a nonprocessing, nonmanufacturing, or other commercial function for the remainder of the year, the predominant use may be established for that period of time the processing, manufacturing or other noncommercial function occurs based on the predominant use during that period.

(3) When determining the predominant use of natural gas or electricity, utilities used to operate production machinery may be considered to be exempt. Utilities used in an area open to the public for the purpose of marketing a product ready for sale are taxable. Utilities used to operate air conditioning and heating for human comfort, and other nonproduction machinery or equipment, are taxable.

(4) Persons whose use of natural gas or electricity is solely in family dwellings will not be required to furnish exemption certificates.

(5) A person whose use is in multifamily apartment complexes, housing complexes, nursing homes, or other residential buildings may be required to issue an exemption certificate if one is necessary for the utility company to distinguish exempt residential use from taxable commercial use.

(e) Determining predominant use: Utility studies.

(1) Persons claiming a sales tax exemption because the predominant use of natural gas and electricity through a single meter is for processing, manufacturing, fabricating, or other noncommercial use must have performed a utility study to establish this predominant exempt use. The study must list all uses of the utility, both exempt and nonexempt, the times of usage, the energy used, and whether the use was taxable or exempt. Twelve consecutive months of utility usage must be a part of the study. The kilowatt rating or BTU rating, duty factor, where needed for cycling equipment, and electrical or natural gas computations must be certified by a registered engineer or a person with an engineering degree from an accredited engineering college. The owner of the business must certify that all items using natural gas or electricity (depending on which utility is covered by the study) are listed and that the hours of use

for each item are correct. The certification of both the engineer and the owner must appear on the face of the study. If the owner of the business appoints an agent to act on the owner's behalf, the power of attorney must clearly state that the agent is attempting to qualify the principal for a sales tax exemption, and if a refund of sales tax is involved, the power of attorney must also state that a sales tax refund will be made by the state through the utility company. A person in business less than 12 consecutive months may still apply for a sales tax exemption if a registered engineer or a person with an engineering degree performs a study based upon projected uses which shows the predominant use as exempt. A person claiming an exemption based upon estimated use must be able to support the claimed exemption with a study of actual use after 12 consecutive months of operation if so requested by the Comptroller.

(2) The study must be completed and on file at the location of the person claiming the exemption at the time an exemption certificate is submitted to the utility company. Without the study, the claim for exemption will be presumed to be invalid. Persons obtaining a sales tax refund without a valid study will be assessed tax, penalty, and interest by the Comptroller on the full amount of the refund, if the exemption is not proved. If the exemption certificate is fully completed with all information required by this section and bears an original seal of a registered engineer or is attached to a signed statement with an original signature from the owner of the business and a person with an engineering degree from an accredited engineering college, as required by subsection (e)(1) of this section, the utility company is not required to make any additional inquiry before honoring the exemption request.

(3) The Comptroller may request a copy of the study for review, either before or after the sales tax exemption is granted. Neither the Comptroller, by reviewing a study nor the utility company by accepting an exemption certificate, is confirming the study's accuracy. Tax, penalty, and interest will be assessed on the business owner if the study is proven to be incomplete or inaccurate to the extent that the predominant use of the natural gas or electricity is taxable.

(4) If a sales tax refund is being claimed retroactively, the study must take into account any changes in equipment or other items using utilities, any changes in business activities, and any changes in square footage being served by the meter.

(f) Exemption certificates.

(1) Noncommercial users must issue exemption certificates to the utility company to claim a sales tax exemption or to obtain a refund of sales tax. The exemption certificate must be specific as to the reason for the claimed exemption. For example, if a person is claiming that the predominant use of the utility is for processing, the reason for the exemption must state, "A valid and complete study has been performed which shows that (insert the actual exempt percentage) of the natural gas or electricity is for processing tangible personal property for sale in the regular course of business."

(2) The exemption is valid only as long as the person continues to use natural gas and electricity in a manner which is for predominantly exempt purposes. At the time the uses of the utilities change so that the predominant use is commercial, it is the person's responsibility to immediately notify the utility company in writing that the exemption is no longer valid.

(g) Transportation of a material extracted from the earth.

(1) Sales or use tax is not due on natural gas or electricity used to transport a material or its components extracted from the earth. Examples of materials or components extracted from the earth would be oil, natural gas, coal or coal slurry.

(2) Sales or use tax is due on natural gas or electricity used to transport a product which was manufactured from a material extracted from the earth. Products which were manufactured from a material extracted from the earth include substances which do not exist in nature or are not components of crude oil, natural gas, coal, or other minerals extracted from the earth.

(3) A material will not be considered to be manufactured when an additive is combined with a material for ancillary reasons, for example, odorant added to natural gas.

(h) Exemptions limited. Natural gas and electricity exemptions are limited to those noncommercial uses covered specifically in the Tax Code, §151.317.

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 December 8, 1989.

TRD-8911842 Bob Bullock
Comptroller of Public Accounts

Effective date: January 1, 1990

Proposal publication date: July 28, 1989

For further information, please call: (512) 463-4004

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Part V. Texas County and District Retirement System

Chapter 109. Domestic Relations Order

• 34 TAC §109.2, §109.12

The Texas County and District Retirement System adopts an amendment to §109.2 and new §109.12, with changes to the proposed text as published in the November 10, 1989, issue of the *Texas Register* (14 TexReg 5924). The amendment to §109.2 would change the statutory reference in that section as a result of the codification, transfer, and renumbering of Texas Civil Statutes, Title 110B, and would redefine the term "alternate payee". New §109.12 is added, which provides that payments to alternate payees except under certain previously approved domestic relations orders will be a straight life annuity based on the life of the alternate payee.

No comments were received regarding adoption of the amendment and new section.

The amendment and new section are adopted under the Texas Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules.

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

Act–Texas Government Code, Title 8, Subtitle F, as amended.

Alternate payee–A spouse, former spouse, child, or other dependent of a member or retiree who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by the system with respect to such member or retiree.

§109.12. Payments to Alternate Payees.

(a) In the event that the participant terminates membership in the system and applies for a refund of the participant's accumulated deposits and interest, the system will make a lump-sum payment to the alternate payee if the domestic relations order so provides and the order has been determined to be a qualified domestic relations order.

