

# Texas Register

SEP 9 1988

Volume 13, Number 69, September 6, 1988

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## Texas Register

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**Information Available:** The eight sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor—appointments, executive orders, and proclamations

Attorney General—summaries of requests for opinions, opinions, and open records decisions

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

Proposed Sections—sections proposed for adoption

Withdrawn Sections—sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

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

Open Meetings—notices of open meetings

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

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

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

In order that readers may cite material more easily page numbers are now written as citations. Example: on page 2 in the lower left-hand corner of the page, would be written: "13 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 13 TexReg 3."

**How To Research:** The public is invited to research rules and information; of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, 503E Sam Houston Building, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, sections number, or TRD number.

## Texas Administrative Code

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

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

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

TAC stands for the *Texas Administrative Code*;

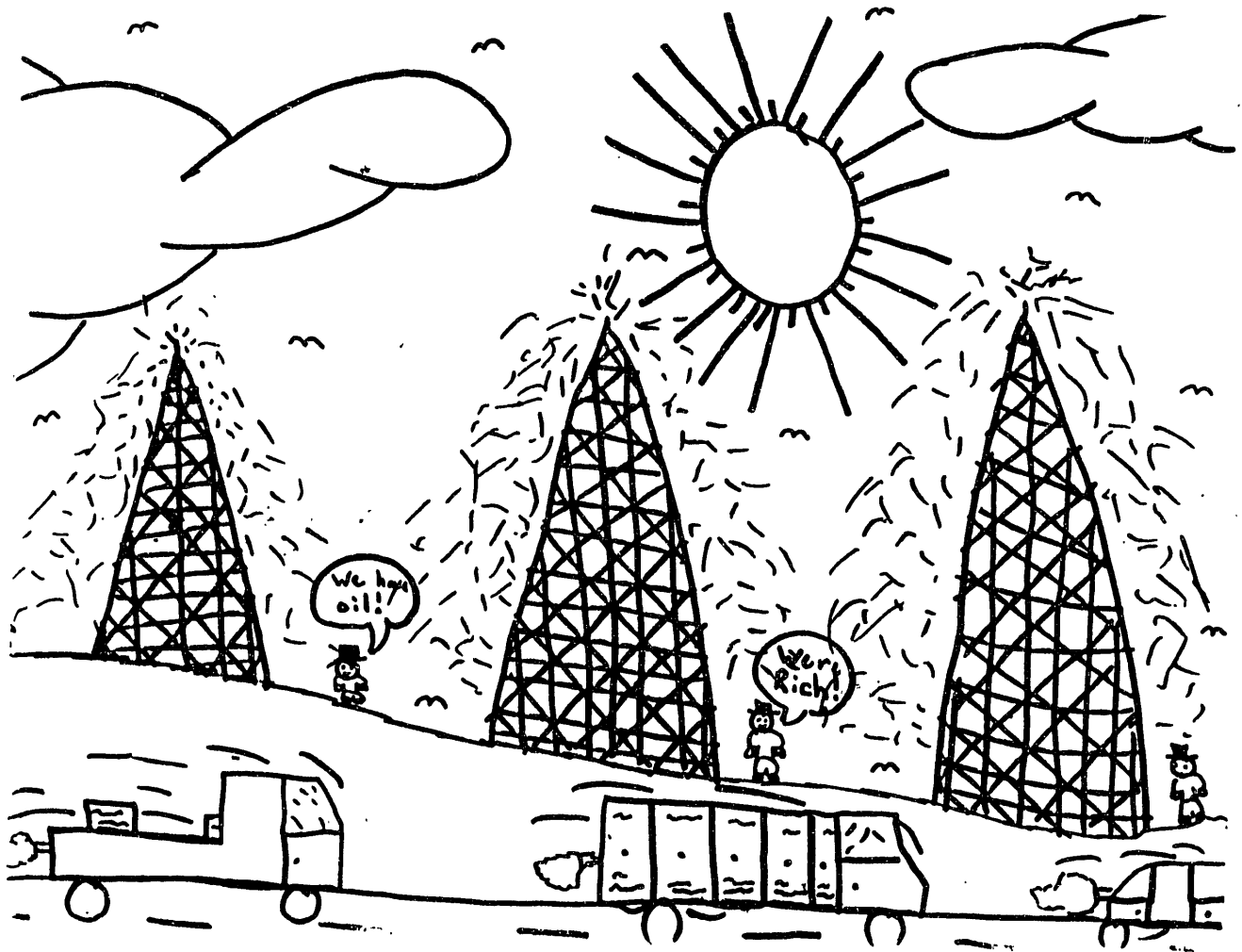
§27.15 is the section number of rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

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Name: Chad Bown

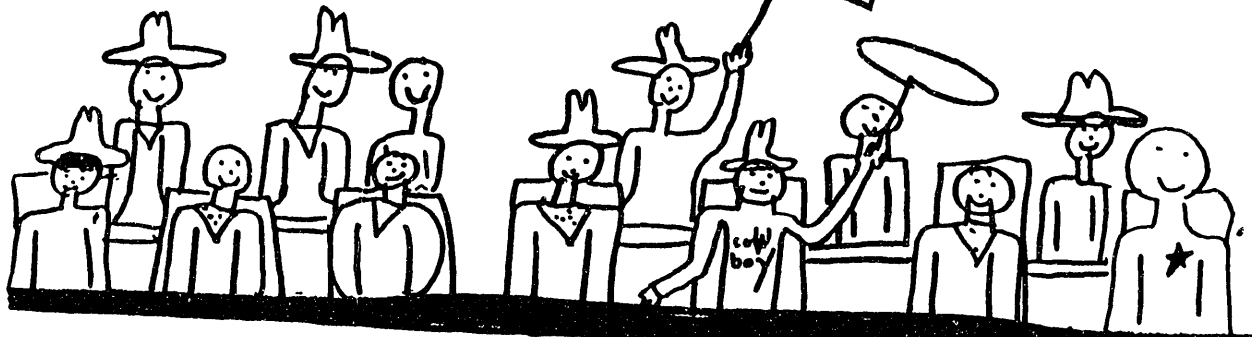
Grade: 3

School: Aikin Elementary, Richardson

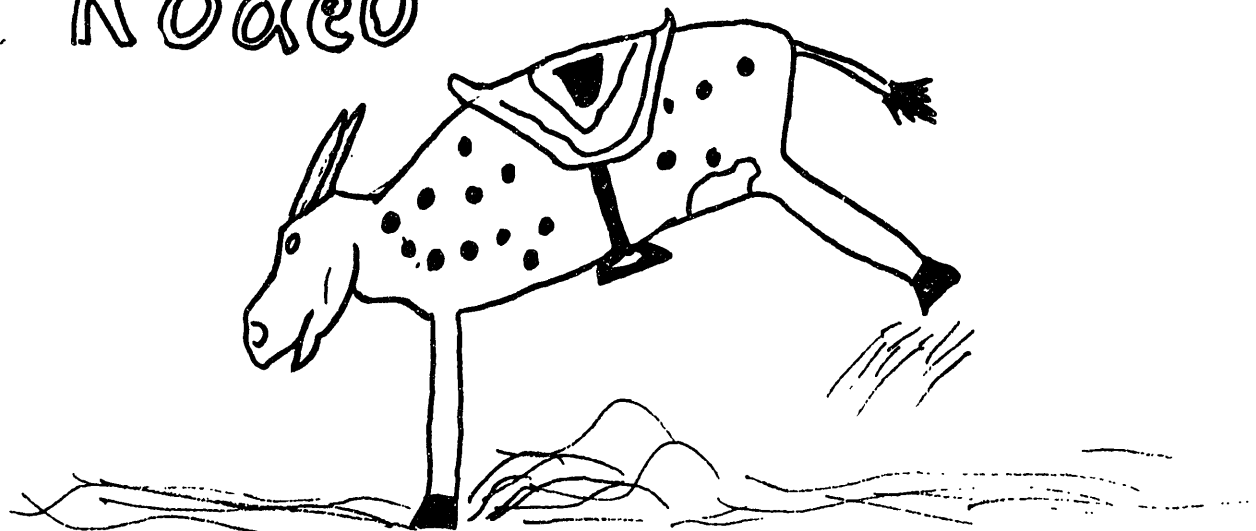


Name: Tiffany Morrow  
Grade: 6  
School: Aikin Elementary, Richardson

1710 MAN RODEO



Rodeo



Name: Mike Scallon  
Grade: 3  
School: O'Henry Elementary, Richardson

# TAC Titles Affected

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## TAC Titles Affected—September

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#### *Part IX. State Aircraft Pooling Board*

1 TAC §181.1—4383

### TITLE 4. AGRICULTURE

#### *Part I. Texas Department of Agriculture*

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22 TAC §164.1—4423

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#### *Part VI. Statewide Health Coordinating Council*

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25 TAC §§571.41-571.51—4446

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#### *Part III. Texas Air Control Board*

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**TITLE 37. PUBLIC SAFETY AND  
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***Part VIII. Commission on Fire Protection Personnel Standards and Education***

37 TAC §233.66—4386

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40 TAC §159.16—4447

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***Part I. State Department of Highways and Public  
Transportation***

43 TAC §§25.601-25.610—4376

43 TAC §§25.701-25.709—4378





# 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 7. BANKING AND SECURITIES

### Part VII. State Securities Board

#### Chapter 109. Transactions Exempt from Registration

##### • 7 TAC §109.13

The State Securities Board is renewing the effectiveness of the emergency adoption of amended §109.13, for a 60-day period effective August 31, 1988. The text of amended §109.13 was originally published in the May 10, 1988, issue of the *Texas Register* (13 TexReg 2205).

Issued in Austin, Texas on August 29, 1988.

TRD-8808803 Denise Voight Crawford  
General Counsel  
State Securities Board

Effective date: August 31, 1988

Expiration date: October 31, 1988

For further information, please call: (512) 474-2233

## TITLE 16. ECONOMIC REGULATION

### Part 1. Railroad Commission of Texas

#### Chapter 5. Transportation Division

##### Subchapter L. Insurance Requirements

##### • 16 TAC §5.183

The Railroad Commission of Texas adopts on an emergency basis an amendment to §5.183, concerning minimum limits. The amendment is adopted on an emergency basis because normal rule making procedures will not allow final adoption of rules setting standards for commission acceptance of proof of insurance issued by surplus lines insurance companies for commercial motor vehicles before the expiration of the existing emergency rule providing for such filings. Emergency adoption of an amendment to this section is also made necessary by the unavailability of insurance coverage for some commercial motor carriers from insurance companies licensed to do business in Texas. If commercial carriers are unable to maintain their operations in service to the general public, an imminent threat to the general public welfare will result.

The amendment is proposed pursuant to Texas Civil Statute, Article 911b, §4(a)(13) and §13, and Article 670ld, §139c, which provides the commission with the authority to register commercial motor vehicles and require the filing of proof of liability insurance. *§5.183. Minimum Limits.*

(a) The minimum amounts referred to in §5.181 of this title (relating to Evidence of Insurance Required) are hereby prescribed as follows:

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

(b) The commission will conditionally accept proof of insurance in the amounts prescribed in subsection (a) to this section by surplus lines insurance companies, as that term is defined in the Texas Insurance Code, Article 1.14-2, whose names appear on the list of eligible surplus lines companies published by the State Board of Insurance. The commission acceptance of such insurance is contingent on a determination by the Surplus Lines Stamping Office of Texas that a surplus lines company is suitable and fit.

Issued in Austin, Texas, on August 29, 1988.

TRD-8808806 James E. Nugent  
Chairman  
Railroad Commission of  
Texas

Effective date: August 29, 1988

Expiration date: December 27, 1988

For further information, please call: (512) 463-7187

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

##### • 16 TAC §5.503

The Railroad Commission of Texas adopts on an emergency basis an amendment to §5.503, concerning acceptance of Texas Department of Public Safety certificates of self-insurance as proof of insurance for commercial motor vehicles of 48,000 pounds or less gross vehicular weight. The amendment is adopted on an emergency basis to relieve the substantial burdens of insurance costs which would otherwise be imposed on commercial carriers operating smaller vehicles. If the commercial carriers are unable to maintain their operations in service to the general public, an imminent threat to the general welfare will result.

The amendment is proposed under Texas Civil Statutes, Article 670ld, §139(C), which requires the commercial motor vehicles to file proof of liability insurance. *§5.503. Liability Insurance for Commercial Carriers.*

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

(d) Proof required. The evidence of bodily injury and property damage liability insurance required shall be in the form set forth in Form E, and shall be duly completed and executed by an authorized representative of an insurance company holding a certificate of authority to transact such kinds of insurance business in State of Texas or by a surplus lines insurer approved by the State Board of Insurance. The cancellation of the policy of insurance may be effected only by the insurance company or the insured giving 30 days notice in writing to the commission. The 30 days notice period will be calculated from the date notice is actually received by the commission. In lieu of a Form E, proof of insurance coverage for the amount prescribed in subsection (c)(1) of this section may be made by filing a current certificate of self insurance issued by the Texas Department of Public Safety.

(e)-(g) (No change.)

Issued in Austin, Texas, on August 29, 1988.

TRD-8808805 James E. Nugent  
Chairman  
Railroad Commission of  
Texas

Effective date: August 29, 1988

Expiration date: December 27, 1988

For further information, please call: (512) 463-7187

## TITLE 25. HEALTH SERVICES

### Part II. Texas Department of Mental Health and Mental Retardation

#### Chapter 401. Systems Administration

##### Subchapter D. Standards of the Texas Department of Mental Health and Mental Retardation—Quality Assurance

##### • 25 TAC §§401.341-401.350

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts on an emergency basis new §§401.341-401.350, concerning standards of the Texas Department of Mental Health and Mental Retardation—Quality assurance.

The new subchapter is adopted in Chapter 401, concerning systems administration, as part of the department's reorganization of its rules into substantively related groups. It differs from the subchapter it would replace in several ways: it updates references to a number of standards documents, which are adopted by reference; it references related sections of other subchapters as well as departmental directives; and it updates the description of departmental responsibilities to reference licensure of private psychiatric hospitals and crisis stabilization units and certification of community residential programs, as well as cooperation with state boards for professional groups.

The sections are adopted on an emergency basis to comply with provisions of the Lelsz implementation agreement concerning certification of community residential programs, a process which is based on TDMHMR Community Standards for Mental Retardation Services, which is adopted in the new subchapter.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 5547-202, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

**§401.341. Purpose.** The purpose of this subchapter is to designate the official standards of client services to be pursued by the facilities of the Texas Department of Mental Health and Mental Retardation and community mental health and mental retardation centers.

**§401.342. Application.** The provisions of this subchapter apply to all facilities of the Texas Department of Mental Health and Mental Retardation and to community mental health and mental retardation centers.

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

**Accreditation**—The state of being publicly or officially sanctioned as conforming to prescribed or desirable standards.

**Center**—A community mental health and mental retardation center established pursuant to Texas Civil Statutes, Article 5547-203.

**Facility**—Any hospital, state school for the mentally retarded, state center, or other institution of the Texas Department of Mental Health and Mental Retardation or any organizational entity that may be hereafter made a part of the department.

**Plan of correction**—Written response to internal or external quality assurance surveys which states the specific actions taken or planned to correct deficiencies, the person responsible for corrective action, and the anticipated date for compliance.

**PRO**—Professional review organization.

**Quality assurance**—The overall goal of ensuring the provision of optimal client services. Movement toward this goal is a continuous process involving measurement of the level of client care relative to norms, criteria, or standards, and taking corrective action to eliminate identified deficiencies.

**Risk management**—A set of activities undertaken to minimize the risk of adverse client

outcome and related malpractice/negligence lawsuits resulting from quality of treatment/training and/or physical plant problems.

**§401.344. Scope.** The Texas Department of Mental Health and Mental Retardation assumes responsibility for:

(1) pursuing high quality in client services and improvement in the level of service in facilities and programs affecting clients through an integrated quality assurance program;

(2) assuring highest quality client service delivered in community mental health and community mental retardation centers through performance contracting and standards compliance monitoring;

(3) providing for the establishment of a safe living environment for clients, a safe working environment for staff, and safety for visitors to facilities/centers;

(4) minimizing the risk events in treatment/training which give rise to malpractice/negligence lawsuits and reducing the negative effects on clients of such events through risk management;

(5) achieving facility and center compliance with applicable regulations (i.e., local, state, and federal statutes; and rules of the department);

(6) providing evidence (e.g., accreditation, certification, licensure, delegated review status, summary data from quality of care reviews and utilization reviews, and documentation of service improvement resulting from quality assurance activities) to consumers and funding agencies of an effort to deliver an optimal level of service to all facility and center clients;

(7) promoting and enforcing an acceptable standard of care for organizations seeking to obtain and maintain licensure as private psychiatric hospitals or crisis stabilization units;

(8) promoting and enforcing an acceptable standard of care for programs seeking to obtain or maintain certification status as a TDMHMR-funded community residential program for persons with mental retardation;

(9) actively pursuing compliance with court agreements concerning client services;

(10) providing program and services evaluation on a systematic basis for all client services at TDMHMR facilities;

(11) cooperating with the designated Texas PRO agency to achieve the highest review evaluation possible for each facility;

(12) enacting the basic and general policies of the Texas Board of Mental Health and Mental Retardation as expressed in its policy manual, which is herein adopted by reference as Exhibit A. A copy may be obtained from the Texas Department of Mental Health and Mental Retarda-

tion, P.O. Box 12668, Austin, Texas 78711-2668; and

(13) cooperating with boards overseeing each mental health and mental retardation professionals to ensure higher quality professional staff performance, including, but not limited to, enforcing the provisions of Directive 12, concerning professional nursing quality assurance.

**§401.345. Standards of Care.**

(a) The Texas Department of Mental Health and Mental Retardation adopts by reference the following standards as integral to quality client services in facilities and centers:

(1) Joint Commission on Accreditation of Healthcare Organizations standards—standards contained in Consolidated Standards for Child, Adolescent, and Adult Psychiatric, Alcoholism, and Drug Abuse Facilities or Accreditation Manual for Hospitals, as applicable, for mental health facilities.

(2) Medicare standards—federal standards governing conditions of participation for hospitals serving Title XVIII clients in mental health facilities, as contained in 42 Code of Federal Regulations 405, Subpart J.

(3) National Fire Protection Association (NFPA) standards—standards contained in the NFPA's Life Safety Code.

(4) Rehabilitation Act of 1973, §504—federal standards for rights of the handicapped.

(5) Medicaid standards—standards governing intermediate care facilities for persons with mental retardation or related conditions (ICF-MR), codified in 42 Code of Federal Regulations 442, Subpart G, for all mental retardation facilities; and ACDD standards—standards of the Accreditation Council on Services for People with Developmental Disabilities for designated mental retardation facilities, as contained in Standards for Services for People with Developmental Disabilities.

(6) Community-based program standards—standards contained in the TDMHMR Community Standards of the Texas Department of Mental Health and Mental Retardation.

(7) Community-based mental retardation program standards—standards contained in TDMHMR Community Standards for Mental Retardation Services of the Texas Department of Mental Health and Mental Retardation;

(8) Commission on Laboratory Accreditation of the College of American Pathologists (CAP) standards—laboratory standards for all TDMHMR facilities contained in Standards of the Commission on Laboratory Accreditation of the College of American Pathologists.

(b) Copies of these documents are available for inspection at the Texas De-

partment of Mental Health and Mental Retardation, 909 West 45th Street, Austin, or by writing to the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668.

**§401.346. Governing Body.** Except as delegated in facility/center policy manuals and position descriptions, the governing body assumes responsibility for the department's standards and quality assurance program. Through the departmental planning and budgeting process, the governing body establishes, maintains, and supports an ongoing quality assurance program. The governing body receives reports of program reviews, accreditation surveys, plans of correction, and other pertinent standards and quality assurance findings as necessary. Boards of trustees for community mental health and mental retardation centers assume governing body responsibilities as necessary in their accreditation processes.

**§401.347. Director of Standards and Quality Assurance.** Each facility and center will designate or appoint a director of standards and quality assurance on its staff to plan, monitor, implement, and evaluate compliance with applicable regulations and standards. This individual will be responsible directly to the facility/center head and maintain regular liaison with the department's office of standards and quality assurance. Depending on the demands for standards and quality assurance, the designated individual may be assisted by other standards and quality assurance staff or a consultant, or may only serve part time in this capacity, as described in Directive 11, concerning standards and quality assurance.

**§401.348. Program Reviews.** Under the coordination of the office of standards and quality assurance, regular reviews will be conducted of all client service programs performed by department facilities and community mental health and mental retardation centers. These reviews will be aimed toward achieving the goals specified in this subchapter through an onsite interview and observation process followed by a written report, a plan of correction, and implementation of corrective actions by the facility/center as described in §1.37, concerning plans of correction, of Directive 1 on standard operating procedures.

**§401.349. References.** Reference is made to the following statutes, standards, and rules of the department:

- (1) 42 Code of Federal Regulations 405, Subpart J (Medicare standards for psychiatric hospitals);
- (2) 42 Code of Federal Regulations 442, Subpart G (Medicaid standards for ICF-MR services);
- (3) Rehabilitation Act of 1973 (Public Law 93-112, §504);
- (4) Texas Mental Health and Mental Retardation Act (Texas Civil Statutes, Article 5547-201 et seq.);
- (5) Mentally Retarded Persons Act (Texas Civil Statutes, Article 5547-300);

(6) Texas Mental Health Code (Texas Civil Statutes, Article 5547-1 et seq);

(7) TDMHMR sections contained in the Texas Administrative Code, Title 25, Part II, Chapters 401-407;

(8) Directive 1, concerning standard operating procedures;

(9) Directive 11, concerning standards and quality assurance, Texas Department of Mental Health and Mental Retardation;

(10) Directive 12, concerning professional nursing quality assurance;

(11) *TDMHMR Community Standards*, Texas Department of Mental Health and Mental Retardation, 1985;

(12) *TDMHMR Community Standards for Mental Retardation Services*, Texas Department of Mental Health and Mental Retardation, 1988;

(13) *Consolidated Standards for Child, Adolescent, and Adult Psychiatric, Alcoholism, and Drug Abuse Facilities*, Joint Commission on the Accreditation of Healthcare Organizations, 1987;

(14) *Accreditation Manual for Hospitals*, Joint Commission on the Accreditation of Healthcare Organizations, 1988;

(15) *Standards for Services for People with Developmental Disabilities*, Accreditation Council on Services for People with Developmental Disabilities, 1987;

(16) *Life Safety Code*, National Fire Protection Association, 1985; and

(17) *Standards of the Commission on Laboratory Accreditation of the College of American Pathologists*, 1987.

**§401.350. Distribution.**

(a) Provisions of this subchapter shall be distributed to members of the Texas Board of Mental Health and Mental Retardation; the medical director, deputy and assistant deputy commissioners, and directors of central office; and superintendents and directors of all TDMHMR facilities and community centers.

(b) The superintendent or director of each facility and center shall disseminate this subchapter to all appropriate staff members and board members.

Issued in Austin, Texas, on August 30, 1988.  
TRD-8808834

Pattilou Dawkins  
Chairman Texas Board of  
Mental Health and  
Mental Retardation  
Texas Department of  
Mental Health and  
Mental Retardation

Effective date: August 30, 1988.

Expiration date: December 28, 1988.

For further information, please call: (512) 465-4670

## Subchapter I. Certification of Community Residential Programs—Mental Retardation Services

### • 25 TAC §§401.551-401.565

The Texas Department of Mental Health and Mental Retardation adopts on an emergency basis new §§401.551-401.565, governing the certification of community residential programs funded by TDMHMR to provide residential services to individuals with mental retardation. The sections adopted on an emergency basis are contemporaneously proposed for public comment in this issue of the *Texas Register*.

The emergency adoption is required to provide an enforceable standard for health and safety in community programs funded by TDMHMR.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rule making powers.

**§401.551. Purpose.** The purpose of this subchapter is to provide the procedures by which community residential programs serving individuals with mental retardation are certified by the Texas Department of Mental Health and Mental Retardation.

**§401.552. Application.** This subchapter applies to all community residential programs which receive funding directly or through contracts for service from the Texas Department of Mental Health and Mental Retardation for the provision of residential services to individuals with Mental Retardation.

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

**Applicant**—A person or organization that completes the application and application packet for certification.

**Assistant deputy commissioner**—The assistant deputy commissioner for mental retardation services with responsibility for the region in which a community residential program is to be operated.

**Service provider**—A person who provides direct services to individuals in a residential setting.

**Certification officer**—The staff person designated by the mental retardation authority to assist the department in the certification of community residential programs in the local service area.

**Certification section**—The section within the Office of Standards and Quality Assurance, Texas Department of Mental Health and Mental Retardation, which is designated as the authority on the certification of community residential programs for individuals with mental retardation, and which reviews programs, determines compliance with certification requirements, and approves, denies, suspends, or revokes certification.

**Community center**—A community mental health and mental retardation center as estab-

lished in the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-203.

**Community residential program**—Any residence in the community providing supervision and habilitation services for one-15 individuals with mental retardation and which is funded by the Texas Department of Mental Health and Mental Retardation. The term excludes boarding homes.

**Deemed status**—The certification status which may be accorded community residential programs which are certified, licensed, or accredited as designated in §401.558 of this title (relating to Deemed Certification Status).

**Department**—The Texas Department of Mental Health and Mental Retardation.

**Designee**—The entity or entities designated by the department to perform the monitoring and evaluation requirements of this subchapter, which may be staff of the MRA serving the local service area.

**Facility**—Any state school or state center providing mental retardation services under the jurisdiction of the Texas Department of Mental Health and Mental Retardation.

**Mental retardation authority (MRA)**—The entity designated by the department to direct, operate, facilitate, or coordinate such services to individuals with mental retardation as are required to be performed at the local level by state law and by the department.

