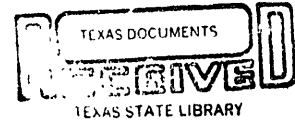


# Texas Register

Volume 13, Number 23, March 22, 1988

Pages 1363-1405

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## Texas Register

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- Attorney General—summaries of requests for opinions, opinions, and open records decisions
- Emergency Rules—rules adopted by state agencies on an emergency basis
- Proposed Rules—rules proposed for adoption
- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
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- Open Meetings—notices of open meetings
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## Texas Administrative Code

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

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

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

TAC stands for the *Texas Administrative Code*;

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



## Texas Register Publications

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### TITLE 7. BANKING AND SECURITIES

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40 TAC §367.1—1195



Name: Aric McIntosh  
Grade: 8  
School: Haltom Jr. High, Birdville

# The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1814.

## Appointments Made March 11

To be a member of the **Battleship Texas Advisory Board**, for a term to serve at the pleasure of the governor: Robert Daniel Miller, 3601 Allen Parkway, #108, Houston, Texas 77019. Mr. Miller will be replacing Denny Hair, of Houston.

To be a member of the **Texas Planning Council for Developmental Disabilities**, for a term to expire February 1, 1991: Ronnie Neil Alexander, 8127 Scottshill, San Antonio, Texas 78209. Mr. Alexander is being reappointed.

To be a member of the **Interagency Council on Autism and Pervasive Developmental Disorders** pursuant to Senate Bill 257, 70th Legislature, 1987, for a term to expire February 1, 1989: Ben Harold Moore, Jr., M.D., P.O. Box 160692, San Antonio, Texas 78232.

To be a member of the **Hospital Licensing Advisory Council** for a term to expire December 7, 1993: Irene S. Wischer, 4001 North New Braunfels, San Antonio, Texas 78209. Mrs. Wischer will be replacing J. T. Palmer of Roby whose term expired.

To be a member of the **Egg Marketing Advisory Board**, for a term to expire August 27, 1991: Kenneth R. Vaughan, 131 Grosvenor, San Antonio, Texas 78221. Mr. Vaughan will be replacing Mr. Edgar H. Burton of Lufkin whose term expired.

To be a member of the **Advisory Council on Community Affairs**, for a term to expire January 31, 1989: Larry Steven May, P.O. Box 128, Sweetwater, Texas 79556. Mr. May will be replacing Ivory E. Moore, Sr. of Commerce whose term expired.

To be a member of the **Advisory Council on Community Affairs**, for a term to expire January 31, 1990: George Weldon Rice, 522 Millard, Nacogdoches, Texas 75961. Mr. Rice will be replacing David Ojeda, Jr. of Carrizo Springs whose term expired.

To be a member of the **Crime Stoppers Advisory Council** for a term to expire September 1, 1989: Rebecca Ann Rothkamm, 6575 Windwood, Beaumont, Texas 77706. Mrs. Rothkamm is being reappointed.

To be a member of the **Battleship Texas Advisory Board** for a term to serve at the pleasure of the Governor: Aileen B. Rains, 5110 San Felipe, 191 West Tower, Houston, Texas 77056. Mrs. Rains is filling a vacant position.

Issued in Austin, Texas on January 9, 1988.

TRD-8802694

William P. Clements, Jr.  
Governor of Texas



Name: Rene De Los Santos  
Grade: 9  
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# Attorney General

**Description of Attorney General submissions.** Under provisions set out in the Texas Constitution, Texas Civil Statutes, Article 4399, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies maybe held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Texas Register*.

## Opinions

**JM-869 (RQ-1196).** Request from Frank Hill, Kendall County Attorney, 207 East San Antonio Street, Boerne, concerning, whether a ticket given to a defendant may serve as the complaint in a trial de novo in county court (RQ-1196) .

**Summary of Opinion.** Where a conviction in an inferior court is based on a plea of guilty or nolo contendere in a case where the notice of violation serves as the charging instrument pursuant to the Code of Criminal Procedure, Article 27.14, §(d) a complaint should be filed in a trial de novo in the county court upon a plea of not guilty being entered by the defendant. The complaint must allege the same offense as the one charged in the inferior court. If the plea in the de novo trial in county court is guilty or nolo contendere, the duplicate copy of the notice of violation upon which the conviction was based in the inferior court may serve as the complaint. TRD-8802657

◆ ◆ ◆

**JM-870 (RQ-1248).** Request from Fred G. Rodriguez, Criminal District Attorney, Bexar County Courthouse, San Antonio, concerning the jurisdiction of the statutory probate courts of Bexar County to adjudicate cases under the Mental Health Code, in light of recent amendments to former Texas Civil Statutes, Article 1970-301e.2 (RQ-1248).

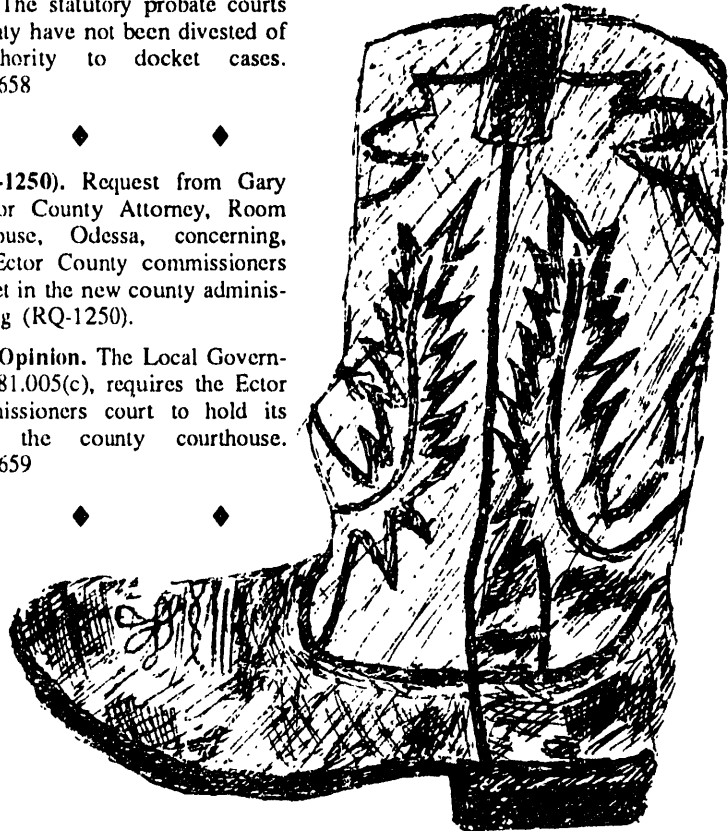
**Summary of Opinion.** The statutory probate courts of Bexar County have jurisdiction to hear and adjudicate proceedings brought pursuant to the Texas Mental Health Code. The statutory probate courts of Bexar County have not been divested of statutory authority to docket cases. TRD-8802658

◆ ◆ ◆

**JM-871 (RQ-1250).** Request from Gary Garrison, Ector County Attorney, Room 223, Courthouse, Odessa, concerning, whether the Ector County commissioners court may meet in the new county administration building (RQ-1250).

**Summary of Opinion.** The Local Government Code, §81.005(c), requires the Ector County commissioners court to hold its meetings in the county courthouse. TRD-8802659

Name: Todd Counts  
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# Emergency Rules

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 W. Registration of Commercial Carriers

###### • 16 TAC §5.508

The Railroad Commission of Texas adopts on an emergency basis new §5.508, concerning leasing of commercial motor vehicles. The new section is adopted on an emergency basis due to the unacceptable burden which would be placed on leasing companies and their customers by the registration system which is to be effective April 1, 1988. That system would be unduly burdensome to leasing companies insofar as they are under short-term leases, and in the situation where vehicles are substituted for vehicles under long-term leases when the leased vehicles are inoperable. This section would not become effective under normal rulemaking procedures until after the current registration system becomes effective. Such a temporary registration requirement would impose a regulatory burden without any corresponding benefit, and would therefore pose an imminent threat to the general welfare.

The commission proposes that short-term leased vehicles, defined as vehicles under a lease effective for 30 days or less, will not be required to carry a cab card or to have an identification decal attached to its windshield. The leasing company will be allowed to register all of its vehicle fleet, and pay registration fees according to the apportionment system of the international registration plan. Leasing companies which require their lessees to provide liability insurance may comply with the insurance filing requirement by filing proof of a contingency insurance policy.

The new section will also allow leasing companies to provide substitute vehicles for vehicles under long-term leases which become inoperable. Since the lease contracts often provide for immediate replacement of these vehicles, it would be impossible to have the substitute vehicle registered with the commission before it is used. The lessor, therefore, may carry a copy of the cab card of the replaced vehicle attached to a copy of the leasing agreement and be in compliance with the registration requirement. The long-term leased vehicles must comply with the registration requirement under the provisions applicable to all other commercial motor vehicles.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 911b, 4(a)(13), and Article 6701d, §139(c), which authorize the commission to register commercial motor vehicles and to require motor carriers to file proof of insurance with the commission.

*§5.508. Leasing of Commercial Motor Vehicles.*

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

(1) Bona fide leasing business—A person whose principal business is the bona fide leasing or renting of commercial motor vehicles without drivers for compensation to the general public.

(2) Contingency policy—A liability insurance policy purchased by a bona fide leasing business to cover motor vehicles which are leased by the leasing company under contracts which require the lessee to provide liability insurance, and which pays only claims not paid by the insurance provided by the lessee.

(3) Lease—An agreement which is required to be filed with the Department of Public Safety under the provisions of Texas Civil Statutes, Article 6701c-1, including leases by bona fide leasing businesses which may file a list of vehicles to be leased in lieu of filing each lease agreement.

(4) Long term lease—a lease which is effective for a period of greater than 30 days.

(5) Short term lease—A lease which is effective for a period of 30 days or less.

(6) Substitute vehicle—A commercial motor vehicle which is provided by the lessor of a different commercial motor vehicle to the lessee of the different commercial motor vehicle as a temporary replacement for the different commercial motor vehicle due to maintenance, repair, or other unavailability of the different commercial motor vehicle.

(b) Registration of commercial motor vehicles under short term lease.

(1) A commercial motor vehicle which is under short term lease shall not be required to be registered by the lessee of the commercial motor vehicle, if the commercial motor vehicle is registered with the

commission under the provisions of this subsection.

(2) A bona fide leasing business may register commercial motor vehicles which it owns and which it leases under the terms of short term leases.

(3) A commercial motor vehicle registered with the commission under the provisions of this subsection shall not be required to be in compliance with the requirements of §5.504 of this title (relating to Cab Cards; Identification Decals).

(4) A bona fide leasing business which registers its commercial motor vehicles under the provisions of this subsection may pay a reduced registration fee under the same provisions as provided by the international registration plan.

(5) A bona fide leasing business which registers commercial motor vehicles under the provisions of this subsection may comply with the provisions of §5.503 of this title (relating to Liability Insurance for Commercial Carriers) by filing proof of a contingency liability policy. Proof of a contingency liability policy shall be in the form set forth in Form E.

(6) A bona fide leasing business which registers commercial motor vehicles under the provisions of this subsection shall include with its application a letter designating the registered commercial motor vehicles a short term lease vehicles. The bona fide leasing business shall also include with its application documentation of its last annual apportionment under the international registration plan.

(c) Registration of substitute vehicles.

(1) A substitute vehicle operated under the provisions of this subsection shall not be required to comply with the requirements of §5.504 of this subchapter (relating to Cab Cards; Identification Decals).

(2) A substitute vehicle may be operated by the lessee of a leased vehicle for no more than 30 days if the lease agreement is attached to the cab card of the commercial motor vehicle which the substitute vehicle is replacing.

(3) The lease agreement and cab card shall be carried in the substitute vehicle at all times the substitute vehicle is operating as a commercial motor vehicle.

(4) The lessor of the substitute

vehicle shall notify the commission of the substitution within 15 days of the substitution. The notification shall include the identification required by subsection (d) of §5.502 of this title (relating to Applications for Registration of Commercial Motor Vehicles) for the replaced vehicle and the substitute vehicle, as well as the effective date of the substitution.

(d) Alternative system. A leased vehicle may comply with the provisions of this subchapter either in accordance with the provisions of this section or the remainder of this subchapter (relating to Registration of Commercial Carriers).

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

Issued in Austin, Texas, on March 14, 1988.

TRD-8802673 Jim Nugent  
Chairman  
Railroad Commission of  
Texas

Effective date: March 15, 1988

Expiration date: July 13, 1988

For further information, please call: (512) 463-7149

## TITLE 22. EXAMINING BOARDS

### Part XXII. Texas State Board of Public Accountancy

#### Chapter 521. Fee Schedule

##### • 22 TAC §521.1

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of the repealed §521.1, for a 60-day period effective March 15, 1988. The text of the repealed §521.1 was originally published in the November 24, 1987, issue of the *Texas Register* (12 TexReg 4398).

Issued in Austin, Texas on March 14, 1988.

TRD-8802646 William A. Sansing  
Enforcement Coordinator  
Texas State Board of  
Public Accountancy

Effective date: March 15, 1988

Expiration date: May 14, 1988

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

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of new §521.1, for a 60-day period effective March 15, 1988. The text of new §521.1 was originally published in the November 24, 1987, issue of the *Texas Register* (12 TexReg 4398).

Issued in Austin, Texas on March 14, 1988.

TRD-8802649 William A. Sansing  
Enforcement Coordinator  
Texas State Board of  
Public Accountancy

Effective date: March 15, 1988

Expiration date: May 14, 1988

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

### Fee for Certification by Reciprocity

##### • 22 TAC §521.3

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of the repealed §521.3, for a 60-day period effective March 15, 1988. The text of the repealed §521.3 was originally published in the November 24, 1987, issue of the *Texas Register* (12 TexReg 4398).

Issued in Austin, Texas on March 14, 1988.

TRD-8802645 William A. Sansing  
Enforcement Coordinator  
Texas State Board of  
Public Accountancy

Effective date: March 15, 1988

Expiration date: May 14, 1988

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

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of the repealed §521.3, for a 60-day period effective March 15, 1988. The text of the new §521.3 was originally published in the November 24, 1987, issue of the *Texas Register* (12 TexReg 4398).

Issued in Austin, Texas on March 14, 1988.

TRD-8802644 William A. Sansing  
Enforcement Coordinator  
Texas State Board of  
Public Accountancy

Effective date: March 15, 1988

Expiration date: May 14, 1988

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

##### • 22 TAC §521.4

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of the repealed §521.4, for a 60-day period effective March 15, 1988. The text of the repealed §521.4 was originally published in the November 24, 1987, issue of the *Texas Register* (12 TexReg 4398).

Issued in Austin, Texas on March 14, 1988.

TRD-8802642 William A. Sansing  
Enforcement Coordinator  
Texas State Board of  
Public Accountancy

Effective date: March 15, 1988

Expiration date: May 14, 1988

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

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of the new §521.4, for a 60-day period effective March 15, 1988. The text of new §521.4 was originally published in the November 24, 1987, issue of the *Texas Register* (12 TexReg 4399).

Issued in Austin, Texas on March 14, 1988.

TRD-8802643 William A. Sansing  
Enforcement Coordinator  
Texas State Board of  
Public Accountancy

Effective date: March 15, 1988

Expiration date: May 14, 1988

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

## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

#### Chapter 3. Tax Administration

##### Subchapter V. Bingo Regulation and Tax

##### • 34 TAC §3.544

The Comptroller of Public Accounts is renewing the effectiveness of the emergency adoption of amended §3.544, for a 60-day period effective March 19, 1988. The text of amended §3.544 was originally published in the November 27, 1987, issue of the *Texas Register* (12 TexReg 4444).

Issued in Austin, Texas on March 14, 1988.

TRD-8802669 Wade Anderson  
Rules Coordinator  
Comptroller of Public  
Accounts

Effective date: March 19, 1988

Expiration date: May 18, 1988

For further information, please call: (512) 463-4004

##### • 34 TAC §3.548

The Comptroller of Public Accounts is renewing the effectiveness of the emergency adoption of amended §3.548, for a 60-day period effective March 19, 1988. The text of amended §3.548 was originally published in the November 27, 1987, issue of the *Texas Register* (12 TexReg 4444).

Issued in Austin, Texas on March 14, 1988.

TRD-8802668 Wade Anderson  
Rules Coordinator  
Comptroller of Public  
Accounts

Effective date: March 19, 1988

Expiration date: May 18, 1988

For further information, please call: (512) 463-4004

◆ ◆ ◆  
• 34 TAC §3.550

The Comptroller of Public Accounts is renewing the effectiveness of the emergency adoption of amended §3.550, for a 60-day period effective March 19, 1988. The text of amended §3.550 was originally published in the November 27, 1987, issue of the *Texas Register* (12 TexReg 4445).

Issued in Austin, Texas on March 14, 1988.

TRD-8802667

Wade Anderson  
Rules Coordinator  
Comptroller of Public  
Accounts

Effective date: March 19, 1988

Expiration date: May 18, 1988

For further information, please call: (512) 463-4004

◆ ◆ ◆  
• 34 TAC §3.558

The Comptroller of Public Accounts is renewing the effectiveness of the emergency adoption of amended §3.558, for a 60-day period effective March 19, 1988. The text of amended §3.558 was originally published in the November 27, 1987, issue of the *Texas Register* (12 TexReg 4446).

Issued in Austin, Texas on March 14, 1988.

TRD-8802670

Wade Anderson  
Rules Coordinator  
Comptroller of Public  
Accounts

Effective date: March 19, 1988

Expiration date: May 18, 1988

For further information, please call: (512) 463-4004



Name: Mark Digiovanna

Grade: 12

School: Sam Houston High, Arlington

# 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 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

#### Chapter 5. Transportation Division

##### Subchapter W. Registration of Commercial Carriers

###### 16 TAC §5.508

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

The Railroad Commission of Texas proposes a new §5.508, concerning registration of leased commercial motor vehicles. The commission proposes to clarify the responsibilities of lessors and lessees of commercial motor vehicles in regard to the commercial motor vehicle registration requirement in this subchapter.

Nim K. Graves, assistant director, 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 small businesses as a result of enforcing or administering the section.

Ronald D. Stutes, hearings examiner, 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 clarified responsibilities in regard to the registration of leased commercial motor vehicles, increased efficiency in allowing estimation of the number of leased vehicles there are in Texas with regards to a nationwide rental fleet, and an efficient system of compliance for substitute vehicles under long-term leases. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Ronald D. Stutes, Hearings Examiner, and C. Tom Clowe, Director, Transportation Division, Railroad Commission of Texas, P.O. Drawer 12967, Capitol Station, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 911b, §4(a) (13), which give the commission authority to register commercial motor vehicles.

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

Issued in Austin, Texas, on March 14, 1988.

TRD-8802674

Walter Earl Lillie  
Special Counsel  
Railroad Commission of  
Texas

Earliest possible date of adoption: April 22, 1988

For further information, please call: (512) 463-7149

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 157. Emergency Medical Care

##### Emergency Medical Services

###### • 25 TAC §§157.66, 157.72, 157.77, 157.78

The Texas Department of Health proposes amendments to §§157.66, 157.72, 157.77 and 157.78, concerning emergency medical service (EMS) general requirements for vehicle permits; requests for variances from minimum standards; and the certification of course coordinators, program instructors, and examiners.