(b) In the event that the participant (or the participant's designated beneficiary or estate) begins receiving an annuity after the date that a qualified domestic relations order is received by the system, and the order provides for a division of the annuity in that event, the payment to the alternate payee will be a monthly allowance payable during the lifetime of the alternate payee, which payment is the actuarial equivalent of the portion of the participant's benefit that was awarded to the alternate payee under the domestic relations order. The mortality assumption for alternate payees for deter-

mining the payment to the alternate payee shall be the same as the mortality assumption for the beneficiaries as set forth in §103.1(a) of this title (relating to Actuarial Tables) with regard to service retirements and as set forth in §103. 1(b) of this title (relating to Actuarial Tables) with regard to disability retirements.

(c) Subsection (b), of this section will apply to all domestic relations orders approved in accordance with this Chapter 109 of this title (relating to Domestic Relations Orders) after January 1, 1990, and to such domestic relations orders approved prior to that date as are construed to provide for such an annuity.

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 October 31, 1989.

TRD-8911876 J. Robert Brown
Director
Texas County and District Retirement System

Effective date: January 1, 1990

Proposal publication date: November 10, 1989

For further information, please call: (512) 476-6651

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part X. Texas Adult Probation Commission

Chapter 321. Standards

• 37 TAC §§321.11-321.16

The Texas Adult Probation Commission adopts the repeal of §§321.11-321.16, without changes to the proposed text as published in the September 22, 1989, issue of the *Texas Register* (14 TexReg 4906).

The new sections will enable the commission to carry out more effective probation services.

New rewritten sections will replace the aforementioned sections.

No comments were received regarding adoption of the repeals.

The repeal is adopted under the Texas Code of Criminal Procedure, Article 42. 121, §3.01, which provides the Texas Adult Probation Commission with the authority to promulgate reasonable rules.

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 December 11, 1989.

TRD-8911915 Virginia Grote
Administrative Secretary
Texas Adult Probation Commission

Effective date: January 2, 1990

Proposal publication date: September 22, 1989

For further information, please call: (512) 834-8188

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 141. General Provisions

• 40 TAC §§141.1, 141.3-141.6, 141.21, 141.34, 141.41, 141.51, 141.61

The Texas Commission on Alcohol and Drug Abuse adopts amendments to 141.1, 141.3-141.6, 141.21, 141.34, 141.41, 141.51, and 141.61, without changes to the proposed text as published in the September 29, 1989, issue of the *Texas Register* (14 TexReg 5166).

These sections set out information concerning the commission's general provisions relating to its organization, operations, meetings, records, employees, funding, rulemaking, and legal authority.

The amendments are made in order to update terminology based on legislative amendments to governing statutes of the agency and more accurately reflect the current practices of the commission.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Health and Safety Code, Title 6, Subtitle B, Chapter 461, §012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing its functions, policies, and procedures.

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 December 11, 1989.

TRD-8911908 Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug Abuse

Effective date: January 2, 1990

Proposal publication date: September 29, 1989

For further information, please call: (512) 463-5510

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• 40 TAC §141.7

The Texas Commission on Alcohol and Drug Abuse adopts new §141.7, without changes to the proposed text as published in the September 29, 1989, issue of the *Texas Register* (14 TexReg 5166).

This section will allow the public to understand the scope and membership of commission committees.

The amendment clarifies the authority of the commission to appoint its members to committees in connection with policy development of the agency.

No comments were received regarding adoption of the new section.

The new section is adopted under the Health and Safety Code, Title 6, Subtitle B, Chapter 46, §012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing its functions and prescribing policies and procedures used in administration of its programs.

This agency hereby certifies that the section 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 December 11, 1989.

TRD-8911909 Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug Abuse

Effective date: January 2, 1990

Proposal publication date: September 29, 1989

For further information, please call: (512) 463-5510

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Chapter 151. Licensure

Licensure Procedures

• 40 TAC §§151.31, 151.33, 151.34

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§151. 31, 151.33, and 151.34, without changes to the proposed text as published in the October 13, 1989, issue of the *Texas Register* (14 TexReg 5487).

The commission adopts amendments to these sections as a result of recent legislation which revised the commission's licensure statute, the Texas Health and Safety Code, Title 6, Subtitle B, Chapter 464.

To meet certain life, health, and safety standards to ensure quality, chemical dependency treatment programs in the state will adhere to amendments in these sections which clarify changes in the licensure procedures regarding licensure period, time frames, and fees.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Health and Safety Code, Title 6, Subtitle B, Chapter 464, §7, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to establish procedures by which the commission is to license chemical dependency treatment facilities. The commission prescribes the following rules and procedures by which a person who operates a chemical dependency treatment facility that treats chemically dependent persons must obtain a license issued under this Act.