**Operator**—The agency, organization, or individual directly responsible for the overall management of the facility.

**Substantial compliance**—Ninety percent compliance with each requisite standard.  
**§401.554. General Provisions Governing Certification of Community Residential Programs.**

(a) To be eligible to receive funds from the Texas Department of Mental Health and Mental Retardation for the provision of residential services to individuals with mental retardation, each community residential program, including those operated by state schools and state centers, must obtain and maintain certification as described in this subchapter. Consistent with the terms of the contract under which services are delivered and departmental policy, the department shall terminate the expenditure of state funds in programs that do not obtain and maintain certification status.

(b) A separate certification must be obtained for each service location when the applicant operates programs at more than one site.

(c) Certification issued by the department is neither transferable nor assignable.

(d) Certification remains in effect, pending annual renewal, until suspended or revoked by the department or surrendered by the community residential program.

(e) Programs that are not directly operated by an MRA or designated provider must execute a contract with an MRA or designated provider that meets the require-

ments of the departmental contract for services, including specific requirements for ensuring, monitoring, and evaluating provider compliance with §401.555 of this title (relating to Requirements for Certification).  
**§401.555. Requirements for Certification.** To be certified to provide community mental retardation residential services, the applicant must submit an application, referred to in §401.563 of this title (relating to Exhibits) as Exhibit A, and must be able to meet the basic requirements in the application packet referred to in §401.563 of this title (relating to Exhibits) as Exhibit B, and must demonstrate compliance with the following standards and rules:

(1) applicable provisions of the TDMHMR Community Standards for Mental Retardation Services, as amended, or certification, licensure, or accreditation as listed in §401.558(a)(1) of this title (relating to Deemed Certification Status);

(2) Chapter 402, Subchapter F of this title (relating to Continuity of Services—Mental Retardation);

(3) Chapter 403, Subchapter K of this title (relating to Client-Identifying Information);

(4) Chapter 404, Subchapter B of this title (relating to Client Abuse and Neglect in Community Mental Health and Mental Retardation Centers), or Chapter 404, Subchapter A of this title (relating to Client Abuse and Neglect in TDMHMR Facilities), as appropriate;

(5) Chapter 405, Subchapter K of this title (relating to Client Deaths);

(6) Chapter 405, Subchapter Y of this title (relating to Rights of Clients—Mental Retardation Services);

(7) applicable provisions of the National Fire Protection Association's *Life Safety Code*;

(8) the Mentally Retarded Persons' Act of 1977, Texas Civil Statutes, Article 5547-300; and

(9) the applicable provisions of the implementation agreement in Lelsz v. Kavanagh, October 15, 1987.  
**§401.556. Application Process and Provisional Certification.**

(a) Application process. All correspondence with reference to certification to operate a community residential program for individuals with mental retardation should be directed to the Certification Section, Office of Standards and Quality Assurance, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

(1) New community residential programs. All applicants for new community residential programs shall make application for certification using the forms referred to in §401.563 of this title (relating to Exhibits) as Exhibits A and B. Application

should be made at the earliest time feasible, but in no case later than 30 days prior to the date on which the program begins serving individuals with mental retardation. Upon completing the requirements described in the application packet, the applicant shall submit the fully completed application and application packet materials to the certification officer of the MRA serving the local service area, who shall forward a copy of the materials to the certification section. Training for new providers regarding the certification process will be provided by the local MRA.

(2) Community residential programs currently in operation on the effective date of this subchapter. The certification officer of each MRA shall ensure that each community residential program in operation in its local service area shall receive the application and application packet referred to in §401.563 of this title (relating to Exhibits) as Exhibits A and B. Community residential programs currently in operation will be phased in within a 12 month period with appropriate training regarding the certification process by the certification section.

(b) Provisional certification for new programs started after the effective date of this section. If the certification officer finds that the premises are suitable and the applicant is qualified to operate a community residential program in accordance with the requirements of this subchapter, the certification officer shall recommend provisional certification. A recommendation by the certification officer must include the signature endorsement of the director of quality assurance of the MRA that the program meets provisional certification requirements. The completed packet and endorsements shall be forwarded to the certification section.

(1) The packet shall be reviewed by the certification section. If provisional certification is granted, the certification section shall issue to the applicant a provisional certificate meeting the requirements of §401.557(1) (relating to Certification Decision and Notification) for a period not to exceed six months. A copy of the provisional certificate shall be sent to the certification officer, the assistant deputy commissioner, and the MRA director of quality assurance.

(2) If provisional certification is not granted, the certification section shall send the applicant a letter, return receipt requested, stating the reason(s) that the application has been denied. A copy of the letter shall be sent to the certification officer of the MRA, the assistant deputy commissioner, and the MRA director of quality assurance.

(3) During the six-month period of provisional certification, the certification section shall make onsite visit(s) to the premises to determine whether full certification should be granted.

**§401.557. Certification Decision and Notification.** Following receipt of the fully completed application for certification and onsite certification program review, the certification section shall take the following action.

(1) The certification section will determine whether the community residential program complies with the requirements for certification (substantial compliance with each requisite standard for the program's initial year of certification and every year thereafter, and compliance with at least 55% of the program standards by October 15, 1990, 65% of the program standards by October 15, 1991, and 75% of the program standards by October 15, 1992, and thereafter). If the certification section determines that the program complies with the requirements, the certification section shall certify the program and issue a certificate and letter to the applicant, and copies to the certification officer of the MRA, the assistant deputy commissioner, and the MRA director of quality assurance, which stipulate certification as follows:

(A) the name and location of the community residential program;

(B) the name of the owner;

(C) the name of the operator;

(D) the maximum capacity;  
and

(E) any special restrictions on the operation of the program.

(2) If the certification section determines that the community residential program does not substantially comply with requirements for certification, the certification section shall notify the applicant by letter, return receipt requested, of the reason(s) why certification has been denied. A copy of the letter shall be sent to the certification officer of the MRA, the assistant deputy commissioner, and the MRA director of quality assurance in order for these parties to determine a course of action.

(3) Each period of certification after the initial certification is for 12 months.

**§401.558. Deemed Certification Status.**

(a) Community residential programs under auspices of the TDMHMR facility or CMHMRC which are certified, licensed, or accredited by other agencies may be deemed to be certified by the department if:

(1) the certification, licensure, or accreditation is:

(A) licensure by the Department of Human Services as a foster family home for children;

(B) certification by the Texas Department of Health as an ICF/MR program;

(C) certification by the Texas Department of Mental Health and Mental Retardation as a Home and Community-Based Services 1915(c) waiver program; or

(D) accreditation by the Accreditation Council on Services for People with Developmental Disabilities; and

(2) the program has demonstrated compliance with §401.555(2)-(9) of this title, (relating to Requirements for Certification).

(b) Community residential programs certified, licensed, or accredited by agencies described in subsection (a) of this section must submit the completed deemed status validation form referred to in §401.563 of this title (relating to Exhibits) as Exhibit C.

(c) The community residential program provider must notify the certification officer within two working days of any change in the licensure or certification status on which the TDMHMR deemed certification status is based. Upon notification of the change, the certification officer shall be responsible for reporting the change to the department within two working days. If the program provider desires to receive or continue receiving funds from TDMHMR, a prompt plan of correction or an application for certification must be made to initiate the certification process.

**§401.559. Certification Renewal.**

(a) Following initial certification, the applicant must apply for renewal of certification annually at least 45 days prior to the anniversary date of certification.

(b) To renew certification, each applicant shall submit any changes to the most recent application, referred to in §401.563 of this title (relating to Exhibits) as Exhibit A, and the application packet, referred to in §401.563 of this title (relating to Exhibits) as Exhibit B. The renewal application and packet must include the signature endorsement of the certification officer and the quality assurance director of the MRA.

(c) Following receipt of updated information, the certification section will make an onsite visit in order to determine whether certification shall be renewed.

(1) If the certification section determines that the community residential program substantially complies with the requirements for certification, the certification section shall recertify the program for a period not to exceed one year. A letter of recertification and a new certificate shall be sent to the applicant, and copies to the certification officer, the assistant deputy commissioner, and the MRA director of quality assurance.

(2) If the certification section determines that the community residential program does not substantially comply with requirements for certification, the certification section shall notify the applicant by letter, return receipt requested, of the reasons that certification has not been renewed. A copy of the letter shall be sent to the certification officer of the MRA, the assistant deputy commissioner, and the MRA director of quality assurance, in order for these parties to determine a course of action.

(d) In exceptional cases, as defined by the certification section, the commissioner of TDMHMR may grant an extension to the previous certification, not to exceed two months after the anniversary date of certification.

**§401.560. Change in Certification.**

(a) An updated application for certification is required when:

(1) the location of the community residential program is moved;

(2) the physical premises of a program are substantially altered, i.e., the physical plant undergoes structural renovation, construction, or modification;

(3) the maximum capacity is to be increased; or

(4) the program owner or operator changes.

(b) At least 30 days prior to implementation of such a change in program, the applicant shall meet the requirements as outlined in §401.559(b) of this title (relating to Certification Renewal).

(c) An application for change in certification shall be processed to include a review of submitted information and on-site verification by the certification section or designee.

**§401.561. Denial, Suspension, and Revocation of Certification.**

(a) The department shall have the authority to immediately deny, suspend, or revoke the certification of a community residential program even if the program has been granted deemed status under §401.558 of this title, (relating to Deemed Certification Status), if the department finds that the program:

(1) violates or continues to violate applicable laws, rules, or standards; or

(2) operates the program in a way that is harmful to the health, safety, care, or rights of one or more individuals.

(b) When denial, suspension, or revocation of a certification occurs:

(1) because a program does not substantially comply with each of the requisite standards, a plan of correction shall be submitted for approval to the certification section and the assistant deputy commissioner and deficiencies corrected within 30

days, unless an exception has been granted. Review by the certification section or designee, including on-site inspection, as appropriate, will occur in order to determine compliance with the plan of correction; or

(2) because a program does not meet at least 55% of the program standards by October 15, 1990, 65% of the program standards by October 15, 1991, or 75% of the program standards by October 15, 1992, and thereafter, a plan of correction shall be submitted for approval to the certification section and the assistant deputy commissioner and shall be implemented within 60 days, unless an exception has been granted. Review by the certification section or designee, including onsite inspection, as appropriate, will occur in order to determine compliance with the plan of correction; or

(3) because a program that has been deemed loses the certification, licensure, or accreditation on which the deemed status is based, an application for certification will be submitted unless a plan for reattaining the conditions of deemed status is approved by the certification section.

(c) The denial, suspension, or revocation of a certification maintained pursuant to a contract for services may be appealed following the procedures described in Chapter 403, Subchapter O of this title (relating to Administrative Hearings of the Department in Contested Cases).

(d) The MRA shall notify parents/guardians of the individuals served if the program fails to obtain or maintain certification.

#### *§401.562. Inspection Authority and Reporting Responsibilities.*

(a) The certification section may make such investigations as it deems necessary and proper to obtain compliance with the provisions of this subchapter.

(b) Any department designee may at any time enter upon the premises of any community residential program to inspect the facilities and conditions, to observe the program for service and habilitation, to question service providers of the program, and to gain access for the purpose of examination and transcription to such records and documents as are relevant to the inspection.

(c) When a regional monitor visits a community residential program, any resulting documentation relating to compliance with the TDMHMR Community Standards for Mental Retardation Services will be provided to the certification section. Appropriate action will be taken by the certification section based on the content of the report.

*§401.563. Exhibits.* The following exhibits referenced in this subchapter are herein adopted by reference and are available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711:

(1) Exhibit A—application for Certification;

(2) Exhibit B—application Packet;

(3) Exhibit C—deemed Status Validation Form.

*§401.564. References.* The following laws, rules, and standards are referenced in this subchapter:

(1) applicable provisions of the TDMHMR Community Standards for Mental Retardation Services, as amended;

(2) Chapter 402, Subchapter F of this title (relating to Continuity of Services—Mental Retardation);

(3) Chapter 403, Subchapter K of this title (relating to Client-Identifying Information);

(4) Chapter 403, Subchapter O of this title (relating to Administrative Hearings of the Department in Contested Cases);

(5) Chapter 404, Subchapter B of this title (relating to Client Abuse and Neglect in Community Mental Health and Mental Retardation Centers), or Chapter 404, Subchapter A of this title (relating to Client Abuse and Neglect in TDMHMR Facilities), as appropriate;

(6) Chapter 405, Subchapter K of this title (relating to Client Deaths);

(7) Chapter 405, Subchapter Y of this title (relating to Rights of Clients—Mental Retardation Services);

(8) applicable provisions of the National Fire Protection Association's *Life Safety Code*;

(9) the Mentally Retarded Persons' Act of 1977, Texas Civil Statutes, Article 5547-300; and

(10) the implementation agreement in *Lelsz v. et> Kavanagh, October 15, 1987.*

#### *§401.565. Distribution.*

(a) This subchapter shall be distributed to the members of the Texas Board of Mental Health and Mental Retardation; the medical director, deputy commissioners, assistant deputy commissioners, and directors of central office; superintendents/directors of all TDMHMR facilities; executive directors and chairpersons, boards of trustees, all community mental health and mental retardation centers.

(b) The superintendent/director or executive director is responsible for distributing this subchapter to community residential program providers required to meet certification in the local service area.

Issued in Austin, Texas, on August 30, 1988.

TRD-8808838

Pantliou Dawkins  
Chairman Texas Board of  
Mental Health and  
Mental Retardation  
Texas Department of  
Mental Health and  
Mental Retardation

Effective date: August 30, 1988.

Expiration date: December 28, 1988.

For further information, please call: (512) 465-4670

## Chapter 402. Client Assignment and Continuity of Services

### • 25 TAC §402.44

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts on an emergency basis an amendment to §402.44, concerning areas of responsibility in providing continuity of mental health services. The emergency amendment is adopted contemporaneously with its proposal for public comment in this issue of the *Texas Register*.

The emergency is required to put into effect the court order of July 11, 1988, in *RAJ v. Jones* that requires the department to clarify its standards for providing community-based aftercare services for clients discharged, furloughed, or transferred from state hospitals to the care of a mental health authority.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 5547-202, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

#### *§402.44. Areas of Responsibility.*

(a) (No change.)

(b) The department shall have a contract with each MHA which requires that the MHA provide the following:

(1) a good faith effort to make available and accessible [provide] those services specified in the aftercare plans of those clients being discharged, [or] furloughed, or transferred to the MHA, excluding clients referred to a private psychiatrist or private psychiatric hospital on discharge, for as long as the MHA determines that the client needs services, with documentation of clinical justification for changing or discontinuing services in the client record;

(2) documentation in client records to reflect the MHA's efforts to extend services specified in the aftercare plan and to document the client's rejection if such occurs;

(2)[(3)] documentation of personal or telephone contact within 10 days and the scheduling of follow-up appointments for persons referred for after care, and documentation of the MHA's efforts to have clients meet those appointments;

(3) documentation in client records to reflect the MHA's efforts to extend services specified in the aftercare plan to all clients, including clients who are hard to reach, i.e., who miss without rescheduling one or more significant service contacts (such as an appointment with a physician, case manager, or case-

worker, or another activity important to achieving the primary treatment goal) within 90 days of furlough or discharge, unless the client expressly refuses the services offered, in which case the rejection of services should be documented in the client record of admitted clients or in a log for clients not admitted to services;

(4) (No change.)

(5) a good faith effort to arrange for nonclinical support such as food, clothing, and shelter in cases in which the de-

partment's assessment indicates that long-term hospitalization, and chronicity of mental illness, justify such action. This provision will apply only in situations in which no other resources are available. Documentation of the assessment of each client's need for nonclinical support services will be filed in the client record using the form herein adopted by reference as Exhibit A. Copies of Exhibit A are available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668.

(c)-(i) (No change.)

Issued in Austin, Texas, on August 30, 1988.

TRD-8808839

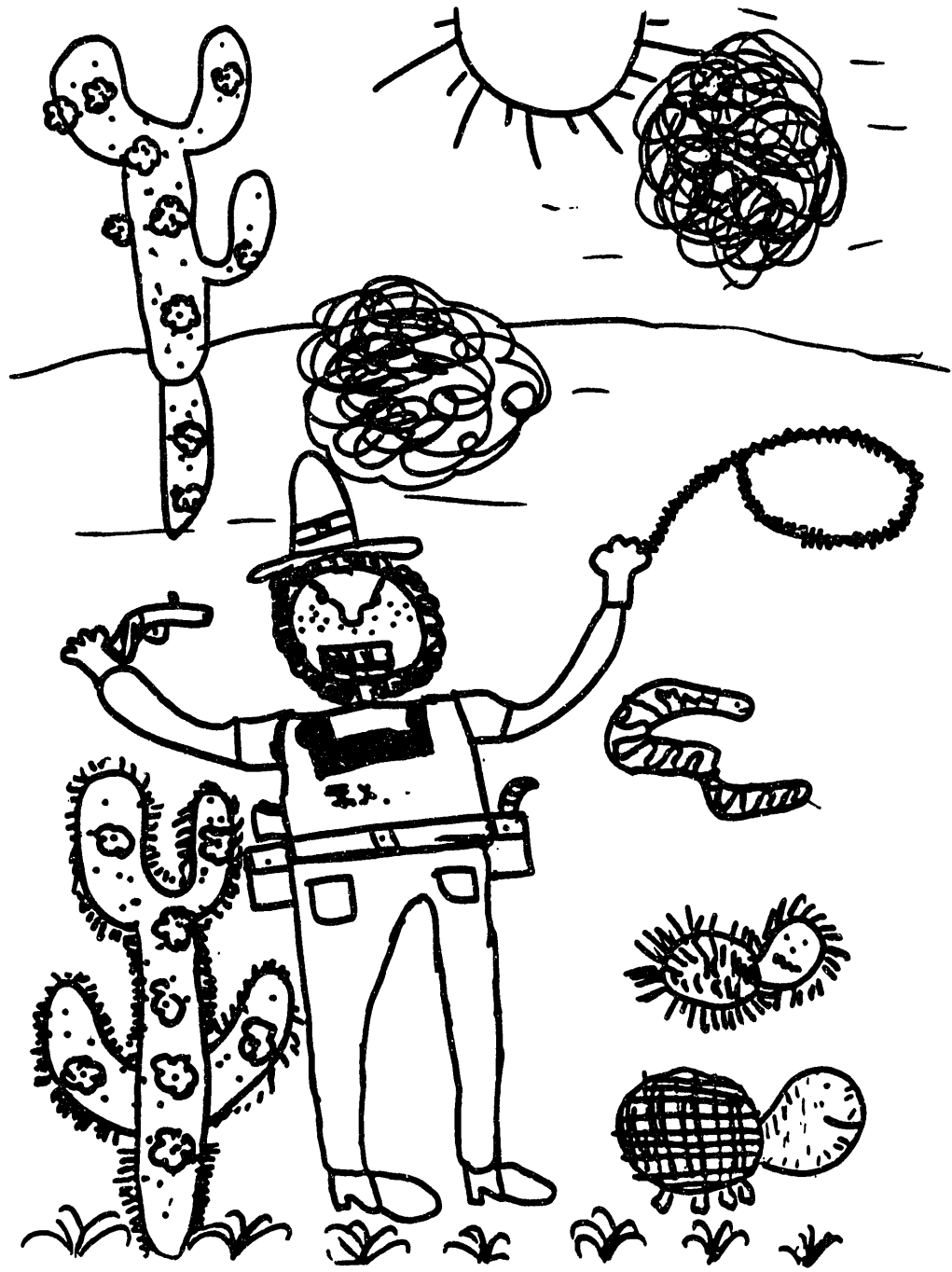
Pattlou Dawkins  
Chairman Texas Board of  
Mental Health and  
Mental Retardation  
Texas Department of  
Mental Health and  
Mental Retardation

Effective date: September 1, 1988.

Expiration date: December 30, 1988.

For further information, please call: (512)  
450-4670





Name: Debbie Hsu  
Grade: 3  
School: O'Henry Elementary, Richardson



# 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 4. AGRICULTURE Part I. Texas Department of Agriculture

### Chapter 11. Herbicide Regulations

#### • 4 TAC §11.2

The Texas Department of Agriculture proposes an amendment to §11.2, concerning county special provisions. This amendment is proposed in accordance with the Texas Agriculture Code, §75.018, and was initiated by a request from the Calhoun County Commissioners Court. The amendment changes the dates for the prohibition of aerial application of 2,4-D in Calhoun County from March 10-September 15 to March 10-August 1.

Dale Burnett, chief, pesticide enforcement, 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.

Mr. Burnett 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 more cost effective rice production resulting in savings to the consumer, and economic benefit to producers in Calhoun County. 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 Dale Burnett, Chief, Pesticide Enforcement, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

The amendment is proposed under the Texas Agriculture Code, §75.108, which provides the Texas Department of Agriculture with the authority to promulgate rules, after notice and hearing, for the administration of the Texas Herbicide Law.

#### §11.2. County Special Provisions.

(a)-(f) (No change.)

(g) Brazoria, Calhoun, Fort Bend, Jackson, Matagorda, and that portion of Wharton County east of the Colorado River. Except for Calhoun County, the aerial application of 2,4-D or any derivative thereof is hereby prohibited in these counties between March 10-September 15 of each year. The aerial application of 2,4-D or any derivative thereof is hereby prohibited in Calhoun County between

March 10-August 1 of each year. These counties, for purposes of this regulation, are considered one unit, and this provision is not to be changed without a public hearing for the unit as a whole.

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

Issued in Austin, Texas, on August 31, 1988.

TRD-8808894

Dolores Alvarado Hibbs  
Director of Hearings  
Texas Department of  
Agriculture

Earliest possible date of adoption: October 7, 1988

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

## TITLE 22. EXAMINING BOARDS

### Part IX. State Board of Medical Examiners

#### Chapter 164. Advertising

#### • 22 TAC §164.1

The Texas State Board of Medical Examiners proposes new section §164.1, concerning advertising. The proposed new section outlines what constitutes misleading or deceptive advertising, particularly as the terminology involving board certification may be used by physicians. The section states that the physicians must disclose the complete name of the specialty board which conferred the certification. Physicians may not use the word "board certified" or other similar words which may mislead.

Florence Allen, business manager, and Jean Davis, Texas Register liaison, 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.

Ms. Davis also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the public will be assured of physician advertising which will not be misleading or deceptive in its reference to certification. 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 Jean Davis, Box 13562, Austin, Texas

78711. A public hearing on the proposed section is expected at a future Board meeting.

The new section is proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act. **§164.1. Misleading or Deceptive Advertising.**

(a) A physician's authorization of or use in any advertising for his or her practice of the term "board certified" or any similar words or phrase calculated to convey the same meaning shall constitute misleading or deceptive advertising under the Act, §3.08(6) unless the physician discloses the complete name of the specialty board which conferred the aforementioned certification.

(b) A physician may not use the term "board certified" or any similar words or phrase calculated to convey the same meaning if the claimed board certification has expired and has not been renewed at the time the advertising in question was published or broadcast.

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

Issued in Austin, Texas, on August 29, 1988.

TRD-8808854

G. V. Brindley, Jr.  
Executive Director  
Texas State Board of  
Medical Examiners

Earliest possible date of adoption: October 7, 1988

For further information, please call: (512) 452-1078

## Part XXIX. Texas Board of Land Surveying

### Chapter 661. General Rules of Procedures and Practices

#### Surveyor in Training

#### • 22 TAC §661.131, §661.132

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the

Texas Board of Land Surveying or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Board of Land Surveying proposes the repeal of §661.131 and §661.132, concerning surveyor in training requirements and examinations. These sections describe educational and experience requirements.

Betty J. Pope, executive secretary, has determined that for the first five-year period the proposed repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Ms. Pope also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be none. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Betty J. Pope, Executive Secretary, 7703 North Lamar Boulevard, Suite 304, Austin, Texas 78752. Written public comment is invited for 30 days from the date of this publication.

The repeals are proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

*§661.131. Minimum Education and Application Fees.*

*§661.132. Basic Examinations.*

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

Issued in Austin, Texas, on August 26, 1988.

TRD-8808804

Betty J. Pope  
Executive Secretary  
Texas Board of Land  
Surveying

Earliest possible date of adoption: October 7, 1988

For further information, please call: (512) 452-9427

◆ ◆ ◆  
• 22 TAC §§661.131, 661.132,  
661.133

The Texas Board of Land Surveying proposes new §661.131 and §661.132, concerning surveyor in training requirements and examinations. The Texas Board of Land Surveying proposes the new sections to outline requirements for application and examination as a surveyor in training. The sections clearly define what a person must do to become a certified surveyor in training.

Betty J. Pope, executive secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

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

effect the public benefit anticipated as a result of enforcing the sections will be none. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Betty J. Pope, Executive Secretary, 7703 North Lamar Boulevard, Suite 304, Austin, Texas 78752. Written public comment is invited for 30 days from the date of this publication.

The new sections are proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act. *§661.131. Minimum Education, Requirements, Examination, and Application Fees.*

(a) Surveyor-in-training applicants under the Act, §15(d), shall have graduated from an accredited high school or have obtained a GED certificate.

(b) Surveyor-in-training applicants qualified under subsection (a) of this section and who have a minimum of two years public surveying experience, of which an aggregate of 1 1/2 years must be in responsible charge and must be verified by the registered public surveyor under which the experience is claimed, may take the National Council of Engineering Examiners eight-hour fundamentals of surveying examination.