The amendment to §157.66 is proposed because inspectors do not have the training or equipment to complete a vehicle inspection as required for motor vehicle inspections. The vehicle must pass a safety inspection annually conducted under the authority of the Texas Department of Public Safety. Additionally, an EMS provider who has disciplinary action on a vehicle permit currently can get another vehicle permitted and continue to operate as before. Section 157.66 standardizes Texas Department of Health inspections and prohibits an EMS provider from applying for a vehicle permit for one year following a revocation of a vehicle permit.

The amendment to §157.72 requires the provider to inform the department of a plan to upgrade to the minimum standard for personnel, and allows the department to continue or repeal a variance after an annual review. The amendment to §157.77 relating to EMS training programs and course approval clarify the criteria for the denial of a course application.

The amendment to §157.78 provides criteria for minimum standards for certification and recertification of course coordinators, program instructors, and examiners. Coordinators should be knowledgeable regarding

criteria and requirements of the skills examination required for certification. Additionally, the completion of the examiner training and certification should be a requirement for course coordinator certification. The amendment also allows for refresher courses for course coordinators and program instructors.

Stephen Seale, chief accountant III, has determined that for the first five-year period the sections as proposed will be in effect, there will be no fiscal implications to state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Seale has also 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 uniformity and standardization of vehicle inspections, clarification of current rules regarding variances from minimum standards, clarification of EMS training program and course approval by outlining the criteria for denial and by adding standards to support the departments denial, and by updating requirements for personnel certification.

Comments on the proposal may be submitted to Eugene Weatherall, Chief, Bureau of Emergency Management, Texas Department of Health, 1100 West 49th Street, Austin Texas, 78756 (512) 465-2601. Comments will be accepted for 90 days after the publication of the section in the *Texas Register*.

The amendments are proposed under the Emergency Medical Services Act, Texas Civil Statutes, Article 4447o, §§3.02, 3.03, and 3.04, which provides the Texas Board of Health with the authority to adopt rules covering certification of EMS personnel and licensure of ambulance vehicles.

###### §157.66. General Requirements for Vehicle Permits.

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

(c) Inspections.

(1) (No change.)

(2) The inspection shall include:

(A) (No change.)

(B) Visual and mechanical inspection of the vehicle for the purpose of determining compliance with the vehicle type specifications of these rules. [In addition, the following motor vehicle equipment shall be in good and working order as required by Texas Civil Statutes, Article 6701d:]

[(i) headlights, taillights,

back-up lights, and brake lights;

((ii) horn and audible warning device;

((iii) emergency lights;

((iv) brakes; and

((v) tires.]

(C)-(H) (No change.)

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

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

(h) An EMS provider or a person shall not be eligible to apply for a vehicle permit for one year following the date of an order revoking a vehicle permit pursuant to §157.71 of this title (relating to Emergency Suspension, Suspension, and Revocation of a Permit). An EMS provider or a person shall not be eligible to apply for a vehicle permit during the time any vehicle permit held by the provider is suspended pursuant to §157.71 of this title (relating to Emergency Suspension, Suspension, and Revocation of a Permit).

*§157.72. Request for Variances from Minimum Standards.*

(a) (No change.)

(b) A request for a personnel variance shall be accompanied by a plan for training personnel to meet the minimum requirements of the EMS Act, Texas Civil Statutes, Article 4447o.

(c)[(b)] Evaluation of the request shall be based on the criteria in the Act, §3.13.

(d)[(c)] If a variance is granted, [an EMS vehicle permit] it shall be issued subject to annual review by the department. The department shall issue a letter to the EMS provider that states the specific rule or standard waived.

(e) After the annual review by the department, the variance may be continued for a period not to exceed one year or the variance may be repealed.

*§157.77. EMS Training Program and Course Approval.*

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

(e) Approval or denial of application.

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

(3) A course may be denied for, but not limited to, the following reasons: [if the application is incomplete or not submitted as required in subsection (c) and subsection (e)(1) of this section.]

(A) If the application is incomplete;

(B) if the application is not submitted as required in subsection (c) and

subsection (e)(1) of this section;

(C) if the course coordinator has a history of courses in which greater than 30% of the students fail the department's written examination for certification;

(D) if the course coordinator fails to provide supervised clinical training;

(E) if the course coordinator is on suspension; or

(F) if the course coordinator falsifies any course documents.

(4) If an application is to be denied, the applicant shall be notified in writing of the proposed denial and shall be given an opportunity to [request a hearing in accordance with §§1.21-1.32 of this title (relating to Formal Hearing Procedures).] appeal the proposed action to the bureau chief.

(f) (No change.)

*§157.78. Certification of Course Coordinator, Program Instructor, and Examiner.*

(a) Course coordinator. A course coordinator is an individual who has the overall responsibility for conducting an emergency medical services (EMS) training course. A course coordinator may be certified as a basic course coordinator, an intermediate course coordinator, or as an advanced course coordinator. A basic course coordinator shall coordinate an emergency care attendant (ECA) or basic emergency medical technician (B-EMT) training course. An intermediate course coordinator shall coordinate a special skills emergency medical technician (SST-EMT) training course, but may coordinate an ECA or B-EMT training course. An advanced course coordinator shall coordinate a special skills-emergency medical technician (SS-EMT) or paramedic-emergency medical technician (p-EMT) training course, but may coordinate an ECA or B-EMT, or a SS-EMT training course.

(1) A course coordinator candidate shall:

(A) have the following qualifications:

(i) be currently certified as at least a B-EMT to be a basic course coordinator, except, however, in areas of need with approval of the bureau, an ECA may qualify as a coordinator candidate and after completion of the requirements of this section may coordinate an ECA course;

(ii) be currently certified as an SS-EMT to be an intermediate course coordinator;

(iii) be currently certified as at least a P-EMT to be an advanced course coordinator; or

(iv) be a licensed physician or licensed registered nurse (R.N.); and

((v)) be [either] a department certified program instructor and[or] examiner.

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

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

(4) Recertification of the course coordinator shall be dependent on:

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

(C) completion of course coordinator refresher [the] seminar [as required in paragraph (1)(C) of this subsection];

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

(b) Program instructor. A program instructor is an individual who is responsible to the course coordinator and shall conduct the skills and/or didactic portion of an EMS training course. A program instructor may be certified as a basic program instructor, as an intermediate program instructor, or as an advanced program instructor. A basic program instructor shall teach the skills and/or didactic content required in the ECA and B-EMT training course and may teach the basic skills required in the SS-EMT and P-EMT training course. An intermediate program instructor shall teach the skills and/or didactic content required in the SS-EMT training course. An advanced program instructor shall teach the skills and/or didactic content required in the SS-EMT or P-EMT training course.

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

(4) Recertification of the program instructor shall be dependent on:

(A) (No change.)

(B) evaluation of performance of students on the department's written and/or skills examinations;

(C)-(D) (No change.)

(E) completion of a department approved refresher program instructor orientation session conducted by the course coordinator.

(c)-(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 March 15, 1988.

TRD-8802718

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

Proposed date of adoption: July 9, 1988

For further information, please call: (512) 465-2601.

◆ ◆ ◆  
• 25 TAC §157.76

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Health, or in the Texas Register office, Room 503, Sam Houston Building, 201, East 14th Street, Austin.)*

The Texas Department of Health proposes the repeal of existing §157.76, and proposes new §157.76, concerning continuing education. The purpose of replacing existing §157.76 with a new §157.76 is to allow for clarification and updating of the section.

The proposed new §157.76 will modify the accrual of continuing education hours to allow flexibility for individuals to receive continuing education credits. The section will not reduce the number of hours required for each level of certification but will allow local needs to be reflected in the areas of continuing education. Additionally, the new section will require EMS personnel to have current CPR certification.

Stephen Seale, chief accountant III, has determined that for each year of the first five years the section as proposed will be in effect, there will be no fiscal implications to state or local government or small businesses as a result of enforcing or administering the section.

Mr. Seale has also 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 is a useful and pertinent application of the accrual of continuing education hours.

Comments on the proposal may be submitted to Eugene Weatherall, Chief, Bureau of Emergency Management, Texas Department of Health, 1100 West 49th Street, Austin Texas, 78756 (512) 465-2601. Comments will be accepted for 90 days after the publication of the section in the *Texas Register*.

The repeal is proposed under the Emergency Medical Services Act, Texas Civil Statutes, Article 4447o, §§3.02, 3.03 and 3.04 which provides the Texas Board of Health with the authority to adopt rules covering recertification of EMS personnel.  
§157.76. *Continuing Education.*

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

Issued in Austin, Texas, on March 15, 1988.

TRD-8802716

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

Proposed date of adoption: July 9, 1988

For further information, please call: (512) 465-2601.

◆ ◆ ◆  
The new section is proposed under the Emergency Medical Services Act, Texas Civil Statutes, Article 4447o, §§3.02, 3.03 and 3.04 which provides the Texas Board of Health with the authority to adopt rules covering recertification of EMS personnel.  
§157.76. *Continuing Education.*

(a) Continuing education requirements. Continuing education is required to meet the requirements in §157.64 of this title (relating to Recertification). Continuing education credit may be recognized if it was earned within four years of an application filed in accordance with this section. Continuing education credit may be accrued through participation in programs and/or refresher courses.

(b) EMS personnel requirements.

(1) Emergency care attendant (ECA). An ECA shall be required to complete 40 hours of continuing education approved by the department.

(2) Basic emergency medical technician (B-EMT). A B-EMT shall be required to complete 80 hours of continuing education approved by the department.

(3) Specially skilled emergency medical technician (SS-EMT). A SS-EMT shall be required to complete 120 hours of continuing education approved by the department.

(4) Paramedic emergency medical technician (P-EMT). A P-EMT shall be required to complete 160 hours of continuing education approved by the department.

(c) Procedures for continuing education approval.

(1) Programs.

(A) A continuing education program may be a short term or single subject presentation or a long term program.

(B) A continuing education program sponsor shall submit to the department a continuing education approval application to include:

- (i) the intended audience;
- (ii) date, times, and location of the program;
- (iii) objectives of the program;
- (iv) program sponsor; and
- (v) program brochure or outline.

(C) Program sponsors shall be notified in writing of the continuing edu-

cation hours approved.

(2) Refresher courses. A refresher course is a course which reviews the curricula for specific level of EMS personnel certification.

(A) Curricula.

(i) An ECA refresher course shall include 20 hours of training reviewing the United States Department of Transportation (DOT) emergency medical services first responder training course, as adopted by reference in §157.77 of this title (relating to EMS Training Program and Course Approval).

(ii) A B-EMT refresher course shall include 40 hours of training reviewing the DOT basic training program for emergency medical technician - ambulance, as adopted by reference in §157.77 of this title (relating to EMS Training Program and Course Approval).

(iii) An SS-EMT refresher course shall include 60 hours of training reviewing the DOT national training course emergency medical technician-paramedic, as adopted by reference in §157.77 of this title (relating to EMS Training Program and Course Approval).

(iv) A P-EMT refresher course shall include 80 hours of training reviewing the DOT national training course emergency medical technician-paramedic, as adopted by reference in §157.77 of this title (relating to EMS Training Program and Course Approval).

(B) Application.

(i) The course coordinator shall complete the application procedures as required in §157.77 (c) of this title (relating to EMS Training Program and Course Approval); except however, those requirements relating to clinical and EMS provider facilities shall be excluded.

(iii) An application shall be approved or denied as in §157.77(e) of this title (relating to EMS Training Program and Course Approval).

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

Issued in Austin, Texas, on March 15, 1988.

TRD-8802716

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

Proposed date of adoption: July 9, 1988

For further information, please call: (512) 465-2601.

• 25 TAC §157.84

The Texas Department of Health proposes new §157.84, concerning (EMS personnel) certification by reciprocity. The new section reflects the authorization in the Emergency Medical Services Act, Texas Civil Statutes, Article 4447o, for the Board of Health to adopt rules for interstate reciprocity. Prior to granting reciprocity, the department shall review and evaluate the certification requirement of the other states.

New §157.84 will allow the department to certify an individual based on reciprocity and issue a certificate for less than four years. This section will allow for acceptance of out-of-state personnel based on review and evaluation of certification requirements. The approved applicant would be granted a certificate based on equivalent training.

Stephen Seale, chief accountant III, has determined that for each year of the first five years the section as proposed will be in effect, there will be no fiscal implications to state or local government or small businesses as a result of enforcing or administering the section.

Mr. Seale has also 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 is uniformity and standardization of the certification in Texas of out-of-state EMS personnel.

Comments on the proposal may be submitted to Eugene Weatherall, Chief, Bureau of Emergency Management, Texas Department of Health, 1100 West 49th Street, Austin Texas 78756, (512) 465-2601. Comments will be accepted for 90 days after the publication of this section in the *Texas Register*.

The new section is proposed under the Emergency Medical Services Act, Texas Civil Statutes, Article 4447o, §§ 3.02, 3.03 and 3.04 which provides the Texas Board of Health with the authority to adopt rules covering interstate reciprocity of EMS personnel. §157.84. Certification by Reciprocity.

(a) An out-of-state certified EMS person may apply for certification by reciprocity.

(b) The candidate shall:

(1) submit proof of current out-of-state certification;

(2) complete the application for reciprocity; and

(3) submit to the department the application and the applicable nonrefundable fee as follows:

(A) SS-EMT and P-EMT-\$7.00;

(B) B-EMT-\$5.00;

(c) After evaluation of the application by the department, the applicant may be certified for a period not to exceed one year or the time remaining on the out-of-state certification, whichever is sooner.

(d) Prior to or within 90 days of the

expiration of the certificate, the certificant shall be required to:

(1) have 50% of the continuing education credit hours required in §157. 76 of this title (relating to Continuing Education) by certification level;

(2) achieve a passing grade on all skills examinations as described in §157.63(a)(5) of this title (relating to Certification); and

(3) achieve a passing grade of 70 on the department's written examination and in addition, achieve a passing grade of 70 on the critical components of the examination.

(e) A candidate who fails either the skills examination or the written examination may retest on each examination one time, provided that all retests shall be completed no later than 90 days after the expiration of the certificate.

(f) A candidate who does not complete the requirements for certification within 90 days after the expiration date of the certificate shall meet the requirements of §157.63(h)-(j) of this title (relating to Certification).

(g) A successful candidate shall be certified for four years commencing on the date of issuance of a certificate and wallet-sized card signed by department officials.

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

Issued in Austin, Texas, on March 15, 1988.

TRD-8802719 Robert A. MacLean  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: July 9, 1988

For further information, please call: (512) 465-2601.

◆ ◆ ◆  
**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**  
**Part I. Texas Department of Human Services**  
**Chapter 17. Tel-Assistance Service Program**

**General Information**

• 40 TAC §17.1

The Texas Department of Human Services (DHS) proposes new §17.1, concerning the Tel-Assistance Service Program. The purpose of the new section is to establish guidelines and requirements for administering the legislatively mandated Tel-assistance Service (TAS) Program, which provides low-income aged and disabled individuals with reductions in the costs of their telephone service.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the sections.

Mr. Packard has also 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 eligible individuals will pay less for telephone service. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-625, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, 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; and under Texas Civil Statutes, Article 1446 (c), which provide for the Telecommunication Service Assistance Program.

§17.1. Tel-assistance Service (TAS) Program.

(a) General description. The Tel-assistance Service (TAS) program provides eligible consumers with reductions in costs of telecommunications services.

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

(1) Disability—A condition, physical or mental, that permanently limits an individual's mobility or his ability to carry out activities of daily living.

(2) Head of household—A person who owns, leases, or pays the rent on the dwelling in which he lives and who pays all utility bills that are not included in the rent. Utility bills include those for telephone, gas, electricity, and water.

(3) Household—Either:

(A) any person or group of people who comprise a household as defined in any other Department of Human Services (DHS) program, such as aid to families with dependent children (AFDC), food stamps, and community care for aged and disabled; or

(B) any person or group of people who live together as one economic unit.

(4) Income—Earned or unearned cash or negotiable instruments, such as checks or money orders, that the household may spend as it chooses. For specific TAS income limits, see subsection (c)(1) and (2) of this section.



(c) Eligibility and certification.

(1) General eligibility requirements. To be eligible for TAS, an applicant must

(A) be a Texas resident;

(B) be the head of household;

(C) be 65 or older on the date of application;

(D) be disabled; and

(E) have income at or below the federal poverty level. An applicant's household's total monthly gross income, without deductions unless specified, cannot exceed the poverty level for household size as determined by the United States Office of Management and Budget and reported annually in the Federal Register.

(2) Income limits. To be considered income, cash or negotiable instruments must be received on a regular and predictable basis. If income varies, DHS estimates a regular and predictable amount, based on the best available evidence. DHS counts every household member's income, except earned income of household members who are under 18 on the date the application for TAS is filed.

(A) Countable income includes, but is not limited to

(i) wages;

(ii) social security (RSDI) benefits, including Medicare premiums;

(iii) veteran's compensation benefits;

(iv) workers' compensation benefits;

(v) railroad and other retirement benefits;

(vi) regular insurance or annuity payments;

(vii) military allotments;

(viii) interest and dividends from liquid assets of more than \$2500;

(ix) self-employment income minus any business expenses;

(x) monthly cash contributions or allowances intended for the household's normal living expenses;

(xi) unemployment compensation;

(xii) AFDC payments;

(xiii) Supplemental Security Income payments;

(xiv) payments from income-producing property, investments, or trusts; and

(xv) strike benefits from union funds.

(B) Countable income does not include

(i) conversion of assets;

(ii) food stamp benefits;

(iii) in-kind contributions such as food, clothing, and furniture;

(iv) loans the household must repay and that are not intended for household support;

and

(v) income tax refunds;

(vi) Home Energy Assistance Program (HEAP) payments.

(3) Income verification. DHS verifies only the applicant's income. If a TAS applicant is a recipient in a department program that verifies income, DHS verifies his income by checking department computer records. Otherwise he is asked to verify his income by submitting copies of income documents, such as paycheck stubs, pay or benefit checks, benefit award letters, or most recent Internal Revenue Service tax forms.

(4) Restrictions. To be eligible, an applicant may have only one telephone line to his address. Although he may, if necessary, obtain special equipment such as TTY for blind individuals, he may not receive optional extended-area service, optional extended-area calling service, foreign zone service, or foreign exchange service.

(5) Certification. Certification of eligibility is effective for 12 months from the certification date, unless DHS learns that the applicant has died, entered a nursing home, or acquired telephone service that is not allowed under TAS. DHS sends an applicant a new certification form for each period of certification. The applicant must return the form within 30 days; otherwise DHS removes his name from the eligibility list, without notice.

(d) Operations.

(1) DHS takes applications for TAS and determines eligibility based on the requirements specified in subsection (c)(1) of this section. The burden of proving TAS eligibility is on the applicant. Applicants have the right to appeal DHS decisions.

(2) The local telephone company determines whether the existing or requested telephone-service arrangements meet program requirements. Each month, DHS provides to the local-exchange telephone company an updated list of names, addresses, and, if available, telephone numbers of persons to be added or deleted from TAS service. The company treats this infor-

mation as confidential. DHS also notifies the local-exchange telephone company whenever an individual is no longer eligible.