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

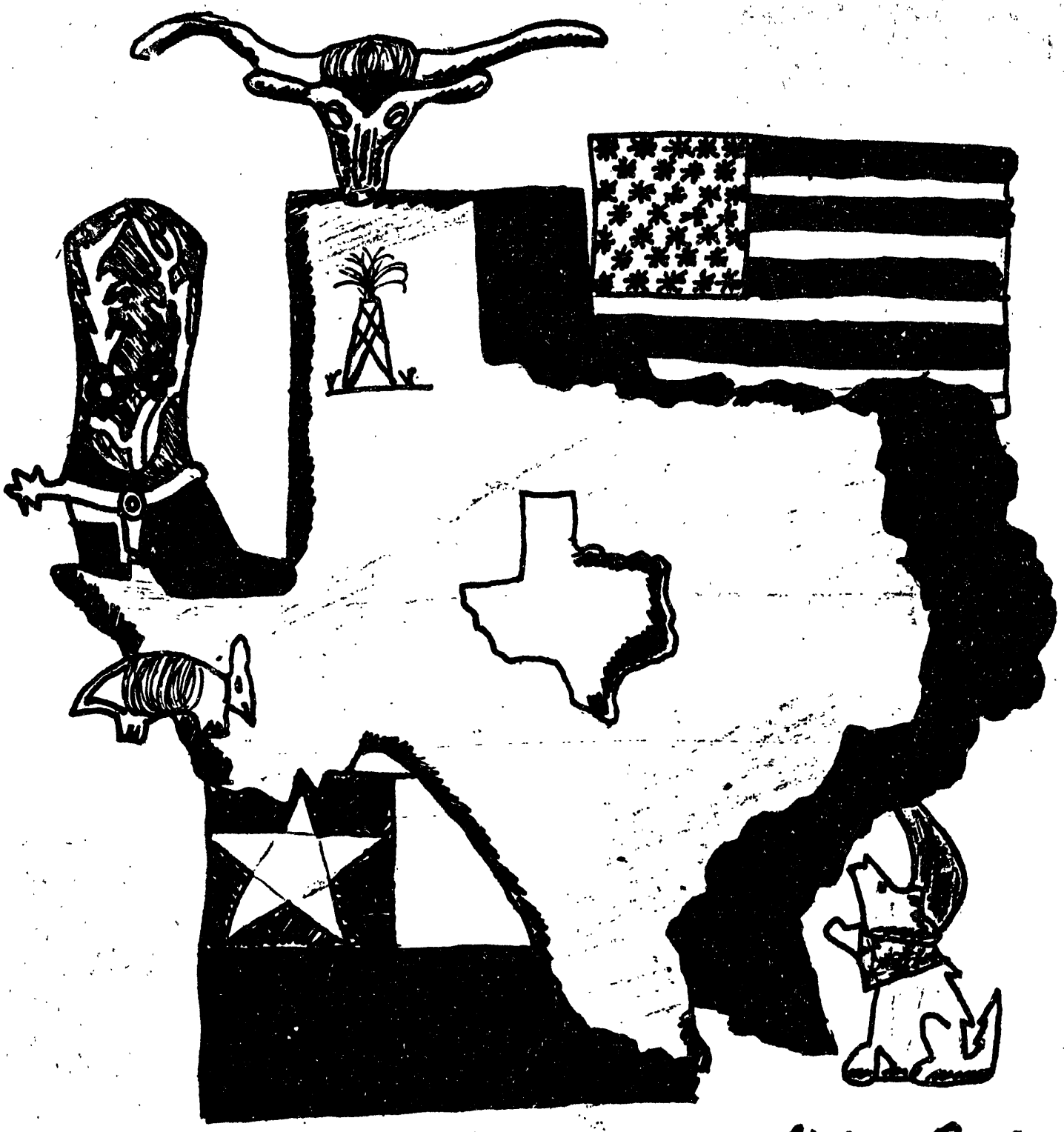
Issued in Austin, Texas, on December 11, 1989.

TRD-8911910 Bob Dickson
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Effective date: January 2, 1990

Proposal publication date: October 13, 1989

For further information, please call: (512) 463-5510



Name: Lindsay Dayton

Grade: 7

School: Clear Lake Intermediate, Clear Creek

Lindsay Dayton

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register.*

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register.*

Texas Department of Agriculture

Friday, December 22, 1989, 10 a.m. The Texas Department of Agriculture will meet at 1700 North Congress Avenue, 9th Floor Conference Room, Austin. According to the agenda, the department will conduct an administrative hearing to review: alleged violations of the Texas Agriculture Code and/or Title IV of the Texas Administrative Code by Robert L. Steglich, holder of private applicator license.

Contact: Ruperto Garcia, P.O. Box 12847, Austin, Texas 78711, (512) 463-7703.

Filed: December 12, 1989, 1:50 p.m.

TRD-8911919

Wednesday, December 27, 1989, 1 p.m. The Texas Department of Agriculture will meet in the District Office, Expressway 83, two blocks west of Morningside Road, San Juan. According to the agenda, the department will hold an administrative hearing to review: alleged violations of Texas Agriculture Code and/or Title IV of the Texas Administrative Code by Troy Vaught doing business as Palm Flying Service.

Contact: Ruperto Garcia, P.O. Box 12847, Austin, Texas 78711, (512) 463-7703.

Filed: December 13, 1989, 2:07 p.m.

TRD-8912008

Wednesday, December 27, 1989, 3 p.m. The Texas Department of Agriculture will meet in the District Office, Expressway 83, two blocks west of Morningside Road, San Juan. According to the agenda, the department will hold an administrative hearing to review: alleged violations of Texas Agriculture Code and/or Title IV of the Texas Administrative Code by John W. Houston doing business as South Texas Dusting Service.

Contact: Ruperto Garcia, P.O. Box 12847, Austin, Texas 78711, (512) 463-7703.

Filed: December 13, 1989, 2:08 p.m.

TRD-8912005

Friday, December 29, 1989, 1 p.m. The Texas Department of Agriculture will meet in the District Office, 517 North Glenwood, Tyler. According to the agenda, the department will hold an administrative hearing to review: alleged violation of Texas Agriculture Code and the Texas Administrative Code by D. A. Bishop doing business as Center Chemical and Service, Inc.

Contact: Ruperto Garcia, P.O. Box 12847, Austin, Texas 78711, (512) 463-7703.

Filed: December 13, 1989, 2:08 p.m.

TRD-8912007

Tuesday, January 9, 1990, 10 a.m. The Texas Department of Agriculture will meet in the District Office, Expressway 83, two blocks west of Morningside Road, San Juan. According to the agenda, the department will hold an administrative hearing to: show cause for denial of application for licensure as a commission merchant by Gustavo Martinez doing business as Robert's Son Packing.

Contact: Imelda Escobar, P.O. Box 12847, Austin, Texas 78711, (512) 463-7682.

Filed: December 13, 1989, 2:08 p.m.

TRD-8912006

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Texas Employment Commission

Tuesday, December 19, 1989, 8:30 a.m. The Texas Employment Commission will meet in the TEC Building, 101 East 15th Street, Room 644, Austin. According to the emergency revised agenda, the commission will consider renewal for 60 day period of emergency child labor rules originally effective September 1, 1989. The emergency status was necessary because of the necessity of maintaining in force rules sufficient to protect the health, safety and welfare of the children of the State of Texas.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: December 12, 1989, 4:14 p.m.

