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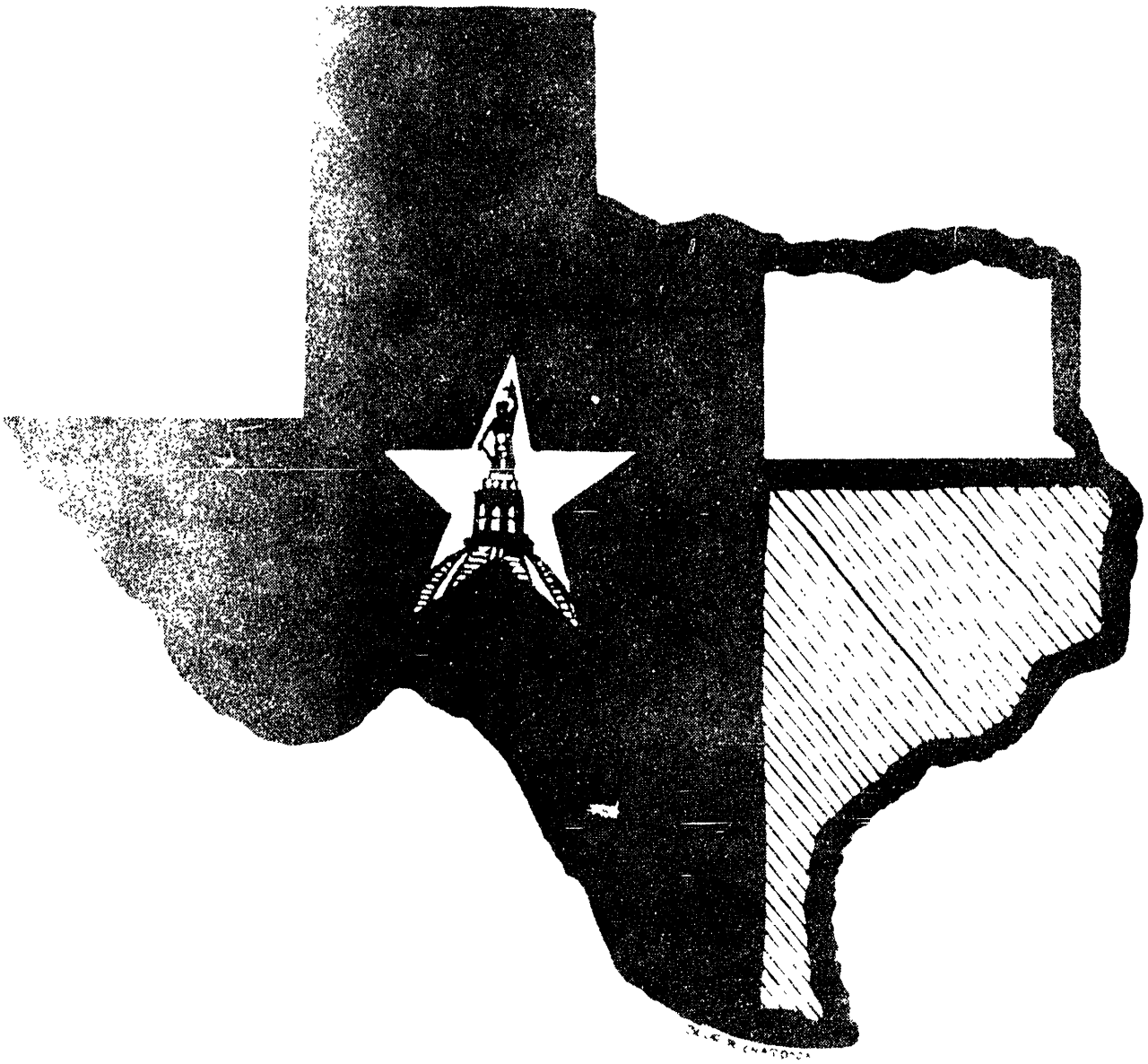

Highlights

Office of the Secretary of State

Texas Register

The *Texas Register* (ISN 0362-4781) is published twice each week at least 100 times a year. Issues will be published on every Tuesday and Friday in 1987 with the exception of January 6, September 1, December 1, and December 29 by the Office of the Secretary of State

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Information Available: The 10 sections of the *Register* represent various facets of state government Documents contained within them include:

- Governor—appointments, executive orders, and proclamations
- Secretary of State—summaries of opinions based on election laws
- State Ethics Advisory Commission—summaries of requests for opinions and opinions
- Attorney General—summaries of requests for opinions, opinions, and open records decisions
- Emergency Rules—rules adopted by state agencies on an emergency basis
- Proposed Rules—rules proposed for adoption
- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
- Adopted Rules—rules 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 explanations 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 "12 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 12 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 by using *Register* indexes, the *Texas Administrative Code*, rule 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 rule is designated by a TAC number. For example, in the citation 1 TAC §27.15:

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

TAC stands for the *Texas Administrative Code;*

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

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[illegible]

Attorney General

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

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JM-771 (RQ-1133). Request from Honorable Stan Schlueter, Chairman, House Ways and Means Committee, Austin, concerning clarification of Attorney General Opinion JM-670 (1987)

Summary of Opinion. Approval of a majority of the board of trustees of the receiving school district is required for a detachment and annexation of territory made pursuant to the Texas Education Code, §19.022. In the event that the transferring school district is governed by an elective board of nine members and is in a county having a population of 100,000 or more, any change in the boundaries of that district requires the approval of a majority of its board of trustees (Texas Education Code, §19.008)

TRD-8707034

Emergency Rules

An agency may adopt a new or amended rule, or repeal an existing rule on an emergency basis, if it determines that such action is necessary for the public health, safety, or welfare of this state. The rule 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 rules. New language added to an existing rule is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a rule.

TITLE 1. ADMINISTRATION

Part I. Office of the Governor

Chapter 3. Criminal Justice Division

Subchapter C. Administration of Narcotics Control Program

★1 TAC §§3.811, 3.812, 3.821, 3.831-3.838, 3.841-3.843, 3.851-3.873, 3.881, 3.911-3.920

The Criminal Justice Division, Office of the Governor, adopts new §§3.811, 3.812, 3.821, 3.831-3.838, 3.841-3.843, 3.851-3.873, 3.881, and 3.911-3.920, concerning administration of the Narcotics Control Program. The Criminal Justice Division is now accepting applications for federal funds that are available under the federal Anti-Drug Abuse Act of 1986. The new sections are adopted on an emergency basis to ensure that the applicants for narcotic control program funds have complete and accurate information essential to the development of their grant applications and are fully aware of statutory and administrative requirements that may affect their proposed projects.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 4413(32a), §6(a)(*11*), which provide the Criminal Justice Division with the authority to adopt rules, regulations and procedures as may be necessary to carry out the provisions of the Act.

§3.811. Legal Authorization. These sections are promulgated under Texas Civil Statutes, Article 4413(32a), §6(a)(11), which provide the Criminal Justice Division of the Office of the Governor (CJD) with the authority to adopt rules, regulations, and procedures as may be necessary.

§3.812. Applicability. These sections shall apply only to applications and grants awarded to local units of government and state agencies, or a combination thereof, for narcotics control projects operated and funded under the Anti-Drug Abuse Act of 1986, Public Law 99-570, Title I, Subtitle K, State and Local Law Enforcement Assistance Act.

§3.821. Compliance; Adoption by Reference. Grantee applicants shall comply with all applicable state and federal statutes, rules, regulations, and guidelines. The Criminal Justice Division (CJD) adopts by reference the following statutes, documents, and forms. Information regarding these adoptions by reference may be obtained from the Criminal Justice Division, P.O. Box 12428, Austin, Texas 78711, (512) 463-1919.

(1) Anti-Drug Abuse Act of 1986, Public Law 99-570, Title I, Subtitle K, and regulations promulgated by the United States Department of Justice, Bureau of Justice Assistance;

(2) United States Department of Justice, Bureau of Justice Assistance, *State and Local Assistance for Narcotics Control Program Policy and Administrative Guidance*, (1987);

(3) Office of Justice Assistance, Research, and Statistics, *OJARS Guideline Manual, OJARS M 7100.1C, Financial and Administrative Guide for Grants* (1985);

(4) United States General Accounting Office *Standards for Audit for Governmental Organizations, Programs, Activities and Functions*;

(5) United States General Accounting Office, *Guidelines for Financial and Compliance Audits of Federally Assisted Programs*;

(6) Office of Management and Budget, Circular A-128, *Audits of State and Local Government*;

(7) *Uniform Grant and Contract Management Standards* developed under directive of the Uniform Grant and Contract Management Act of 1981, Texas Civil Statutes, Article 4413 (32g);

(8) Texas review and comment system (§5.191 of this title (relating to Introduction and Purpose) *et seq.*) developed in response to Presidential Executive Order 12372;

(9) the *Statewide Drug Strategy* developed by CJD;

(10) the application kit for the Texas Narcotics Control Program developed by the CJD for administration of grant funds under the federal Anti-Drug Abuse Act of 1986;

(11) CJD forms:

(A) statement of grant award;
(B) grantee acceptance notice;
(C) grantee's request for funds;
(D) grant adjustment notice;
(E) grantee's quarterly progress report;
(F) report of expenditure and status of funds;
(G) property inventory; and
(H) grantee's quarterly narcotics control activity report.

§3.831. Eligible Applicants. The following entities are eligible to apply to the Criminal Justice Division (CJD) for narcotics control projects to be funded from the available federal funds:

(1) units of local government, which are eligible to receive subgrants from a participating state. Unit of local government means any city, county, town, township, borough, parish, village, or other general purpose political subdivision of a state;

(2) state agencies; and

(3) any combination of paragraphs (1) and (2) of this section.

§3.832. Multijurisdictional Projects. A local unit of government may submit an application to serve two or more jurisdictions provided that all jurisdictions to be included agree to participate in the multijurisdictional project and provide formal, written agreements detailing their participation.

§3.833. Grant Applications.

(a) To be eligible for submission to the Criminal Justice Division (CJD), grant applications must comply with the goals of the *Statewide Drug Strategy*.

(b) Grant applications must be prepared in accordance with all applicable documents, forms, and guidelines adopted by reference under §3.821 of this title (relating to Compliance, Adoption by Reference) including, but not limited to:

(1) the *Statewide Drug Strategy* for the fiscal year for which the funds are requested;

(2) the application kit for the Texas Narcotics Control Program;

(3) the uniform grant and contract management standards; and

(4) the Texas review and comment system.

(c) Grant applications submitted to the CJD must include the names, titles, addresses, and telephone numbers of the authorized official, project director, and financial officer of each grant submitted for consideration.

(d) Grant applications shall be subject to review under the Texas review and com-

ment system (TRACS). Applicants shall be advised, by CJD, of the time and place applications are solicited as to when and where to submit applications for the TRACS review.

§3.834. Review of Grant Applications.

(a) The Criminal Justice Division (CJD) will review only those grant applications that are submitted in compliance with the applicable documents and forms adopted by reference under §3.821 [illegible] (relating to Compliance [illegible] Reference).

(b) CJD will submit recommendations to the governor concerning each grant application reviewed.

(c) CJD may recommend award of a grant, award of a grant with modification, or rejection of a grant application.

(d) Recommendations shall be based on applicable statutory requirements, rules, guidelines, fiscal constraints, administrative policies, comments provided under the Texas review and comment system (TRACS), merit of the project, and merit and quality of the grant application. Merit of the project shall include consideration of how well the applicant and the proposed narcotics control program conform to the requirements and intent of governing directives.

§3.835. Revision of Grant Application. The Criminal Justice Division (CJD) may require revision of a grant application to comply with all applicable state and federal laws, guidelines, rules, regulations, appropriate clearinghouse review and comments and the *Statewide Drug Strategy*.

§3.836. Nonsupplantative Requirement. Each grantee shall certify that grant funds provided for narcotic control have not been used to replace state or local funds that would have been available in the absence of grant funds. The certification shall be incorporated in each grantee's report of expenditure and status of funds referred to under §3.821 of this title (relating to Compliance Adoption by Reference).

§3.837. Nonlobbying Certification.

(a) Each grantee shall certify that none of the grant funds, regardless of their source or character, including local cash contribution, shall be used in any manner to influence the outcome of any election or the passage or defeat of any legislative measure.

(b) A finding that a grantee has violated this certification shall result in the immediate termination of funding of the project and the grantee shall not be eligible for future funding from CJD.

§3.838. Civil Rights.

(a) General. The Anti-Drug Abuse Act of 1986, §809(c)(1), provides that no person in any state shall on the grounds of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subject to discrimination under, or denied employment in connection with, any programs or activity funded in whole or in part with funds available under this Act. Recipients of funds under the Act must comply with the provisions of the Civil Rights Act of 1964, Title VI, the Rehabilitation Act of 1974, §504, as amended, the Education Amendments of 1972, Title IX, the Age Discrimination Act of 1974, and the Department of Justice nondiscrimination regulations 28 Code of Federal Regulations Part 42, Subparts C, D, E, and G.

(b) Required assurance and information. To be eligible for funding under the Act, an applicant for a narcotics control program funding must submit the following assurances and information:

(1) an assurance that the project will comply with all applicable nondiscrimination requirements;

(2) an assurance that in the event a federal or state court or state administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Criminal Justice Division (CJD);

(3) the name of a civil rights compliance person who has lead responsibility for ensuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters with CJD and with the federal Office of Civil Rights Compliance, Office of Justice Programs.

§3.841. Eligible Projects. Only those projects designed for the purpose of enforcing state and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 United States Code 801, et seq.) are eligible for grant funding. Such projects must conform to the authorized program areas as specified in the *Statewide Drug Strategy*. Additionally, to be eligible, each project must:

(1) be operated by a state agency, local unit of government, or by a combination thereof;

(2) demonstrate that it will carry out congressional intent, which is to ensure that the federal assistance provided is coordinated and integrated with state and local drug enforcement efforts and that the maximum impact on the drug abuse problems in the state is achieved.

§3.842. Classification of Projects. Projects shall be classified according to the following categories as defined by the *Statewide Drug Strategy*:

(1) Category one—Projects having the principal goal of apprehension of those persons illegally producing, possessing, or transferring controlled substances.

(2) Category two—Projects having the principal goal of prosecuting persons who are accused of violating state and local laws relating to the production, possession, or transfer of controlled substances.

(3) Category three—Projects having the principal goal of adjudication of cases involving persons accused of violating state and local laws relating to the production, possession, or transfer of controlled substances.

(4) Category four—Projects having the principal goal of dentention and identification for treatment and rehabilitation of persons convicted of violating state and local laws relating to the production, possession, or transfer of controlled substances.

(5) Category five—Any combination of categories one, two, three, or four.

§3.843. Level of Funding for New Projects.

(a) Funding of projects will not require a local cash match, except for a 25% local cash match for confidential funds.

(b) Grantee will be required to furnish 25% cash match of the requested confidential funds granted by the Criminal Justice Division (CJD).

§3.851. Award and Acceptance of Grant Award.

(a) The Criminal Justice Division (CJD) shall notify a grant applicant of final action on a grant application in accordance with the Texas review and comment system.

(b) Each grantee shall accept or reject a grant award in the form and manner prescribed by the CJD within 30 days of the grant award date. In any event, failure by the grantee to execute the grantee acceptance notice within 30 days of the award date shall be construed as a rejection of the grant award.

§3.852. Approval. Approval of projects funded with federal funds is subject to current congressional appropriations.

§3.853. Operation of Grant. All grants shall be conducted in accordance with the following:

(1) applicable federal or state laws, rules, regulations, policies, or guidelines, and

(2) terms, conditions, standards, or stipulations of grant agreements.

§3.854. Implementation of Grant. Each grantee shall implement the grant within 45 days of the designated start date indicated on the grant award statement. Failure by the grantee to implement a grant within 45 days will be construed by the Criminal Justice Division (CJD) as the grantee's relinquishment of the grant award. Any exception to this section will require the review and written approval of the CJD.

§3.855. Grand Adjustments. The grantee must secure prior written approval from the Criminal Justice Division (CJD) for any of the following:

(1) changes in the project director, financial officer, or authorized official;

(2) changes in the need, objectives, approach, or geographical location of the grant;

(3) transfers of funds among direct cost categories exceeding 5.0% of the total grant budget;

(4) changes in the number or job

descriptions of personnel specified in the grant agreement,

(5) [illegible] equipment amount types, or methods of acquisition,

(6) changes in the grant or liquidation periods,

(7) other changes for which the grant agreement or *Uniform Grant and Contract Management Standards* require prior approval.

§3.856. *Grant Extensions.* A grantee may submit a written request to the Criminal Justice Division (CJD) for a grant extension prior to the end of the project grant period, however, only in extraordinary circumstances will an application for an extension of the project grant period be granted by the executive director of CJD.

§3.857. *Requests for Funds.*

(a) All grantee requests for funds shall be submitted to the Criminal Justice Division (CJD) in accordance with the instructions provided by CJD and shall be in the form required by the CJD.

(b) Request for funds will not be honored until any special condition which is a part of the statement of grant award, and which requires a specified action by the grantee before grant funds may be released, has been satisfied.

§3.858. *Obligation of Grant Funds.* Grant funds [illegible] advance written approval by the Criminal Justice Division (CJD), be obligated prior to the effective date or subsequent to the termination date of the grant period. Obligations must be related to goods or services provided and used for approved purposes.

§3.859. *Third Party Participation.*

(a) The grantee will retain ultimate control of and responsibility for the grant project and any contractor shall be bound by grant agreements, grant conditions, and any other requirements applicable to the grantee.

(b) Contracts, including any amendments, must be reviewed and approved as to form by the Criminal Justice Division (CJD) prior to the release of any funds under the contract when the amount of $10,000 is exceeded.

§3.860. *Financial, Progress, and Inventory Reports.* Each grantee shall submit financial, progress, and inventory reports in accordance with the instructions provided by the Criminal Justice Division (CJD). All reports shall be submitted in accordance with the prescribed CJD forms for such reports. Financial and inventory reports must be signed by the financial officer. Progress reports must be signed by the project director. Inventory reports are to accompany the final financial report.

§3.861. *Narcotics Control Activity Reports.* All grantees must complete and submit narcotics control activity reports to the Criminal Justice Division (CJD) at the [illegible] of every grant quarter. Narcotics control activity report [illegible] must be signed by the project director.

§3.862. *Uniform Crime Reporting.* Each criminal and juvenile justice agency receiving funds from the Criminal Justice Division (CJD), or that benefits from funds awarded by the CJD to another agency, must, as a condition precedent to any grant award, comply fully with reporting requirements of the Texas Uniform Crime Reporting Program, Texas Department of Public Safety.

§3.863. *Deobligation of Funds.* Any unobligated funds remaining with the grantee shall be returned immediately to the Criminal Justice Division (CJD) with the final financial report.

§3.864. *Cancellation of Project.* The grantee shall notify the Criminal Justice Division (CJD) in writing of the cancellation of any approved project immediately upon the determination to cancel the project.

§3.865. *Misappropriation of Funds.* The grantee must, immediately upon discovery, report to the Criminal Justice Division (CJD) any evidence of misappropriation of funds.

§3.866. *Withholding Funds from Grantees.* The Criminal Justice Division (CJD) may withhold funds from a grantee when determination is made that the grantee has failed to comply with established rules, guidelines, standard grant conditions, special grant conditions, or contractual agreements on which the award of such grant is predicated or when grant funds are depleted or insufficient to meet fund allocations.

§3.867. *Conditions for Withholding Funds from Grantees.*

(a) Withholding funds from specific projects. Funds may be withheld from a specific project for reasons which include, but are not limited to, the following:

(1) failure to comply with any applicable federal or state laws, rules, regulations, policies or guidelines, or with the terms, conditions, standards, or stipulations of any grant agreements,

(2) failure to submit reports of expenditure and status of funds, grantee's progress reports, or special required reports at the times and in the form established for such reporting,

(3) significant deficiencies or irregularities in records maintained by the grantee or its agent for operation and or administration of the grant project,

(4) failure to conduct the grant project according to the terms of the application for grant, the statement of grant award, the grantee acceptance notice, or a grant adjustment notice,

(5) failure to comply with any standard or special condition which has been made a part of the statement of grant award by reference or inclusion therein, or through the issuance of a grant adjustment notice, or

(6) failure to commence project operations within 45 days of the project start date.

(b) Withholding funds from all projects. Funds may be withheld from all projects operated by a grantee for reasons which include, but are not limited to, the following:

(1) failure to respond to any deficiency listed in this section,

(2) failure to return to the Criminal Justice Division (CJD) within the required time any unused grant funds remaining on the expired grant,

(3) refusal or an unwillingness to return to the CJD any grant funds which have been shown by an audit report and the review board to have been improperly accounted for or expended for ineligible purposes under a grant that has expired.

§3.868. *Notification of Withholding of Funds.* The Criminal Justice Division (CJD) shall notify grantees of all deficient conditions constituting grounds for withholding funds and may give advance notification that funds will be withheld unless the deficient conditions are corrected by a specified date.

§3.869. *Appeals to CJD.* Grantees may, within 10 days of receiving notification, request in writing a reconsideration of the determination to withhold funds. The request shall be directed to the executive director of the Criminal Justice Division (CJD), together with any documentation in support of the reconsideration. The executive director will review the determination to withhold funds based on the documentation submitted, and the final determination will be transmitted in writing to the grantee.

§3.870. *Release of Funds.* Funds shall be released when the Criminal Justice Division (CJD) has been provided with satisfactory evidence that the deficient conditions have been corrected.

§3.871. *Termination for Cause.*

(a) The Criminal Justice Division (CJD) may terminate any grant for failure to comply with any of the following:

(1) applicable federal, state or local laws, rules, regulations, policies, or guidelines,

(2) terms, conditions, standards, or stipulations of grant agreements; or

(3) terms, conditions, standards, or stipulations of any other grant awarded to the grantee.

(b) Termination of grants for cause shall be based on findings that:

(1) deficient conditions make it unlikely that the objectives of the grant will be accomplished,

(2) deficient conditions cannot be corrected within a period of time adjudged acceptable by CJD;

(3) a grantee has acted in bad faith.

(c) The CJD shall notify grantees of the conditions and findings constituting grounds for termination.

(d) Unexpended or unobligated funds

awarded to a grantee shall, upon termination of a grant, revert to the CJD.

(c) A grantee may be adjudged ineligible for future grant awards if a grant awarded to the grantee is terminated for cause.

§3.872. Appeal of Termination of Grant.

(a) A grantee may appeal the termination of a grant by writing to the executive director of the Criminal Justice Division (CJD) within 10 days from the date of the suspension or termination notice.

(b) The grantee may submit written documentation in support of the appeal.

(c) The executive director of the CJD shall consider any documentation submitted by a grantee in support of an appeal.

(d) The decision of the executive director of the CJD concerning an appeal of a termination shall be final unless overturned by a court of competent jurisdiction.

§3.873. Payment of Outstanding Liabilities.

(a) Upon completion of the grant period, a grantee must pay all outstanding liabilities within 90 days.

(b) All payments made after the completion of the grant period must relate to obligations encumbered before the end of the grant period.

§3.881. Requirements. Continuation funding for state and local projects will be considered for staff recommendations to the governor if the following requirements have been satisfied:

(1) funds for the continuation of projects are appropriated by the United States Congress;

(2) the project is eligible for funding in accordance with the requirements set forth in the *Statewide Drug Strategy* for the year of continuation funding;

(3) all administrative, program, and financial requirements are complete.

§3.911. Audit Responsibilities.

(a) Pursuant to Office of Management and Budget (OMB) Circular A-128, Audits of State and Local Governments, grantees, subgrantees, and subrecipients have the responsibility to provide for an audit of their activities. These audits shall be made annually, unless the state or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. Grantees, as well as their subgrantees, contractors, or other organizations under cooperative agreements or purchase of service contracts are to arrange for examinations in the form of independent audits in conformance with OMB Circular A-128.

(b) These audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits. The required audits are to be performed on an organization-wide basis as opposed to a grant-by-grant basis. The audit report must be forwarded to the Criminal Justice Division (CJD) upon receipt by the grantee and must include:

(1) the auditor's report on financial statements of the recipient organization, and a schedule of financial assistance program; and

(2) the auditor's report on compliance containing:

(A) a statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

(B) a negative assurance of those items not tested, and a summary of all instances of noncompliance; and

(C) the auditor's report on the study and evaluation of internal control systems, which must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that federal programs are being managed in compliance with applicable laws and regulations; the auditor's report must also identify the controls that were evaluated, that were not evaluated, and the material weaknesses identified as a result of that evaluation.

§3.912. Audit Standards. Examinations are to be conducted in accordance with the financial compliance audit provisions of the United States General Accounting Office, *Standards for Audit of Governmental Organizations, Programs, Activities and Functions.*

§3.913. Audit Objectives. The audit objective is to review the recipient's administration of grant funds and required matching contributions for the purpose of determining whether the recipient has:

(1) established an accounting system and procedures integrated with adequate internal fiscal and management controls to provide full accountability for the receipt, expenditure, and use of the program funds;

(2) expended and used program funds in accordance with the requirements set forth in state laws, regulations, and procedures and the terms and conditions of the award;

(3) submitted timely financial reports that contain accurate, reliable, and useful financial data, and that present fairly the financial position and the results of the financial operations;

(4) managed its financial operations in accordance with sound management procedures.

§3.914. Audit Implementation. Grantees are required to specify their arrangement for complying with the provision of Office Management and Budget Circular A-128 and include in their grant application, to the extent possible, the following information:

(1) the identity of the organization that will conduct the audit;

(2) approximate timing of when the audit will be performed;

(3) audit coverage to be provided (where the audit will not provide the coverage requirements as specified previously, the audit policy or procedure must describe the specific arrangements for obtaining audit services that will meet the requirements); and

(4) an identification of the audit standards, if any, with which the grantee will not comply.

§3.915. Known or Suspected Violations of Laws. Knowledge or suspicion of any legal violations that are encountered during audits, including fraud, theft, embezzlement, forgery, or serious irregularities, must be communicated in writing to the local prosecutor's office and the Criminal Justice Division (CJD) immediately upon discovery.

§3.916. Grantee's Response to Audit Exceptions. A grantee may, within a reasonable time not to exceed 10 working days, give notice of intent to submit documentation to respond to exceptions contained in an audit report by the Criminal Justice Division (CJD) or that has been forwarded to the CJD by an independent auditor.

§3.917. Documentation by Grantee. Any documentation concerning an audit may be submitted to the Criminal Justice Division (CJD) comptroller, either in person or by mail. Documentation may be delivered to the CJD at the Sam Houston Office Building, 201 East 14th Street, third Floor, Austin, Texas, or may be mailed to the Criminal Justice Division, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, Attention: Comptroller.

§3.918. Audit Review Board. The audit review board will consist of the Criminal Justice Division (CJD) deputy director, the CJD extradition counsel, and the CJD comptroller, who will review the documentation for legal, financial, and program acceptability under state rules, regulations, and guidelines.

§3.919. Report of Audit Review Board. The audit review board will make recommendations to the executive director for approval, disapproval, or approval as modified of audit exceptions. The determination by the executive director will be transmitted in writing to the grantee within 30 days.

§3.920. Refunds to the CJD on Audit Review Board Determinations. Grantees shall, within 30 days, refund all funds due after a final determination by the audit review board and approval by the executive director of the Criminal Justice Division (CJD). Failure to comply with this provision shall subject participants to the provisions of §3.867 of this title (relating to Conditions for Withholding Funds from Grantees).

Issued in Austin, Texas, on August 24, 1987.

TRD 8707059 Ruben Soto
Executive Director
Criminal Justice Policy Council
Office of the Governor

Effective date August 24, 1987
Expiration date December 22, 1987
For further information, please call (512) 463 1788

Part IV. Office of the Secretary of State

Chapter 74. Credit Services Organizations

★1 TAC §§74.1, 74.21-74.23

The Office of the Secretary of State adopts on an emergency basis new §§74 1 and 74.21-74 23, concerning credit services organizations. The Credit Services Organizations Act, effective September 1 1987, requires that all credit services organizations file a registration statement with the secretary of state before conducting business in this state The new sections are adopted on an emergency basis to protect the welfare of those members of the public who may be conducting business in this state on September 1, 1987, under the new Act

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, §4, and Chapter 764, 70th Legislature, 1987, Chapter 764, effective September 1, 1987, which provide the Office of the Secretary of State with the authority to adopt rules and regulations governing registrations as required by law

§74 1 Registration of Credit Services Organizations Documents will be accepted only upon submission of a completed registration form and payment of applicable fee

§74 21 Fee The filing fee for registering a credit services organization is $100

§74 22 Registration Statement of a Credit Services Organization

(a) The Office of the Secretary of State hereby adopts by reference the form, registration statement of a credit services organization. All persons registering shall use the form promulgated by the secretary of state, or a document which shall contain the following information

(1) the name and address of the credit services organization,

(2) the name and address of any person who directly or indirectly owns or controls 10% or more of the outstanding shares of stock in the credit services organization;

(3) a copy of the surety bond, surety account notice, or a statement explaining why the Texas Business and Commerce Code, §18.03(1), is not applicable;

(4) a full and complete disclosure of any litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization or a sworn statement that states that there has been no litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization Copies of the form may be obtained by contacting the Office of the Secretary of State, Statutory Documents, P O Box 12887, Austin, Texas 78711 2887

(b) The registration will be effective as of the date of receipt by the secretary of state of a complete registration form and the receipt of the filing fee provided in §74 21 of this title (relating to Fee)

§74 23 Surety Bond, Surety Account If a credit services organization is required to obtain a surety bond or establish a surety account, the surety bond or surety account shall be for an amount of $10 000 The surety bond must be issued by a surety company authorized to do business in Texas The surety account must be established and maintained at a federally insured bank or savings and loan association located in Texas and notification of the depository, the trustee, and the account number shall be filed with the secretary of state

Issued in Austin, Texas on August 14, 1987

TRD 8707022 Lorna Wassdorf
Special Assistant
Statutory Filings
Division
Office of the Secretary
of State

Effective date September 1, 1987
Expiration date December 30, 1987
For further information, please call (512) 463 5701

Chapter 76. Use of a Deceased Individual's Name, Voice, Signature, Photograph, or Likeness

Registration of Claim, Registration of Claim Form

★1 TAC §76.1, §76.11

The Office of the Secretary of State adopts on an emergency basis new §76 1 and §76 11, concerning the form and procedure for registering a claim for the use of a deceased individual's name, voice, signature, photograph, or likeness The passage of House Bill 834 70th Legislature, adding Chapter 26 to the Property Code, effective September 1, 1987, provides for the filing of a claim form with the secretary of state The new sections are adopted on an emergency basis to protect the welfare of those members of the public who desire to file their claim in this state on September 1, 1987

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, §4, and Chapter 152 70th Legislature, 1987, effective September 1, 1987, which provides the Office of the Secretary of State with the authority to adopt rules and regulations governing registrations as required by law.

§76 1 Registration of Claim

(a) The registration of claim will be accepted for filing only upon submission of a completed claim form and payment of the applicable fee

(b) The registration will be effective as of the date of receipt by the secretary of state, of a registration of claim which complies with §76 11 of this title (relating to Registration of Claim Form) and the Texas Property Code, Chapter 26, and receipt of the filing fee specified in the Texas Property Code, Chapter 26

§76 11 Registration of Claim Form

(a) The Office of the Secretary of State hereby adopts by reference the form entitled registration of claim All persons filing a claim should use the form promulgated by the secretary of state or a document which shall be verified and contains the following information

(1) name and date of death of the deceased individual,

(2) name and address of claimant;

(3) statement of the basis of the claim, and

(4) statement of the right claimed.

(b) Copies of the promulgated form may be obtained from the Office of the Secretary of State, Statutory Documents, P O Box 12887, Austin, Texas 78711-2887

Issued in Austin, Texas on August 20, 1987

TRD 8707025 Lorna Wassdorf
Special Assistant
Statutory Filing
Division
Office of the Secretary
of State

Effective date September 1, 1987
Expiration date December 30, 1987
For further information, please call (512) 463 5701

TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Labor and Standards

Chapter 69. Manufactured Housing Division

General Requirements

★16 TAC §§69.118, 69.129-69.132, 69.135

The Texas Department of Labor and Standards adopts on an emergency basis new §§69 118, 69 129-69 132, and 69 135, con-

cerning definitions, repossession sales reports, delivery of warranty, correction requirements, procedures for handling consumer complaints, and manufactured housing auctions. The new sections comply with House Bill 855, 70th Legislature, 1987, which amended Texas Civil Statutes, Article 5221f. Section 69.135 regulates auctions of manufactured housing which have not previously been covered by the chapter

The new sections are adopted on an emergency basis to protect the safety welfare, and health of the manufactured home consumer in Texas

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 5221f, which provide the commissioner of the Texas Department of Labor and Standards with the authority to promulgate any and all reasonable rules and regulations which may be necessary for the purpose of enforcing the provisions of this Act

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

APTRA—Texas Civil Statutes, Article 6252-13a.

Business use—Any use other than for residential purposes

Credit document—The credit sale contract or the loan instruments, including all the written agreements between the consumer and creditor that relate to the credit transactions. The document may consist of one or more pages

Creditor—A person involved in a credit transaction who.

(A) extends or arranges the extension of credit; or

(B) is a retailer or broker as defined in the Standards Act and participates in arranging for the extension of credit

Imminent safety hazard—A hazard that presents an imminent and unreasonable risk of death or severe personal injury that may or may not be related to failure to comply with an applicable federal manufactured home construction or safety standard

Serious defect—Any failure to comply with an applicable federal manufactured home construction and safety standard that renders the manufactured home or any part thereof not fit for the ordinary use for which it was intended and which results in an unreasonable risk of injury or death to occupants of the affected manufactured home.

Standards Act—Texas Civil Statutes, Article 5221f.

TMHSA—Texas Civil Statutes, Article 5221f

Used manufactured home—Any manufactured home for which a document or certificate of title has previously been issued by an appropriate agency of any state

§69.129. Repossessions Sales Reports. In order for the department to determine whether the transaction is exempt pursuant to the Texas Manufactured Housing Standards Act, §8(f), a holder of a lien recorded on a manufactured home document of title issued by the department who sells, exchanges, or transfers by a lease purchase agreement a repossessed manufactured home covered by such document of title, shall report all such sales, exchanges, or transfers by lease purchase agreement, to the department The reports shall be on forms provided by the department and shall be due on the 10th of the month following the month in which the transactions took place.

§69.130. Delivery of Warranty

(a) For purposes of Texas Civil Statutes, Article 5221f, §7 and §14, the written warranty documents shall have been timely delivered if given to the homeowner at the time of tender of possession of the manufactured home

(b) The contracting installer, as defined in §69.121 of this title (relating to Installation Requirements), shall deliver the installation warranty required by the Standards Act, §14(g), to the consumer at the time of entering into the installation contract If the retail sale of a used manufactured home includes installation, the selling retailer must, as the contracting installer, give the installation warranty The installer must keep a copy of the installation warranty and proof of delivery to the consumer in a permanent file for review by the department

§69.131. Correction Requirements

(a) The retailer or manufacturer shall take immediate corrective action when notification is received from a consumer, and the nature of the complaint indicates an imminent safety hazard or serious defect A reasonable period of time required by the Texas Manufactured Housing Standards Act, §14(e)(2), for correction of all other defects or failures to comply with the code shall be considered to be 40 days after the retailer or manufacturer has received actual written notification from a consumer or the department The retailer and manufacturer shall keep a record of the date the notification was received, the disposition, and the date of correction. The retailer and manufacturer shall communicate to the consumer the date and approximate time that personnel are scheduled to the consumer location.

(b) The manufacturer and retailer shall make available for review by department personnel records to assure that warranty work, including corrections of failures to comply with design, has been accomplished and that such warranty work has been done in accordance with the design and properly completed.

§69.132 Procedures for Handling Consumer Complaints In order to comply with the Standards Act, §2, and to provide for the protection of the citizens who purchase manufactured housing and to provide fair and effective consumer remedies, the following procedures will be followed.

(1) On initial contact by a consumer, the department will attempt to verify if the consumer has a valid complaint that is subject to the department's authority.

(2) If the consumer has not previously notified the manufacturer, retailer, or installer in writing, the department will mail a consumer notice form to the consumer with instructions to complete it and return it to the department On receipt of the consumer notice, the department will forward copies of the consumer notice form to the manufacturer, retailer, and or installer, as appropriate, by certified mail, return receipt requested The manufacturer, retailer, and or installer shall have 40 days from the date of the department's letter to complete the service or repairs

(3) If the consumer has previously notified in writing the manufacturer, retailer, or installer of the need for warranty service or repairs, and has forwarded copies of the prior written notice(s) to the department along with a statement that the service or repairs have not been done, the department will mail copies, certified mail, return receipt requested, of the prior written notice(s) to the manufacturer, retailer, and or installer, as appropriate, with instructions that the service or repairs should be completed forthwith

(4) If the consumer has previously notified the manufacturer, retailer, or installer in writing of the need for warranty service or repairs, but does not have copies of the prior written notice, the consumer shall complete and return to the department a consumer notice form which shall detail the consumer complaints along with the approximate date(s) of the prior written notice(s) The department shall try to determine if the prior written notice(s) were actually received by the manufacturer, retailer, or installer The department will mail copies of the consumer notice, certified mail, return receipt requested, to the manufacturer, retailer, or installer, as appropriate, with instructions to complete the service or repairs:

(A) if the prior written notice(s) were actually received, to complete the service or repairs forthwith, or

(B) if the prior written notice(s) were not actually received, to complete the service or repairs within 40 days from the date of the department's letter

(5) The department shall make a consumer complaint home inspection if a consumer, manufacturer, or retailer requests such inspection

(A) Consumer request The consumer may, at any time, request that the department perform a consumer complaint home inspection if the consumer has not been provided proper warranty service The request must be in writing on such form as the department may require There is no fee for such inspection performed at the request of the consumer

(B) Industry request Manufacturer or retailer requests for a consumer

complaint home inspection must be in writing on such form as the department may require and shall identify the home by HUD label and serial number(s), and provide the necessary information for the department to contact the consumer and determine the physical location of the home. The request must be accompanied by the required fee. The manufacturer or retailer may request a consumer complaint home inspection if the manufacturer or retailer

(i) believes that the consumer's complaints are not covered by the respective written warranty, or implied warranties; or

(ii) believes that the warranty service was previously properly provided; or

(iii) has a dispute as to the respective responsibilities pursuant to the warranties.