(c) Surveyor-in-training applicants qualified under subsection (a) of this section and who have successfully completed 32 semester hours of college level study or its academic equivalent in any combination of courses in civil engineering, land surveying, mathematics, photogrammetry, forestry, geodesy, land law, and the physical sciences, and who have a minimum of one year responsible charge experience in public surveying verified by the registered public surveyor under which the experience is claimed, may take the National Council of Engineering Examiners eight-hour fundamentals of surveying examination.

(d) The applicant shall furnish references from two registered public surveyors who are knowledgeable of the applicant's experience and a written commitment from a third registered public surveyor to act as a mentor during the training period. The mentor may be the applicant's employer or another registered public surveyor who is readily accessible to the applicant.

(e) The application fee and the examination fee for a surveyor-in-training shall be as prescribed by statute.

(f) If a surveyor-in-training applicant passes the examination on the National Council of Engineering Examiners eight-hour fundamentals of surveying, a surveyor-in-training certificate will be issued to the applicant.

*§661.132. Surveyor-in-Training Activities, Reports, and Application Updates.*

(a) A surveyor-in-training applicant who has become a surveyor-in-training under §661.131(b) (relating to Minimum Education, Requirements, Examination, and Application Fees) and has received an additional two years experience in responsible charge of public surveying verified by the registered public surveyor under which the experience is claimed and upon completion of a course of study containing 16 semester hours or its academic equivalent in any combination of courses in land surveying, mathematics, photogrammetry, geodesy, or land law as outlined or approved by the board, tailored to that individual's needs and geographic location, may then be permitted to take the remainder of the examination. If the applicant passes, he shall be registered.

(b) A surveyor-in-training applicant who has become a surveyor-in-training under §661.131(c) (relating to Minimum Education, Requirements, Examination, and Application Fees) and who has received an additional two years of experience in responsible charge of public surveying under the surveyor-in-training program and has completed any course of study which may be required by the board may then be permitted to take the remainder of the examination. If the applicant passes he shall be registered.

(c) It shall be the responsibility of the surveyor-in-training to file a detailed quarterly report with the board on or before January 1, April 1, July 1, and September 1, until such time as the surveyor-in-training is registered or his file is closed. The report shall state the progress in completing the required study program. The report shall identify any change of employment and/or address. The report shall indicate, in tabular form, those land survey assignments over which the surveyor-in-training had responsible charge. This tabulation shall contain duration dates, county of property, survey name and abstract number, acreage or indication that the tract is in a small lot subdivision, nature or purpose of the survey and the character of the surveyor-in-training responsibility (i.e. field party chief, calculations and drafting, deed research, or complete charge and any other information required by the board). The quarterly report shall include a "Report of Survey" on one of the listed assignments. The quarterly report shall contain a statement signed by the mentor that he has reviewed the quarterly report and he has counseled the surveyor-in-training on his progress during the quarter. Failure to file quarterly reports may result in closure of the applicant's file.

(d) It is the responsibility of the applicant to update his application each year on or before the anniversary date thereof. This update will be a revision of his original application. If a surveyor-in-training applicant does not update the appli-

cation within 30 days after the anniversary date of his original application, such application may be closed and the applicant so notified at his last known address.  
§661.133. *Limitations.*

(a) The application for registration under the surveyor-in-training provisions of these rules is valid for six years, if kept current.

(b) Any applicant withdrawing from the surveyor-in-training program after being certified as a surveyor-in-training shall not be eligible for further consideration as a surveyor-in-training.

(c) A certificate as a surveyor-in-training does not entitle an individual to practice as a registered public surveyor.

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

Issued in Austin, Texas, on August 26, 1988.

TRD-8808802 Betty J. Pope  
Executive Secretary  
Texas Board of Land  
Surveying

Earliest possible date of adoption: October 7, 1988

For further information, please call: (512) 452-9427

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 133. Hospital Licensing

##### Standards

###### • 25 TAC §133.21

The Texas Department of Health proposes an amendment to §133.21, concerning the adoption by reference of hospital licensing standards. Generally, the amendments update and clarify Chapters 1-10 in the standards. Specifically, the amendments change the Life Safety Code edition referenced in the Hospital Licensing Standards from 1981 to 1985 to correspond with recent changes to federal certification requirements; relocate sections concerning waste and waste disposal; implement House Bill 2031, 70th Legislature, 1987, by adding requirements for medical records retention; expand the section on smoking regulations to require hospitals to prominently display its smoking policy at the hospital's main entrance; impose a time limit on the commencement of construction projects following departmental approval of architectural drawings; reduce the requirement concerning the number of labor rooms; add handicap design provisions to the sections concerning patient toilet rooms in physical and occupational therapy suites; clarify the location of return air inlets in nurseries, birthing rooms, and rooms used for invasive procedures; add a requirement for emergency potable water storage facilities; add a section concerning

sprinkler system approval; add a section concerning the location of the fire alarm panel; update the National Fire Protection Association publications that are referenced to the editions required by the 1985 Life Safety Code; and add addresses for organizations authorized to approve sprinkler shop drawings.

Mr. Stephen Seale, chief accountant III, has determined that for first five-year period the section 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 as proposed.

Mr. Seale also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to update and clarify hospital licensing standards so that they are compatible with but do not exceed federal certification requirements. 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 Gerald W. Guthrie, Director, Hospital and Professional Licensure Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 4437f, §5, which provide the Texas Board of Health with the authority to adopt minimum standards governing the transfer of patients, for staffing by physicians and nurses, hospital services relating to patient care and safety, fire prevention, and sanitary provisions of hospitals in Texas; and Texas Civil Statutes, Article 4414b, §1.05, which provide the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

##### §133.21 Adoption by Reference.

(a) The Texas Department of Health adopts by reference the rules contained in the Department publication effective September 1, 1985, entitled, "Hospital Licensing Standards," as amended.

(b) (No change.)

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

Issued in Austin, Texas, on August 30, 1988.

TRD-8808875 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Earliest possible date of adoption: November 5, 1988.

For further information, please call: (512) 458-7538

## Chapter 401. Systems Administration

### Subchapter I. Certification of Community Residential Programs - Mental Retardation Services

#### • 25 TAC §§401.551-401.565

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

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§401.551-401.565, concerning the certification of community residential programs funded by TDMHMR to provide residential services to persons with mental retardation. The subchapter, which was previously proposed in the August 21, 1987, issue of the *Texas Register* (12 TexReg 2772), was automatically withdrawn in February 1988, pending the completion of the revision of certification standards. The proposed new subchapter, which is contemporaneously adopted on an emergency basis in this issue of the *Texas Register*, differs from the original proposal because it incorporates procedural modifications in response to staff and public comment concerning the withdrawn sections.

The new subchapter is proposed in response to the rapidly increasing numbers of persons with mental retardation who are being served in community residential programs. New sections would provide a mechanism by which an acceptable standard of service is provided to all clients living in such settings.

The new subchapter is consistent with the intent of the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-201 et seq., which requires the department to establish standards of care for community-based services, and which further requires the department to evaluate the performance of community-based service providers. It conforms with provisions of Senate Bill 257 of the 70th Legislature, which requires departmental rules and standards regarding community-based services to be applicable to outreach programs as well as community centers, and which mandates the department to annually review all outreach services, including residential programs. The new subchapter is also consonant with the implementation agreement in *Lelsz v. Kavanagh*.

Sue Dillard, director, office of standards and quality assurance, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for local government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect is an estimated additional cost of \$442,000 for fiscal years 1988-1992. Fiscal implications for small businesses, including community mental health and mental retardation centers, will depend on the extent to which each is currently providing services consistent with the proposed standard of service and may be significant with regard to compliance with standards based on the standards of the Ac-

creditation Council on Services for People with Developmental Disabilities.

Ms. Dillard also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be use of procedures that ensure that individuals placed in community residential programs are provided service that meets minimum standards for life, health, and safety. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Linda Logan, Rules Coordinator, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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

Issued in Austin, Texas, on August 30, 1988.

TRD-8808837

Pattilou Dawkins  
Chairman Texas Board of  
Mental Health and  
Mental Retardation  
Texas Department of  
Mental Health and  
Mental Retardation

Earliest possible date of adoption: October 7, 1988.

For further information, please call: (512) 465-4670

## Chapter 402. Client Assignment and Continuity of Services

### Subchapter B. Continuity of Services—Mental Health

#### • 25 TAC §402.44

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes an amendment to §402.44, concerning areas of responsibility in providing continuity of mental health services. The amended section is proposed contemporaneously with its emergency adoption in this issue of the *Texas Register*.

The proposed amendment will put into effect the court order of July 11, 1988, in *RAJ v. Jones* that requires the department to clarify its standards for providing community-based after-care services for clients discharged, furloughed, or transferred from state hospitals to the care of a mental health authority. The court requires that revisions to the standards be implemented effective September 1, 1988.

Revisions would require each mental health authority (MHA) to continue its good faith effort to make available and accessible specified aftercare services to clients discharged, furloughed, or transferred from state hospitals to mental health authorities for as long as the MHA determines such services are necessary. When services are changed or discon-

tinued, clinical justification is required to be documented in the client record.

The amendment will also require documentation of the efforts the MHA makes to ensure specified services are made available and accessible to clients, including hard to reach clients, i.e., clients who miss one or more significant treatment contacts within the first 90 days following furlough or discharge. Assessments of need for nonclinical support services would be required for all clients using a form designated by the department.

Sue Dillard, director, office of standards and quality assurance, 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.

Ms. Dillard also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that better ensure that efforts are made to provide services to clients discharged from state hospitals to community programs. There is no anticipated cost to individuals required to comply with the sections as proposed.

Public comments on the proposed amendment may be submitted to Linda Logan, rules coordinator, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668.

The amendment is proposed under Texas Civil Statutes, Article 5547-202, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers. <Pre>This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 30, 1988.

TRD-8808840

Pattilou Dawkins  
Chairman Texas Board of  
Mental Health and  
Mental Retardation  
Texas Department of  
Mental Health and  
Mental Retardation

Earliest possible date of adoption: October 7, 1988.

For further information, please call: (512) 450-4670

## Chapter 405. Client (Patient) Care

### Subchapter CC. Standards of Texas Department of MHMR Facilities and Centers—Quality Assurance

#### • 25 TAC §§405.731-405.740

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

The Texas Department of Mental Health and

Mental Retardation (TDMHMR) proposes the repeal of §§405.731-405.740, concerning standards of Texas Department of MHMR facilities and centers—quality assurance. The repeals are proposed pursuant to the proposal of new Chapter 401, Subchapter D of this title, governing Standards of the Texas Department of Mental Health and Mental Retardation—Quality Assurance, to be published in the September 13, 1988, issue of the *Texas Register*.

Sue Dillard, director, office of standards and quality assurance, has determined that for the first five-year period the repeals 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 repeals.

Ms. Dillard also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be will be the reorganization of the department's rules. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Linda Logan, Rules Coordinator, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

The repeals are proposed under Texas Civil Statutes, Article 5547-202, §2. 11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers. §405.731. Purpose.

§405.732. Application.

§405.733. Definitions.

§405.734. Scope.

§405.735. Standards of Care.

§405.736. Governing Body.

§405.737. Director of Standards and Quality Assurance.

§405.738. Program Reviews.

§405.739. References.

§405.740. Distribution.

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

Issued in Austin, Texas, on August 30, 1988.

TRD-8808842

Pattilou Dawkins  
Chairman Texas Board of  
Mental Health and  
Mental Retardation  
Texas Department of  
Mental Health and  
Mental Retardation

Earliest possible date of adoption: October 7, 1988.

For further information, please call: (512) 465-4670

#### • 25 TAC §§405.861-405.864

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

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeal of §§405.861-405.864, concerning uniform standards for quality of medical laboratory services. The repeals are proposed pursuant to the proposal of new Chapter 401, Subchapter D of this title, governing standards of the Texas Department of Mental Health and Mental Retardation—quality assurance, to be published in the September 13, 1988, issue of the *Texas Register*.

Sue Dillard, director, office of standards and quality assurance, has determined that for the first five-year period the proposed repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Ms. Dillard also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be the reorganization of the department's rules. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the proposal may be submitted to Linda Logan, Rules Coordinator, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

The repeal is proposed under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers. §405.861. Purpose.

§405.862. Application.

§405.863. Definitions.

§405.864. Implementation of Standards.

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

Issued in Austin, Texas, on August 30, 1988.

TRD-8808843

Pattliou Dawkins  
Chairman Texas Board of  
Mental Health and  
Mental Retardation  
Texas Department of  
Mental Health and  
Mental Retardation

Earliest possible date of adoption: October 7, 1988.

For further information, please call: (512) 465-4670

## Part VI. Statewide Health Coordinating Council

### Chapter 571. Health Planning and Resource Development

#### Review Manual

##### • 25 TAC §§571.21-571.30

The Statewide Health Coordinating Council (SHCC) proposes the repeal of §§571.21-571.30, concerning the review manual. The initial purpose of the manual was to establish the procedures and criteria which the SHCC would use in its reviews of state plans and applications and its reviews

of health system agencies' budgets and applications. However, the manual is now obsolete because the federal law which authorized the manual is no longer in existence. Therefore, the SHCC is proposing to repeal the manual.

Carol S. Daniels, chief, bureau of state health data and policy analysis, has determined that for the first five-year period that the repeals will be in effect there will be no fiscal implications to state or local government or small businesses as a result of administering or enforcing the proposed repeals.

Ms. Daniels also has determined that for each year of the first five years that the repeals are in effect the public benefit of the proposed repeals is to delete rules which the SHCC no longer uses. There is no anticipated economic cost to individuals as a result of the proposed repeals.

Comments of the proposed repeals may be submitted to Carol S. Daniels, Chief, Bureau of State Health Data and Policy Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 30 days after publication of the proposed repeals in the *Texas Register*.

The repeals are proposed under Texas Civil Statutes, Article 4418h, §4.04, which provides the Statewide Health Coordinating Council with the authority to adopt rules concerning the implementation of the state health plan.

§571.21. Introduction.

§571.22. Legislative Authorization.

§571.23. Organizational Structure for Review.

§571.24. Procedures.

§571.25. Other Procedural Considerations.

§571.26. General Criteria.

§571.27. Conflict of Interest.

§571.28. Office of Management and Budget Circular A-95 Review Information Checklist.

§571.29. Checklist for HSA Application Review.

§571.30. State A-95 Clearinghouse Criteria for HSA Applications/Budgets.

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

Issued in Austin, Texas, on August 31, 1988.

TRD-8808887

Marion R. Zetzman  
Chairman  
Statewide Health  
Coordinating Council

Earliest possible date of adoption: October 7, 1988.

For further information, please call: (512) 458-7261

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

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

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

The Texas Department of Human Services (DHS) proposes the repeal of §§48.1201, 48.2901-48.2904, 48.2906, 48.2907, 48.2910, 48.2912, 48.2914, 48.2917, 48.2922-48.2927, 48.3901, and 48.3903; an amendment to §48.5901; and new §§48.1201, 48.2901-48.2904, 48.2906, 48.2907, 48.2910, 48.2912, 48.2914, 48.2917, 48.2922, 48.2927, 48.3901, and 48.3903, concerning community care for aged and disabled (CHAD). The purpose of the proposal is to clarify program definitions, client eligibility requirements, and client rights and responsibilities during the application and service termination processes.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed repeals and 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 repeals and sections.

Mr. Packard also has determined that for each year of the first five years the repeals and sections are in effect the public benefit anticipated as a result of enforcing the repeals and sections will be clearer and more concise statement of rules governing the CCAD program. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals and sections.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-416, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

#### Definitions

##### • 40 TAC §48.1201

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

##### §48.1201. Definitions of Program Terms.

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

Issued in Austin, Texas, on August 31, 1988.

TRD-8808880

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: February 1, 1989

For further information, please call: (512)

## Definitions

### • 40 TAC §48.1201

The 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.

**§48.1201. Definitions of Program Terms.** The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

**Abuse**—The willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish; or the willful deprivation by a caretaker or one's self of goods or services which are necessary to avoid physical harm, mental anguish, or mental illness. (Chapter 48, Human Resources Code)

**Activities of daily living (ADL)**—Activities that are essential to daily self-care; including bathing, dressing, grooming, toileting, house-keeping, shopping, meal preparation, and others.

**Adult**—A person 18 or older, or an emancipated minor.

**Aged or elderly person**—A person 65 or older.

**Applicant**—A person initially requesting services.

**Attendant**—A person who is employed by a provider agency to give personal care or house-keeping services or both to an eligible family care or primary home care client, according to a service plan.

**Caregiver**—A relative, guardian, representative payee, or person who has contact with the client that is frequent enough or regularly scheduled enough that a personal relationship exists or the client perceives that person sharing a role in helping the client to meet basic needs.

**Caregiver support**—An interval of rest or relief from caregiving duties given to or arranged for the caregiver of a DHS client.

**Client**—A person determined eligible for CCAD services.

**Community care**—Services provided within the client's own home, neighborhood, or community, as alternatives to institutional care. Community care is sometimes called alternate care.

**Disabled/incapacitated person**—A person who, because of physical, mental, or developmental impairment, is limited temporarily or permanently in his capacity to adequately perform one or more essential activities of daily living, which include, but are not limited to, personal and health care, moving around, communicating, and housekeeping.

**Earned income**—Cash or liquid resources that a client receives for services he performs as an employee or as a result of self-employment. All other income is unearned income.

**Emancipated minor**—A person under 18 who has the power and capacity of an adult. This

includes a minor who has had the disabilities of minority removed by a court of law or a minor who, with or without parental consent, has been married. Marriage includes common-law marriage.

**Expedited response**—A face-to-face contact with an applicant by the caseworker within five calendar days of the date of the applicant's request for services.

**Exploitation**—The illegal or improper act or process of a caregiver or others using an adult's income and resources for monetary or personal benefit, profit, or gain.

**Facility**—A legal entity that contracts with the department to deliver to clients day services or 24-hour residential services.

**Fraud**—A deliberate misrepresentation or intentional concealment of information in order to receive or to be reimbursed for the delivery of services to which the individual is not entitled.

**Functional need**—An individual's requirement for assistance with activities of daily living, caused by a physical or mental limitation or disability.

**Immediate response**—A face-to-face contact with an applicant by the caseworker within 24 hours of the applicant's request for services.

**Income eligible (I.E.)**—An adult who, although neither a Medicaid recipient nor a food stamp head of household or spouse, nevertheless has income and resources equal to or less than the eligibility level established by the department.

**Institution**—A nursing home, an intermediate care facility for the mentally retarded (ICF-MR), a state school, or a state hospital.

**Liquid resource**—Cash or financial instruments that could be converted to cash within 20 workdays.

**Medicaid eligible**—An individual eligible for federal medical assistance as an SSI or AFDC client, or eligible for medical assistance only (MAO) in a nursing home or while living in the community or through a federally approved waiver.

**Medicare eligible**—An aged or disabled person who is a recipient of social security or railroad retirement benefit payments and meets eligibility criteria to have certain medical expenses paid by the federal Medicare program.

**Neglect**—The failure to provide for one's self the goods or services which are necessary to avoid physical harm, mental anguish, or mental illness; or the failure of a caretaker to provide the goods or services. (Chapter 48, Human Resources Code)

**Personal leave**—Any leave from a residential care facility except for hospitalization or institutionalization. A day of personal leave is any period of 24 consecutive hours.

**Prior approval**—A regional nurse's authorization that payment may be made to a provider agency, because a client meets the medical criteria for the requested Medicaid service.

**Provider agency**—An agency that has contracted with DHS to provide the CCAD services that DHS has authorized for eligible clients.

**Resource**—Any cash or other liquid assets or any real or personal property owned by an individual and spouse that could be converted to cash to use for support and maintenance.

**Responder**—A person who responds to an emergency response services (ERS) call activated by a client. Responders may include relatives, neighbors, volunteers, or staff of a sheriff's department, police department, emergency medical service, or fire department.

**Supplemental security income (SSI)**—Monthly payments made by the Social Security Administration (SSA) to an aged or disabled individual who meets the requirements for public aid. SSA determines eligibility for SSI.

**Support system**—The network of family members, close friends, and neighbors who are usually available and willing to provide regular or occasional assistance to a person.

**Unearned income**—Income received by a client from sources other than self-employment or employee work activities.

**Unmet need**—A requirement for assistance with activities of daily living that cannot be met adequately on an ongoing basis by friends, relatives, volunteers, or service agencies other than DHS.

**Verbal referral**—A referral made by the caseworker to the provider agency in person or by telephone, no later than the first workday after the caseworker's determination that the applicant meets the criteria for an expedited or immediate response to a request for service, and needs immediate service initiation.

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

Issued in Austin, Texas, on August 31, 1988.

TRD-8808883

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: February 1, 1989

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

## Eligibility

### • 40 TAC §§48.2901, 48.2904, 48.2906, 48.2907, 48.2910, 48.2912, 48.2914, 48.2917, 48.2922-48.2927

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

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

**§48.2901. Eligibility for Services.**

**§48.2902. Income-Income Eligibles.**

**§48.2903. Determination of Monthly Gross Income.**

**§48.2904. Income Exclusions.**

**§48.2906. Age.**

**§48.2907. Need.**

**§48.2910. Eligibility for Specific CCAD Services.**

**§48.2912. Congregate and Home-delivered**



(16) Regular monthly cash support payments from friends or relatives.

(17) Net income from the client's share of a life estate.  
**§48.2904. Income Exclusions.** The client's monthly gross income excludes the following:

(1) per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian Claims Commission or the court of claims;

(2) any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(3) loans and grants such as scholarships, obtained and used under conditions that preclude their use for current living costs;

(4) Veterans Administration Aid-and-Attendance Benefits, VA Homebound Elderly Benefits, and payments to certain eligible veterans for purchase of medications;

(5) in-kind income such as food, clothing, shelter, or rent subsidies;

(6) infrequent or irregular income (income received less frequently than once a month) that averages \$20 a month or less. One-time or lump-sum payments are not counted as income;

(7) reimbursement from an insurance company for health insurance claims;

(8) the amount of the cost-of-living increase in any pension or benefit, received on or after January 1, 1985, that would cause the client to be ineligible for continued services. This exclusion applies only to community care clients who are already receiving services or case management and would become ineligible because of the increase. It does not apply to applicants for services;

(9) the first \$65 of the client's earnings plus 1/2 of the remaining earnings. This exclusion applies only to the client's earnings. If both members of an eligible couple are employed, only one exclusion is allowed for the couple's combined earned income.

**§48.2906. Age.**

(a) Except as specified in subsections (b)-(c) of this section, clients must be at least 18 to receive CCAD services.

(b) No age limits apply to CCAD Medicaid services (primary home care and day activity and health services).

(c) Emancipated minors may receive CCAD services without regard to age.  
**§48.2907. Need.**

(a) The client needs assessment questionnaire is used to determine an individual's functional need for CCAD services.

(b) Regardless of a client's functional eligibility, as determined by his score on the client needs assessment questionnaire, he receives CCAD services only if he has an unmet need for those services.

**§48.2910. Service Availability.** Some services are not available in certain geographic areas of the state. If the provider agency in an eligible client's area is operating at capacity, the client may not be able to receive a service at the time he is determined eligible. In this event, the caseworker puts the client's name on a waiting list. Waiting lists are kept in order according to the score on the client needs assessment questionnaire and then chronologically by date of eligibility certification.

**§48.2912. Congregate and Home-delivered Meals.** To be eligible for congregate or home-delivered meals, applicants and clients must score at least 16 on the client needs assessment questionnaire. Individuals receiving congregate or home-delivered meals on July 1, 1986, continue to be eligible for services as long as they score at least nine on the client needs assessment questionnaire. If services are terminated for these grandfathered clients, they must meet an eligibility score of at least 16 to requalify for services.

**§48.2914. Special Services to Handicapped Adults.** To be eligible for special services to handicapped adults, clients must score at least nine on the client needs assessment questionnaire.

**§48.2917. Case Management Services.** Clients must meet the eligibility criteria for CCAD services, but they do not have to receive services to receive case management. Ineligible applicants receiving only information and referral are not eligible for case management.

**§48.2922. Resource Limits.** An applicant or client is not eligible for CCAD services if the value of nonexempt resources owned by him or his spouse exceeds \$5,000.

**§48.2923. Countable Resources.** In determining eligibility for CCAD services, the department considers the following to be resources.

(1) Liquid resources including cash on hand, certificates of deposit, checking or savings accounts, money market funds, revocable trust funds, savings certificates, stocks, or bonds. Liquid resources also include the individuals or couple's portion of money in a checking or savings account or a money market fund held jointly with another person.

(A) Jointly held liquid resources are the resources of the applicant/client if he has unrestricted access to the funds regardless of the source. The applicant/client may move his portion of jointly held funds in a joint account to a new account. Although the new account may be jointly owned, all funds in the new account are his.

(B) Money received as a nonrecurring lump sum payment is not considered a resource until 30 days from the date of receipt. Lump-sum payments include, but are not limited to, income tax refunds; earned income tax credits or rebates; one-time bonuses from mineral rights; retroactive lump-sum social security, SSI, or railroad retirement benefits; lump-sum insurance settlements; one-time gifts, awards, or prizes; and refunds from rental or utility deposits. The applicant/client is responsible for reporting the receipt of a lump sum payment.

(2) Nonliquid resources including nonexempt licensed or unlicensed vehicles; buildings and land not designated as homestead that are not producing income, or are producing income less than 6% of the equity value; and any other property not specifically excluded.

**§48.2924. Resource Exclusions.** In determining eligibility for CCAD services, the department does not consider the following to be resources. They are considered to be excluded for eligibility purposes. Any item not listed as an exclusion is considered a resource.

(1) Homestead. Any structure used by the client as a residence, including other buildings and contiguous land. Mobile homes, houseboats, and motor homes are considered structures. Vacant property is not a homestead. Contiguous land means land adjacent to the home, including any land separated only by roads, rivers, and streams. Land is contiguous as long as it is not separated by property owned by another person. The homestead is excluded as a resource regardless of its location, even if the client no longer lives there (unless he has purchased another residence). If he owns two houses, his homestead is the property that he uses as a residence. Only one homestead may be excluded for each client or couple.