(e) Penalty for false information. If a TAS applicant provides false information, his action may result in prosecution under any and all applicable state laws for theft, perjury, and tampering with government records.

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

Issued in Austin, Texas, on March 16, 1988.

TRD-88027442

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: May 2, 1988

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

◆ ◆ ◆  
Chapter 27. Intermediate Care Facility for the Mentally Retarded

Subchapter Z. Change in Status of Intermediate Care MR Sections

• 40 TAC §27.2505

The Texas Department of Human Services (DHS) proposes an amendment to §27.2505, concerning sanction provisions for violations of Title XIX ICF-MR facility contractual agreements, and an amendment to §27.3007, concerning release from the ICF-MR. The purpose of the amendments is to update references that are no longer accurate because of changes to the referenced section titles and numbers.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the sections.

Mr. Packard has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more accurate and consistent department rules. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-068, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.  
§27.2505. *Sanction Provisions for Viola-*

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

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

(3) New admission--The admission of a resident [recipient-resident] who has never been previously admitted to the facility or who, if previously admitted, was discharged or voluntarily left the facility. New admissions do not include the following:

(A) (No change.)

(B) individuals who, after a temporary absence from the facility for a therapeutic visit or extended therapeutic visit as described in §27.3010 [§27.1206] of this title (relating to Payment for Absences [Visits Away] from the Facility), are readmitted to beds reserved for them.

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

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

Issued in Austin, Texas, on March 16, 1988.

TRD-8802743

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: May 1, 1988

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

### Subchapter EE. Admission and Release

#### • 40 TAC §27.3007

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.

§27.3007. Release from the ICF-MR.

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

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

(5) Therapeutic visit or extended therapeutic visit--A resident's absence from the facility meets the criteria stated in §27. 3010 [§27.1206] of this title (relating to Payment for Absences [Visits Away] from the Facility).

(b)-(e) (No change.)

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

TRD-8802744

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: May 1, 1988

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

### Chapter 29. Purchased Health Services

#### Subchapter B. Medicaid Eyeglass Program

##### • 40 §29.103, §29.104

The Texas Department of Human Services (DHS) proposes amendments to §§29.103 and 29.104, concerning reimbursement for optometric services and additional claims information requirements, in its Purchased Health Services rule chapter. The amendments clarify the invoice requirements and patient-signature requirements necessary for electronic submittals of claims.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Packard has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more timely reimbursement to providers for services rendered to Texas Medicaid recipients. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-094, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

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

§29.103. Reimbursement for Optometric Services. The department periodically determines the rate of reimbursement for optometric services within appropriation limitations of the Texas Medical Assistance (Medicaid) Program. The department or its designee notifies each provider about the maximum fee schedule. The department or its designee determines reasonable charges according to the provisions described in §29.1104 of this title (relating to Reasonable Charges).

(1) (No change.)

(2) Eyewear. Reimbursement for prosthetic eyewear is based on the provider's reasonable charge profile and includes fitting services. Reimbursement for nonprosthetic eyewear is based on the unit

cost for each pair of eyeglasses, rather than costs for components. Reimbursement by the Medicaid Program is limited to the type of lenses and frames prescribed under §29.102 of this title (relating to Specifications for Eyewear). There is no charge to the recipient for this eyewear. The provider may dispense eyewear with optional features that include, but are not limited to, special tints, coatings, and types of lenses and styles of frames selected by the recipient beyond the specifications of the Medicaid Program. The department or its designee reimburses the provider up to the allowable amount for the basic eyewear and the recipient is responsible for the cost of the optional feature(s) he selects.

(A) The recipient selecting optional features must sign the claim or a patient certification for electronically submitted claims to acknowledge [at the indicated place acknowledging] selection of eyewear or features beyond program benefits.

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

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

§29.104. Additional Claims Information Requirements. Providers must meet the claim criteria established in the provisions of this subchapter for optometric services and the provisions for participation in the Medicaid Program established under Subchapter A of this chapter (relating to Medicaid Procedures for Providers) and Subchapter L of this chapter (relating to General Administration) of the Purchased Health Services chapter. Besides the claims information requirements established in §29.1 of this title (relating to Claim Information Requirements), the following information is required for claims for services:

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

(5) claims for eyewear with special features must be signed by the recipient, acknowledging his selection of eyewear that is beyond the specifications for eyewear in §29.102 of this title (relating to Specifications for Eyewear). A signed patient certification satisfies this requirement for claims that are electronically submitted.

(6) a copy of the invoice for supplies dispensed must be attached to a claim for repairs or retained by the provider as authorized by the department or its designee.

(7) reimbursement for replacement prosthetic eyewear is contingent upon the original eyewear being lost or damaged beyond repair or upon the recipient's visual acuity having changed significantly as defined in §29.101(2)(B)(ii) of this title (relating to Benefits and Limitations). If the original eyewear has been lost or damaged beyond repair, the recipient must sign the claim form or, in the case of

providers who electronically bill, a patient certification. [The recipient must sign the claim form if the original eyewear has been lost or damaged beyond repair.] Reimbursement for replacement nonprosthetic eyewear is contingent upon the recipient's visual acuity having undergone a significant change as defined in §29.101(2)(C) of this title (relating to Benefits and Limitations).

(8) (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 March 16, 1988.

TRD-8802747  
Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: May 16, 1988

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

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**Subchapter K. Definitions**

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• 40 TAC §29.1001

The Texas Department of Human Services (DHS) proposes amendments to §29.1001 and §§29.1601-29.1603, concerning definitions; and nurse-midwife services, in its Purchased Health Services rule chapter. The amendments allow the Texas Medical Assistance Program to cover home deliveries performed by certified nurse-midwives if the department or its designee has given prior authorization for the home delivery. The amendments include other requirements that must be met to receive prior authorization and that make the department's rules consistent with the Title XIX state plan.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the sections.

Mr. Packard has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be an additional option for Medicaid recipients choosing a place of birth. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-096, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

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

§29.1001. *General Definitions for Purchased Health Services.* The following words and terms, when used in this chapter,

shall have the following meanings, unless the context clearly indicates otherwise.

[Complicated maternity cycle—For purposes of nurse-midwife services, complicated maternity cycle means any point in the prenatal, postpartum, or delivery process, when for expected or unexpected reasons, the patient must be referred to a physician because the condition of the mother, the fetus, or the newborn requires the use of medical judgment, medical procedures, additional techniques, or instruments beyond the licensure, scope of practice, or capability of the attending nurse-midwife.

[Immediate care of the newborn—For purposes of nurse-midwife services, immediate care of the newborn means care provided to the newborn within the first 48 hours from live birth.

[Newborn—For purposes of nurse-midwife services, newborn means an infant who is not more than 48 hours old.]

Nurse-midwifery—For purposes of coverage and reimbursement under the Medical Assistance Program, nurse-midwifery means the management of the [and] care of mothers and newborns throughout the maternity cycle, including the prepartum period, labor, birth, and the immediate postpartum period, not to exceed six weeks [women, antepartally, intrapartally, and postpartally; and the immediate care of the newborn].

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

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Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: May 16, 1988

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

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**Subchapter L. General Administration**

◆ ◆ ◆  
• 40 TAC §29.1124

The Texas Department of Human Services (DHS) proposes to amend §29.1124, concerning provider certification/enrollment in Medicare, in its Purchased Health Services rule chapter. The amendment allows the department or its designee to waive the Medicare participation requirement if a provider has been excluded from Medicare and his Medicaid exclusion would prevent recipients from having access to necessary medical care.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the section.

Mr. Packard has also 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 Medicaid recipients will be ensured continued access to medical services. There is no antic-

ipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-095, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

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

§29.1124. *Provider Certification/Enrollment in Medicare.*

(a) (No change.)

(b) The department or its designee may waive the enrollment requirement for providers whose types of practice or services are not covered by Medicare. The department or its designee may also waive this requirement if:

(1) a provider has been excluded from participating in Medicare; and

(2) the provider's exclusion from participating in Medicaid will prevent recipients from having access to needed medical services.

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

Issued in Austin, Texas, on March 16, 1988.

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Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: May 16, 1988

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

◆ ◆ ◆  
**Subchapter Q. Nurse-Midwife Services**

◆ ◆ ◆  
• 40 TAC §§29.1601-29.1603

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

§29.1601. *Benefits and Limitations.* Subject to the specifications, conditions, requirements, and limitations established by the department or its designee and according to state and federal laws, rules, and regulations, and in the case of services furnished in an institution, hospital, or other facility to the extent permitted by the institution, hospital, or facility, nurse-midwife services are limited as follows.

(1) (No change.)

(2) Nurse-midwife services are limited to the services that are concerned with the management of the care of the mother and the newborn throughout the [normal] maternity cycle [of an uncomplicated pregnancy], including the[:]

[(A) Normal] prepartum period, [normal] labor, birth, [normal child-birth by pelvic delivery only;] and

[(B)] immediate postpartum period not to exceed six weeks; and

[(C) management of the immediate care of the newborn].

(3) For purposes of coverage and reimbursement by the Medicaid Program, deliveries by a CNM that are [must be] performed in a general or acute care hospital or special hospital or facility must be done in a hospital or facility licensed and approved by the appropriate state licensing authority for the operation of maternity and newborn services and approved by the department for participation in the Texas Medical Assistance Program. Home deliveries performed by a CNM are [not] reimbursable when the department or its designee has prior authorized the home delivery. The CNM must submit a written request for prior authorization during the recipient's third trimester of pregnancy. The CNM must include a statement signed by a licensed physician who has examined the recipient during the third trimester and determined that at that time she is not at high risk and is suitable for a home delivery.

(4) To be directly reimbursed by the Texas Medical Assistance Program, a CNM who manages the medical aspects of a case under a physician's control and supervision according to the rules of the State Board of Nurse Examiners and the Medical Practice Act must perform the services according to the written protocols required by the State Board of Nurse Examiners and the services must not be duplicative of other charges to the Medicaid Program. [The Medicaid Program does not reimburse the CNM for managing the medical aspects of a case.] Services other than [normal] management of the care of mothers and newborns are not included as nurse-midwife services and are not covered for reimbursement. For services other than nurse-midwife services, other provisions of the state plan apply.

(5) (No change.)  
§29.1602. *Conditions for Participation.* Subject to the specifications, conditions, requirements, and limitations established by the department or its designee, nurse-midwife services are a covered benefit under the Medicaid Program and are subject to the following conditions:

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

(3) To participate in the Medicaid Program, a CNM must identify [provide written documentation of policies, protocols, and collaborative arrangements with] a licensed physician or group of physicians with whom an arrangement has been

made for referral and consultation in the event of medical complications. If the collaborating physician or group is not participating in the Texas Medical Assistance Program, the CNM must inform recipients of their potential financial responsibility according to the requirements of the Texas Medical Assistance Program applicable to all Medicaid providers. [The collaborating physician must be a participating provider in the Medicaid Program. A copy of this written documentation, containing the signatures of the physician and the CNM, must be submitted as a part of the provider enrollment process for CNMs.] If and when the arrangement is changed or cancelled, the CNM must notify the department or its designee in writing of the identity of the new physician or group [such event] within two weeks after the cancellation or change. [Such notification must be accompanied by a copy of the new or amended documentation signed by both the CNM and the physician. Failure to submit a copy of the written documentation could jeopardize the CNM's approval for participation in the Medicaid Program.]

§29.1603. *Reimbursement.*

(a) (No change.)

(b) The department or its designee reimburses only the CNM actually performing or directing the covered service, unless federal requirements related to reassignment of claims have been met [other arrangements are made according to the policies or procedures applicable to the Medicaid Program. These arrangements must be approved by the department or its designee.]

(c) Certified nurse-midwives who manage the medical aspects of a case under a physician's control and supervision according to the rules of the State Board of Nurse Examiners and the Medical Practice Act are [not] reimbursed by the Medicaid Program for those services only if they are performed according to the written protocols required by the State Board of Nurse Examiners and are not duplicative of other charges to the Medicaid Program.

(d) [Services actually provided by or under the personal supervision of a physician must be billed by the physician. Reimbursement, if any, is paid to the physician. When reimbursement is made to a physician for services provided by the physician and/or the CNM, reimbursement by the physician to the CNM, if any, is dependent upon the agreement which exists between the physician and the CNM.] Reimbursement for services which are other than nurse-midwife services are governed by the applicable provisions of the Medicaid Program, as specified by the department.

(e) (No change.)

(f) Certified nurse-midwives who are employed by [, under contract to,] or

remunerated by a physician, health maintenance organization (HMO), hospital, or other facility may not bill the Medicaid Program directly for nurse-midwife services if that billing would result in duplicate payment for the same services [performed under the terms of that employment, contract, or other arrangement]. If the services are covered and reimbursable by the Medicaid Program, payment may be made to the physician, hospital, or other provider, if approved for participation in the Medicaid Program who employs or[,] reimburses[, or contracts with] the nurse-midwife. The basis and amount of Medicaid reimbursement depends on the nurse-midwife services actually provided, who provided the services, and the reimbursement methodology utilized by the Medicaid Program as appropriate for the services and provider(s) involved.

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

Issued in Austin, Texas, on March 16, 1988.

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Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: May 16, 1988

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

## Chapter 49. Child Protective Services

### Subchapter C. Eligibility for Child Protective Services

#### • 40 TAC §49.328

The Texas Department of Human Services (DHS) proposes an amendment to §48.328, concerning foster care assistance payments, in its Child Protective Services Chapter. The amendment is necessary to comply with legislation passed in the 70th session of the Texas Legislature that requires the department to implement a foster care level of care system after January 1, 1988.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state government. The cost to the state is expected to be \$70,205 in fiscal year 88, \$103,751 in fiscal year 89, \$103,059 in fiscal year 90, \$102,256 in fiscal year 91, and \$102,429 in fiscal year 92. There will be no fiscal implications for local governments or small businesses as a result of enforcing or administering the sections.

Mr. Packard has also 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 level of care system that equitably relates the dollar amount paid to the needs of the child served. It will furthermore reduce competition among state agencies with child care provid-

ers. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-593, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

**§49.328. Foster Care Assistance Payments.**

(a) (No change.)

(b) For payments after January 1988, DHS' foster care rates will be determined by the level of care that the child needs, subject to adjustments based on the extent to which other services meet the child's needs or on other factors consistent with the child's needs [are set at a flat or uniform rate for each category of child care]. In the [flat] rate structure, rates are set based on an analysis of cost reports and available appropriated revenues. DHS' determination of the level of care is based upon the child's characteristics, as described in the common application document, and the definitions of levels of care established by the Health and Human Services Coordinating Council.

(c) Foster care assistance payments are intended to cover the child's basic needs. DHS establishes the rates for foster care payments. The rates include allowances for lodging, food, clothing, personal and incidental expenses for the child, recreation, travel, and transportation. At some levels of care, the rates [for exceptional care facilities] also include allowances for psychological services; therapeutic or social services; and any health, medical, or psychiatric services [which are] provided as part of the facility's program. [Exceptional care facilities are those licensed as residential treatment centers, therapeutic camps, and institutions exclusively serving the mentally retarded.]

(d) (No change.)

(e) Upon DHS' request [if DHR requests], these facilities [also] must accept a common application document and submit a completed cost report. DHS uses cost reports to set foster care rates. Reimbursement for a child care facility is contingent on the completion and submittal of the cost report to DHS. Failure to complete and submit a cost report is grounds for vendor hold or contract termination. [If a facility chooses not to complete the cost report, the facility's foster care rate will remain the same as the rate specified on the contract form at the time the facility decides not to complete the cost report. The facility must provide written notice of this decision to DHR. These facilities will not receive rate increases until they complete a cost

report.

[(f) A facility that does not submit a cost report and does not provide written notification of the intent not to submit the report is subject to vendor hold of the facility's reimbursement.]

[(g)] DHS may exempt a facility from the cost report requirement if extenuating circumstances make it impossible or impractical for the facility to comply. Exemptions may be granted if the facility is newly opened and licensed, financial records are lost or destroyed, or the number of children placed by DHS is so small that the information in a cost report is insignificant to the facility's overall budget.

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

Issued in Austin, Texas, on March 16, 1988.

TRD-8802753

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: May 15, 1988

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



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# 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 within 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 19. EDUCATION Part II. Texas Education Agency

### Chapter 61. School Districts

#### Subchapter D. School District- Pupil Relationship

##### Attendance

###### 19 TAC §61.64

The Texas Education Agency has withdrawn the emergency effectiveness of the new §61.64, concerning the attendance. The text of the emergency new section appeared in the February 26, 1988, issue of the *Texas Register* (13 TexReg 944). The effective date of this withdrawal is April 5, 1988.

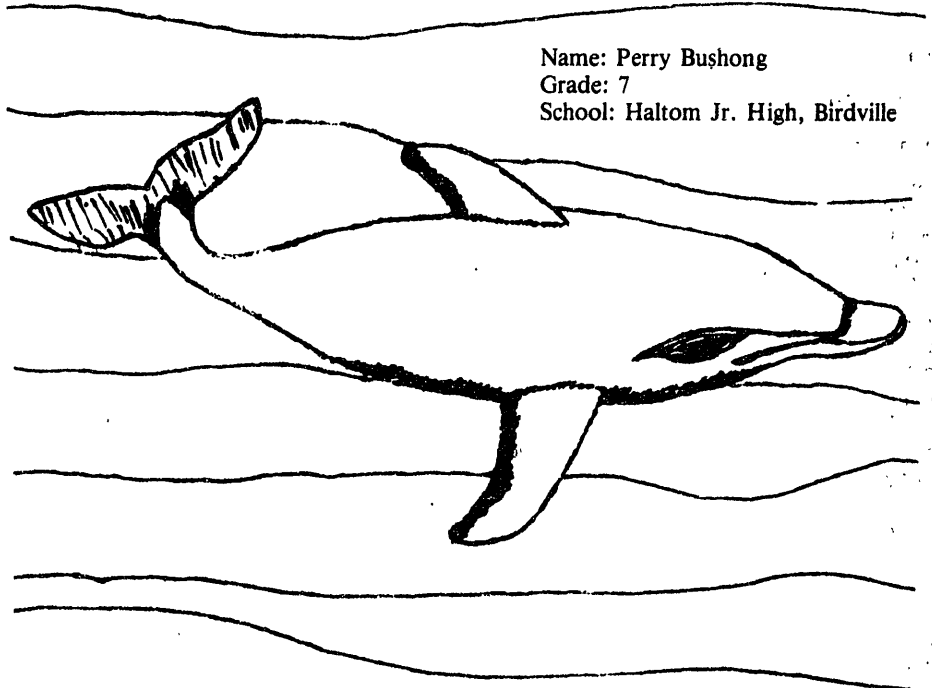
This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on March 15, 1988.

TRD-8802721

Filed: March 15, 1988

For further information, please call: (512) 463-9212



# Adopted Sections

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

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

## TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture Chapter 11. Herbicide Regulations

### • 4 TAC §§11.1, §11.2

The Texas Department of Agriculture adopts amendments to §11.1 and §11.2, without changes to the proposed text published in the February 9, 1988, issue of the *Texas Register* (13 TexReg 671).