(6) The department's responsibility in connection with the consumer complaint home inspection is separated as to new manufactured homes sold prior to June 18, 1987, and new manufactured homes sold on or after June 18, 1987.

(A) For new manufactured homes sold prior to June 18, 1987, the department will perform the inspection within 15 working days from the date of receiving the written request for inspection. The inspector shall

(i) detail a list of each of the consumer's complaints, and

(ii) determine whether or not each of the complaints is covered by the manufactured home warranty for which the manufacturer and retailer are jointly and serverally liable prior to June 18, 1987.

(B) For new manufactured homes sold on or after June 18, 1987, the department will perform the inspection within 15 working days from the date of receiving the written request for inspection. The inspector shall.

(i) detail a list of each of the consumer's complaints; and

(ii) determine whether or not each complaint is covered by either the manufacturer's or retailer's warranty and, if covered, by which of the respective warranties.

(C) Within five working days following the consumer complaint home inspection, the department shall mail its written report and orders, if any, to the consumer, manufacturer, and retailer by certified mail, return receipt requested. The orders will set out the responsibility for performing the service or repairs, and the reasonable time allowed for completion.

(7) When service or repairs are completed following any notice or orders from the department pursuant to paragraph 6(C) of this section, the manufacturer, retailer, and/or installer shall forward to the department copies of work orders or other documentation to establish that the warranty service or repairs have been completed.

(8) If the department's certified mail notice to the manufacturer, retailer, or installer is returned to the department because it was refused or unclaimed, the department will mail the notice to the last known address of the manufacturer, retailer, or installer by regular mail. Each registrant holding a certificate from the department must maintain a current address and mailing address with the department.

(9) The consumer will be contacted to determine if warranty service and repairs have been completed if the department has reason to believe that such service or repairs have not been performed or completed within.

(A) 40 days following actual receipt of written notice from the consumer,

(B) 40 days following the date of receipt of written notice from the department forwarding the consumer notice form, or

(C) the reasonable time set forth in any order following a consumer complaint home inspection.

(10) If necessary, a follow up inspection will be made to verify the status of the service or repairs. If the service or repairs have not been made, a hearing will be set at which the responsible registrants shall show cause why their respective registrants should not be suspended or revoked.

§69.135. *Manufactured Housing Auctions.*

(a) Auction of manufactured housing to Texas consumers.

(1) The persons selling the homes through the auction must be registered as a retailer with this department and the specific location at which the auction is to be held must be bonded in accordance with the Standards Act.

(2) The auctioneer must be dually licensed, both as a manufactured housing salesperson and an auctioneer, pursuant to the Texas Auctioneer Act, Article 8700.

(3) The retailer must notify this department in writing at least 30 days prior to the auction with such notice to contain the date, time, and physical address and location of the proposed auction.

(4) The retailer must keep and maintain a file copy of all notices, circulars, or advertisements of any kind relating to the auction of manufactured housing.

(5) The retailer must give notice, which must be preapproved by this department, at least 10 days prior to the auction, to each person attending the auction which shall contain the following.

(A) a statement that the homes offered for sale are habitable pursuant to the Standards Act, §8(b);

(B) a statement that any home purchased at the auction must be installed by a licensed and bonded installer registered with this department, and

(C) the appropriate warning concerning formaldehyde as required by the Manufactured Housing Standards Act, §20.

(6) The retailer shall file sales reports as required by §69.123 of this title (relating to Retailer Sales Information) and shall notify the department as to the name, address, and registration number of the installer with whom the consumer has contracted for installation.

(b) Auction of manufactured housing to registered, licensed retailers.

(1) No registration with the Manufactured Housing Division of the department is required of a lender whose repossessed manufactured homes are being auctioned, if the lender is selling to persons registered pursuant to Texas Civil Statutes, Article 5221f. The auctioneer must be licensed only pursuant to the Texas Auctioneer Act, Article 8700.

(2) The auctioneer must notify this department at least 30 days prior to the auction, such notice must contain the date, time, and physical address and location of the proposed auction.

(3) The auctioneer must keep and maintain a file copy of all notices, circulars, or advertisements of any kind relating to the auction of manufactured housing.

(4) The auctioneer must keep and maintain an accurate register of all persons attending the auction. This register should show the name of the individual, the manufactured housing retailer business name, the address of the retailer, and the registration or license number of the manufactured housing retailer.

(5) The auctioneer must keep and forward to this department immediately following the auction, a complete list of all manufactured homes sold at such auction, including the name of manufacturer, model, serial, and HUD numbers, along with the name, address, and registration number of the retailer purchasing the home.

(6) In lieu of the auctioneer maintaining and filing the information in paragraphs (1)-(5) of this subsection with the department, the consigner of the manufactured homes may contract with the auctioneer to file this information with the department.

Issued in Austin, Texas, on August 20, 1987.

TRD 8706971 Larry E. Kosta
Assistant Commissioner
Texas Department of
Labor and Standards

Effective date: August 20, 1987
Expiration date: December 18, 1987
For further information, please call
(512) 463-3127

★16 TAC §§69.121, 69.123-69.125

The Texas Department of Labor and Standards adopts on an emergency basis amendments to §§69.121, 69.123-69.125, concerning installation responsibilities, retailer sales information, security requirements, and registration requirements, respectively. The amendments

comply with House Bill 855, 70th Legislature, 1987, which amended Texas Civil Statutes, Article 5221f.

The amendments are adopted on an emergency basis to protect the safety, welfare, and health of the manufactured home consumer in Texas.

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 5221f, which provide the commissioner of the Texas Department of Labor and Standards with the authority to promulgate any and all reasonable rules and regulations which may be necessary for the purpose of enforcing the provisions of this Act.

§69.121. Installation Responsibilities.

(a) The responsibility for the proper installation of all manufactured homes shall be that of the **contracting** [registered] installer. **The contracting installer is the person who, by statute, contract, or agreement, is obligated to the consumer for the installation of the manufactured home** [Failure to install homes in accordance with all standards, rules, regulations, administrative orders, and requirements of the department may be grounds for the revocation of the installer's certificate of registration pursuant to the Texas Manufactured Housing Standards Act (TMHSA), §7. For all new manufactured homes sold and installed, the retailer shall be responsible for the fulfillment of the installation warranty requirement as required by the TMHSA, §14(c), even if one or more registered installers perform installation functions. For all installations not subject to the TMHSA, §14(c), the registered installer shall be responsible for fulfillment of the installation warranty required by the TMHSA, §14(e), and the warranty shall specify the functions performed. The responsibility for adequate site preparation and for providing proper facilities for the connection of utilities shall be that of the purchaser, subject to applicable local requirements, unless otherwise expressly provided by written provision of the sales or installation contract]

(1) New manufactured homes. The retailer in all cases is the contracting installer and is responsible for, and warrants, the installation of the new manufactured home.

(2) Used manufactured homes. The person contracting with the consumer for the installation of the used manufactured home is responsible for, and warrants, the installation of the used manufactured home.

(A) The selling retailer is the contracting installer if the retail sales contract or agreement provides for, or includes, the installation of the used manufactured home at the homesite.

(B) The installer contracting with the consumer for the relocation of a used manufactured home from a sales location or a homesite (secondary move) to a new homesite is the contracting installer for such installation.

(b) **The contracting installer is fully responsible for the complete installation even though the contracting installer may subcontract certain installation functions to independent contractors pursuant to the Standards Act, §7(j)** [An application for a permit to install a mobile home or HUD-code manufactured home on a custom nonpermanent foundation design shall be reported to the department 10 days prior to construction of the stabilization system].

(c) Failure to install a manufactured home in accordance with all standards, rules, regulations, administrative orders, and requirements of the department constitutes cause for the revocation of the installer's certificate of registration pursuant to the Standards Act, §7(k).

(d) The responsibility for adequate site preparation and for providing proper facilities for the connection of utilities shall be that of the purchaser or homeowner, subject to applicable local requirements, unless otherwise expressly provided by written provisions of the sales or installation contract.

(e) An application for a permit to install a manufactured home on a custom permanent foundation system design shall be filed with the department at least 10 days prior to construction of the customized foundation system.

(1) The installer must send in to the department an application form (provided by the department), which must be accompanied by the permanent foundation inspection fee, at least 10 days prior to the starting of the construction of the permanent foundation system.

(2) The first inspection by the department must be made prior to any concrete being poured for the custom permanent foundation, thus the various materials being used, such as reinforcing steel, may be checked by the department's inspector with the specifications required by the approved plans.

(3) The second inspection shall be conducted after the concrete has been poured, but prior to the installation of the home.

(4) The third inspection shall be made after the home has been installed on the foundation.

§69.123. Retailer Sales Information.

(a) (No change.)

(b) Manufactured housing retailers shall make available for review by department personnel as part of each sales record the following information:

(1) (No change.)

(2) verification that the **manufacturer's** new [manufactured] home warranty **and retailers warranty** was delivered to the purchaser;

(3) verification that the purchaser **of a new manufactured home** received written notice of the two-year limitation of notice for filing a claim against the bond;

(4)-(5) (No change.)

(6) the signed written report for the installation of air conditioning required by §69.64 of this title (relating to Procedures for Retailer Alterations), **if air conditioning is a part of the sales contract;**

(7) (No change.)

§69.124. Security Requirements.

(a) For purposes of meeting the security requirements of Texas Civil Statutes, Article 5221f, §13, [cash deposit or] **other** security means an assignment of a certificate of deposit from or on a state or federally chartered bank or savings and loan association, properly signed and filed with the department. Such deposits are hereinafter referred to as security. Forms shall be furnished by the department for filing an assignment of such security. If such security is reduced by a claim, the **registrant** [depositor] shall, within 20 days, make up the deficit as required by Texas Civil Statutes, Article 5221f, §13(b). No advance notice is required by the department to the **registrant** [depositor], but the department shall verify receipt of the deposit.

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

(d) To be exempt from the additional security as required by Article 5221f, §13(h), a manufacturer who does not have a manufacturing plant in this state must have a bonafide service facility.

(1) The manufacturer shall provide the department with the name, address, and phone number of the service facility, conspicuous notice of which shall be provided to each Texas retailer who purchases homes from the manufacturer.

(2) The service facility shall be capable of compliance with the provisions of Subpart I of the procedural and enforcement regulations promulgated by the Department of Housing and Urban Development, and capable of providing warranty service within the reasonable time requirements set by the department, and shall be subject to periodic review and inspection by department personnel.

(3) If the department determines that the requirements of pargraph (2) of this subsection have not been met, notice must be sent of that determination and of the requirement of additional bond amount.

§69.125. Registration Requirements.

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

(d) **Rebuilder** [Recyclers of tires, wheels, and axles].

[(1)] **Any person who alters, repairs, or otherwise rebuilds a salvaged manufactured home, as that term is defined in Article 5221f, §8, within this state, shall be registered as a rebuilder. An application shall be submitted on the form required by the department and shall be completed, giving all the requested information. The application shall be accompanied by the required registration fee. Each separate rebuilding location which is not on property that is contiguous to a registered location requires a separate registration.** [All persons who acquire, or purchase, or sell, or offer to purchase or sell, any tires, wheels, or axles for manufactured homes must be

registered with the department. An application for registration shall be made on a form containing such information as the department may require. Payment of the required fee shall accompany each application. The registration shall be annually renewable until terminated by the registrant or on action of the department. Any tire, wheels, or axles which are not new are deemed to be recycled for purposes of this section. Recycler registration shall be designated by the letters "RC."]

[(2) Each applicant for a certificate of registration as an approved recycler must file with the department an application for registration containing the following information:

[(A) the full legal name, business location, mailing address, and telephone number of the applicant,

[(B) the trade name by which the applicant does business and, if incorporated, the name registered with the Office of the Secretary of State and the address of the business; and

[(C) the dates on which the applicant became the owner and operator of the business.

[(3) A written sale and purchase memo in the form required by the department shall be completed in connection with every sale, conveyance, purchase, or acquisition transaction of tires, wheels, or axles for manufactured homes. The sale and purchase memo shall be retained by the recycler and shall contain the following information:

[(A) the name, address, and registration number of the person who is acquiring, purchasing, selling, or conveying the items. If the person acquiring, purchasing, selling, or conveying such items is a consumer or homeowner, the social security number will be shown instead of a registration number;

[(B) the name, address, and registration number of the person who is acquiring, purchasing, selling, or conveying the items. If the person acquiring, purchasing, selling, or conveying such items is a consumer or homeowner, the social security number will be shown instead of a registration number;

[(C) a separate number which shall not be duplicated on another memo in order that the particular memo can be identified;

[(D) the number of the check or other negotiable instrument given in payment for the items;

[(E) a complete list of the items acquired, purchased, sold, or conveyed, and all identifying numbers;

[(F) the date of the transaction,

[(G) if either party to the transaction is a corporation or partnership, the name of the individual(s) involved in the transaction for each party, and

[(H) a statement set out in boldface type of not less than eight points: "If your mobile or manufactured home is financed or mortgaged, it is a violation of state law to sell the tires, wheels, or axles without the written permission of the lender."

[(4) A check or other negotiable instrument shall be given in payment for the purchase or acquisition of the tires, wheels, or axles.

[(5) This section does not apply when the sale or purchase of a manufactured home includes tires, wheels, or axles.

[(6) No persons shall distribute or cause to be distributed any form of advertising as defined in the Texas Manufactured Housing Standards Act which relates to the purchase, acquisition, sale, or conveyance of tires, wheels, and axles, unless such advertising includes the name, address, and registration number of the person distributing, or causing the distribution of, the advertisement. The advertising must contain the following statement set out in boldface type of not less than eight points: "If your mobile or manufactured home is financed or mortgaged, it is a violation of state law to sell the tires, wheels, or axles without written permission of the lender."]

(e) Installer registration.

(1) Every person who performs installations shall submit the required bond, complete the necessary registration forms, and any other information needed, and be issued a registration card or certificate prior to performing an installation function. The required registration fee must accompany the application for registration. Except as may otherwise be authorized, the fee shall be submitted in the form of a cashier's check or money order made payable to the Texas Department of Labor and Standards.

(A) (No change.)

(B) **At the time of initial registration and on renewal,** a certificate of insurance must be filed with the department by the insurance carrier or its authorized agent certifying the kind, type, and amount of insurance coverage and which provides for 30 days notice of cancellation. If the applicant does not provide proof of the required motor vehicle liability insurance and the cargo coverage, the applicant must sign an affidavit that the applicant will not engage in any transportation of manufactured housing. If the applicant transports only his/her own property, and furnishes the department with an affidavit attesting to that fact, cargo coverage is not required.

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

(2)-(6) (No change.)

(f)-(g) (No change.)

(h) Applicable registrant ownership changes.

(1) In addition to a proper endorsement where a new bond shall not be required for any change of ownership of a **business** [person] registered with the department [nor for any change of location], the registrant shall supply the department with the following items:

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

(C) no registration fee shall be required resulting from a change of ownership [or location]; however, education requirements of the Act, §7(p), must be met.

(2) A bond endorsement representing a change of ownership [or location] from a registered retailer to a purchaser shall not be deemed complete until the items in paragraph (1)(A) of this subsection have been met.

(3) For a registrant to change the location of his bonded place of business, the registrant shall supply the department with the following:

(A) an endorsement to the bond reflecting the change of location; and

(B) a written notification of the change of location from the registrant.

(4) The change of location is not effective until the items in paragraph (3)(A) and (B) of this subsection are actually received by the department.

(i) (No change.)

(j) Education requirements.

[(1) Effective September 1, **1987** [1985], all applicants for registration [as a retailer] shall attend and complete **20** [40] hours of educational instruction as required by the Texas Manufactured Housing Standards Act, Texas Civil Statutes, Article 5221f, and the rules and regulations of the department. The registration will not be issued until the owner, partner, corporate officer, or other person who will personally have the day-to-day management responsibility for the **business location, or the salesperson to be registered,** [retail sales location or brokers office] attends and completes this education requirement. This section shall not apply to the renewal of registrations, **nor to the registration of additional business locations.**

[(2) If the applicant has complied with all other registration requirements, and the 40 hours of instruction are not available, the department shall issue a temporary retailer registration. A temporary retailer registration shall be effective for a period of 90 days, or until the 40 hours of instruction are scheduled, whichever shall come first. Failure to attend shall result in cancellation of the temporary registration.

[(3) However, no further instruction is necessary if a registered retailer opens an additional sales location, and the person who has the day-to-day management responsibilities for that new location has completed the education requirements.]

(k) Registration renewal requirements. It is the responsibility of the registrant to renew the registration prior to it's expiration date, however:

(1) the department will mail each registrant a renewal notice and application for renewal at least 45 days prior to the date on which the current registration expires. Notice will be mailed to the last known address indicated in department records; and

(2) in order to prevent the expiration of a certificate of registration, all ap-

plications for registration renewals must be received by the department on or before the date on which the current registration expires; and

(3) if an application for registration renewal is received by the department after the date on which the current registration expires, the application will be returned, and an application for registration reinstatement must be submitted. The registration will not be reinstated except with approval of the commissioner. The commissioner may require a hearing prior to reinstatement. Reinstatement registration will not be back dated; the effective date will be the date of the commissioner's approval; and

(4) salespersons shall be responsible for their renewals as set forth in subsection (g)(6) of this section.

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TRD-8706973 Larry E Kosta
Assistant Commissioner
Texas Department of
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For further information please call
(512) 463-3127

♦ ♦ ♦

★16 TAC §§69.122, 69.127, 69.128

The Texas Department of Labor and Standards adopts on an emergency basis the repeal of §§69 122, 69.127, and 69 128, concerning correction requirements; delivery of warranty; and the terms "TMHSA" and "APTRA," respectively. The repeals enable the department to reorganize and renumber the sections in order to enhance their clarity.

The repeals are adopted on an emergency basis to protect the safety, welfare, and health of the manufactured home consumer in Texas.

The repeals are adopted on an emergency basis under Texas Civil Statutes, Article 5221f, which provide the commission er of the Texas Department of Labor and Standards with the authority to promulgate any and all reasonable rules and regulations which may be necessary for the purpose of enforcing the provisions of this Act.

§69.122. Correction Requirements

§69.127. Delivery of Warranty

§69 128. The Terms "TMHSA" and "APTRA."

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Titling

★16 TAC §§69.201, 69.202, 69.205, 69.207, 69.208

The Texas Department of Labor and Standards adopts on an emergency basis amendments to §§69.201, 69.202, 69.205, 69 207, and 69.208, concerning definitions; titling; fees for title documents; titling transaction; reinstatement of cancelled certificate; and recording of tax lien, respectively. The amendments comply with House Bill 855, 70th Legislature, 1987, which amended Texas Civil Statutes, Article 5221f; and clarify some items within the sections.

The amendments are adopted on an emergency basis to protect the safety, welfare, and health of the manufactured home consumer in Texas.

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 5221f, which provide the commissioner of the Texas Department of Labor and Standards with the authority to promulgate any and all reasonable rules and regulations which may be necessary for the purpose of enforcing the provisions of this Act

§69 201. Definitions Concerning Titling. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Manufactured home identification numbers—

(A) For purposes of title records, shall include the HUD label number(s) [or the Texas modular decal number(s) along with] **and** the serial number(s) imprinted or stamped on the home in accordance with HUD departmental regulations. For homes manufactured prior to June 15, 1976, the Texas seal number, as issued by the department, shall be used instead of the HUD label number. If a home manufactured prior to June 15, 1976, does not have a Texas seal, such shall be **obtained from the department and attached to the home** [noted in the department's records by the assignment of a special number in lieu of a Texas seal number]

(B) Any home which has sustained sufficient damage to be declared salvage **as defined in Article 5221f, §8,** [by a competent authority] may be rebuilt/repaired for purposes of issuance of a manufactured home **document of title** [certificate of ownership] at the option of the department after inspection in accordance with department procedures Notification in writing to the department at its Austin headquarters office shall be required before **rebuilding/repair** [reconstruction/repair] begins. Notification shall include a complete description of the home and the rebuilder's plan to be followed during the **rebuilding/repair** [reconstruction/repair] process. The plan for rebuilding/repair shall bear the stamp of a registered professional engineer who shall review the plan for assurance of compliance with the Texas Manufactured Housing Standards **Act requirement for habitability** [Code in force at the time of manufacture or with acceptable engineering practices compatible with the home to be rebuilt/repaired]. The department may schedule inspections of the home during the rebuilding/repair process. Any person who purchased a rebuilt manufactured home and received a [motor vehicle] salvage title as evidence of ownership **after June 18, 1987** [prior to September 1, 1983], may be issued document of title upon application to the department. An inspection may be required by the department.

§69.202. Fees for Title Documents.

(a) Title transaction fees.

(1) There shall be a fee of **$25** [$15] for **each title transaction** [the issuance of a manufactured home document of title]. Except as may otherwise be authorized, the fee shall be submitted in the form of a cashier's check or money order payable to the Texas Department of Labor and Standards. The fee shall accompany the required documents and affidavits forwarded to the department at its principal office in Austin. **Ten dollars of the fee for each title transaction shall be deposited in the manufactured homeowners' recovery fund. A title transaction is:**

(A) the issuance, reissuance, reinstatement, or cancellation of a manufactured home document of title, including issuance of corrected titles;

(B) the issuance of a salvage title;

(C) the cancellation of a manufacturer's certificate of origin;

(D) the filing of an inventory financing lien;

(E) the filing of foreclosure documents or a repossession affidavit; and

(F) the recording of a transfer of ownership from a lienholder to or through a retailer.

(2) There shall be **a transaction** [an additional] fee of **$50** [$15] for the issuance of a quick title. A quick title shall be defined as the processing of the title transfer documents within 72 hours. Title transfer documents must be hand delivered in good transfer order to the department's title section in Austin for the issuance of a manufactured housing title on a quick title basis. No mail in's or express delivery or express mail service will be accepted for quick title transfer service In order to assure the 72 hours service, no more than one application will be accepted per applicant per day.

(b) The **$25** [$15] fee is payable for any subsequent issuance or reissuance of a manufactured home document of title except for **the issuance of a corrected document of title in those instances where an error was made by the department in the document of title.** [the following:]

[(1) No fee is due for the issuance of a corrected document of title in those instances where an error was made by the de-

partment in the document of title.

[(2) No fee is due for the cancellation of an original document of title or of a manufacturer's certificate or origin which is surrendered to the department when the home has been affixed to real estate or when the home has been destroyed or damaged beyond repair and the remaining structure will be sold for salvage.]

(c) All persons registered with the department as manufacturers, retailers, brokers, or installers may submit company or business firm checks in payment of the fee for the issuance of titles. All state or federally chartered banks or savings institutions and all commercial lenders or mortgage bankers who regularly extend credit for the retail purchase of manufactured homes may also pay title **transaction or title search** fees with company or business firm checks at the discretion of the department. All checks shall be made payable to the Texas Department of Labor and Standards.

(d) One check may be submitted in payment of the aggregate fees for **multiple title transactions or** the issuance of more than one document of title. When multiple applications are submitted, a cover letter must be included which shall identify each application and reconcile the **$25** [$15] fee for each application with the total amount of the check.

(e) (No change.)

§69.205. Titling Transaction

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

(f) Surrender of title documents for cancellation.

(1) The department shall cancel any outstanding title to a manufactured home upon proper execution of any affidavit of transaction and the surrender of either the original document of title or the manufacturer's certificate of origin. Title documents may be surrendered for cancellation in the following instances:

(A) (No change.)

(B) the manufactured home, or transportable section, has been **declared salvage as defined in the Standards Act, §8** [damaged beyond repair];

(C) the manufactured home has been sold, exchanged, or transferred by lease purchase for business use.

(2) (No change.)

[(3) No fee shall be required for cancellation of a surrendered document of title.]

§69.207. Reinstatement of Cancelled ***Documents of Title*** *[Certificates of Ownership].*

(a) A document of title [certificate of ownership] issued by the department to a manufactured home which has been cancelled because the home has been affixed to real estate **by installation on a permanent foundation** may be reinstated subject to the following documents being filed with the department:

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

(3) a properly executed affidavit of disposition accompanied by a cashier's check or money order for **$25** [$15];

(4)-(5) (No change.)

(b) if a document of title has been cancelled as a result of the home's having been previously sold for business use, the department will reinstate the title subject to the following:

(1) receipt of a written request for an inspection of the home to determine if the home is habitable. The required fee must accompany the application; and

(2) following the inspection, a written finding by the inspector that the home is habitable; and, if so

(3) the receipt of a properly executed affidavit of transaction accompanied by the proper transaction fee; and

(4) if title is being transferred, a properly executed affidavit of disposition accompanied by the proper fee.

§69.208. Recording Tax Lien on Manufactured Homes.

(a) The collector for a taxing unit may file notice of the unit's tax lien on a manufactured home with the Texas Department of Labor and Standards (TDLS), **if the tax has not been paid by January 31 of the year following the year for which the tax is assessed.** The notice must include:

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

(b)-(l) (No change.)

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Assistant Commissioner
Texas Department of Labor and Standards

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 97. Communicable Diseases

Control of Communicable Diseases

★25 TAC §§97.1-97.11

The Texas Department of Health adopts on an emergency basis the repeal of §§97.1-97.11, concerning the control of communicable diseases, new §§97.1-97.11, the repeal of §§97.91-97.97, and amendments to §§97.131-97.135, concerning the control of communicable diseases, the examining of public school personnel for tuberculosis, and venereal disease, respectively. The changes update and clarify the sections relating to reporting, preventing, and controlling communicable diseases in Texas.

Substantive changes are the addition of diseases and conditions to the list of reportable communicable diseases, specifically human immunodeficiency virus infections and laboratory-confirmed *Chlamydia trachomatis* infections; the addition of diseases and conditions to the list for which deceased persons must be tagged, and clarification of the types of viral hepatitis requiring tagging, specifically human immunodeficiency virus infections, brucellosis, Q fever, viral hepatitis B, D, and non-A/non-B; establishing guidelines designating the diseases and conditions that constitute possible exposure of transport personnel to the diseases; the adoption by reference of the department's publication, *Identification and Confirmation of Reportable Diseases*, in order to simplify laboratory reporting requirements; and the adoption by reference of the department's publication, *Communicable Disease Chart for Schools and Child Care Centers*, in order to assist users in deciding on the need to exclude a child from school because of a communicable disease.

The repeals, amendments, new sections are adopted on an emergency basis to comply with House Bill 1829, 70th Legislature, 1987, which becomes effective on September 1, 1987, and which contains numerous requirements concerning the prevention and control of communicable diseases in the State of Texas. Because the department is required by Texas Civil Statutes, Article 4419b-1, to adopt rules to implement the changes in House Bill 1829, the department adopts the repeals, new sections, and amendments on an emergency basis, effective September 1, 1987.

The repeals are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, §5, which provide the board with the authority to adopt rules on an emergency basis, the Communicable Disease Prevention and Control Act, Texas Civil Statutes, Article 4419b-1, §2.02, which provides the Texas Board of Health with the authority to adopt rules to implement the Act, and House Bill 1829, 70th Legislature, 1987, concerning the prevention and control of communicable diseases.

§97.1. Definitions.

§97.2. Reporting Requirements.

§97.3. Hospitals to Report Communicable Diseases.

§97.4. List of Reportable Diseases.

§97.5. Diseases Requiring Exclusion from Child-Care Centers and Schools.

§97.6. Prevention of the Spread of Disease from a Case.

§97.7. General Control Measures for Reportable Diseases.

§97.8. Quarantine of Diseases, Persons, and of Contacts Within Specific Premises.

§97.9. Confindential Nature of Case Reporting.

§97.10. List of Quarantinable Diseases.

§97.11. Death of a Person with Certain Communicable Diseases.

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Texas Department of Health

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The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, §5, which provide the board with the authority to adopt rules on an emergency basis; the Communicable Disease Prevention and Control Act, Texas Civil Statutes, Article 4419b-1, §2.02, which provides the Texas Board of Health with the authority to adopt rules to implement the Act; and House Bill 1829, 70th Legislature, 1987, covering the prevention and control of communicable diseases

§97.1. Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Act—Communicable Disease Prevention and Control Act, Texas Civil Statutes, Article 4419b-1.

AIDS—Acquired immune deficiency syndrome, as defined by the Centers for Disease Control of the United States Public Health Service.

Carrier—An infected person or animal that harbors a specific infectious agent in the absence of discernible clinical disease and serves as a potential source or reservoir for the infection of man.

Case—As distinct from a carrier, a person in whose tissues the etiological agent of a communicable disease is lodged and which usually produces signs or symptoms of disease. Evidence of the presence of a communicable disease may also be revealed by routine laboratory findings.

Commissioner—Commissioner of health.

Communicable disease—An illness due to an infectious agent or its toxic products which is transmitted directly to a well person from an infected person or animal, or indirectly through an intermediate plant or animal host, vector, or the inanimate environment.

Contact—A person or animal that has been in such association with an infected person or a contaminated environment so as to have had opportunity to acquire the infection.

Department—Texas Department of Health.

Disinfection—Destruction of infectious agents outside the body by chemical or physical means directly applied.

Epidemic or outbreak—The occurrence in a community or region of a group of illnesses of similar nature, clearly in excess of normal expectancy, and derived from a common or a propagated source.

Health authority—A physician designated to administer state and local laws relating to public health under the Local Public Health Reorganization Act, Texas Civil Statutes, Article 4436b. The health authority, for purposes of these sections, may be the director of a local health department, a regional director, or another physician as appropriate

HIV—Human immunodeficiency virus.

HIV infection—Diagnosed by a physician with supporting laboratory evidence of one of the following:

(A) a serum specimen that is repeatedly reactive for HIV antibody by a licensed screening test (e.g. ELISA) and/or the same or an additional serum specimen that is positive by a subsequent test (e.g. Western blot, immunofluorescence assay); or

(B) a positive test for serum antigen; or

(C) a positive lymphocyte culture confirmed by specific HIV antigen test (not just reverse transcriptase detection) or by *in situ* hybridization using a DNA probe.

Outbreak—See epidemic.

Physician—A person licensed by the Texas State Board of Medical Examiners to practice medicine in Texas.

Regional director—The physician who is the chief administrative officer of a region as designated by the department under the Local Public Health Reorganization Act, Texas Civil Statutes, Article 4436b.

Report—Information that is required to be provided to the department.

Report of a disease—The notification to the appropriate authority of the occurrence of a specific communicable disease in man or animals, including all information required by the procedures established by the department.

Reportable disease—Any disease or condition that is required to be reported under the Act or by these sections. See §97.3 of this title (relating to Reportable Diseases and Health Conditions). Any unusual outbreak of illness which may be of public concern, whether or not the disease involved is listed in §97.3 of this title (relating to Reportable Diseases and Health Conditions), shall be considered a reportable disease.

School administrator—The city or county superintendent of schools, or the principal of any school not under the jurisdiction of a city or county board of education.

§97.2. Who Shall Report.

(a) A physician, dentist, or veterinarian shall report as required by these sections each patient or animal he or she shall examine and who has or is suspected of having any reportable disease or health condition, and shall report any unusual outbreak of illness of any kind whether or not the disease is known to be communicable or reportable. An employee from the clinic or office staff may be designated to serve as the reporting officer.

(b) The chief administrative officer of a hospital shall appoint one reporting officer who shall be responsible for reporting each patient who is admitted to the facility who has or is suspected of having any reportable disease or health condition. Hospital laboratories may report through the reporting officer or independently in accordance with the hospital's policies and procedures. For the purposes of these sections, the term "hospital laboratory" includes any laboratory that performs laboratory test procedures for a patient of a hospital either as a part of the hospital or through contract with the hospital.

(c) Except as provided in subsection (b) of this section for a hospital laboratory, any person who is in charge of a clinical laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopical, cultural, serological, or other evidence of a reportable disease or health condition shall report as required by these sections.

(d) School authorities, including a superintendent, principal, teacher, school health official, or counselor of a public or private school, and the administrator or health official of a public or private institution of higher learning shall report as required by these sections those students attending school who are suspected of having a reportable disease.

(e) Any person having knowledge that a person is suspected of having a reportable disease or health condition shall notify the local health authority or the department and provide all information known to them concerning the illness and physical condition of such person or persons.

§97.3. Reportable Diseases and Health Conditions.

(a) The department's publication *Identification and Confirmation of Reportable Diseases* is adopted by reference. This publication shall be used to determine when a reportable disease should be reported under these sections based on a specific diagnosis, test procedure, and/or confirmatory test. Copies are available upon request to the Materials Acquisition and Management Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Copies are indexed and filed in the Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas

78756, and are available for public inspection during regular working hours.

(b) The following diseases are reportable: acquired immune deficiency syndrome; amebiasis; anthrax; botulism—adult and infant; brucellosis; campylobacteriosis; chickenpox; *Chlamydia trachomatis* infection; cholera; coccidioidomycosis; dengue; diphtheria; encephalitis (specify etiology); gonorrhea; Hansen's disease (leprosy); *Haemophilus influenzae* infections; hepatitis, viral—type A, type B, type D (delta agent), type non-A/non-B, and unspecified types; histoplasmosis; HIV infection; influenza and flu-like illness; legionellosis; leptospirosis; listeria infections; Lyme disease; malaria; measles; meningitis—bacterial, aseptic/viral, fungal, and other (specify etiology, all types); meningococcal infections; mumps; pertussis; plague; poliomyelitis, paralytic; psittacosis; Q fever; rabies in man; Reye syndrome; Rocky Mountain spotted fever; rubella; rubella, congenital syndrome; salmonellosis; shigellosis; syphilis; tetanus; toxic shock syndrome; trichinosis; tuberculosis; tularemia; typhoid fever; typhus fever— endemic (murine) and epidemic; vibrio infections, viral hemorrhagic fever; and yellow fever

(c) In addition to individual case reports, any unusual outbreak of disease that could be of public health concern should be reported by the most expeditious means.

§97.4. Where to Report A Communicable Disease.

(a) This section is intended to describe where a person is required to report a disease. The minimal information that should be reported for each disease is as follows:

(1) numerical totals only—influenza and flu-like illness;

(2) numerical totals by age—chickenpox;

(3) numerical totals by age and sex—HIV infection;

(4) in accordance with §§97.131, 97.134, and 97.135 of this title (relating to Sexually Transmitted Diseases)—syphilis, gonorrhea, and *Chlamydia trachomatis* infection;

(5) by name, city, age, sex, race/ethnicity, physician, disease, type of diagnosis, and date of onset—all other reportable diseases.

(b) The following reportable diseases are to be reported immediately to the Infectious Disease Division of the department by calling 1-800-252-8239: botulism; cholera; plague; rabies in man; and yellow fever.

(c) The following reportable diseases are to be reported immediately to the Immunization Division of the department by calling 1-800-252-9152: diphtheria; measles; pertussis; poliomyelitis, paralytic; and rubella.

(d) *Chlamydia trachomatis* infection, gonorrhea, and syphilis shall be reported in accordance with §§97.132, 97.134, and 97.135 of this title (relating to Sexually Transmitted Diseases).

(e) For all other reportable diseases not listed in subsections (b)-(d) of this section, reports of disease shall be made no later than one week after a case or suspected case is identified as follows.

(1) A physician, dentist, veterinarian, or school authority shall report to the local health authority where the office, clinic, or school is located. If there is no local health authority appointed for the jurisdiction where the office, clinic, or school is located, the report shall be made to the regional director. The report may be made by an employee who has been designated to serve as the reporting officer.

(2) The reporting officer of a hospital and the person in charge of a hospital laboratory (if the laboratory reports independently) shall report to the local health authority where the hospital is located. If there is no local health authority appointed for the jurisdiction where the hospital is located, the report shall be made to the regional director. Reporting of a case of communicable disease by a hospital shall be in addition to, and not as a substitute for, the reporting required of the attending physician or other persons having knowledge of the case. Reports of diseases shall be based on all patients suspected of having a reportable disease or health condition, who, during the reported week:

(A) were newly admitted to a facility,

(B) were admitted to an isolation unit;

(C) were discharged, disease not previously reported,

(D) died, disease not previously reported; or

(E) were evaluated in an outpatient unit or emergency room.

(3) A person in charge of a clinical laboratory, blood bank, mobile unit, or other facility which is required to report shall report as follows.

(A) A laboratory shall report on all reportable diseases when the confirmatory laboratory tests are initially positive as specified in the current edition of the department's publication *Identification and Confirmation of Reportable Diseases*. Repetitive test results from the same patient do not need to be reported except for mycobacterial infections.

(B) If the laboratory examination was requested by a physician, notice shall be sent to the health authority for the jurisdiction where the physician's office is located or to the regional director for the jurisdiction where the physician's office is located if no health authority has been appointed.

(C) If the laboratory examination was not requested by a physician, notice shall be sent to the health authority for the jurisdiction where the laboratory is located or to the regional director for the jurisdiction where the laboratory is located if no health authority has been appointed.

(f) Official reports of preliminary nature that do not require immediate investigation shall be held by the local health authority until a final diagnosis has been made.

§97.5. Reporting and Other Duties of Local Health Authorities and Regional Directors.

(a) The purpose of this section is to provide procedures for local health authorities to report a disease to the department. Syphilis, gonorrhea, and *Chlamydia trachomatis* infection shall be reported in accordance with §§97.131, 97.134, and 97.135 of this title (relating to Sexually Transmitted Diseases).

(b) The local health authority or regional director shall collect reports of disease and transmit the following information at weekly intervals as directed by the department:

(1) numerical totals only—influenza and flu-like illness;

(2) numerical totals by age—chickenpox,

(3) numerical totals by age and sex—HIV infection.