(2) Personal property. Household goods and personal effects.

(3) Property essential to employment. Tools and equipment required for employment or self-employment, and property such as livestock used for self-support.

(4) Prepaid burial funds. Prepaid burial arrangements, burial insurance, and burial plots.

(5) Life insurance. The cash surrender value of all life insurance.

(6) Vehicles. One passenger car or other vehicle, such as a van or truck, used for transportation; or one unlicensed vehicle.

(A) A second vehicle may be excluded if it is:

(1) specially equipped for a handicapped person to drive; or

(2) essential to the employment



or self-employment of the family.

(B) Any additional vehicles, licensed or unlicensed, are considered resources.

(7) **Income-producing property.** Property that annually produces net income equal to or greater than 6% of the property's equity value. The equity value is the current market value of the property less any recorded encumbrances.

(8) **Installment contracts from mortgages, notes, or loans.** The value of installment contracts for the sale of land, other property, or repayment of loans, if the contract or agreement is producing income according to the fair market value at the time of the agreement. An installment is a mortgage or similar contract in which the buyer promises to pay a fixed amount over a period of time until the principal of the note is paid. Even though the seller retains legal title, the property is not considered a countable resource as long as the buyer is fulfilling the contractual obligation. The payment is considered income.

(9) **Disaster assistance.** Government payments granted for the rebuilding of homes destroyed or damaged in a disaster.

(10) **Energy assistance.** Payments or allowances for energy assistance made under any federal, state, or local law.

(11) **Food stamp allotments.** The value of food stamp allotments and USDA-donated foods.

(12) **Inaccessible resources.** The cash value of resources that are inaccessible to the client, including, but not limited to, irrevocable trust funds, property in probate, and pension funds. Real property that the client or family is making a good faith effort to sell is exempt. The client or family

must ask a fair price for the property, according to its current market value. Property is also exempt if it is jointly owned and the other co-owners refuse to sell.

(13) **Mineral rights.** The value of mineral rights.

(14) **Life estates.** Certain rights an individual holds to property for his lifetime, if it qualifies as a homestead or if a contract restriction exists that prevents the holder of a life estate from selling the property.

(15) **Replacement value of excluded resources.** Replacement value of an excluded resource if it is lost, damaged, or stolen. The cash received from an insurance company for replacing the resource is not considered for three months if it is real property. Any cash not spent within the specified time period is considered a resource.

(16) **Monthly gross income.** All income received monthly. Monthly gross income is counted as income in the month received and excluded as a resource in that month.

(17) **Sale of a homestead.** Proceeds from the sale of a homestead up to six months after they become available to the seller. The six months gives the client time to acquire another homestead. If he does so, any balance from the original sale must be considered as an available resource. If, before the end of the six-month period, the client declares he has no intention of acquiring another homestead, the proceeds from the sale must be counted as an available resource.

**§48.2925. Transfer of Resources.** Applicants/clients who have transferred resources to qualify for CCAD services are not eligible to participate in the program for up to two years after the date of the transfer.

Disqualification applies if substantial evidence exists indicating that the applicant or client knew about CCAD resource policies before transferring his resources.

**§48.2926. Transfers Not Affecting Eligibility.** The following transfers are not considered transfers of resources as described in §48.2925 of this title (relating to Transfer of Resources):

(1) transfers of furniture, the homestead, or other items which are excluded as resources;

(2) transfers of resources which, when added to other nonexempt household resources, total less at the time of transfer than the allowable resource maximum;

(3) transfer of income-producing property, if the amount of income available to the applicant or client is unaffected;

(4) liquid resources spent for benefit of the applicant or client, his spouse, or minor children. A liquid resource given to another person is considered a transfer if the reason for the gift was to qualify for services; and

(5) property sold at current market value.

**§48.2927. Length of Disqualification.**

(a) For applicants or clients who have transferred resources to qualify for CCAD services, the disqualification period is based on the resource's value as verified by the CCAD caseworker and the amount of resources in excess of the resource limit.

(b) To determine the amount in excess of the resource limit, add the value of the applicant's or client's current resources to the value of the resource(s) he transferred. Subtract the \$5,000 resource limit from the total.

(c) The disqualification period begins on the date of the transfer and extends as indicated in the following chart:

Amount in Excess  
of Resource Limit

Period of Disqualification

\$ 1 - \$ 249.99	1 month
\$ 250 - \$ 999.99	3 months
\$1,000 - \$ 2,999.99	6 months
\$3,000 - \$ 4,999.99	9 months
\$5,000 - \$10,000	12 months
Over \$10,000	24 months

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

Issued in Austin, Texas, on August 31, 1988.

TRD-8808884

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: February 1, 1989

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

◆ ◆ ◆ ^  
**Case Management**

◆ ◆ ◆ ^  
**• 40 TAC §48.3901, §48.3903**

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

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

**§48.3901. Application for Services.**

**§48.3903. Denial, Reduction, or Termination of 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 August 31, 1988.

TRD-8808882

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: February 1, 1989

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

◆ ◆ ◆ ^  
**• 40 TAC §48.3901, §48.3903**

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

**§48.3901. Application for Services.**

(a) Information collected to determine eligibility for services, whether collected by DHS staff or provider agencies, is confidential.

(b) The applicant is entitled to a face-to-face interview during the department's determination of his eligibility for CCAD services.

(c) Applicants or their representatives applying for services provided with regard to income must sign an application for assistance form. If they refuse to sign this form, they are not eligible for CCAD services. The date of application is the date the department receives the signed application. Applicants must provide accurate information about income and resources.

(d) An applicant is entitled to a decision on his application within 30 calendar days after the signed application is received by the department. He must provide all information requested by department staff for use in determining eligibility. If he fails to cooperate, he is not eligible for services. Falsification of information is grounds for prosecution.

(e) The client must report promptly any changes in income, resources, or family size; loss of assistance grant or Medicaid benefits; or other changes in functional ability or circumstances that affect eligibility. The client is subject to fraud prosecution if he willfully fails to report changes and continues to receive services for which he is not eligible.

(f) A Medicaid-certified applicant for CCAD-purchased services who requires a verbal referral is eligible to receive CCAD-purchased services when his eligibility for Medicaid is verified. A non-Medicaid certified applicant who meets the requirements for a verbal referral is eligible to receive CCAD purchased services for up to 30 calendar days while income and resources are verified.

(1) To be eligible, this applicant must:

(A) be a new applicant for CCAD services;

(B) appear to be eligible based on the declaration of income and resources on his application for services or have possession of a current medical care identification card; and

(C) meet the age and need criteria for the CCAD service he requires.

(2) The 30-calendar day eligibility period for non-Medicaid applicants begins on the date of application.

(3) To continue receiving services after the 30-day period, a non-Medicaid applicant must provide the information to verify that his income and resources are equal to or below the CCAD eligibility limits.

**§48.3903. Denial, Reduction, and Termination of Benefits.**

(a) An applicant or client may request an appeal of any decision that denies, reduces, or terminates his benefits. The effective date of the action depends on the situation, as shown in the following table:

if  
Termination or reduction is because client lost his eligibility as an income-eligible, failed to meet the client needs assessment score or medical criteria for the service, repeatedly refused to follow the service plan, or experienced a change in his need for the specific service,

Termination is because client lacks AFUC, SSI, Medicaid or food stamp eligibility,

Termination is because client lacks physician's orders for the service,

Termination or reduction is because of budgetary constraints or changes in federal law or state regulations, and services are reduced or terminated for an entire categorical client group,

Termination is because client failed to qualify as an income-eligible after the 30-day period of expedited CCAD purchased services,

Termination is because the client threatens his own health or safety or that of others,

Then  
The action is effective 10 days (or 12 days if mailed) from the date of the notice unless the action is appealed. In the event of appeal, services continue until the hearing officer gives a decision. The cost of providing services during this period is subject to recovery by the department from the client. Services to clients in residential care facilities are terminated five days after the hearing officer gives his decision.

Services continue only to the end of month that the client is determined ineligible, even if the action is appealed.

Services continue only through the date the previous orders end, even if the action is appealed.

Services continue only through the date of termination of a categorical client group, even if appealed.

Services continue only through the 30th day, even if the action is appealed.

Services may be terminated immediately under the following conditions:

A client receiving residential care, adult foster care, day, activity and health services, congregate meals, or special services to handicapped threatens his own health or safety or that of others, or

A client receiving emergency response services, home-delivered meals, family care, or primary home care threatens the provider's health or safety.

(b) A client is entitled to be notified 10 days before any reduction or termination of his services, or to have the notification mailed 12 days before the date of reduction or termination. If a client threatened his own health or safety or that of others, purchased services may be terminated without advance notice.

(c) A client is not eligible for CCAD services when:

- (1) he dies;
- (2) he is admitted to an institution;
- (3) his physician requests service termination (Medicaid services only);
- (4) he requests service termination or repeatedly refuses to accept help, except in an involuntary protective services case, or he refuses to comply with his service plan; or
- (5) he becomes ineligible for Medicaid and social services block grants services, unless he is receiving time-limited services because of APS client status.

(d) The client is not eligible for emergency response services if:

(1) he abuses the service by activating:

(A) four false alarms which result in a response by fire department, police/sheriff, or ambulance personnel within a six-month period; or

(B) twenty false alarms of any kind within a six-month period;

(2) he is admitted to a skilled institution, personal care home, foster care setting, or any other setting where 24-hour supervision is available;

(3) in the caseworker's judgment, he is no longer mentally alert enough to operate the equipment properly. Situations include, but are not limited to:

(A) he damages the equipment;

(B) he disconnects the equipment and has received two warnings that are documented in the case record;

(C) he refuses to participate in the monthly system checks; or

(4) he is away from the home or is unable to participate in the service delivery for three consecutive months or more.

(e) The client is not eligible for residential care if he is required to contribute to the cost of his care, but refuses to do so.

(f) If a client refuses to comply with his service plan, the caseworker and the client may adjust it within the CCAD service requirement limitations. If the client repeatedly refuses to comply with his service plan, the caseworker may terminate services. Refusal to comply with a service plan includes actions by the client that prevent carrying out the service plan. Before services are terminated, the client is entitled to receive written notification that his services will be terminated if he does not comply with his service plan.

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

Issued in Austin, Texas, on August 31, 1988.

TRD-8808885

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: February 1, 1989

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

### Contracting for CCAD Services

#### • 40 TAC §48.5901

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.

§48.5901. CCAI Contracts.

(a) CCAD provider agencies [contractors] must comply with applicable federal regulations, the Title XIX and/or XX state plans, applicable statutes, appropriate service standards, and the department's procurement requirements.

(b) To be reimbursed, provider agencies must accept DHS' decision about which clients are eligible.

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

Issued in Austin, Texas, on August 31, 1988.

TRD-8808886

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Proposed date of adoption: February 1, 1989

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

## Chapter 76. Auditing

### Provider's Requirements

#### • 40 TAC §76.203

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

The Texas Department of Human Services (DHS) proposes the repeal of §76.203, concerning prior approval. This is the only remaining section in Chapter 76, Auditing. DHS has updated and moved the sections from Chapter 76 to Chapter 69, Contracted Services. Section 76.203 was renumbered §69.305 and adopted in the August 12, 1988, issue of the *Texas Register* (13 TexReg 3903).

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed repeal 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 repeal.

Mr. Packard also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be availability of the department's auditing procedures in one rule chapter. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-569, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

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

§76.203. Prior 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.

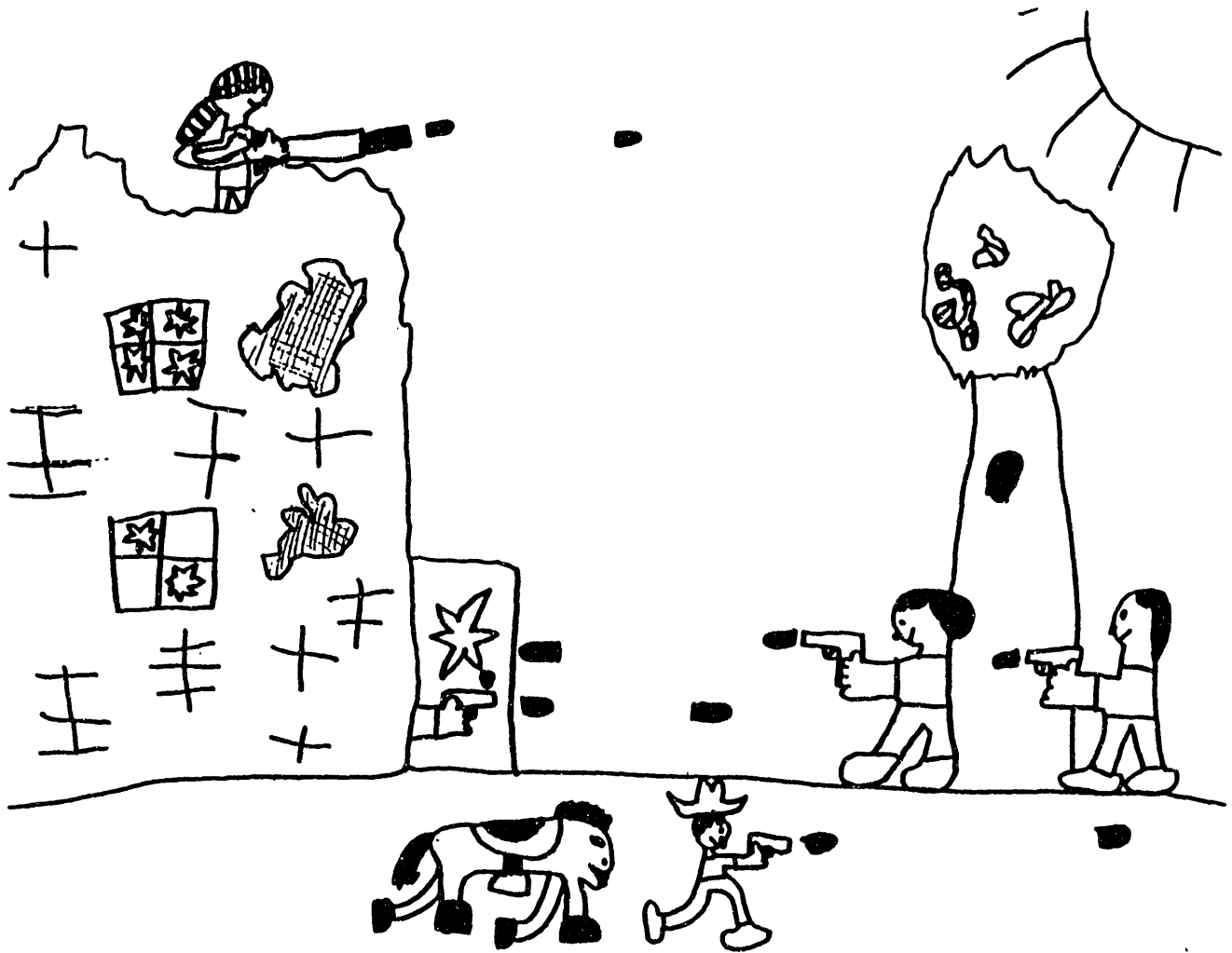
Issued in Austin, Texas, on August 31, 1988.

TRD-8808879

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Proposed Date of Adoption: February 1, 1989

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



Name: Patrick Pursley  
Grade: 2  
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# Adopted Sections

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

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

## TITLE 16. ECONOMIC REGULATION

### Part II. Public Utility Commission of Texas

#### Chapter 23. Substantive Rules

##### Customer Service and Protection

###### • 16 TAC §23.52

The Public Utility Commission of Texas adopts an amendment to §23.52, without changes to the proposed text as published in the July 8, 1988, issue of the *Texas Register* (13 TexReg 3401).

The section is adopted because PURA, §94, requires the Public Utility Commission to adopt rules requiring each local exchange company to establish a telecommunications service assistance program to provide eligible consumers with a reduction in costs of telecommunications services.

Each local exchange company shall provide tel-assistance service to all eligible consumers within its certificated area in the form of a 65% reduction in the applicable tariff rate for a qualifying service. The Texas Department of Human Services will determine eligibility and notify the local exchange companies. Each local exchange company must file a tariff to implement tel-assistance service.

Commenters objected to the elimination of service order charges from lost revenues eligible for reimbursement from the Universal Service Fund.

Commenters opposing adoption of the amendment were Southwestern Bell Telephone Company, the Texas Telephone Association, and Texas Statewide Telephone Cooperatives, Inc.

The commission finds that service order charges do not qualify as lost revenue under the statute creating tel-assistance or under existing tariffs.

The amendment is adopted under PURA, §94, which provides the Public Utility Commission of Texas with the authority to adopt rules requiring local exchange companies to establish tel-assistance service 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 August 30, 1988.

TRD-8808859

Phillip A. Holder  
Secretary  
Public Utility Commission  
of Texas

Effective date: September 20, 1988

Proposal publication date: July 8, 1988

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

###### • 16 TAC §23.53

The Public Utility Commission of Texas adopts an amendment to §23.53, with changes to the proposed text as published in the July 8, 1988, issue of the *Texas Register* (13 TexReg 3401).

The section is adopted because PURA, §98, requires the Public Utility Commission of Texas to adopt rules relating to establishment of a universal service fund to assist local exchange companies in providing basic local exchange service at reasonable rates in high cost rural areas and for reimbursement of certain lost revenues and costs in connection with tel-assistance service.

Telecommunications utilities will pay an assessed amount into the universal service fund. Local exchange companies will be reimbursed for lost revenues associated with tel-assistance service. The Public Utility Commission and the Department of Human Services will be reimbursed for costs incurred in administering the fund and the tel-assistance program. Ministerial functions may be delegated to another agency or organization. A mechanism for developing high cost assistance is established.

The commenting party objected to the elimination of service order charges from lost revenue eligible for reimbursement from the Universal Service Fund.

A commenter opposing adoption of the amendment was Southwestern Bell Telephone Company.

The commission finds that service order charges do not qualify as lost revenue under the statute creating tel-assistance or under existing tariffs.

The amendment is adopted under Texas Civil Statute, Article 1446c, §98, which provide the Public Utility Commission of Texas with the authority to adopt rules relating to the establishment of a universal service fund. §23.53. *Universal Service Fund*.

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

(c) Administration of Universal Service Fund.

(1) (No Change.)

(2) Assessments to telecommunications utilities.

(A) Local exchange companies (LECs) shall submit monthly reports to

the administrator showing intrastate local switching access minutes of use for telecommunications utilities and showing the LEC's equivalent access minutes of use, developed in accordance with paragraph (3) of this subsection. Telecommunications utilities other than LECs shall submit monthly reports to the administrator showing additional data that is required by the administrator to calculate the assessment rate.

(B) Local exchange companies shall submit monthly reports in accordance with paragraph (4)(B) of this subsection showing the lost revenue associated with the provision of tel-assistance service.

(C) The agencies which qualify to receive reimbursements from the USF in accordance with paragraph (4)(A) of this subsection shall file monthly reports with the administrator showing the costs incurred for the previous period which are directly and reasonably associated with the administration of the Universal Service Fund and with tel-assistance service.

(D) The administrator shall establish a reserve for such contingencies as late payments and uncollectibles in an amount authorized by the commission.

(E) The administrator shall establish an assessment rate to be applied to all telecommunications utilities based upon the total claims for the current period, including claims reported under subparagraphs (B), (C), and (D) of this paragraph, divided by the total industry access minutes of use for the period reported. Total industry access minutes of use shall include intrastate local switching access minutes of use and LEC equivalent access minutes of use as developed under paragraph (3) of this subsection. The assessment for each telecommunications utility shall be in the amount of that utility's access minutes of use multiplied by the assessment rate for the period.

(3) Methodologies for developing industry access minutes of use.

(A) Intrastate local switching access minutes of use (MOU) are all minutes for which telecommunications utilities are billed the local switching rate element (e.g. LS1, LS2) from the LEC's intrastate

access service tariff. These minutes shall include sent paid, sent collect, and originating 800 service. For services not billed the local switching rate element, intrastate local switching access MOU will be the assumed MOU as defined in the LEC's intrastate access service tariff multiplied by the number of intrastate voice grade/equivalent circuits billed to that telecommunications utility.

(B) LEC intrastate equivalent access minutes of use shall include sent paid, sent collect, and originating 800 service, and shall be derived using the following methods.

(i) CBS conversion method. The carrier access billing system conversion process which uses Attempts Per Message Factors (ATMF), Non-Conversation Time Additives (NCTA), and Terminating to Originating Ratios (T/O) will be applied to LEC intrastate toll MOU (which include originating and terminating minutes billed in accordance with the LEC's message toll and WATS tariff) to derive LEC intrastate equivalent access MOU. If the data and/or mechanized systems required to perform this CABS conversion process are not available, the Dial Equipment Minutes conversion method (DEM) shall be used if available.

(ii) Dial Equipment Minutes (DEM) conversion method. Unweighted dial equipment minutes of use (which include originating and terminating minutes billed in accordance with the LEC's message toll and WATS tariff, and which are adjusted to reflect total toll usage in accordance with separations procedures) will be divided by the toll access time ratio to derive LEC intrastate equivalent access MOU. If DEM information is not available, the LEC will use the message conversion method as follows.

(iii) Message conversion method. The LEC's intrastate toll message volume (which includes all messages billed in accordance with the LEC's message toll and WATS tariff) will be multiplied by the industry surrogate holding time (developed by the administrator based upon an average holding time for companies using the CABS conversion method or the DEM conversion method.) The product will be divided by the toll access time ratio to derive LEC intrastate equivalent access minutes of use.

(4) Disbursements to qualifying companies and agencies.

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

(d) (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 August 30, 1988

TRD-8808858

Phillip A. Holder  
Secretary  
Public Utility Commission  
of Texas

Effective date: September 20, 1988

Proposal publication date: July 8, 1988

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

## TITLE 22. EXAMINING BOARDS

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

#### Chapter 511. Certification as CPA

##### Certification

###### • 22 TAC §511.163

The Texas State Board of Public Accountancy adopts the repeal of §511.163, without changes to the proposed text published in the April 19, 1988, issue of the *Texas Register* (13 TexReg 1904).

The repeal of this section is required to establish guidelines for the issuance of replacement certificates for certified public accountants.

The repeal of this section will more clearly set forth guidelines for the issuance of replacement certificates for certified public accountants, and prohibits registration or certificate holders from possessing multiple Texas certificates.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding replacement certificates for certified 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 August 23, 1988.

TRD-8808812

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

Effective date: September 19, 1988

Proposal publication date: April 19, 1988

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

The Texas State Board of Public Accountancy adopts new §511.163, with changes to the proposed text published in the April 19, 1988, issue of the *Texas Register* (13 TexReg 1904).

The new section is required to establish guidelines for the issuance of replacement certificates for certified public accountants.

The new section more clearly sets forth guidelines for the issuance of replacement certificates for certified public accountants,

and prohibits registration or certificate holders from possessing multiple Texas certificates.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding replacement certificates for certified public accountants.

§511.163. *Replacement Certificates.* Replacement certificates may be issued by the board in appropriate cases and upon payment by the certified public accountant or public accountant of the actual cost, as determined by the board, of the replacement certificate or registration as a public accountant. However, a registration or certificate holder is specifically prohibited from possessing multiple Texas certificates as a certified public accountant or registration as a public accountant.

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 August 23, 1988.

TRD-8808813

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

Effective date: September 19, 1988

Proposal publication date: April 19, 1988

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

## TITLE 25. HEALTH SERVICES

### Part II. Texas Department of Mental Health and Mental Retardation

#### Chapter 401. Systems Administration

##### Subchapter B. Interagency Agreements

###### • 25 TAC §§401.41-401.44, 401.61

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §401.43, with changes to the proposed text as published in the May 24, 1988, issue of the *Texas Register* (13 TexReg 2436). Sections §§401.41, 401.42, 401.44, and 401.61 are adopted without changes and will not be republished.

The new sections provide a means by which legislatively mandated agreements between TDMHMR and other state agencies may be published for public review and comments and adopted in rule form.

Section 401.44 adopts by reference a memorandum of understanding (MOU) between TDMHMR, the Texas Department of Health (TDH), and the Texas Department of Human Services (TDHS) concerning hospitals and long-term care facilities. The section is adopted in order to comply with the provi-



sions of the Human Resources Code, Texas Codes Annotated, §22.014, which requires the agencies to adopt the MOU by rule. The MOU discusses the responsibilities, procedures, and standards involved in the provision, regulation, and/or funding of services in hospitals and long-term care facilities. It does not apply to state hospitals or to any TDMHMR services not funded under Title XIX of the United States Social Security Act.

Section 401.43, concerning definitions, has been revised to include reference to the Texas Department on Aging.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 5547-202, §2.11, which provides the Texas Board of Mental Health and Mental Retardation with rule making powers. **§401.43. Definitions.** The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

**Community center**—A community mental health and mental retardation center organized pursuant to the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-201 et seq., as amended.

**TCADA**—Texas Commission on Alcohol and Drug Abuse.

**TDC**—Texas Department of Corrections.

**TDH**—Texas Department of Health.

**TDHS**—Texas Department of Human Services.

**TDMHMR**—Texas Department of Mental Health and Mental Retardation.

**TDOA**—Texas Department on Aging.

**TEA**—Texas Education Agency.

**TRC**—Texas Rehabilitation Commission.

**TSBP**—Texas State Board of Pharmacy.

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 August 30, 1988.