The amendments are made upon the request of county officials for affected counties and after public hearings were held by the Texas Department of Agriculture, as required by Texas Agriculture Code, §75.018.

The amendment to §11.1 adds Bailey and Wilbarger Counties to the list of counties covered by the Texas Herbicide Law. The amendment to §11.2 deletes special provisions for Dickens County and adds special provisions for Bailey and Wilbarger Counties.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Agriculture Code, §75.018, which provides the Texas Department of Agriculture with the authority to promulgate rules, after notice and hearing, for administration of the Texas Herbicide Law.

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 March 14, 1988.

TRD-8802691

Dolores Alvarado Hibbs  
Director of Hearings  
Texas Department of  
Agriculture

Effective date: April 5, 1988

Proposal publication date: February 9, 1988

For further information, please call: (512) 463-7583



Name: Louis Doportio  
Grade: 9  
School: Haltom Jr. High, Birdville

## TITLE 10. COMMUNITY DEVELOPMENT Part IV. Texas Housing Agency

### Chapter 149. Low-Income Rental Housing Tax Credit Rules

#### • 10 TAC §§149.1-149.11

The Texas Housing Agency adopts the repeal of §§149.1-149.11, without changes to the proposed text published in the September 15, 1987, issue of the *Texas Register* (12 TexReg 3203).

The sections which concern low-income rental housing tax credits, are repealed in order to enact new sections conforming to the requirements of new regulations enacted under the Internal Revenue Code of 1986, §42, which provides for credits against federal income taxes for owners of qualified low-income rental housing projects.

The repeals will enable the agency to adopt new sections concerning low-income rental housing tax credits.

No comments were received concerning adoption of the repeals.

The repeals are adopted under the Texas Housing Agency Act, Texas Civil Statutes, Article 12691-6, which provide the Texas Housing Agency with the authority to make rules governing the administration of the agency and its programs.

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

Issued in Austin, Texas, on March 14, 1988.

TRD-8802653

Edwina Carrington  
Programs Manager  
Texas Housing Agency

Effective date: April 4, 1988

Proposal publication date: September 15, 1987

For further information, please call: (512) 474-2974

#### • 10 TAC §§149.1-149.12

The Texas Housing Agency adopts new §§149.1-149.12, without changes to the proposed text published in the September 15, 1987, issue of the *Texas Register* (12 TexReg 3203).

The Texas Housing Agency adopts new

§§149.1-149.12 to provide procedures for the allocation by the agency of certain low-income rental housing tax credits available under federal income tax laws to owners of qualified low-income rental housing projects.

The new sections replace repealed sections concerning low-income rental housing tax credits and conform to the requirements of the Internal Revenue Code of 1986, §42.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Housing Agency Act, Texas Civil Statutes, Article 12691-6, which provide the Texas Housing Agency with the authority to make rules governing the administration of the agency and its programs and Executive Order WPC-87-15 (August 4, 1987), which provides the Texas Housing Agency with the authority to make housing credit allocations for the State of Texas.

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 March 14, 1988.

TRD-8802652

Edwina Carrington  
Programs Manager  
Texas Housing Agency

Effective date: April 4, 1988

Proposal publication date: September 15, 1987

For further information, please call: (512) 474-2974

## TITLE 16. ECONOMIC REGULATION

### Part 1. Railroad Commission of Texas

#### Chapter 5. Transportation Division

##### Subchapter A. General Provisions

#### • 16 TAC §5.5

The Railroad Commission adopts an amendment to §5.5, without changes to the proposed text published in the December 25, 1987, issue of the *Texas Register* (12 TexReg 4881). The section concerns examination of facilities and records. Adopted subsection (b) provides that certain specified entities or other persons whomsoever shall permit any authorized representative of the commission, upon written authority of the attorney general or any district judge of a dis-

strict court properly having venue under the laws of this state, to inspect and examine specified records and make copies as may be necessary to show or tend to show that a violation of the Motor Carrier Act (Texas Civil Statutes, Article 911b, §1 et seq.) respecting safety, certificates, or rates, or any commission rule, regulation, or order respecting safety, certificates, or rates has occurred. The adopted section allows the commission to enforce certain terms of Senate Bill 595 and House Bill 908 which were passed by the 70th Legislature, 1987.

No public comments were received on this proposed amendment to §5.5, even though this amendment was published on December 25, 1987, in the *Texas Register* and the period for public comment was extended until March 7, 1988.

The amendment is adopted under Senate Bill 595, 70th Legislature, 1987, signed by the governor on June 16, 1987, which provides the commission with authority over motor carriers, shippers, or other persons whomsoever to promote, encourage, and ensure a safe, dependable, responsive, and adequate transportation system for the public as a whole and House Bill 908, 70th Legislature, 1987, signed by the governor on June 16, 1987, which provides the commission with the authority to prescribe and register liability insurance for commercial motor carriers of property.

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 March 14, 1988.

TRD-8802732 James E. (Jim) Nugent  
Chairman  
Railroad Commission of  
Texas

Effective date: April 6, 1988

Proposal publication date: December 25, 1987

For further information, please call: (512) 463-7149

◆ ◆ ◆  
**Subchapter U. General and  
Special Rules of Practice  
and Procedure**

• **16 TAC §5.463**

The Railroad Commission of Texas adopts §5.463, with changes to the proposed text published in the December 25, 1987, issue of the *Texas Register* (12 TexReg 4882). The adopted section implements portions of Senate Bill 595 and House Bill 908 which were passed by the 70th Legislature, 1987. The new section provides for the purpose and scope of the adopted rule; what the commission will consider as a violation and as a violator in assessing administrative penalties; that each act, omission or violation of statutes or any commission rule, regulation or order respecting safety, certificates, or rates shall subject the violator to an administrative penalty; what the commission may consider in exercising its discretion in determining the amount of the penalty; how administrative penalty proceedings shall be initiated before

the commission; that an administrative penalty complaint may be amended, dismissed without prejudice, or may be consolidated; how the commission shall give notice to the alleged violator; the answer which is required to be filed by the alleged violator; provides for pleadings, compromise settlement agreements, and final commission orders, post order requirements (including notice, payment of the administrative penalty into an escrow account, the posting of a supersedeas bond to perfect appeal or the filing of an affidavit of financial inability with a balance sheet and obtaining a waiver of the payment or posting); for refund of the escrowed administrative penalty and/or release of the supersedeas bond for an alleged violator who receives a favorable final decision, and provides for certain time limits.

On March 7, 1988, the commission received one public comment from Mike Cotton, wherein he suggested that the legislature did not intend for the \$10,000 penalty to be assessed on a per violation basis, but rather on a per complaint basis. The section as drafted would subject the violator to an administrative penalty of up to \$10,000 for each act, omission or violation of the statute or any Commission rule, regulation or order respecting safety, certificates, or rates. The section, as drafted, is the better interpretation of the legislative intent. The section should, therefore, be adopted as drafted.

The new section is adopted under Senate Bill 595, 70th Legislature, 1987, signed by the governor on June 16, 1987, which provides the commission with the authority to register commercial motor vehicles and to assess administrative penalties of up to \$10,000 for violation of any provision of the Motor Carrier Act (Texas Civil Statutes, Article 911b, §1 et seq.) and/or any commission rule, regulation, or order respecting safety, certificates or rates; and House Bill 908, 70th Legislature, 1987, signed by the governor on June 16, 1987, which provides the commission with the authority to prescribe and register liability insurance for commercial motor carriers of property.

**§5.463. Administrative Penalties Procedures.**

(a) Purpose and scope.

(1) The purpose of this section is to establish hearing and related procedures which the agency will follow when administrative penalties are sought against any motor carrier, shipper, or other person whomsoever under authority of:

(A) Texas Civil Statutes, Article 911b, §1, et seq; and

(B) Texas Civil Statutes, Article 6701d, §139.

(2) This section establishes procedures to interpret, clarify, and supplement requirements and procedures described in each of the Texas Civil Statutes listed in paragraph (1) of this subsection. The agency will follow the requirements and procedures in these statutes, the procedures in this section, and the provisions of the Administrative Procedure and Texas Regis-

ter Act (Texas Civil Statutes, Article 6252-13a, §1, et seq.). If there is any conflict between the statutes and this section, the statutory requirements and procedures shall be followed.

(3) Any references in this section to statute or statutes means a statute or the statutes described in paragraph (1) of this subsection or the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a, §1, et seq.).

(b) Assessing administrative penalties.

(1) The agency may assess administrative penalties of up to 10,000 for violation of any provision of Texas Civil Statutes, Article 911b, §1, et seq. respecting safety certificates, or rates or any agency rule, regulation, or order respecting safety, certificates, or rates, by any motor carrier, shipper, or other person whomsoever.

(2) For purposes of assessing administrative penalties, a violator is defined as any corporation, association, partnership, firm, individual, person, company, co-partnership, joint stock association, motor carrier, shipper, owner or operator of a motor vehicle, or other entity or person whomsoever and their lessees, receivers or trustees appointed by any court who commits an act, omission or violation of the statutes respecting safety, certificates or rates, or any agency rule, regulation, or order respecting safety, certificates, or rates.

(3) Each act, omission, or violation of the statutes respecting safety, certificates, or rates or any agency rule, regulation, or order respecting safety, certificates or rates shall subject the violator to an administrative penalty of up to \$10,000 per violation.

(4) The commission shall have discretion in determining the appropriate amount of the administrative penalty assessed for each violation. In determining the amount of the penalty, the commission may consider:

(A) the violator's history of previous violations;

(B) the seriousness of the violation or violations;

(C) any hazard to the health or safety of the public caused by the violation or violations;

(D) the economic benefit gained by the violation or violations;

(E) the amount necessary to deter future violations;

(F) the demonstrated good faith of the violator; and



(G) other circumstances as the public welfare may require or as the commission may determine.

(c) Initiation of administrative penalty proceedings before the agency.

(1) An administrative penalty proceeding may be initiated by any entity, carrier, shipper, association, the agency, other state or federal agencies, or by any person whomsoever or their legal representative. The complaint initiating an administrative penalty proceeding shall be filed with docket services of the Transportation Division and shall consist of a signed, written pleading containing the names of the complainant and the alleged violator or violators, a concise statement of the facts relied upon by the complainant, a prayer stating the type of relief, action, or order desired by the complainant, and any other matter required by statute.

(2) Before an administrative penalty complaint filed by anyone other than the agency can proceed to hearing a copy of said complaint shall be delivered to the director of the Transportation Division. Said director or its designate shall have 60 days to intervene in support of said complaint, intervene in opposition to said complaint, dismiss said complaint or issue a letter advising the complainant that the Transportation Division has taken no position in the proceeding. In the event said director or its designate takes no action after 60 days from the date of delivery of the complaint on said director, the party who filed the administrative penalty complaint may proceed to hearing on the complaint. Nothing contained herein shall preclude the agency from intervening as otherwise allowed under commission rules.

(3) Administrative penalty complaints initiated by the annoy or other state agencies shall be initially prepared by the director of the Transportation Division or its designate. The administrative penalty complaint prepared pursuant to this subparagraph shall be filed by the director of the Transportation Division or its designate.

(4) An administrative penalty complaint may be amended any time prior to the hearing as authorized by commission rules. An administrative penalty complaint may be jointly filed or consolidated with a show cause complaint seeking cancellation of a certificate, permit, or registration. An administrative penalty proceeding shall be cumulative of all other remedies available under Texas Civil Statutes, Article 911b, §1 *et seq.* Nothing herein shall be construed so as to preclude the agency or any other party, person or entity from seeking any remedy in law or equity not specifically mentioned in this section.

(5) An administrative penalty complaint may be dismissed by the party

who filed same without prejudice to refiling upon the same facts by compliance with §5.426 of this title (relating to Motions for Postponement, Continuance, Withdrawal, or Dismissal of Applications or Other Matters Before the Agency).

(d) Notice of administrative penalty proceeding. The agency shall notify the alleged violator by remitting a copy of the administrative penalty complaint by certified mail, return receipt requested, to the last known business or resident address of the alleged violator. In the event the alleged violator cannot be notified by certified mail, the agency may give notice as provided in the Texas Rules of Civil Procedure.

(e) Answer.

(1) The alleged violator shall submit to the agency a written answer not later than 30 days after the date on which notice of the administrative penalty complaint is mailed, served, or published. Such answer may contain one or more of the following;

(A) a general denial of one or more of the facts alleged in the administrative penalty complaint;

(B) a response to facts alleged in the administrative penalty complaint which are not denied;

(C) a response which affirmatively alleges claims, defenses, or mitigating factor and the reasoning in support thereof; or

(D) any other facts desired to be alleged or shown.

(2) Supplemental pleadings shall be in writing and may be filed by the alleged violator, with the director of the Transportation Division and distributed to all interested parties, under a certificate of service at any time until five days before the hearing date. Supplemental pleadings filed five days or less prior to the hearing date may be allowed by the hearings examiner upon a showing of good cause and undue surprise does not disadvantage other parties of record.

(3) If the alleged violator fails to timely file an answer as required by this subsection, or fails to appear at the hearing, the commission may enter an order which assesses an administrative penalty as provided by law for the violations alleged in the administrative penalty complaint, or the agency may proceed with a hearing to receive evidence on the alleged violations and the commission may assess administrative penalties as provided by law.

(f) Settlement Orders.

(1) An alleged violator may enter into a compromise settlement agreement

and final order which does not constitute an admission by the alleged violator of any alleged violations contained in the railroad commission's complaint. The compromise settlement agreement and final order shall be signed by the alleged violator and all parties to the preceding, and shall reflect that the alleged violator consents to the assessment of a specific administrative penalty. Such settlement of the matters raised in the administrative penalty complaint and the proposed agreed order and recommended penalty is subject to the approval of the commission.

(2) If the alleged violator and all the parties to the proceeding and the director of the Transportation Division or its designate enter into a compromise settlement agreement and final order, the settlement shall include a recommended penalty to the commission. Simultaneously therewith to the filing of a compromise settlement agreement and final order, the alleged violator shall remit to the railroad commission a cashier's check or money order payable to the "State Treasurer of Texas" and shall be credited to the "Motor Carrier Act Enforcement Fund". These funds shall be held in an escrow account until appropriately allocated upon final order. The agreed order shall be submitted to the commission by the general counsel or its designate. If the commission approves the agreed order and the recommended administrative penalty and said order becomes final, the administrative penalty proceeding shall cease. If the commission decides not to approve the agreed order and does not accept the recommended administrative penalty, the staff shall set the administrative penalty complaint for hearing.

(g) Final commission order with no administrative penalty assessed. In the event the commission enters an order which becomes final wherein the commission does not assess an administrative penalty, the commission shall return any portion of the administrative penalty which might have been received by the commission with a certificate of its return.

(h) Post order requirements.

(1) Issuance of order. On the issuance of an order finding that a violation or violations have occurred, the commission shall inform the violator or his legal representative as soon as practicable of the rendition of the order of the amount of the penalty, if any. The commission shall inform the violator by remitting a copy of the order by certified mail, return receipt requested, at the last known business or resident address of the violator, or by publication one time in the Transportation Division bi-monthly notice of hearing.

(2) Payment of administrative penalty. Within the 30 day period immediately following the day on which the decision or order is final as provided in the Administrative Procedure and Texas Regis-

ter Act, §16(c) (Texas Civil Statutes, Article 6252-13a, §1 *et seq.*), the violator who has not previously paid all the administrative penalty ordered to be paid shall pay the penalty in full by remitting a cashier's check or money order to the Railroad Commission payable to the "State Treasurer of Texas" and shall be credited to the "Motor Carrier Act Enforcement Fund".

(3) Judicial review and failure to perfect appeal.

(A) If the violator against whom a penalty is assessed seeks judicial review as authorized by the statute, the violator shall forward to the Railroad Commission a cashier's check or money order payable to the "State Treasurer of Texas" for placement in an escrow account. As an alternative to paying the penalty into an escrow account, the violator may post with the agency a supersedeas bond approved by the commission and payable to the "State Treasurer of Texas" for the amount of the penalty, which will remain in effect until all judicial review of the order or decision is final. The violator shall either remit the escrow payment or post an approved supersedeas bond with the agency within the 30 day period immediately following the day on which the commission's order is rendered. If the violator is unable financially to comply with the requirements of this subparagraph, the violator seeking judicial review shall file with the general counsel of the Railroad Commission of Texas an affidavit stating his financial inability and shall attach thereto a balance sheet describing, with particularity, the violator's assets and liabilities. If the general counsel of the Railroad Commission of Texas concludes that the balance sheet and affidavit sufficiently show the violator's financial inability to comply with this subparagraph, the commission may waive payment of the administrative penalty into an escrow account or the filing of a supersedeas bond, and so notify the presiding hearings examiner and the parties of record in writing.

(B) Failure to pay the penalty in full or failure to forward the amount of the penalty for placement in an escrow account, failure to post a supersedeas bond within the 30 day period immediately following the day on which the agency's order is final or failure to obtain a waiver of such requirements, shall result in a waiver of all legal rights to judicial review. In the event the violator fails to take any of the actions in paragraphs (2) or (3)(A) of this subsection, the general counsel or its designate, upon approval of the commission, may forward the matter to the attorney general for enforcement.

(4) Unfavorable appellate determination. In the event the final appellate determination is against the alleged violator (the person assessed a penalty):

(A) the violator shall forward to the Railroad Commission a cashier's check or money order payable to the "State Treasurer of Texas" for any amount owing on the administrative penalties assessed and not held in escrow which shall be credited to the "Motor Carrier Act Enforcement Fund"; or

(B) the surety or principal of the supersedeas bond shall forward to the railroad commission a check or money order payable to the "State Treasurer of Texas" for any amount owing on the administrative penalties assessed which shall be credited to the "Motor Carrier Act Enforcement Fund".

(5) Favorable appellate determination. In the event that the final appellate determination is in favor of the person assessed, he or she shall be absolved of all liability for payment of the amount of the penalty. The commission shall return the amount of the penalty assessed and paid with a certificate of its return or shall release the supersedeas bond by commission order, as shall be required under the circumstances.

(6) Form of supersedeas bond or escrow agreement. Any supersedeas bond or escrow agreement filed with the agency for the purpose of appeal of the final decision of the commission shall be drawn according to a form approved by the Railroad Commission of Texas and on file in docket services of the Transportation Division. Upon request, the Office of General Counsel shall certify the receipt of the funds or the supersedeas bond by the agency for purposes of appeal.

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 March 14, 1988.

TRD-8802733 James E. Nugent  
Chairman  
Railroad Commission of  
Texas

Effective date: April 5, 1988

Proposal publication date: December 25, 1987

For further information, please call: (512) 463-7149

◆ ◆ ◆  
**Subchapter BB. Miscellaneous Provisions for Commercial Motor Vehicles**

• 16 TAC §5.701

The Railroad Commission of Texas adopts new §5.701, without changes to the proposed text published in the December 25, 1987, issue of the *Texas Register* (12 TexReg 4885). The new section, in newly established subchapter BB, concerns the definition of violations of an owner or operator of a commer-

cial motor vehicle. The new section implements certain terms of Senate Bill 595 and House Bill 908, which were passed by the 70th Legislature, 1987. The new section states the legislative directive that the Railroad Commission promote, encourage, and ensure a safe, dependable, responsive, and adequate transportation system for the public as a whole. The new section also provides that each act, omission, or violation of the Motor Carrier Act, Texas Civil Statutes, Article 911b, §1 *et seq.* and/or Texas Civil Statutes, Article 6701d, §139, respecting safety, certificates, or rates or of any Railroad Commission rule, regulation, or order respecting safety, certificates, or rates shall be a violation subject to administrative penalties for certain omissions of an owner or operator of a commercial motor vehicle.