(4) by name, city, age, sex, race/ethnicity, physician, disease, type of diagnosis, and date of onset—all other reportable diseases.

(c) Transmittal may be by telephone, mail, courier, or electronic transmission.

(1) If by mail or courier, the reports shall be on a form provided by the department and placed in a sealed envelope addressed to the attention of the appropriate receiving source and marked Confidential.

(2) If by electronic transmission, including facsimile transmission by telephone, the local health authority or regional director must obtain prior approval of the manner and form of the transmission from the commissioner or his or her designee. Any electronic transmission of the reports must provide at least the same degree of protection against unauthorized disclosure as those of mail or courier transmittal.

(d) The local health authority shall notify health authorities in other jurisdictions of a case or outbreak of a communicable disease that has been reported if the case resides in another jurisdiction or there is cause to believe transmission of a disease may have occurred in another jurisdiction. The department shall assist the local health authority in providing such notifications upon request. The local health authority of the area where the case or outbreak is diagnosed shall report the case or outbreak to the department on the same basis as other reports.

(e) The local health authority, upon identification of a case or upon receipt of notification or report of disease, shall take such action and measures as may be necessary to conform with the appropriate control measure standards. The local health authority may, upon identification of a case or upon report of a communicable disease in a child attending a public or private child-

care facility or a school, notify the owner or operator of the child-care facility or the school administrator. The commissioner is authorized to amend, revise, or revoke any control measure or action taken by the local health authority if necessary or desirable in the administration of a regional or statewide public health program or policy.

(f) The local health authority is empowered to close any public or private child-care facility, school, or other place of public or private assembly when in his or her opinion such closing is necessary to protect the public health; and such school or other place of public or private assembly shall not reopen until permitted by the health authority who caused its closure.

§97.6. Diseases Requiring Exclusion from Child-care Facilities and Schools.

(a) The department's publication *Communicable Disease Chart for Schools and Child Care Facilities* is adopted by reference. This chart includes the communicable diseases that require exclusion of children from child-care or school settings and the conditions for readmission. Copies are available upon request to the Materials Acquisition and Management Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Copies are indexed and filed in the Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public inspection during regular working hours.

(b) The owner or operator of a child-care facility, or the school administrator, shall exclude from attendance any child having or suspected of having a communicable disease designated by the commissioner until one of the criteria listed in subsection (c) of this section is fulfilled.

(c) All children excluded for reason of communicable disease may be readmitted by any of the following methods, as determined by the local health authority:

(1) a certificate of the attending physician attesting to their not having a communicable disease or to their non-communicability in a child-care or school setting or to their recovery;

(2) a permit for readmission issued by a local health authority;

(3) readmission criteria as established by the commissioner of health.

§97.7. General Control Measures for Reportable Diseases. Except for diseases for which equivalent measures of investigation and control are specifically provided in other sections of these sections, the commissioner, a local health authority, or a duly authorized representative of the commissioner or a local health authority may proceed as follows.

(1) Investigation shall be made, as the circumstances may require, for verifying the diagnosis, ascertaining the source of the causative agent, disclosing unreported cases, and finding contacts.

(2) Laboratory specimens of the body tissues, fluids, or discharges and of materials directly or indirectly associated with the case, as may be necessary or desirable in confirmation of the diagnosis or for ascertaining the source of the infection, shall be collected and submitted to a laboratory for examination.

(3) Control techniques, including disinfection, environmental sanitation, immunization, chemoprophylaxis, isolation, preventive therapy, quarantine, and other accepted measures shall be instituted as necessary to reduce morbidity and mortality. In establishing quarantine or isolation, the local health authority shall designate and define the limits of the areas in which the persons are quarantined or isolated. No person may be quarantined or isolated by a local health authority without his or her consent unless the person is subject to court orders under the Act, Article 8.

(4) Information concerning the disease and its prevention shall be given to to the patient or a responsible member of the patient's household to prevent further spread of the disease.

(5) Control measures implemented by the local health authorities shall be consistent with and at least as stringent as those control measure standards imposed by the department. Individual control measures implemented by the local health authority are subject to review and modification or change by the commissioner.

§97.8. Quarantine of Specific Premises. A local health authority may declare a house, building, apartment, room, or place within the health authority's jurisdiction to be a place of quarantine whenever a case of communicable disease occurs therein, and, in the health authority's opinion, it is necessary to do so in order to protect the public health. No person shall leave or enter the place during the period of quarantine except with specific permission of the health authority.

§97.9. Confidential Nature of Case Reporting and Records.

(a) All individual morbidity case reports received by the local health authority or the department are confidential records and not public records.

(b) To implement communicable disease control measures authorized in these sections, it may be necessary for the local health authority or the department to investigate public or private health records including patient medical records pertinent to the communicable disease. On request, a person shall provide the department with records, data, and other information according to the written instruction of the department. The local health authority and the department shall keep this information confidential.

(c) The department may use information obtained from reports or health records for statistical and epidemiological studies which may be public information as long as an individual is not identifiable.

§97.10. Notification of Emergency Medical Service Employee, Peace Officer, or Firefighter of Possible Exposure to a Disease. The Act, §3.08, requires a licensed hospital to notify a local health authority in certain instances when an emergency medical service employee, a peace officer, or a firefighter may have been exposed to a communicable disease during the course of duty from a person delivered to the hospital under conditions that were favorable for transmission. The following guidelines are issued to designate diseases and conditions that constitute a possible exposure to the disease for the purposes of the Act, §3.08.

(1) diphtheria, measles, meningococcal infections, pertussis, plague, rubella, tuberculosis, viral hemorrhagic fever if there has been an examination of the throat, intubation, suctioning, or mouth-to-mouth resuscitation.

(2) acquired immune deficiency syndrome, HIV infection, malaria, plague, syphilis, viral hepatitis if there has been a needlestick or other penetrating puncture of the skin with a used needle or other item, or either a splatter or aerosol into the eye, nose, or mouth or any significant contamination of an open wound or non-intact skin with blood or body fluids.

§97.11. Death of a Person with Certain Communicable Diseases.

(a) If a physician has knowledge that a person had, at the time of death, a communicable disease listed in subsection (c) of this section, then the physician shall affix or cause to be affixed a tag on the body, preferably on a great toe.

(b) The tag shall be on card stock paper and shall be no smaller than five centimeters by ten centimeters. The tag shall include the words "Communicable disease—blood/body fluid precautions required" in letters no smaller than 6 millimeters in height. The name of the deceased person shall be written on the tag. The tag shall remain affixed to the body until the preparation of the body for burial has been completed.

(c) Diseases that shall require tagging are acquired immune deficiency syndrome, anthrax, brucellosis, viral hepatitis (types B, D, and non-A/non-B), HIV infection, plague, Q fever, rabies, Rocky Mountain spotted fever, syphilis, tuberculosis, tularemia, and viral hemorrhagic fever.

(d) All persons should routinely practice the following procedure when performing postmortem care on a deceased person who is known or suspected of having a communicable disease listed in subsection (c) of this section.

(1) A person should wear a gown, gloves, a mask, and eye-coverings when performing procedures involving extensive contact with blood or body fluids. Skin should be washed immediately if the skin is or may

be contaminated with blood or body fluids.

(2) Needles should not be recapped, purposefully bent, broken, or removed from disposable syringes. Needles and other sharp items should be disposed of in puncture-resistant containers. Contaminated articles that may be disposed of by bagging should be double-bagged in plastic bags not less than 1.5 mil thick each. Other articles may be disposed of by incineration or disinfected by chemical disinfection or steam sterilization.

(3) Spills of blood and other body fluids should be cleaned promptly with a solution of household chlorine bleach diluted 1:10 with water.

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Examining Public School Personnel for Tuberculosis

★25 TAC §§97.91-97.97

The repeals are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, §5, which provide the board with the authority to adopt rules on an emergency basis; the Communicable Disease Prevention and Control Act, Texas Civil Statutes, Article 4419b-1, §2.02, which provides the Texas Board of Health with the authority to adopt rules to implement the Act; and House Bill 1829, 70th Legislature, 1987, covering the prevention and control of communicable diseases.

§97.91. Categories of Employees and Volunteers.

§97.92. Certificate of Examination.

§97.93. Closing Date for Filing Certificate.

§97.94. Transfer of Certificate Between School Districts.

§97.95. Expiration and Frequency of Certificates.

§97.96. Reexaminations.

§97.97. Reporting Results of Examination.

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Sexually Transmitted [Venereal] Disease

★25 TAC §§97.131-97.135

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, §5, which provide the board with the authority to adopt rules on an emergency basis; the Communicable Disease Prevention and Control Act, Texas Civil Statutes, Article 4419b-1, §§2.02, 3.02, 7.02, and 7.04, which provides the Texas Board of Health with the authority to adopt rules to implement the Act and adopt rules concerning the control of communicable diseases, the approval of prophylaxis to prevent opthalmia neonatorum, and the standards for certification of laboratories that perform standard serologic tests; and House Bill 1829, 70th Legislature, 1987, covering the prevention and control of communicable diseases.

§97.131. Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Reportable **sexually transmitted** [venereal] disease—***Chlamydia trachomatis***, gonorrhea, or syphilis.

Sexually transmitted [Venereal] disease—An infection, with or without symptoms or clinical manifestations, that is or may be transmitted from one person to another during, or as a result of, sexual relations of whatever kind between two persons, and that produces or might produce a disease in or otherwise impair the health of either person or might cause an infection or disease in a fetus in utero or a newborn. For purposes of these sections, syphilis, gonorrhea, chancroid, granuloma inguinale, condyloma acuminata, genital herpes simplex infection, and genital and neonatal chlamydial infections, including lymphogranuloma venereum, are **sexually transmitted** [venereal] diseases

*§97.132. Reporting of **Sexually Transmitted** [Venereal] Disease.*

(a) A physician who diagnoses or treats a case of syphilis, [or] gonorrhea, **or *Chlamydia trachomatis*** and every administrator of a hospital, dispensary, or charitable or penal institution in which there is a case of syphilis, [or] gonorrhea, **or *Chlamydia trachomatis*** shall report the case within 72 hours to the director of a local health department or, if there is none, to the director of the public health region in which the case is diagnosed or treated.

(b) The reporting physician shall make the report in writing, except as follows in this subsection, using a Form **STD-27** [J-27] Confidential Report of **Sexually Transmitted** [Venereal] Disease. A health authority may authorize one or more employees under his or her supervision to receive the report from the physician by telephone and to complete the form on behalf of the physician; use of this alternative, if authorized, is at the option of the reporting physician. The health authority shall implement a method for verifying the identity of the telephone caller when that person is unfamiliar to the employee.

(c) The Form **STD-27** [J-27] Confidential Report of **Sexually Transmitted** [Venereal] Disease shall be supplied to physicians on request without charge by the department through each regional director or the **Sexually Transmitted** [Venereal] Disease Control **Division** [Program] at the department's central office in Austin, Texas; the department may make the form available through directors of local health departments.

(d) **To report syphilis,** the report shall contain the name, address, including the city and county of residence, age or date of birth, sex, race, ethnic group, diagnosis of the case, including pertinent laboratory test results, and antibiotics used; and the name, office address, and office telephone of the reporting physician or other individual rendering the report.

(e) A physician **or others** reporting a case of gonorrhea **or a laboratory-confirmed case of chlamydia shall complete a report Form STD-27 with only the city, age, sex, race, disease, and the name, office address, and office telephone of the reporting physician or other person filing the report,** [may substitute a code of letters and/or digits for the name and street address or post office box address of the patient] provided all of the following conditions are met:

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

[(f) The physician shall keep a record of the code and patient's name and address for a period of 30 days from the date of report, during which period the health authority to whom the case was reported may require that the name and address be disclosed if, in the opinion of the health authority, circumstances so warrant.]

(f)[(g)] A health authority shall forward to the department at least weekly all reports of cases received by him/her. Transmittal may be by mail, courier, or electronic transmission.

(1) If by mail or courier, the reports shall be placed in a sealed envelope addressed to the attention of the **Sexually Transmitted** [Venereal] Disease Control **Division** [Program] and marked "Confidential Medical Records." The envelope, which may be placed in an outer envelope, shall be delivered with the seal unbroken to the **Sexually Transmitted** [Venereal] Disease Control **Division** [Program] office for opening and processing of the contents.

(2) (No change.)

§97.133. Serologic Testing During Pregnancy and at Delivery.

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

(d) Every physician or other person required to report births or fetal deaths shall state on each birth or fetal death certificate whether a blood test for syphilis was performed during the pregnancy and on the ma-

ternal blood or the umbilical cord blood of the newborn infant. [Until the birth and fetal death certificates contain an item for certifying this test, the person completing the certificate shall make an entry immediately below the section entitled, "For Medical and Health Use Only," as follows: "Was serologic test made at delivery?"

[(e) After the certificates have been revised, the information shall be entered only in the appropriate item of the printed form.]

§97.134. Certification of Laboratories Performing Standard Serologic Tests.

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

(g) The department shall mail a complete list of approved laboratories to all county clerks **and a list** [within 45 days of the adoption of these sections and shall notify the clerks at least annually] of any additions, suspensions, or revocations of proficiency certification **at least annually**.

(h)-(j) (No change.)

(k) Each laboratory shall obtain and use its own individual test result reporting forms. A copy of the results of a standard serologic test shall be sent to the requesting physician and a copy to the **Sexually Transmitted** [Venereal] Disease Control **Division** [Program] of the department as required in §97.135 of this title (relating to the Reporting of Laboratory Tests for **Sexually Transmitted Diseases** [Syphilis and Gonorrhea]).

§97.135. Reporting of Laboratory Tests for Sexually Transmitted Diseases [Syphilis and Gonorrhea].

(a) Any person in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopical, cultural, serological, or other evidence suggestive of syphilis, [or] gonorrhea, **or *chlamydia*** shall notify the department of its findings.

(b) The notification shall be on Form **STD-28, Notification of Laboratory Test Findings, which** [J-28, Notification of Laboratory Examination Indicating Presence of Syphilis or Gonorrhea and] shall be provided without charge to the laboratory or facility upon request. It shall state the name, address, sex, age or date of birth, race, and ethnic group of the person from whom the specimen was obtained; the tests performed and the dates performed; and the name and office address of the physician from whom such examination or test was performed.

(c) Notifications shall be submitted at least weekly if any of the tests for syphilis, [or] gonorrhea, **or *chlamydia*** are reactive or positive. If a darkfield microscopic examination for syphilis (Treponema pallidum) is positive, the findings shall be reported within 24 hours of completion of the examination. If during any calendar quarter, reportable tests are performed and all test results are negative, the person in charge of the laboratory shall submit a statement to this effect in the same manner as the notification on or before January 5, April 5, July 5, and October 5 following that calendar quarter.

(d) Notifications shall be routed to the department as follows.

(1) (No change.)

(2) A health authority shall make cumulative reports weekly to the department of all notifications received, except that positive results of a darkfield microscopic examination for Treponema pallidum shall be reported within one working day. For purposes of this subsection, report to the department means to the employee in the appropriate public health region of the department who is designated as the **Sexually Transmitted** [Venereal] Disease Control Program manager; that employee shall be responsible for forwarding the reports to the **Sexually Transmitted** [Venereal] Disease Control **Division** [Program] at the department's central office in Austin as required.

(e) Notifications by laboratories and cumulative reports by health authorities may be submitted by mail, courier, or electronically, including facsimile transmission by telephone as follows.

(1) If by mail or courier, notifications shall be submitted in a sealed envelope addressed to the health authority, attention: **STD** [VD] Control, and marked "Confidential Medical Report" on the outside of the envelope. The health authority shall establish procedures to prevent disclosure of the contents to unauthorized personnel within his or her office.

(2) If by mail or courier, cumulative reports to the department shall be submitted in a sealed envelope addressed to the **Sexually Transmitted** [Venereal] Disease Control **Division** [Program], Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and shall be marked "Confidential Medical Report" on the outside of the envelope. The envelope shall be delivered with unbroken seal to the program office for opening.

(3) If **by electronic transmission, including facsimile transmission by telephone, it shall be in a manner and form authorized** [notifications or reports are transmitted electronically, they shall be by a means and in a form approved] by the commissioner or his or her designees **in each instance** [; additional approval by the regional director or local health director is required for notifications]. **Any electronic transmission of the reports must provide at least the same degree of protection against unauthorized disclosure as those of mail or courier transmittal. The commissioner or his or her designee shall, before authorizing such transmittal, establish guidelines for establishing and conducting such transmission.**

(f) A laboratory report of the results of tests performed for gonorrhea, [or] syphilis, **or *chlamydia*** shall not constitute a diagnosis of either disease and shall not satisfy the requirements for reporting **sexually transmitted** [venereal] disease by a physician attending the person from whom the laboratory specimen was obtained.

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Chapter 109. Tuberculosis

Tuberculosis Control

★25 TAC §109.24

The Texas Department of Health adopts on an emergency basis the repeal of §109.24, concerning reporting of mycobacterium tuberculosis from laboratory examination. Section 109.24 covers the procedure which laboratories follow in reporting cases of tuberculosis to the department. The section is repealed because the reporting procedure is incorporated in new §§97.1-97.11, concerning the control of communicable diseases, which the department adopts on an emergency basis in this issue of the *Texas Register*.

Section 109.24 is repealed on an emergency basis in order to comply with the requirements of House Bill 1829, 70th Legislature, 1987. House Bill 1829 becomes effective on September 1, 1987, and contains numerous requirements and procedures for the prevention and control of communicable diseases in Texas. One such procedure involves the reporting by laboratories of cases of tuberculosis to the Department of Health. New §§97.1-97.11 contain provisions on the reporting of tuberculosis which presently are in §109.24. Therefore the department repeals §109.24 on an emergency basis, effective September 1, 1987, to coincide with the emergency adoption of new §§97.1-97.11.

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, §5, which provide the board with the authority to adopt rules on an emergency basis; the Communicable Disease Prevention and Control Act, Texas Civil Statutes, Article 4419b-1, §2.02, which provides the Texas Board of Health to adopt rules to implement the Act; and House Bill 1829, 70th Legislature, 1987, covering the prevention and control of communicable diseases.

§109.24. Reporting of Mycobacterium Tuberculosis from Laboratory Examination

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Chapter 141. Massage Therapists

★25 TAC §141.5, §141.16

The Texas Department of Health adopts on an emergency basis an amendment to §141.5, and new §141.16, concerning registration requirements, and crimes or offenses involving prostitution or sexual offenses. The amendment adds subsection (c) to §141.5, which covers a grandfather period that begins on the effective date of the new subsection and expires on January 1, 1988. A person who possesses qualifications that would have entitled the person to register under the Massage Therapy Act, Texas Civil Statutes, Article 4512k, §15, but who failed to apply for registration before January 1, 1986, shall be registered if the person complies with the requirements of subsection (c) prior to January 1, 1988. New §141.16 provides that a person who has been convicted of, entered a plea of nolo contendere, or received deferred adjudiction to crimes or offenses involving prostitution or sexual offenses is ineligible for registration as a massage therapist. The person, however, has an opportunity for a due process hearing prior to any denial or revocation of registration.

The amendment and new section are adopted on an emergency basis to conform with House Bill 2466, 70th Legislature, 1987, which becomes effective September 1, 1987. House Bill 2466 reopens the grandfather clause of the Massage Therapy Act until January 1, 1988, and contains requirements concerning crimes involving prostitution or sexual offenses. Because the bill requires the department to adopt sections implementing House Bill 2466, the department is adopting the amendment and new section effective September 1, 1988

The amendment and new section are adopted under Texas Civil Statutes, Article 4512k, §7, which provide the board of health with the authority to adopt rules concerning the regulation and registration of massage therapists; Texas Civil Statutes, Article 6252-13a, §5, which provide the board of health with the authority to adopt rules on an emergency basis; and House Bill 2466, 70th Legislature, 1987, which contains requirements concerning massage therapists

§141.5. Registration Requirements.

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

(c) Grandfather period. The grandfather period begins on the effective date of these sections and expires January 1, 1988. A person who possesses qualifications that would have entitled the person to register under the Act, §15, but who failed to apply for registration before January 1, 1986, shall be registered if the person:

(1) complies with §141.6 of this title (relating to Application Procedures);

(2) states the reason(s) the applicant failed to register by January 1, 1986;

(3) furnishes the department with one of the following:

(A) a certified copy of his/her birth certificate; or

(B) a certified copy of her marriage certificate; or

(C) a certificate of his/her naturalization;

(4) pays a late fee of $120 in addition to the registration fee required in §141.4 of this title (relating to Fees); and

(5) has met the following requirements as of September 1, 1985:

(A) The applicant was engaged in the professional practice of massage therapy as defined in §141.2 of this title (relating to Definitions) for not less than 36 hours per month for a total of two years (two years being defined as September 1, 1983-September 1, 1985);

(B) The applicant must provide proof of such practice with or without compensation by submitting to the department the following:

***(i)* properly completed official forms as required in §141.6 of this title (relating to Application Procedures); and**

(ii) an affidavit certifying to the 36 hours per month;

(C) The applicant must submit two or more of the following to the department:

***(i)* employer affidavits on department prepared forms;**

(ii) client affidavits on department prepared forms. The affidavit shall include the client's address, phone number, and copies of receipt(s) for massage therapy services rendered. This information shall be used for no other purpose than to verify the two-year experience requirement;

(iii) W-2 forms or any other Internal Revenue Service forms issued to the applicant which reflect receipt of payment for massage therapy services;

(iv) affidavit of referral for massage therapy from a licensed health professional; or

(v) any other information which supports the experience verification;

(D) as an alternative to being engaged in the professional practice of massage therapy as described in Subparagraphs (A)-(C) of this paragraph, the applicant may:

***(i)* have a bona-fide diploma from a school of massage therapy approved by a governmental body authorized by law, statutes, or other legally recognized provision, or by the American Massage Therapy Association (diploma must have been issued prior to September 1, 1985); or**

(ii) have been an active member of the American Massage Therapy Association on September 1, 1985. Applicant must submit letter from the American Massage Therapy Association indicating they were a member at that time or be able to furnish the department with a copy of the current year membership card for the year 1985/1986;

(E) no documentation of the practice of massage therapy may be from a business in which any of the floor space is devoted to the offering of materials or services which are characterized by an emphasis on sexual activities. Such businesses include, but are not limited to, nude modeling or nude photographic studios, adult arcades, adult bookstores, adult theatres, adult novelty shops, escort services, and topless bars; and

(6) has previously submitted portions of an application, including the application fee. Such person will only be required to submit the late fee along with new application forms provided by the department.

§141.16. Crimes Or Offenses Involving Prostitution Or Sexual Offenses.

(a) Notwithstanding any other provisions in these sections, an individual who has been convicted of, entered a plea of nolo contendere to, or received deferred adjudication to crimes or offenses involving prostitution or sexual offenses is ineligible for registration as a massage therapist.

(b) Prior to denying or revoking a registration on the grounds in subsection (a) of this section, the department will offer the individual an opportunity for formal hearing in accordance with §§1.21—1.32 of this title (relating to Formal Hearing Procedures).

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Chapter 145. Long Term Care

The Texas Department of Health adopts on an emergency basis amendments to §§145.34, 145.35, 145.55, 145.56, 145.181-145.183, 145.216, 145.217, 145.231, and 145.234-145.244, concerning minimum licensing standards for custodial care homes, for maternity homes, for personal care homes, for facilities serving the mentally retarded citizens of Texas, and the architectural manual for facilities serving the mentally retarded.

The amendments provide that the homes and facilities must comply with the 1985

edition of the Code for Safety to Life from Fire in Buildings and Structures, known as the Life Safety Code, Standard 101, published by the National Fire Protection Association, Quincy, Massachusetts 02269

The amendments are adopted on an emergency basis to comply with House Bill 37, 70th Legislature, 1987, which becomes effective on September 1, 1987 House Bill 37 requires homes and facilities covered by Texas Civil Statutes, Article 4442c, to begin complying with the 1985 Edition of the Life Safety Code. Since the department must adopt rules to implement the legislative requirements in the bill, the department adopts the sections on an emergency basis, to become effective on September 1, 1987

Subchapter C. Minimum Licensing Standards for Custodial Care Homes

★25 TAC §145.34, §145.35

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 4442c, §7 and §18, which require the board of health to adopt rules concerning the investigation of employees and prospective employees of nursing homes and custodial care homes to determine if the individuals have criminal conviction records; and Article 6252-13a, §5, which authorize the board to adopt rules on an emergency basis.

§145.34. Planning, Construction, Procedures, and Approvals.

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

(f) The total facility, including fire protection, shall be approved by the Texas state fire marshal or his local representative having jurisdiction for fire safety [and for compliance with the fire safety recommendations for convalescent and nursing homes].

(g) (No change.)

§145.35. Physical Plant.

(a) Types of construction programs and application of these standards.

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

(3) An existing building licensed as a nursing home or custodial care home and for which the licensee proposes that the building be licensed or relicensed as a custodial care home shall be made to comply with the following requirements, and a reasonable time schedule shall be allowed for completing the construction.

(A) (No change.)

(B) Fire resistance, flame spread, and related fire characteristics shall be provided in substantial compliance with those requirements for new buildings. Equal methods of obtaining the necessary fire resistance, flame spread, and related fire characteristics shall be as allowed in the referenced Life Safety Code [and the referenced *Planning and Construction Manual*].

(C) Exit provisions shall be substantially as required for new buildings. Alternate methods may be used for attaining equal compliance as allowed in the referenced Life Safety Code [and the referenced *Planning and Construction Manual*].

(D) (No change.)

(4)-(5) (No change.)

(b) Codes, guides, and manuals.

(1) Every custodial care home shall conform to the requirements of the Code for Safety to Life from Fire in Buildings and Structures, known as the Life Safety Code, Standard 101, of the National Fire Protection Association, Quincy, Massachusetts 02269, as called for and detailed under Texas Civil Statutes, Article 4442c, §4A. The Life Safety Code shall be the authority for fire safety and shall take precedence over any provision or wording within these minimum licensing standards for custodial care homes or within the referenced *Planning and Construction Manual* that may be in conflict.

(2)[(1)] The following codes, guides, and manuals shall generally govern the design and all construction.

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

[(C) the Life Safety Code, 1966, Number 101, as published by the National Fire Protection Association, 470 Atlantic Avenue, Boston, Massachusetts, 02210;]

(C)[(D)] American Standards Safety Code for Elevators, Dumb Waiters, and Escalators, as published by the National Fire Protection Association, 70 East 45th Street, New York, New York 10017;

(D)[(E)] National Plumbing Code, as published by the American Standards Association, 70 East **45th** [45] Street, New York, New York 10017;

(E)[(F)] Heating, Ventilating, and Air Conditioning Guide, 1967 Edition, American Society of Heating, Refrigerating and Air Conditioning Engineers, 345 East 47th Street, New York, New York 10017;

(F)[(G)] IES Lighting Handbook, 1962, as published by Illuminating Engineering Society, 345 East 47th Street, New York, New York 10017;

(G)[(H)] The *Planning and Construction Manual*, 1967, as published by the Quality Planning Standards Division, Bureau of Long Term Care, of the Texas Department of Health, which manual modifies some of the requirements of some of the preceding codes and guides.

(3)[(2)] The facility shall conform to all state laws and local codes and ordinances. When such laws, codes, and ordinances are more stringent than these standards or than any of the codes, guides, and manuals referenced in paragraph (2) of this subsection, the more stringent requirement shall govern. Should state laws and local codes and ordinances be in conflict with the requirements of these standards or with any of the previously referenced codes, guides, and manual, the licensing agency shall be so informed so that these conflicts may be legally resolved.

(c) Safety of residents.

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

(3) Fire resistance, flame spread, and related fire characteristics shall be in accordance with the requirements of the referenced Life Safety Code. [and the referenced *Planning and Construction Manual*. For general guidance without reference to the Life Safety Code and the *Planning and Construction Manual* the following construction types are required.]

[(A) One—story construction shall have the basic structure of not less than one-hour fire resistive combustible construction.

[(B) Two—story construction shall have the basic structure of not less than one-hour fire resistive noncombustible construction or one-hour fire resistive combustible construction having an approved sprinkler system.

[(C) Three—story and higher construction shall have the basic structure of not less than two-hour fire resistive noncombustible construction.

[(D) An approved sprinkler system shall be considered as equal to one-hour fire resistive combustible or noncombustible construction.]

(4) Exit provisions, including corridors, stairways, and other exitways, handrails, doors, locks, resident control, and other applicable items shall be in accordance with the requirements of the referenced Life Safety Code and **those parts of** the referenced *Planning and Construction Manual* **that are not in conflict with the Life Safety Code**.

(5) Special safety features or requirements include the following.

(A) Sprinkler system, fire or smoke detection systems, and fire extinguishers shall be as required under the referenced Life Safety Code and as modified in the referenced *Planning and Construction Manual* **where not in conflict with the Life Safety Code**.

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

[(6) Unless the facility has an automatic sprinkler system throughout or is of noncombustible construction, blind or physically handicapped persons shall not be housed above the street floor level.]

(6)[(7)] Reports of periodic inspections of the facility by the fire control authority having jurisdiction in the area shall be on file in the facility. Any gas fuel installations and systems in the building shall be tested as required by law; in the case of natural or manufactured gas, the system shall be checked by an approved pressure test at the start of each heating season, and a record of such check shall be on file in the facility.

(7)[(8)] The building shall be maintained in good repair and kept free of hazards such as those created by any damaged or defective parts of the building.

(8)[(9)] No occupancies or activities undesirable to the health and safety of

residents shall be located in the building or buildings of the facility.

(9)[(10)] There shall be at least one telephone in the facility available to resident use and for use in making calls to summon help in case of emergency. The telephone number of the fire department shall be posted conspicuously in the vicinity of the telephone.

(10) Control of smoking shall be as required by the Life Safety Code.

[(11) Nonmentally alert residents who smoke should have or be provided with outside clothing that is flame proof or that will not support combustion or is self extinguishing. Nonmentally alert residents who smoke without the protection mentioned previously shall be supervised by a non-resident or a mentally alert resident during any smoking period].

(d)-(j) (No change.)

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Subchapter D. Minimum Licensing Standards for Maternity Homes

★25 TAC §145.55, §145.56

These amendments are adopted on an emergency basis under Texas Civil Statutes, Article 4442c, §7 and §18, which require the board of health to adopt rules concerning the investigation of employees and prospective employees of nursing homes and custodial care homes to determine if the individuals have criminal conviction records; and Article 6252-13a, §5, which provide the board with the authority to adopt rules on an emergency basis.

§145.55. Types of Construction Programs and Application of these Standards.

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

(f) Codes and guides.

(1) The design and construction shall conform to the requirements of the Code for Safety to Life from Fire in Buildings and Structures, 1985 Edition, known as the Life Safety Code, Standard 101, of the National Fire Protection Association, Quincy, Massachusetts 02269, as called for under Texas Civil Statutes, Article 4442c, §4A. The Life Safety Code shall be the authority for fire safety and shall take precedence over any provision or wording within these licensing standards that may be in conflict.

(A) The usual and basic occupancy classification is Chapter 21, residential board and care occupancies. This chapter applies to new and existing maternity homes.

(B) If a maternity home provides post partum care directly rather than by agreement with a hospital or by other appropriate arrangement, additional physical plant requirements or installations may be necessary, as determined by the licensing agency.

(2) The following codes and guides shall generally govern the design and all construction:

(A)[(1)] the National Building Code, 1955, with amendments of December, 1957, and January, 1963, as published by the National Board of Fire Underwriters, 85 St. Johns Street, New York, New York 10038;

(B)[(2)]the National Electrical Code, 1962 edition, as published by the National Fire Protection Association, 60 Batterymarch Street, Boston, Massachusetts 02110;

[(3) the Life Safety Code, 1967, Number 101, as published by the National Fire Protection Association, 60 Batterymarch Street, Boston, Massachusetts, 02110;]

(C)[(4)] American Standards Safety Code for Elevators, Dumb Waiters, and Escalators, as published by the United States of America Standards Institute, 10 East 40th Street, New York, New York 10016.

(D)[(5)] National Plumbing Code, as published by the United States of America Standards Institute, 10 East 40th Street, New York 10016;

(E)[(6)] Heating, Ventilating, and Air Conditioning Guide, 1967 Edition, American Society of Heating, Refrigerating and Air Conditioning Engineers, United Engineers Center, 345 East 47th Street, New York, New York 10017;

(F)[(7)] IES Lighting Handbook, 1962, as published by Illuminating Engineering Society, 345 East 47th Street, New York, New York 10017;

(g) (No change.)

§145.56. Safety of Clients.

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

[(c) Fire resistance, flame spread, and related fire characteristics shall be in accordance with the requirements of the referenced Life Safety Code, except the following minimum construction types are required.

[(1) One-story construction shall have the basic structure and exitways of not less than one-hour resistive combustible construction, except foster homes shall be not less than noncombustible protected combustible construction.

[(2) Two-story construction shall have the basic structure, vertical shafts, and exitways of not less than one-hour fire resistive noncombustible construction or one-hour resistive combustible construction having an approved sprinkler system, except foster homes shall be not less than noncombustible protected combustible construction.

[(3) Three-story and higher construction shall have the basic structure and vertical shafts of not less than two-hour fire resistive noncombustible construction. Exitways shall be not less than one-hour fire resistive noncombustible construction.

[(4) An approved sprinkler system shall be considered as equal to one-hour fire resistive combustible or noncombustible construction.

[(5) Noncombustible treated lumber shall be considered equal to non-combustible structural elements.]

(c)[(d)] Exit provisions, including corridors, stairways, and other exitways, handrails, doors, locks, client control, and other applicable items shall be in accordance with the requirements of the referenced Life Safety Code in reference to the type of facility: e.g. single family, dormitory, or nursing care (in areas where post partum care is given).

(d)[(e)] Special safety features or requirements include the following.

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

[(f) Unless the facility has an automatic sprinkler throughout or is of noncombustible construction, blind or physically handicapped persons shall not be housed above the street floor level.]

(e)[(g)] The building shall be maintained in good repair and kept free of hazards such as those created by any damaged or defective parts of the building.

(f)[(h)] No occupancies or activities undesirable to the health and safety of clients shall be located in the buildings or buildings of the facility.

(g)[(i)] Illumination, either natural or artificial, shall be provided to supply the needs of the residents without eye strain or glare. Nonglare lighting fixtures and window glare-reduction devices shall be provided. General building surfaces shall be nonglare. Wall, floor, and ceiling surfaces shall generally provide reflectance factors that are compatible with good lighting practice. Generally, current recommendations of the Illuminating Engineering Society shall be followed to achieve proper illumination characteristics and light levels throughout the building.

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Subchapter E. Procedures on Long Term Care Facilities

★25 TAC §145.94

The Texas Department of Health adopts on an emergency basis the repeal of §145 94, and new §145 94, concerning the investigation of facility employees. The new section replaces the repealed section in order to provide that the Texas Department of Human Services, on behalf of the Texas Department of Health, will investigate prospective employees or existing employees of a nursing home or custodial care home to determine if that person has a criminal conviction record. The new section covers the criteria and procedure which the Texas Department of Human Services will follow in conducting the investigation.

The repeal and new section are adopted on an emergency basis to comply with Senate Bill 200, 70th Legislature, 1987, which becomes effective on September 1, 1987, and which requires the Texas Department of Human Services, on behalf of the Texas Department of Health, to conduct the previously mentioned investigation. Since the Texas Department of Health is required by Texas Civil Statutes, Article 4442c, to adopt rules covering the investigation requirements, the department adopts the rules on an emergency basis, effective September 1, 1987.

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 4442c, §7 and §18, which require the board of health to adopt rules concerning the investigation of employees and prospective employees of nursing homes and custodial care homes to determine if the individuals have criminal conviction records; and Article 6252-13a, §5, which authorize the board to adopt rules on an emergency basis.

§145.94. Investigation of Facility Employees.

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The new section is adopted on an emergency basis under Texas Civil Statutes, Article 4442c, §7 and §18, which require the board of health to adopt rules concerning the investigation of employees and prospective employees of nursing homes and custodial care homes to determine if the individuals have criminal conviction records; and Article 6252-13a, §5, which provide the board with the authority to adopt rules on an emergency basis.

§145.94. Investigation of Facility Employees.

(a) On behalf of the Texas Department of Health, the Texas Department of Human Services will administer a program of investigating prospective employees or current employees of a licensed nursing home or custodial care home or employees of a nursing home or custodial care home applying for a license, to determine if such persons have criminal conviction records. This program of investigation is called for under Texas Civil Statutes, Article 4442c, §18. The Texas Department of Human Services is entitled to obtain criminal conviction records maintained by the Texas Department of Public Safety and/or the Federal Bureau of Investigation.

(b) Except as provided by subsection (c) of this section, before a nursing home or custodial care home makes an offer of employment to a person applying for employment at the facility, the facility shall provide to the Texas Department of Human Services the name and relevant information relating to the person as required by the Texas Department of Human Services. Texas Civil Statutes, Article 4442c, §18, states that immediately after receiving the information from the facility, the Texas Department of Human Services shall request that the Department of Public Safety conduct a criminal conviction check on the person. If the nursing home or custodial care home is part of a larger complex of buildings, the requirement of a criminal conviction check applies to an offer of employment made to a person who will work primarily in the immediate boundaries of the nursing home or custodial care home. The requirement of a criminal conviction check does not apply to an offer of employment made to a nursing home administrator, a nurse, or other person licensed under other law. At the request of a facility, the Texas Department of Human Services, on behalf of the Texas Department of Health, shall investigate any person employed at a nursing home or custodial care home, including an administrator, nurse, or other person licensed under other law.

(c) A nursing home or custodial care home may make an offer of temporary employment to a person applying for employment at the facility pending the results of the criminal conviction check on the person. The facility shall provide to the Texas Department of Human Services the name and relevant information relating to the person not later than the 72nd hour after the hour on which the person accepts temporary employment. The facility may not hire a person on a permanent basis until the facility receives the results of the criminal conviction check.