TRD-8911931

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Texas Department of Health

Thursday, December 21, 1989, 10 a.m. The Texas Board of Health Special Meeting of the Texas Department of Health will be held in the Conference Room, Terminal 2 (Old Terminal at the rear of the restaurant), San Antonio International Airport, 9800 Airport Boulevard, San Antonio. According to the agenda, the board at this special meeting will consider emergency and proposed amendments to the chronically ill and disabled children's services rules; discuss the state auditor's review of the management controls of the chronically ill and disabled children's services program.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: December 13, 1989, at 3:33 p.m.

TRD-8912010

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State Department of Highways and Public Transportation

Thursday, December 14, 1989, 9:30 a.m. The State Highway and Public Transportation Commission of the State Department of Highways and Public Transportation met at the Dewitt C. Greer State Highway Building, 11th and Brazos Streets, Room 101-A, First Floor, Austin. According to the emergency revised agenda, the commission considered the supplement, as follows: Executive Session Pursuant to Article 6252-17, Vernon's Texas Civil Statutes. Section 2(e) -consultation with, and advice from legal counsel concerning pending/contemplated litigation, settlement offers and negotiations, to include acquisition of real estate and Save Barton Creek Association, We Care Austin, and Austin Crossroads vs. Federal Highway Administration, Environmental Protection Agency, and Texas State Department of Highways and Public Transportation, Cause Number A-89-CA-719 United States District Court Western District of Texas, Austin Division.

The emergency status was necessary because immediate consultation with litigation counsel was needed for strategy and timely response to pleadings newly filed by plaintiff.

Contact: Myrna Klipple, Dewitt C. Greer State Highway Building, Room 203, 11th and Brazos Streets, Austin, Texas 78701, (512) 463-8616.

Filed: December 12, 1989, 10:05 a.m.

TRD-8911913

Thursday, December 14, 1989, 9:30 a.m. The State Highway and Public Transportation Commission of the State Department of Highways and Public Transportation will meet in Room 101-A, First Floor, Dewitt C. Greer State Highways Building, 11th and Brazos Streets, Austin. According to the emergency revised agenda, the commission will consider the supplement to the agenda on Page 5 (revised), Item 16 which reads as follows: consider approval of partial settlement in Save Barton Creek Association, We Care Austin, and Austin Crossroads v. Federal Highway Administration, Environmental Protection Agency, and Texas State Department of Highways and Public Transportation, Cause Number 89-CA-719, United States District Court, Western District of Texas, Austin Division. (MO). The emergency status was necessary because immediate action essential to satisfy terms of offer of partial settlement not reasonably anticipated, and which will protect immediate vital interests of public funds and the environment.

Contact: Myrna Klipple, Dewitt C. Green State Highway Building, Room 203, 11th and Brazos Streets, Austin, Texas 78701, (512) 463-8616.

Filed: December 13, 1989, 4:08 p.m.

TRD-8912014

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Texas Housing Agency

Wednesday, December 20, 1989, 8:30 a.m. The Finance and Planning Committee of the Texas Housing Agency will meet in the THA Conference Room, Suite 300, 811 Barton Springs, Austin. According to the agenda summary, the committee will meet review, consider and possibly act on request for proposal (RFP) for financial advisors concerning the agency's single family bond programs, series 1984A and 1984B.

Contact: Tish Gonzalez, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: December 12, 1989, 4:22 p.m.

TRD-8911934

Wednesday, December 20, 1989, 9 a.m. The Low Income Tax Credit Committee Meeting of the Texas Housing Agency will meet in the THA Conference Room, Suite 300, 811 Barton Springs, Austin. According to the agenda summary, the committee will review and possibly act on: October 31, 1989 minutes; report from staff on 1989 Low Income Tax Credit (LITC) allocation request chart; report on Low Income Tax Credit Program for 1990; approval to issue commitment letters for 1989 Low Income Tax Credit applications; and on requests for commitment extensions for 1989 tax credit applications.

Contact: Tish Gonzalez, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: December 12, 1989, 4:22 p.m.

TRD-8911933

Thursday, December 21, 1989, 10 a.m. The Board of Directors of the Texas Housing Agency will meet at the Agency Conference Room, Suite 300, 811 Barton Springs, Austin. According to the agenda, the board will consider and possibly act on the following items: September 6, 1989 and October 31, 1989 board minutes; Management Information Systems (MIS) quarterly reports; property disposal partnership between the agency and Resolution Trust Corporation (RTC) and/or HUD; budget amendment to establish the RTC clearinghouse; request for proposal for financial advisors; loan restructure request from Houston Co-Operative; Low Income Tax Credit (LITC) allocation request chart; 1990 LITC program; 1989 LITC program commitment letters; commitment extensions for 1989 tax credit applications; and while in executive session (pursuant to §§2(e) and 2(g), Article 6252-17, Texas Civil Statutes, consider and possibly act on pending or contemplated litigation and duties, evaluation and discipline of employees. Act on executive session items as required in open session.

Contact: Tish Gonzalez, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: December 13, 1989, 4:17 p.m.

TRD-8912015

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State Board of Insurance

Wednesday, December 20, 1989, 10 a.m. The State Board of Insurance will meet at the State Board of Insurance Building, 1110 San Jacinto, Room 414, Austin. According to the revised agenda, the board will discuss the original jurisdiction matters: amendment to workers' compensation manual rule concerning effects on experience modifiers of changes in ownership.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6328.

Filed: December 12, 1989, 4:15 p.m.

TRD-8911931

Wednesday, December 20, 1989, 10 a.m. The State Board of Insurance will meet in the State Board of Insurance Building, 1110 San Jacinto, Room 414, Austin. According to the agenda summary, the board will consider under the Texas Insurance Code, Article 5.96(i), of adoption on an emergency basis of manual rules, of policy and endorsement forms, and of amendments to rules and forms for workers' compensation insurance. Emergency and proposed action on 28 TAC §§3.3306, 3.3308 and 3.3312. Extension of emergency effectiveness of repeal of 28 TAC §7. 1601-7.1622 and new 28 TAC §7.1601-7.1613. Board orders on several different matters as itemized on the complete agenda and discuss personal matters, litigation, and solvency matters.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6328.

Filed: December 12, 1989, 3:07 p.m.