No public comments were received on this proposed new section even though this new section was published on December 25, 1987, in the *Texas Register*, and the period for public comment was extended until March 7, 1988.

The new section is adopted under Senate Bill 595, 70th Legislature, 1987, signed by the governor on June 16, 1987, which provides the commission with the authority to register commercial motor vehicles and to assess administrative penalties of up to \$10,000 for violation of any provision of the Motor Carrier Act (Texas Civil Statutes, Article 911b, §1 *et seq.*) and/or any commission rule, regulation, or order respecting safety, certificates, or rates, and House Bill 908, 70th Legislature, 1987, signed by the governor on June 16, 1987, which provides the commission with the authority to prescribe and register liability insurance for commercial motor carriers of property.

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 March 14, 1988.

TRD-8802734 James E. (Jim) Nugent  
Chairman  
Railroad Commission of  
Texas

Effective date: April 6, 1988

Proposal publication date: December 25, 1987

For further information, please call: (512) 463-7149

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**TITLE 19. EDUCATION**  
**Part II. Texas Education Agency**

**Chapter 41. State Commissioner of Education**

**Subchapter B. Duties and Responsibilities**

• 19 TAC §41.22

The Texas Education Agency adopts new §41.22, with changes to the proposed text published in the January 22, 1988, issue of the *Texas Register* (13 TexReg 387). The purpose of the section is to enable school

districts to explore innovative strategies for educational improvement, as well as to enable them to address emergency or hardship situations. The section provides that, upon written request of a school district superintendent, the commissioner of education is authorized to waive one or more regulations of the State Board of Education for that school district when, in the commissioner's judgment, granting the waiver would enable the district to improve its educational program. Statutory requirements may not be waived. All waivers requested and all waivers granted must be reported to the State Board of Education. The board will collectively review the waivers annually. Changes include the addition of a requirement that waivers be for a specified time period and editorial changes in subsection (e).

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Education Code, §11.24(b), which gives the State Board of Education authority to make rules for carrying out the duties placed on it or on the Central Education Agency by the legislature.

**§41.22. Commissioner of Education's Discretionary Authority to Waive State Board of Education Rules Under Certain Circumstances.**

(a) Upon written request of a school district superintendent, the commissioner of education is authorized to waive, for a specified period of time, one or more regulations of the State Board of Education for that school district when, in the judgment of the commissioner, granting the waiver would enable the district to improve its educational program.

(b) The district's request must state the nature of the waiver requested, the reasons for the request, and the anticipated educational consequences of the waiver.

(c) It is the intent of this section that the commissioner's waiver authority may be used to enable districts to explore innovative strategies for educational improvement, as well as to enable them to address emergency or hardship situations.

(d) Waivers under this section are entirely within the discretion of the commissioner of education. This section in no way creates a right to a waiver on the part of any school district. Statutory requirements may not be waived.

(e) Waivers requested and those granted under this section shall be reported to the State Board of Education at the next meeting of the board and shall be collectively reviewed by the board annually.

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 March 15, 1988.

TRD-8802724 W. N. Kirby  
Commissioner of Education

Effective date: April 5, 1988

Proposal publication date: January 22, 1988

For further information, please call: (512) 463-9212

## Chapter 61. School Districts

### Subchapter D. School District-Pupil Relationship

#### Attendance

##### • 19 TAC §61.64

The Texas Education Agency adopts new §61.64, without changes to the proposed text published in the January 29, 1988, issue of the *Texas Register* (13 TexReg 529). The new section concerns dropout reporting. House Bill 1010, 70th Legislature, required the Central Education Agency to develop a system for school districts to collect data on student dropouts. The agency is also required to determine for each grade level, grades seven-12, the number of student dropouts each school year and the ethnic origin of these students for each campus, district, county, and region. There are no changes from the text as proposed; however, in paragraph (1), the word "transfer" should be corrected to read "transfers".

The new section defines a dropout for data collection purposes and authorizes the commissioner of education to develop data standards for purposes of uniform and meaningful dropout data collection. School districts must submit data on dropouts in accordance with the section and the data standards developed by the commissioner of education.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Education Code, §11.205(b), which directs the agency to develop a system for school districts to collect data on student dropouts and §11.205(d), which requires the agency to report dropout information to the governor, lieutenant governor, and speaker of the house.

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 March 15, 1988.

TRD-8802720 W. N. Kirby  
Commissioner of Education

Effective date: April 5, 1988

Proposal publication date: January 29, 1988

For further information, please call: (512) 463-9212

## Subchapter D. School District-Pupil Relationship

#### Health and Safety

##### • 19 TAC §61.92

The Texas Education Agency adopts new §61.92, concerning missing child prevention

and identification program: fingerprints and photographs, without changes to the proposed text published in the January 22, 1988, issue of the *Texas Register* (13 TexReg 387).

House Bill 538, 70th Legislature, provided for local school districts to participate in missing child prevention and identification programs. The new section provides for disposition of photographs and fingerprints taken as part of the missing child prevention and identification program. Photographs of students taken as part of the program shall be retained by the school for three years or until the photograph is replaced by a more recent one, whichever is earlier. If a student withdraws from a school district, all photographs and fingerprints taken as part of the program shall be returned to the parent or guardian of the student. If such return is not possible, the materials shall be destroyed by the school district.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Education Code, §21.779, which directs the Central Education Agency to adopt rules relating to the destruction of fingerprints and photographs made as part of a missing child prevention and identification program.

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

Issued in Austin, Texas, on March 15, 1988.

TRD-8802723 W. N. Kirby  
Commissioner of Education

Effective date: April 5, 1988

Proposal publication date: January 22, 1988

For further information, please call: (512) 463-9212

## Chapter 149. Education Personnel Development

### Subchapter B. Inservice Education

##### • 19 TAC §149.24

The Texas Education Agency adopts an amendment to §149.24, with changes to the proposed text published in the September 29, 1987, issue of the *Texas Register* (12 TexReg 3461). The section implements the requirements of the Texas Education Code, §13.353 for inservice training in management skills for school district administrators. The amendment provides for a core curriculum, covering skills needed by all administrators, and skills that are job specific.

During the 1987-1988 school year, each school district must appoint a district advisory committee to start development of the evaluation of district needs. During the 1988-1989 school year, each district must identify and conduct a pilot program suitable for individual and district needs. Each district must implement a management and leadership development plan in the 1989-1990 school year. Each district must document the completion and effectiveness of administrator training. Each school district's evaluation process will

result in a growth plan for each administrator which will serve as the basis for continued education.

Changes from the proposal include the deletion of the requirement for state approval of each inservice program, although the requirement for approval of each sponsoring agency has been retained. Verification of completion of training has been made the responsibility of the sponsoring agency. Editorial changes have been made for clarity throughout.

Several individuals commented in favor of the amendment. Two individuals expressed concern that a written test would be required at the end of the training. In response, the agency notes that requirement for a written test would be at the discretion of the sponsor of each training program. There is no requirement for a written test in the section.

The amendment is adopted under the Texas Education Code, §13.353, which requires each school district to offer inservice training in management skills for district administrators, in accordance with State Board of Education standards.

*§149.24. Standards for Management and Leadership Development for Administrators.*

(a) General provisions. The training required in accordance with the Texas Education Code, §13.353. (relating to Management Skills and Practices) applies to school district administrators in positions listed in the Texas Education Code, §16.056(b), starting with supervisor (I) through superintendent-districts with 50,000 or more average daily attendance (ADA).

(1) Continuing inservice. After fulfilling the initial required training for instructional leadership, and the Texas teacher appraisal system, each school administrator shall participate annually in continuing education in management and leadership development as defined in the Texas Education Code, §13.353(c).

(2) Program approval.

(A) Each sponsoring agency shall be approved by the Central Education Agency to deliver continuing education in the areas of administrative leadership and management. Program delivery dates shall be submitted to the Central Education Agency 30 days prior to delivery.

(B) Approved sponsoring agencies shall have an evaluation design that includes the assessment of knowledge and skills of the Participants. An expected level of performance will be identified by the school district or sponsoring agency. Approved sponsors will provide verification of completion for those meeting program expectations. Sponsors will be responsible for providing the Central Education Agency, when requested, with documentation from the practitioners that the program content is relevant and related to job-specific skills or this core content.

(C) Approved sponsoring agencies will be reviewed by the Central Education Agency at least every five years with compliance audits scheduled at any time. All sponsoring agencies will maintain approved status unless notified by the agency

(3) Training institutions and instructors.

(A) Approved programs for district administrators in leadership and management professional development must be sponsored by an education service center, college or university, appropriate professional organization, school district, approved private organization, or the Central Education Agency.

(B) Program instructors must have documented training and experience in the subject area in which they are delivering instruction.

(C) Institutions sponsoring programs will verify and document the qualifications of program instructors.

(D) Each institution providing training in general management, instructional leadership and teacher evaluation must designate a member of its training staff to attend a Central Education Agency sponsored workshop on content, standards, and techniques.

(4) Verification. The sponsoring agency will provide verification of completion to the individual participant and to the participant's employing school district.

(b) Continuing professional development programs are required in the following areas.

(1) General management training.

(A) General management training will be based on a core curriculum and job-specific content approved by the State Board of Education. The core curriculum shall include the following domains:

- (i) administrator skills;
- (ii) conceptual skills;
- (iii) interpersonal skills;
- (iv) resource skills.

(B) The curriculum will be revised and updated periodically.

(C) The general management advisory committee will recommend exemplary assessment instruments. Each school district, with the help of the education service center as needed, will assess its district

and individual administrator training needs. The initial implementation plan in general management training will begin with the 1987-1988 school year.

(D) The district's plans for management and leadership development should reflect the State Board of Education's direction for academic improvement.

(E) During the 1987-1988 school year each school district, with the assistance of the education service center, if needed, will appoint a district advisory committee to initiate the process of developing or selecting an assessment process for evaluating the district's needs based on the core and job-specific content requirements established by the State Board of Education.

(F) During the 1988-1989 school year, the district's advisory committee will review and validate a process for assessing district needs. The Central Education Agency will provide technical assistance to the districts as needed. Each district will interpret assessment results and plan for training accordingly. The assessment results and development plans shall be kept on file for monitoring purposes by the Central Education Agency.

(G) During the 1988-1989 school year each school district, with the assistance of the education service center, if needed, will identify and conduct a pilot program commensurate with individual and district needs and consistent with the district's long-range plan.

(H) Each school district will document the completion and effectiveness of administrator development based on the State Board of Education core and job-specific requirements, as identified through the Central Education Agency's effective school correlates.

(I) Effective with the 1989-1990 school year each school district will implement an approved program of management and leadership development to help ensure effective implementation of the State Board of Education's long-range plan.

(J) Each school district's evaluation process will result in growth plans for each administrator which will serve as the basis for continuing education for the individual.

(2) Instructional leadership development.

(A) Content of programs for instructional leadership training. Development programs for instructional leadership must address the following content areas:

(i) knowledge and skills related to learners and learning;

(ii) knowledge and skills related to teaching;

(iii) knowledge and skills related to managing and supervising teaching and learning;

(iv) knowledge, skills, and attitudes related to climate for instruction; and

(v) knowledge and skills related to diverse presentation models.

(B) Length of program. The initial professional development program for administrators in instructional leadership shall consist of not less than 36 hours.

(C) Sequence. All school district administrators must have completed initial training in instructional leadership prior to attending programs for teacher appraiser certification.

(D) Primary position with fiscal responsibility. Personnel who hold the primary position charged with fiscal responsibility for a district's instructional resources must complete the initial instructional leadership development requirement. Thereafter, continuing education for these administrators in leadership and management may be job-specific.

(3) Teacher evaluation training.

(A) As an exception to subsection (a) of this section, teacher evaluation training is required of superintendents and of those school district administrators who serve as appraisers of teacher performance. Superintendents who previously have been certified for teacher evaluation and who will not be conducting appraisals during the school year are required to complete only that portion of appraisal training that focuses on changes in the system.

(B) Initial training requirements relating to teacher evaluation will be met through the training and certification program for appraisers of teacher performance as required in accordance with the Texas Education Code, §13.302(c).

(C) Continuing requirements for certification as an appraiser of teacher performance will be satisfied by maintenance of proficiency for appraisers or by completion of appraisal update training.

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 March 15, 1988.

TRD-8802722 W. N. Kirby

Commissioner of Education

Effective date: April 5, 1988

Proposal publication date: September 29, 1987

For further information, please call: (512) 463-9212

◆ ◆ ◆  
**TITLE 22. EXAMINING  
BOARDS**

**Part XXII. Texas State  
Board of Public  
Accountancy**

**Chapter 505. The Board**

• **22 TAC §505.10**

The Texas State Board of Public Accountancy adopts new §505.10, without changes to the proposed text published in the December 25, 1987, issue of the *Texas Register* (12 TexReg 4903).

The new section is necessary to set forth guidelines of areas of responsibility in regard to the composition and appointment of various committees of the board.

The new section will state proper guidelines, areas of responsibility, and composition of various appointed board committees.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 41a-1, §61, which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to board committees.

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 March 14, 1988.

TRD-8802648 Bob E. Bradley  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: April 4, 1988

Proposal publication date: December 25, 1987

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

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**Chapter 511. Certification as  
CPA**

**Certification**

• **22 TAC §511.164**

The Texas State Board of Public Accountancy adopts an amendment to §511.164, without changes to the proposed text published in the December 25, 1987, issue of the *Texas Register* (12 TexReg 4904).

The amendment allows practitioners of public accountancy to practice under their legal names, less abbreviations.

The amendment allows the applicant to opt not to use words or abbreviations such as "Jr." or "III" on his certificate.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6a, which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct regarding an applicant's use of legal name for certification as public accountants.

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 March 14, 1988.

TRD-8802647 Bob E. Bradley  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: April 4, 1988

Proposal publication date: December 25, 1987

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

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**TITLE 40. SOCIAL  
SERVICES AND  
ASSISTANCE**

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

**Chapter 15. Medicaid  
Eligibility**

**Subchapter GG. Resources for  
Individuals Related to the  
SSI Program**

• **40 TAC §15.3226**

The Texas Department of Human Services (DHS) adopts an amendment to §15.3226, concerning SSI and RSDI retroactive lump sum payments, in its Medicaid Eligibility chapter. The amendment is adopted to comply with provisions of the Omnibus Budget Reconciliation Act of 1987. SSI and RSDI retroactive lump sum payments received during the period from October 1, 1987, through September 30, 1989, are excluded from countable resources for nine months after the month of receipt. The amendment is adopted effective January 1, 1988, to comply with federal requirements.

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

*§15.3226. SSI and RSDI Retroactive Lump Sum Payments.*

(a) Except as indicated in this subsection, the caseworker excludes SSI and RSDI retroactive lump sum payments from countable resources for six months after the month of receipt. If these payments are received during the period from October 1,

1987, through September 30, 1989, they are excludable for nine months after the month of receipt. The exclusion applies only to the payment. If the payment is spent, the exclusion no longer applies to items purchased with the payment unless those items are otherwise excludable. This is true even if the six-month period has not expired.

(b) (No change.)

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

Issued in Austin, Texas, on March 16, 1988.

TRD-8802740

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: January 1, 1988

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

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**Subchapter II. Budgeting for  
Individuals Related to the  
SSI Program**

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• 40 TAC §15.3410

The Texas Department of Human Services (DHS) adopts an amendment to §15.3410, concerning definitions of budgeting in vendor living arrangements, in its Medicaid Eligibility chapter. The policy for couple cases has changed so that, although both spouses in a couples case must live in the same Title XIX long-term care facility, they are no longer required to live in the same room of that facility. Until November 10, 1986, they were required to share the same room. The amendment is adopted effective November 10, 1986, to comply with federal requirements.

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

§15.3410. *Definitions of Budgeting in Vendor Living Arrangements.*

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

(d) The caseworker prepares a budget for a couple if an individual and eligible spouse:

(1) are both MAO applicants/recipients with the same type program; and

(2) live in the same Title XIX long-term care facility. Until November 10, 1986, both spouses were required to share the same room of a facility to be eligible as a couple case. For a couple case, the caseworker considers the needs and incomes of both spouses.

(e) If one member of an eligible couple is discharged from a Title XIX long-term care facility, for a reason other than hospitalization or a therapeutic home visit, and the spouse stays in the facility, the

caseworker no longer budgets them as a couple. The caseworker redetermines eligibility on an individual basis and adjusts applied income for the individual remaining in the facility effective the first day of the month after the spouse's discharge from the facility.

(f) If a couple becomes ineligible because of an increase in income received by one member of the couple, the spouse with lower income may reapply for assistance as an individual with an ineligible spouse (companion case). This is true even if the couple shares the same room in the facility. Deeming from the ineligible spouse does not apply, because the department does not consider the couple to be living in the same household while in a long-term care facility.

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 March 16, 1988.

TRD-8802741

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: November 10, 1986

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

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**Chapter 29. Purchased Health  
Services**

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**Subchapter G. Hospital  
Services**

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• 40 TAC §29.603

The Texas Department of Human Services adopts amendments to §§29.603, 29.1112, and 29.1125. The amendment to §29.1125 is adopted with changes to the proposed text published in the October 23, 1987, issue of the *Texas Register* (12 TexReg 3910). The amendments to §§29.603 and 29.1112 are adopted without changes and will not be republished.

The amendments are justified because they facilitate the receipt of a covered organ transplant procedure.

The amendments will function by specifying that the Texas Medical Assistance Program will cover solid organ procurement. The amendments also will function by ensuring reasonable access to medically necessary transplant services. The amendments specify that the department may cover additional days of inpatient hospital care and physician services during that care. The amendments also contain an exception to the \$50,000 limit on hospitalization related services.

During the 30-day public comment period, the department received comments from a representative of the University of Nebraska Medical Center. The following is a summary of the comments and the department's response.

The commenter stated that it appeared that the costs of transporting and maintaining the

organ before transplant would not be covered. In response, the department has revised the text of subsection (a)(1) of §29.1125 to list the services associated with solid organ procurement. These services are harvesting/acquiring, processing, preserving, storing, distributing, and tissue typing.

The commenter stated that the department should cover 120 days of inpatient hospital services beginning with the first day of the transplant instead of the 30 days as proposed. The department disagrees with this comment. The amendments permit coverage of a maximum of 30 days of inpatient hospital services during a Title XIX spell of illness beginning with the actual first day of the transplant. This coverage does not include any covered inpatient hospital days (up to 30) provided during the Title XIX spell of illness before the actual first day of the transplant. In essence, a patient may have already received 30 days of covered inpatient hospital services before the transplant and may receive a maximum of 30 additional days beginning with the day of the transplant. The department believes that this coverage is reasonable and adequate and ensures access to medically necessary transplant services.

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

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 March 16, 1988.