(d) Immediately after receiving the results of the criminal conviction check, the Texas Department of Human Services shall notify the facility of the results and provide a copy of the results to the Texas Department of Health. As specified in Texas Civil Statutes, Article 4442c, §18, the Texas Department of Public Safety may not provide to the Texas Department of Human Services, the Texas Department of Health, or the facility, the criminal conviction records of a person being investigated, unless the criminal records relate to:

(1) any felony or misdemeanor classified as an offense against the person or the family;

(2) any felony or misdemeanor classified as public indecency;

(3) a felony violation of any statute intended to control the possession or distribution of a substance included in the Texas Controlled Substances Act (Texas Civil Statutes, Article 4476-15); or

(4) any felony violation of the Penal Code, §31.03.

(e) The Texas Department of Human Services may require the facility to submit a complete set of fingerprints, social security number, or the complete name of the person being investigated.

(f) A nursing home or custodial care home shall inform each applicant for employment that the facility is required to conduct a criminal conviction check before it may make an offer of employment to a person and that the facility may request a criminal conviction check on that person.

(g) Except as provided by subsection (h) of this section, if the results of a criminal conviction check reveal that an applicant for employment at a nursing home or custodial care home has been convicted of an offense listed in subsection (d) of this section, the facility may not hire the person. Except as provided by subsection (h) of this section, if the results of a criminal conviction check reveal that an employee or a person hired on a temporary basis under subsection (c) of this section has been convicted of an offense listed in subsection (d) of this section, the facility shall immediately terminate the person's employment.

(h) A nursing home or custodial care home may employ or continue employing a person convicted of an offense under the Texas Controlled Substances Act (Texas Civil Statutes, Article 4476-15), other than an offense under the Texas Controlled Substances Act, §4.052 or §4.053, Texas Civil Statutes, Article 4476-15, or an offense listed in that Act, §4.012(b), if the person produces evidence that the person has successfully completed a drug rehabilitation program.

(i) As provided under Texas Civil Statutes, Article 4442c, §18, all criminal records received by the Texas Department of Human Services are privileged information and are for the exclusive use of the Texas Department of Human Services, the Texas Department of Health, and the facility for which the Texas Department of Human Ser-

vices requested the information. Except on court order or with the written consent of the person being investigated, the records may not be released or otherwise disclosed to any other person or agency.

(j) As provided under Texas Civil Statutes, Article 4442c, §18, a person commits an offense if the person releases or discloses any information received under this section without the authorization prescribed by subsection (i) of this section. An offense under this subsection is a felony of the second degree.

(k) Texas Civil Statutes, Article 4442c, §18, provides that a nursing home or custodial care home or any of its officers or employees shall not be held liable civilly for failure to comply with this section if the institution makes a good faith effort to comply.

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Subchapter L. Minimum Licensing Standards for Personal Care Homes

★25 TAC §§145.181-145.183

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 4442c, §7 and §18, which require the board of health to adopt rules concerning the investigation of employees and prospective employees of nursing homes and custodial care homes to determine if the individuals have criminal conviction records; and Article 6252-13a, §5, which provide the board with the authority to adopt rules on an emergency basis.

§145.181. General.

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

(e) Types of personal care homes.

(1) Type A.

(A) (No change.)

(B) Residents are ambulatory, self-help, capable of following directions and taking appropriate action for self-preservation under emergency conditions. **One exception is that** [Exception:] under certain conditions, a Type A-**small** [Class I] facility may care for mobile nonambulatory residents. See subsection (f)(6) of this section.

(C)-(F) (No change.)

(2) (No change.)

(f) General requirements.

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

(6) The physical plant requirements of the Type A personal care home are written on the premise that residents are ambulatory. A Type A—**small** [Class I] personal care home **of not over eight beds** may have mobile nonambulatory residents but may be subject to additional physical plant requirements as determined by the licensing agency **in accordance with the Life Safety Code evacuation capability appropriate to the facility** [utilizing the fire safety evaluation system for facilities for the mentally retarded as recognized by the United States Department of Health and Human Services]. A mobile nonambulatory resident may nt be housed above or below the ground level.

(7)-(18) (No change.)

(g) (No change.)

§145.182. Personal Care Homes—Type A.

(a) Building construction.

(1) Classification of facilities.

[(A) A Type A-Class I facility is a building consisting of one or more floors or one or more units providing sleeping accommodations for eight or fewer residents exclusive of live-in houseparents, family, or staff.]

(A)[(B)] A Type A-**small** [Class II] facility is a building consisting of one or more floors or one or more units providing sleeping accommodations for **not more than 16** [nine to 15] persons exclusive of live-in staff.

(B)[(C)] A Type A-**large** [Class III] facility is a building consisting of one or more floors or one or more uits providing sleeping accommodations for **more than** 16 persons [or more] exclusive of live-in staff.

(2) Applicability of requirements of construction and life safety.

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

(C) For existing facilities (i.e., facilities with residents at time of initial inspection) the licensing agency **in accordance with the Life Safety Code, Chapter 1,** may modify those requirements, which, if strictly applied, would clearly be impractical in the judgment of the licensing agency. Any such modifications will be allowed only to the extent that reasonable life safety against the hazards of fire, explosion, structural or other building failure and panic are provided and maintained.

(D) For existing buildings and structures which are converted to personal care home occupancy, the licensing agency, **in accordance with the Life Safety Code, Chapter 1,** may modify those requirements, which, if strictly applied, would clearly be impractical in the judgment of the licensing agency. Any such modifications will be allowed only to the extent that reasonable life safety against the hazards of fire, explosion, structural or other building failure and panic are provided and maintained. If the facility is to be converted, or is in the process of conversion, no residents will be admitted until all standards are met and approval for occupancy is granted by the licensing agency. A licensed nursing home, licensed custodial care home, or licensed hospital may be considered as a personal care home occupancy for the purpose of this paragraph.

(3) Requirements of construction and life safety.

(A) Buildings and structures shall conform to the **requirements of the Code for Safety to Life from Fire in Buildings and Structures, 1985 Edition, known as the** Life Safety Code, Standard 101, [1981 Edition, Number 101, as published by] **of** the National Fire Protection Association [Inc.], **Quincy Massachusetts 02269** [Batterymarch Park, Quincy, Massachusetts 02269], as [follows] **called for under Texas Civil Statutes, Article 4442c, §4A.**

(i) **Chapter 21, Residential Board and Care Occupancies, shall apply, including Chapter 16, New Hotels and Dormitories and Chapter 18, New Apartment Buildings** [Type A-Class I & II: Chapter 20, Lodging or Rooming Houses.]

[(ii) Type A-Class III: Chapter 16, Section 16-6, New Dormitories.]

(ii)[(iii)] Other chapters, sections, subsections, or paragraphs of the Life Safety Code, such as Chapters 1-7, and Chapter 31, shall apply as referenced or intended for their relation to **Chapter 21** [§16-6 and Chapter 20].

[(iv) Minimum construction for existing facilities (i.e., facilities with residents at time of initial inspection) shall conform to the construction requirements of this minimum standard paragraph (3)(F) and (G) of this subsection and need not comply with §16-6 and Chapter 20 for one hour rated walls or 20-minute doors.]

(iii)[(v)] Where the building arrangement and operation of the personal care home resembles an apartment building more than a dormitory building or rooming house, Chapter 18, New Apartment Buildings, shall be used for conformance.

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

(F) Interior wall and ceiling surfaces shall have as the finished surface or as substrate or sheathing a fire resistance of not less than that provided by 3/8" gypsum board, unless approved otherwise by the licensing agency. Flame spread rate requirements specified in the Life Safety Code shall be satisfied. [Exception: existing small one story buildings housing Type A—Class I residents will not be required to have a time rated structure. Walls and ceilings shall be sheathed with at least 3/16" thick plywood (flame spread of 200 or less) or equivalent.]

(G) Doors between resident rooms and corridors or public spaces shall be not less than 3/4" [1 3/8"] thick solid core wood construction and latch in their frames. [Exception: In existing facilities housing Type A-Class I residents, bedroom doors can be 1-3/8" hollow core with tight fit and latching hardware. Exception: Bedroom doors for both new and existing facilities need not comply with the Life Safety Code requirement for automatic closure.]

[(H) Vertical openings between

floors, such as stairs, shall be protected by separation equal to at least a 20 minute (1/3 hour) fire resistance rating and shall be smoke tight. Doors shall be at least 1-3/4" solid core wood.]

(H)[(I)] Upper floors shall have at least two separate approved stairs. Each stair shall be arranged and located so that it is not necessary to go through another room (such as bedroom or bath) to reach the stair. All stairs shall be provided with handrails and with normal lighting. Refer to Life Safety Code, **Chapter 5.** [§5-2.2 and §5-2.5.] **One exception is that** [Exception] for existing **Type A-small facilities,** [15 beds or less:] at least one main stair shall be Class B. Secondary exterior stairs may be fire escape stairs in accordance with Life Safety Code, **Chapter 5.** [§5-2.9 and §5-2.9.4 for existing stairs] Such stairs may be constructed of wood.

(I)[(J)] Electrical and mechanical systems shall be safe and in working order. The licensing agency may require the facility sponsor or licensee to submit evidence to this effect, consisting of a report of the fire marshal or city/county building official having jurisdiction or a report of a registered professional engineer.

(J)[(K)] The facility shall conform to all applicable state laws and local codes and ordinances. When such laws, codes, and ordinances are more stringent than these standards for personal care homes, the more stringent requirements shall govern. Should state laws or local codes or ordinances be in conflict with the requirements of these standards, the licensing agency shall be informed so that these conflicts may be legally resolved.

(K)[(L)] Should any provisions of these licensing standards be in conflict with the Life Safety Code, the more stringent requirements shall govern, except as may be clearly stated or implied otherwise.

(4)-(5) (No change.)

(b) Personal safety and comfort.

(1) Fire alarm and smoke detection system. A manual alarm initiating system shall be provided in accordance with the Life Safety Code, **Chapter 7,** [§7-6] and be supplemented by an automatic smoke detection and alarm initiation system in accordance with the Life Safety Code, **Chapter 7** [§7-6]. Smoke detectors shall be installed in resident bedrooms, corridors, hallways, public areas, and service areas. The primary power source for the complete fire alarm system must be commercial electric. Emergency power source shall be from storage batteries or on-site engine-driven generator set. The manual operation of any alarm initiating device will sound an alarm(s) at the site and **provide emergency forces notification if required by the Life Safety Code.** [the Life Safety Code, §7-6.3.4, is not applicable.] The facility shall have a written contract with the fire alarm company or person licensed by the State of Texas to maintain the fire alarm system semi-annually. [Exception: Independent self-contained smoke detectors located in bedrooms, hallways, and living/dining areas may be installed in small one-story buildings with Type A-Class I residents. Detectors must be heard throughout the building with the doors closed. Units at bedroom halls shall be integral wired with house current. Smoke detectors shall be inspected monthly and maintained by facility personnel.]

(2) Portable fire extinguishers.

(A) Dry chemical. At least one portable UL or FM-approved five-pound Class B:C dry chemical fire extinguisher, rechargeable type,is required in each laundry, kitchen, and walk-in mechanical room. A.B.C. type extinguishers shall not be used in kitchens. **Two exceptions are as follows.**

(i) [Exception:] UL or FM-approved equivalent Class B five-pound carbon dioxide extinguisher in an existing facility (i.e., facility with residents) prior to the initial inspection of the licensing agency is acceptable.

(ii) [Exception:] In small buildings, housing Type A-**Small** [Class I] residents, A.B.C. type extinguishers will be acceptable.

(B) Water type. Portable UL or FM-approved 2 1/2 gallon stored pressure water-type fire extinguishers (Class A) must be provided in public areas serving resident bedrooms. One such unit shall be located within 50 feet of any resident bedroom door. Acidic base (A.B.C.) and dry chemical types are not acceptable. **An exception to this section would be small facilities housing Type A-small residents** [Exception: Not required in small facilities housing Type A-Class I residents].

(C)-(E) (No change.)

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

(5) Other requirements of safety and comfort.

(A) The physical plant shall be designed for handicapped use and must comply with applicable federal, state, and local requirements. **An** exception: **would be that** a Type A- **small** [Class I or Class II] facility is exempt unless the facility houses handicapped residents.

(B)-(I) (No change.)

[(J) In the event of failure of normal lighting, all individual buildings housing 30 or more residents shall be provided with emergency lighting in corridors, exit access ways, and stairwells, in accordance with the Life Safety Code, §5-9.

[(K) For individual buildings housing 30 or more residents, exit signs shall be provided in accordance with the Life Safety Code, §5-10.]

(J)[(L)] All exterior site conditions shall be designed, constructed, and maintained in the interest of resident safety. Newly constructed ramps shall not exceed 1:12 slope. Ramps, walks, and steps shall be of slip-resistive texture and be smooth and uniform, without irregularities. Guard rails, fences, and hand rails shall be provided where needed. Grounds, grass, shrubbery, trees, and other site features shall be maintained in a neat and attractive manner in the interest of health and safety.

(K)[(M)] All stairways shall have substantial hand rails.

(L)[(N)] Tubs and showers shall have non-slip bottoms or floor surfaces, either built-in or applied to the surface.

(M)[(O)] All lavatories and bathing units shall be supplied with hot water in quantities to meet the needs of the residents.

(N)[(P)] Cooling and heating shall be provided for occupant comfort. Conditioning systems shall be capable of maintaining the comfort ranges of heating and cooling.

(O)[(Q)] The facility shall be well ventilated through the use of windows, mechanical ventilation, or a combination of both.

(P)[(R)] Illumination, either natural or artificial, shall be provided to supply the needs of the residents and staff without eye strain or glare.

(Q)[(S)] Passenger elevator shall be provided in the facility for resident bedroom and use areas which are on the third floor or higher, the street floor being considered the first floor. Applicable codes (building and Life Safety) shall be observed in the design and construction of elevators.

(R)[(T)] It is desirable that finish materials, colors, decorations, and furnishings contribute to physical and emotional comfort. Furniture shall be substantial and stable and of design commensurate with its function and use. Loose rugs creating a hazard shall be avoided. Building features, furnishings, and furniture shall be provided and maintained free of hazardous conditions and in the interest of continuing resident benefit.

(S)[(U)] There shall be no occupancies or activities undesirable to the health and safety of the residents in the buildings or on the premises of the facility.

(c) (No change.)

(d) Accommodations

(1) (No change.)

(2) Resident toilet and bathing facilities

(A) All bedrooms shall be served by separate private, connecting, or general toilet rooms for each sex (if facility houses both sexes.) General toilet room or bathing room shall be accessible from corridor or public space. A lavatory shall be readily accessible to each water closet. At least one water closet, lavatory, and bathing unit shall be provided on each sleeping floor accessible to residents of that floor. **An** exception **would be that in** Type A- **small facilities of not over eight beds** [Class I facilities] toilet rooms for each sex are not required

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

(3) Recreation, living, and day room.

(A) Recreation, living, and day room space and furniture shall be provided

to allow seating of not less than 50% of the residents at one time. Each facility shall have at least one space not less than 144 square feet regardless of number of residents. The required total space may include more than one room or area; second and subsequent spaces shall be not less than 100 square feet each. **An** exception **would be** in small facilities, housing Type A-**small**[Class I] residents, these spaces shall be of sufficient size to seat all occupants simultaneously.

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

(4) (No change.)

(e) Care and services.

(1) Personnel.

(A) Eligibility for licensure.

(i) An applicant for license to operate a personal care home shall have graduated from or hold a certificate of equivalency of graduation from an accredited high school. **An** exception **would be that** for Type A-**small** [Class I] facilities, the graduation or certificate is not required; however, the applicant must be able to read, write, and comprehend.

(ii)-(iv) (No change.)

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

(2)-(7) (No change.)

(8) Dietary service.

(A) A dining room or rooms with appropriate furnishings shall be provided. Ideally, the dining space and furnishings should allow the residents to dine at one sitting. Where alternate or second meal services are employed, those services must be equal in quantity, quality, and sanitation to the first serving. **An** exception **would be in** small facilities, housing Type A-**small**[Class I] residents, **which** must have ample space to provide seating for all occupants simultaneously.

(B)-(I) (No change.)

(9) (No change.)

§145.183. Personal Care Homes—Type B.

(a) Building construction.

(1) Applicability of requirements of construction and life safety. Same as that for personal care homes—Type A.

(2) Requirements of construction and life safety.

(A) Buildings and structures shall conform to the **requirements of the Code for Safety to Life from Fire in Buildings and Structures, 1985 Edition, known as the** Life Safety Code, **Standard** [1981 Edition, Number] 101, **of** [as published by] the National Fire Protection Association, [Inc., Batterymarch Park,] Quincy, Massachusetts 02269, as [follows.] **called for under Texas Civil Statutes, Article 4442c, §4A.**

***(i)* Chapter 21, Residential Board and Care Occupancies, shall apply.**

(ii)[(i)] Personal care facilities of Type B which are in operation on the date of initial inspection by the licensing agency **and are required under Chapter 21 to meet the requirements for custodial care facilities,** shall conform at least to Chapter 13, Existing Health Care Occupancies. The requirements therein for [residential-] custodial care facilities may be used

(iii)[(ii)] New personal care facilities of Type B **that are required under Chapter 21 to meet the requirements for custodial care facilities** shall conform to Chapter 12, New Health Care Occupancies. The requirements therein for [residential-] custodial care facilities may be used.

(iv)[(iii)] Buildings converted to Type B from licensed health care occupancies **and that are required under Chapter 21 to meet the requirements for custodial care facilities** shall conform to Chapter 13 or appendix C, as determined by the licensing agency.

(v)[(iv)] Buildings converted to Type B from occupancies other than health care **and that are required under Chapter 21 to meet the requirements for custodial care facilities** shall conform to Chapter 12, except as may be waived or allowed otherwise by the licensing agency.

(vi)[(v)] Other chapters, sections, subsections, or paragraphs of the Life Safety Code, such as Chapters 1-7 and Chapter 31 shall apply as referenced or intended for their relation to Chapters 12 and 13.

(B)-(I) (No change.)

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

(b) Personal safety and comfort. All requirements in this subsection are the same as for personal care homes—Type A except with the additions or modifications as follows.

(1) Fire alarm/smoke detection system. The fire alarm **and** [/] smoke detection system **shall be the same as for personal care homes—Type A, except that where a personal care home of Type B is required under the Life Safety Code, Chapter 21,** [must comply with but need not exceed §12-3.4 and §13-3.4] of the Life Safety Code **to meet the requirements for a custodial care facility, the fire alarm and smoke detection system shall be increased as required under the Life Safety Code, Chapter 12 or 13, whichever is applicable,** [except that the alarm need sound only at the site and §12-3.4.4 and §13-3.4.4 of the Life Safety Code need not be applicable].

(2)-(9) (No change.)

(c)-(e) (No change.)

Issued in Austin, Texas, on August 21, 1987

TRD-8707068 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

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Subchapter N. Minimum Licensing Standards for Facilities Serving the Mentally Retarded Citizens of Texas

★25 TAC §145.216, §145.217

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 4442c, §7 and §18, which require the board of health to adopt rules concerning the investigation of employees and prospective employees of nursing homes and custodial care homes to determine if the individuals have criminal conviction records; and Article 6252-13a, §5, which provides the board with the authority to adopt rules on an emergency basis.

§145.216. Physical Environment.

(a) (No change.)

(b) Physical plant.

(1) (No change.)

(2) For convenience, some of the requirements stated in the architectural manual are herewith re-stated in abbreviated form.

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

(C) The facility shall meet the requirements of the Life Safety Code, **1985** [1976] Edition, (NFPA 101), and other codes or standards as referenced in the manual. **If provisions within §§145.211-145.218 of this title (relating to Minimum Licensing Standards for Facilities Serving the Mentally Retarded Citizens of Texas) conflict with the applicable provisions of the Life Safety Code, the Life Safety Code shall take precedence.**

(D)-(O) (No change)

(P) The facility shall develop and conspicuously post an emergency evacuation floor plan approved by the local fire marshal having jurisdiction and the licensing agency. [For Type A,] A written disaster plan (procedure) shall be developed and approved by the local fire marshal and the licensing agency. This plan shall be readily available to staff.

(Q)-(Y) (No change.)

[(Z) The licensing agency may waive specific provisions of the Life Safety Code, with renewals annually for as long as it considers appropriate if:

[(i) the waiver would not adversely affect the health and safety of the residents;

[(ii) rigid application of specific provisions would result in unreasonable hardship for the facility as determined by such factors as costs (relative to life of building), disruption to staff and residents, etc.; and

[(iii) the waiver is granted in accordance with criteria contained on the Life Safety Code waiver form which may include alternate equivalent safeguard features.]

(c) Safety operations.

(1) (No change.)

(2) Evacuation drills

(A) The facility must hold fire evacuation drills **as required by the Life Safety Code** [at least every three months] for each shift of personnel [(12 per year)] and under varied times and conditions to:

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

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

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

§145.217. Special Provisions for Facilities with 15 Beds or Less (Type B.)

(a) All **provisions in this section** [standards in this document] apply to facilities with 15 beds or less[.] , **known as Type B. Type B facilities shall meet the Life Safety Code, Chapter 21, Residential Board and Care Occupancies.**

(b) Exceptions in the areas of programs, services, and environment are contained in the following section for Type B occupancy [which utilizes a building meeting the Life Safety Code, §11-5, Lodging or Rooming Houses.]

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

[(3) Facilities that have satisfied subsection (a)(1)(A) and (B) of this section may apply the exceptions of this subpart for Type B (15 beds of less) and may utilize a residential type building which meets the Life Safety Code, §11-5, Lodging or Rooming Houses.]

(c)[(b)] Architectural and fire safety.

(1) (No change.)

(2) For convenience, some of the requirements stated in the architectural manual are herewith re-stated in abbreviated form.

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

[(C) Each bedroom shall have an outside window readiliy openable from the inside which provides a clear opening of not less than 20 inches in width, 24 inches in height, and 5.7 square feet in area. The bottom of the opening shall be not more than 44 inches above the floor. (Exception: unless the room has a door directly to the outside at ground level.)]

(C)[(D)] Buildings of two or more stories require at least two separate approved exit stairs from the upper floors. Usable space under the stairs is not allowed. Open interior stairways which constitute an unprotected vertical opening to a required exit passageway on the upper floor must be provided with a barrier (wall and door) at either the lower or upper level to prevent the rapid rise of fire or smoke originating on the lower level from rendering the upstairs passageway to the second stair impassable.

(D)[(E)] An approved fire alarm system shall be installed as described in the architectural manual. As a minimum, this includes a manual system with interconnected smoke detectors. The alarm system shall be installed by an agent registered by the state fire marshal's office and meet the requirements of NFPA 72A. The system shall be tested monthly by the staff and semi-annually by an agent registered with the state fire marshal's office.

(E)[(F)] Interior wall and ceiling surfaces shall have, as the finished surface or a substrate or sheathing, a fire resistance of not less than that provided by 3/8 inch gypsum board, unless approved otherwise by the licensing agency. [(Facilities which were ICF-MR certified prior to the date of these standards may continue to have existing wall and ceiling construction.)]

[(G) Doors to resident bedrooms shall be not less than 1 3/8 inch thick solid core wood construction and latch in their frames. Louvers and transoms are not permitted. Exceptions are as follows.

[(i) Facilities which were ICF-MR certified prior to the date of these standards may continue to have existing doors.

[(ii) Buildings having a complete approved sprinkler system may have hollow core wood doors.

[(iii) Special approval by the licensing agency.]

(F)[(H)] The facility shall be serviced by a paid or volunteer fire fighting unit as approved by the licensing agency.

(G)[(I)] Portable fire extinguishers shall be provided as required by NFPA 10 and in the architectural manual.

(H)[(J)] Hot water temperature for resident use may exceed 110°F.

(d)[(c)] Programs and services.

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

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Subchapter O. Architectural Manual for Facilities Serving the Mentally Retarded

★25 TAC §§145.231, 145.234-145.244

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 4442c, §7 and §18, which provide the board of health with the authority to adopt rules concerning the investigation of employees and prospective employees of nursing homes and custodial care homes to determine if the individuals have criminal conviction records; and Article 6252-13a, §5, which provide the board with the authority to adopt rules on an emergency basis.

§145.231. Introduction and Application.

(a) This manual is written for, and shall apply to, new construction, conversions, additions, and remodelings. The requirements of the Life Safety Code, **1985** [1976] edition, (Standard Number 101) of the National Fire Protection Association (NFPA), (hereafter referred to as the Life Safety Code or the Code) and other applicable NFPA standards referenced therein shall apply. **If provisions within §§145.231-145.244 (relating to Architectural Manual for Facilities Serving the Mentally Retarded) conflict with applicable provisions of the Life Safety Code, the Life Safety Code shall take precedence.**

(b) The Classification of occupancy type (the Code, Chapter 4) will be determined by the licensing agency for each building or building part.

(1) Type A facilities. The usual classification of Type A facilities is **Chapter 12 New Health Care Occupancies,** [health care occupancies, Chapter 10] **or Chapter 13, Existing Health Care Occupancies. Type A facilities in licensed operation on September 1, 1987, shall meet Chapter 13.**

(2) Type B facilities. Chapter **21** [11], Residential **Board and Care** Occupancies, [, §11-5, Lodging or Rooming Houses, may be used for facilities of 15 beds or less where residents meet criteria for Type B exceptions stated in the minimum licensing standards for facilities serving the mentally retarded citizens of Texas, Subchapter N, §§145.211-145.218 of this title (relating to Minimum Licensing Standards for Facilities Serving the Mentally Retarded Citizens of Texas).] **applies to both new and existing facilities.**

[(c) Facilities which were certified under the Medicaid Title XIX Program as intermediate care facilities for the mentally retarded or persons with related conditions (ICF-MR) prior to the publication date of these standards and have a current certification, may continue to meet the year edition of the Life Safety Code and other code and architectural requirements under which they were certified unless otherwise noted in these standards.]

(c)[(d)] Conversions of buildings [Type A)] not licensed as nursing homes or ICF-MR certified, will be required to meet these standards and Life Safety Code requirements for new construction except as otherwise may be determined by the licensing agency.

(d)[(e)] Additions or remodelings, where construction or demolition is involved, may require conformance **to the Life Safety Code based on new construction** [with the 1976 Code] (in part or whole) as determined by the licensing agency.

(e)[(f)] Routine maintenance, repairs, equipment replacement, upkeep, painting, trim, etc., are not considered as remodeling.

(f)[(g)] All other applicable local, state, or national codes and ordinances shall be met as determined by the authority having jurisdiction for those codes and ordinances and by the licensing agency.

(g)[(h)] Conditions or construction not specifically covered in this manual shall be subject to requirements in the referenced

codes and in the minimum licensing standards for facilities serving the mentally [illegible] Subchapter [illegible] of this title (relating to Minimum Licensing Standards for Facilities Serving the Mentally Retarded Citizens of Texas)

(h)[(i)] For **application of the Code and** equivalency concepts (such as variances or waivers) see Life Safety Code **§1-4 and §1-5** [§1-4.2 and §1-4.4]

(i)[(j)] For occupancy requirements, see the Code, **§1-5** [§1.5]

(j)[(k)] Information and questions pertaining to architectural or code requirements should be directed to the licensing agency which is the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 (architectural section—MR program).

(k)[(l)] Copies of the Life Safety Code (NFPA Standard 101) **1985** [1976] Edition, may be purchased from[:] **the** National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269, Attention: Publication Sales Division [(price approximately $7.00 as of April 1981)].

§145.234. Structural Safety and General Building Requirements.

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

[(d) Types A and B—vertical openings. Vertical openings (stairs, elevator shafts, plumbing shafts, etc.) shall be in accordance with NFPA applicable standards for protection of vertical openings between floors.]

§145.235. Flame Spread and Related Characteristics.

(a) (No change.)

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

(1) Flame spread. Rate of fire travel along the surface of a material. (This is different than other requirements for time-rated burn through resistance ratings, such as one-hour rated). Flame spread ratings are Class A (0-25), Class B (26-75), Class C (76-200). See the Code, **§6-5** [§6-2].

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

(c) Types A and B—interior finishes. Interior finishes shall be as described in the Life Safety Code, **(§6-5)** [§6-2] which basically covers wall and ceiling finishes for flame spread.

(d) (No change.)

(e) Soft floor coverings.

(1) Type A **and B** [only]—sanitation requirements.

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

(2) Type A **and B** [only]—physical hazards.

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

(3) (No change.)

§145.236. Exit Provisions.

(a) (No change.)

(b) Basic requirements for exit provisions. **Basic requirements for** exit provisions [for Type A facilities] shall be as described in the Life Safety Code. [under Chapter 10 for health care occupancies (Section 11-5, Lodging or Rooming Houses, may be used for Type B facilities of 15 beds or less.)]

(c) Special requirements for exit provisions.

(1)-(6) (No change.)

(7) Doors in means of egress.

(A) (No change.)

(B) Types A and B. A latch or other fastening device on an exit door shall be provided with a knob, handle, panic bar, or similar releasing device, the method of operation being obvious in the dark, without use of a key, and operable by a one-action well known operation that will easily operate with normal pressure applied to the door or to the device toward the exterior. Locking hardware which prevents unauthorized entry from the outside (only) is permissible. [(A waiver for locking devices which inhibit exiting from the inside may be considered in some cases (Type A primarily).)]

(C) Type A **and B** [only]. To aid in control of wandering residents, buzzers or other sounding devices may be used to announce the unauthorized use of an exit door. Other methods include emergency exit door locks or enclosed fences at exit door which enclose a space outside sufficiently large to allow the space to be an exterior area of egress and refuge.

(D)-(H) (No change.)

(d) (No change.)

(e) Areas outside of exterior exit doors.

(1) (No change.)

(2) Type A **and B** [only].Emergency egress lighting immediately outside of exit doors is required as a part of the building emergency lighting system, **if the facility is required to have an emergency lighting system.** (Photo-cell devices to turn lights off during daylight hours may be used.)

§145.237. Architectural Space Planning—Type A Facilities.

(a) (No change.)

(b) Resident bedrooms.

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

(5) Each bedroom shall have at least one operable window giving outside exposure. Unless approved otherwise by the licensing agency, the window sill of the required window shall be no higher than 36 inches from the floor and shall be at or above outside grade level. Other window requirements shall be as called for in the Life Safety Code, **§2-3.8.1** [§10-2.3.7.].

(6) (No change.)

(c)-(g) (No change.)

§145.238. Architectural Space Planning (Type B Facilities of 15 Beds or Less).

(a) Residential building types. Detached single-family type dwellings embody most of the qualities and requirements expected for this category. However, other existing building types such as duplexes and certain small apartment or dormitory type buildings can sometimes be utilized. Due to the innumerable variations possible in floor plan arrangement, construction, type of building [illegible] existing facility must be evaluated independently. Distinct parts of another building are not allowed. Applicable codes include the NFPA 101, Life Safety Code, **1985, Chapter 21.** [(1976), Chapter 11], Residential **Board and Care** Occupancies, [§11-5, Lodging or Rooming Houses,] and applicable local codes and ordinances.

(b) Space requirements.

(1) Bedrooms. **Same requirements as §145.237(b)(1)-(4) of this title (relating to Architectural Space Planning—Type A Facilities).**

[(A) Same requirements as §145.237(b)(1)-(4) of this title (relating to Architectural Space Planning—Type A Facilities).

[(B) Unless there is a door in the bedroom leading directly outside to grade level of an outside stair, every bedroom shall have at least one outside window readily openable from the inside and providing a clear opening of at least 5.7 square feet (minimum width of 20 inches; minimum height of 24 inches). The bottom of the opening shall be not more than 44 inches above the floor.]

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

§145.239. Additional Requirements for Type B Facilities.

(a) General explanation. The following requirements for Type B facilities of 15 beds or less are in addition to,or more restrictive than,the requirements listed in the Life Safety Code, [lodging or rooming houses,] **§21** [§11-5)].

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

[(d) Bedroom doors. Doors to resident bedrooms shall be not less than 1 3/8 inch thick solid core wood construction and latch in their frames. Louvers and transoms are not permitted. Exceptions are as follows.

[(1) Facilities which were ICF-MR certified prior to the date of these standards may continue to have existing doors.

[(2) Buildings having a complete approved sprinkler system may have hollow core wood doors.

[(3) Special approval by the licensing agency.]

(d)[(e)] Interior wall and ceiling surfaces.

(1) (No change.)

(2) Existing buildings. New locations shall have, as the finished surface (or as a substrate or sheathing) a fire resistance of not less than that provided by 3/8 inch gypsum board, unless otherwise approved by the licensing agency.

[(A) Exception one—Facilities which were ICF-MR certified prior to the date of this publication and which have a current certification may continue to have existing wall and ceiling finishes.

[(B) Exception two—Facilities with complete approved sprinkler systems.]

(e)[(f)] Emergency lighting. Emergency lighting shall be provided for interior stairs. This may be an inexpensive self-contained battery type unit as approved by the licensing agency. (All facilities—new and existing.)

(f)[(g)] Fire alarm systems. See §145.240 of this title (relating to Fire Alarm Systems—Types A and B), for requirements in addition to the basic alarm system required by the Code for Residential **Board and Care Occupancies** [Occupancy]

§145.240. Fire Alarm Systems - Types A and B.

(a) (No change.)

(b) Every building shall have a manually operated fire alarm system in accordance with the Life Safety Code, **§7.6-1** [§6-3], and such system shall be electrically supervised. Location of manual pull stations shall be as required by the Code and as directed or approved by the licensing agency.

(c)-(e) (No change.)

(f) Internal audible alarm devices shall be provided and installed in accordance with the Life Safety Code, **§7.6-1** [§6-3] and as directed and approved by the licensing agency. Audible alarm devices nearest the central telephone communication stations shall be located or installed so as not to interfere with emergency telephone communications.

(g) **For Type A and new Type B** [only] flashing visual alarms shall be provided in all corridors and public areas as directed or approved by the licensing agency.

(h) In new construction or new locations, an approved automatic smoke detection system shall be installed in all corridors and ways of egress in accordance with Life Safety Code, **§7.6-1** [§6-3] and other applicable NFPA standards. Such smoke detectors shall be spaced no further apart than 30 feet on centers nor more than 15 feet from any wall. All such smoke detection systems shall be electronically interconnected to the fire alarm system. [Exception: Corridor smoke detection systems will not be required on resident sleeping room floors if each resident sleeping room is protected by such an approved detection system and local detectors are provided at the smoke partition openings, horizontal exits, and open ways of egress which are continuations of corridors, such as lobbies and dayrooms.]

(i)-(j) (No change.)

(k) Unless otherwise approved by the licensing agency for special conditions, the activation of any device of a fire alarm system shall cause the following to occur:

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

(3) permit all smoke doors which are held open by approved devices to close [(not applicable to Type B)];

(4) close smoke dampers [(not applicable to Type B)];

(5) shut off air handling fans in air conditioning or heating units [(Type A only)].

(l)-(p) (No change.)

§145.241 Exits for Type B Facilities.

(a) Exits shall be in accordance with the Life Safety Code **Chapter 21** [§11-5 (lodging or rooming houses). A fire and smoke barrier between floors (stairs, etc.) shall be provided generally as called for in Life Safety Code, §6-1, protection of vertical openings, and as approved by the licensing agency].

(b) (No change.)

[(c) Bedroom windows can be used for the second means of escape. The clear opening size of at least one such window in each bedroom shall be as required in §145.238(b)(1)(B) of this title (relating to Architectural Space Planning (Type B Facilities of 15 Beds or Less)) and the Code, §11-6.2 2.1.]

§145.242. Denial of Initial License—Types A and B. When the facility has notified the licensing agency (architectural section) that it has completed all work on the building, a date will be set for the Life Safety Code surveyor to make an initial inspection for licensure. If, during the initial on-site inspection for licensure, the surveyor finds certain basic requirements not met, he may recommend to the licensing officer that the facility not yet be licensed. Such basic items may include the following.

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

(4) Required exits [(including bedroom windows in Type B facilities)] are not all usable according to Code requirements.

(5)-(9) (No change.)

§145.243. Evacuation Drills—Types A and B.

(a) The facility shall hold fire drills [at least every three months] for each shift [(12 per year)] as called for in §145.216 of this title (relating to Physical Environment), of the minimum licensing standards for facilities serving the mentally retarded citizens of Texas and in the Life Safety Code, **Chapter 31**, [Chapter 17, §17-1.4] fire exit drills, (general requirements).

(1) Type A facilities shall hold drills as described in **the Life Safety** Code, **Chapter 31, §31-4** [§17-4].

(2) Type B facilities shall hold drills as described in **the Life Safety** Code, **Chapter 31, §31-7,** [§17-4, as applicable (e.g. §17-4.1.2 for rolling hospital bed castors would not be applicable)].

(b) (No change.)

§145.244. Miscellaneous.

(a) (No change.)

(b) Types A and B — Smoking regulations. Smoking regulations, policies, and implementation shall be established as required. [In Type A facilities,] Smoking regulations shall be posted throughout the building. This pertains to written descriptive regulations. No smoking signs (which do not suffice for the regulations) shall be posted where required.

(c)-(h) (No change.)

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter V. Bingo Regulation and Tax

★34 TAC §3.544

The Comptroller of Public Accounts is renewing the effectiveness of the emergency adoption of amended §3.544 for a 60-day period effective August 19, 1987. The text of amended §3.544 was originally published in the May 8, 1987, issue of the *Texas Register* (12 TexReg 1486).

Issued in Austin, Texas, on August 19, 1987.

TRD-8706958 Wade Anderson
Rules Coordinator
Comptroller of Public Accounts

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Expiration date: October 18, 1987
For further information, please call (512) 463-4004.

★34 TAC §3.545

The Comptroller of Public Accounts is renewing the effectiveness of the emergency adoption of amended §3.545 for a 60-day period effective August 19, 1987. The text of amended §3.545 was originally published in the May 8, 1987, issue of the *Texas Register* (12 TexReg 1487).