TRD-8808833

Pattilou Dawkins  
Chairman Texas Board of  
Mental Health and  
Mental Retardation  
Texas Department of  
Mental Health and  
Mental Retardation

Effective date: September 20, 1988.

Proposal publication date: May 24, 1988

For further information, please call: (512) 485-4670

## Subchapter L. TDMHMR In-Home and Family Support Program

• 25 TAC §§401.681-401.692

The Texas Department of Mental Health and Mental Retardation adopts new §§401.684-401.686 and 401.688, with changes to the proposed text as published in the April 8, 1988, issue of the *Texas Register*. Sections 401.681-401.683, 401.687, and 401.689-401.692 are adopted without changes and will not be republished.

The new sections describe the administration of a program that provides up to \$3,600 annually in financial support for services to persons with mental disabilities and their families, with an additional one-time grant of up to \$3600 for architectural modifications or equipment.

Public comment regarding adoption of the new sections was received from the Texas Legal Services Center, Austin; the Association for Retarded Citizens of Texas, Austin; the Wichita Falls Community Mental Health and Mental Retardation Center, Wichita Falls; and the Texas Planning Council for Developmental Disabilities, Austin.

The Texas Legal Services Center commented that in the listing of fundable services in §401.684, concerning support services, the department omitted the cost of transportation and room and board during a client's treatment which has been preapproved by the department. The department responds that the omission of this statutorily authorized fundable service was an oversight and that language has been added.

The Association for Retarded Citizens of Texas suggested clarifying language concerning the establishment of need for services in §401.685, concerning eligibility determination. The department concurs with the recommendation to clarify that application can only be made by an individual or family, not by a residential facility per se, and has added language in subsection (a) of the section. In subsection (a)(4)(A), the department has also clarified that clients who are served in programs intended to provide comprehensive services, e.g., ICF-MR, are not eligible to receive funding through the program.

The Wichita Falls Community Mental Health and Mental Retardation Center commented that by not requiring a comprehensive diagnosis and evaluation before MR clients receive funding for services, the department is departing from its policy in other rules and the Mentally Retarded Persons Act of 1977. The department responds that the fundable services provided are not mental retardation services per se, e.g., transportation for a person with mental retardation is not a mental retardation service, and therefore a comprehensive diagnosis and evaluation is not requisite. It should be further noted that within 90 days of receipt of funding for designated services, written documentation is required to establish the basis of diagnostic eligibility. This approach is in keeping with the intent of the authorizing legislation, which is to make services accessible to eligible persons with dem-

onstrated needs without imposing unnecessary obstacles.

One commenter stated that the section was acceptable overall if it reaches persons where and when needed, but that more consideration should be given to the specific needs of mentally ill clients, such as for various forms of rehabilitation. The department responds that it concurs that certain mentally ill clients require ongoing services, as do certain clients with mental retardation. The section sets forth a program that is but a first step toward meeting the needs of mentally disabled persons not otherwise served by TDMHMR.

The Texas Planning Council for Developmental Disabilities comments that the TDMHMR program should use the same sliding scale as that adopted by the Texas Department of Human Services (TDHS) for its in-home and family support program. The department responds that after considering the alternatives for sliding scales, it chose to adopt the TDHS scale as the framework for sliding scales, leaving some flexibility for local communities to adjust for the notable variations across the state in cost of services and per capita income. By leaving a degree of control over the program to local administering agencies, the intent of the program to meet individual need is better served.

Two technical corrections were made to the sections as adopted. In §401.686, concerning documentation requirements, subsection (a)(5) was changed to include a requirement that the payee be designated in the written plan for services. In §401.688, concerning payment system, subsection (c)(1) was modified to indicate that determination of amount of support is based on taxable income, not adjusted gross income.

The new sections are adopted under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

**§401.684. Support Services.** The TDMHMR In-Home and Family Support Program funds shall be used to provide the following types of present and future support for a family or a person with a mental disability who lives independently:

(1) medical, surgical, therapeutic, diagnostic, and other health services related to a person's mental disability, including medication;

(2) counseling or training programs that assist the family in providing proper care for a person with a mental disability or assist the person in an independent living situation, and that provide for their special needs;

(3) attendant care, home health aid services, homemaker services, and chore services that provide assistance with training, routine body functions, dressing, preparation and consumption of food, and ambulation;

(4) transportation for the person with a mental disability;

(5) transportation and room and board incurred by the family and the person during the person's evaluation for services

or treatment that has been preapproved by the administering agency;

(6) respite assistance for the family;

(7) original or unique services consistent with the intent of the enabling legislation and as negotiated between the family or person and the administering agency; and

(8) architectural modifications to the home and/or purchase or lease of special equipment or supplies that improve or facilitate the care, treatment, therapy, general living conditions, or access of the person with a mental disability.  
**§401.685. Eligibility Determination.**

(a) **Criteria for eligibility.** A request for support must be made on an individual basis by the person or the family. Upon receipt of a request for support, eligibility will be determined on the basis of the following four factors.

(1) **Diagnosis.** The family or a person with a mental disability is eligible for services if the person has been diagnosed to have mental illness, mental retardation, or a pervasive developmental disorder, or to require early childhood intervention services for children ages 0-3. (A comprehensive diagnosis and evaluation is not required for persons with mental retardation to be eligible for services.) The family or person may be eligible to receive support if the person is determined to be diagnostically eligible for services in three ways.

(A) A person meeting the criterion in paragraph (1) of this subsection who has previously received services from the Texas Department of Mental Health and Mental Retardation or a community mental health and mental retardation center is eligible for services. Additional evaluation or documentation of diagnosis is not required unless deemed necessary by intake staff.

(B) A person who submits a current diagnosis or assessment of private licensed or certified service providers that indicate that the person meets the criterion in paragraph (1) of this subsection is eligible for services. Additional evaluation or documentation may be required.

(C) A person who is determined to meet the criterion in paragraph (1) of this subsection by the professional staff of the administering agency is eligible for services. For persons otherwise meeting the residency, income, and need criteria described in paragraphs (2)-(4) of this subsection, emergency eligibility may be granted on a temporary basis for up to 90 days on a one-time basis. Documentation substantiating the diagnostic basis of eligibility is required within 90 days of emergency admission to services.

(2) **Residency.** A family is eligible to receive support if the family resides in Texas. A person with a mental disability is eligible to receive support if the person resides in Texas. Applicants must provide proof of residence.

(3) **Income.** Income eligibility will be determined by following the procedures described in §401.688 of this title (relating to Payment System).

(4) **Need.** The need for services shall be determined jointly by the applicant and staff of the administering agency.

(A) A person with a mental disability or the family of a person being served in a 24-hour residential treatment program that is intended to provide a comprehensive program to address all of the person's needs (e.g., ICF/MR, PPP, TDMHMR, etc.) is not eligible to receive support through the TDMHMR In-Home and Family Support Program.

(B) TDMHMR In-Home and Family Support Program funds shall not be used to supplant services available through other local, state, or federal programs, but may be used to supplement services provided and may be granted to persons receiving benefits under any governmental entitlement programs.

(C) TDMHMR shall coordinate with TDHS to ensure that individuals receiving services through the TDHS in-home and family support program are excluded from eligibility from the TDMHMR In-Home and Family Support Program. TDMHMR may contract with TDHS to provide support services to mentally disabled clients of TDHS.

(D) Unless required by federal regulations, a local or state agency may not consider support received through the TDMHMR In-Home and Family Support Program in determining eligibility for another support program.

(b) Determination of services to be provided and appeal. For a family or a person with a mental disability who applies for services, the administering agency shall make the following determinations for each service requested.

(1) The administering agency shall determine if the applicant is eligible to receive the service from other support programs.

(2) If the administering agency determines that an applicant is eligible to receive the service from another support program and that the service is available, the administering agency may deny the request for the service. Denial of a request for a specific service does not constitute denial of a request for other services. In cases of emergency, support may be provided prior

to the initiation of services in the other program.

(3) If the administering agency denies the request for the service, it shall provide to the applicant information for referral to the appropriate support program as well as information concerning the right to appeal the denial of services and to request a hearing (for which the department will provide a hearing officer) in accord with Chapter 403, Subchapter O of this title (relating to Practice and Procedure with Respect to Administrative Hearings of the Department in Contested Cases). Denial of a request for services due to lack of available funding shall not be considered grounds for appeal.

(c) Eligibility for continuation of support. The continuation of support for a person with a mental disability or family through the TDMHMR In-Home and Family Support Program requires a reevaluation of eligibility prior to the beginning of each fiscal year and when qualifying factors change.

(d) Penalties. For purposes of applying for support through the TDMHMR In-Home and Family Support Program, a person commits a felony of the third degree who:

(1) makes or causes to be made a statement or representation that the person knows to be false; or

(2) solicits or accepts support for which the person knows he, or the person for whom the solicitation is made, is not eligible.

**§401.686. Documentation Requirements.**

(a) Each person with a mental disability or family shall have a written plan, which is part of the treatment plan when other nonresidential services are provided by the administering agency. The written plan shall include:

(1) the identification of the direct recipient of the service, i.e., the person with a mental disability and/or the family;

(2) the name of the agency staff member responsible for the development of the plan;

(3) a description of need(s) requiring funding;

(4) a description of services to be provided, including type and method of delivery;

(5) a statement of how funds will be used to meet identified need(s), related to the quantity, frequency, and duration of services to be provided and the rate, amount, and frequency of payment with designation of payee;

(6) a listing of specific qualification or requirements for service providers;

(7) a statement by the person with a mental disability or family and the

staff of the administering agency that the individual selected to render designated services has been approved as a qualified service provider as agreed upon by the person or family and staff;

(8) a description of how the plan will be monitored, designating the staff person responsible, the frequency of review, and review criteria; and

(9) the signatures of the staff persons and the person with a mental disability and/or family members who developed the plan.

(b) For purposes of entry of data into the CARE system, a family receiving support shall be principally identified by the name of the person with a mental disability on whose behalf support has been obtained. §401.688. *Payment System.*

(a) Support for services. The amount of support, not to exceed \$3,600 in each fiscal year for each person with a mental disability or family, will be determined on an individual basis.

(1) Funds may be disbursed in a lump sum or on a periodic basis.

(2) With the agreement of the

family or the person with a mental disability, as appropriate, payment may be made to the person with a mental disability, the family, or the vendor.

(3) The amount of support shall be reduced by the appropriate copayment, if any.

(4) Additional amounts may be granted on an individual basis by the commissioner or designee.

(b) Support for architectural modification and/or the purchase or lease of equipment or supplies. Additional support may be awarded as a one-time grant of not more than \$3,600.

(1) Upon specific request and with the agreement of the administering agency, funds may be encumbered for this purpose as monies are available.

(2) All architectural modifications, equipment, and supplies purchased with these funds become the property of the person with a mental disability or family and shall not be inventoried by the administering agency or TDMHMR.

(3) Architectural modifications to leased or rented property shall be funded

only upon the written approval of the owner or property manager and become the property of the owner.

(c) Determination of amount of support and copayment. This determination shall be based on the income of the primary recipient of services as documented in the written plan, either the person with a mental disability or the family. If the primary recipient is a person with a mental disability who is under 18 years of age, the determination shall be based on the family's income.

(1) The administering agency shall base its determination of income on the taxable income from the previous year's federal income tax return (Form 1040EZ, 1040A, or 1040) or other locally acceptable and documented indicator, excluding income from fixed assets such as real property or trusts.

(2) The administering agency shall determine the percentage of copayment required using a sliding scale with a base for full compensation that corresponds to Texas median income levels established by TDHS, without adjustment for present or future expenses, as follows:

<b>Family Size</b>	<b>Median Income</b>
1	\$16,738
2	21,889
3	27,039
4	32,189
5	37,339
6	42,489
<b>For each additional family member, add</b>	<b>\$ 1,960</b>

(3) The amount of copayment shall be the appropriate percentage of the total cost of services requested.

(d) Accountability. The disbursement of support shall be in accordance with the laws of the state and shall include documentation that permits auditing by TDMHMR and the administering agency.

(e) Payment rates. Funding for services or architectural modifications and special equipment shall not exceed the prevailing rates for the area as determined by the administering agency.

(f) Automated disbursement. All administering agencies shall participate in the TDMHMR disbursement system when it becomes operational.

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 August 30, 1988.

TRD-8808838      Pattiou Dawkins  
Chairman Texas Board of  
Mental Health and  
Mental Retardation  
Texas Department of  
Mental Health and  
Mental Retardation

Effective date: September 20, 1988.

Proposal publication date: April 8, 1988

For further information, please call: (512) 465-4670

◆      ◆      ◆  
**Chapter 405. Client (Patient)  
Care**  
**Subchapter C. Life-Sustaining  
Treatment**

• **25 TAC §§405.51-405.62**

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§401.52-401.55, and 401.57-401.60, with changes to the proposed text as published in the May 24, 1988, issue of the *Texas Register* (13 TexReg 2437). Sections 401.51, 401.56, 401.61, and 401.62 are adopted without changes and will not be republished.

The new sections were developed to ensure that TDMHMR clients receive the same level of thoughtful terminal care that is given to non-institutionalized persons. They are the product of a work group of distinguished professionals from within TDMHMR and the community representing fields of ethics, religion, medicine, and law.

The sections are based on similar guidelines commonly utilized in community hospitals for many years and which were recently refined by the American Medical Association Task Force on Resuscitation Criteria. The new subchapter complies with the requirements of the Joint Commission on Accreditation of Healthcare Organizations for a categorization plan for terminally ill patients. It also implements the Texas Natural Death Act, Texas Civil Statutes, Article 4590h, as it applies in

situations occurring in the TDMHMR client population.

The remarks of staff and advocacy organizations solicited prior to the proposal of the new sections were considered by the task force at the same time that comment from the public at large was reviewed. Prepublication comment was received from the Hospice and Life Enrichment Center, St. Anthony's Hospital, Amarillo, and Advocacy Inc., Austin. Public comment was received from the Parents' Association for the Retarded of Texas (PART), Fort Worth.

The Hospice and Life Enrichment Center submitted prepublication comment that encouraged the department to seek the assistance of the Texas Hospice Association in the enactment of the new section. The department responds that such coordination would be a natural extension of the implementation of the new subchapter and that the interest of the Hospice and Life Enrichment Center in the development of the department's policy is appreciated.

Advocacy, Inc., commented that clarification should be made as to whom the new subchapter would apply, i.e., whether the new subchapter would apply to all clients served at TDMHMR facilities, to those served in medical-surgical units only, or to those served by contractors. Clarification on this matter was also requested by PART, particularly with respect to the applicability of the section in community programs and in community hospitals. The department responds that the section applies only to clients receiving residential services directly from the department at its facilities and is not limited to clients served in medical-surgical units. The section seeks to enact the provisions of the Texas Natural Death Act, which applies universally to Texas citizens, including those served in local hospitals or in other health care settings. Language in §401.52, concerning application, has been revised to reflect that the section is applicable to residential facilities of the department.

Regarding §405.53, concerning definitions, Advocacy, Inc. requested that the term "competency" be clarified. The department responds that the use of the term "competency" in the new subchapter conforms to the use of the term in the Texas Natural Death Act, which is to designate factual, as opposed to legal, competency. Language has been accordingly revised throughout the sections to reflect that incompetency means factual incompetency and is not limited in application to clients formally adjudicated incompetent. The determination of factual competency is the responsibility of the treatment team.

Advocacy, Inc. suggested that the discussion of resuscitative status categories with the client, legal guardian, parents, and/or family be required to be documented. The department responds that documentation is required in §405.55(c), concerning determination and implementation of resuscitative status category.

With regard to §405.56, concerning general provisions relating to withholding or withdrawal of life-sustaining treatment under the Texas Natural Death Act, Advocacy, Inc. requested clarification as to when clients will be provided a copy of the directive. The department responds that language has been revised to indicate that competent clients will be

provided a copy of the directive when it is clinically appropriate.

Advocacy, Inc. also commented that the consultants serving on the ethics committee should not be employees of TDMHMR. The department responds that a definition of "consulting" has been added to §401.552, concerning definitions, that indicates that consulting professionals are not employees of TDMHMR and that consulting members of the committee serve on a voluntary basis.

Also concerning the ethics committee, Advocacy, Inc. requested that the procedure for initiating consultation with committee be specified, and that such consultation be mandatory whenever a conflict arises between or among decision makers. The department responds that consultation with the ethics committee may be initiated by any decisionmaker at any time and that it is therefore not necessary to provide official requirements for initiation or to make such consultation mandatory.

Advocacy, Inc. requested that a member of a parents' group be included in the ethics committees of state hospitals. The department responds that it has revised the minimal membership of ethics committees at all facilities to include a member of a parents' group or an advocacy organization and that additional representation is permissible if individuals are available to serve.

A commenter noted that subsection (b)(3) of §405.54, concerning resuscitative status policy, which states, "Age, handicaps, economic status, or incompetency should not be determinants of resuscitative status" is contradicted by subsection (b)(4) of the same section, which states in part, "There may be clients with such severe chronic disabilities or recurring complications that resuscitation would be an unnecessary burden even though they are not in the final stages of a single, defined terminal illness." The commenter recommended deleting the last sentence of paragraph (4). The department responds that the use of the term "chronic disabilities," although intended to signify disabilities directly associated with illness, could be misinterpreted to mean "handicap" in the usual sense of the term. Language has therefore been revised in subsection (b)(4) to make clear that the reference is to clients who have severe recurring complications as a result of terminal illness.

PART commented that the department should guarantee that parents, guardians, and/or family members be notified of the initial and subsequent assignment of a resuscitative status category to the client, and that such notification be made by mail. It was further recommended that the categorization be addressed at each client staffing. The department responds that as reflected in the description of the process in subsections (a) and (b) of §405.55, concerning determination and implementation of resuscitative status category, the parents, guardians, and/or family would not just be notified but would play the most important role in the categorization process for clients who are not competent. Any disagreement on the part of the parents, family, or guardian of a factually incompetent client nullifies the assignment of a Category II or III order. It is not the department's policy to categorize such a client in Category II or III without the participation of the available par-

ent, guardian, or family involvement. Language has been clarified in subsection (d) of the same section that the categorization of clients in Category II or Category III must be reviewed monthly, and that the categorization of every client must occur at least annually, preferably at the annual staffing.

The commenter further recommended that Exhibit B to the new subchapter be expanded to also be used for persons over 18 years of age who are incompetent. The department responds that the form, which is based on the provisions of the Texas Natural Death Act, cannot be modified as requested because by law a directive cannot be executed for a person over the age of 18 by others, although parents, guardians, and/or family may participate in the decisionmaking process for such persons.

PART commented that the new subchapter is unclear and hard to understand and that parents' roles and rights need to be clarified. The department responds that certain basic principles on which the policy is based have been clarified in the subchapter as adopted: Only clients who have been certified by two physicians to have a terminal condition can be assigned to Category II or Category III; Assignment to Category II or Category III cannot be made without the competent client's agreement or the agreement of the parents, guardian, and/or family of the incompetent client; The purpose of the policy is to facilitate thoughtful and appropriate care for the terminally ill client, taking into consideration not only professional judgment but the preferences of the client and his or her significant others; The role of the ethics committee is advisory only. The ethics committee is not intended to dictate a course of action to the physician, client, or significant others, but is to serve as a resource group of caring and knowledgeable professionals and lay persons; Conflict or disagreement as to the appropriate categorization of an incompetent client results by default in a Category I designation.

PART also commented that each facility should have a list of rotating consultant physicians for terminally ill clients in the infirmary. The department responds that this is a matter for local discretion and falls outside the scope of the sections.

PART also commented that the state should remove itself as far as possible from the decisionmaking process. The department fully concurs. In formulating the new sections, the guiding purpose of the task force that created the subchapter was to facilitate decisionmaking by the client and his or her parents, guardians, and/or family in cooperation with medical staff and, if necessary, with the assistance of the ethics committee.

PART suggested that qualified clients should be certified by three, not two, physicians, two of whom are consulting and one of whom is from the facility. PART also recommended that if the parents do not agree with the physicians, they should be able to retain physicians at their own expense. The department responds that the procedure for qualifying clients is based directly on the Texas Natural Death Act. Parents are welcome to enlist the services of private physicians for any aspect of client care, including the process of qualification of clients. It is emphasized that when a client who is not competent is qualified, the

legal guardian, parents, and/or family can dispute the assignment of Category II or Category III and until resolution is attained, the client will remain in Category I.

In addition to the changes made in response to public comments, the following modifications were made in response to facility staff and task force recommendations.

In §405.53, concerning definitions, the definition of "family" was modified in response to numerous inquiries concerning the necessity for involving all persons specified in the definition in the decisionmaking process. In the same section, a definition of "ethics committee" was added. In the same section language was added to the definitions of Category II and Category III resuscitative status categories that makes clear that these categories are only applicable to qualified, i.e., terminally ill, clients.

In §405.54, concerning resuscitative status policy, subsection (a) has been revised to make clear that Category II and Category III designations are only applicable to qualified clients. In subsection (b)(1) of the same section, a minor revision to language was made for purposes of clarity.

In §405.55, concerning determination and implementation of resuscitative status order, language has been added to subsection (a) to indicate that the resuscitative status category is normally determined on client admission but in all cases is made within one year of admission. In subsection (c) of the same section, the term "therapeutic philosophy" has been replaced with the more functional term "corresponding treatment plan."

Subsection (d) of the same section has been clarified to indicate that monthly reevaluation of resuscitative status categories is only required when the category designated is II or III. It further requires an annual evaluation of all categorizations, preferably at the annual staffing.

Recognizing the necessity for a standardized method of documenting resuscitative status categories system wide, the department has revised subsection (e) to indicate that the department will provide the forms for documenting Category II and Category III assignments in client records. Reference to locally developed color-coded forms has been deleted.

In §405.59(a), concerning decisionmaking under the Texas Natural Death Act for clients who have not issued directives, the term "may" has been changed to "can" to reduce potential confusion. In subsection (b) of the same section, language has been added to indicate that when a client is factually incompetent and family members are involved in the decisionmaking process, the priority order of involvement is contingent on the availability of such family members.

Section 405.60, concerning ethics committee, has been extensively revised in response to questions and comments from staff. In subsection (a), language has been modified to indicate that the formulation of the the committee is not optional and that committees may be established multi-institutionally with other health care providers serving the same area.

In subsection (b), the composition of the committee as proposed was too unwieldy to be

workable. The minimal requirements for committee membership as indicated in subsection (b) have therefore been modified to include a facility physician, a consulting physician, a facility registered nurse from the client's unit who is knowledgeable about the client and the client's condition, a member of the clergy, an attorney not affiliated with the facility or TDMHMR, a facility social worker (CSW-ACP certified), and a representative of a parents' or advocacy group. The section does not preclude a larger committee with additional representation from these and other professional and advocacy groups if such individuals are available to serve.

A new subsection (d) has been added to indicate that decisionmaking by the committee with regard to recommendations will be by consensus. It further requires that each consultation with the committee be documented in the client record.

The new sections are adopted under Texas Civil Statutes, Article 5547-202, §2.11, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

**§405.52. Application.** This subchapter applies to all residential facilities of the Texas Department of Mental Health and Mental Retardation.

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

**Client**—A person receiving residential services from a facility of the Texas Department of Mental Health and Mental Retardation.

**Consulting**—The descriptor for persons not employed by the Texas Department of Mental Health and Mental Retardation who serve on an ethics committee on a voluntary basis, i.e., without monetary or other tangible compensation.

**Directive**—Written or oral expression by a competent adult of his or her desires regarding life-sustaining treatment in the event of an occurrence of a terminal condition as certified by two physicians, one of whom is the attending physician, which meets the legal requirements of the Texas Natural Death Act.

**Ethics committee**—An advisory committee of facility staff, consulting professionals, and advocates, whose purpose is to provide advice and consultation to physicians, parents, guardians, and family members regarding treatment decisions concerning qualified clients.

**Facility**—Any state hospital, state school for persons with mental retardation, state center, or other institution of the Texas Department of Mental Health and Mental Retardation, and any organizational entity that hereafter may be made a part of the department.

**Family**—The client's spouse, reasonably available adult children, parent(s), siblings, or nearest relative.

**Legal guardian**—The person who, under court order, is the guardian of the person of the client.

**Life-sustaining treatment**—A medical procedure or intervention which utilizes mechanical or other artificial means to sustain, restore, or supplant a vital function.

**Qualified client**—A client diagnosed and certified in writing to have a terminal condition

by two physicians, one of whom is the attending physician, and both of whom have personally examined the client.

Resuscitation—Act of reviving from apparent death or unconsciousness.

Resuscitative status categories—Categories of intervention for clients, as follows:

(A) Category I: Maximum therapeutic effort—Intervention in which everything necessary will be done to reduce mortality and morbidity, including transfer to another medical facility for additional services;

(B) Category II: Therapeutic effort with no heroics—Intervention in which conservative therapeutic and supportive measures will be performed to reduce mortality and morbidity, excluding initiation of endotracheal intubation and external cardiac massage. Defibrillation, surgical intervention, hyperalimentation, or implementation of other measures deemed extraordinary may be restricted or excluded. This category of intervention is only designated when a client is qualified (see §405.54 of this title (relating to Resuscitative Status Policy)); and

(C) Category III: Palliative measures only—Intervention in which measures directed toward reducing pain and enhancing the client's comfort and dignity will be maintained. However, no resuscitative measures will be performed. This category of intervention is only designated when a client is qualified (see §405.54 of this title (relating to Resuscitative Status Policy)).

Terminal condition—An incurable condition caused by injury, disease, or illness which, regardless of the application of life-sustaining procedures, would, within reasonable medical judgment, produce death, and for which the application of life-sustaining procedures would serve only to postpone the moment of death of the client.