TRD-8802751

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: April 13, 1988

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

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**Subchapter L. General  
Administration**

◆ ◆ ◆  
• 40 TAC §29.1112, §29.1125

The following amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.  
§29.1125. *Organ Transplants.*

(a) Subject to the specifications, conditions, and limitations established by the department, organ transplant services are covered as follows.

(1) (No change.)

(2) Coverage includes solid organ procurement (including acquiring/harvesting, processing, preserving, storing, distributing, and tissue typing). If a hospital obtains a solid organ outside of the hospital, the hospital must obtain it from an organ procurement organization designated by the secretary of the Department of Health and Human Services. Coverage does

not include donor expenses or services or nonsolid organ procurement, such as a cornea or bone marrow.

(3) Coverage of each type of solid organ transplants is limited to an initial transplant and one subsequent retransplant because of rejection as a life-time benefit.

(b) As specified by the department or its designee, prior authorization is required for certain organ transplant services. If a covered organ transplant has been prior authorized as medically necessary by the department or its designee because of an emergent, life-threatening situation, a maximum of 30 days of inpatient hospital services during a Title XIX spell of illness may be covered beginning with the actual first day of the transplant. This coverage is in addition to covered inpatient hospital days provided before the actual first day of the transplant. This 30-day period is considered a separate inpatient hospital admission for reimbursement purposes. Physician services that the department or its designee determines to be reasonable and medically necessary are also covered during the 30-day period.

(c) If expenditures for a single inpatient hospital admission exceed the \$50,000 limit on hospitalization-related services specified in §29.1112 of this title (relating to Exclusions and Limitations), expenditures for that admission are excluded in calculating expenditures toward the limit. This policy only applies to an inpatient hospital admission to perform a covered organ transplant procedure determined to be medically necessary because of an emergent, life-threatening situation.

(d) To be reimbursed for transplant services, a hospital must meet the requirements contained in the Social Security Act §1138. To be reimbursed for a heart or liver transplant, a hospital must also be approved by the department or its designee as a heart or liver transplant facility.

(e) For purposes of this section, the term "organ" means a human heart, kidney, liver, cornea, or bone marrow, and any other human organ or tissue specified by the department.

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 March 16, 1988.

TRD-8802752 Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: April 13, 1988

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



### Subchapter O. Dentists' Services

#### • 40 TAC §29.1401

The Texas Department of Human Services (DHS) adopts the repeal of §29.1401 and an amendment to §29.1402, concerning dentists' services, in its Purchased Health Services rule chapter. The repeal and amendment are adopted effective January 1, 1988, to comply with the Omnibus Budget Reconciliation Act of 1987, §4103, (Public Law 100-203). Section 4103 requires state Medicaid programs to reimburse dentists for services performed within their scope of practice, as defined by state law, if the services are also covered when they are performed by a physician (M.D. or D.O.). The amendment to §29.1402 describes the expanded coverage of dentists' services under the Texas Medical Assistance Program.

The adoption is justified to comply with federal requirements.

The adoption will function as the department's rule concerning reimbursement for services that dentists perform.

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

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 March 16, 1988.

TRD-8802749 Marlin W. Johnston  
Texas Department of  
Human Services

Effective date: January 1, 1988

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



#### • 40 TAC §29.1402

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

*§29.1402. Authorized Dentists' Services.* Dentists' services provided by a doctor of dentistry (D.D.S., D.M.D., or D.D.M.), as defined in §29.1001 of this chapter (relating to General Definitions for Purchased Health Services), are covered by the Texas Medical Assistance Program if the services:

(1) are within the dentist's scope of practice, as defined by state law; and

(2) would be covered by the Texas Medical Assistance Program when they are provided by a licensed physician (M.D. or D.O.).

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 March 16, 1988.

TRD-8802750

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: January 1, 1988

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



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

#### In-Home and Family Support Project

##### • 40 TAC §§48.2701-48.2711

The Texas Department of Human Services (TDHS) adopts new §§48.2701-48.2711, concerning the in-home and family support project, in its Community Care for Aged and Disabled Chapter. Sections 48.2701, 48.2702, 48.2704, 48.2706, 48.2707, 48.2710, and 48.2711 are adopted with changes to the proposed text published in the February 5, 1988, issue of the *Texas Register* (13 TexReg 591). Sections 48.2703, 48.2705, 48.2708, and 48.2709 are adopted without changes and will not be republished.

The new sections are justified so that persons with developmental disabilities and their families can receive services that help to maintain or encourage community living arrangements.

The new sections will function by establishing the eligibility criteria and requirements for an in-home and family support project.

During the public comment period, the department received comments from three groups (the Texas Planning Council for Developmental Disabilities, the TDHS Region 09 Advisory Committee for Services to Persons with Disabilities, and the Southwest Neuropsychiatric Institute) and from one individual. The following is a summary of the comments and the department's response to each comment.

One commenter recommended that the department establish a panel of five to seven people who represent consumers, service providers, and the general public to review project applications and determine who should be served. The commenter was concerned that, if clients are selected for benefits on a first-come, first-served basis, funds might be used for persons with less critical needs. The department disagrees. Clients will be categorized by age group to facilitate data collection on as many different client types as possible. Although the project will provide services to the target population, the evaluation is intended to obtain information about the needs for and cost of services for the different age categories. Qualified department staff will determine client eligibility. The department will also evaluate the screening instrument for developmental disability eligibility and its effectiveness in client assessment. Use of the recommended panel would preclude examination of this important project component.

One commenter recommended that, if funds are not used in one age category, the funds

be transferred to another category. This transfer would allow more applicants to benefit from the project. The department disagrees. The department anticipates that funding for all age categories will be used. If one or more categories does not reach capacity, however, the department will consider transferring funds to other categories.

One commenter recommended that the department gather data on the number of people who are eligible for the project but are not served. The department will be collecting data on all inquiries received by project staff, regardless of eligibility status, for project evaluation. Although no clarification regarding this issue has been made to the rule text, the information is included in the project procedures guide.

One commenter asked for clarification about the age of onset. The commenter asked whether a client would be eligible, regardless of his age, as long as documentation was provided stating that his disability occurred before age 22. The department has clarified §48.2704(c) to specify that a physician's statement or required records are used as verification of the date of onset.

One commenter asked whether architectural modifications would require two or more bids. Section 48.2705(d) of the proposed rules specifies that the applicant household must obtain three bids for architectural modifications.

Several commenters asked for clarification regarding program eligibility for persons with mental retardation or mental illness. The questions were as follows. What diagnostic criteria will be used to differentiate between mentally ill and mentally retarded individuals and the developmentally disabled population to be served by this project? If an individual has a diagnosis other than mentally ill, but has a history of receiving psychiatric care, will he be eligible for participation in the project? If an individual is eligible for care under the Texas Department of Mental Health and Mental Retardation (TDMHMR) guidelines but is either not currently being served or has never been served through TDMHMR, is he eligible for participation in the TDHS project? Which project will serve autistic persons and persons with dual diagnoses? To clarify program restrictions, the department has added subsection (i) to §48.2707. The new subsection clarifies that the following diagnostic criteria will be used in the project: the Mental Health Code for mental illness; the Mentally Retarded Persons' Act, for mental retardation; and the Diagnostic and Statistical Manual III, for autism and other mental diseases. Applicants with these diagnoses and children age three and younger who meet the definition of early childhood intervention are not eligible for services under this project. These persons will be served by the Texas Department of Mental Health and Retardation. Persons with one or more of the diagnoses specified in §48.2707(i) are not eligible for project participation; they will be more appropriately served by TDMHMR.

One commenter asked for clarification about what is allowed under the program restriction described in §48.2707(a), which specifies that the service subsidy and capital expenditure cash grant must be used only for goods, supplies, or services that directly relate to the care of the person with a developmental dis-

ability. No change to the text has been made based on this comment. Because individual client needs will vary so widely, the project coordinator will review each request for services and supplies and consider the needs of the individual client. The department has changed §48.2711 to clarify that the client must complete a new client agreement at each recertification, and has made several other minor editorial changes for clarity.

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

**§48.2701. Definitions.** The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

**Applicant/client**—An individual evaluated as having a developmental disability or disabilities as specified in Public Law (PL) 100-146, the Developmental Disabilities Act, and who is either a member of a household or is living independently.

**Household/family**—A group of two or more people listed on the Internal Revenue Service (IRS) personal income tax return form, either:

(A) jointly, in the case of spouses; or

(B) as individuals included as dependents on the personal income tax return form. If the person with the developmental disability is a newborn or a new household member by court order, and therefore would not have been considered a household member on the previous year's IRS Form 1040, he is considered a member of the household/family.

**Informant**—An individual who is assisting an adult applicant/client in applying for IH/FSP services.

**Living independently**—An adult with a developmental disability who lives alone or lives with others who file the IRS personal income tax return form under "single status" or "married filing separately."

**Responsible party**—An individual who is either:

(A) the client's natural or surrogate parent or legal guardian appointed by the court and who is applying on behalf of the client; or

(B) an adult 18 or older who is applying for services on his own behalf.

**§48.2702. Application.**

(a) To be considered for eligibility for the IH/FSP, an applicant must complete the application for eligibility.

(b) Upon receipt of the application, the DHS project coordinator (PC) places the applicant in one of the following four categories:

(1) Category I—birth through age 2;

(2) Category II—age 3 through age 17;

(3) Category III—age 18 or older and living alone; or

(4) Category IV—age 18 or older and living with spouse, relatives, or friends.

(c) If a slot in the appropriate age category is available, the applicant receives an appointment letter/notice of waiting list status scheduling an appointment.

(d) If no slot is available, the applicant's name and relevant data are recorded on the IH/FSP waiting list and the applicant is advised via the appointment letter/notice of waiting list status form about his status on the waiting list.

(1) Should a slot become available within 90 days of receipt of the application, an appointment is scheduled and the applicant receives notification of the appointment.

(2) If after 90 days a slot is not available, the applicant is denied but his name is retained on the waiting list. The applicant is entitled to written notification of the denial. The applicant is notified that, should his status on the waiting list change, he will be contacted and he may reapply.

(e) If an applicant cannot keep a scheduled appointment, he must notify the IH/FSP office. If he fails to notify the office, his name is placed at the end of the IH/FSP waiting list. The applicant is entitled to receive notification about his new status on the waiting list and about the reason for the change.

(f) Persons on the waiting list are entitled to be contacted annually during the two years of the project to determine their continued interest in the project.

(g) An applicant is entitled to a decision on his application within 30 calendar days from the date the application is received by DHS.

(h) An applicant is entitled to written notification about the decision regarding his eligibility for the IH/FSP. Should an applicant be ineligible or have his benefits reduced, the notification letter specifies the reason for the denial or reduction of benefits.

**§48.2704. Functional Eligibility.**

(a) Applicants must meet the federal definition of developmental disabilities specified in Public Law (P.L.) 100-146, Developmental Disabilities Act.

(b) The applicant or responsible party must sign the IH/FSP developmental disabilities screening instrument.

(c) The applicant must give permission to obtain verification of his developmental disability through either a signed physician's statement or clinical, educational, medical, diagnostic, and evaluation records that include the following:



- (1) diagnosis;
- (2) date of onset; and
- (3) prognosis.

**§48.2706. Allowable IH/FSP Services.** The following IH/FSP services may be purchased with a service subsidy:

- (1) the purchase or lease of special equipment or architectural modifications of a home, if these purchases or leases improve or facilitate the care, treatment, therapy, or general living conditions of a person with a developmental disability;
- (2) medical, surgical, therapeutic, diagnostic, and other health services related to a person's disability;
- (3) counseling or training programs that help a household to provide proper care for a disabled family member, help a person with a developmental disability in an independent living situation, or provide for the special needs of the family or person with a developmental disability;
- (4) attendant care, home health aide services, homemaker services, and chore services that provide assistance with training, routine body functions, dressing, preparing and consuming food, and ambulating;
- (5) respite assistance for a family;
- (6) transportation services for the person with a developmental disability;
- (7) transportation, room, and board costs incurred by a person with a developmental disability or his family during evaluation or treatment that has been pre-approved by DHS. Estimates of lodging, meals, and mileage costs, limited to \$.21 per mile, must be submitted to the PC for prior approval; and
- (8) other services prior approved by DHS.

**§48.2707. Program Restrictions.**

(a) The IH/FSP service subsidy and capital expenditure cash grant must be used only for goods, supplies, or services that specifically and directly relate to the care of the person with a developmental disability.

(b) To participate in the IH/FSP, an applicant or his responsible party must agree in writing to provide receipts for all services, goods, or supplies purchased with project funds and the amount of copayment, if applicable. If an applicant refuses to sign the agreement, his application for project services is denied.

(c) The applicant must agree to submit receipts for service subsidy funds, and the copayment amount, if any, at intervals designated by DHS during the 12 month certification period. A one-time submittal of receipts is required for the capital expenditure grant. If the applicant fails to furnish the required receipts, he is denied eligibility and faces possible criminal prosecution.

cution.

(d) Applicants must be residents of Bexar County and must live in a community-based setting, or they must live in a community living arrangement within 30 days from the date they apply for project services.

(e) An applicant must be either a United States (U.S.) citizen or an alien legally admitted for permanent residence.

(f) An applicant who received a cash grant for capital expenditures during the first year of the IH/FSP may not receive funds for this purpose during the project's second year, even if he is determined eligible for the second year. In this event, the applicant is eligible for only the service subsidy during the second year of eligibility.

(g) Architectural modifications to leased or rented property are subsidized only if the landlord or owner submits written approval for the modifications to the department.

(h) Applicants must not receive services from both the TDHS IH/FSP and the TDMHMR IH/FSP.

(i) Individuals with mental illness according to the Mental Health Code, mental retardation according to the Mentally Retarded Persons' Act, autism or other mental disease(s) as defined by the Diagnostic and Statistical Manual III, and children who meet the definition of early childhood intervention are not eligible for services in the TDHS In-home and Family Support Project.

**§48.2710. Right to Appeal.**

(a) Applicants have the right to appeal if they have been denied eligibility or have had their benefits reduced, or for any other adverse action.

(b) An applicant must exercise his right to appeal within 90 calendar days from the date he receives written notification about his denial or reduction of benefits.

(c) If a client is already receiving IH/FSP services and his benefits are denied or reduced, he must submit to the PC a request for a hearing within 10 calendar days from the date he receives the notification letter, to continue receiving services while the appeal is pending. He may be able to continue receiving the subsidy until the hearing is completed if the request is submitted within the 10-day time frame. If the results of the appeal agree with the denial or reduction of benefits, the client may be asked to pay back the amount of the subsidy provided during the appeal period.

**§48.2711. Recertification.**

(a) Recertification occurs after 12 months of continuous program eligibility. To be recertified, the client must:

- (1) complete another application

for eligibility;

(2) furnish current income verification; and

(3) complete a new client agreement.

(b) The applicant is entitled to receive a notification letter within 30 calendar days of furnishing the required information, informing him about his continued eligibility or ineligibility.

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 March 14, 1988.

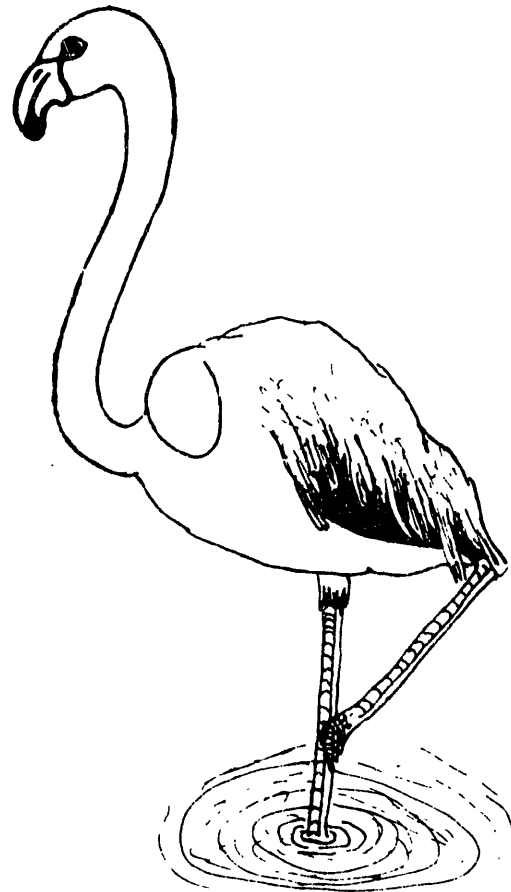
TRD-8802656

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: April 4, 1988

Proposal publication date: February 5, 1988

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



Name: Chong Yang  
Grade: 9  
School: Haltom Jr. High, Birdville

# 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 billeting board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

## Texas Department of Agriculture

**Tuesday, March 29, 1988, 1:30 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 review alleged violation of Texas Agriculture Code §103.001 by Hunt Oil Company doing business as Plantation Produce Company as petitioned by Lucas and Green Farms.

Contact: Margo P. Wilton, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: March 15, 1988, 1:38 p.m.

TRD-8802711

## Texas Air Control Board

**Friday, March 25, 1988, 8:30 a.m.** The Texas Air Control Board will meet at 6330 Highway 290 East, Austin. Times, rooms, and agendas follow.

**8:30 a.m.** The Monitoring and Research Committees will meet in Room 332 to report on the results of the Gulf Coast Community Exposure Study and review the status of research on visible pollution in the Dallas area.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

Filed: March 15, 1988, 1:30 p.m.

TRD-8802703

**9 a.m.** The Budget and Finance Committee will meet in Room 332 to discuss proposed budget submission for fiscal years 1990 and 1991, rebudget lists, and executive order concerning an internal audit program.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

Filed: March 15, 1988, 1:30 p.m.

TRD-8802704

**9:45 a.m.** The Fee Review Committee will review and discuss proposed permit continuance fee system.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

Filed: March 15, 1988, 1:30 p.m.

TRD-8802702

**10 a.m.** The Regulation Development Committee will meet in Room 332 to review and consider for adoption proposed revision to regulation VI for permit continuance fees, public hearing of new procedural rule relating to agency guidelines for the receipt and processing of gifts and grants, and reassignment of six counties to adjacent air quality control regions.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

Filed: March 15, 1988, 1:30 p.m.

TRD-8802701

**10:30 a.m.** The board will meet in the TACB Auditorium, to approve minutes of the February 12, 1988, meeting; hear public testimony, reports, and enforcement report; consider agreed enforcement orders and proposed regulation; hear report on Dallas Brown Cloud Study; and consider new business.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

Filed: March 15, 1988, 1:30 p.m.

TRD-8802705

## Texas Alcoholic Beverage Commission

**Monday, March 28, 1988, 1:30 p.m.** The Texas Alcoholic Beverage Commission will meet in Room 320, 1600 West 38th Street, Austin. According to the agenda, the commission will approve minutes of the January 25, 1988, meeting; hear administrator's and staff's report of agency activity; and approve affidavits of destruction of tested al-

coholic beverages.

Contact: W.S. McBeath, P.O. Box 13127, Austin, Texas 78711, (512) 458-2500.

Filed: March 15, 1988, 12:53 p.m.