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Rules Coordinator
Comptroller of Public Accounts

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★34 TAC §3.548

The Comptroller of Public Accounts is renewing the effectiveness of the

emergency adoption of amended §3.548 for a 60-day period effective August 19, 1987 The text of amended §3.548 was originally published in the May 8, 1987, issue of the *Texas Register* (12 TexReg 1487).

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Comptroller of Public Accounts

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★34 TAC §3.548

The Comptroller of Public Accounts adopts on an emergency basis an amendment to the second emergency amendment of the original emergency amendment published in the May 18, 1987, issue of the *Texas Register* (12 TexReg 1487), concerning general restrictions on the conduct of bingo. The amendment, in subsection (d), prohibits advertising of prize amounts; in subsection (i), deletes references to allowable drawings; repeals subsection (j); and renumbers other subsections.

The amendment is adopted on an emergency basis to implement the provisions of House Bill 1043, 70th Legislature, 1987, which becomes effective September 1, 1987, and to avoid conflict with §3.562, concerning unauthorized prizes, which was adopted on an emergency basis August 19, 1987.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179d, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.

§3.548. General Restrictions on the Conduct of Bingo.

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

(d) Advertising. All advertisements for bingo games, whether in newspapers, fliers, pamphlets, brochures, or other circulars, **bill boards, signs, or recordings,** must clearly identify the name of the licensed **authorized organization** [bingo operator], its bingo license number, and the days and times of the occasions it will operate **Only a licensed authorized organization may advertise or promote bingo. No licensed authorized organization may include in any advertisement or promotion the amount of a prize or prizes offered at a bingo occasion. A reference to the prize limits allowed by the Bingo Enabling Act, so long as no specific amount is also mentioned, is allowed.**

(e)-(f) (No change.)

(g) Frequency of [multiple] bingo occasions. No more than two organizations may be licensed to conduct bingo at the same location, as that term is defined in §3.544 of this title (relating to Definitions), on the same day. If two organizations are licensed to conduct bingo at the same location on the same day, there must be a minimum 30-minute break or intermission between each organization's occasion. The operator or caller must announce prior to the start of the occasion the name of the organization that will be conducting bingo for that session. If two or more licensed organizations are conducting bingo at the same location, a person may not at any time be required to purchase cards for more than one bingo session. If bingo is conducted at a location between the hours of 6 p.m. and midnight on a calendar day, then bingo may not be conducted at that same location between the hours of 12:01 a.m. and 6 a.m. on the next succeeding calendar day. The restrictions in the immediately preceding sentence apply to initial or renewal applications, to applications for amendments relating to changes in times of bingo occasions submitted on or after May 18, 1987, and to bingo games conducted at a location as defined in §3.544 of this title (relating to Definitions), even though the initial application for a commercial lessor's license for that location was issued prior to May 4, 1987.

(h) (No change.)

(i) Other games prohibited. No unlawful games of chance of any kind other than bingo, whether any separate or additional charge is required or not, may be conducted or allowed on the premises, as that term is defined in §3.544 of this title (relating to Definitions), during any occasion when bingo is played. [A raffle or lottery is an example of an unlawful game of chance. A drawing where no payment of any kind is necessary to be eligible to win is not an unlawful game of chance. Bingo proceeds may not be used to purchase any prize given at a drawing.]

[(j) Gifts prohibited. No licensee or holder of a temporary authorization may offer, distribute, or give any service, thing of value, or opportunity to play bingo without charge, unless all players are offered or given the service, thing of value, or opportunity to play without charge. Bingo proceeds may not be used to purchase any such service or thing of value.]

(j)[(k)] Workers as players. No licensee or holder of a temporary authorization may permit any person who is conducting or assisting in the conduct of bingo to participate as a player when the person is conducting or assisting in the conduct of bingo.

(k)[(l)] No licensed organization may reserve, or allow to be reserved, any bingo card or cards for use by a particular individual.

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Comptroller of Public Accounts

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★34 TAC §3.562

The Comptroller of Public Accounts adopts on an emergency basis new §3.562, concerning unauthorized prizes. The new section prohibits the offering or awarding of any prize at any time by any person in connection with a bingo occasion except for prizes for winning individual bingo games.

The new section is adopted on an emergency basis so that organizations conducting bingo may know exactly how to comply with prohibition of additional prizes in House Bill 1043, 70th Legislature, 1987, which becomes effective September 1, 1987.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 179d, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.

§3.562. Unauthorized Prizes.

(a) Construction. The prohibition contained in this section shall be broadly construed in order to carry out the legislative purpose expressed in House Bill 1043, 70th Legislature, 1987, of prohibiting all door prizes or other prizes in addition to those given for winning individual bingo games.

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

(1) Person—An individual, partnership, corporation, or other group, however organized, whether or not licensed or required to be licensed under the Bingo Enabling Act.

(2) Present at a bingo occasion and participating in a bingo occasion—Includes, but is not limited to, being present at or participating in any activity at the bingo location, including the parking facilities, if any, while any person is present at the location partly or primarily to participate in the bingo occasion, whether before an organization's licensed time, during an organization's licensed time, between licensed times, or after an organization's licensed time.

(3) Prize—Money or anything of value offered or awarded to one or more persons present or offered or awarded at a different time or place.

(c) Extra prizes prohibited. No authorized organization, lessor, or other person, may offer or award any prize to any person

or persons present at a bingo occasion or participating in a bingo occasion other than or in addition to the prizes awarded for winning the individual bingo games. This prohibition extends to the offering or awarding of a prize or prizes, other than prizes for winning bingo games authorized under the Bingo Enabling Act, that are associated in any manner, either directly or indirectly, with the conduct, promotion, or administration of bingo in this state and to any activity in connection with the offering or awarding of such prizes, such as the handing out of tickets, the drawing of a name or names, or the awarding of a prize.

(d) Conflict. In the event of conflict between this section and §3.548 of this title (relating to General Restrictions on the Conduct of Bingo), this section prevails.

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Comptroller of Public Accounts

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Proposed Rules

Before an agency may permanently adopt a new or amended rule, or repeal an existing rule, a proposal detailing the action must be published in the *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 rule. Also, in the case of substantive rules, 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 rule is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a rule

TITLE 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 74. Credit Services Organizations

★1 TAC §§74.1, 74.21-74.23

(Editor's note: The Office of the Secretary of State proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is published in the Emergency Rules section of this issue.)

The Office of the Secretary of State proposes new §§74.1 and 74.21-74.23, concerning credit services organizations. The Credit Services Act, effective September 1, 1987, requires that all credit services organizations file a registration statement with the secretary of state before conducting business in this state.

Linda Stout, director, Statutory Documents, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. The cost of compliance with the sections for small businesses will be a $100 registration fee; and a $10,000 surety bond or surety account. The cost of compliance will be the same for small businesses and large businesses. It is not a variable cost.

Ms. Stout 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 provision to the public of specific guidelines by which credit services organizations can register with the secretary of state. The anticipated economic cost to individuals who are required to comply with the sections as proposed will be $100 per registration, totaling $25,000 in 1988; and $1,000 each year from 1989-1992.

Comments may be submitted to Linda Stout, Director, Statutory Documents, P.O. Box 12887, Austin, Texas 78711-2887.

The new sections are proposed under Texas Civil Statutes, Article 6252-13a, §4; and Chapter 764, 70th Legislature, 1987, effective September 1, 1987, which provide the Office of the Secretary of State with the authority to adopt rules and regulations governing registrations as required by law

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 14, 1987

TRD-8707023 Lorna Wassdorf
Special Assistant
Statutory Filings Division
Office of the Secretary of State

Earliest possible date of adoption September 28, 1987
For further information, please call (512) 463-5701

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Chapter 76. Use of a Deceased Individual's Name, Voice, Signature, Photograph, or Likeness

Registration of Claim, Registration of Claim Form

★1 TAC §76.1, §76.11

(Editor's note: The Office of the Secretary of State proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is published in the Emergency Rules section of this issue.)

The Office of the Secretary of State proposes new §76.1 and §76.11, concerning the form and procedure for registering a claim for the use of a deceased individual's name, voice, signature, photograph, or likeness. The passage of House Bill 834, 70th Legislature, adding Chapter 26 to the Property Code, effective September 1, 1987, provides for the filing of a claim form with the secretary of state.

Linda Stout, director, Statutory Documents, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections

Ms. Stout 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 provision of specific guidelines by which an individual may file a claim in accordance with the Property Code, §26.006, with the secretary of state. The anticipated economic cost to individuals who are required to comply with the sections as proposed will be $25 per registration, totaling $500 in 1987, $31,250 in 1988, and $12,500 each year from 1989-1991

Comments may be submitted to Linda Stout, Director, Statutory Documents, P.O. Box 12887, Austin, Texas 78711-2887.

The new sections are proposed under Texas Civil Statutes, Article 6252-13a, §4; and Chapter 152, 70th Legislature, 1987, effective September 1, 1987, which provide the Office of the Secretary of State with the authority to adopt rules and regulations governing registrations as required by law.

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 20, 1987.

TRD-8707026 Lorna Wassdorf
Special Assistant
Statutory Filings Division
Office of the Secretary of State

Earliest possible date of adoption September 28, 1987
For further information, please call (512) 463-5701

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TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Labor and Standards

Chapter 69. Manufactured Housing Division

General Requirements

★16 TAC §§69.118, 69.129-69.132, 69.135

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

The Texas Department of Labor and Standards proposes new §§69.118, 69.129-69.132, and 69.135, concerning definitions; repossession sales reports; delivery of warranty; correction requirements; procedures for handling consumer complaints; and manufactured housing auctions. The new sections comply with House Bill 855, 70th Legislature, 1987, which amended Texas Civil Statutes, Article 5221f. Section 69.135 regulates auctions of manufactured housing which have not previously been covered by the chapter.

Harry Christensen, assistant director, Manufactured Housing Division, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Christensen also has determined that for each year of the first five years the sections are in effect there will be no public benefit anticipated as a result of enforcing the sections. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to John P. Steele, Director, Manufactured Housing Division, E. O. Thompson Building, P.O. Box 12157, Austin, Texas 78711. A hearing to receive comments from the public will be held at 8 a.m., October 19, 1987, in Room 1-100 of the Travis Building, Austin.

The new sections are proposed under Texas Civil Statutes, Article 5221f, which provide the Texas Department of Labor and Standards with the authority to adopt rules and regulations, promulgate administrative orders, and take all action necessary to assure compliance with the intent and purpose of the Texas Manufactured Housing Standards Act.

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

Issued in Austin, Texas, on August 20, 1987

TRD-8706975 Larry E. Kosta
Assistant Commissioner
Texas Department of Labor and Standards

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For further information, please call (512) 463-3127

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★16 TAC §§69.121, 69.123-69.125

(Editor's note: The Texas Department of Labor and Standards proposes for permanent adoption the amendments it adopts on an emergency basis in this issue. The text of the amendments is published in the Emergency Rules section of this issue.)

The Texas Department of Labor and Standards proposes amendments to §§69.121 and 69.123-69.125, concerning installation responsibilities; retailer sales information; security requirements; and registration requirements, respectively. The amendments are made to comply with House Bill 855, 70th Legislature, 1987, which amended Texas Civil Statutes, Article 5221f.

Harry Christensen, assistant director, Manufactured Housing Division, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the proposed sections will be in effect is an estimated increase in revenue of $181,050 in 1988; $184,250 in 1989 and 1990; $187,550 in 1991; and $193,250 in 1992. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

The cost of compliance with the sections for small businesses will be a 20-hour schooling cost of $110 per registrant and, for rebuilders, the rebuilder registration fee of $225 per registrant. Information on the number of employees in the industry is unavailable, and it is not known whether the employer or the employee will fund the school requirement costs.

Mr. Christensen 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 education for industry personnel which cannot be measured in monetary benefits. Public benefits will result from industry personnel instruction as to law, rules, regulations, and public safety. The anticipated economic cost to individuals who are required to comply with the sections as proposed will be the cost of a 20-hour course of instruction for retailers, installers, and salespersons at $110 each, totaling $101,000 in 1988; $104,200 in 1989; $97,200 in 1990; $100,200 in 1991; and $103,800 in 1992.

Comments may be submitted to John P. Steele, Director, Manufactured Housing Division, E.O. Thompson Building, P.O. Box 12157, Austin, Texas 78711. A public hearing will be held at 8 a.m., October 19, 1987, in Room 1-100, of the Travis Building, Austin.

The amendments are proposed under Texas Civil Statutes, Article 5221f, which provide the Texas Department of Labor and Standards with the authority to adopt rules and regulations, promulgate administrative orders, and take all action necessary to assure compliance with the intent and purpose of the Texas Manufactured Housing Standards Act.

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

Issued in Austin, Texas, on August 20, 1987

TRD-8706977 Larry E. Kosta
Assistant Commissioner
Texas Department of Labor and Standards

Earliest possible date of adoption September 28, 1987
For further information, please call (512) 463-3127

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★16 TAC §§69.122, 69.127, 69.128

(Editor's note: The Texas Department of Labor and Standards proposes for permanent adoption the repeals it adopts on an emergency basis in this issue. The text of the repeals is published in the Emergency Rules section of this issue.)

The Texas Labor and Standards proposes the repeal of §§69.122, 69.127, and 69.128, concerning correction requirements; delivery of warranty; and the terms "TMHSA" and "APTRA," respectively. The repeals allow the department to reorganize and renumber the sections in order to enhance their clarity.

Harry Christensen, assistant director, Manufactured Housing Division, has determined that for the first five-year period the proposed 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.

Mr. Christensen also has determined that for each year of the first five years the repeals are in effect there will be no public benefit anticipated as a result of enforcing the repeals. 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 John P. Steele, Director, Manufactured Housing Division, E. O. Thompson Building, PO Box 12157, Austin, Texas

78711. A public hearing will be held at 8 a.m., October 19, 1987, in Room 1-100 of the Travis Building, Austin

The repeals are proposed under Texas Civil Statutes, Article 5221f, which provide the Texas Department of Labor and Standards with the authority to adopt rules and regulations, promulgate administrative orders, and take all action necessary to assure compliance with the intent and purpose of the Texas Manufactured Housing Standards Act

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

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TRD-8706978 Larry E Kosta
Assistant Commissioner
Texas Department of Labor and Standards

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For further information please call (512) 463-3127

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Titling

★16 TAC §§69.201, 69.202, 69.205, 69.207, 69.208

(Editor's note: The Texas Department of Labor and Standards proposes for permanent adoption the amendments it adopts on an emergency basis in this issue. The text of the amendments is published in the Emergency Rules section of this issue.)

The Texas Department of Labor and Standards proposes amendments to §§69.201, 69.202, 69.205, 69.207, and 69 208, concerning definitions; titling; fees for title documents; titling transaction, reinstatement of cancelled certificate of ownership, and recording of tax lien The amendments comply with House Bill 855 70th Legislature, 1987 which amended Texas Civil Statutes Article 5221f and clarify some items within the sections

Harry Christensen, assistant director, Manufactured Housing Division, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect will be an estimated increase in revenue of $230,700 in 1988; $235,205 in 1989; $236,930 in 1990; $241,220 in 1991, and $248,330 in 1992. There will be no fiscal implications for local government or small businesses as a result of enforcing or administering the sections.

Mr. Christensen also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the prohibition of the sale of manufactured homes for residential use that are not habitable. The actual number of homes removed from residential use cannot be valued. The anticipated economic cost to individuals who are required to comply with the sections as proposed will be, for title cancellation, a total of $33,450 in 1988, $34,275 in 1989, $35,115 in 1990, $35,985 in 1991, and $36,870 in 1992; and for salvage title, a total of $16,200 in 1988, $16,680 in 1989, $17,175 in 1990, $17,685 in 1991, and $18,210 in 1992.

Comments on the proposal may be submitted to John P. Steele, Director, Manufactured Housing Division, E.O. Thompson Building, P.O. Box 12157, Austin, Texas, 78711. A public hearing will be held at 8 a.m., October 19, 1987, in Room 1-100 of the Travis Building, Austin.

The amendments are proposed under Texas Civil Statutes, Article 5221f, which provide the Texas Department of Labor and Standards with the authority to adopt rules and regulations, promulgate administrative orders, and take all action necessary to assure compliance with the intent and purpose of the Texas Manufactured Housing Standards Act.

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

Issued in Austin, Texas, on August 20, 1987

TRD-8706976 Larry E Kosta
Assistant Commissioner
Texas Department of Labor and Standards

Earliest possible date of adoption, September 28, 1987
For further information, please call (512) 463-3127

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TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 501. Professional Conduct

Competence

★22 TAC §501.21

The Texas State Board of Public Accountancy proposes an amendment to §501 21, concerning the general competency level required in completion of engagements. The amendment states the prevailing position of the public accounting profession.

Bob E. Bradley, executive director, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Bradley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more concise definition of the level of competence to be met by the certified public accountant. There is no anticipated economic cost to individuals who are required to comply with the proposed section

Comments on the proposal may be submitted to William A. Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to professional competency in the public accounting profession.

§501.21. Competence. **A certificate or registration holder** [licensee] shall not undertake any engagement for the performance of professional services which he cannot reasonably expect to complete with due professional competence, including compliance, where applicable, with **§§501.22-501.24** [§501.22] of this title (relating to Professional Auditing Standards and Accounting Principles[), and §501.23 of this title (relating to]; Other Standards; **and Forecasts, respectively**).

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 17, 1987.

TRD-8706946 Bob E Bradley
Executive Director
Texas State Board of Public Accountancy

Earliest possible date of adoption September 28, 1987
For further information, please call (512) 450-7066

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Professional Auditing Standards and Accounting Principles

★22 TAC §501.22

(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 State Board of Public Accountancy, 1033 La Posada, Suite 340, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas State Board of Public Accountancy proposes the repeal of §501.22, con-

cerning professional auditing standards and accounting principles within the public accounting profession The repeal allows the adoption of a new section reflecting the prevailing position in the public accounting profession.

Bob E. Bradley, executive director, 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 government or small businesses as a result of enforcing or administering the repeal.

Mr. Bradley also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the ability to adopt a new section which provides for a more appropriate definition of professional standards. 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 William A. Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The repeal is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to professional auditing standards and accounting principles.

§501.22. Professional Auditing Standards and Accounting Principles.

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 17, 1987

TRD-8706945 Bob E Bradley
Executive Director
Texas State Board of Public Accountancy

Earliest possible date of adoption September 28, 1987
For further information, please call (512) 450-7066

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Auditing Standards

★22 TAC §501.22

The Texas State Board of Public Accountancy proposes new §501.22, concerning the definition of auditing standards as applicable to the public accounting profession. The new section states the prevailing position of the public accounting profession.

Bob E. Bradley, executive director, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section

Mr Bradley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the proper definition of auditing standards presently utilized in the accounting profession There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to William A. Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to auditing standards to be met within the public accounting profession.

§501.22. Auditing Standards. A certificate or registration holder shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as an independent public accountant with respect to such financial statements, unless he has complied with applicable generally accepted auditing standards. Statements on auditing standards issued by the American Institute of Certified Public Accountants, auditing standards included in Standards for Audit of Government Organizations, Programs, Activities, and Functions, issued by the United States General Accounting Office, and in other pronouncements having similar generally recognized authority, are considered to be interpretations of generally accepted auditing standards, and departures from such pronouncements, where they are applicable, must be justified by those who do not follow them.

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 17, 1987

TRD-8706944 Bob E Bradley
Executive Director
Texas State Board of Public Accountancy

Earliest possible date of adoption September 28, 1987
For further information, please call (512) 450-7066

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Other Standards

★22 TAC §501.23

(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 State Board of Public Accountancy, 1033 La Posada, Suite 340, Austin, or in the Texas Register office, Room 503I, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas State Board of Public Accountancy proposes the repeal of §501.23, concerning other standards required to be met in the public accounting profession The repeal allows the adoption of a new section reflecting the prevailing position in the public accounting profession

Bob E Bradley, executive director, 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 government or small businesses as a result of enforcing or administering the repeal

Mr Bradley also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the ability to adopt a new section which more adequately states the standards to be met within the public accounting profession. 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 William A. Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892

The repeal is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to other standards to be met within the public accounting profession

§501.23. Other 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.

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TRD-8706943 Bob E Bradley
Executive Director
Texas State Board of Public Accountancy

Earliest possible date of adoption September 28, 1987
For further information, please call (512) 450-7066

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Accounting Principles

★22 TAC §501.23

The Texas State Board of Public Accountancy proposes new §501.23, concerning the accounting principles required to be adhered to by members of the public accounting profession. The new section states the prevailing position of the public accounting profession.

Bob E Bradley, executive director, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section

Mr. Bradley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a clear statement of the accounting principles to be adhered to by members of the public accounting profession There is no anticipated economic cost to individuals who are required to comply with the proposed section

Comments on the proposal may be submitted to William A Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to accounting principles to be met by licensees of the board.

§501.23. Accounting Principles. A certificate or registration holder shall not issue a report asserting that financial statements are presented in conformity with generally accepted accounting principles if such financial statements contain any departure from such accounting principles which has a material effect on the financial statements taken as a whole, unless the certificate or registration holder can demonstrate that by reason of unusual circumstances the financial statements would otherwise have been misleading. In such a case, the certificate or registration holder's report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in a misleading statement. For purposes of this section, generally accepted accounting principles are considered to be defined by pronouncements issued by the Financial Accounting Standards Board and its predecessor entities and similar pronouncements issued by other entities having similar generally recognized authority.

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 17, 1987

TRD-8706942 Bob E Bradley
Executive Director
Texas State Board of Public Accountancy

Earliest possible date of adoption
September 28, 1987
For further information, please call (512) 450-7066

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Firm Names

★22 TAC §501.47

The Texas State Board of Public Accountancy proposes an amendment to §501.47, concerning firm names which may be used in the practice of public accountancy. The amendment removes the restriction on the use of trade names.

Bob E Bradley, executive director, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section

Mr Bradley 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 provision of firm name requirements which are more consistent with the present state of the law. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to William A Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to firm names through which public accounting may be practiced

§501.47. Firm Names. **No certificate or registration holder shall engage in the practice of public accountancy using a professional or firm name or designation that is misleading about** [A licensee shall not practice public accountancy under a firm name which is misleading in any way, as to] the legal form of the firm, or **about** [as to] the persons who are partners, officers, or shareholders of the firm, or **about** [as to] any **other** matter **provided, however, that names of one or more former partners or shareholders may be included in the name of a firm or its successor.** [with respect to which public communications are restricted by §501.43 of this title (relating to Advertising). The name or designation any firm may assume or use shall contain the personal name or names of one or more individuals presently or previously members thereof, and the name or designation any individual may assume or use shall contain his name. No trade name or descriptive words indicating character or grade of service offered may be used or included.] If the firm is incorporated, the firm name must include **the words** "corporation," "incorporated," "professional corporation," or "company" or an abbreviation thereof, and the words "professional corporation" or "P.C." must appear in or with the firm name each time it is used. The designation "and company" or "and associates" or abbreviations thereof may be used by **certificate or registration holders** [licensees] as long as there are at least two licensees involved in the practice. A partner surviving the death or withdrawal of all other partners may continue to practice under a partnership name for up to two years after becoming a sole practitioner.

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 17, 1987.

TRD-8706947 Bob E Bradley
Executive Director
Texas State Board of Public Accountancy

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September 28, 1987
For further information, please call (512) 450-7066.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 281. Applications Processing

★31 TAC §281.8, §281.18

The Texas Water Commission (TWC) proposes new §281.8 and an amendment to §281.18, concerning applications processing. Chapter 281 establishes commission policy for the efficient and effective processing of applications for permits, licenses, and other types of approvals under the commission's jurisdiction, as described in the chapter. New §281.8, seeks to implement the legislative amendments to the Texas Water Code, §16.092, as amended by Senate Bill 324, 70th Texas Legislature, 1987, concerning the application of a political subdivision for designation as the cooperating local sponsor of a project that is proposed for planning or development by the Texas Water Development Board, the Corps of Engineers or the Bureau of Reclamation. New §281.8 sets forth the contents of an application for designation as a local sponsor. An application shall include a description of the proposed project, the contemplated use of water to be derived from the project, the reasons for the application, and a description of the resources the applicant is willing to commit to the planning and/or development of the project. The amendment to §281.18 seeks to implement the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(e)(4)(B), as amended by House Bill 814, 70th Texas Legislature, 1987, which added new language to require applicants for solid

waste permit applications to submit information necessary to make an application administratively complete within 270 days of receiving notice from the agency that additional information is needed. Unless there are extenuating circumstances, the application shall be considered withdrawn if an administratively completed application is not submitted as required. In §281 18, new subsection (b) is added to incorporate the statutory provisions of House Bill 814 into the regulations governing the processing of applications Subsection (b) applies to applications involving industrial solid waste and hazardous waste and allows an applicant up to 270 days to respond to a notice of deficiency in an application. Under existing subsection (a), an applicant is allowed 30 days from the date of receipt of a deficiency notice to submit required information before the executive director returns the incomplete application to the applicant

William Monroe, chief fiscal officer, has determined that for the first five-year period the amendment and new section will be in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the sections.

Mr. Monroe also has also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the existence of a commission regulation addressing applications for local sponsor designation and the clarification of the agency's procedures on deficient industrial solid waste and hazardous waste permit applications that are not administratively complete within certain time frames There is no anticipated economic cost to individuals who are required to comply with the proposed sections

Comments may be submitted to Patricia Carls, Attorney, Legal Division, Texas Water Commission, P O. Box 13087. Austin, Texas 78711-3087. Comments will be received for 30 days following the publication date of the sections.

The amendment and new section are proposed under the Texas Water Code, §5 103 and §5.105, which provides the Texas Water Commission with the authority to adopt any regulations necessary to carry out its powers and duties under the Water Code and other laws of this state and to establish and approve all general policy of the commission. The amendment and new section are also proposed under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate regulations consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including requirements relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation The Act, §3(b), also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities

§281 8 Applications for Local Sponsor Designation. An application for designation as the local sponsor of a project under the Texas Water Code, §16.092, shall include:

(1) a detailed description of the proposed project, including the location and purpose(s) of the project;

(2) the reasons for the application;

(3) the contemplated use of water the applicant might derive from the project if a permit for use is subsequently granted by the commission, and

(4) the contributions the applicant is prepared to make to the planning and/or development of the project

§281.18. Applications Returned.

(a) If an application or petition is received which is not administratively complete, the staff shall notify the applicant of the deficiencies prior to expiration of the applicable review period established by §281.3(a) and (b) of this title (relating to Initial Review) by certified mail return receipt requested. If the additional information is received within 30 days of receipt of the deficiency notice, the staff will evaluate the information within eight working days and, where applicable, shall prepare a statement of receipt of the application and declaration of administrative completeness in accordance with §281.17 of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness). If the required information is not forthcoming from the applicant within 30 days of the date of receipt of the deficiency notice, the executive director shall return the incomplete application to the applicant.

(b) For applications involving industrial solid waste or municipal hazardous waste, the executive director may extend the response time to a maximum of 270 days upon sufficient proof from the applicant that an adequate response cannot be submitted within 30 days. Unless there are extenuating circumstances, if an applicant does not submit an administratively complete application as required by this chapter, the application shall be considered withdrawn.

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 20, 1987.

TRD-8707001 J D. Head
Director
Legal Division
Texas Water Commission

Earliest possible date of adoption
September 28, 1987
For further information, please call
(512) 463-8069.

Chapter 295. Water Rights, Procedural

The Texas Water Commission proposes new §§295.85, 295.140, and 295.176; and amendments to §295.132 and §295.133, concerning requirements and fees for applications for local sponsor designation for Texas Water Development Board (TWDB) or federal projects, notice and public hearing on applications for local sponsor designation, and filing, recording, notice, and one-time use fees. Sections 295.85, 295.132, 295.140, and 295.176 pertain to applications by a political subdivision for designation as a cooperating local sponsor of a project proposed for planning or development by the TWDB, the Corps of Engineers of the United States Army, or the Bureau of Reclamation of the United States Department of the Interior. These sections will implement actions by Senate Bill 324, 70th Legislature, 1987, which amended the Texas Water Code, §16.092, by transferring jurisdiction over these applications from the TWDB to the commission. The amendment to §295.133 establishes the application fee rates specified by the 69th Legislature, amending the Texas Water Code, §5.235. Section 295.85 generally describes the application requirements for local sponsor designation and provides that the commission may postpone consideration of the application until after the TWDB determines whether the project is feasible pursuant to the Texas Water Code, §12.051. Section 295.132(c)(5) references local sponsor applications as applications subject to a filing and recording fee. The amendment to §295.133(a) adds paragraph (2), which establishes the fees for impounding state water in exempt and non-exempt impoundments. The amendment implements action by the 69th Legislature, amending the Texas Water Code, §5.235(i), and by the 70th Legislature, 1987, amending the Texas Water Code, x 11.1421. Section 295.140 specifies that the applications for local sponsor designation are subject to filing, recording and notice fees. Section 295.176 sets forth the public hearing procedures for consideration of the application.

William Monroe, chief fiscal officer, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering §§295.85, 295.132, 295.140 and 295.176. These sections only reflect the statutory amendments to the Texas Water Code whereby the agency responsible for reviewing the applications was changed from the TWDB to the commission. By statute, only political subdivisions can apply for designation as a local sponsor. The economic costs to entities or small businesses that are required to comply with §295.133(a)(2) will not change. The amendment merely incorporates into the section the fee schedule enacted by the legislature in 1985.

Mr. Monroe also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the existence of commission regulations addressing applications for local sponsor designation and regulations addressing the application fees for impounding water. There will be no cost to individuals who are required to comply with §§295.85, 295.132, 295.40 and 295.76. The cost to individuals required to comply with §295.133 will not change.

Comments may be submitted to Patricia E. Carls, Staff Attorney, Texas Water Commission, P. O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted for 30 days following publication of these proposed sections in the *Texas Register*.

Subchapter A. Requirements for Water Use Application

★31 TAC §295.85

The new section is proposed under the Water Code, §5.103, which provides the Texas Water Commission with authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§295.85. Application. Any political subdivision may apply to the commission for designation as a cooperating local sponsor of a proposed Texas Water Development Board, United States Army Corps of Engineers, or Bureau of Reclamation of the United States Department of the Interior water development project. More than one cooperating local sponsor may be designated by the commission for each project, but no application shall apply to more than one project. The commission may postpone consideration of the application until after the Texas Water Development Board determines whether the project is feasible, as required by the Texas Water Code, §12.051.

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 20, 1987.

TRD-8707002 J.D. Head
Director
Legal Division
Texas Water Commission

Earliest possible date of adoption: September 28, 1987
For further information, please call (512) 463-8069

Subchapter B. Water Use Permit Fees

★31 TAC §§295.132, 295.133, 295.140

The amendments and new section are proposed under the Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§295.132. Filing, Recording, and Notice Fees.

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

(c) The following are examples of applications or petitions subject to the filing and recording fee:

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

(5) application for local sponsor designation.

§295.133. One-Time Use Fees.

(a) In addition to the filing, recording, and notice fees stated in §295.132 of this title (relating to Filing, Recording, and Notice Fees), the following use fees shall be submitted at the time an application for an appropriation is made:

(1) (No change.)

(2) for the impoundment of state water, except under the Texas Water Code, §11.142 **and §11.1421**, a fee of $.50 per acre-foot of storage; **however, if the applicant seeks to impound water in an on-channel reservoir for in-place recreational purposes, the fee is $1.00 per acre-foot of storage (storage is** based on the total holding capacity of the reservoir at normal maximum operating level);

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

(b) (No change.)

§295.140. Local Sponsor Designation Fees.

(a) Filing and recording fees shall be submitted with each application for local sponsor designation as required by §295.132(a)(1) and (2) of this title (relating to Filing, Recording and Notice Fees).

(b) The cost of any required publication of notice shall be paid by the applicant directly to the newspaper involved.

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

Issued in Austin, Texas, on August 20, 1987.

TRD-8707003 J.D. Head
Director
Legal Division
Texas Water Commission

Earliest possible date of adoption: September 28, 1987
For further information, please call (512) 463-8069

Subchapter D. Public Hearing

★31 TAC §295.176

The new section is proposed under the Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§295.176. Public Hearing on Application for Local Sponsor Designation. After a local sponsor application is filed with the commission, the chief clerk shall issue a notice of public hearing to be published by the applicant or his agent in a newspaper having general circulation in that section of the state where the project is proposed to be located. After notice, the commission shall hold a public hearing to consider applications for local sponsor designations. Any interested party may appear and be heard for or against an applicant being designated as local sponsor of a project. After notice and hearing, the commission shall grant or reject the application and shall state its reasons. The commission may designate co-sponsors for the project, or it may grant one application and deny others.

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 20, 1987.

TRD-8707004 J.D. Head
Director
Legal Division
Texas Water Commission

Earliest possible date of adoption: September 28, 1987
For further information, please call (512) 463-8069

Chapter 297. Water Rights, Substantive

The Texas Water Commission proposes an amendment to §297.1, and new §297.27 and §297.28, concerning definitions, permit exemption for mariculture activities, and permit exemption for drilling and producing petroleum. The amendment to §297.1 adds the definition of mariculture. New §297.27 establishes the water use

permit exemption for mariculture activities and, in lieu of the permit requirement, sets forth annual reporting requirements for mariculture appropriations. New §297.27 also provides for interrupting or reducing mariculture appropriations after notice and hearing when freshwater inflows are low and the appropriations are interfering with the natural productivity of the bays and estuaries. The amendment and new sections conform with House Bill 1912, 70th Legislature, 1987, which amended the Texas Water Code, Chapter 11, be adding new §11 1421, concerning permit exemption for mariculture activities The commission also proposes new §297 28, which sets forth the permit exemption created by the legislature in 1985 (Texas Water Code, §11 142(b)) whereby drillers and producers of petroleum may take up to one acre-foot of water per 24-hour period from the Gulf of Mexico, or from the adjacent bays and arms of the Gulf of Mexico, for the purposes of drilling and producing petroleum In new §297 28, a person using water for such purposes is also exempt from the requirement to file water use reports

William Monroe, chief fiscal officer,has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections

Mr. Monroe also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the exemption from commission permitting requirements for certain uses of water. The anticipated economic cost to individuals who are required to comply with rules as proposed will be reduced because they would only need to file annual water use reports, but would not need to apply for a water use permit. The economic cost to individuals who are required to comply with §297.28 would not change because the proposed section merely incorporates the permit exemption created by the legislature in 1985, which resulted in a savings to affected persons that were realized when the statutory amendment became effective in 1985.

Comments may be submitted to Patricia E. Carls, Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-0387. Comments will be accepted for 30 days following publication of these proposed sections in the *Texas Register*.

Subchapter A. Requirements of Water Use Permit Application

★31 TAC §297.1

The amendment is proposed under the Water Code, §5 103 and §5 105, which provides the commission with the authority to adopt any rule necessary to carry out its powers and duties under the Texas Water Code and other laws of this state and to establish and approve all general policy of the commission

§297.1. Definitions. The following words and terms, when used in this chapter and in Chapter 295 of this title (relating to Water Rights, Procedural), shall have the following meanings, unless the contest clearly indicates otherwise.

Mariculture—The propagation and rearing of aquatic species, including shrimp, other crustaceans, finfish, mollusks, and other similar creatures in a controlled environment using brackish or marine water.

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 20 1987

TRD 8707005 J D Head
Director
Legal Division
Texas Water Commission

Earliest possible date of adoption
September 26 1987
For further information please call
(512) 463 8069

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Subchapter C. Types of Uses

★31 TAC §297.27, §297.28

The new sections are proposed under the Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt regulations necessary to carry out its powers and duties under the code and the laws of the state

§297.27. Permit Exemption for Mariculture Activities.

(a) Without obtaining a permit from the commission, a person engaged in mariculture activities on land may take an appropriate amount of water from the Gulf of Mexico or adjacent bays and arms of the Gulf of Mexico for that purpose if:

(1) prior to the first taking of water, the person gives notice to the commission of the proposed appropriation, including:

(A) the name and address of the person(s);

(B) the location of the project;

(C) the name of the water source;

(D) the maximum annual amount of water to be appropriated; and

(E) the month and year of the first appropriation; and

(2) the person submits annual water use reports as required by §295.202 of this title (relating to Reports).

(b) After notice and hearing, if the commission determines that as a result of low freshwater inflows appropriations under subsection (a) of this section are interfering with natural productivity of bays and estuaries, the commission shall issue an order requiring interruption or reduction of these appropriations.

§297.28. Permit Exemption for Drilling and Producing of Petroleum. Without obtaining a water use permit from the commission, a person engaged in drilling for petroleum, or producing petroleum, may take for those purposes not to exceed one acre-foot of water per 24-hour period from the Gulf of Mexico or from the adjacent bays and arms of the Gulf of Mexico A person using water for such purposes is not required to file water use reports

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 20 1987

TRD 8707006 J D Head
Director
Legal Division
Texas Water Commission

Earliest possible date of adoption
September 28 1987
For further information please call
(512) 463 8069

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 33. Early and Periodic Screening, Diagnosis, and Treatment

The Texas Department of Human Services (DHS) proposes amendments to §§33.112, 33.122, 33.306, 33 317, and 33.402 concerning the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program. The amendments reinstate EPSDT coverage for Medicaid recipients who are 18-20 years old. Recipients in this age group have not been eligible since July 15, 1986. The 70th Legislature appropriated EPSDT funding for fiscal years 1988 and 1989 for reinstatement of services for these recipients.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications for state 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 cost of $739,948 for fiscal year 1988; $888,813 for fiscal year 1989; $930,980 for fiscal year 1990,

$973,511 for fiscal year 1991, and $1,021,846 for fiscal year 1992 There will be no fiscal implications for local government or small businesses as a result of enforcing or administering the sections.