#### §405.54. Resuscitative Status Policy.

(a) The resuscitative status of a client is an integral part of the overall evaluation of the client's medical care. An order not to resuscitate (Category II or III) will be given only for a qualified client and should be based on a judgment that resuscitation is anethically extraordinary and non-obligatory procedure for prolonging the life of the client. Such an order would be most appropriate when the client is terminally ill and resuscitation would only prolong the dying process.

(b) Resuscitative status should be discussed with the client (or legal guardian) and his or her family in advance of a medical emergency. When a determination of that status is being made by the client (or legal guardian), family, and physician, the following considerations are recommended.

(1) The competent client must be allowed the right to consensual partnership in the determination of resuscitative status. If the client is factually incompetent, comatose, or incapable of communication, the decision should be made with the consultation and consent of the client's legal guardian and family. Because the client's

wishes, if known, are to be honored, an expression of those wishes made when the client was competent and capable of communication, e.g., in a directive issued in accordance with the Natural Death Act, should be respected and followed.

(2) Comatose clients are living human beings whose lives are to be valued; however, this does not mean that all technologies for prolonging life are appropriate or obligatory.

(3) Age, handicaps, economic status, or incompetency should not be determinants of resuscitative status.

(4) Category II status normally reflects a decision to pursue a conservative therapeutic effort in the face of a chronic disabling illness. There may be clients with such severe recurring complications that resuscitation would be an unnecessary burden even though they are not in the final stages of a single, defined terminal illness. The physician, with the consultation and consent of the client, or, if the client is unable to participate in decisionmaking, the client's legal guardian and family, may order the further restriction of other measures. In such cases, although treating the intervening illness remains the primary goal, full resuscitation could be considered non-obligatory and a Category II order would be appropriate.

(5) A Category III order does not indicate withdrawal of palliative procedures. A client for whom such an order has been written will receive all the usual care given to enhance comfort, dignity, safety, and a sense of well-being.

(6) In any problematic case involving a Category II or III designation or when a client with a Category II or III designation has no family or legal guardian, consultation with the facility ethics committee should be sought.

#### §405.55. Determination and Implementation of Resuscitative Status Order.

(a) All clients will be initially evaluated on an individual basis as to resuscitative status by the attending physician. Normally this evaluation will be made on admission to services, but in all cases within one year of admission.

(1) If the attending physician does not categorize the client, the client will automatically be considered Category I.

(2) If the client is competent and wishes to be classified Category II or III, and the client's family and physician concur, the client's wish will be honored. If the family or physician disagrees, the client's wish should be honored, especially when the client has issued a valid directive in accordance with the Texas Natural Death Act.

(3) When the client is factually incompetent, comatose, or incapable of communication, the wishes of the legal guardian and family will be honored, pro-

vided the attending physician concurs. If there is disagreement between the legal guardian and family, within the family, or between the legal guardian or family and physician, the client will be designated Category I status until there is consensus. Consultation with the facility ethics committee should be sought.

(4) If the client is unable to give direction and has no legal guardian or family, the physician(s) should seek consultation with the facility ethics committee before designating a Category II or III resuscitative status for the client.

(b) When the client's condition deteriorates subsequent to initial categorization, and this contingency has not been previously addressed by the ethics committee, the client may be reclassified by following the procedure described in subsection (a) of this section.

(c) The attending physician will note in the medical record that the client or the client's legal guardian or family have been consulted and concur with the designated status (or redesignation) and its corresponding treatment plan. Such consultations should be witnessed and documented.

(d) The resuscitative status categories of II and III must be evaluated and documented by the attending physician (or his/her physician designee) at least monthly. The resuscitative status category of every client must be reviewed at least annually, preferably at the annual staffing and should be reevaluated when there is a significant change in the client's clinical condition. Documentation will be in the physician's orders section and the progress notes section of the chart. If an order to renew the resuscitative status category of a client is not updated in writing, the client will automatically be considered Category I until redesignated by the physician.

(e) When the physician has documented the need and written an order for a Category II or III designation, a form designated by the department will be placed in the client's chart. This form will have appropriate spaces for documentation of the periodic review.

#### §405.57. Legal Expression through Directive under the Texas Natural Death Act.

(a) When an adult client is competent to make a decision regarding life-sustaining treatment and it is clinically appropriate to do so, the client should be informed of the provisions of the Texas Natural Death Act and provided with a copy of the form of the directive herein adopted as Exhibit B. The desires expressed by the competent client should be observed.

(1) The directive may be made in writing at any time that the client is competent to make such a decision.

(2) The directive may also be made by a nonwritten means of communication by a qualified client.

(3) The directive may be revoked by the client at any time, without regard to his mental state or competency.

(4) The competent client's present desire shall at all times supersede a directive.

(5) A competent adult client can designate a person to make a treatment decision in the event that the client becomes comatose, factually incompetent, or otherwise mentally or physically incapable of communication.

(b) A directive may be made on behalf of a qualified client who is under 18 years of age by the client's spouse, if the spouse is an adult; the client's parents; or the client's legal guardian. However, such a directive can be overridden by a competent client's contrary desire, even if the client is under 18 years of age.

*§405.58. Decisionmaking under the Texas Natural Death Act for Clients Who Have Issued Directives.*

(a) The desires expressed by a competent client through directive should be honored.

(b) When a client is factually incompetent to make a decision regarding life-sustaining treatment but was previously competent and at that time designated a person through directive to make such a decision, the person so designated will be accorded decisionmaking power.

(c) When a client is unable to communicate and has previously issued a directive without designating a person to make treatment decisions, the attending physician shall comply with the directive unless the physician believes that the directive does not reflect the present desire of the client. *§405.59. Decisionmaking under the Texas Natural Death Act for Clients Who Have Not Issued Directives.*

(a) When a client is factually incompetent to make a decision regarding life-sustaining treatment, has not previously issued a directive while competent, and has a legal guardian, the legal guardian of the client, along with the attending physician, can make a decision based on knowledge of what the client would desire, if known.

(b) When a client is factually incompetent to make a decision regarding life-sustaining treatment, has not previously issued a directive while competent, and does not have a legal guardian, at least two of the following persons, in order of priority, as available, along with the attending physician, can make the decision: the client's spouse, a majority of the client's reasonably available adult children, the client's parents, or the client's nearest living relative.

(c) When a client is unable to give direction regarding life-sustaining treatment; has not, while competent, issued a directive or designated another person to

make such a decision; does not have relatives as described in subsection (b) or such relatives are unavailable or unwilling to participate in decisionmaking; and has no legal guardian, the appointment of a legal guardian should be sought by the facility to the extent authorized by law or, in acute situations, the provisions of §405.60 of this title (relating to The Ethics Committee), should be followed.

*§405.60. Ethics Committee.*

(a) An ethics committee must be established by each facility. The committee maybe established multi-institutionally in cooperation with other health care providers, e.g., local hospitals, serving the same geographical area.

(b) The ethics committee must minimally consist of one facility physician; one consulting physician; one facility registered nurse from the client's unit who has knowledge of the client and the client's condition; a member of the clergy; an attorney not affiliated with the facility or TDMHMR; a facility social worker (CSW-ACP certified); and a representative of a parents' group or a representative of an advocacy group. The committee may also include the following additional members as available: additional consulting physician; medical support staff, such as a physical therapist, clinical pharmacist, clinical psychologist, or occupational therapist; a consulting social worker (CSW-ACP certified); a client rights representative; and additional representation by parents' and or advocacy organizations.

(c) Consultation with the ethics committee may be sought for any treatment decision, but should be sought as follows:

(1) when a client is unable to give direction regarding the withholding or withdrawal of life-sustaining treatment, has no legal guardian, and has no person legally designated to make such a decision according to provisions of the Texas Natural Death Act; and

(2) when a decision regarding the withholding or withdrawal of life-sustaining treatment is to be made and there is a conflict between or among the decision makers.

(d) Decisionmaking concerning recommendations to be made by the ethics committee shall be by consensus. Each consultation with the ethics committee shall be documented in the client record.

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 August 30, 1988.

TRD-8808841

Pattilou Dawkins  
Chairman Texas Board of  
Mental Health and  
Mental Retardation  
Texas Department of  
Mental Health and  
Mental Retardation

Effective date: September 20, 1988.

Proposal publication date: May 24, 1988

For further information, please call: (512) 450-4670

◆ ◆ ◆  
**Part VI. Statewide Health  
Coordinating Council**  
**Chapter 571. Health Planning  
and Resource Development**

**Procedures and By-laws**

• **25 TAC §§571.41-571.51**

The Statewide Health Coordinating Council adopts new §§571.41-571.51 without changes to the proposed text as published in the May 31, 1988, issue of the *Texas Register* (13 TexReg 2672).

The justification for the new sections is that they will inform the general public of the procedures and by-laws governing the council. The new sections cover the name and enabling legislation, purpose and functions, organization and structure, officers, meetings, committees, ad hoc advisory groups, conflicts of interest, general considerations, admendment to the sections, and dissolution of the council.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 4418h, §4. 04, which provide the Statewide Health Coordinating Council with the authority to adopt rules covering its procedures and by-laws.

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

Issued in Austin, Texas, on August 31, 1988.

TRD-8808888

Marion R. Zetzman  
Chairman  
Statewide Health  
Coordinating Council

Effective date: September 21, 1988.

Proposal publication date: May 31, 1988.

For further information, please call: (512) 458-7261

◆ ◆ ◆  
**TITLE 28. INSURANCE**  
**Part I. State Board of  
Insurance**

**Chapter 3. Life, Accident, and  
Health Insurance and  
Annuities**

**Subchapter T. Minimum  
Standards for Medicare  
Supplement Policies**

• **§28 TAC §3.3311**

The State Board of Insurance adopts new §3.3311, without changes to the proposed text as published in the March 4, 1988, issue of the *Texas Register* (13 TexReg 1131).



Section 3.3311 concerns notification to policyholders of a consumer telephone number created by the board to answer questions and to register complaints relating to the sale of Medicare supplement insurance policies. This section is necessary to inform the public of this service which can provide consumers with access by telephone to information that may prevent the purchase of unnecessary and costly duplicate Medicare supplement insurance. This service can also provide consumers with an efficient means of reporting abuses in the marketing of Medicare supplement insurance.

The new section requires that all Medicare supplement insurance policies and certificates of coverage include notice of the board's consumer telephone number. The section also requires insurers to provide notification of the telephone number to existing policyholders.

No comments were received regarding adoption of the section.

The new section is adopted under the Insurance Code, Article 3.74, which authorizes the State Board of Insurance to adopt rules regarding Medicare supplement insurance, including rules establishing standards for policy provisions and rules providing for disclosure respecting specific Medicare supplement policies and respecting Medicare in general.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agen-

cy's legal authority.

Issued in Austin, Texas, on August 30, 1988.

TRD-8808867

Nicholas Murphy  
Chief Clerk  
State Board of Insurance  
Effective date: September  
20, 1988  
Proposal publication date:  
March 4, 1988  
For further information,  
please call: (512) 463-  
6327

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part IV. Texas Commission for the Blind

#### Chapter 159. Administrative Rules and Procedures

##### • 40 TAC §159.16

The Texas Commission for the Blind adopts new §159.16, without changes to the proposed text published in the July 26, 1988, issue of the *Texas Register* (13 TexReg 3692).

The section requires a Texas corporation contracting with the agency or applying for a license or permit issued by the agency to certify in writing that its corporate franchise

taxes are current, thereby increasing payments of franchise taxes by corporations to the state.

The section sets out the procedure for certifying that payments of franchise taxes are current, delineates procedures when a corporation is exempt from payment of state franchise taxes, and invokes penalties for false statements.

No comments were received regarding adoption of the new section.

The section is adopted under the Texas Business Corporation Act, §2.45, which provides the Texas Commission for the Blind with the authority to not award a contract or issue a permit or license to a corporation which is delinquent in state franchise tax payments.

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 August 29, 1988.

TRD-8808845

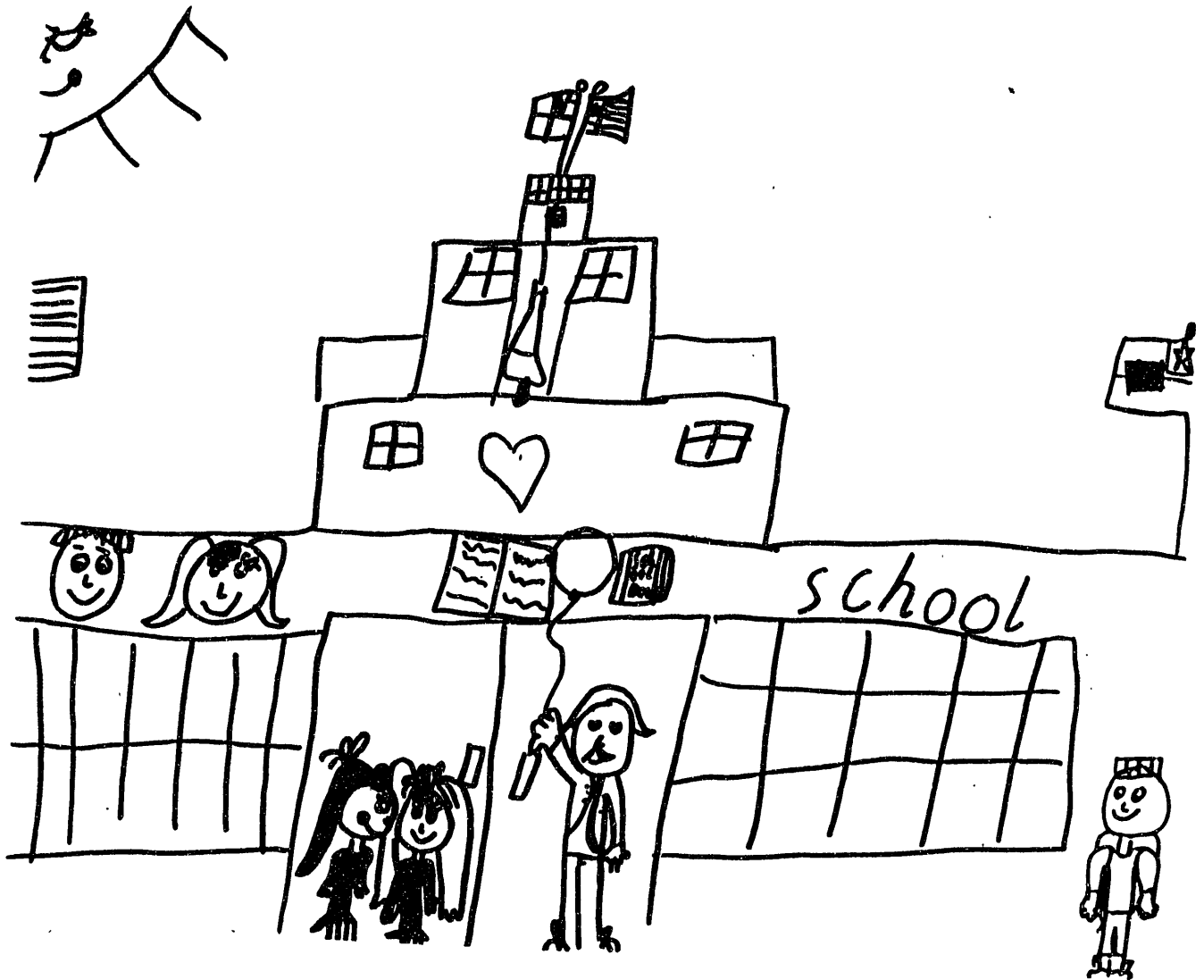
Pat D. Westbrook  
Executive Director  
Texas Commission for the  
Blind

Effective date: September 18, 1988

Proposal publication date: July 26, 1988

For further information, please call: (512) 459-2600





Name: Hillary Hobbs

Grade: 2

School: O'Henry Elementary, Richardson

# 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 on Aging

**Thursday, September 15, 1988, 10 a.m.**

The Texas Board on Aging for the Texas Department on Aging will meet at the Alamo Area Council of Governments, Atlee B. Ayers Building, 118 Broadway, San Antonio. According to the agenda, the board will hear welcoming remarks by Evelyn Porter, member, Texas Board on Aging; welcoming remarks by Al J. Notzon, III, executive director, Alamo Area Council of Governments; approve minutes to the joint meeting of the Texas Board on Aging and the State Citizens Advisory Council on July 6, 1988; 1990-1991 legislative appropriations request (LAR); open meetings law; RFPs for discretionary grants; fiscal year 1988 area agency on aging program reviews; fiscal year 1989 area plan amendments; fiscal year 1989 operating budget; activities of the Texas Silver Haired Legislature; policies and procedures for citizens advisory council membership; grandparents day; adult literacy councils; senior spelling bee and videotape; and hear general announcements.

Contact: O.P. (Bob) Bobbitt, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: August 31, 1988, 3:59 p.m.

TRD-8808918

## Texas Department of Agriculture

The Produce Recovery Fund Board of the Texas Department of Agriculture will meet in the Ninth Floor Conference Room, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, unless otherwise noted. Dates, times, and agendas follow.

**Wednesday, September 14, 1988, 1 p.m.**  
The Texas Department of Agriculture will meet at 517 North Glenwood, Tyler. According to the agenda, the department will review alleged violation of Texas pesticide laws by Charles Yant, doing business as Yant Air Services, holder of commercial applicator license.

Contact: Robert A. Caine, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: August 31, 1988, 3:09 p.m.

TRD-8808914

**Tuesday, September 27, 1988, 1 p.m.**  
The board will consider alleged violation of Texas Agriculture Code §103.001 by Sun Valley Foods, Inc., C.R. Snyder, Gordon R. Todd and Lynn Thomas as petitioned by GAR Farms, Inc.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: August 30, 1988 1:51 p.m.

TRD-8808853

**Wednesday, September 28, 1988, 9 a.m.**  
The board will consider alleged violation of Texas Agriculture Code §103.001 by Belinda C. Kaye doing business as Twilight Agro Sales as petitioned by Alberto Ortega.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: August 30, 1988 1:51 p.m.

TRD-8808852

**Wednesday, September 28, 1988, 1 p.m.**  
The board will consider alleged violation of Texas Agriculture Code §103.001 by Richard Ruiz doing business as Ruiz Produce Company as petitioned by W.H. Simpson, Jr.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: August 30, 1988 1:51 p.m.

TRD-8808851

**Thursday, September 29, 1988, 11 a.m.**  
The Texas Department of Agriculture will meet at 202 East Horton, Brenham. According to the agenda, the department will review alleged violation of Texas pesticide laws by Kenneth Schwartz, doing business as Schwartz Flying Service, hold of commercial applicator license.

Contact: Robert A. Caine, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: August 31, 1988, 3:09 p.m.

TRD-8808917

**Tuesday, October 11, 1988, 9 a.m.**  
The Texas Department of Agriculture will meet in Suite 150, 5408-A South Bell Street, Amarillo. According to the agenda, the department will review alleged violation of Texas pesticide laws by Wade Wilson, doing business as Longhorn Spraying, Inc., holder of commercial applicator license.

Contact: Robert A. Caine, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: August 31, 1988, 3:09 p.m.

TRD-8808913

**Tuesday, October 11, 1988, 10 a.m.**  
The Texas Department of Agriculture will meet at 5408-A South Bell Street, Amarillo. According to the agenda, the department will review alleged violation of Texas pesticide laws by Harold Hyman, doing business as Hyman Farm Service, holder of commercial applicator license.

Contact: Robert A. Caine, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: August 31, 1988, 3:09 p.m.

TRD-8808916

## Texas Air Control Board

**Thursday, September 8, 1988, 3 p.m.**  
The Hearings Oversight Committee for the Texas Air Control Board will meet in Room 332, 6330 Highway 290 East, Austin. According to the agenda, the committee will receive public comments regarding current hearing procedures and committee supervision of examiners, including coordination of board policy, and hearing examiner's reports; and discuss pending employment applications in executive session.

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

Filed: August 31, 1988, 3:57 p.m.

TRD-8808915

## State Board of Barber Examiners

**Monday, September 12, 1988, 3 p.m.** The Board Members for the State Board of Barber Examiners will meet in emergency session in Suite 103, 9101 Burnet Road, Austin. According to the agenda, the members will review proposed changes in the Texas Barber Law for submission to the 1989 legislative session; and meet in executive session. The emergency session is necessary as board members will be in Austin for the examinations, and the next scheduled board meeting is for October 4, 1988.

**Contact:** Jo King McCrorey, 9101 Burnet Road, Suite 103, Austin, Texas 78758, (512) 835-2040.

**Filed:** August 31, 1988, 3:11 p.m.

TRD-8808911

## Texas Department of Commerce

**Monday, September 12, 1988, 3:30 p.m.** The Board of Directors for the Texas Department of Commerce will meet in the Louisiana Room, Petroleum Club, 800 Bell, Houston. According to the agenda, the board will discuss administration, personnel, and budget matters, and meet in executive session.

**Contact:** Mary Lane, (512) 472-5059.

TRD-8808902

**Tuesday, September 13, 1988, 2:15 p.m.** The Board of Directors for the Texas Department of Commerce will meet in Room 304 A and B, Brown Convention Center, 1001 Convention Center Boulevard, Houston. According to the agenda, the board will approve prior minutes; presentation on small business programs; and presentation on major components of the 1990-1991 budget request.

**Contact:** Mary Lane, (512) 472-5059.

**Filed:** August 31, 1988, 3:21 p.m.

TRD-8808901

**Wednesday, September 14, 1988, 9 a.m.** The Work Force Development Division of the Texas Department of Commerce will meet at 6000 Middle Fiskville Road, Austin Airport Hilton, Austin. According to the agenda summary, the division will meet in conjunction with Region VI, Department of Labor; Texas Department of Commerce will discuss the Job Training Partnership Act; discuss who the JTPA program should serve, what services should be provided and how can the quality of service may be improved; how the management tools used in the program can be enhanced; should JTPA be coordinated more closely with non-JTPA service and other national priorities; and should the public-private partnership under JTPA be broadened.

**Contact:** Leslie Ross, 8317 Cross Park Drive, Austin, Texas 78754, (512) 834-6143.

**Filed:** September 1, 1988, 9:50 a.m.

TRD-8808959

## Texas State Board on Dental Examiners

**Thursday-Saturday, September 8-10, 1988, 8 a.m.** The Texas State Board of Dental Examiners will meet at the Double Tree Inn, 2001 Post Oak Boulevard, Houston. According to the agenda, the board will discuss x-ray rules (115.10); reports of board committees; and discuss 1989 fiscal year budget, legal counsel, State Travel Management Program; and variance requests on the direct supervision rule.

**Contact:** William S. Nail, 8317 Cross Park Drive, Suite 400, Austin, Texas, (512) 834-6021.

**Filed:** August 31, 1988, 3:03 p.m.

TRD-8808900

## Texas Education Agency

The State Board of Education of the Texas Education Agency will meet in the William B. Travis Building, 1701 North Congress Avenue, Austin, unless otherwise noted. Dates, times, rooms, and agendas follow.

**Thursday, September 8, 1988, 4 p.m.** The Ad Hoc Committee on Salaries will meet in Room 2-115 to consider recommendations regarding TEA salaries and Texas public school teacher's salaries.

**Contact:** W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

**Filed:** August 31, 1988, 4:25 p.m.

TRD-8808945

**Thursday-Saturday, September 8-10, 1988, 8:15 a.m. daily except on Thursday at 6:30 p.m.** The Texas Academic Skills Program (TASP) Bias Review Panel will meet at the Marriott Hotel at the Capital, 701 East 11th Street, Austin. According to the agenda summary, the panel will review test items; consider test area group sign-in; and review items in test area groups.

**Contact:** Pamela Tackett, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9525.

**Filed:** August 31, 1988, 4:25 p.m.

TRD-8808956

**Friday, September 9, 1988, 8:30 a.m.** The Committee for Students will meet in Room 1-111, to hold public hearing on compensatory education funding; consider remedial and compensatory instruction, special education, assessment, request to participate in

1989 pretest for the 1990 trial state assessment to be conducted by the National Assessment of Educational Progress; hear report on grade one Texas Educational Assessment of Minimum Skills Survey; consider legislative recommendation of the board; review draft of the plan for adult and community education; and hear report to board of the 1988 curriculum cluster review meetings.

**Contact:** W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

**Filed:** August 31, 1988, 4:25 p.m.

TRD-8808947

**Friday, September 9, 1988, 8:30 a.m.** The Committee for Finance and Programs will meet in Room 1-104, to consider permanent school fund, list of equity brokers, guarantee bond program, proprietary schools and veterans education, state textbook program, alleged violations of textbook adoption process, school transportation, price differential index, long-range plan for information systems, TEA 1988-1989 operating budget, master plan for vocational education, vocational education funding, method of calculating full-time equivalent days, budgeting, accounting, and auditing committing, opinion poll on public education, legislative recommendations, status report on selection committee on education, sunset commission review, legislative matters, accountable costs advisory committee study, coordinated vocational academic education, and migrant education program development center.

**Contact:** W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

**Filed:** August 31, 1988, 4:25 p.m.

TRD-8808951

**Friday, September 9, 1988, 8:30 a.m.** The Committee for Personnel will meet in Room 1-100, to consider appraisal of certified personnel, rules concerning hearings and appeals generally, hearings of appeals to the commissioners, appeals to the board, 1987 standards for approval of institutions offering teacher education program for initial certification, 1987 standards for approval of institutions offering graduate education programs for professional certification, certification of teachers in general, requirements for assignment of school personnel, requirements for assignment of teachers, training for school board members, request for approval to modify examinee fee for the Texas Academic Skills Program examination, examination for the certification of educators in Texas tests being reviewed and updated legislative recommendations of the board, teacher career ladder issues, and staff update on the progress being made on the teacher induction year.

**Contact:** W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-

8985.

Filed: August 31, 1988, 4:25 p.m.