TRD-8911936

Wednesday, December 20, 1989, 3 p.m. The State Board of Insurance will meet at the State Board of Insurance Building, 1110 San Jacinto, Room 414, Austin. According to the agenda summary, the board will meet with the Attorney General's Office concerning pending and contemplated litigation.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6328.

Filed: December 12, 1989, 3:07 p.m.

TRD-8911937

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Texas Council on Offenders with Mental Impairments

Monday, December 18, 1989, 10 a.m. The Executive Committee of the Texas Council on Offenders with Mental Impairments held an emergency meeting at the Mental Health Association in Texas, 8401 Shoal Creek Boulevard, Austin. According to the agenda, the committee went into executive session to discuss personnel matters. Reopened to discuss new and old business. The emergency status was necessary to discuss personnel matters.

Contact: Pat Hamilton, 2818 San Gabriel, Austin, Texas 78705, (512) 477-9914.

Filed: December 13, 1989, 4:55 p.m.

TRD-8912038

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State Preservation Board

Thursday, December 14, 1989, 10 a.m. The Permanent Advisory Committee to the Board of the State Preservation Board had an emergency meeting in Room 314, Lorenzo de Zavala Library and Archives Building, 1201 Brazos, Austin. According to the agenda, the committee will discuss old business; new business: listing of change requests, approval of rule amendments, Texas capitol project, general land office building, Alamo monument, annual financial report, and approval of PAC meeting dates. The emergency status

was necessary because meeting was scheduled in advance but unable to be rescheduled when agenda was finalized December 13, 1989.

Contact: Michael Schneider, 201 East 14th Street, Suite # 50, Austin, Texas 78701, (512) 463-5495.

Filed: December 13, 1989, 3:08 p.m.

TRD-8912004

Tuesday, December 19, 1989, 2 p.m. The State Preservation Board will hold an emergency meeting in Room 103, John H. Reagan Building, Austin. According to the agenda, the board will discuss old business: construction manager presentation; new business: listing of change requests, legislative council remodel, approval or rule amendments, Texas capitol project, general land office building, annual financial report, and approval of the board meeting dates. The emergency status was necessary because agenda was finalized December 13, 1989, but meeting was unable to be rescheduled.

Contact: Michael Schneider, 201 East 14th Street, Suite 503, Austin, Texas, 78701, (512) 463-5495.

Filed: December 13, 1989, 3:08 p.m.

TRD-8912003

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Texas State Board of Public Accountancy

Thursday, December 14, 1989, 9 a.m. The Executive Committee of the Texas State Board of Public Accountancy met at 1033 La Posada, Suite 340, Austin. According to the emergency revised agenda, the committee discussed substantive rule 521.9, certificate fee. The emergency status was necessary because of last minute information from the FBI.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

Filed: December 13, 1989, 11:49 a.m.

TRD-8911966

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Public Utility Commission of Texas

Thursday, December 21, 1989, 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 agenda, the division will conduct a prehearing conference in Docket Number 9177–petition of Southwestern Public Service Company for authority to establish new fixed fuel factors and to be exempt from notice requirements.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 12, 1989, 4:27 p.m.

TRD-8911938

Wednesday, January 10, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. The prehearing conference has been rescheduled for the above date and time in Docket Number 8953–complaint of Trinity River Authority against Texas Utilities Electric Company.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 12, 1989, 4:31 p.m.

TRD-8911940

Wednesday, February 28, 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 agenda, the division will conduct a hearing on the merits in Docket Number 9159–application of Taylor Electric Cooperative, Inc. for authority to change rates.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 12, 1989, 4:28 p.m.

TRD-8911939

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Railroad Commission of Texas

Monday, December 18, 1989, 9 a.m. The Railroad Commission of Texas met at the William B. Travis Building, Room 12-126, 1701 North Congress Avenue, Austin. According to the emergency revised agenda, the commission discussed oil and gas docket number 3-91, 092; consideration of whether to enter a commission order assessing administrative penalties and/or requiring compliance with commission regulations by Linda Production, Inc. on the J. T. Tadlock lease, well number 1-U, Dayton, North (5000 Sand) Field, Liberty County. The emergency status was necessary because this was the last opportunity for the commission to consider this motion before it is overruled by operation of law. The motion was filed on December 11, 1989; therefore, it was reasonably unforeseeable situation requiring immediate action by the commission.

Contact: Lee R. Johnson, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-6766.

Filed: December 12, 1989, 3:35 p.m.

TRD-8911930

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Texas Real Estate Research Center

Saturday, January 13, 1990, 9 a.m. The Advisory Committee of the Texas Real Estate Research Center will meet in the Hill Country Room C, Hyatt Regency Hotel, Austin. According to the agenda, the committee will discuss approval of minutes; progress reports (administrative, communications, research); current budget report; date of next meeting; and other business.

Contact: Richard L. Floyd, Real Estate Center, Texas A&M University, College Station, Texas 77843-2115, (409) 845-9691.

Filed: December 14, 1989, 8:43 a.m.

TRD-8912051

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Texas Water Commission

Thursday, November 14, 1989, 2 p.m. The Texas Water Commission had an emergency meeting at 1700 North Congress Avenue, Stephen F. Austin Building, Room 118, Austin. According to the agenda, the commission considered various matters within the regulatory jurisdiction of the commission. In addition, the commission considered items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission took various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time. The emergency status was necessary in order to prevent a threat to public health and welfare.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: December 12, 1989, 3:31 p.m.

TRD-8911929

Monday, January 8, 1990, 10 a.m. The Texas Water Commission will meet in Room 1149A, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider application by Scenic Hills Water Company for a rate increase, Docket Number 8133-G.

Contact: Deborah Parker, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: December 13, 1989, 4:25 p.m.

TRD-8912040

Monday, January 8, 1990, 10 a.m. The Texas Water Commission will meet in Room 543, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider the application for a water certificate of convenience and necessity by W. Tom Holmes, Jr., doing business as Holmwood Water Supply, Docket Number 8148-C.

Contact: Sally Colbert, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: December 13, 1989, 4:25 p.m.

TRD-8912041

Friday, January 12, 1990, at 10 a.m. The Texas Water Commission will meet in Room 543, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will conduct a hearing regarding application by Kruger Water Works for a rate increase, Docket Number 8236-A.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: December 13, 1989, 4:25 p.m.