TRD-8802712

## Banking Section of the Finance Commission

**Friday, March 25, 1988, 10 a.m.** The Banking Section of the Finance Commission will meet at 2601 North Lamar Boulevard, Austin. According to the agenda summary, the commission will approve minutes of the previous meeting; form bank agency activity; consider rules; review department operations, consider legislative discussion and update; and approve of date of next meeting. The commission will also meet in executive session to discuss litigation and personnel matters.

Contact: Jorge A. Gutierrez, 2601 North Lamar Boulevard, Austin, Texas 78705-4924, (512) 479-1200.

Filed: March 16, 1988, 2:19 p.m.

TRD-8802764

## State Bar of Texas

**Thursday, March 17, 1988, 9 a.m.** The State Bar of Texas submitted an emergency revised agenda for a meeting held in Room 206-207, Texas Law Center, 1414 Colorado Street, Austin. According to the agenda, the bar considered position on issue of attorney general representing the bar. The emergency status was necessary because the issue arose on March 16, 1988, and was unknown to the bar prior to that date. Action had to be taken prior to next regularly scheduled Executive Committee meeting.

Contact: Paula Welch, 1414 Colorado Street, Austin, Texas 78701, (512) 463-1451.

Filed: March 16, 1988, 3:14 p.m.

TRD-8802771

## Texas Department of Commerce

Monday, March 28, 1988, 8:30 a.m. The Strategic Economic Policy Commission of the Texas Department of Commerce will meet at One Bell Plaza, 208 South Akard, Dallas. According to the agenda summary, the commission will hear reports from the Strength and Weaknesses Task Force and the Economic Trends Task Force and organize the next set of task forces for the remainder of the commission's work

Contact: J. William Lauderback, Texas Department of Commerce.

Filed: March 16, 1988, 1:26 p.m.

TRD-8802762

## Texas Commission for the Deaf

Friday, March 25, 1988, 7 p.m. The Board for Evaluation of Interpreters of the Texas Commission for the Deaf will meet in the Conference Room, 510 South Congress Avenue, Austin. According to the agenda, the board will approve minutes of the previous meeting; consider plan presentations for BEI/TCD workshop and election of BEI chairperson; and chairperson's report. The board will also meet in executive session to recommend board positions, direct consultants, and review certificate recommendations, evaluations, and revocations.

Contact: Larry D. Evans, 510 South Congress Avenue, Suite 300, Austin, Texas 78704, (512) 469-9891.

Filed: March 15, 1988, 1:37 p.m.

TRD-8802709

## Advisory Commission on State Emergency Communications

Tuesday, March 29, 1988, 9 a.m. The Advisory Commission on State Emergency Communications will meet in Suite 1500, 919 Congress Avenue, Austin. Times and agendas follow.

9 a.m. The Finance Committee will consider a proposal from treasurers office related to the collection of the 9-1-1 surcharge, develop the definition for equivalent local access line and continue to discuss financing issues relating to the 9-1-1 service fees and surcharges, and new business.

Contact: Mary Boyd, P.O. Box 13206, Austin, Texas 78711, (512) 463-1812.

Filed: March 16, 1988, 1:26 p.m.

TRD-8802761

10 a.m. The Finance and Regional Plan Committee will identify, discuss, and de-

velop guidelines for the submission of interim regional plans by the council of governments; and consider the 9-1-1 service fee and its establishment and implementation related to interim plans and new business.

Contact: Mary Boyd, P.O. Box 13206, Austin, Texas 78711, (512) 463-1812.

Filed: March 16, 1988, 1:26 p.m.

TRD-8802760

## Texas Employment Commission

Wednesday, March 23, 1988, 8:30 a.m. The Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will approve minutes to fund interior renovation at the San Antonio agency-owned building; consider internal procedures of commission appeals, tax liability cases and higher level appeals in unemployment compensation cases listed on commission Docket 12, and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: March 15, 3:24 p.m.

TRD-8802714

## State Finance Commission

Friday, March 25, 1988, 2 p.m. The State Finance Commission will meet at the State Banking Department, 2601 North Lamar Boulevard, Austin. According to the agenda summary, the commission will approve minutes of the previous meeting; hear reports from the Consumer Credit Department, Savings and Loan Department, and Banking Department concerning departmental operations and legislative proposals and update. The commission will also meet in executive session to consider personnel matters, pending litigation, and supervisory actions.

Contact: Jorge A. Gutierrez, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, (512) 479-1200.

Filed: March 16, 1988, 2:20 p.m.

TRD-8802765

## Texas Statewide Health Coordinating Council

Monday, March 28, 1988, 4 p.m. The Special Bylaws Committee of the Texas Statewide Health Coordinating Council will meet in Room T-507, 1100 West 49th Street, Austin. According to the agenda summary, the committee will review statewide health coordinating council rules of procedures and bylaws.

Contact: Carol S. Daniels, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: March 16, 1988, 9:10 a.m.

TRD-8802735

## Health and Human Services Coordinating Council

Wednesday, March 23, 1988, 10:30 a.m. The Children and Youth Services State Coordinating Committee of the Health and Human Services Coordinating Council will meet in the Boardroom, 1100 West 49th Street, Austin. According to the agenda, the committee will approve minutes of the previous meeting; consider old business; hear reports of the Tracking Subcommittee, Joint Funding Subcommittee, Local Level Cooperative Subcommittee, and Needs and Resources Subcommittee; consider new business and selection of next meeting site.

Contact: Patricia Thomas, 311-A East 14th Street, Austin, Texas, (512) 463-2195.

Filed: March 15, 1988, 10:58 a.m.

TRD-8802690

## State Board of Insurance

The State Board of Insurance will meet at 1110 San Jacinto Boulevard, Austin. Dates, times, rooms, and agendas follow.

Wednesday, March 23, 1988, 10 a.m. The board will meet in Room 414, to consider extension of emergency effectiveness of 28 TAC §3.311 and final action on 28 TAC §3.3308 and 28 TAC §§19.1101-19.1110; consider board orders on several matters; consider personnel matters concerning Fire Marshal, Statistical and Rate Development, Research and Information Services, and Commissioner; and litigation matters concerning commissioner.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 15, 1988, 3:55 p.m.

TRD-8802725

## Texas State Board of Medical Examiners

The Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. Dates, times, and agendas follow.

Friday, March 25, 1988, 8 a.m. The Reciprocity Committee will review licensure applicants. The committee will also meet in executive session under authority of Texas Civil Statutes, Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1), and Attorney General Opinion

1974 H-484.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: March 15, 1988, 1:32 p.m.

TRD-8802695

Friday, March 25, 1988, 4 p.m. The Examination Committee will review licensure applicants. The committee will also meet in executive session under authority of Texas Civil Statutes, Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1), and Attorney General Opinion 1974 H-484.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: March 15, 1988, 1:32 p.m.

TRD-8802696

The Examination Committee submitted a revised agenda to discuss raising passing score on exam.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78752, (12) 452-1078.

Filed: March 17, 1988, 9:15 a.m.

TRD-8802777

Friday, March 25, 1988, 5 p.m. The Finance Committee will discuss financial report and budget. The committee will also meet in executive session under authority of Texas Civil Statutes, Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1), and Attorney General Opinion 1974 H-484.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: March 15, 1988, 1:32 p.m.

TRD-8802697

Friday, March 25, 1988, 6 p.m. The Standing Orders Committee will consider Medicare coverage of optometric services/whether certain acts constitute practice of medicine or practice of optometry. The committee will also meet in executive session under authority of Texas Civil Statutes, Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1), and Attorney General Opinion 1974 H-484.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: March 15, 1988, 1:32 p.m.

TRD-8802698

Saturday, March 26, 1988, 8 a.m. The Ad Hoc Committee on Senate Bill 1439 will discuss opinion request on Medical Radiologic Certification Act, TSBME rules on medical radiologic technologists. The committee will also meet in executive session under authority of Texas Civil Statutes, Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1), and Attorney General Opinion 1974 H-484.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: March 15, 1988, 1:32 p.m.

TRD-8802699

Saturday, March 26, 1988, 8:30 a.m. The board will consider proposed rules Chapters 161 and 179, probationary appearances, and appearances requesting licensure status changes; approve minutes of the previous meeting; consider motion to rescind; hear report of committees, executive director's report, and public communication. The committee will also meet in executive session under authority of Texas Civil Statutes, Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1), and Attorney General Opinion 1974 H-484.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: March 15, 1988, 1:32 p.m.

TRD-8802700

### Special Committee on Organization of State Agencies

Thursday, March 24, 1988, 9 a.m. The Subcommittee on Natural Resources, Recreation, and Cultural Affairs of the Special Committee on Organization of State Agencies will meet in Room 104, John H. Reagan Building, Austin. According to the agenda summary, the subcommittee will hear testimony from representatives of Texas state agencies involved with natural resources, environmental, and cultural affairs activities regarding the agencies' organizational structures, budgets, and methods of operations. The subcommittee may discuss and consider potential alternative organization structures for carrying out some or all of these functions. The agencies requested to testify have been notified of the meeting by the committee staff.

Contact: Jim Reed, P.O. Box 13206, Austin, Texas 78711, (512) 463-1812.

Filed: March 16, 1988, 1:27 p.m.

TRD-8802759

### State Property Tax Board

Friday, March 25, 1988, 9 a.m. The State Property Tax Board will meet in the Agency Conference Room, 9501 North I-35, Austin. According to the agenda summary, the board will approve minutes of the October 30, 1987, meeting; consider manual for the appraisal of agricultural lands, various proposed rules, rule amendments, forms, section of the general appraisal manual dealing with House Bill 2445, audit recommendation related to 1986 school district taxable value findings, and budget amendment.

Contact: Ron Patterson, 9501 North I-35, Austin, Texas, (512) 834-4800.

Filed: March 16, 1988, 9:50 a.m.

TRD-8802739

### Texas Department of Public Safety

Thursday, March 24, 1988, 10 a.m. The Public Safety Commission of the Texas Department of Public Safety will meet at 5805 North Lamar Boulevard, Austin. According to the agenda, the commission will approve minutes of the previous meeting; consider budget matters, personnel matters, pending and contemplated litigation, real estate matters, and miscellaneous and other unfinished business.

Contact: Leo E. Gossett, 5805 North Lamar Boulevard, Austin, Texas, (512) 465-2000, ext. 3700.

Filed: March 16, 1988, 9:43 a.m.

TRD-8802737

### Public Utility Commission of Texas

The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Dates, times, and agendas follow.

Wednesday, March 16, 1988, 9 a.m. The Hearings Division submitted an emergency revised agenda to consider Docket 7790-Petition of the general counsel for an evidentiary proceeding to determine market dominance among interexchange telecommunications carriers appeal of examiner's order 16. The emergency status was necessary because of statutory deadlines.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 15, 1988, 2:52 p.m.

TRD-8802713

Monday, April 4, 1988, 10 a.m. The Hearings Division will consider Docket 7971-Complaint of Intellicall, Inc. against General Telephone Company of the Southwest, Inc.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 16, 1988, 2:01 p.m.

Tuesday, April 12, 1988, 10 a.m. The Hearings Division will consider Dockets 6668 and 6753-Inquiry of the commission into the prudence and efficiency of the planning and management of the South Texas Nuclear Project and inquiry into the treatment of the proceeds from the South Texas Nuclear Project.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 16, 1988, 2:01 p.m.

## Texas Renabilitation Commission

Friday, March 25, 1988, 10 a.m. The Planning and Evaluation Committee of the Texas Planning Council for Developmental Disabilities will meet in Room 302, 118 East Riverside Drive, Austin. According to the agenda, the committee will approve of summary report; consider council planning process, state plan amendments, and funding activity recommendations.

Contact: Roger Webb, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8867.

Filed: March 15, 1988, 1:38 p.m.

TRD-8802708

Saturday-Sunday, March 26-27, 1988, 9:30 a.m. The commission will meet in the Capitol Ballroom, Radisson Hotel, 700 San Jacinto, Austin. According to the agenda summary, the board will approve minutes of February 18 and 19, 1988, meeting; consider legislative appropriation request, and continuation of legislative appropriation request. The commission will also meet in executive session.

Contact: Charles Schiesser, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8124.

Filed: March 16, 1988, 9:11 a.m.

TRD-8802731

## Texas Water Commission

The Texas Water Commission will meet in Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Dates, times, rooms, and agendas follow.

Wednesday, March 30, 1988, 2 p.m. The commission will meet in Room 118, to consider approving proposed rule 307.1-307.10 concerning Texas surface water quality standards as a permanent rule of the commission and recommending submission to the Environmental Protection Agency.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: March 16, 1988, 11:47 a.m.

TRD-8802758

Friday, April 8, 1988, 10 a.m. The Office of Hearings Examiner will meet in Room 512, to consider Docket 7471-R-Request for a rate increase filed by W & W Water Company of Canyon Lake, to be effective in Comal and Blanco Counties.

Contact: Marcella Roberts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 16, 1988, 11:46 a.m.

TRD-8802757

Wednesday, April 20, 1988, 10 a.m. The commission will meet in Room 118, to consider petition for creation of Bastrop County Municipal Utility District, #1, containing 753.72 acres of land.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: March 15, 1988, 11:32 a.m.

TRD-8802692

Wednesday, April 20, 1988, 10 a.m. The commission will meet in Room 118, to consider petition for creation of Bastrop County Municipal Utility District, #2, containing 860.27 acres of land.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: March 15, 1988, 11:32 a.m.

TRD-8802693

Friday, April 22, 1988, 10 a.m. The Office of Hearings Examiner will meet in Room 618, to consider Docket 7444-G-Application for rate increase by Jenks Branch Water Supply.

Contact: Cynthia G. Hayes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 16, 1988, 11:48 a.m.

TRD-8802756

## Texas Water Development Board

Thursday, March 17, 1988, 9:30 a.m. The Texas Water Development Board submitted a revised emergency agenda for a meeting held in Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the board considered selection of official statement printer for the proposed issue of \$50,000,000 Series 1988-A and \$20,000,000 Series 1988-B bonds. The emergency status was necessary because the board needed to act immediately to include both bond issues in the request for printer's for the official statement. Failure to include this item would cause the State of Texas to incur additional, unnecessary, and wasteful expenses and would be a detriment to the public welfare.

Contact: M. Reginald Arnold II, P.O. Box 13231, Austin, Texas, (512) 463-7847.

TRD-8802706

Thursday, March 17, 1988, 11 a.m. The Texas Water Development Board met in emergency session in Room 118, Stephen

F. Austin Building, Austin. According to the agenda, the board considered an extension of the loan commitment for the water project of the Angelina-Neches River Authority, \$320,000, from March 18, 1988, to September 16, 1988. The emergency status was necessary because the funding authorized expired on March 18, 1988, and without the funding there is a threat to the public welfare of the communities served by the River Authority.

Contact: M. Reginald Arnold, II, P.O. Box 13231, Austin, Texas, (512) 463-7847.

Filed: March 17, 1988, 8:17 a.m.

TRD-8802773

## Regional Meetings

### Meetings Filed March 15, 1988

The Central Counties Center for MHMR Services, Board of Trustees, will meet at 304 South 22nd Street, Temple, on March 22, 1988, at 7:45 p.m. Information may be obtained from Michael K. Muegge, 304 South 22nd Street, Temple, Texas 76503.

The Central Texas Council of Governments, Central Texas Private Industry Council, will meet at 302 East Central, Belton, on March 24, 1988, at 10 a.m. Information may be obtained from A. C. Johnson, P.O. Box 729, Belton, Texas 76513, (817) 939-3771.

The Heart of Texas Private Industry Council, met at 320 Franklin Avenue, Waco, on March 21, 1988, 5:30 p.m. Information may be obtained from Arlene D. Schmitt, 320 Franklin Avenue, Waco, Texas 76701, (817) 756-6631.

The Jack County Appraisal District, Board of Directors, will meet in the Los Creek Office Building, 216-D South Main, Jacksboro, on March 22, 1988, at 7 p.m. Information may be obtained from Doris G. Ray or Linda Williams, 216-D South Main, Jacksboro, Texas 76056, (817) 567-6301.

The Swisher County Appraisal District, met at 130 North Armstrong, Tulia, on March 17, 1988, at 7:30 p.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118.

TRD-882710

### Meetings Filed March 16, 1988

The Austin-Travis County MHMR, Board of Trustees, will meet in Suite 440, 611 South Congress Avenue, Austin, on March 22, at noon. Information may be obtained from Sharon Taylor, 611 South Congress Avenue, Austin, Texas 78704, (512) 447-4141.

The Brazos Higher Education Authority, Inc., Board of Directors, will meet at the City Club, 801 Washington Avenue, Waco, on March 23, 1988, at 11 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0913.

The Brazos Student Finance Corporation, Board of Directors, will meet at the City Club, 801 Washington Avenue, Waco, on March 23, 1988, at 10 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0913.

The Brown County Appraisal District, Board of Review, will meet at 403 Fisk Avenue, Brownwood, on March 24, 1988, at 9 a.m. Information may be obtained from Robert Young, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676.

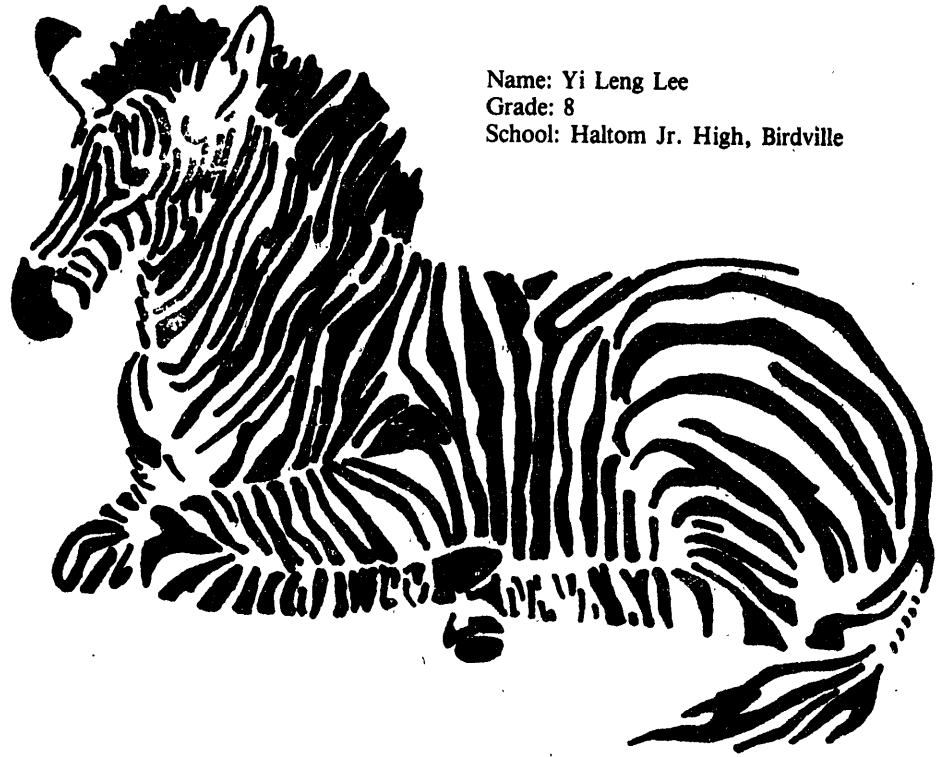
The Gregg Appraisal District, Board of Directors, will meet at 2010 Gilmer Road, Longview, on March 23, 1988, at 4:30 p.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (214) 759-0015.