TRD-8808952

Friday, September 9, 1988, 3:30 p.m. The Committee for Long-Range Planning will meet in Room 1-110, to consider memorandum of understanding on coordination of services to disabled persons, regional education service centers, TEA long-range plan for information systems; hear status report on the accreditation of school districts; consider legislative recommendations of the board; consider update on the long-range plan for technology, interim draft of the plan for adult and community education; hear report on ethnic composition of regional education service center staff; consider ethnic/gender distribution of agency personnel and summer tutorial programs for at-risk students.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: August 31, 1988, 4:25 p.m.

TRD-8808950

Friday, September 9, 1988, 7 p.m. The board will meet in the Longhorn Room, Guest Quarters Hotel, 303 West 15th Street, Austin. According to the agenda, the board will hear reports from the chairman of the committees: Committee for Finance and Programs, Committee for Students, Committee for Personnel, Committee for Long-Range Planning, Ad Hoc Committee on Salaries, and Committee of the Whole, concerning items discussed in committee meetings on Thursday, September 8, 1988, and Friday, September 9, 1988.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: August 31, 1988, 4:25 p.m.

TRD-8808949

Friday, September 9, 1988, 10:30 a.m. The Committee of the Whole will meet in Room 1-104, to consider legislative recommendations of the board, status of executive/legislative studies; hear report on the Select Committee on Education's legislative recommendations; and discuss pending litigation. The committee will also meet in executive session in accordance with Texas Civil Statutes, Article 62542-17.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: August 31, 1988, 4:25 p.m.

TRD-8808948

Saturday, September 10, 1988, 8:30 a.m. The board will meet in Room 1-104, to consider resolutions for winners in international problem solving competition, permanent school fund, guarantee bond program, proprietary schools, state textbook program,

alleged violations of textbook adoption process, school transportation, price differential index, long-range plan for information systems, 1988-1989 TEA operating budget, master plan for vocational education, vocational education funding, and method of calculating full-time equivalent days; consider Budgeting, Accounting, and Auditing Committee; consider Ad Hoc Committee recommendations-TEA salaries, opinion poll on public education, remedial/compensatory instruction, special education, assessment, 1990 trial state assessment, appraisal of certified personnel, hearings and appeals rules, teacher education rules, assignment of school personnel, training of school board members, fee for Texas Academic Skills Program examinations, education service centers, and memorandum of understanding regarding services to disabled persons.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: August 31, 1988, 4:25 p.m.

TRD-8808946

Monday-Wednesday, September 12-14, 8:15 a.m. daily except Monday at 6:30 p.m. The Texas Academic Skills Program (TASP) Content Advisory Committees will meet in the Marriott at the Capitol, 701 East 11th Street, Austin. According to the agenda summary, the committee will review test items; consider content area committee meeting sign-in; and review items.

Contact: Pamela Tackett, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9525.

Filed: August 31, 1988, 4:25 p.m.

TRD-8808955

◆ ◆ ◆  
**The Advisory Commission on  
State Emergency  
Communications**

Tuesday, September 6, 1988, 6 p.m. The Public Information Committee will meet in emergency session in Room 102, John H. Reagan Building, Austin. According to the agenda, the committee will review 9-1-1 media presentation; consider 9-1-1 state brochure; discuss exhibit opportunities and potential Austin public relations firms; and consider any new business and hear public comments. The emergency status is necessary in order to approve public information projects and comply with the 9-1-1 legislative mandates.

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

Filed: August 30, 1988, 2:37 p.m.

TRD-8808863

Wednesday, September 7, 1988, 9:30 a.m. The Advisory Commission on State Emergency Communications will meet in Room

104, John H. Reagan Building, Austin. According to the agenda summary, the commission will hear committee reports from Public Information Committee, Administration Committee, Regional Plan Committee, and Finance Committee; consider approval of the 1988-1989 budget and the process related to the council of governments 9-1-1 budget process, action on 1-800 long distance service as it relates to the 9-1-1 surcharge, and federal government 9-1-1 surcharge customers; hear public comment and read and consider any new business; and schedule future commission meetings.

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

Filed: August 30, 1988, 4:40 p.m.

TRD-8808869

Wednesday, September 7, 1988, 9:30 a.m. The Advisory Commission on State Emergency Communications will meet in Room 104, John H. Reagan Building, 105 West 15th Street, Austin. According to the agenda, the commission will consider on an emergency basis proposed legislation amending Texas Civil Statutes, Article 1432f and the legislative appropriation process regarding 9-1-1 operations. The commission will also meet in executive session to discuss the selection of staff for the commission. The emergency status was necessary because the schedule for development of regional emergency communications plans requires that these items be added to the posted agenda rather than delayed to a future meeting.

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

Filed: August 31, 1988, 4:15 p.m.

TRD-8808925

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**Texas Employment  
Commission**

Wednesday, September 7, 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 of the previous meeting; consider internal procedures of commission appeals, action on tax liability cases listed on Docket 35 and higher level appeals in unemployment compensation cases listed on Dockets 35 and 36, and set date of next meeting.

Contact: Courtenay Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

Filed: August 30, 1988, 2:39 p.m.

TRD-8808860

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## Office of the Governor

Thursday, September 8, 1988, 9:00 a.m. The SCOE-Post Finance Subcommittee of the Governor will meet in Room 103, John H. Reagan Building, Austin. According to the agenda, there will be consideration and discussion of proposed finance options for capitol outlay and debt service for maintenance and operation.

Contact: Margaret LaMontagne

Filed: August 31, 1988, 2:20 p.m.

TRD-88088899

## Texas Department of Health

Friday, September 16, 1988, 9 a.m. The State Committee of Examiners of Speech-Language Pathology and Audiology of the Texas Department of Health will meet in Room T-507, 1100 West 49th Street, Austin. According to the agenda summary, the department will approve minutes of the previous meeting; consider election of officers; hear subcommittee reports regarding status of complaints and complaint investigations; review complaint statistics; consider possible expansion of continuing education options, proposal for settlement of complaint 25, status of interns after completion of internship (cfy) but prior to becoming licensed, proposed contract for newsletter and other committee publications, possible amendments to committee rules, and correspondence addressed to committee; review committee's budget; hear executive secretary's report; and consider other matters relating to licensing and regulation of speech-language pathologists and audiologists.

Contact: June Robertson, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7502.

Filed: August 30, 1988, 1:54 p.m.

TRD-88088847

## Texas Health and Human Services Coordinating Council

Thursday, September 8, 1988, 1:30 p.m. The Confidentiality Work Group for the Texas Health and Human Services Coordinating Council will meet in the Seventh Floor Conference Room, Sam Houston Building, Austin. According to the agenda, the group will approve minutes; continued review of materials on confidentiality rules and regulations; continued discussion of confidentiality rules and regulations, and recommendations to allow for the proposed computer data exchange between state agencies; objectives for next meeting; and discuss old and new business.

Contact: Greg Olsson, 311-A East 14th

Street, Austin, Texas, (512) 463-2195.

Filed: August 31, 1988, 3:38 p.m.

TRD-8808906

## Texas Department of Human Services

Wednesday, September 7, 1988, 10 a.m. The Services to Aged and Disabled Committee of the Texas Department of Human Services will meet in Conference Room 6W, Sixth Floor, West Tower, 701 West 51st Street, Austin. According to the agenda, the committee will approve minutes of the previous meeting; hear report on August 10 and 17 LBB hearing, deputy's report, and subcommittee on services to disabled persons; consider proposed swing bed program for rural hospitals, adjustments to the nursing home rate methodology and interim rates, rates for six bed ICF-MR's, family care hour limit, assessment of physically handicapped inmate's need for CCAD services, exception to reduced SSI payment standard, and new resource exclusion; discuss ADAC procedures for review and comment on policy changes and rules; and consider other business and plans for the next meeting.

Contact: Mary Ann Harvey, P.O. Box 2960, Austin, Texas 787689, (512) 450-3194.

Filed: August 30, 1988, 3:59 p.m.

TRD-88088865

Tuesday, September 13, 1988, 1:30 p.m. The School-Age Pregnancy Advisory Commission of the Texas Department of Human Services in Conference Room 103W, First Floor, West Tower, 701 West 51st Street, Austin. According to the agenda, the School-Age Pregnancy Advisory Committee will draft mission statement and bylaws; consider update on statewide school-age pregnancy resource directory, status of school-age pregnancy clearinghouse, update on pregnancy prevention initiatives, and wrap-up.

Contact: Liz Silbermagel, P.O. Box 2960, Austin, Texas 78769, (512) 450-4163.

Filed: August 30, 1988, 3:59 p.m.

TRD-88088866

## The Special Committee on Organization of State Agencies

Thursday, September 8, 1988, 10 a.m. The Special Committee on Organization of State Agencies will meet in Room 109, John H. Reagan Building, Austin. According to the agenda summary, the committee will hear invited presentations from representatives of selected agencies and other organizations concerning preliminary sub-

committee proposals; consider cost estimates related to selected subcommittee proposals and subcommittee reports to determine further actions and priorities; and discuss overall structure of the executive branch.

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

Filed: August 30, 1988, 2:37 p.m.

TRD-88088857

## Texas State Board of Examiners of Psychologists

Thursday-Saturday, September 8-10, 1988, 8:30 a.m., daily. The Texas State Board of Examiners of Psychologists will meet in the Executel Inn, 925 East Anderson Lane, Austin. According to the agenda, the board will approve minutes of the previous meeting; consider opinion letters, proposed rules, interviews, hearings, complaints, budget, legislative matters, applications, reports, exam issues, planning, and personnel matters.

Contact: Patti Bizzell, 1300 F Anderson Lane, Suite C-270, Austin, Texas 78752.

Filed: August 30, 1988, 1:58 p.m.

TRD-88088848

## Texas State Board of Public Accountancy

Tuesday, September 13, 1988, 1 p.m. A panel hearing for the Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. According to the agenda, the panel will hear complaint 87-04-28L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: August 31, 1988, 3:11 p.m.

TRD-8808912

## 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, September 7, 1988, 9 a.m. The Hearings Division will consider Dockets 8031, 8095, 7437, and 8052; consider final adoption of §23.3 concerning definitions and §23.49 concerning telephone extended area service and proposed §23.54 concerning private pay telephone service.

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

Filed: August 30, 1988, 2:35 p.m.

TRD-8808861

Wednesday, September 7, 1988, 2 p.m. The Administrative Division will approve minutes of the previous meeting; hear reports, discuss and act on budget and fiscal matters; consider transmission line health effects task force membership recommendation; consider reply comments in three FERC rulemaking dockets RM 88-4-000, RM 88-4-000, RM 88-5-000, and RM 88-6-000; consider reply comments in FCC Docket 87-124 in the matter of access to telecommunications equipment and services by the hearing impaired and other disabled persons; discuss proposed changes to the commission's filing requirements for construction reports; hear research and development reports, service quality reports, and interruption in service reports; and set time and place for next meeting. The division will also meet in executive session to consider personnel and litigation matters.

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

Filed: August 30, 1988, 2:35 p.m.

TRD-8808862

### Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons

Thursday, September 8, 1988, 10 a.m. The Budget Subcommittee of the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons will meet in the One Highland Center Boardroom, Texas Industries for the Blind and Handicapped, Inc., 314 Highland Mall Boulevard, Austin. According to the agenda, the subcommittee will review Texas Industries for the Blind and Handicapped fiscal year 1989 budget and discuss and act on Texas Industries for the Blind and Handicapped fiscal year 1989 commission rate schedule. The subcommittee will also meet in executive session pursuant to Article 6252-17, §2(r).

Contact: Michael T. Phillips, P.O. Box 12866, Austin, Texas 78711, (512) 459-2603.

Filed: August 30, 1988, 1:43 p.m.

TRD-8808844

### Railroad Commission of Texas

Wednesday, September 14, 1988, 1:30 p.m. The Oil and Gas Division of the Railroad Commission of Texas will meet in Room 12-126, William B. Travis Building, 1701 North Congress Avenue, Austin. Ac-

ording to the agenda, the division will consider docket 10-87,017 and hear oral argument on this case.

Contact: William Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6924.

Filed: August 31, 1988, 3:36 p.m.

TRD-8808904

### Texas Real Estate Commission

Monday, September 12, 1988, 9:30 a.m. The Texas Real Estate Commission will meet in the Conference Room, TREC Headquarters Office, 1101 Camino La Costa, Austin. According to the agenda, the commission will consider minutes of the July 18, 1988, meeting; hear staff reports for months of June and July, 1988; audit report; consider proposed new 22 TAC §535.165, concerning disclosure of buyer or tenant representation; consider complaint information concerning James D. Shepherd and Grady C. Farris; consider request to promulgate a standard contract addendum providing for release of liability upon assumption of an existing FHA-insured loan; report on Broker-Lawyer Committee work; executive session to discuss pending litigation pursuant to Texas Civil Statutes, Article 6525-17, §2(c); consider claims against the Real Estate Recovery Fund; and consider motions for rehearing.

Contact: Camilla S. Shannon, P.O. Box 12188, Austin, Texas 78711, (512) 465-3900.

Filed: August 31, 1988, 4:21 p.m.

TRD-8808926

### Texas County and District Retirement System

Friday, September 16, 1988, 9 a.m. The Board of Trustees of the Texas County and District Retirement System will meet at the Guest Quarters Hotel, 303 West 15th Street, Austin. According to the agenda summary, the board will consider and pass on applications for service retirement benefits and disability retirement benefits; review and act on reports from director, actuary, legal counsel, and investment counsel; and set date of December meeting.

Contact: J. Robert Brown, 400 West 14th Street, Austin, Texas 78701, (512) 476-6651.

Filed: August 31, 1988, 9:12 a.m.

TRD-8808889

### Special Task Force on Rural Health Care Delivery in Texas

Wednesday, September 7, 1988, 10 a.m. The OB/Liability Subcommittee of the Special Task Force on Rural Health Care Delivery in Texas will meet in emergency session in the Lieutenant Governor's Room, State Capitol Building, Austin. According to the agenda, the subcommittee will discuss the elimination of obstetrical services by rural hospitals and physicians and medical malpractice insurance and make recommendations to full committee. The emergency status is necessary because a date suiting the schedules of the subcommittee members was not finalized until August 31, 1988.

Contact: Sam Gorena, P.O. Box 13206, Austin, Texas 78711, (512) 463-0809.

Filed: August 31, 1988, 1:41 p.m.

TRD-8808898

### Senate

Tuesday, September 13, 1988, 9:00 a.m. The Subcommittee on Health Services for the Senate will meet in Old Supreme Courtroom 310, Capitol Building, Austin. According to the agenda, there will be a public hearing on intermediate care facilities for mentally retarded citizens in Texas. Testimony will be heard in an effort to seek to identify problems relating to the ICF-MR survey process, reimbursement rates, availability of services and the effects of the Prospective Payment Program. If necessary, testimony will continue on Wednesday, September 14, 1988, 9 a.m.- 5 p.m., Lt. Governor's Committeeroom, Second Floor, Capitol Building.

Contact: Vicki Hines, (512) 463-0120.

Filed: August 31, 1988, 11:24 a.m.

TRD-8808896

### Texas Small Business Industrial Development Corporation

Tuesday, September 13, 1988, 2 p.m. The Board of Directors for the Texas Small Business Industrial Development Corporation will meet in Room 304 A and B, Brown Convention Center, 1001 Convention Center Boulevard, Houston. According to the agenda, the board will introduce board members; hear status reports on Texas Public Finance Facilities Capital Access Program (TEXCAP), community development bonds (water furnishing and sewage disposal facilities bond program) Series 1985, TSBIDC investments; consider minutes of the June 14, 1988, meeting; consider amended TEXCAP financing doc-

uments; third amended and restated trust indenture, remarketing agreement, letter of credit/reimbursement agreements, form of obligation, investment agreement; payment to the Texas Department of Commerce for TSTBIDC related expenses; and appoint TEXCAP Financing Corporation directors.

Contact: Barbara Carpenter, TSBIDC, (512) 472-5059.

Filed: August 31, 1988, 3:20 p.m.

TRD-8808903

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**Select Committee on Tax Equity**

Wednesday, September 7, 1988, 9 a.m. The Select Committee on Tax Equity, will meet in emergency session in Room 105, Reagan Building, 105 West 15th Street, Austin. According to the agenda there will be a meeting of the Property Tax, Intergovernmental Issues and Economic Development work group for the committee. The emergency status is necessary due to schedule conflicts between work group members on an available meeting date.

Contact: Billy Hamilton, P.O. Box 12666, Austin, Texas 78711, (512) 463-1238.

Filed: August 31, 1988, 2:19 p.m.

TRD-8808924

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**Texas County and District Retirement System**

Friday, September 16, 1988, 9 a.m. The Board of Trustees of the Texas County and District Retirement System will meet at the Guest Quarters Hotel, 303 West 15th Street, Austin. According to the agenda summary, the board will consider and pass on applications for service retirement benefits and disability retirement benefits; review and act on reports from director, actuary, legal counsel, and investment counsel; and set date of December meeting.

Contact: J. Robert Brown, 400 West 14th Street, Austin, Texas 78701, (512) 476-6651.

Filed: August 31, 1988, 9:12 a.m.

TRD-8808889

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**Texas Municipal Retirement System**

Saturday, September 17, 1988, 9:00 a.m. The Board of Trustees will meet at 1200 North IH-35, Austin. According to the agenda summary, to hear and approve minutes of June 17, 1988 Regular Meeting; Review and approve service retirements; Disability retirements; Review and approve supplemental death benefits payments; Consider extended supplemental death benefits;

Review and act on financial statements; Consider adoption of resolution concerning updated service credit for the System; Discussion of vesting periods as they relate to TMRS; Report by actuary; Report by legal counsel; Report by Director; Consider any other business to come before the Board.

Contact: Jimmie L. Mormon, (512) 476-7577

Filed: August 31, 1988, 11:07 a.m.

TRD-8808895

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**University Interscholastic League**

Wednesday, September 7, 1988, 1 p.m. The Waiver Review Board of the University Interscholastic League will meet in Room 2.110, Thompson Conference Center, University of Texas, 26th and Red River Streets, Austin. According to the agenda summary, the board will consider appeal of waiver decision to determine student eligibility.

Contact: Bob Young, P.O. Box 8028, Austin, Texas 78713.

Filed: September 1, 1988, 9:32 a.m.

TRD-8808957

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**Texas Water Commission**

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

Wednesday, September 7, 1988, 11 a.m. The commission will meet in Room 123, to consider executive director's report on agency administration, policy, budget procedures, and personnel matters.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 463-7909.

Filed: August 30, 1988, 4:34 p.m.

TRD-8808871

Monday, September 12, 1988, 10 a.m. The commission will meet in Room 118, to consider application by City of Cedar Park, for an amendment to Permit 12308-01 and dismissal of renewal application 12308-01.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 463-7909.

Filed: August 30, 1988, 4:33 p.m.

TRD-8808872

Thursday, September 15, 1988, 9 a.m. The commission will meet in Room 1-100, to consider executive director's preliminary report and petition for order assessing administrative penalties and requiring certain actions of El Paso Refining Company, Ltd.

(Solid Waste Registration 30026).

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 463-7909.

Filed: August 30, 1988, 4:33 p.m.

TRD-8808873

Thursday, September 15, 1988, 10 a.m. The commission will meet in Room 123, to consider the executive director's report on agency administration, policy, budget procedures, and personnel matters.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 463-7909.

Filed: August 30, 1988, 4:33 p.m.

TRD-8808874

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**Texas Youth Commission**

Thursday, September 8, 1988, 9 a.m. The Board for the Texas Youth Commission will meet in the Durango Room, Embassy Suites Hotel, 6100 Gateway East, El Paso. According to the agenda, the board will review preliminary recommendations of the Senate Select Committee on the Juvenile Justice System (action); report on regional focus groups (information); staff response on consultant report on risk needs assessment (information); status of request for proposals for new residential and non-residential contract programs (information); general operating policies recodification (information); contract for federal bilingual grants evaluation (action); approval of change order for perimeter security system at Gainesville State School (action); approve budgets for Parrie Haynes and Wende Trust Funds (action); and status of TYC central office lease (information).

Contact: Ron Jackson, 8900 Shoal Creek Boulevard, Austin, Texas, (512) 452-8111.

Filed: August 31, 1988, 3:45 p.m.

TRD-8808907

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**Regional Meetings**

Meetings Filed August 30, 1988

The Grayson Appraisal District, Appraisal Review Board, met and will meet at 205 North Travis, Sherman, on September 1-30, 1988, at 9 a.m. Information may be obtained from Deborah Reneau, 205 North Travis, Sherman, Texas 75090, (214) 893-9673.

The Middle Rio Grande Development Council, Texas Review and Comment System, met in the Commissioner's Courtroom, 500 Quarry Street, Eagle Pass, on August 31, 1988, at 10 a.m. Information may be obtained from Dora T. Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (512)



876-3533.

TRD-8808846

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**Meetings Filed August 31,  
1988**

**The Dawson County Central Appraisal District, Board of Directors, will meet at 920 North Dallas Avenue, Lamesa, on September 7, 1988, at 7 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 372-7060.**

**The Garza County Appraisal District, Board of Directors, will meet in the Courthouse, Appraisal Office, Post, on September 8, 1988, 9 a.m. Information may be obtained from Jean M. Westfall, P.O. Drawer F, Post, Texas 79356, (806) 495-3518.**

**The Sabine Valley Regional MHMR Center, Board of Trustees, will meet in Suite E, Sabine Valley Center, 107 Woodbine Place, Longview, on September 12, 1988, at 7 p.m. Information may be obtained from Ron Cookston, P.O. Box 6800, Longview,**

Texas 75608, (214) 758-2471.

**The San Patricio County Appraisal District, Board of Directors, will meet at 1146 East Market, Sinton, on September 8, 1988, at 9:30 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402.**

**The Scurry County Appraisal District, Board of Directors, will meet at 2612 College Avenue, Snyder, on September 6, 1988, at 3 p.m. Information may be obtained from L.R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549.**

**The Tarrant Appraisal District, Board of Directors, met at 2301 Gravel Road, Fort Worth, on September 2, 1988, at 10:30 a.m. Information may be obtained from Olive Miller, 2301 Gravel Road, Fort Worth, Texas 76118, (817) 595-6005.**

**The South Texas Development Council, Regional Review Committee, will meet in the Commissioner's Courtroom, Courthouse Annex, Zapata, on September 7, 1988 at 2 p.m. Information may be obtained from**

Juan Vargas, P.O. Box 2187, Laredo, Texas 78044-2187, (512) 722-3995.

TRD-8808878

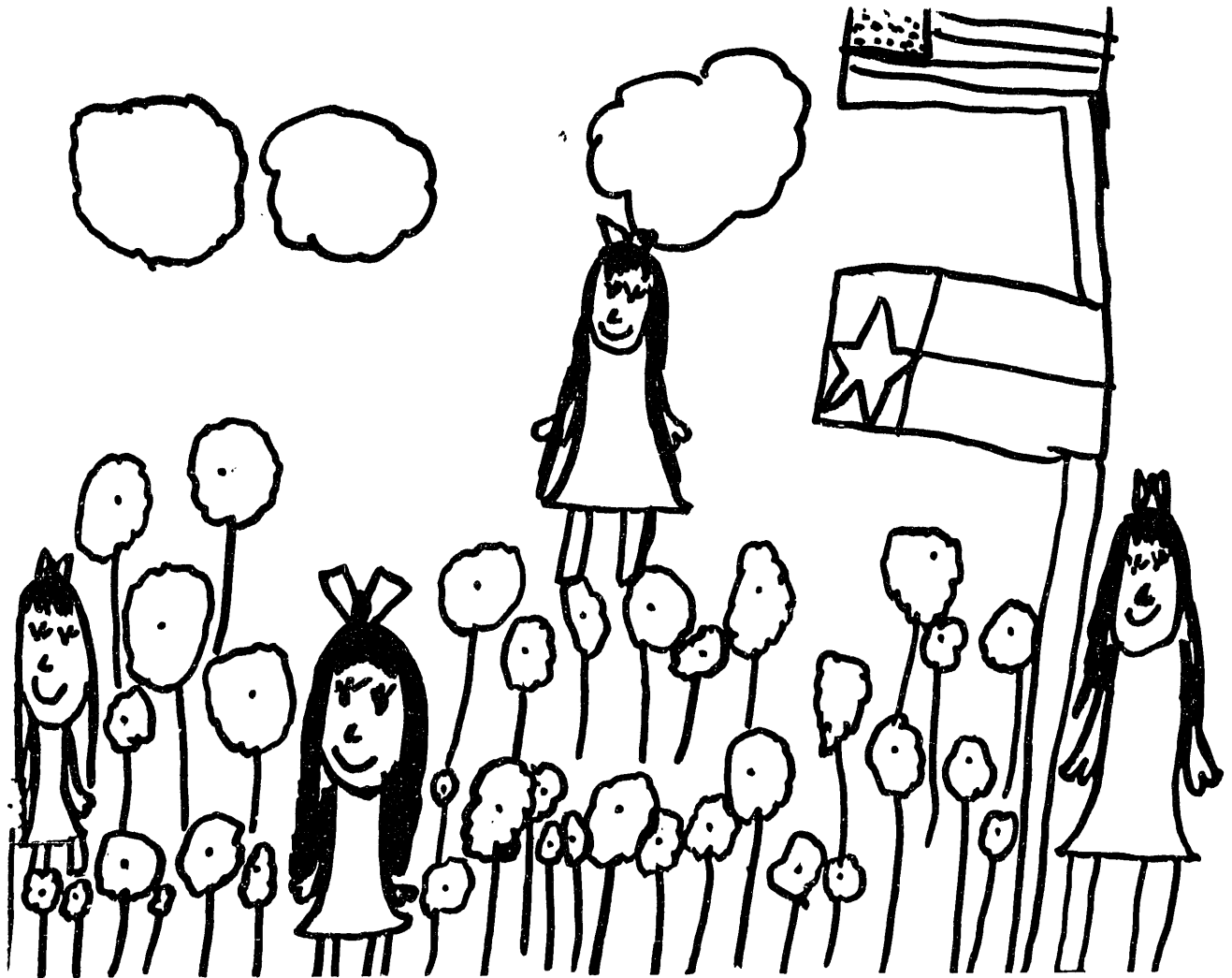
◆ ◆ ◆  
**Meetings Filed September 1,  
1988**

**The Edwards Underground Water District, Board of Directors and Administration Committee, will meet at 1615 North St. Mary's, San Antonio, on September 6, 1988, at 9 a.m. and 12:15 p.m. respectively. Information may be obtained from Thomas P. Fox, 1615 North St. Mary's, San Antonio, Texas 78215, (512) 222-2204.**

**The Hunt County Tax Appraisal District, Appraisal Review Board, will meet in the Boardroom, 4801 King Street, Greenville, on September 6, 1988, at 9 a.m. The Board of Directors will meet at the same location on September 8, 1988, at 7 a.m. Information may be obtained from Joe P. Davis or Linda S. Haynes, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510.**

TRD-8808958

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Name: Amy Burley

Grade: 2

School: O'Henry Elementary, Richardson

# In Addition

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

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

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## Texas Air Control Board Notice of Contested Case Hearing Number 252

An examiner for the Texas Air Control Board (TACB) will conduct a contested case hearing on the appeal of revisions and an amendment of TACB Operating Permit Number R-9337, which were issued to Texas TX TX Marine Transportation, Inc., the immediate predecessor of the current permit holder, Tex Trac, Inc. (the company), by the TACB executive director on May 13, 1988. TACB Operating Permit Number R-9337 authorizes the operation of a petroleum coke bulk handling facility in Harris County on the east bank of Sims Bayou, immediately upstream of its confluence with the Houston Ship Channel. The May 13, 1988, revisions include requirements that the company: control stockpile emissions by installing a quantity of water sprinklers proportional to the area of petroleum coke which is stockpiled; clean up petroleum coke which has spilled during railcar unloading with front end loaders and deposit it into the conveyor hopper; clean up petroleum coke which has accumulated in low drainage areas around the rails, conveyor, and pump sumps with front end loaders and deposit it into storage; use feeder mechanisms with long tines on the loading hoppers which receive the petroleum coke; and use concrete or asphaltic concrete in the construction of the truck wash facility. The May 13, 1988, amendment requires the company to use a water fog ring on the barge loading chute and requires that the end of the barge loading chute be fully extended to within six feet of the bottom of the barge when loading commences, and thereafter, a maximum freefall distance of two chute diameters must be maintained.