Mr. Packard 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 that the EPSDT program will again be able to provide preventive services to Medicaid eligibles ages 0-20 years old while remaining within appropriated funds There is no anticipated economic cost to individuals who are required to comply with the proposed sections

Comments may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-410, Texas Department of Human Services, 222-E, PO Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*

Subchapter H. Eligibility

★40 TAC §33.112

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

§33.112. Eligibility for Services. All Medicaid recipients under age **21** [18] are eligible for EPSDT services Services can be continued through the month the eligible recipient becomes **21** [18]

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 24 1987

TRD-8707080 Marlin W Johnston
Commissioner
Texas Department of
Human Services

Earliest possible date of adoption
September 28, 1987
For further information, please call
(512) 450-3766.

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Subchapter I. Periodicity

★40 TAC §33.122

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.

§33.122. Periodicity.

(a) (No change.)

(b) Medical screening services are available once at each of the following time periods:

(1)-(10) (No change.)

(11) 16 years through **20** [17] years

(c)-(f) (No change.)

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

Issued in Austin, Texas, on August 24 1987

TRD-8707081 Marlin W Johnston
Commissioner
Texas Department of
Human Services

Earliest possible date of adoption
September 28, 1987
For further information, please call
(512) 450-3766

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Subchapter R. Dental Services

★40 TAC §33.306, §33.317

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

§33.306. Who is Eligible. To be eligible for EPSDT dental services, a person must:

(1) (No change.)

(2) be under age **21** [18]. Services can be continued through the month the recipient becomes **21** [18],

(3) (No change.)

§33.317. Claims—Time Limits, Return, and Denial.

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

(f) Claims are denied for the following reasons.

(1) Recipient is ineligible. The recipient is not eligible for Medicaid or is **21** [18] years old or older at the time of service.

(2)-(7) (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 24, 1987.

TRD-8707082 Marlin W Johnston
Commissioner
Texas Department of
Human Services

Earliest possible date of adoption
September 28, 1987
For further information, please call
(512) 450 3766

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Subchapter I. EPSDT Eyeglass Program

★40 TAC §33.402

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

§33.402. Benefits and Limitations. The benefits and limitations applicable to optometric services available through the Medicaid EPSDT Program are as follows.

(1) Recipient eligibility. All Medicaid recipients under the age of **21** [18] are eligible for EPSDT optometric services. Services may be continued through the month the eligible recipient becomes **21** [18].

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

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

Issued in Austin, Texas, on August 24, 1987

TRD-8707083 Marlin W Johnston
Commissioner
Texas Department of
Human Services

Earliest possible date of adoption
September 28, 1987
For further information, please call
(512) 450 3766

Withdrawn Rules

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

TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Labor and Standards

Chapter 69. Manufactured Housing Division

Titling

★16 TAC §69.202

The Texas Department of Labor and Standards has withdrawn the emergency effectiveness of an amendment to §69.202, concerning titling The text of the emergency amendment appeared in the July 16, 1987, issue of the *Texas Register* (12 TexReg 2326) The effective date of this withdrawal is August 24, 1987

Issued in Austin Texas, on August 24 1987

TRD 8707079 Vernon C Mayfield
General Counsel
Texas Department of Labor and Standards

Filed August 24 1987
For further information please call (512) 463 3127

Adopted Rules

An agency may take final action on a rule 30 days after a proposal has been published in the *Register*. The rule 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 rule 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 rule with changes to the proposed text, the proposal will be republished with the changes

TITLE 22. EXAMINING BOARDS

Part X. State Board of Morticians

Chapter 201. Licensing and Enforcement—Practice and Procedure

★22 TAC §201.4

The State Board of Morticians adopts an amendment to §201.4, without changes to the proposed text published in the July 10, 1987, issue of the *Texas Register* (12 TexReg 2216)

This amendment provides for quicker and more efficient hearings that will allow both parties ample time to prepare their cases

The amendment clarifies that all motions in a contested case must be filed five days in advance

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4582b, §5, which provide the State Board of Morticians with the authority to promulgate rules and regulations

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 14, 1987

TRD-8707099 Larry A. Farrow
Executive Secretary
State Board of Morticians

Effective date. September 14, 1987
Proposal publication date July 10, 1987
For further information, please call (512) 834-9992

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★22 TAC §201.9

The State Board of Morticians adopts an amendment to §201.9, without changes to the proposed text published in the July 10, 1987, issue of the *Texas Register* (12 TexReg 2218)

The name of the agency was changed by new legislation thereby necessitating the amendment

The amendment correctly shows the agency's name change

No comments were received regarding adoption of the amendment

The amendment is adopted under Texas Civil Statutes, Article 4582b, §5, which provide the State Board of Morticians with the authority to promulgate rules and regulations

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 14, 1987

TRD 8707093 Larry A. Farrow
Executive Secretary
State Board of Morticians

Effective date September 14, 1987
Proposal publication date July 10, 1987
For further information please call (512) 834 9992

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★22 TAC §201.10

The State Board of Morticians adopts new §201.10, without changes to the proposed text published in the July 10, 1987, issue of the *Texas Register* (12 TexReg 2218)

The new section improves the presentation of consumer complaints by providing for the availability of witnesses.

The new section sets the rate to reimburse witnesses in formal hearings before the board

No comments were received regarding adoption of the new section

The new section is adopted under Texas Civil Statutes, Article 4582b, §5, which provide the State Board of Morticians with the authority to promulgate rules and regulations

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 14, 1987

TRD 8707095 Larry A. Farrow
Executive Secretary
State Board of Morticians

Effective date September 14, 1987
Proposal publication date July 10, 1987
For further information please call (512) 834 9992

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Chapter 203. Licensing and Enforcement—Specific Substantive Rules

★22 TAC §203.2

The State Board of Morticians adopts the repeal of §203.2, without changes to the proposed text published in the July 10, 1987, issue of the *Texas Register* (12 TexReg 2219)

The section is repealed and resubmitted as a new section that is in compliance with Senate Bill 95.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4582b, §5, which provide the State Board of Morticians with the authority to promulgate rules and regulations.

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 14, 1987

TRD 8707097 Larry A. Farrow
Executive Secretary
State Board of Morticians

Effective date September 14, 1987
Proposal publication date July 10, 1987
For further information, please call (512) 834 9992

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The State Board of Morticians adopts new §203 2, without changes to the proposed text published in the July 10, 1987, issue of the *Texas Register* (12 TexReg 2220)

Senate Bill 95, which amended Texas Civil Statutes, Article 4582b, revised the requirements for making a first call. This new section clarifies the procedure to be followed by an unlicensed employee of a funeral establishment

This new section sets procedures a person must comply with, if requested, when making a first call

No comments were received regarding adoption of the new section

The new section is adopted under Texas Civil Statutes, Article 4582b, §5, which provide the State Board of Morticians with the authority to promulgate rules and regulations.

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 14 1987

TRD-8707094 Larry A Farrow
Executive Secretary
State Board of Morticians

Effective date September 14, 1987
Proposal publication date July 10, 1987
For further information, please call (512) 834 9992

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★22 TAC §§203.5, 203.10, 203.13

The State Board of Morticians adopts amendments to §§203.5, 203.10, and 203.13, without changes to the proposed text published in the July 14, 1987, issue of the *Texas Register* (12 TexReg 2281)

The amendments correctly show the agency's name change.

The amendments reflect the name change of the agency, effective September 1, 1987

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 4582b, §5, which provide the State Board of Morticians with the authority to promulgate rules and regulations

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 14 1987

TRD 8707091 Larry A Farrow
Executive Secretary
State Board of Morticians

Effective date September 14, 1987
Proposal publication date July 14, 1987
For further information please call (512) 834 9992

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★22 TAC §203.6, §203.12

The State Board of Morticians adopts amendments to §203 6 and §203 12, without changes to the proposed text published in the July 10, 1987, issue of the *Texas Register* (12 TexReg 2220)

The amendments require all licensees in Texas to be familiar with laws and regulations that they are governed by

The amendments ensure better trained funeral director and reciprocal licensees that are more knowledgeable of the laws and regulations

Comments stated that the amendments would ensure that all licensees would be required to familiarize themselves with state laws and commission rules

The Consumers Union commented for the amendments

The amendments are adopted under Texas Civil Statutes, Article 4582b, §5, which provide the State Board of Morticians with the authority to promulgate rules and regulations

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 14, 1987

TRD 8707098 Larry A Farrow
Executive Secretary
State Board of Morticians

Effective date September 14, 1987
Proposal publication date July 10, 1987
For further information, please call (512) 834 9992

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★22 TAC §203.7

The State Board of Morticians adopts the repeal of §203 7, without changes to the proposed text published in the July 10, 1987, issue of the *Texas Register* (12 TexReg 2220)

This section is repealed, as the grading system for the embalmer practical examination is changed

This section is repealed and resubmitted as a new section in order to change the grading system on the embalmer practical examination to pass/fail

No comments were received regarding adoption of the repeal

The repeal is adopted under Texas Civil Statutes, Article 4582b, §5, which provide the State Board of Morticians with the authority to promulgate rules and regulations

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 14, 1987

TRD 8707096 Larry A Farrow
Executive Secretary
State Board of Morticians

Effective date September 14, 1987
Proposal publication date July 10, 1987
For further information please call (512) 834 9992

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The State Board of Morticians adopts new §203 7, without changes to the proposed text published in the July 10, 1987, issue of the *Texas Register* (12 TexReg 2221)

The new section provides that all embalmers are technically proficient

The new section defines the system by which embalmer practical examinations will be graded

No comments were received regarding adoption of the new section

The new section is adopted under Texas Civil Statutes, Article 4582b, §5, which provide the State Board of Morticians with the authority to promulgate rules and regulations.

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 14, 1987

TRD-8707092 Larry A. Farrow
Executive Secretary
State Board of Morticians

Effective date September 14, 1987
Proposal publication date July 10, 1987
For further information, please call (512) 834-9992.

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 145. Long Term Care

The Texas Department of Health adopts the repeal of existing §§145 11 145 24 and

[illegible] §145.11, §145.25, and §145.271-145.285 [illegible] §145.11, §145.16, §145.20, §145.25 [illegible] §145.271, §145.277, §145.280, §145.281 [illegible] are adopted with changes to the proposed text published in the April 14, 1987, issue of the *Texas Register* (12 TexReg 1227). The repeal of existing §§145.11-145.24, new §§145.19, §145.272, §145.273, §145.278, §145.279, §145.282, §145.283, and §145.285 are adopted without changes and will not be republished.

The justification for repealing the existing sections and adopting the new sections is to make the minimum licensing standards for the effective management and operation of a nursing home consistent with current practices and methods and to assure the provision of quality care to residents.

New §§145.11-145.25 establish minimum licensing standards for nursing homes to provide adequate health care. New §§145.271-145.285 establish minimum licensing standards concerning planning and construction of nursing homes. To determine facilities' compliance with these standards, department staff will perform onsite inspections and prepare reports of their findings. Based on these findings, a determination will be made concerning a facility's eligibility for licensure. Annually, inspections will be done to evaluate facilities' continuing compliance for licensure purposes.

The following is a summary of the comments received regarding the proposals. Several comments were received expressing major concern with the cost impact on nursing homes that would result from adoption of these sections. There are three requirements in the sections which the department has identified and has recognized as cost items during the development of the sections: the requirement for an on-premises licensed nurse for the 11 p.m. to 7 a.m. shift; the requirement for a medical advisor; and the increase in the number of hours a consultant pharmacist must devote to consultant pharmacist duties. These cost items were identified in the preamble to the proposed rules as printed in the April 14, 1987, issue of the *Texas Register*. They are cost items that, in looking at the whole, have been identified as a real impact on the reimbursement rates paid for the care of residents under the Medicaid Program. Many nursing homes are already voluntarily meeting these three requirements; other nursing homes are meeting them in various degrees; some nursing homes may have expenditures in all three items. In the area of consultant pharmacist hours, the final sections have listed a basic time amount of service for each resident, which, together with wording to show that in some situations the basic time amount can be less, results in an average of less pharmacist consultant time requirement, thereby reducing the overall cost for this provision from the cost estimated in the April 14, 1987, *Texas Register*. These commentors said that additional cost items should not be made requirements until offsetting reimbursement under the Medicaid Program can be assured. Some of these commentors said that since Medicaid reimbursement rates covering costs of providing service are not adjusted immediately when an expenditure occurs, there should be an immediate mechanism within the reimbursement system if these cost items are included in the final sections. Some of the commentors took issue with the cost estimates printed in the April 14, 1987, issue of the *Texas Register*; those estimates were made by the Texas Department of Human Services, the Medicaid agency in Texas, in considering the overall impact and not the impact that might result to an individual nursing home. The Texas Department of Health concurs in those cost estimates. Some of the commentors in providing their calculation of cost estimates seem not to have understood that the requirements in the planning and construction rules, Subchapter Q, apply to new construction and not to existing licensed nursing homes, and there are other areas in the sections which the department believes some of these commentors did not fully understand when presenting their cost estimates.

Most commentors who spoke on costs said the three cost provisions would, however, help in quality of care. A very few commentors, however, expressed opinions that some of these items are actually not needed and in part might even be a detriment to quality of care. In informally summarizing comments from at least two commentors, the department concludes that these commentors believe quality of care is the issue regardless of the cost.

The Board of Health and the department have considered all the implications of the cost issue. The board and the department have specially set out the three cost items (as already described) for adoption as part of these entire standards but with an effective date for those cost items to be when the Department of Human Services certifies that the funds are available to reimburse facilities for the cost provisions when the federal government requires these provisions under Medicare-Medicaid participation or under other applicable authority, and/or when the commissioner of health under authority provided by law certifies that these provisions are urgent as well as necessary for the health and safety of residents. Each of the three cost items stands alone such that each could have its own separate effective date if necessary. The subsections, paragraphs, or subparagraphs with wording relating to the cost items have been identified in the sections with a preceding statement (statement of procedure) indicating adoption but with effective date when the previously mentioned criteria for establishing the date have been met. With these cost provisions expected to be delayed in implementation, certain provisions on an interim basis are necessary. The interim provisions are shown immediately preceding the statement of procedure. An example of this methodology for dealing with cost items is at §145.21(g)(3)(A) wherein the interim provision for consultant pharmacist time devoted to the facility is on a schedule of hours per three census ranges, as shown before the statement of procedure. The later requirement is expressed in minutes per facility resident and is located after the statement of procedure.

Several commentors had comments of a general nature. One commentor particularly stressed that standards need to be explicit and that the use of such words as "adequate," "sufficient," and "appropriate" provide inexactness leading to department regulatory personnel being unable to inspect and unable to identify violations consistently and allowing nursing homes to escape needed regulation. The department both agrees and disagrees with this comment. Where such words can be avoided, desired exactness is enhanced; on the other hand in some instances if, for example, the word "sufficient" is not used, the word "insufficient" is implied as being acceptable. The department, therefore, has considered this subject in reviewing the rules throughout and has in some cases deleted these words and in some cases has retained them.

Three commentors particularly noted inconsistencies and ambiguities in the use of names, subjects, and terms. For example, the terms "nursing home," "facility," "nursing facility," "facility providing nursing care," and other wording have been used throughout to identify the institutions to which these sections apply. The department agrees with these commentors and has made changes throughout in the interest of consistency, clarity, and elimination of ambiguity and redundancy. The department, however, has specifically retained the words "nursing home" and "facility" as being interchangeable. In one instance, and for a reason, the department has used the term "licensed nursing home." Other subjects or areas to which the department has aimed for consistency in language include with the selected terms, "overall care plans," "responsible party," and "medical records."

The department has made various word and phrase changes and added explanatory statements throughout both the licensing standards and the planning and construction standards to improve the clarity and accuracy of these documents.

Concerning new §145.11, one commentor stated that the words "in the light of advancing knowledge" should be eliminated. The department does not agree with this comment because that wording

is found in Texas Civil Statutes, Article 4442c One commentor said that there is no provision as to who decides if a resident's needs can be met The decision to admit or retain is a requirement on the facility, if the facility finds it cannot meet a certain resident's needs, there are provisions elsewhere speaking to the procedures the facility must take However the department, in an attempt to better clarify the statement regarding the meeting of needs has added supporting language

Concerning new §145 12 several comments were received regarding inadequacies, inconsistencies, redundancies incompletenesses, and errors in various definitions Of particular concern were the definitions of the terms facility legend drug or prescription drug licensed vocational nurse, medical advisor, nursing care, nursing home, and nursing personnel The department has accepted most of these comments and has rewritten or made changes in these definitions Several comments were received prompting the department to provide additional definitions of the terms legal guardian local health authority, medical care practitioner responsible party, and social services director or referral resource One commentor stated that the definition of a nursing home should not say the institution is subject to licensure The department disagrees, and is of the opinion that the wording unchanged will show that these standards would apply to facilities that should be licensed when the department takes action against an unlicenced facility. One commentor said the medication aide definition should have words about the medication aide working under the direction of a licensed nurse. That provision is covered under the rules for the permitting of medication aides and need not be included here One commentor said the overall care plan should be as prescribed by the physician on admission and completed in three days The care plan must be completed with detail from any general directives given by the physician, and a comprehensive care plan cannot be developed in that short time period, the department therefore, has not changed its wording

Two comments were received regarding §145 13(a)(1), stating that the procedures for application for license under the various situations, i e, new facilities change of ownership, and the others listed, should have the procedures in a complete list for each situation The department agrees with these comments and has provided the necessary wording

Two commentors stated that a license should no longer be issued in the name of an administrator, as the department has historically done, but the license should be issued in the name of the facility The department does not agree with these comments at this time although statutorily this procedural change may be possible The department must have a system to track administrators and has knowledge of no other system which shows which administrator is administering a given nursing home The standards require a full time administrator, the present system of placing the name of the administrator on the license is an appropriate mechanism to track that requirement

One commentor stated that there must be standards defining good moral character of the applicant, the department has determined that this requirement would come under the jurisdiction of the Texas Board of Licensure for Nursing Home Administrators and has, therefore, deleted this wording One commentor said that in the department's need of proof of ownership there may be some cases where a partnership agreement exists without a written agreement to show proof The department cannot consider a nonwritten agreement as being a legal agreement

One commentor stated that the description of some of the legal documents that must be submitted with the license application are incorrectly described The department agrees with this comment agrees with this comment and has adjusted the wording One commentor stated that the term occupancy approval in §145 13 (a)(1)(B)(iii)(II) is not clear The department agrees and has made language change

One commentor stated that under the license renewal category there is no mention of approval of the local health authority The department agrees and has added that necessity One commentor said that there should be a limit, such as 10 days, for the department to evaluate a request for license The department agrees only in part but because of all variables encountered cannot place an exact time period, however, language has been added to state that requests will be evaluated in a timely manner

One comentor said that the legal ownership should be posted for public view, the department believes that additional posting of this nature is not necessary and points out that under public disclosure, the department can supply information on ownership One commentor stated that the wording on submission of false information on an application should be changed to speak to intentional submission The department agrees with this comment and has made a language change One commentor said that submission of false information should automatically cause revocation The department believes such a requirement would be too harsh moreover the department does not have statutory authority to write such a requirement One commentor said that use of evasive means in obtaining a license should cause automatic revocation Again the department does not have that authority. One commentor stated that in reference to §145.13(a)(1)(F), (which has been moved to §145.13(a)(2)(0) in the adopted sections), there should not be grounds for withholding or revoking the license on actions of an employee The department essentially disagrees that in all situations such liability on the facility should be eliminated; the department, however, has tempered this requirement by having the requirement apply in extreme circumstances. On the other hand one commentor said that any use of alcoholic beverages or drugs should cause automatic revocation of license. such a requirement would be beyond the department's authority One commentor expressed a similar concern in §145 13(a)(1) (G) (which has been moved to §145 13(a)(2)(P) in the adopted sections) The department agrees in part with this comment and has changed wording to indicate in extreme circumstances of violation grounds for revocation or denial may exist

Comments were received on the policies for control of communicable diseases in employees in §145 13(a)(1)(C), (which has been moved to §145 13(a)(3)(D) in the adopted sections) These policies have been clarified and located in a more appropriate place in the standards

Regarding §145 13(a)(2), several comments were received with reference to accidents and incidents One commentor indicated that in reporting incidents to the licensing agency, the words "specially and specifically" should be defined The department does not agree with the need for the definition, the examples of incidents to report will be in guidelines issued by the department under the language changes of the final sections on this subject Several comments were received that the examples of reporting to the department should be in guidelines issued separately from rules, that official rules are not intended to include examples. These comments, together with other concerns received, have prompted the department to rewrite §145 13(a)(2)(L) and (M) in a more clear manner The rewording now deletes an objection at least two commentors made with reference to describing problems in the incident report The rewording now includes notification of responsible party immediately when an incident adversely affecting a resident is severe in nature One commentor indicated that every incident should be reported to the licensing agency The department disagrees with this comment There are many minor incidents and accidents that occur, many unavoidable, and the department has no need to be notified of those, those reports kept on file in the facility are available for licensing agency representatives to review One commentor said incident and accident reports should be part of the medical record Much study has been made in the past on the subject and the conclusion has been and is that

these reports are to be kept in separate administrative records. One commentor indicated that theft over $50 should be reported, while such is regrettable, the department does not have staff to investigate such incidents. One commentor stated that each death should be reported to the licensing agency, while death is regrettable, the department has no need to have information on usual death occurrences. One commentor said that facility investigation of accidents and incidents should be investigated under the direction of a physician or a director of nurses and certainly not by a committee as the rules state. The department believes its wording is appropriate and has not changed that description. One commentor said that in respect to investigation of incidents and complaints better methods of substantiation by the licensing agency representatives are necessary. The department continues to strive for accuracy in investigation conclusions, however the department cannot draw conclusions on third party reports or hearsay as the commentor suggested.

One commentor stated that persons having mental or physical diseases which endanger other residents shall be admitted if care can be provided in separate locked rooms according to their needs as defined by their physician. The department disagrees with this comment, the department cannot force a facility to admit a resident and the use of locked rooms as a criterion of such admission is not appropriate.

One commentor indicated that facilities shall automatically make copies of documents or records that show evidence of poor care. Under such an arrangement incomplete or superlative documents would be received, the department believes requesting documents is more appropriate and has not made word changes.

One commentor had comments about review of a resident's medical record by a family member or other person, wording on that subject is found in §145.14.

One commentor said that the inventory of a resident's personal property should be made upon admittance, while such a requirement would be desirable, there are admission situations which would make the requirement impractical, and the department has not changed its wording. One commentor said personal clothing should be excluded from the list of personal property, the department agrees and has changed wording accordingly.

Regarding §145.13(a)(3), one commentor said copies of the facility's administrative policy and procedure manual should be furnished to the resident's responsible party, on admission. Many of the items in the manual are included in usual admission agreements, the department does not believe furnishing a copy of the manual should be a requirement.

One commentor said there should be provision for pay by the responsible party to hold a bed while a resident is in the hospital. Such an arrangement for a private-pay resident already exists without a standards requirement by the licensing agency, where a Medicaid recipient is involved, this subject is an issue with the Texas Department of Human Services and not the licensing agency. One commentor said the facility shall have financial records to demonstrate its compliance. While that is true, the intent is to make them available when the licensing agency requests them, clarification wording therefore has been written.

There were several comments regarding transfer agreements. One commentor said the transfer agreement should be with the nearest hospital, the department believes this would be impractical under some situations. Other comments included clarifying what is meant by a record summary to accompany a resident upon transfer. Other comments indicated that it would be better to state what is needed during a transfer and not emphasize a transfer agreement as such. The department has considered these comments, has deleted the agreement requirement as such, and has clarified the summary requirement.

Regarding §145.13(b), one commentor stated that owners and administrators must be more accountable. Shortcomings of the administrator become an issue with the governing body and shortcomings of the governing body become an issue with the owners. The department believes its language at this point is correct and is essentially consistent with the requirements under Medicaid participation, therefore, no changes have been made. One commentor said earlier language requiring the administrator to have no physical or mental disabilities or personality disturbances that would adversely affect the discharge of duties should be restored. The department has provided a new paragraph (6) which speaks to general qualifications of all personnel. One comment was received that the requirement for the vacancy in administrator be reported to the licensing agency in seven days is in conflict to Texas Civil Statutes Article 4442d, and that under this wording the licensing agency is allowing a facility to be in violation of state law. The department agrees with this comment and has provided wording to require notification of vacancy to be made immediately.

One commentor made several comments about §145.13(c), the staff development section. Comments included requiring additional training for nurses aides, requiring qualified activities directors to have job specific training, requiring the delay period under which an unqualified food service supervisor need not begin job specific training be reduced, increasing the requirements for beginning training for an activities director who does not meet certain qualifications, requiring the training coordinator to have no family ties with the governing body or the director of nurses, increasing the requirements for the training coordinator, reducing the various methods of providing the training and reducing the use of any generally recognized technique, materially decreasing the time to complete both the orientation and the job-specific training, eliminating outside meetings as credit, and eliminating the licensing agency's assistance in organizing training programs. The department in general would like to increase the training program but considers most of these suggestions impractical at this time from both financial and other standpoints. Only very minor changes for clarity have been made in the staff development section.

Regarding §145.13(d), several comments were received pointing out the benefits of a volunteer program in a nursing home and requesting that the volunteer program section be strengthened. The commentors requested that facilities shall promote and support a volunteer program, have written policies, have a coordinator who may be a volunteer or an employee of the facility in the activities program, and have a volunteer council whenever possible. The department agrees in part with these comments and has provided wording stating that the facility shall promote a volunteer program rather than letting the entire program be optional on the part of the facility.

Regarding §145.14, one commentor indicated reference to the Social Security Act and federal regulations is not clear and does not provide the necessary information. The department agrees and has changed the wording.

One commentor said the title of this section, "Resident Rights", should be changed to "Policies Relating to Residents". The department does not agree, the customary title used for this subject is "Resident Rights".

One commentor stated opposition to §145.14(6) in providing the residents a statement of their trust fund accounts. The department does not agree with this comment and has made no word changes.

Regarding §145.15, one commentor stated that the relationship between the admitting physician and the attending physician is not clearly expressed and does not include all admitting situations. The department agrees with the comment and has completely rewritten §145.15(c). One commentor said that reference to a physician designee could be misleading. The department agrees and has clarified the wording. One commentor said that the recommended quarterly examination of a resident be made a requirement. The

department does not agree with the com- does not agree with the comment in that there is no payment structure available to pay for such examinations One commentor said that a facility cannot establish medical staff bylaws, that only the medical staff can establish them Two commentors said the wording regarding medical staff and bylaws was not clear as to the option a facility has The department agrees and has provided wording to satisfy both of these concerns One commentor said medical staff bylaws should not pertain to attending physicians The department believes the confusing wording regarding medical staff and bylaws led to this comment One commentor said physicians must review and sign their programs on each subsequent visit (subsection (e)) The department believes its current wording is satisfactory One commentor said that on admission, responsible parties must be told that they can choose their physicians The department points out that subsection (g) calls for freedom of choice in selecting a physician but within certain limits which the department believes are appropriate to promote the proper operation of the nursing home One commentor said that there should be a signed agreement between an attending physician and a resident stating that the physician or his or her alternate will provide professional medical services to the resident when needed The department does not accept this comment as relating to these standards and has no jurisdiction over such arrangement between the attending physician and the resident. One commentor said that it may be impossible to have a medical advisor in some of the rural areas of Texas. The department has accepted this comment in part and has provided wording to state that an attending physician may perform the function of a medical advisor.

Regarding §145 16, one commentor said that facilities should not be required to maintain lists of local dentists, podiatrists, and optometrists, that telephone books reveal these sources, and that in some rural areas there are no such sources The department does not accept the comment, the department believes this is a small service that would be appreciated by most residents and responsible parties

Comments were received that House Bill 1739 passed by the 70th Legislature should be included in these sections That bill is effective September 1, 1987 and wording to alert facilities to compliance with the bill has been added as §145 16(a)(3)

Regarding §145 17(a), one commentor said that the directors of nurses should be registered nurses The department cannot consider this comment at this time, prior consideration in proposed rules would be necessary One commentor said the qualifications of the person to assist the director of nurses if the director of nurses has administrataive duties is not clear The department agrees and has stated that this assistant director of nurses must be a licensed person One commentor said that the director of nurses must be relieved on her days off by a licensed nurse The department does not agree that there should be seven-day per week director of nurses coverage One commentor said a licensed vocational nurse, regardless of how that person qualified for licensure, should be allowed in these sections as a director of nurses The department believes the nurse should at least be a graduate of a state-approved school of vocational nursing, therefore, that requirement has been maintained One commentor said the reference to a director of nurses responsible for multiple distinct part facilities not being qualified to be counted in the nurse-resident ratio is not clear as it relates to licensing The department agrees, and since the issue is one relating to Medicaid certification and distinct parts, and not to licensing, the department has removed this provision One commentor said it is not clear if each nursing unit is to have a charge person at all times The department agrees that the language is not clear and has provided clarifying language in this subsection as well as in subsection §145 23(o) At least two commentors said the relief person for the 7 a m to 3 p m shift was not stated That is correct, and wording has been added There were comments that the nurse requirement for the 11 p m. to 7 a m shift is not clear with respect to Medicaid distinct parts or multiple nursing units The department agrees and has added language to state that each licensed nursing home, regardless of the number of nursing units, shall have a minimum of one nurse in the facility on this shift; the issue of whether the nurse in a distinct part under Medicaid can serve as the nurse under §145 17(a) for this shift in a separate distinct part under Medicaid or in a nonparticipating part of the entire licensed nursing home is a question under certification and not under licensure One commentor said the relief person for the 11 p m to 7 a m nurse is not identified That is correct, and the department has added wording One commentor said the description of the charge person for the 11 p m to 7 a m shift if the charge person is not a nurse is not clear, and the department has provided rewording Several commentors said there should be waiver provision for the 11 p m to 7 a m nurse requirement the comments had various degrees of what conditions should prompt a waiver The department agrees that in certain circumstances a waiver may be necessary and has provided wording accordingly One commentor said that the requirements stating the persons not acceptable as nursing personnel should be reworded to be in positive wording, and the department has done so

Several commentors stated that the nursing personnel should be able to converse with the residents in the English language and should be able to read and write English The department agrees and has changed wording accordingly One commentor said at this point that there needs to be a better description of the non-nursing personnel The department agrees and has provided additional language, and has also moved the paragraph to §145 13(b)(6) A comment was received relative to the vacation time of an RN consultant, and the department has made word adjustments One commentor stated there should be less allowance for the time for illness of an RN consultant before a replacement or substitute is provided The department disagrees and has made no changes One commentor said that there should be a ratio of nurses aides to residents The department does not believe this issue is appropriate at this time, no proposals of this nature were made in the proposed sections

Regarding §145 17(b), one commentor expressed concern whether a licensed vocational nurse who is director of nurses has had training to exercise appropriate judgment related to orientation and training of staff The department responds that the director of nurses, regardless of which way that person has qualified to hold that position, in operating the nursing service must depend on others also, such as the training coordinator, to arrange for appropriate training One commentor stated that in §145 17(b)(7), the wording places the licensed vocational nurse in position to determine the competency of a registered nurse who may be on the nursing staff The department agrees that the wording of this paragraph is not clear and has completely reworded it

One commentor questioned the wording regarding the giving of intravenous fluids, and the department has made word adjustments A few comments were received relative to the routine reduction or manicure of nails The department agrees that the wording is not clear and has provided wording adjustments

One commentor stated that the interdisciplinary overall care plan should be reviewed every 30 days The department believes 30 day reviews as a requirement in all cases would not be appropriate, and no change from the 90 days has been made Two commentors stated that something should be said about when the initial plan is due The department agrees that this should be specified and has so done One commentor said there was no necessity in having an interdisciplinary care plan that each department could have its own plan The department rejects this comment under such an arrangement the various elements of care would

not be coordinated. One commentor said that charting must be under the direction of the charge nurse only. The department disagrees in that the charge person for some nursing units on the 11 p.m. to 7 a.m. shift may be other than a nurse.

One commentor said that established restraint procedures should not be a part of the use-of-restraints requirements. The department does not agree, in that a physician may order a certain kind of restraint but it must be applied under established procedures. One commentor said that restraints should be released every hour. The department notes that a two-hour time is and has been considered appropriate nursing practice, therefore, no change has been made.

Four commentors stated that §145.18, the section on social services, is not clear in that there is no direct language as to who is in charge of social services and has the responsibility to do something with the assessment information received. The department agrees with these comments and has provided for wording calling for a facility to employ a social services director or provide social services by referral. The educational requirements of the social services director are included in definitions and are consistent with requirements for this person functioning under Medicaid participation in the Intermediate Care Facility program. Two comments were received regarding the need for some of the information on social history and need to make assessments in all of the areas that are listed. The department believes all of the information listed and the stated needs assessments are necessary for the facility to operate an appropriate social services program, therefore, no deletions have been made. One of these commentors, on the other hand, said the identification or assessment of social problems and needs should be accomplished in 14 days instead of 30 days. The department does not agree with this comment and has made no change in time.

Regarding §145.19, two commentors stated that the sections do not provide for an appropriate qualified person to be in charge of the activities program. The department has considered these comments but believes the flexibility provided in the present wording is appropriate at this time.

One commentor stated that many times information required in §145.20(a) is not available, unknown, or not applicable to residents admitted to the facility. The department agrees and language has been added to this section to allow for these situations. One commentor said that the requirement for the name and address of next of kin or next friend was duplication of §145.18(2)(D) and should be deleted. The department has considered this comment and believes that the two sections address different areas, §145.20(a) requires basic identification data needed to care for a resident, and §145.18(2)(D) addresses "social/emotional" needs of residents regarding family relationships. No change has been made.

Regarding §145.20(b), one commentor noted that the term "admission log" is restrictive when specific information to be recorded includes discharge information as well. The department agrees and has added wording to clarify this section. One commentor stated that sex and date of birth were not needed here since they are recorded elsewhere. While this is correct, the department believes that the resident register contains a concise summary of basic, frequently requested information on all facility residents and is consistent with accepted medical records practice. No change has been made.

Regarding §145.20(c), one commentor said that it should be acceptable for the current month's medication and treatment record to be kept away from the nurses station but be readily accessible to the health team. The department agrees with this in concept since the facility must protect residents' medical record information from loss, damage, or unauthorized access. Accordingly, rewording has been done.

One commentor stated that §145.20(f) was unclear as to under what conditions and to whom the facility could make exceptions to allow for access to and release of medical record information. The department agrees with this comment and has reworded the section for clarity and consistency with terminology used elsewhere in these standards.

Regarding §145.21, several comments were received relative to the number of consultant hours required of the consultant pharmacist. One commentor stated that if the pharmacy services are not deficient why should the hours be increased. One commentor questioned why specifying hours is necessary. Several commentors related comments to increased costs. The department considered these comments and determined that a basic contract time requirement should be established or retained but that there should be a provision where the basic time specified could be more or less depending on the operations of the facility. The department has determined that the basic time requirement should relate to the number of minutes per resident a pharmacy consultant needs to perform all consultant tasks, including review of the medication regimens. Therefore, the department has reworded the pharmacy consultant time requirements.

One commentor stated the paper work required in ordering and receiving medications is not necessary. The department believes this requirement clarifies and standardizes necessary record keeping, therefore, no changes have been made.

One commentor stated the wording with regard to labeling a multiple-dose container is not clear. The department concurs and has corrected the wording. One commentor stated that the requirement for reordered medication to be in the facility prior to administering the last dose is too severe. The department believes that as a rule the reordered medication should be immediately available prior to the administration of the last dose in case some unforeseen condition, like spillage, adversely affects the integrity of the last dose, therefore, the department has not altered this requirement. One commentor said that the rule for the emergency drug and equipment tray should be changed to address the two separately, and that this provision should be optional with a facility. Other comments related to this subject. The department believes the provision of an emergency drug kit is necessary and that supplies needed to administer the emergency drugs must be readily available. The department has made word changes in this provision and has added wording to indicate that controlled substances may be kept in the emergency drug kit in accordance with Senate Bill 803, passed by the 70th Legislature. One commentor said the current wording of §145.21(e)(2) provides a management problem in that several physicians could each have an emergency medication kit. The department believes the current wording is appropriate. One commentor stated that drugs delivered to a resident by a practitioner should meet the same labeling requirements as for drugs dispensed by a pharmacist. The department accepts this comment and has adjusted the wording. One commentor stated that in §145.21(g)(2) the reference to dispensing physicians without further explanation be eliminated as it is misleading when carefully looking at state laws and regulations. The department agrees with this comment and has adjusted the wording. One commentor said reference to procedures listed in Medicaid regulations is not appropriate. The department agrees and has deleted that reference.

Regarding §145.22, one commentor said the dietetic service supervisor should be an employee of the facility. The department does not agree with this recommendation since food services of some facilities are provided under contract. Two commentors said the necessary consultation provided by a dietitian when the dietetic service supervisor is not a dietitian should be weekly. The department disagrees and believes consultation provided regularly without further specificity is appropriate. One commentor said the dietitian consultation hours should be increased. The department believes the hour requirements as already listed are appropriate. One commentor said a ratio of food service staff to residents should be a part of standards. The department

does not agree and has made no changes One commentor spoke to offering second helpings and substitute foods, and color identification of trays with special diets The department has added wording to emphasize second helpings and has provided wording requiring a facility to have a system assuring proper tray or diet identification One commentor said sufficient personnel to monitor residents while eating should be specified The department has added wording to state that nursing personnel shall be in the dining room during meals to assure the safety of the residents One commentor stated that the requirements for advance food supplies should not speak to supplies being consonant with the planned menus The department does not accept this comment, believing special efforts must be maintained to conform to the planned and advertised menus as much as possible Comments were received relative to posting menus for residents, responsible parties, and nursing personnel to see The department agrees in part with these comments and has provided word changes One commentor made several comments relative to wording standards requiring food storage, including refrigerators and freezers, to be locked to prevent theft The department does not believe this should be a standard requirement; the problem is one a facility must itself solve. The commentor also said that theft of food of over $25 value should be reported to law enforcement and licensing agency and the two agencies make investigations The department again states that food theft is a problem of the facility to solve and need not involve the licensing agency.