The Liberty County Central Appraisal District, Board of Directors, will meet at 1820 Sam Houston, Liberty, on March 23, 1988, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575.

The Pecan Valley Mental Health and Mental Retardation, Board of Trustees, will meet at 104 Charles Street, Granbury, on March 23, 1988, at 8 a.m. Information may be obtained from Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806.

The Texas Political Subdivision WC Joint Insurance Fund, Board of Trustees, met at the Texas Employers Building, 1301 Young, Dallas, on March 21, 1988, at 10 a.m. Information may be obtained from Thomas P. Vick, P.O. Box 2759, Dallas, Texas 75221, (214) 760-6184.

TRD-8802654



Name: Yi Leng Lee  
Grade: 8  
School: Haltom Jr. High, Birdville

# In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## Texas Air Control Board

### Correction of Error

The Texas Air Control Board submitted a proposed amendment which contained errors as published by the office of the Texas Register in the March 11, 1988, issue of the *Texas Register* (13 TexReg 1218).

In §116.10, the entire subparagraph (a)(7)(B) is proposed for deletion. Therefore, a closing bracket should not follow the letter (B), as published.

For chapter 116, the earliest possible date of adoption is misstated, it should read: "Proposed date of adoption: June 17, 1988."



### Notice of Applications for Construction Permits

Notice is given by the Texas Air Control Board (TACB) of applications for construction permits received during the period of February 1, to March 9, 1988.

Information relative to the applications listed below, including projected emissions and the opportunity to comment or to request a hearing, may be obtained by contacting the office of the executive director at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

A copy of all material submitted by the applicant is available for public inspection at the central office of the TACB at the address stated previously and at the regional office for the air quality control region within which the proposed facility will be located.

Conoco Inc., Forsan; Kloch Central Battery Flare; Forsan, Howard County; 18642; new

SPG Exploration Inc., Ozona; Gas Sweetening Plant; Ozona, Crockett County; 18643; new

Cabot Corporation, Pampa; Carbon Black Manufacturing; Pampa, Gray County; 18646; new

Gulf Chemical and Metallurgical, Freeport; Ammonia Recovery System; Freeport, Brazoria County; 18647; new

University of Texas Medical Branch, Galveston; Redbag Incinerator; Galveston, Galveston County; 18655; new

Merichem Company, Houston; Nitrogen Base Extraction Unit; Houston, Harris County; 18656; new

Soltex Polymer Corporation, Deer Park; Polyethylene Unit Mod.; Deer Park, Harris County; 18664; new

Allied Signal, Orange; Polyethylene Wax Unit; Orange, Orange County; 18675; new

Denovo Oil and Gas, Dilley; Gas Sweetening Plant; Dilley, Frio County; 18676; new

Thornhill Investment Corporation, Dallas; Spray Painting

Facility; Dallas, Dallas County; 18677; new

Goodson Polymers, Jacintoport; Polystyrene Manufacturing Unit; Jacintoport, Harris County; 18678; new

Wynn-Kiki, Inc., Grand Prairie; Auto A/C Parts Manufacturing; Grand Prairie, Dallas County; 18688; new

G. S. Roofing, Ennis; Glass Materials Manufacturing; Ennis, Ellis County; 18694; new

Exxon Company U.S.A., Norias; Gas Producing; Norias, Kennedy County; 18695; new

Issued in Austin, Texas, on March 11, 1988.

TRD-8802707 Bill Ehret  
Director of Hearing  
Texas Air Control Board

Filed: March 15, 1988

For further information, please call (512) 451-5711, ext. 354.



## Texas Board of Architectural Examiners

### Correction of Error

The Texas Board of Architectural Examiners submitted sections which contained errors as published by the office of the Texas Register in the March 4, 1988, issue of the *Texas Register* (13 TexReg 1138).

In §1.5, the last term defined was omitted. It should read: "TBAE-Texas Board of Architectural Examiners."

In subchapter D, the proposal publication date should read: "December 8, 1987."

In §1.175 (13 TexReg 11), the effective date should read: "March 17, 1988."



## Texas Department of Banking

### Notice of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On March 14, 1988, the banking commissioner received an application to acquire control of the Chasewood Bank, Houston, by Don E. Hand, Spring.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas, on March 14, 1988.

TRD-8802672 William F. Aldridge  
Director of Corporate Activities  
Texas Department of Banking

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**Office of Consumer Credit  
Commissioner**

**Notice of Rate Ceilings**

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

<u>Type of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer<sup>(3)</sup>/Agri- cultural/Commercial<sup>(4)</sup> thru \$250,000</u>	<u>Commercial<sup>(4)</sup> over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	03/21/88-03/27/88	18.00%	18.00%
Monthly Rate <sup>(1)</sup> Art. 1.04(c)	03/01/88-03/31/88	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a)(2)	04/01/88-06/30/88	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11 <sup>(3)</sup>	04/01/88-06/30/88	18.00%	N.A.
Lender Credit Card Quar- terly Rate - Art. 15.02(d) <sup>(3)</sup>	04/01/88-06/30/88	14.00%	N.A.
Standard Annual Rate - Art. 1.04(a)(2) <sup>(2)</sup>	04/01/88-06/30/88	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11 <sup>(3)</sup>	04/01/88-06/30/88	18.00%	N.A.
Annual Rate Applicable to Pre-July 1, 1983 Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from:	04/01/88-06/30/88	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	03/01/88-03/31/88	10.00%	10.00%

- (1) For variable rate commercial transactions only.
- (2) Only for open-end credit as defined in Art. 5069-1.01(f) V.T.C.S.
- (3) Credit for personal, family or household use.
- (4) Credit for business, commercial, investment or other similar purpose.



Issued in Austin, Texas, on March 14, 1988.

TRD-8802736 Al Endsley  
Consumer Credit Commissioner

Filed: March 16, 1988

For further information, please call (512) 479-1280

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**Governor's Office of Budget and  
Planning**

**Meeting of the Transportation Energy  
Advisory Panel**

The second meeting of the Transportation Energy Advisory Panel will be held on March 31, 1988, from 10 a.m. to 4 p.m., at the Governor's Management Center, Room 412, Sam Houston Office Building, 201 East 14th Street, Austin. The panel is being convened to provide expert advice to the Governor's Office concerning transportation programs which might be funded by oil overcharge refunds in accordance with Senate Bill 33, §27 and §28, 70th Legislature, Second Called Session, 1987. The panel will discuss the results of a rating of transportation program concepts, identify areas of agreement, and develop a schedule for completion of assigned tasks. For further information, contact Jim McIntyre at the Energy Management Center, (512) 463-1931.

Issued in Austin, Texas, on March 15, 1988.

TRD-8802671 Robert E. Davis  
Director  
Governor's Office of Budget and Planning

Filed: March 15, 1988, 8:39 a.m.

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

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**Texas Department of Health  
Cancellation of Hearing**

The Federal Drug Enforcement Administration (DEA) published a final rule in the Federal Register, January 27, 1988, which deletes the controlled substance methylenedioxy methamphetamine (also known as MDMA, MDM, Ecstasy) from Schedule I of the schedules of controlled substances in 21 United States Code §812. The action was taken under authority of the Federal Controlled Substances Act (21 United States Code, §811) and was done in response to a court action which overruled the scheduling of the drug by the DEA. The Texas Controlled Substances Act, Texas Civil Statutes, Article 4476-15, §2.09, paragraph (e) requires the commissioner of health to similarly delete a substance from the Schedules of the Texas Controlled Substances Act after the expiration of 30 days of the DEA's action unless the commissioner of health objects to the deletion. The commissioner published in the *Texas Register* on February 23, 1988, a notice of his objection to the removal of methylenedioxy methamphetamine from Schedule I of the Texas Controlled Substances Act. The notice provided for a public hearing on March 25, 1988, beginning at 9 a.m., in the Texas Department of Health Auditorium, 1100 West 49th Street, Austin, Texas 78756, concerning the objection. Following a remand from the United States Court of Appeals for the First Circuit, the DEA published a final rule in the Federal Register, February 22, 1988, once again placing the substance methylenedioxy methamphetamine into Schedule I of the federal schedules of controlled substances. This action supports the commissioner's position, and elimi-

nates the need for a hearing on March 25, 1988, concerning the objection to scheduling. Therefore, in accordance with the Texas Controlled Substances Act, §2.09(e), and the actions of the DEA, the department cancels the hearing set for March 25, 1988.

Issued in Austin, Texas, on March 16, 1988.

TRD-8802738 Robert A. MacLean  
Deputy Commissioner for Professional  
Services  
Texas Department of Health

Filed: March 11, 1988,

For further information, please call (512) 458-7541.

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**Radioactive Material License Amendment**

Notice is given by the Texas Department of Health that it has granted an amendment to the following radioactive material license: Radioactive Material License L03966, formerly issued to Summa Pharmacy of El Paso, now transferred to Medi-Physics, Inc., a subsidiary of Hoffman-La Roche, Inc., doing business as MPI Professional Service Centers, Inc., for their facility located in El Paso, (mailing address: Medi-Physics, Inc., a subsidiary of Hoffman-La Roche, Inc., doing business as MPI Professional Service Centers, Inc., 1501 Arizona, Building 5D, El Paso, Texas 79902).

The amendment of this license is summarized as follows: reflects the acquisition and transfer of the licensed facilities to Medi-Physics, Inc., a subsidiary of Hoffman-La Roche, Inc., doing business as MPI Professional Service Center, Inc., from Summa Pharmacy of El Paso.

The Division of Licensing, Registration, and Standards has determined that the amendment has no significant impact on the human environment; the licensee is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these regulations in such a manner as to minimize danger to public health and safety, and the environment; the licensee's equipment, facilities, and procedures are adequate to minimize danger to public health and safety, and the environment; the issuance of the license amendment will not be inimical to public health and safety, or have a detrimental impact on the environment; and the licensee satisfies any applicable special requirements of the TRCR.

This notice affords the opportunity for written comment or for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as required by Texas Civil Statutes, Article 4590f, §11B(b), as amended, and as set out in TRCR 13.6. A person affected is defined as a person who is resident of a county, or a county adjacent to a county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage. A person affected may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756. Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the amendment will remain in

effect.

A copy of all material submitted is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Texas. Information relative to the amendment of this specific radioactive material license may be obtained by contacting David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756. For further information, please call (512) 835-7000.

Issued in Austin, Texas, on March 11, 1988.

TRD-8802651 Robert A. MacLean, M.D.  
Deputy Commissioner for Professional  
Services  
Texas Department of Health

Filed: March 14, 1988, 2:35 p.m.

For further information, please call (512) 458-7236.

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## Texas Department of Human Services

### Notice of Contract Increase

This notice of contract increase is filed in accordance with Texas Civil Statutes, Article 6252-11c. A notice of award of a consultant contract was published in the October 9, 1987, issue of the *Texas Register* (12 Tex Reg 3735). The contract was effective October 1, 1987, and is scheduled to expire August 31, 1988.

**Description of Contract.** The contract is for follow-up programming, modifications, testing, training, and technical assistance for components of the family self-support automation/streamlining project using MAPPER based application.

**Description of Contract Modification.** The department intends to modify the contract to increase the consultant's service hours and the amount to be paid to the consultant to accommodate unanticipated needs of the employment services program refocus project.

**Contact Person.** The contact person is Edward N. Jones, Jr., 2503 Forest Bend, Austin, Texas 78704.

**Total Value of the Contract Increase.** The contract is being increased by \$25,500 from \$55,300 to \$80,850.

Issued in Austin, Texas, on March 15, 1988.

TRD-8802715 Marlin W. Johnston  
Commissioner  
Texas Department of Human Services

Filed: March 15, 1988

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

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## Texas Department of Mental Health and Mental Retardation

### Consultant Contract Award

This award of consulting services is being filed pursuant to Texas Civil Statutes, Article 6252-11c.

On December 9, 1987, the Central Office of the Texas Department of Mental Health and Mental Retardation filed a request for proposals in the December 18, 1987, issue of the *Texas Register* (12 TexReg 4798).

The consultant is to provide the following services: reviewing client deaths at Austin, Denton, Fort Worth, and San Antonio State Schools during a one-year period and making recommendations for improvement in health care

services; participating in an on-site review of the preliminary analysis and recommendations with the Texas Department of Mental Health and Mental Retardation staff prior to the preparation of the final report; preparing of a final report.

The Central Office of the Texas Department of Mental Health and Mental Retardation has contracted with Columbus Medical Services, Inc., 2000 Valley Forge Towers, King of Prussia, Pennsylvania 19406, to provide the previously described services. The contract was entered into on March 9, 1988, and will be in effect until February 1, 1989.

The total value of the contract is \$65,880 to be paid on a monthly basis as services are provided. This amount includes all travel, per diem, and other costs although actual expenditures of travel and per diem may reduce this amount. This amount is the total value of the contract unless more than 30 deaths occur within the specified one-year period.

Issued in Austin, Texas, on March 15, 1988.

TRD-8802728 Gary E. Miller, M.D.  
Commissioner  
Texas Department of Mental Health and  
Mental Retardation

Filed: March 15, 1988, 4:24 p.m.

For further information, please call (512) 465-4591.

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## Consultant Proposal Request

Pursuant to Texas Civil Statutes, Article 6252-11c, the Texas Department of Mental Health and Mental Retardation (TDMHMR) serves notice of invitation for bids on a continuation of services heretofore performed by Management Science America, Inc.

**Description.** The consultant will assist TDMHMR staff in installing the encumbrance subsystem of the MSA general ledger/budgetary control system. Specific tasks which the consultant will perform include project management; convert information expert programs; develop information expert reports; provide assistance in implementing the encumbrance project (give recommendations for available funds file (AFF), assist with the test planning, assist in developing user manual and user training, assist in pilot test, assist in defining available funds file, and encumbrance document file); provide technical assistance during systems installation (SI) (optimizing information expert, job control language (JCL) set-up and testing, provide system training); modification and tailoring of budgetary control system (provide validation of vendor number and invoice data entry screen in Budgetary Control Release 5.1, format a file of vouchers requesting checks issued by the comptroller's office).

**Contract Person.** Prospective bidders may contact Sally Anderson, Director, Office of Information Services, TDMHMR, P.O. Box 12668, Austin, Texas 78711-2668, (512) 465-4570.

**Consultant Information.** To eliminate the costs incurred in developing the consultant's knowledge of department fiscal operations and the software products used, TDMHMR intends to award this contract to Management Science America, Inc. unless a better offer is received.

**Procedures for Selection of Consultant.** TDMHMR will consider demonstrated competence, knowledge, and qualifications to complete the work satisfactorily and on time. These factors will be used for each individual who will be assigned to the project, and for the firm as a whole,

as well as for the reasonableness of the proposed fee. TDMHMR has the sole discretion and reserves the right to cancel the request if it is considered in the best interest of the agency to do so.

**Closing Date.** The closing date for receipt of offers is March 22, 1988.

Issued in Austin, Texas, on March 15, 1988.

TRD-8802730 Gary E. Miller, M.D.  
Commissioner  
Texas Department of Mental Health and  
Mental Retardation

Filed: March 15, 1988, 4:24 p.m.

For further information, please call (512) 465-4591.

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**Invitation for Comments**

The Texas Department of Mental Health and Mental Retardation is inviting comments regarding its intended use of block grant funds available to Texas under Public Law 100-77, Title VI, Subtitle B, §611, the Stewart B. McKinney Homeless Assistance Act, Community Mental Health Services for the Homeless. Copies of the department's plan for the use of these funds may be obtained by writing to Nancy D. Dittmar, Ph.D., Director of Special Programs, Mental Health Services, P.O. Box 12688, Austin, Texas 78711.

Comments should be submitted to the same address. The deadline for receipt of comments is April 21, 1988.

Issued in Austin, Texas, on March 14, 1988.

TRD-8802654 Gary E. Miller, M.D.  
Commissioner  
Texas Department of Mental Health and  
Mental Retardation

Filed: March 14, 1988, 4:48 p.m.

For further information, please call (512) 465-4591.

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**State Rural Medical Education Board  
Change of Address**

The State Rural Medical Education Board has moved from the Southwest Tower Building, 211 East Seventh Street, Austin, Texas 78701.

The board is now located at the Anson Jones Building, 410 East Fifth Street, Austin, Room B1-B, with a mailing address of Capitol Station, P.O. Box 12663, Austin, Texas 78711. The new telephone number is 463-1108, STS 255-1108. The Acting Director is J. C. Randolph.

Issued in Austin, Texas, on March 15, 1988.

TRD-8802729 J. C. Randolph  
Acting Director  
State Rural Medical Education Board

Filed: March 16, 1988

For further information, please call (512) 463-1108.

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**Texas Water Commission  
Enforcement Order**

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day

after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to El Paso Water Control and Improvement District-Westway on March 11, 1988, assessing \$3,560 in administrative penalties.

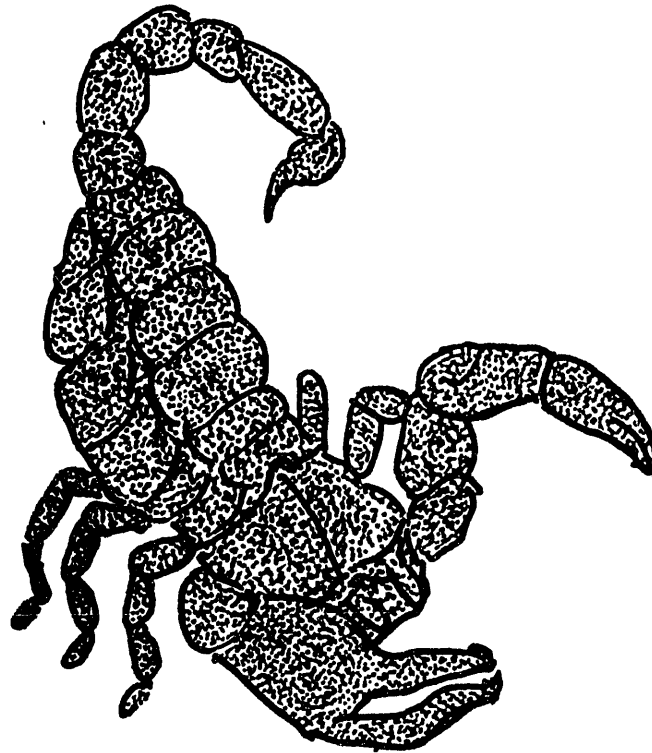
Information concerning any aspect of this order may be obtained by contacting Paricia Barnhard, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on March 14, 1988.

TRD-8802726 Gloria A. Vasquez  
Notices Coordinator  
Texas Water Commission

Filed: March 15, 1988

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



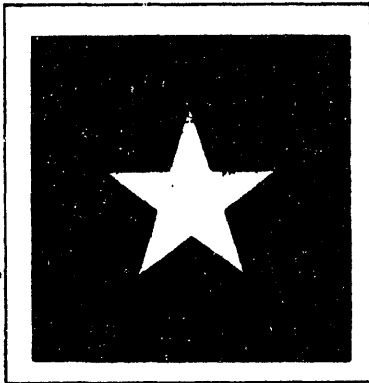
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