TRD-8912042

Friday, January 12, 1990, 10 a.m. The Texas Water Commission will meet in Room 1149A, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will conduct a hearing regarding application by Paint Creek Water Supply Corporation for a rate increase, Docket Number 8179-W.

Contact: Alex Schmandt, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: December 13, 1989, 4:26 p.m.

TRD-8912044

Friday, January 12, 1990, 10:30 a.m. The Texas Water Commission will meet in Room 1149B, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will conduct a hearing on application by Carrington Associates, Inc. for a rate increase, Docket Number 8142-R.

Contact: Joe O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: December 13, 1989, 4:40 p.m.

TRD-8912049

Friday, January 12, 1990, 11 a.m. The Weather Modification Advisory Committee of the Texas Water Commission will meet in Room 811, Eller Oceanography/Meteorology Building, Texas A&M University, College Station. According to the agenda, the committee will review the 1989 Texas Water Commission-authorized rainfall-enhancement activities of Irving P. Krick, Inc. of Texas (Trans-Pecos Project T-18, Panhandle Project OC-4, and Upper Red River Valley Project OC-16), The City of San Angelo, and the Colorado River Municipal Water District. The committee shall also review the status of the commission's weather modification demonstration program to be conducted in the San Angelo-Big Spring area of west Texas during the summer of 1990.

Contact: George Bomar, P.O. Box 13087, Austin, Texas 78711, (512) 371-6382.

Filed: December 14, 1989, 9:41 a.m.

TRD-8912052

Monday, January 15, 1990, 10 a.m. The Texas Water Commission will meet in Room 618, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will conduct a hearing on application by Sunbelt Utilities for a rate increase, Docket Number 8246-A.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: December 13, 1989, 4:26 p.m.

TRD-8912045

Monday, January 15, 1990, 10 a.m. The Texas Water Commission will meet in Room 512, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will conduct a hearing on application by Harry Goodrich, doing business as Demi-John Island Water System for a rate increase, Docket Number 8172-G.

Contact: Angela Demerle, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: December 13, 1989, 4:24 p.m.

TRD-8912050

Wednesday, January 17, 1990, 9 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will conduct a hearing regarding adoption of standby fees for Cornerstones Municipal Utility District.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: December 13, 1989, 4:26 p.m.

TRD-8912046

Wednesday, January 17, 1990, 9 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will conduct a hearing on adoption of standby fees for Harris County Municipal Utility District Number 105.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: December 13, 1989, 4:25 p.m.

TRD-8912043

Wednesday, January 17, 1990, 9 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will conduct a hearing on adoption of standby fees for Galveston County Municipal Utility District Number 6.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: December 13, 1989, 4:40 p.m.

TRD-8912048

Wednesday, January 17, 1990, 9 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will conduct a hearing regarding adoption of standby fees for Aransas County Municipal Utility District Number 1.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: December 13, 1989, 4:39 p.m.

TRD-8912047

Wednesday, January 31, 1990, 9 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider application by the Moran Corporation, Application Number 5261, for authorization for a permit for an existing lake, with a capacity of 65 acre-feet of water created by a dam on an unnamed tributary of Weirs Creek, tributary of the West Fork San Jacinto River, tributary of the San Jacinto River, San Jacinto River Basin. The water will be used for in-place recreational use approximately 11 miles north of Conroe, Montgomery County.

Contact: Rick Airey, P.O. Box 13087, Austin, Texas 78711, (512) 371-6384.

Filed: December 13, 1989, 1:46 p.m.

TRD-8912012

Wednesday, January 31, 1990, 9 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue Austin. According to the agenda, the commission will consider application by Errol O. Jonsson, James R. Perlitz, Lee G. Griffin, and Lea Griffin Perlitz, Application Number 21-3089A to amend Certificate of Adjudication Number 21-3089 by removing or extending the expiration date of December 31, 1989.

Contact: Mark Evans, P.O. Box 13087, Austin, Texas 78711, (512) 371-6389.

Filed: December 13, 1989, 1:46 p.m.

TRD-8912011

Wednesday, January 31, 1990, 9 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue Austin. According to the agenda, the commission will consider application by the City of Rusk and Betty J. McLain for an extension of time to complete modifications of Rusk Ore Mine Dam authorized under Certificate of Adjudication Number 06-3302. Certificate of Adjudication Number 06-3302 authorizes owners to maintain Rusk Ore Mine Dam and Reservoir on Mall Creek, tributary of Bean's Creek, tributary of Box Creek, tributary of Neches River, Neches River basin and impound 345 acre-feet of water for recreational purposes, approximately 2.5 miles northwest of Rusk, Cherokee County.

Contact: Weldon Hawthore, P.O. Box 13087, Austin, Texas 78711, (512) 371-6388.

Filed: December 13, 1989, 1:47 p.m.

TRD-8912009

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Regional Meetings

Meetings Filed December 12, 1989

The Ellis County Appraisal District held an emergency meeting at 406 Sycamore Street, Waxahachie, December 14, 1989, 7 p.m. The emergency status was necessary to appoint all seven members to the 1990 appraisal review board. Information may be obtained from Russell A. Garrison, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552.

The Lamar County Appraisal District Regular Board Meeting will be held at the Lamar County Appraisal District Office, 521 Bonham Street, Paris, December 19, 1989, at 5 p.m. Information may be obtained from Joe Welch, 521 Bonham Street, Paris, Texas 75460, (214) 785-7822.

The Texas Municipal League Intergovernmental Risk Pool Board of Trustees Executive Committee will meet at La Posada Hotel, Laredo, December 15, 1989, 3 p.m. Information may be obtained from Jackson B. Floyd, 211 East Seventh Street, Suite 500, Austin, Texas 78701, (512) 230-1325.

The Texas Municipal League Intergovernmental Risk Pool Board of Trustees met at the La Posada Hotel, Laredo, December 16, 1989, 9 a.m. Information may be obtained from Jackson B. Floyd, 211 East Seventh Street, Suite 500, Austin, Texas 78701, (512) 230-1325.