Regarding §145 23(a)-(n), one commentor said that a grandfather clause needs to be provided to allow existing systems to remain in operation until replacement is needed The department accepts this comment in part and believes this protection is already provided in the wording of various paragraphs throughout this section and in noting the waiver provision provided in §145 23(b)(7) (formerly (b)(6)) The department wishes also to note at this point that the Life Safety Code provides a means for equivalency provisions The department continues to maintain the opinion expressed in §145 23(b)(2) (formerly (b)(3)) that alterations or new installations of building services equipment must be made as much as possible in conformance with new construction One commentor stated that where beds are added to existing facilities (§145 23(b)(5) (formerly (b)(4)), the requirements for toilet and bathing facilities and for living and dining spaces are too severe The department does not agree with this comment, department staff have been applying under policy the provisions of this paragraph and do not believe it would be appropriate to lessen the requirements One commentor, however, stated this paragraph is not clear with respect to number of toilet and bathing facilities, and the department has added some clarifying wording One commentor said the waiver provision is not appropriate, that there should be no waivers The department does not accept this comment, experience has shown that waivers or variances must be available when situations are encountered that cannot be provided or corrected under strict conformance to codes or rules

One commentor said the Uniform Building Code should be referenced as one of the building codes that can be used The department believes the reference already made to the Standard Building Code of the Southern Building Code Congress International Inc under the wording such as' is sufficient One commentor said that in light of adopting municipal codes by reference, some of the wording in the standards is redundant The department disagrees with this comment and has intentionally provided such wording as an aide to planning, construction, and maintenance One commentor spoke to vehicle parking, stating that vehicles should be 10 feet from any bedroom window While such could be provided in most new construction arrangements, the department believes such a requirement should not be placed on existing facilities now having less than 10 feet Two commentors objected to the use of hedges in offering protection to residents outside the building

The department does not agree with these comments and has made no word changes. One commentor said that other buildings on the site as described in §145 23(e)(6) should not house residents. The department replies that if any of these buildings are used by residents, the appropriate occupancy classification of the Life Safety Code will be used to determine the adequacy of the buildings

One commentor stated that under subsection (g), the response time of the fire department should relate to the emergency involved The department agrees and has provided appropriate wording One commentor was concerned with the word "limited" in specifying flame spread rate The department replies by saying that word is customarily used in flame spread rate language One commentor said the requirements for access panels and view panels to observe smoke barriers and smoke dampers would be costly and not needed The department agrees only in part but has removed these requirements in the interest of cost

Regarding §145 23(o)(5) one commentor stated that room sizes should be 100 square feet per bed in multiple bed rooms and that only one or two bed rooms should be allowed The department does not accept these comments such requirements would destroy many existing nursing homes One commentor said the operable window sections in bedrooms shall be restricted in opening. The department does not agree with this comment, restriction, if done within the standard listed, should remain optional with the facility One commentor said that methods to assure privacy in multiple-bed rooms should only be by cubicle curtains The department rejects this comment, the cost of such in existing facilities would be prohibitive at this time One commentor stated that existing bedrooms not meeting the requirements of §145 23(o)(1)(H) should be allowed to remain in operation The department believes the wording is not punitive but has made one change to temper the requirement One commentor said the requirements on bedside stands are punitive The department agrees with this comment and has adjusted the requirements Also, a comment was made that the closet description is punitive The department has accepted this comment and has changed the wording One commentor said that bedroom furniture requirements should be determined based on the illness or desire of the resident The department does not accept this comment the department believes the basically required furniture is appropriate

One commentor stated that §145 23(o)(2)(A) on nursing units and nursing stations is not clear and consistent with Medicaid standards for participation The department agrees essentially with this comment and has adjusted the wording One commentor said that handrails and grab bars in existing facilities would have to be strengthened to meet the new 250-pound support requirement. The department agrees with this comment and has changed wording to require those rails and bars to be substantially secured One commentor said that bathing units should be provided one for every 15 beds and toilets one for every four beds The department rejects this comment, such requirement would cause extensive remodeling and new construction in many existing nursing homes One commentor stated that 50 % of the toilets should be arranged for the handicapped The department does not accept this comment and believes the wording provided meets the applicable handicapped provisions under the law

One commentor said the range hood provided in the kitchen at the time the facility was built should be accepted The department agrees only in part and has provided in wording that the licensing agency may waive details of the range hood One commentor said that requiring laundry arrangement and equipment to allow processing a seven-days laundry supply in a regularly scheduled work week is too specific The department agrees and has provided other wording Several comments were made by two commentors with respect to linen supply and storage The department has accepted

some of these comments, and has made word changes. One commentor suggested an easier method to document the inspection of fire extinguishers. The department accepted the comment.

One commentor stated that where beds are added to existing facilities in §145.271(f) the requirements for toilet and bathing facilities and for living and dining spaces are too severe. The department does not agree with this comment. department staff have been applying under policy the provisions of this subsection and do not believe it would be appropriate to lessen the requirements.

Regarding §145.272, one commentor said there should be no variance in the requirement for a new building to be set back at least 10 feet from property lines. The department does not agree with the comment. provision for exception may at times be beneficial. One commentor said walks should be provided from all exits. the department does not agree with this comment, there may be some exits not requiring a walk. One commentor said ramps must be used in lieu of steps in outside walkways. The department disagrees with this comment, there are situations where ramps cannot be accommodated. One commentor said hedges are not appropriate as outside barriers. The department does not agree with this comment.

One commentor said that in §145.273(c), provision should be made to state that mental and Alzheimer's residents will be separated from other areas. The department does not believe the physical separations mentioned in the comment would always be appropriate, therefore, no word changes have been made.

Regarding §145.274, one commentor stated that the maximum capacity bedroom must be two beds. The department does not agree. some three or four-bed rooms are appropriate in some situations. One commentor said every bedroom should provide 100 square feet per bed. The department does not agree and has made no word changes. One commentor said that if other than two bed rooms are provided toilets should be provided so that not over four residents share a toilet. The department believes this requirement would be too severe and therefore does not accept. One commentor said the bedroom closet or wardrobe should be 24 inches wide. The department does not accept the comment. 22 inches provides better use of materials in construction. Two commentors stated that privacy curtains should be required in new construction in all multiple-bed rooms. The department believes that even in new construction availability of privacy curtains as needed is functional. therefore, these comments have not been accepted.

One commentor said that icemaker dispensers should not be required in [illegible] stations. The department has accepted the comment in part and is [illegible] ice makers. One commentor said one bathing unit for each 20 beds is insufficient. The department believes this number is appropriate. One commentor said 50% of the toilets should meet American National Standards Institute criteria. The department requires 10% and notes that that quantity satisfies American National Standards Institute requirements. One commentor stated that drinking fountains are not required in sufficient quantity. The department believes the requirement is satisfactory.

Regarding §145.275, one commentor said that buzzers or equal shall be used to announce unauthorized use of an exit door. The department does not want to limit resident control in this regard to only one method. therefore, no word change has been made. One commentor discussed doors from rooms swinging dangerously into corridors. The department agreed with part of the discussion and has made some word changes in §145.275(6)(G). One commentor stated it is not clear what is meant by in colder climates in §145.275(8)(B). The department agrees that the words are not clear and has made explanations.

Regarding §145.280, one comment was received to reference the Uniform Building Code as an appropriate nationally recognized code of construction. The department believes the reference already made to the Standard Building Code of the Southern Building Code Congress International, Inc. under the wording "such as" is sufficient.

Regarding §145.285, one commentor stated that there should be no exception to granting approval for new construction until basic requirements are made. The department believes the department should retain an option to grant approval if circumstances warrant. therefore, no word changes have been made.

These groups and associations made comments, expressed concerns, and suggested changes (no group or organization definitely stated a position as being for or against the sections in their entirety, however, three groups expressed being generally pleased with the sections: United People for Better Nursing Home Care, Texas Health Care Association, Texas Association of Homes for the Aging, Wood, Lucksinger and Epstein, Texas Pharmaceutical Association, the National Association of Social Worker/Texas, Beverly Enterprises, United Health, Inc., the Board of Vocational Nurse Examiners, the City of Arlington, the Southern Building Code Congress International, Inc., the Board of Nurse Examiners for the State of Texas, Texas Independent Nursing Home Association, Travis County Agriculture Extension Service, Volunteer Guardian Program/Eldercare, Capital Area Agency on Aging, the Gray Panthers, the American Association of Retired Persons, Travis County Retired Senior Volunteer Program, and the Silver Haired Legislature.

Subchapter B. Minimum Standards for Nursing Homes

★25 TAC §§145.11-145.24

The repeals are adopted under Texas Civil Statutes, Article 4442c, §7, which provide the Texas Board of Health with the authority to repeal rules covering minimum licensing standards and construction standards for long term care facilities.

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 19, 1987.

TRD 8706964 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: September 9, 1987
Proposal publication date: April 14, 1987
For further information, please call (512) 458-7236.

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★25 TAC §§145.11-145.25

The new sections are adopted under Texas Civil Statutes, Article 4442c, §7, which provide the Texas Board of Health with the authority to adopt rules covering minimum licensing standards and construction standards for long term care facilities.

§145.11. Purpose and Application. The purpose of these sections is to promote the public health, safety, and welfare and provide for the development, establishment, and enforcement of standards, for the care of individuals in facilities of the character defined and covered herein, and for the establishment, construction, maintenance, and operation of such facilities which in the light of advancing knowledge will promote safe and adequate care of individuals of these facilities. Residents shall not be admitted or retained if their needs cannot be met through services provided by the facility either directly or through arrangements. Facilities to which these standards apply are those which provide organized and structured nursing care and service, and are subject to license under Texas Civil Statutes, Article 4442c. The facilities are known by various names, including nursing home, nursing facility, or facility.

§145.12. Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise and shall also apply to Subchapter Q of this chapter (relating to Planning and Construction for Nursing Homes).

Act. Texas Civil Statutes, Article 4442c (relating to convalescent and nursing homes and related institutions).

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

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

Dentist—A practitioner licensed by the Texas State Dental Examiners Board.

Department—Texas Department of Health.

Dietetic service supervisor—

(A)—A person who is a qualified dietitian,

(B)—A qualified dietary technician with an Associate of Arts Degree.

(C)—A certified dietary manager,

(D)—A graduate of a 90 hour course in food service supervision approved by the state or by the American Dietary Managers Association, or

(E)—A person who has training and experience in food service supervision and management in a military service equivalent in content to the programs in subparagraphs (A)-(D) of this definition and has had his or her training credentials evaluated and approved by the chief, Nutritional Services, of the licensing agency.

Dietitian—

(A)—A registered dietitian is a dietitian who is currently registered by the Commission on Dietetic Registration.

(B)—A licensed dietitian is a dietitian who is currently licensed by the Texas State Board of Examiners of Dietitians and who has 15 hours of dietetic continuing education annually.

(C)—A qualified dietitian is a dietitian who is eligible for registration by the American Dietetic Association under its requirements, or who has a Baccalaureate Degree with major studies in food and nutrition, dietetics, or food service management; has one year of supervisory experience in the dietetic service of a health care facility; and participates annually in continuing dietetic education. These persons must have credentials evaluated and approved by the chief, Nutritional Services, of the licensing agency, and 15 hours of dietetic continuing education annually.

Drug (also referred to as medication)

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

(B)—Any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man,

(C)—Any substance (other than food) intended to affect the structure or any function of the body of man, and

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

Facility—An institution or establishment that provides organized and structured nursing care and service, and is subject to licensure as a nursing home under Texas Civil Statutes, Article 4442c. Facility is also referred to as nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the residents, or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

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

Legal guardian—A person lawfully invested with power and duty to take care of another person and manage the property and rights of that person who is considered incapable of administering his her own affairs.

Legend drug or prescription drug—Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

Licensed vocational nurse (LVN)—An individual currently licensed by the Texas Board of Vocational Nurse Examiners to practice as a licensed vocational nurse in the State of Texas.

Licensing agency—The department.

Life Safety Code (also referred to as the Code or NFPA 101)—The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA), as required under the Act, §4A. Life Safety Code, NFPA 101, is a registered trademark of the National Fire Protection Association, Inc., Quincy, Massachusetts 02269.

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

Medical advisor—A physician licensed by the Texas State Board of Medical Examiners who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care. This definition shall become effective at such time as the requirements of Rider Number 17, H-22, General Appropriations Act for the fiscal 1988-1989 biennium and or Texas Human Resources Code, §22.014, are met, and written notice of same is provided to licensed facilities at least 60 days prior to its effective date.

Medical care—Care required for preservation of life and comfort, for prevention and treatment of illness and maintenance of bodily and mental function, and which is under the continued supervision of a physician. Such care is to be provided, for purposes of long term care facilities, in an institution with services of registered nurses or licensed vocational nurses continuously available in order to carry out the physician's plan of care for his patients who are residents in the facility.

Medication aide—A person who holds a current permit issued under the Medication Aide Training Program rules in §145.251-§145.261 of this title (relating to Medication Aide Training Program) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

Non-nursing personnel—All persons who are not responsible for direct personal services to residents. Such personnel would include administrative, dietary, medical records, activity, housekeeping and laundry, and maintenance.

Nursing care—Services provided by nursing personnel as prescribed by a physician, which services include, but are not limited to, promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

Nursing home—An institution or establishment that provides organized and structured nursing care and service, and is subject to licensure as a nursing home under Texas Civil Statutes, Article 4442c. Nursing home is also referred to as nursing facility or facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the residents; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

Nursing home administrator—A person licensed by and in good standing with the Texas Board of Licensure for Nursing Home Administrators. Also referred to as administrator.

Nursing personnel—All persons responsible for giving nursing care to residents. Such personnel includes registered nurses, licensed vocational nurses, therapists, medication aides, nurses aides, and orderlies.

Optometrist—An individual licensed by the Texas Optometry Board.

Overall care plan—The coordinated interdisciplinary plan of care which is developed for each resident within 30 days of admission. The plan consists of medical, nursing, social services, nutrition, rehabilitative services, and activities.

Pharmacist—A person licensed by

the Texas State Board of Pharmacy to practice pharmacy.

Physician—A practitioner licensed by the Texas State Board of Medical Examiners.

Podiatrist—A practitioner licensed by the Texas State Board of Podiatry Examiners.

Poison—Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally which contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a physician, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

Practitioner—Pursuant to §§145.21 of this title (relating to Pharmacy Services), a physician, podiatrist or dentist.

Registered nurse (RN)—An individual currently licensed by the Board of Nurse Examiners for the State of Texas as a registered nurse in the State of Texas.

Resident—Anyone accepted for care in the facility.

Responsible party—An individual authorized by the resident to act for him or her as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual.

Shall—The word to signify a mandatory provision.

Should—The word to signify a nonmandatory but recommended provision.

Social service director or referral resource—A person who shall have one of the following requirements:

(A) a masters degree in social work;

(B) a bachelors degree in social work from a college or university accredited by the Council of Social Work Education and at least one year of social work experience in a health care setting; or

(C) if the person lacks one of the requirements in subparagraphs (A) and (B) of this definition, the facility employee designated as social services director or the referral resource must receive consultation from a social worker meeting the requirements in subparagraph (A) or (B) of this definition.

§145.13. Administrative Management.

(a) General requirements.

(1) Application for license.

(A) An applicant for a state license to operate a nursing home shall be a full-time licensed nursing home administrator. The state license to operate the nursing home will be issued in the name of the qualified full-time nursing home administrator.

(B) Application shall be made on a form or in a manner as determined by the licensing agency. The application shall be completed in all detail. The applicant shall have the physical and mental capability to conduct the operations of the facility pursuant to rules adopted by the Texas Board of Health. The application is to be completed by the administrator, signed in the presence of a notary public, and returned to the licensing agency with the following prerequisites:

(i) New facilities.

(I) The application shall include:

(-a-) a fee required by the Act. This fee shall be submitted in the form of a check or money order payable to the department;

(-b-) a copy of the full-time administrator's current license as issued by the Texas Board of Licensure for Nursing Home Administrators;

(-c-) approval from the local health authority having jurisdiction over the facility for issuing the license;

(-d-) approval from the fire marshal having jurisdiction over the facility, for issuing the license;

(-e-) documents whereby legal ownership may be verified (i.e., lease agreement, warranty deed, etc.). If the facility is corporately owned, it will be necessary to provide a copy of the certificate of authority or articles of incorporation, as appropriate, and a copy of the corporate bylaws. If owned by partnership, it will be necessary to provide a copy of the partnership agreement;

(-f-) a fee as required under §145.93 of this title (relating to Fees for Plan Reviews and Building Inspections) for plan reviews, construction inspections, and feasibility inspections. All required fees must be paid prior to issuance of a license; and

(-g-) approval from the Architectural Section of the licensing agency, based upon a final inspection.

(II) Upon receipt of the prescribed application, the licensing agency will evaluate the request in a timely manner. A license will be granted only if the facility is found to be in compliance with applicable laws and standards. Compliance will be ascertained by on-site inspections by appropriate inspection teams, including architectural evaluations. Until the license is granted, a maximum of three residents may be admitted.

(ii) Change of ownership.

(I) The application shall include:

(-a-) a fee required by the Act. This fee shall be submitted in the form of a check or money order payable to the department;

(-b-) a copy of the full-time administrator's current license as issued by the Texas Board of Licensure for Nursing Home Administrators;

(-c-) approval from the local health authority having jurisdiction over the facility for issuing the license;

(-d-) approval from the fire marshal having jurisdiction over the facility for issuing the license;

(-e-) documents whereby legal ownership may be verified (i.e., lease agreement, warranty deed, etc.). If the facility is corporately owned, it will be necessary to provide a copy of the certificate of authority or articles of incorporation, as appropriate, and a copy of the corporate bylaws. If owned by partnership, it will be necessary to provide a copy of the partnership agreement.

(II) Upon receipt of the prescribed application, the licensing agency will evaluate the request in a timely manner. A license will be granted only if the facility is found to be in compliance with applicable laws and standards. Compliance will be ascertained by on-site inspections by appropriate inspection teams, including architectural evaluations.

(iii) Increase in bed capacity.

(I) The application shall include:

(-a-) approval from the local health authority having jurisdiction over the facility, for issuing the license;

(-b-) approval from the fire marshal having jurisdiction over the facility, for issuing the license;

(-c-) a fee as required by the Act. The fee shall be submitted in the form of a check or money order payable to the department; and

(-d-) approval from the Architectural Section of the licensing agency, based upon drawing(s) reviewed prior to conversion or construction and a final inspection.

(II) Approval to occupy the increased beds may be granted by the licensing agency prior to the issuance of the license covering the increased bed capacity; however, the prerequisites of subclause (I) of this clause must first be met.

(III) Upon receipt of the prescribed application, the licensing agency will evaluate the request in a timely manner. A license will be granted only if the facility is found to be in compliance with applicable laws and standards. Compliance will be ascertained by on-site inspections by appropriate inspection teams, including architectural evaluations.

(iv) Change of administrator. The application shall include:

(I) a fee as required by the Act. The fee shall be submitted in the form of a check or money order payable to the department; and

(II) a copy of the full-time administrator's current license as issued by the Texas Board of Licensure for Nursing Home Administrators.

(v) Renewal.

(I) The application shall include:

(-a-) a fee required by the Act. The fee shall be submitted in the form

of a check or money order payable to the department.

(b) a copy of the full time administrator's current license as issued by the Texas Board of Licensure for Nursing Home Administrators,

(c) approval from the local health authority having jurisdiction over the facility for issuing the license, and

(d) approval from the fire marshal having jurisdiction over the facility, for issuing the license.

(II) Upon receipt of the prescribed application, the licensing agency will evaluate the request in a timely manner. A license will be granted only if the facility is found to be in accordance with applicable laws and standards. Compliance will be ascertained by on-site inspections by appropriate inspection teams, including architectural evaluations.

(C) The intentional submission of false information by any applicant for an original or renewed state license shall constitute grounds for denial or revocation of license.

(D) The use of subterfuge or other evasive means, such as filing for license through a second party when an individual is disqualified for licensing, shall constitute grounds for denial or revocation of license.

(2) General requirements for a licensed facility.

(A) The facility shall admit and retain only residents whose needs can be met through service from the facility staff, or in cooperation with community resources or other providers under contract.

(B) Persons having mental and/or physical diseases which endanger other residents may be admitted or retained if adequate rooms and care are provided to protect the other residents.

(C) Each license shall specify the maximum allowable number of residents to be cared for at any one time. No greater number of residents shall be kept than is authorized by the license.

(D) Copies of these sections shall be available to the personnel of the facility. They shall be instructed in the requirements of the law and the rules pertaining to their respective duties.

(E) The term "hospital" may not be used as part of the name of a nursing facility unless it has been classified and duly licensed as a hospital by the appropriate state agency.

(F) Upon request, the facility management shall make available to the licensing agency representatives copies of relevant facility documents or records which in the opinion of the licensing agency representatives contain evidence of conditions that threaten the health and safety of residents. Documents or records which may be copied and made available are resident's medical records, including nursing notes, pharmacy records, medication records, and physicians' orders. The facility may charge the licensing agency at a rate not to exceed the rate charged by the department for copies. Collection shall be by billing the licensing agency. The procedure of copying shall be the responsibility of the administrator or designee. If copying requires the records be removed from the facility, a representative of the facility shall be expected to accompany the records and assure their order and preservation. It shall be the responsibility of the licensing agency to maintain the confidentiality of all records or documents photocopied for its use. The licensing agency shall protect the copies for privacy and confidentiality in accordance with recognized standards of medical-records practice, applicable state laws, and licensing agency policy. In accordance with the Act, the facilities and their officers and employees and the residents' attending physicians shall not be held civilly liable for surrendering physicians' orders, pharmacy records, state-office notes and memorandums, residents' files, and other confidential or private material under this provision.

(G) In the event any facility ceases operation, temporarily or permanently, voluntarily or involuntarily, notice shall be provided to the residents and residents' relatives or responsible parties of closure. If the closure is voluntary, notice to residents' relatives or responsible parties shall be in writing, giving at least seven days notice for relocation after receipt of notice. In voluntary closure actions, notices shall be provided as required within seven days of ownership's final decision to close. Written notice is waived for involuntary closure; however, the facility remains responsible for verbal notice immediately to residents, relatives, or responsible parties.

(H) Each licensed facility shall conspicuously and prominently post the information listed in clauses *(i)-(v)* of this subparagraph in one area of the facility that is readily and customarily available to the public. The posting shall be in a manner that each item of information is directly visible at a single time. The location of posting shall be in a main lobby or living room or main corridor leading from the main lobby or living room, or for a facility of less than 30 beds, the posting may be in the area where public notices are usually posted, as long as that location otherwise qualifies. In the case of a licensed section that is part of a larger building or complex, the posting shall be in the licensed section or public way leading thereto. Any exceptions shall be as approved by the licensing agency. The following items shall be posted:

(i) the facility license,

(ii) a complaint sign provided by the licensing agency giving the toll-free telephone number and noting that the number is available for both registering complaints and obtaining information concerning the facility;

(iii) a notice in a form prescribed by the licensing agency that inspection reports and related reports are available at the facility for public inspection,

(iv) a concise summary in non-technical language prepared by the licensing agency of the most recent inspection report;

(v) a notice in a form prescribed by the licensing agency stating that:

(I) a person has a cause of action against a facility, or the owner or employee of the facility, that suspends or terminates the employment of the person or otherwise disciplines or discriminates against the person, for reporting the abuse or neglect of a facility resident to the person's supervisors, to the department, or to a law enforcement agency, in accordance with the Act, §16;

(II) a person making a bad faith, malicious, or reckless report of abuse or neglect is subject to a criminal penalty, in accordance with the Act, §16; and

(III) the facility has available for public inspection a copy of the Act, §16, pertaining to abuse and neglect.

(I) The inspection reports and related reports that will be available at the facility for public inspection, as noted in subparagraph (H)*(iii)* of this paragraph, shall include licensing inspection reports, deficiency sheets, and plan of correction (Health Care Financing Administration (HCFA) Form 2567) of Medicare and Medicaid participating facilities, and summaries provided by the licensing agency of inspections and complaint investigations provided in accordance with §145.84(a)(2) of this title (relating to Determinations and Actions Pursuant to Inspections, Surveys, and Visits). This material shall cover the most current 12 months. The material available for public inspection shall be available at the on-premises business office or administrator's office during normal facility office hours. On admission to the facility, the resident and or responsible party shall be advised that these reports are available.

(J) A copy of the Act, §16, referred to in subparagraph (H)*(v)*(III) of this paragragh, shall be available for public reference at the on-premises business office or administrator's office during normal facility office hours.

(K) Summaries, inspection reports, and related reports prepared by the licensing agency shall be available to the public through the established licensing agency's public disclosure procedures.

(L) Accidents, whether or not resulting in injury, and any unusual incidents or abnormal events, including allegations of mistreatment of residents by staff or personnel or visitors, shall be described in a separate administrative record and reported by the facility in accordance with the Act and this section.

(i) If the incident appears to be of a serious nature, it shall be investigated

by or under the direction of the director of nurses, the facility administrator, or a committee charged with this responsibility.

(iii) If the incident involves a resident and is serious or is one requiring special reporting to the licensing agency, the resident's responsible party and attending physician shall be immediately notified.

(iv) Certain types of incidents shall be specially and specifically reported to the central office of the licensing agency in accordance with guidelines established by the licensing agency.

(M) Accident or incident reports shall be filed in the administrator's office, shall be retained for the period of time indicated in §145.20 (g) of this title (relating to Medical Records), and shall contain the following information.

(i) For incidents involving residents, the name of resident; witnesses (if witnesses were present); date, time, and description of the incident; circumstances under which it occurred; action taken, including documentation of notification of the responsible party and attending physician if appropriate; and final disposition that indicates the resident's condition has stabilized and/or is resolved. The final disposition shall include the date and time of entry, resident's vital signs, and description of the resident's present health condition. The incident report shall be completed under the direction of the director of nurses or individual in charge of the shift of duty at the time the accident or incident occurred. The nursing staff is then to document in the nurses notes, on each shift, the condition of the resident for at least 24 hours or until the condition stabilizes.

(ii) Incident reports describing incidents not involving residents shall contain such information as names of individuals involved, date, time, witnesses (if witnesses were present), description of the event or occurrence, including the circumstances under which it occurred, action taken, and final disposition that indicates resolution of the event or occurrence.

(N) Within 72 hours of admission, the facility must prepare a written inventory of the personal property a resident brings to the facility, such as furnishings, jewelry, televisions, radios, sewing machines, and medical equipment. The facility does not have to inventory the resident's clothing, however, the operating policies and procedures must provide for the management of resident clothing to prevent loss and or damage. The facility administrator or his or her designee must sign and retain the written inventory and must give a copy to the resident and or the resident's responsible party. If requested by the resident or responsible party, the facility must revise the written inventory to show if property is lost, destroyed, damaged, replaced, or supplemented. Upon discharge of the resident, the disposition of personal effects must be documented by a dated receipt bearing the signature of the resident and or the resident's responsible party.

(O) Intemperate use of alcohol or controlled substances, disorderly conduct, or the violation of any law involving moral turpitude on the part of the owner, administrator, or employees while on duty engaged in the operations and functions of a facility may in extreme circumstances constitute grounds for denial or revocation of license.

(P) Substantiated evidence of the owner, administrator, or any employee willfully inflicting injury, physical suffering, or mental anguish on any resident in a facility; or failure of management, who is knowledgeable of a substantiated case of physical mental abuse or neglect, to take corrective action; or failure of management, who has cause to believe that a resident's physical or mental health or welfare has been or may be adversely affected by abuse or neglect caused by another person or persons, to report it in accordance with the Act, §16, may in extreme circumstances constitute grounds for denial or revocation of license.

(3) Operating policies and procedures.

(A) The facility shall have an administrative policy and procedure manual that outlines the general operating policies and procedures of the facility. The manual must include policies and procedures related to admission and admission agreements, resident care services, refunds, transfers and discharges, receiving and responding to complaints and recommendations, and protection of residents' personal property and civil rights.

(B) The facility's written resident care policies shall outline the nursing care, related medical services, and other services provided.

(i) These policies shall include plans for promoting self-care and independence and also include the following areas:

(I) admission, transfer, and discharge;

(II) physician services;

(III) dental services;

(IV) dietary services;

(V) nursing services;

(VI) pharmacy services;

(VII) social services;

(VIII) activities;

(IX) ancillary diagnostic and therapeutic services (such as laboratory, radiology, and physical therapy);

(X) medical records;

(XI) emergency medical health care;

(XII) disaster plan; and

(XIII) infection control.

(ii) These resident care policies shall be developed by a minimum of three professionals or outside resource staff that may include the licensed nursing home administrator, physician(s), registered or licensed nurses, registered pharmacist(s), social worker(s), and dietitian(s). At least three of the previously listed professionals shall review and sign these policies at least annually and update them as necessary.

(C) The facility shall have written personnel policies and procedures that are explained to employees when first employed and always available to them. These policies and procedures may include job assignment, working hours, overtime, payment, payroll deductions, paydays, insurance, fringe benefits, time off, educational programs, vacation, resignations and terminations, breaks, probation, leaves of absence, dress, and conduct.

(D) The facility shall have written policies for the control of communicable diseases in employees and residents, provision of a safe and sanitary environment for residents and employees, and reporting and reviewing accidents-incidents involving residents and employees. If employees contract a communicable disease that is transmissible to residents through routine care practices, the facility shall ensure that they shall be excluded from direct resident care and/or foodhandling, as appropriate, as long as risk of transmission is present. The local health authority should be available to assist the facility in determining the transmissibility of the disease, when exclusion from direct resident care and/or foodhandling is appropriate, and when work can be resumed. The facility must maintain evidence of compliance with local health codes or ordinances regarding employee and resident health status.

(E) The facility shall ensure that personnel records are correct and contain sufficient information to support placement in the assigned position (including a resume of training and experience). Where applicable, a current copy of the person's license or permit shall be in the file.

(F) Upon request of the licensing agency, the facility shall make available financial records to demonstrate the facility's compliance with applicable state laws and standards relating to licensing.

(G) If the resident or his or her responsible party entrusts the handling of petty cash (for incidental purposes such as soft drinks, magazines, tobacco, etc.) to the nursing facility, simple financial records of receipts and expenditures of such petty cash must be maintained in an orderly and accountable fashion. These funds shall not be deposited in the general operating bank account of the facility.

(H) The facility shall make arrangements to transfer residents to another health care facility when residents' needs change or become acute as set forth in §145.15(f) of this title (relating to Physician Services). At the time of transfer, a resident transfer summary or copy of those portions of the resident's medical record which are relevant to the transfer and the continuing care of the resident shall be forwarded to the receiving facility or caregivers. At a minimum, the resident transfer summary or

copies of the medical record to be provided shall include

(i) a brief description of the resident's medical condition at time of transfer; e.g., diagnosis, vital signs;

(ii) the reason for the transfer; and

(iii) medications and any other pertinent information.

(I) If a facility does not employ a person qualified to provide a required or needed service, it shall have arrangements with outside resources. An outside resource shall be a qualified person, agency, or staff of a corporate entity, including temporary personnel agencies, that will provide the service directly to residents or act as a consultant to the facility.

(i) If the facility enters into an agreement with any outside resource, the facility shall state in the agreement the responsibilities, functions, objectives, and terms of the agreement, including financial arrangements and charges.

(ii) The administrator or his representative and the qualified professional shall sign the agreement. If the facility is owned by a corporation, a copy of the agreement signed by the representative of the corporate entity and the qualified professional fulfills this requirement.

(iii) The facility shall require in any such agreement that outside resources meet the same qualifications that would apply if the services were provided by facility employees.

(iv) The outside resource, if acting as a consultant, shall prepare written, signed, and dated reports to apprise the administrator of progress, plans for implementation, evaluation of performance, and recommendations. The administrator must retain the reports for two years.

(b) Governing body.

(1) Legal responsibility. There shall be a governing body which assumes full legal responsibility for the overall conduct of the facility. The person(s) legally responsible for the conduct of the facility shall carry out or have carried out the functions herein pertaining to the governing body.

(2) Disclosure of ownership. The ownership of the facility shall be fully disclosed to the state licensing agency. In the case of corporate ownership, the corporation shall

(A) secure, employ, or arrange for a nursing home administrator,

(B) provide a copy of the certificate of authority or articles of incorporation, as appropriate, and a copy of the corporate bylaws,

(C) provide to the licensing agency the name and address of the individual or agent authorized to receive service in Texas, and

(D) provide to the licensing agency a list of all individuals exercising management or control of the corporation.

(3) Compliance with laws and standards. The governing body shall be responsible for compliance with the applicable rules and licensing standards of the licensing agency.

(4) Policies and procedures. The facility shall have written operational policies and procedures that are formally adopted, dated, and available to facility staff, residents, responsible parties of the residents, and the public. These policies and procedures shall be reviewed and updated annually by staff members designated to assist in this review. Consultants may assist if requested to do so by the facility.

(5) Full-time administrator.

(A) Unless the owner is the full-time administrator, the governing body shall appoint a full-time licensed administrator. The governing body shall delegate in writing to the administrator full authority for the internal operation of the facility in accordance with established policy. The state license for operation of the facility must be issued in the name of the full-time licensed administrator. The administrator shall be accountable to the governing body for overall management of the facility.

(B) The administrator's responsibilities for procurement and direction of competent personnel shall be clearly defined.

(C) An individual competent and authorized to act in the absence of the administrator shall be designated in writing.

(D) The administrator may be a member of the governing body.

(E) The vacancy in the position of administrator of a facility shall be reported immediately to the licensing agency.

(6) Staffing. There shall be on duty in the facility sufficient personnel as specified in §145.17(a) of this title (relating to Nursing Services) and sufficient non-nursing personnel to maintain the premises in an orderly, safe, and clean manner; to prepare and serve meals; to keep a supply of clean linens, to assist and supervise the residents in the use of the recreational facilities, and to meet the other operational needs of the facility. All such persons shall be physically, emotionally, and mentally able to perform their assigned duties.

(c) Staff development. Each facility shall implement and maintain programs of orientation, training, and continuing in-service education of all employees who have any contact with the residents. The programs shall meet the requirements described in this section.

(1) General description of orientation, training, and continuing in-service education programs. The following orientation, training, and continuing in-service education programs shall be provided by the facility for its employees.

(A) Present employees shall demonstrate and/or submit evidence to the facility training coordinator that they have competency in the skills and have knowledge meeting the requirements of orientation and job specific training, the same as required for new employees, or shall receive part or all orientation or training as necessary to have such required competency and knowledge. Documentation of attainment of competency and receipt of knowledge shall be on the same report forms as for new employees, those forms being derived from a standard training inventory list prepared by and supplied only in sample form by the licensing agency. The facility shall make all necessary copies. The form shall not be modified in any way. The standard training inventory list, hereinafter referred to as the training inventory list, will be the document used to accomplish the following:

(i) to serve as an inventory for determining if more training is needed for present employees, and if so, in what areas;

(ii) to determine the level of training success for each employee; and

(iii) to point out employees who fail to adequately complete training and who must receive all or part of the orientation or training again as necessary to gain required competency and knowledge.

(B) The orientation section of the training inventory list will be the same for all employees. Each job-specific area will be covered by the training inventory list. The inventory list will be administered by the facility training coordinator or by the appropriate and competent person named to carry out or assist in carrying out the training program. The administrator of the inventory list must be closely familiar with the actual training each individual taking the training inventory list has undergone.

(C) New employees shall receive orientation and job-specific training, of the content and scope as specified herein and as approved by the licensing agency. On completion of the training, the employees shall be tested by the required inventory list.

(D) Both new and present employees must receive continuing in-service education of content and scope, as it relates to the job category involved and as approved by the training coordinator.

(2) Employees involved.

(A) Employees included are those having responsibility for any part of the care given to residents and who have any contact with residents. Licensed and degreed personnel will not be required to meet the job-specific requirements of §145.131 of this title (relating to Basic Teaching Outline) for these training programs, but will be included in training required for all employees under the orientation provisions in §145.131 of this title (relating to Basic Teaching Outline) (orientation), and in continuing education.

(B) Orientation is required for all employees, except the administrator. The employee categories requiring job-specific training and continuing in-service education to their respective jobs are nursing, dietary, janitor/housekeeper, activity-social service, and medical records.

(i) For the purpose of this subsection, a medication aide is considered a nurse

aide and must receive the same training as the nurse aides in orientation, job-specific training, and continuing in-service education. The continuing in service education requirement for nurse aides in this subsection may not be used for renewal as a medication aide.

(ii) Administrators licensed by the Texas Board of Licensure for Nursing Home Administrators and administrators-in-training under the auspices of that board are not included. Consultants and subcontract personnel who are not employees of the facility are not included.

(iii) A person who is employed as a food service supervisor and enrolls in an approved food service supervisors course within 90 calendar days after the date of employment is not required to receive the dietary job-specific training.

(iv) Activity directors who meet the requirements for activity directors under the state Medicaid ICF/SNF standards for participation issued by the Texas Department of Human Services are excluded from the job-specific training.

(v) A person who is employed as the activity director and enrolls in an activity directors course that is approved by the Texas Department of Human Services is exempt from the activities director training, provided the 80-hour activity director course is begun within 90 calendar days after the date of employment.

(C) The administrator shall be responsible for determining that employees who come from outside placement resources have been adequately trained to perform the job which they will occupy in the facility. Outside placement resources would include contract personnel, registry personnel, agency pools, and temporary help placement agencies. Orientation programs for such individuals may be conducted at the discretion of each facility. Facility administrators shall request outside placement resources to provide documented evidence that their personnel have successfully completed the required training.

(3) Facility training coordinator.

(A) The administrator of the facility shall designate in writing a facility training coordinator to organize, oversee, and coordinate the facility's program of orientation, job-specific training, and continuing in-service education. The training coordinator shall engage the services of appropriate and competent persons to carry out or assist in carrying out the programs. The coordinator, based on his own instruction, or by recommendation of the instructors or trainers involved, shall determine the status of all employees, new and present, with respect to training programs, training needs, and competencies. The coordinator will be held responsible for checking or causing to be checked the credentials of persons being trained.