**Time and Place of Hearing.** The examiner has set the hearing to begin at 10:30 a.m. on October 18, 1988, at the TACB Central Office, Room 240, 6330 Highway 290 East, Austin. No one may participate in the hearing without meeting the requirements set forth below.

**Nature of Hearing.** This hearing is a contested case hearing under the Administrative Procedure and Texas Register Act, §13, Texas Civil Statutes, Article 6252-13a. The examiner will therefore conduct it in most respects like a nonjury trial in one of the district courts of this state.

**What Must be Proven.** In order for the issuance of the May 13, 1988, revisions and amendment to be sustained on appeal, the preponderance of the evidence taken at the hearing must demonstrate that all the requirements of the TACB and the Texas Clean Air Act, Texas Civil Statutes, Article 4477-5 (the Act), for the issuance of the May 13, 1988, revisions and amendment have been satisfied.

**Parties to the Hearing.** At the hearing on the merits, only those persons admitted as parties will be permitted to make motions, present evidence and argument, and cross-examine witnesses. Presently, the only prospective parties are the company and the TACB staff.

**Deadline for Requesting to be a Party.** Any other person or organization that wants to be made a party must send a

specific written request for party status to hearing examiner Bill Ehret and make sure that this request is actually received at the TACB Central Office, 6330 Highway 290 East, Austin, Texas 78723 by 5 p.m. on September 13, 1988. The examiner cannot grant party status to any person or organization whose request comes in after that deadline, unless there is good cause for the request's coming in late. Hearing requests, comments, or other correspondence sent to the TACB before publication of this notice are not party status requests and will not enable any person or organization to be a party to the hearing. The examiner will make a decision on party status at the prehearing conference. If there is any objection at the prehearing conference to the granting of party status to any person or organization that has requested it, that person or organization will not be admitted as a party without proof that he, she or it may be affected by the emissions from the proposed facility.

**Prehearing Conference.** The examiner has scheduled a prehearing conference on September 21, 1988, at 1 p.m., at the TACB Central Office, Room 240, 6330 Highway 290 East, Austin. At this conference, in addition to making a decision on party status, the examiner will also receive proposed written disputed issues for consideration at the hearing on the merits and motions to take official notice. The examiner will consider discovery motions and any other prehearing motions, but may grant contested motions for continuances only upon proof of good cause. The examiner will also establish a specific date prior to the hearing on the merits for the exchange of written and documentary evidence. At or following the prehearing conference, the examiner may issue prehearing orders concerning discovery and other prehearing requirements.

**Public Attendance and Testimony.** Members of the general public may attend the hearing. Those who plan to attend are encouraged to telephone the TACB Central Office in Austin, at (512) 451-5711, extension 350, a day or two prior to the hearing date to confirm the setting, since continuances are granted from time to time.

Any person who desires to give testimony at the hearing, but who does not desire to be a party, may call the TACB legal division at (512) 451-5711, extension 350, to find out the names and addresses of all admitted parties. These parties may then be contacted about the possibility of presenting testimony.

**Information About the Application and TACB Rules.** Information about the application and copies of the TACB's rules and regulations are available at the TACB Regional Office located at 5555 West Loop, Suite 300, Bellaire, Texas 77401, the TACB Central Office located at 6330 Highway 290 East, Austin, Texas 78723, and at the office of the Houston Bureau of Air Quality Control, 7411 Park Place, Houston, Texas 77087.

**Legal Authority.** This hearing is called and will be conducted under the authority of the Act, §§3.15, 3.16, 3.17, and 3.27, and TACB Procedural Rules 103.31, 103.41, and 103.81.

Issued in Austin, Texas on August 26, 1988.

Filed: August 30, 1988

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

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## Comptroller of Public Accounts Consultant Proposal Request

Pursuant to Texas Civil Statutes, Article 6252-11c, the Comptroller of Public Accounts of the State of Texas requests proposals to provide the following data processing services.

**Description of Work.** The selected consultant will provide an automated collection system (ACS) software package and all necessary software modifications. The automated collection system must operate within the comptroller's current hardware environment, including IBM 3090 and Rockwell International GVS 3000 Automatic Call Distributor. The ACS must operate within the following software environment: MVS/XA and/or MVS/ESA, JES3, VSAM, and DB2. The consultant will modify any existing software to the comptroller's environment, convert collection inventory systems, and modify interfaces to existing comptroller tax systems as necessary.

The request for proposal dated September 1988 for automated collection system (ACS) software depicts detail and functional specifications as well as our hardware and software environment. The purpose of the work proposed to be contracted is to assure the fullest reasonable degree of automation of the functions related to the collection of taxes.

**Person to be Contacted.** Detailed specifications are contained in the request for proposal (RFP), a copy of which may be obtained on or after September 8, 1988, from the Data Services Division of the Comptroller of Public Accounts, Room 309, LBJ building, between the hours of 8 a.m. and 5 p.m., Monday-Friday. For additional information, interested persons may contact Bill Grabo, Associate Deputy Comptroller, Room 309, LBJ Building, 111 East 17th Street, Austin, Texas 78774, (512) 463-3956.

**Bidders Conference.** A bidders conference will be held in third floor auditorium of the James Harper Starr State Office Building, 111 East 16th Street, Austin, on September 16, 1988, at 9 a.m.

**Closing Date.** Proposals to perform these consulting services will be accepted only if in writing and actually received in the office of Bill Grabo no later than 5 p.m., October 17, 1988. Bids should be submitted with an original and ten copies. The Comptroller of Public Accounts reserves the right to reject any or all proposals. Bids based upon shared participation by the comptroller's and consultant's staff will be considered.

**Procedure for Selection of Consultant.** The Comptroller's Office will consider the 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 the reasonableness of the proposed fee. The consultant firm which best meets these criteria will be selected for fee and contract negotiations. The Comptroller of Public Accounts 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.

**Schedule of Events.** Bidder Conference—September 16, 1988; Bid Opening—October 17, 1988; Bid Award—No-

vember 1, 1988; Work Begins—November 7, 1988.

Issued in Austin, Texas on September 1, 1988.

TRD-8808832

Bob Bullock  
Comptroller of Public Accounts

Filed: August 30, 1988

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

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## Texas Department of Health Amended Guidelines for the AZT Program

In the October 13, 1987, issue of the *Texas Register* (12 TexReg 3787), the Texas Department of Health published guidelines concerning applications for financial assistance in obtaining the drug zidovudine (AZT). The Texas Department of Health received a grant from the Federal Health Resources Services Administration, United States Department of Health and Human Services, to help offset the cost of the drug AZT (azidothymidine, zidovudine, or Retrovir) for eligible persons with AIDS or AIDS-related complex. The amount of the grant was initially expected to purchase a nine-month supply of the drug for each person enrolled in the program.

At this time, the Texas Department of Health is amending the guidelines which limit patients to receiving a nine-month supply of the drug. Patients enrolled in the financial assistance program may continue to receive AZT until all federal grant funds have been expended. Persons enrolled in the program will be notified by the Texas Department of Health before all funds are expended. No new applications may be accepted for enrollment in the program after September 30, 1988, when the federal grant period ends.

For further information contact Christi Reed, Director, AIDS Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7207.

Issued in Austin, Texas on August 30, 1988.

TRD-8808876

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

Filed: August 30, 1988.

For further information, please call: (512) 458-7207

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## Correction of Error

The Texas Department of Health submitted miscellaneous items which contained errors as submitted by the department in the July 8, 1988, issue of the *Texas Register* (13 TexReg 3427).

Under "Intent to Revoke Certificate of Registration," (13 TexReg 3427), the fourth paragraph of the second document (TRD-8806884) should read: "Complaint: Comes now the Division of Compliance and Inspection, Bureau of Radiation Control, Texas Department of Health (the agency), through its division director, and makes the following complaint against Northshore Industrial Clinic, 1260 Uvalde, Houston, Texas 77015 (the registrant), holder of certificate of registration number 11-07342."

Under "Intent to Revoke General License Acknowledgements" (13 TexReg 3430) the eighth paragraph should read: "Comes now the Division of Compliance and Inspection, Bureau of Radiation Control, Texas Department of Health (the agency), through its division director, and makes the following complaint against Louis J. Code, M.D., 1155 East 42nd Street, Odessa, Texas 79762 (the

licensee), holder of general license acknowledgement number 12-863."

## Texas Housing Agency Request for Proposal

The Texas Housing Agency (THA) is amending its request for proposals regarding the hardware maintenance service published in the September 2, 1988, issue of the *Texas Register*.

**Description:** The Texas Housing Agency gives notice of its intention to engage one or more companies with the qualifications and experience required to perform remedial and preventive maintenance service for the agency's computer hardware.

**Selection:** The Finance and Audit Committee of the Board of Directors of the Texas Housing Agency will review proposals timely submitted and will make recommendations to the full board. The committee may conduct personal interviews with the final candidates. The contract will be awarded on the basis of the proposal that is judged by the board to fulfill most effectively the specifications outlined in the complete request for proposal.

**Additional Information:** A copy of the RFP and additional information may be obtained by contacting Suzanne Rittenberry, Texas Housing Agency, 811 Barton Springs Road, Suite 300, Austin, Texas 78704, (512) 474-2974.

**Extended Closing Date:** The deadline for proposals has been extended. Proposals must be received in the agency office by 5 p.m. on September 9, 1988.

Issued in Austin, Texas on August 30, 1988.

TRD-8808868 Timothy R. Kenny  
Executive Administrator  
Texas Housing Agency

Filed: August 30, 1988

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

## Texas Department of Human Services Request for Proposal

The Texas Department of Human Services (DHS) announces a Request for Proposal (RFP) for purchased food stamp issuance services. DHS uses a competitive procurement process to ensure and document that services purchased are of the highest quality, lowest price, and best meet the needs of clients served.

**Description:** Over-the-counter food stamp issuance is the exchange of food coupon booklets for authorization to participate (ATP) forms. ATP forms will specify client name, case number, ID issuance number, total benefit amount, number of each denomination booklets to be issued, and month valid. Food stamp clients will present issuance agent with ATP and ID card. Issuance agent will check to see that the ID card serial number matches the corresponding number on the ATP form. If they match, the client will sign the ATP form in the presence of the issuance agent, who will then exchange the indicated number of each denomination of booklets for the signed ATP form. The issuance agent will write the issuance verification code (from the ID card) on the ATP form, date stamp the ATP, form and later batch it for delivery to DHS. To contract with DHS, the contractor must comply with the following: applicable federal and state laws, regulations, and policies; DHS service standards applica-

ble to the service being purchased; generally accepted accounting principles and procedures recognized by the American Institute of Certified Public Accountants; and contractual terms such as those relating to sufficient operating capital, bonding requirements, assumption of liability for redemption errors, losses and audit exceptions, and contract termination. DHS will procure over-the-counter food stamp issuance services in Travis and Denton Counties.

**Terms of Contract:** The contracts will be for a 12-month period. DHS has the option of renewal on a non-competitive basis for additional periods. Contractors will be paid on a fee per transaction basis for eligible ATP forms processed.

**Selection Procedure:** Proposals will be received by a selection committee. Those proposals meeting the offer or response packet requirements will be considered for the contract award. The award will be made to the lowest bidder meeting the specified requirements.

**Contact Person:** To request an RFP package or additional information, contact Charles Jennings at (512) 450-3467. All proposals must be received by DHS no later than noon on October 17, 1988. Sealed bids must be mailed or hand delivered to Charles Jennings, Director of Program Control, Program Management Division, 518-W, P.O. Box 2960, Austin, Texas 78769.

Issued in Austin, Texas on August 31, 1988.

TRD-8808877 Marlin W. Johnston  
Commissioner  
Texas Department of Human Services

Filed: August 31, 1988.

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

## State Board of Insurance Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration:

1. Application for admission to do business in Texas of MCOT/Americas Life Insurance Company, a foreign life insurance company. The home office is in Tampa, Florida.
2. Application for a name change by BSC Life Insurance Company, a domestic life insurance company. The home office is in Dallas. The proposed new name is USABLE Life Insurance Company of Texas.
3. Application for incorporation in Texas of American Ranger Reinsurance Corp., a domestic casualty insurance company. The home office is in Houston.
4. Application for admission to do business in Texas of American Southern Home Insurance Company, a foreign casualty insurance company. The home office is in Jacksonville, Florida.
5. Application for admission to do business in Texas of Group Services, Inc., a foreign third party administrator. The home office is in De Pere, Wisconsin.

Issued in Austin, Texas, on August 29, 1988.

TRD-8808808 Nicholas Murphy  
Chief Clerk  
State Board of Insurance

Filed: August 29, 1988

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

## Correction of Error

The State Board of Insurance submitted proposed new sections which contained errors as published in the August 16, 1988, issue of the *Texas Register* (13 TexReg 4030).

For §§33.201-33.206: the heading for these sections should be "Subchapter C. Application by Continuing Care Provider for Certificates of Authority"

Section 33.202: should read: "**§33.202. Incorporated Entities Only.** Except for persons qualifying for certificates of authority under the Act, §4(g), the commissioner shall limit issuance of certificates of authority to incorporated entities."

For §§33.301-33.308: the heading for these sections should be: "Subchapter D. Disclosure Statement"

For §§33.401-33.407: the heading for these sections should be: "Subchapter E. Escrow Accounts."

For §33.403: subsection (b) should read: "(b)Calculations concerning conditions."

## North Central Texas Council of Governments Consultant Contract Award

In accordance with Texas Civil Statutes, Article 6252-11c, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the May 27, 1988, issue of the *Texas Register* (13 TexReg 2635). The consultant is to conduct a census of mobility impaired individuals in Tarrant County for the Fort Worth Transportation Authority.

The consultant selected to perform this study is NuStats, Inc., First City Centre, 816 Congress Avenue, Austin, Texas 78701. The maximum amount of this contract is \$41,429. The contract will begin on August 29, 1988, and will terminate on February 15, 1989.

At the conclusion of the project, the consultant will submit a report containing documentation and evaluation of the methodologies used in this census.

Issued in Austin, Texas on August 29, 1988.

TRD-8808893 William J. Pitstick  
Executive Director  
North Central Texas Council of  
Governments

Filed: August 31, 1988

For further information, please call (817) 640-3300

In accordance with Texas Civil Statutes, Article 6252-11c, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the May 27, 1988, issue of the *Texas Register* (13 TexReg 2635). The consultant is to prepare an operational audit of mobility impaired transportation services for the Fort Worth Transportation Authority.

The consultant selected to perform this study is ATE Management and Service Company, Inc., 1040 Noel Drive, Menlo Park, California 94025. The maximum amount of this contract is \$40,700. The contract will begin on August 29, 1988, and will terminate on January 15, 1989.

At the conclusion of the project, the consultant will submit a report containing all findings and recommendations associated with this audit.

Issued in Austin, Texas on August 29, 1988.

TRD-8808890 William J. Pitstick  
Executive Director  
North Central Texas Council of  
Governments

Filed: August 31, 1988

For further information, please call (817) 640-3300

## Railroad Commission of Texas Public Notice

Notice is hereby given that an application for authority to charge a toll by the Long Island Bridge Company, Inc., and John R. Freeland, Co-Applicants, P.O. Box 2586, McAllen, Texas 78502 was filed on May 10, 1988, before the Railroad Commission of Texas in Docket 003632ZZCW pursuant to Texas Civil Statutes, Article 1473. The applicant seeks authority to charge all users of the Long Island Swing Bridge, located across the Intercoastal Canal Waterway between Long Island and Port Isabel, as follows: \$3.50 for motorized vehicles, including passenger cars, recreational vehicles, and motorcycles; \$4.50 for all motorized vehicles in excess of two tons. All interested persons affected by this toll application that wish to participate in the commission consideration of this application may do so only by filing a written protest, intervention in opposition, or intervention in support, on or before Monday, October 10, 1988, at 5 p.m. by writing the Docket Services Section—Legal Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967.

Please include in the written pleading the Docket 003632ZZCW in all responses. A copy of such pleading should also be sent to the applicant.

Notice is further given that this case has been set for a pre-hearing conference pursuant to 16 T.A.C. §5.425 as follows: November 1, 1988, 10 a.m., Karen W. Kornell, Bright, Fuller and Associates, at the Railroad Commission Offices, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. For room assignment, on the date of the hearing please check the bulletin board in the first floor lobby.

The failure of any party to appear at the pre-hearing conference shall not in any way affect their status as a party. The purpose of the pre-hearing conference will be to formulate issues and consider: the alignment of parties by the examiner according to their classification and relationship to this proceeding, and the designation of representative persons to receive personal service of all further pleadings, notices, correspondence, and orders; the simplification of issues; the possibility of the parties stipulating to certain facts in order to avoid the unnecessary introduction of proof; the procedure at the hearing; and such other matters as may aid in the simplification of the proceeding and the disposition of the matters in controversy.

Issued in Austin, Texas on August 8, 1988.

TRD-8808807 G. Gail Watkins  
Director, Legal Division  
Railroad Commission of Texas

Filed: August 29, 1988

For further information, please call (512) 463-7187

## Texas Legislative Council Consultant Proposal Request

This request for consultant proposals is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

The Texas Legislative Council requests proposals for consulting services to develop a proposal for the reorganization of the senate rules in cooperation with the officers and employees of the senate; develop proposals to improve the efficiency of interactions between the house and the senate in the legislative process; advise and assist leadership of the house and senate in regard to issues concerning public education and public school finance; and evaluate the feasibility of, and develop recommendations in regard to, the production and publication of an annotated analysis of the Texas Constitution.

Proposals should contain the name of the consultant; previous experience similar to the services to be performed; a list of key personnel who would be assigned to perform the services; an explanation of the consultant's proposed fee schedule and expense charges; and any other information that the consultant deems relevant.

Proposals should be submitted to Dorothy Wells, Assistant Director, Texas Legislative Council, P.O. Box 12128, Austin, Texas 78711. Proposals must be received by 5 p.m. on September 23, 1988.

The contract will be awarded on the basis of demonstrated competence in working on projects similar to the project described in this request for proposals; the consultant's knowledge and experience in performing and ability to perform services similar to those described; accessibility and availability of the consultant for required activities, including attendance of committee meetings and activities related to the services to be performed; and the total cost for services to be performed.

Issued in Austin, Texas on August 31, 1988.

TRD-8808892 Sharon Carter  
Administrative Assistant  
Texas Legislative Council

Filed: August 31, 1988

For further information, please call (512) 463-1151

## The University of Texas System Consultant Contract Award

The University of Texas Medical Branch at Galveston (hereinafter referred to as UTMB), in accordance with provisions of Texas Civil Statutes, Article 6252-11c, reports the following information with regard to a consultant contract entered into by UTMB and Telecommunications International, Inc., 215 Union Boulevard, Suite 300, Lakewood, Colorado 80228 (hereinafter referred to as TII) on August 18, 1988.

On February 5, 1988, The University of Texas Medical Branch at Galveston Telecommunications Consulting Request for Proposal was published in the *Texas Register* (13 TexReg 655). On August 18, 1988, UTMB and TII entered into a consultant contract which requires that the consultant provide the following services to UTMB: Phase One: Consultant will develop final design specifications for inclusion in a request for proposals for installation of a new telecommunications system at UTMB (hereinafter referred to as RFP). Consultant will then work with UTMB in finalizing and distributing the RFP. Consultant will schedule the pre-proposal conference and will assist

UTMB in vendor interface during this process. Consultant will evaluate RFP responses and make oral and written recommendations to UTMB, based on financial, technical, and operational criteria. Consultant will then assist in contract negotiation. Phase Two: Consultant will carefully monitor the installation of the system. Progress meetings and quality control checks will be performed, continuing through UTMB's acceptance of the system. The scope of work proposed by consultant in Phase Two will accomplish all of the specific implementation activities identified by UTMB: acceptance test monitoring; post-cutover evaluation; ascertaining that the vendor has provided the required documents and operating procedures; assistance in development of internal records; organization and staffing recommendations; and inventory recommendations.

The consultant contract became effective on the date of execution and shall remain in effect until August 1990, or until all of the activities previously described are completed and accepted by UTMB.

The total amount due TII under this consultant contract shall not exceed \$107,000.

Issued in Austin, Texas on August 30, 1988.

TRD-8808870 Arthur H. Dilly  
Certifying Official  
The University of Texas System

Filed: August 31, 1988

For further information, please call (512) 499-4402

## Texas Water Commission Request for Proposal

The Texas Water Commission (TWC) announces that it wishes to retain the services of a consultant to perform a remedial investigation and feasibility study of a gasoline contaminated site in Granbury.

The project will be conducted by the TWC through cooperative agreement with the United States Environmental Protection Agency (EPA) in accordance with the Superfund Amendments and Reauthorization Act (SARA) of 1986, amending Subtitle I of the Resource Conservation and Recovery Act (RCRA), and Subchapter 26 of the Texas Water Code.

**Objectives.** The objectives of this project are to complete a remedial investigation and feasibility study at the site to determine the source of the contamination, the extent of contamination, and to provide recommendations for remedial action designs.

The consultant will be responsible for all services and equipment necessary to complete the project.

**RFP Procurement.** Consultants interested in submitting proposals for this project must obtain a request for proposals (RFP) from the TWC. A copy of the RFP may be obtained in one of three ways: by certified mail to Ms. Chris Peckham, UST Section, Contracts Unit, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7786; by private express mail service with a prepaid self-addressed envelope; or in person at Room 542, Stephen F. Austin Building, 1700 North Congress Avenue, Austin.

**Procedure for Selecting Consultant.** A detailed evaluation process will be conducted, using criteria such as, but not limited to, demonstrated technical experience, available facilities and equipment, and the proposed technical approach; the competence, related experience, and availability of personnel to be assigned to the project; the

consultant's safety, chain-of-custody, and quality assurance/quality control plans; and a separate accompanying cost proposal.

Upon selection of a candidate by the commission, negotiation will be conducted by the TWC staff with the selected consultant. If a fair and reasonable cost cannot be negotiated, that candidate will be bypassed and a second proposer shall be selected for negotiation proceedings.

**Submittal Information.** Four copies of the proposal must be received at the following address before 4 p.m. local prevailing time on October 6, 1988: Danny Lien, P.E., Texas Water Commission, Underground Storage Tank Section, Stephen F. Austin Building, Room 224-A, 1700 North Congress Avenue, Austin, Texas 78711.

Proposals submitted in response to this request must address the scope of work outlined in the RFP. Any addi-

tions, alterations, or options to this scope of work must be clearly identified in the proposal.

Information submitted by an offeror in variance with the RFP instructions will not be evaluated. All contracting procedures shall be conducted in accordance with all applicable state and federal rules.

**Budget.** The maximum budget allowable for the project will be consistent with the scope of work and cooperative agreement. Budgeted funds for the remedial investigation/feasibility study phase are \$180,000.

Issued in Austin, Texas on August 31, 1988.

TRD-8808891

William G. Newchurch  
Legal Division  
Texas Water Commission

Filed: August 31, 1988

For further information, please call (512) 463-7786