TRD-8911914

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Meetings Filed December 13, 1989

The Bexar Appraisal District Board of Directors held an emergency meeting at 535 South Main, San Antonio, December 18, 1989, at 5 p.m. The emergency status was necessary because it was the only time a quorum could be met. Information may be obtained from Walter Stoneham, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Central Counties Center for Mental Health and Mental Retardation Services Board of Trustees will meet at 304 South 22nd Street, Temple, December 19, 1989, 7:45 p.m. Information may be obtained from Michael K. Muegge, 304 South 22nd Street, Temple, Texas.

The Harris County Appraisal District Board of Directors will meet at 2800 North Loop West, 8th Floor, Houston, December 20, 1989, at 1:30 p.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292, (713) 957-5291.

The Heart of Texas Region Mental Health and Mental Retardation Board of Trustees will meet at 110 South 12th Street, Waco, December 19, 1989, at 11:45 a.m. Information may be obtained from Helen Jasso, 110 South 12th Street, Waco, Texas 76701, (817) 752-3451.

The Houston-Galveston Area Council Projects Review Committee will meet at 3555 Timmons Lane, Board of Directors Conference Room, 4th Floor, Houston, December 19, 1989, at 9 a.m. Information may be obtained from Rowena Ballas, P.O. Box 22777, Houston, Texas 77227, (713) 993-4596.

The Lamb County Appraisal District Board of Directors met in the Board Meeting Room, 331 LFD Drive, Littlefield, December 18, 1989, at 8:30 p.m. Information may be obtained from Murlene J. Godfrey, P.O. Box 552, 330 Phelps Avenue, Littlefield, Texas 79339-0552, (806) 385-6474.

The Lavaca County Central Appraisal District Appraisal Review Board will meet at 113 North Main, Hallettsville, January 5, 1990, at 9 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396.

The Middle Rio Grande Development Council Private Industry Council will meet at the Uvalde Civic Center, Reading Room, Uvalde, December 20, 1989, at 1 p.m. Information may be obtained from Michael M. Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533.

The Swisher County Appraisal District Board of Directors will meet at the Steak House, Tulia, December 21, 1989, noon. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118.

TRD-8911935

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Meetings Filed December 14, 1989

The Houston-Galveston Area Council Board of Directors will meet at 3555 Timmons Lane, Houston, December 19, 1989, at 10 a.m. Information may be obtained from Marjorie Baker, P.O. Box 22777, Houston, Texas 77227-2777, (713) 993-4596.

The Wood County Appraisal District Board of Directors will meet at 217 North Main, Conference Room, Quitman, December 21, 1989, at 1:30 p.m. Information may be obtained from W. Carson Wages, 217 North Main, Quitman, Texas 75783, (214) 763-4891.

TRD-8912039

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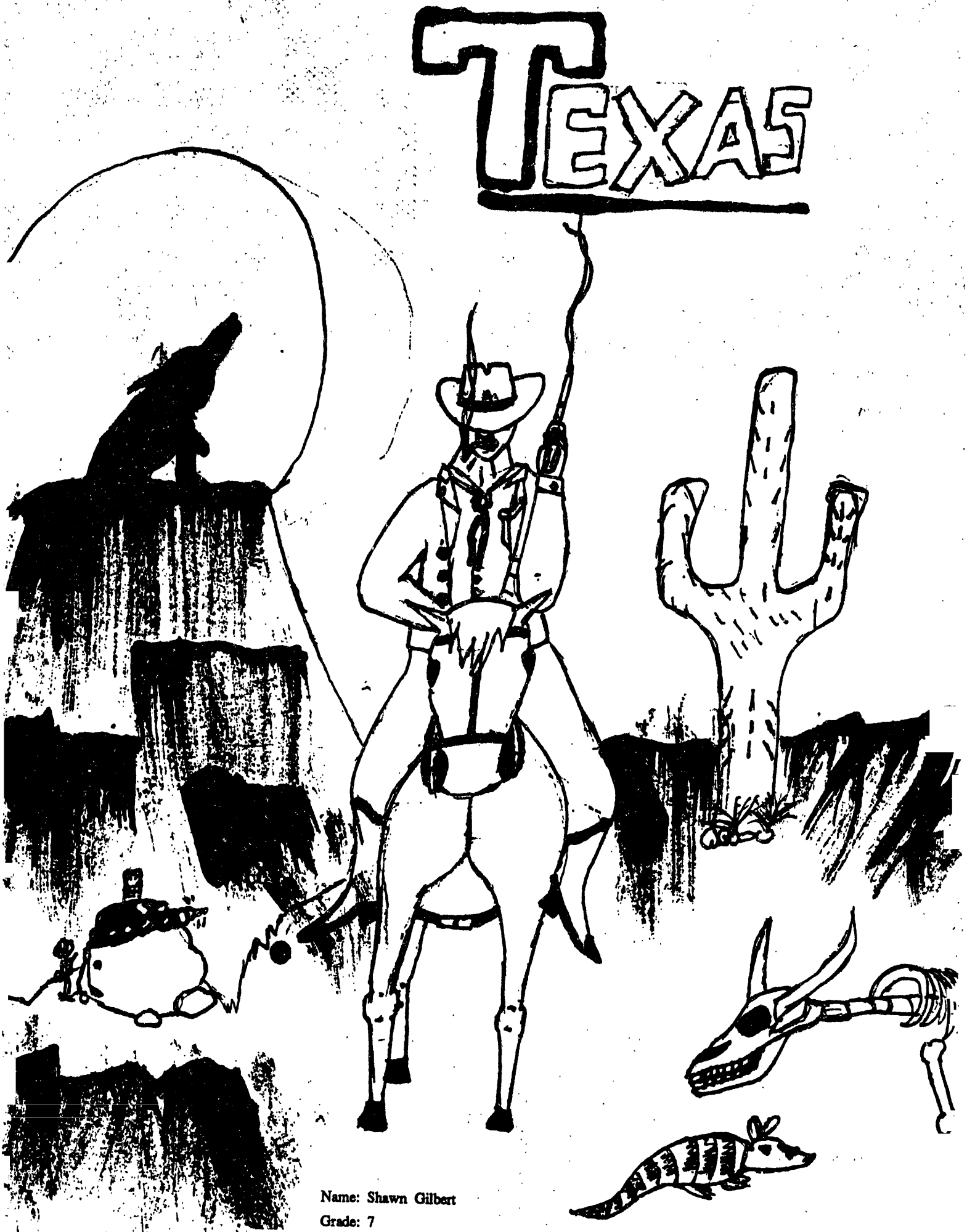

Name: Shawn Gilbert

Grade: 7

School: Clear Lake Intermediate, Clear Creek

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.

Public Utility Commission of Texas

Consultant Proposal Request

This notice of issuance of consultant proposal request provisions of Texas Civil Statutes, Article 6252-11c.

The Public Utility Commission of Texas (PUC) is seeking an auditor to perform a financial audit of the Texas universal service fund (USF). This audit is being undertaken pursuant to the commission's responsibility under the Texas Public Utility Regulatory Act (PURA), Article XIV, §98 to implement and administer the USF. The commission will use the audit to ensure that the USF is being appropriately maintained by its contractor, the Texas Exchange Carrier Association (TECA).

The USF was established by the Texas Legislature in 1987 for the purpose of funding a state lifeline program (tel-assistance) and a state high-cost assistance program for local exchange carriers. Currently the fund supports only the tel-assistance program. In the near future, the fund will also support the dual-party-relay service, a program established by the Texas Legislature in 1989 to enable hearing- and speech-impaired Texans and other telephone subscribers to communicate through specially trained operators.

TECA collects USF monies on a monthly basis from all telecommunications utilities operating in Texas (approximately 200 companies) and reimburses the Texas local exchange carriers for their lost revenues associated with the tel-assistance program. The USF also reimburses the PUC, the Department of Human Services, and TECA for the costs they incur in administering the USF and the tel-assistance program.

The offices of TECA and the records to be audited are located in Dallas. A general description of the types of reports reviewed or produced by the TECA staff in the course of their duties is included in the request for proposals.

In addition to introductory information, the request for proposals also includes details regarding audit objectives and scope, information required from the contractor, criteria for selection, project administration, and conditions.

Auditors interested in receiving a complete copy of the request for proposals should contact Elaine Powell, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, (512) 458-0155.

Proposals will be due on or before 3 p.m., Friday, January 5, 1990.

Issued in Austin, Texas on December 13, 1989.

TRD-8911952 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 13, 1989

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

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Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 30, 1989, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of Colorado Valley Telephone Cooperative, Inc. to amend certificate of convenience and necessity to cover the establishment of new interexchange telecommunications trunk routes within Colorado, Fayette and Lavaca Counties, Docket Number 9180 before the Public Utility Commission of Texas.

The Application: In Docket Number 9180, Colorado Valley Telephone Cooperative, Inc. requests approval of its application to extend new telecommunications trunk routes.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas on December 11, 1989.

TRD-8911941 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 12, 1989

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

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 4, 1989, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of Southwestern Electric Power Company for a certificate of convenience and necessity for 5.39 miles of 138KV tap line to serve the International Paper Company in Cass County, Docket Number 9183 before the Public Utility Commission of Texas.

The Application: In Docket Number 9183, Southwestern Electric Power Company requests approval of its application to construct a transmission line in Cass County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas on December 11, 1989.

TRD-8911942 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 12, 1989

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

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 4, 1989, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of the West Texas Utilities Company for a proposed transmission line in Stonewall County, Docket Number 9184 before the Public Utility Commission of Texas.

The Application: In Docket Number 9184, West Texas Utilities Company requests approval of its application to construct approximately 1.81 miles of 138kV transmission line in Stonewall County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on December 11, 1989.

TRD-8911943 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 12, 1989

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

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 6, 1989, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of Fort Bend Telephone Company to amend the boundary between Central Telephone Company of Texas and Fort Bend Telephone Company, Docket Number 9185 before the Public Utility Commission of Texas.

The Application: In Docket Number 9185, Fort Bend Telephone Company requests approval of its application to amend its service area boundary to extend service to a single customer.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on December 11, 1989.

TRD-8911945 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 12, 1989

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

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Notice of Intent to File Application

Notice is given to the public of the intent to file with the Public Utility Commission of Texas (PUC) an application for approval to offer promotional rates for PLEXAR I service for the statewide geographical market area of Texas pursuant to Public Utility Commission Substantive Rule 23.28.

Tariff Title and Number. Application of Southwestern Bell Telephone Company (SWB) to offer promotional PLEXAR I rates pursuant to Public Utility Commission Substantive Rule 23.28; Tariff Control Number 9188.

The Application. Southwestern Bell Telephone Company is requesting approval of proposed promotional rates for certain nonrecurring rate elements for PLEXAR I service for three-month period beginning February 1, 1990, and ending April 30, 1990. Approval of the proposed promotion would allow SWB to waive the PLEXAR I system charge and the PLEXAR I feature capability charge.

Persons who wish to comment upon action, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Section at (512) 458-0227, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on December 12, 1989.

TRD-8911943 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 12, 1989

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

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Texas Commission for the Deaf

A special report prepared by the Texas Legislative Council in 1967 expressed concern that, at the time, no central agency existed to coordinate the scattered services available to deaf and hearing-impaired persons. Moreover, the report noted, many of these services were failing to reach their intended clientele because of the communication problems caused by deafness.

Four years later, in 1971, the Legislature responded by creating the State Commission for the Deaf. The new agency would provide all services to deaf persons not delegated to other agencies, conduct a census and prepare a registry of the state's deaf population, and serve as a clearinghouse for information on deafness.

Based on studies prepared by a Joint Advisory Committee on Educational Services to the Deaf, the Legislature abolished the commission in 1979 and created the Texas Commission for the Deaf in its place. With increased statutory authority, the commission's responsibilities were expanded to include establishment of a state agency network of telecommunication devices for the deaf (TDD), development of a summer outdoor training program for deaf children, and maintenance of a directory of persons qualified to interpret in civil, criminal and governmental proceedings.

Today, the commission contracts with 17 community based non-profit organizations to provide direct services to the deaf and hearing-impaired. It has also written memoranda of understanding with ten state agencies in an effort to better coordinate services. The commission's goal is to implement a statewide program of advocacy and education to improve the quality and scope of service for the deaf.

The Texas Commission for the Deaf is located in Austin and may be contacted at (512) 469-9891.