(B) A training coordinator may serve more than one facility as long as the training program requirements are met. As the training coordinator will be responsible for the training of all employee categories, that person shall be a professionally or vocationally licensed person in health care or shall hold a Bachelors Degree from an accredited college or university. Ideally, the training coordinator will have had training or experience in adult education and in the general areas of health care.

(C) To assure that the overall quality of service provided by the facility is not lessened, the facility administrator and director of nurses are not to serve as the training coordinator.

(4) Methods acceptable.

(A) It is the intent of the licensing agency to accept various methods by which a facility may accomplish its training and inservice education programs as long as the employees receive the training and education necessary to achieve the competencies and proficiencies outlined in the training inventory list within the required total time frames. Programs may be conducted in the facility, in a school or college, or elsewhere. Instructors may be consultants, qualified facility employees, including the training coordinator, persons from outside the facility, or representatives of schools or other organizations, as engaged or approved by the training coordinator. Facility employees with other duties may be used in training programs as long as their other required duties are not adversely affected.

(B) A facility consultant may teach the continuing inservice education required by this program and count that as part of the time spent in consultation. The time a consultant may use teaching in orientation or job-specific training (§145.131 of this title (relating to Basic Teaching Outline) may not be counted as time spent in consultation.

(C) Any generally recognized training technique may be used, including, when appropriate, demonstration and learning-by-doing while actually on the job. In teaching technical and nursing care of the elderly and other residents of the facilities, consideration shall be given in all such subjects to the psychological and social needs of the residents.

(D) If the facility chooses to purchase training from a college, school, or other institution to meet these requirements, the course must be approved. For a college, school, or other institution to acquire approval, it must submit a letter of intent or training outline it will use to the licensing agency for approval. If the college, school, or other institution uses the material suggested by the licensing agency it may submit a letter of intent to the licensing agency. In either case, it is the facility's responsibility to determine that the college, school, or other institution has a current approval from the licensing agency. The licensing agency will maintain a current list of approved training institutions. Health care facilities shall have open access to that list.

(5) Examinations. The training coordinator is to assure himself/herself that the employee being trained is in fact receiving the knowledge and attaining the skills in accordance with the intent of the program. The licensing agency will provide samples of the required standardized training inventory list. The training coordinator may develop examinations or other tests of skills or knowledge; but such tests shall not be used in lieu of the required standardized training inventory list.

(6) Records.

(A) Each facility shall keep appropriate records on each employee who must be involved in training and education programs. The records shall show the status and progress of each employee with reference to his or her required training and shall denote completion and show the date of completion of the appropriate training. An employee is not eligible to receive a record of completion of job-specific training until the required course work is completed and the training coordinator is satisfied appropriate skill levels are attained. Thus, the awarding of a completion record may take as long as 120 calendar days for an employee.

(B) Copies of all records and training inventory lists will be maintained in employee files. However, when the training is provided by a school, college, or other educational institution approved by the licensing agency, those records and training inventory lists need only be maintained by the training institution. Training inventory lists and records pertaining to orientation will in all cases be maintained by the facility. A record or report from an educational institution attesting that a student has successfully completed a training course will be acceptable to the licensing agency, but such record or report must be available in the facility involved for review by the licensing agency. Records of a student or graduate of an educational institution will be made available to the student or graduate on his or her request in accordance with policies of the institution. When an employee terminates employment in a facility, on that employee's request, the facility shall provide that employee with a copy of his or her training inventory list and/or other documentation showing his or her status with respect to required training. Such records shall be shared with another facility on request of the employee. All records shall be made available to representatives of the licensing agency. The facility shall also have a record showing the designation of the training coordinator by the administrator and a resume or curriculum vitae of the coordinator.

(7) Programs teaching outline.

(A) New employee training requirements are as follows.

(i) New employee orientation and job specific training shall meet the requirements specified in §145.131 of this title (relating to Basic Teaching Outline). The training for an employee shall include information not less than that specified for the category or

sub-category applicable to the employee in the basic teaching outlines included as a part of these sections.

(ii) If a facility has a policy prohibiting a skill to be performed, that facility may exclude the training for that skill. Similarly, if a facility has no residents requiring a certain skill, that facility may exclude the training for that skill. In both cases, documentation to this effect shall be made on the individual's training inventory list.

(iii) Each facility shall submit a letter of intent which shall include an outline of the subject matter (if different from the one suggested by the licensing agency), the date of implementation of the training, and the name and curriculum vitae of the designated training coordinator. The substituted teaching outline is subject to approval by the licensing agency. A copy of the licensing agency's basic teaching outline and suggested plan for implementing the training program will be furnished to each facility; additional copies may be reproduced by the facility. The minimum subject requirements of training for each category are shown in the licensing agency's basic teaching outline, and it is expected that each individual subject in each category will receive an appropriate amount of time. Appropriate learning by-doing, when supervised by the training coordinator, or the person designated by the training coordinator, may count toward job-specific training. Such training may be subject to monitoring and approval by the licensing agency.

(B) Continuing in-service education subjects shall relate to the job category involved and be as approved by the training coordinator.

(8) Schedule of training and continuing in service education.

(A) As regards to new employee training, full orientation shall be provided within 10 working days of employment. The remainder of the training required on the outline for each of the respective job categories shall be completed within 120 calendar days following the 10 working day orientation.

(B) Continuing in-service education requirements are as follows.

(i) Each new and present employee shall secure or receive the numbers of hours of continuing in-service education per year as appropriate to his or her specific job, but not less than the following.

(I) licensed nursing personnel and nurse aides - two hours per quarter;

(II) food service supervisors, cooks, and helpers, dietary aides -- two hours per quarter,

(III) housekeepers, janitors, laundry workers - one hour per quarter,

(IV) activity staff - one hour per quarter,

(V) social services staff - one hour per quarter, and

(VI) medical record clerks - one hour per quarter.

(ii) Annual in-service training on rehabilitative nursing procedures and the use of restraints must be given to all nursing personnel.

(iii) When related to the employee's respective job, attendance at outside meetings or seminars may be used to satisfy the continuing in service education requirement for a maximum of four quarters. The facility shall keep records of the total number of hours of in service education for all employees in the facility as well as records of attendance of each individual employee.

(C) If present employees have to meet the same requirements as new employees, documentation covering these requirements shall be recorded on the same training inventory list and other report forms, as are used for new employees.

(9) Employees already trained or partly trained when employed.

(A) New employees requirements are as follows.

(i) Any new employee who has already met all the training requirements or has had similar training, or six months previous employment in a health care facility, and presents verification of previous experience need undergo only that part of training which would relate to orientation and/or specific training peculiar to the facility. To receive credit for all or any completed portion of past training, the employee must be able to offer documented evidence in the form of copies of records of subjects completed in the facility of former employment or demonstrate skill competency to the training coordinator. In either instance, the training inventory will be used as the record for documenting credit.

(ii) Any new employee that has had at least six months previous experience in a health care facility may demonstrate competency to the training coordinator. The required training inventory list will be administered by the facility training coordinator or by the appropriate and competent person to determine if more training is needed, and if so, in what areas. The employee's previous service dates are to be verified by the former employer, and this documentation included in the employee's training record.

(B) Job interruption for any reason, including leave of absence, will cause a suspension of the minimum training time. The training time restarts immediately upon the renewal of active employment.

(C) Part time employee requirements are as follows.

(i) Part-time employees shall be included in orientation and their respective job-specific training and continuing in-service education.

(ii) Additional time may be allowed for the completion of both the orientation and job-specific training for part-time employees. The number of hours worked will determine the time allowed for completion of training. Orientation must be completed within 80 hours worked and job-specific within 960 hours worked.

(10) Employees changing positions within the facility. An employee changing position within a facility will be considered as a new employee with respect to the new position, and will be subject to being provided with any additional training that would be required for the category or sub-category of the new position within the total minimum training time for that job category or sub-category.

(11) Monitoring and assistance by the licensing agency. Each facility shall maintain not less than a 30-day advance schedule of training classes. This shall not apply for classes being taught by a college, school, or other institution, where the advance scheduling becomes the responsibility of that institution. The licensing agency may monitor any training or education session. The licensing agency will offer assistance in organizing and maintaining training programs, or in orienting training coordinators, to the extent licensing agency staff and funds permit.

(12) Change of ownership.

(A) When a facility undergoes a change in ownership, the administrator shall submit a letter to the licensing agency to report the status of the training program. If the training programs remain unchanged, the letter shall so state. Changes of training coordinator or the method by which the facility accomplishes its training should be reported in writing.

(B) The change of ownership letter must be submitted within 30 days of the change. Pending approval from the licensing agency, the facility should begin the training program so as to have it fully operational within 60 days following the change of ownership.

(d) Volunteer program.

(1) The facility shall promote a volunteer program designed to assist in meeting the social and emotional needs of the residents.

(2) A volunteer council may be utilized to involve the community in the volunteer program.

§145.14. Resident Rights. The governing body of the facility establishes written policies regarding the rights and responsibilities of residents and, through the administrator, is responsible for development of, and adherence to, procedures implementing such policies. These policies and procedures are made available to residents, residents' responsible parties, and the public. The staff of the facility shall be trained and involved in the implementation of these policies and procedures. These resident right policies and procedures shall ensure that, at least, each resident admitted to the facility:

(1) is fully informed, as evidenced by the resident's and/or responsible party's written acknowledgement, prior to or at the time of admission and during stay, of these rights and of all rules and regulations governing conduct and responsibilities;

(2) is fully informed, prior to or at the time of admission and during stay, of services available in the facility, and of related charges, including any charges for services not covered under the United States Social Security Act, Title XVIII (Medicare) and Title XIX (Medicaid), 42 United States Code 1395 et. seq. and 1396 et. seq., or not covered by the facility's basic per diem rate;

(3) is fully informed, by a physician, of his or her health condition unless medically contraindicated (as documented by a physician in his medical record), and is afforded the opportunity to participate in the planning of his or her treatment and to refuse to participate in experimental research;

(4) is transferred or discharged only for medical reasons, or for his or her welfare or that of other residents, or for nonpayment of his or her stay (except as prohibited by the United States Social Security Act, Titles XVIII or XIX), and is given reasonable advance notice to ensure orderly transfer or discharge, and that such actions are documented in his or her medical record;

(5) is encouraged and assisted, throughout his or her period of stay, to exercise his or her rights as a resident and as a citizen and, therefore, may voice grievances and recommend changes in policies and services to facility staff and/or to outside representatives of his or her choice, free from restraint, interference, coercion, discrimination, or reprisal;

(6) may manage his or her personal financial affairs, or is given at least a quarterly accounting of financial transactions made on his or her behalf should the facility accept his or her written delegation of this responsibility to the facility for any period of time in conformance with state law;

(7) is free from mental and physical abuse, and free from chemical and, except in emergencies, physical restraints, except as authorized in writing by a physician for a specified and limited period of time, or when necessary to protect the resident from injury to himself or herself or to others;

(8) is assured confidential treatment of his or her personal and medical records, and may approve or refuse their release to any individual not involved in his or her care, except, in case of his or her transfer to another health care facility, or as required by law or third-party payment contract;

(9) is treated with consideration, respect, and full recognition of his or her dignity and individuality, including privacy in treatment and in care for his or her personal needs;

(10) is not required to perform services for the facility that are not included for therapeutic purposes in his or her plan of care;

(11) may associate, communicate, and meet privately with individuals, unless to do so would infringe on the rights of other individuals, and may receive mail unopened;

(12) may meet with and participate in activities of social, religious, and community groups at his or her discretion, within the facility and in the community at large, unless medically contraindicated by his or her physician in his or her medical record;

(13) may retain and use his or her personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents, and unless medically contraindicated (as documented by his or her physician in the medical record); and

(14) if married, is assured privacy for visits by his or her spouse. If both are residents in the facility, they are permitted to share a room, unless medically contraindicated (as documented by the attending physician in the medical record)

§145.15. Physician Services.

(a) Residents will be admitted only upon the order of a physician.

(b) Upon admission, the person or agency responsible for the placement of the resident in a nursing home shall see that arrangements are made for medical care of the resident.

(c) Each nursing facility shall require as a condition of admission that each resident have a current medical history and physical examination by a physician.

(1) The medical history and physical examination must be done within 14 days prior to admission or within seven days after admission.

(2) The medical history and physical examination report shall be sufficient for the attending physician to evaluate the resident's immediate and long term needs, and shall include a diagnosis and any other information that may be needed for the care of the resident.

(3) A copy of a recent hospital discharge summary or history and physical examination report which contains all of the required information may be utilized. If the author of such hospital report is not the resident's attending physician, then the attending physician must acknowledge the report in writing by cosigning the report.

(4) Where the admitting physician is not the attending physician, the attending physician must see the resident within seven days after admission and prepare a history and physical examination report or acknowledge the appropriate report from the hospital as described in paragraph (3) of this subsection.

(5) If the attending physician is the author of the hospital report described in paragraph (3) of this subsection, then no cosignature is required

(d) Each resident shall be examined at least annually by his or her attending physician or designated physician and a report shall be placed in the resident's medical record indicating the physician has done the examination and giving the physician's findings and current diagnosis It is recommended that each resident be seen by the attending physician at least quarterly or more often as necessary, and a written report of the findings be attached to the resident's medical record in the facility

(e) Physicians must review and sign their programs of care

(1) Physician's orders must bear the usual signature of the physician responsible for the orders, as well as the effective date

(2) Changes cannot be made either on a handwritten or computerized physician's order sheet after the orders have been signed by the physician, unless space allows for additional orders below the physician's signature, including space for the physician to sign again

(3) In the event a change of orders is necessary, they will need to be treated as new orders. Should the change be by telephone, the telephone order shall be signed by the physician and returned to the medical record within seven working days.

(f) In the event of an acute illness or accident requiring medical and/or nursing care beyond the capabilities of a nursing home, the resident shall be transferred to a hospital where needed services and facilities are available, provided, however, until said transfer is made, the nursing home personnel shall have authority to carry out emergency procedures as prescribed by a licensed physician. In case of an emergency illness which does not necessitate transfer of a resident from the facility, appropriate nursing personnel shall keep a necessary record of medications and vital signs in order to keep the attending physician fully informed relative to the health status of the individual resident.

(g) Freedom of choice concerning physician services is as follows

(1) Each resident of the facility or his or her responsible party shall have the right to choose and change the physician of such resident at any time, and the facility shall not interfere with or limit such right, except when such choice of physician creates a noncompliance situation for the facility regarding federal, state, or local laws and regulations and/or the facility's medical staff policies. Such changes shall be recorded on the admission record and all other appropriate forms maintained by the facility.

(2) A facility may have a medical staff to establish bylaws which govern physicians' clinical privileges of admitting and attending facility residents.

(3) The facility may not enter into any agreement with any physician that would hinder a resident's freedom of choice and/or would defraud, injure, or harm any resident

(h) Every facility shall arrange for facility medical service as follows

(1) Every facility shall have an arrangement with one or more physicians to provide emergency medical care as needed

(2) Every facility shall have documented participation of a medical advisor whose responsibilities shall include, but are not limited to, assisting in the development and implementation of policies and procedures for resident care, pharmaceutical services, and continuous physician coverage for medical emergencies. An attending physician may perform the functions of a medical advisor.

(3) Paragraph (2) of this subsection shall become effective and replace paragraph (1) of this subsection at such time as the requirements of Rider Number 17, H-22, General Appropriations Act for the fiscal 1988-1989 biennium and or Texas

Human Resources Code, §22.014, are met, and written notice of same is provided to licensed facilities at least 60 days prior to its effective date.

(i) In case of an acute illness or death, the resident's responsible party shall be notified as soon as possible concerning the illness or death.

(j) The name of any resident of a facility with a reportable disease as specified in §§97.1-97.11 of this title (relating to Control of Communicable Diseases) shall be reported immediately to the city health officer, county health officer, or health unit director having jurisdiction, and appropriate infection control procedures shall be implemented as directed by the local health authority. For further information on reportable diseases, see Texas Department of Health Publication 6-101, *Rules and Regulations for Control of Communicable Diseases*.

§145.16. Dental Services and Other Professional Services.

(a) Dental services.

(1) At the time of admission, the facility shall obtain the name of the resident's preferred dentist and record this in the medical record.

(2) The facility shall maintain a list of local dentists for residents who do not have a private dentist.

(3) The facility shall comply with the Act, §7, as amended by the 70th Legislature, 1987, Regular Session (House Bill 1739), regarding annual dental examinations for residents at his or her own expense.

(b) Other professional services.

(1) The facility shall maintain a list of podiatrists in the area as assistance to the resident in arranging for podiatric care.

(2) The facility shall maintain a list of optometrists in the area as assistance to the resident in arranging for optometric services.

§145.17. Nursing Services.

(a) Staffing.

(1) The facility shall provide 24-hour nursing services, seven days a week, to meet the needs of the residents who are admitted to and remain in the facility.

(2) The nursing service is directed by a registered professional nurse licensed in Texas or a licensed vocational nurse licensed in Texas who is a graduate of a state approved school of vocational nursing. The director of nurses is employed full-time in the facility and is responsible for the total nursing service. The director of nurses serves only one facility in this capacity.

(A) The director of nurses shall work during the day, including the morning shift, and shall devote a minimum of 40 hours each week to the nursing service of the facility. If the director of nurses has administrative responsibility for the facility, the director of nurses must have an assistant licensed director of nurses so that there is the equivalent of a full time director of nursing service.

(B) The director of nurses may be the charge nurse on the 7 a.m. to 3 p.m. shift in a facility with less than 60 beds.

(3) Each nursing unit shall have persons or individuals in charge as follows:

(A) Each nursing unit shall have a charge nurse as required in paragraphs (4) and (5) of this subsection and a charge individual as required in paragraph (6) of this subsection. Refer to §145.23(o) of this title (relating to Physical Plant and Environment) for information on nursing units.

(B) Each nursing unit shall have a charge nurse as required in paragraphs (4) and (5) of this subsection and a nurse or other individual as required in paragraph (6) of this subsection. Refer to §145.23(o) of this title (relating to Physical Plant and Environment) for information on nursing units.

(C) Subparagraph (B) of this paragraph shall become effective and replace subparagraph (A) of this paragraph at such time as the requirements of Rider Number 17, II-22, General Appropriations Act for the Fiscal 1988-1989 biennium and or Texas Human Resources Code, §22.014, are met, and written notice of same is provided to licensed facilities at least 60 days prior to its effective date.

(4) The charge nurse on the 7 a.m. to 3 p.m. shift shall be at least a licensed vocational nurse. The charge nurse must be relieved on days off by at least a licensed vocational nurse.

(5) The charge nurse on the 3 p.m. to 11 p.m. shift shall be at least a licensed vocational nurse. The charge nurse must be relieved on days off by at least a licensed vocational nurse.

(6) For the 11 p.m. to 7 a.m. shift, provision for charge individuals and for licensed vocational nurse or registered nurse staffing shall be as follows.

(A) The charge individual on the 11 p.m. to 7 a.m. shift shall be a medication aide or other individual of the facility nursing personnel who has had previous experience in the nursing field, preferably in caring for the infirm and aged.

(B) Each licensed nursing home, regardless of number of nursing units, shall have a minimum of one licensed vocational nurse or registered nurse in the facility during the 11 p.m. to 7 a.m. shift. This nurse must be relieved on days off by at least a licensed vocational nurse. This nurse shall be available to respond to situations or emergencies that require a licensed nurse.

(i) On an individual basis and for a limited period of time, the licensing agency may grant a waiver of this requirement where, in the opinion of the licensing agency, it would be impractical and of extreme hardship for the facility to meet the requirement and where, in the opinion of the licensing agency, the facility has demonstrated that residents do not need the direct and immediate availability of a licensed nurse.

(ii) In instances where this nurse is not the person in charge of the nursing unit, the charge individual shall be a medication aide or other individual of the facility nursing personnel who has had previous experience in the nursing field, preferably in caring for the infirm and aged.

(C) Subparagraph (B) of this paragraph shall become effective and replace subparagraph (A) of this paragraph at such time as the requirements of Rider Number 17, II-22, General Appropriations Act for the fiscal 1988-1989 biennium and or Texas Human Resources Code, §22.014, are met, and written notice of same is provided to licensed facilities at least 60 days prior to its effective date.

(7) The licensed nurse ratio for each 24-hour period shall be a minimum of one such nurse to 30 residents. Special consideration shall be given on the deployment and utilization of nursing staff in situations involving multiple nursing stations and the type of building which houses the facility.

(8) It shall be the duty of the administrator to see that in addition to the aforementioned ratios for licensed personnel, the nursing personnel, including nurse aides and orderlies, is sufficient to provide 24-hour nursing service and is increased whenever necessary to assure that each resident receives treatments, medication, and diet as prescribed; receives preventive care to discourage decubiti; is kept comfortable, clean, and well-groomed; is protected from accident and injury by adoption of indicated safety measures; and is treated with kindness and respect. Duties of nursing personnel consist of direct resident care and services.

(9) Persons acceptable as nursing personnel include:

(A) persons who are mentally, physically, or emotionally able to perform assigned duties;

(B) persons whose behavior or health appears not to endanger the health, safety, and well-being of residents; and

(C) persons able to speak, read, and write English.

(10) A graduate vocational nurse who has a temporary work permit must work under the direction of a registered professional nurse or a licensed vocational nurse who is physically present in the facility.

(11) A graduate nurse with a work permit must work under the direction of a registered nurse who is physically present in the facility.

(12) If the facility employs a licensed vocational nurse to supervise and direct nursing services, the facility must have an agreement with a registered nurse (RN) who must provide the vocational nurse at least four hours of consultation per week

in the facility.

(A) The RN consultant shall not assume director of nursing duties, but shall act as a consultant to help solve problems involving resident care, conduct in-service training, and maintain proper medical records.

(B) A facility is not required to hire a replacement for the RN consultant to satisfy the four hours per week requirement during a two-week annual vacation.

(C) A facility is not required to hire a replacement for the RN consultant during a personal illness, provided there is evidence of satisfactory past performance, and provided the illness does not create an absenteeism which exceeds 30 days.

(D) When it is anticipated that the RN consultant will be absent for the maximum of 30 days due to illness, the licensing agency must be notified.

(E) RN time spent in continuing education workshops may not be counted as hours of consultation for the facility.

(13) If the facility uses licensed temporary nursing personnel, they must have the same qualifications that permanent facility employees do. Temporary personnel may not serve as the director of nurses. If temporary personnel are used, a full-time licensed nurse of the facility must be on call and immediately available by telephone.

(14) A private duty nurse or sitter must perform within the scope of the written resident care policies and procedures and administrative policies of the facility.

(b) Nursing care service.

(1) The director of nurses shall participate in the development and implementation of resident care policies.

(2) The director of nurses shall assure that orientation, training, and continuing in-service education for all nursing personnel are provided consonant with the requirements of staff development §145.13 (c) of this title (relating to Administrative Management).

(3) The director of nurses shall assure that an interdisciplinary overall care plan is established for each resident within 30 days of admission and that the plan is reviewed and modified as necessary, but at least every 90 days.

(A) The overall care plan must be written in ink or typewritten. Additions and/or alterations, and the required review and revisions must also be permanently recorded.

(B) The overall care plan must be kept at the nurses station, readily accessible to all staff providing care.

(4) Charting must be under the direction of the charge nurse or charge person on each shift.

(5) Daily rounds to observe all residents shall be as follows.

(A) Daily rounds to observe all residents shall be made by the charge nurse on the 7 a.m. to 3 p.m. shift and the 3 p.m. to 11 p.m. shift, and the charge individual on the 11 p.m. to 7 a.m. shift.

(B) Daily rounds to observe all residents shall be made by the charge nurse on the 7 a.m. to 3 p.m. shift and the 3 p.m. to 11 p.m. shift, and the nurse available in the facility or the charge individual on the 11 p.m. to 7 a.m. shift.

(C) Subparagraph (B) of this paragraph shall become effective and replace subparagraph (A) of this paragraph at such time as the requirements of Rider Number 17, H.B. 22, General Appropriations Act for the fiscal 1988-1989 biennium and/or Texas Human Resources Code, §22.014, are met, and written notice of same is provided to licensed facilities at least 60 days prior to its effective date.

(6) Licensed nursing personnel must be aware of nutritional needs of residents and shall assist with meeting the dietary needs. The weight of each resident should be recorded monthly or more frequently if indicated.

(7) Licensed vocational nurses whose formal training has not included venipunctures or nasogastric tube insertion procedures may perform these procedures if the director of nursing or RN consultant document that each LVN (by name) has received instruction in the performance of these procedures and is qualified to perform them.

(8) Under ordinary circumstances, venipunctures and insertion of nasogastric tubes shall be accomplished by a registered nurse.

(9) In cases of venipunctures, blood specimens for laboratory tests may be drawn and intravenous fluids may be started or given by any RN or LVN who is qualified through their formal training or as described in paragraph (7) of this subsection. An LVN shall not give any medications intravenously, but an LVN may monitor intravenous medications once started by an RN.

(10) Nursing personnel shall observe, recognize, record, and report to the physician sudden and/or severe changes in resident clinical signs and symptoms and/or conditions.

(11) Nursing personnel must meet the needs of the residents, including good grooming and seeing that the residents are dressed appropriately.

(12) Levine tube feedings shall be given in accordance with physician's orders by a registered or licensed nurse only using established feeding procedures.

(13) Syringe feedings shall be given in accordance with physician's orders and established feeding procedures. They may be given by any nonlicensed nursing personnel, provided that nonlicensed nursing personnel have had in-service from the licensed nurse and have demonstrated proficiency by a return demonstration.

(14) Catheters shall be inserted, treated in accordance with physician's orders by licensed nurses using established procedures. Intake and output records shall be kept as indicated by the physician. Catheters shall be positioned at all times to allow for flow of urine by gravity.

(15) Rehabilitative nursing services must be provided and maintained, i.e., good body alignment, proper positioning, exercising of bedfast residents, the use of protective devices, and proper skin care.

(16) Emergency medical care shall be obtained when required.

(17) Restraints shall be used in accordance with physician's orders and established procedures.

(A) Restrained residents must be released for 10 minutes and repositioned every two hours, unless directed otherwise by physician's orders.

(B) In case of emergency, the charge nurse may restrain a resident, then must immediately obtain a telephone order from the physician.

(C) Monitoring of restraints shall include observation of the resident every hour.

(D) Locked restraints are not allowed.

(18) Fecal impactions must be removed by licensed nurses.

(19) Nursing personnel must wash or disinfect their hands between treatment of residents.

(20) When suctioning is necessary for a resident, it must be done by licensed nurses or physicians.

(21) It is the duty of facility nursing staff to assure that the routine reduction and/or debridement or manicure of nails is performed. Physician's orders are not required unless the debridement is medically contraindicated.

§145.18. Social Services.

(a) The facility shall provide a program to meet the social and emotional needs of the residents. The facility shall employ a social services director to carry out the program or else shall arrange for social services to be provided by referral to a qualified resource.

(b) The facility shall obtain information in order to assist the resident to adjust to the social and emotional aspects of his or her illness, treatment, and stay in the facility.

(1) Social history. The facility shall begin a resident's social history at admission and complete it within 30 days after admission. A check list may be used. The facility shall include in the social history at least information about the following areas.

(A) Background.

(i) age, sex, and marital status,

(ii) birthplace, family history, including family of origin and current family structure,

(iii) religion

(iv) cultural and ethnic background,

(v) work history;

(vi) education;

(vii) special training or skills;

(viii) habits; and

(ix) language commonly used.

(B) Social:

(i) hobbies and leisure time activities,

(ii) living situation before admission,

(iii) relationship with family and friends;

(iv) involvement with organizations and individuals within the community; and

(v) factors and feelings about placement in the nursing facility.

(C) Psychological:

(i) emotional and mental status;

(ii) behavior problems;

(iii) personal view of old age; and

(iv) orientation to time, person, place.

(D) Physical functioning:

(i) communication; type and effectiveness, verbal, non-verbal;

(ii) self-help skills;

(iii) sight and hearing;

(iv) mobility; and

(v) prosthetic devices and adjustments.

(2) Assessment of problems and needs. Need/problem assessment shall be completed within 30 days of admission. Social/emotional/environmental needs considered in the assessment shall include:

(A) adjustment to the facility;

(B) staff resident interaction;

(C) cognitive disorders (disorientation);

(D) family relationships; and

(E) behavior problems.

(c) Information collected under subsection (b) of this section shall be considered in the development of the resident's overall care plan and used to meet the resident's social and emotional needs.

§145.20. Medical Records.

(a) Each facility shall be required to secure at the time of admission of a resident the following identifying information as required under Texas Civil Statutes, Article 4477, Rule 50a. If this information is unknown, unavailable or not applicable, so state in the medical record:

(1) name of resident (first, middle, and last);

(2) usual residence (where resident lived before admission to nursing facility);

(A) state;

(B) county;

(C) city or town (if outside city limits, give precinct number);

(D) street address (if rural, give location);

(3) sex;

(4) color or race;

(5) marital status: married, never married, widowed, divorced;

(6) date of birth;

(7) usual occupation (give kind of work done during most of working life, even if retired);

(8) kind of business or industry;

(9) birthplace (state or foreign country);

(10) father's name;

(11) mother's maiden name;

(12) whether patient was ever in United States Armed Forces:

(A) yes, no, unknown;

(B) if yes, give war or dates of service;

(13) name or organization in which service was rendered;

(14) serial number of discharge papers or adjusted service certificate;

(15) name and post office address of responsible party; and

(16) social security number.

(b) The facility shall maintain a permanent chronological register of all residents admitted to and discharged from the facility. This register shall contain at least the following information on each resident:

(1) name of resident (first, middle, and last);

(2) date of birth;

(3) date of admission;

(4) date of discharge/death; and

(5) disposition (where resident went).

(c) The facility shall maintain a separate medical record for each resident admitted with all entries kept current, dated, and signed. The record shall include:

(1) identification information as outlined in subsection (a) of this section; the date of admission; and names of the attending physician, alternate physician, and dentist;

(2) medication and treatment record, including all medication, treatments, and special procedures performed for the safety and well-being of the resident. The most recent month may be filed separately from the active medical record, but must be kept readily accessible to individuals caring for the resident;

(3) nurses' notes containing documentation of nursing observations; medical condition changes; and follow-ups to medical changes, treatments, incidents, and medications as required under §145.21 (c)(6) of this title (relating to Pharmacy Services);

(4) physician progress notes made after each visit or consultation, physician orders, and histories and physicals;

(5) any laboratory and x-ray reports and rehabilitation reports;

(6) the overall care plan, developed 30 days after admission, updated as necessary or at least every 90 days which may be filed separately from the active medical record, but must be kept at the nurses station for easy reference by individuals caring for the resident;

(7) a discharge summary developed at the time of the resident's discharge. This report shall contain at least the following information:

(A) resident's name;

(B) attending physician's name;

(C) admission date;

(D) discharge date;

(E) admission diagnosis(es);

(F) discharge diagnosis(es);

(G) condition on discharge;

(H) prognosis;

(I) disposition of resident (where resident went and how resident left the facility (wheelchair, walking, stretcher, etc.); and

(J) attending physician's signature;

(8) resident assessments and other notes, as determined by facility policy, related to nursing, social services, dietary, and activities.

(d) The facility must protect medical/clinical records against loss, damage, destruction, and unauthorized use

(e) The facility must safeguard the confidentiality of medical record information from unauthorized access. The facility must allow access and/or release confidential medical information under court order or by written authorization of the resident or his or her legal guardian unless the physician documents in the medical record that access to the information would be harmful to the physical, mental, or emotional health of the resident.

(f) As an exception to subsection (e) of this section, the facility must make medical records available for review by representatives of the licensing agency and for those individuals caring for the resident. The facility shall make available photocopies of medical records as required in §145.13(a)(2)(F) of this title (relating to Administrative Management), and shall release photocopies of pertinent information from the resident's medical record to a health care facility where a resident is transferred.

(g) The facility must retain the records:

(1) for at least five years after medical services end; or

(2) in the case of a minor, for at least three years after the minor comes of age under state law.

(h) The facility shall comply with the provisions of the Natural Death Act, Texas Civil Statutes, Article 4590h, for those residents with orders to withhold life sustaining procedures or treatments

(i) In the event of closure of a facility, change of ownership or, change of administrative authority, the new management shall maintain documented proof of the medical information required for the continuity of care of all residents This

documentation may be in the form of copies of the resident's medical record or the original medical record.

(j) The nursing facility must designate an employee to be responsible for the medical records.

§145.21 Pharmacy Services.

(a) Procedures concerning drugs and medications.

(1) A resident in a nursing home shall not be administered any medication except on written or verbal orders of a physician.

(2) Bulk dangerous and or controlled drugs shall not be maintained in the facility, except for dangerous drugs as outlined in subsection (e) of this section.

(3) The label of each resident's individual drug container shall be completed in accordance with all federal and state statutes. There shall be affixed to the immediate container in which said drug is delivered a label which clearly indicates the resident's full name; the prescribing physician's name; prescription number; name and strength of the drug; amount dispensed; date dispensed; an expiration date; directions for use, and the name, address, and telephone number of the pharmacy issuing the drug.

(A) An exception to the aforementioned labeling requirement would be drugs delivered to a particular resident by a practitioner which shall be labeled in accordance with the Texas Dangerous Drug Act, Texas Civil Statutes, Article 4476-14, §3(a)(2), including the directions for use, the name and address of such practitioner, the name of the resident, the name and strength of the drug, the quantity dispensed, the date dispensed, and the expiration date.

(B) A multiple dose drug container that is too small for the pharmacist to affix the pharmacy-required labeling, shall be placed into a larger container upon which the pharmacy's regular label, properly completed, is affixed. In addition, such small multiple dose drug container shall have a strip label attached which contains the name of the resident and the prescription number. Should the two containers become separated, then the small drug container will still have resident identification.

(4) The medications of each resident shall be kept and stored in their originally received containers. Transferring between containers is a dispensing function and should be done in accordance with the Texas drug laws, and regulations set forth by the Texas State Board of Medical Examiners and Texas State Board of Pharmacy.

(5) Any errors suspected or found in medication dispensed shall be reported as follows:

(A) The director of nurses or the charge licensed nurse shall call the issuing pharmacist and or consultant pharmacist and report any errors suspected or found in the medication dispensed.

(B) The director of nurses, the charge licensed nurse, or the nurse available on the 11 p.m. to 7 a.m. shift shall call the issuing pharmacist and or consultant pharmacist and report any errors suspected or found in the medication dispensed.

(C) Subparagraph (B) of this paragraph shall become effective and replace subparagraph (A) of this paragraph at such time as the requirements of Rider Number 17, H-22, General Appropriations Act for the fiscal 1988-1989 biennium and or Texas Human Resources Code, §22.014, are met, and written notice of same is provided to licensed facilities at least 60 days prior to its effective date.

(6) Separately locked, permanently affixed compartments within the medicine storage area shall be provided for storage of Schedule II drugs of the Controlled Substances Act, Texas Civil Statutes, Article 4476-15, and for other controlled or dangerous drugs as deemed necessary by the facility.

(7) Medications requiring refrigeration shall be stored in the medication storage area refrigerator, used only for medicine storage, supplemental feedings, and substances specifically ordered by the resident's physician that require refrigeration. The medications shall be kept in a separate, permanently affixed, locked medication storage compartment in a refrigerator at or near the nurses station, if the refrigerator is located outside the locked medication storage area.

(8) Medications marked "For External Use Only" shall be kept in the locked medication storage area in compartments or cabinets and shall be kept separate from internal medications.

(9) Poisons shall be stored in a locked compartment or cabinet and shall be kept separate from all internal and external medications.

(10) Medications which have been discontinued by order of the physician, medications of deceased residents, and or medications which have passed their expiration date shall be kept under separate lock and key, and shall be kept separate from those medications currently in use. Medications shall be disposed of in accordance with regulations governing the destruction of dangerous and controlled substances as set forth by the Texas State Board of Pharmacy.

(11) Medications shall be released to residents only on the written or verbal authorization of the attending physician. All medications released to residents or responsible parties shall be properly labeled and inventoried. The inventory shall include the date, name, strength, and amount of each medication, the signature of the person releasing the medication, and the signature of the person accepting the medication. Furloughed residents' medications shall be inventoried upon return to the facility using the same inventory criteria for released medications. Medications returned to the nursing home deemed unacceptable by the facility for administration to the resident shall be held for inspection by the consultant pharmacist for authorization to be used or destroyed.

(b) Order procedure.

(1) All medications must be ordered in writing by the resident's physician. Verbal orders may be taken from a physician only by a licensed nurse, pharmacist, or another physician. This order shall be immediately reduced to writing, signed by the person receiving the order, mailed to the physician for signature within 72 hours, and returned to the clinical chart within seven working days.

(2) Medication shall be re-ordered by calling the issuing pharmacy at least 72 hours prior to the administration of the last available dose. The re-ordered medication shall be in the facility prior to the time the resident has taken the last available dose.

(3) A written record shall be maintained for each medication ordered re-ordered from the pharmacy and its delivery to the facility. The record shall include, but is not limited to, the date of order re-order, the date received from the pharmacy, the name and strength of the medication ordered re-ordered, and the initials of the authorized nursing staff person receiving the delivery of the medication.

(c) Administration of medication.

(1) Medications are administered only by physicians, licensed nursing personnel, or by medication aides. All medications shall be administered in accordance with the physician's orders. It shall be the duty of the person responsible for administering the medication to ascertain that the medication is in fact taken by the resident. Persons administering medications shall observe infection control techniques, and shall cleanse or disinfect their hands between residents if there is hand contact with the resident.

(2) The medication preparation area must have readily available items necessary for the proper administration of all medications.

(3) The medication nurse aide who prepares the medication dose shall administer the dose and properly record in the appropriate medical record the medication administered during his or her shift. Under a unit-of-use medication cart distribution system, the medication nurse aide administering the resident's medication shall record the medication in the appropriate medical record immediately after administration to the individual resident. Medications shall not be charted prior to administration or before the fact.

(4) Medications prescribed and labeled for one resident shall not be administered to any other resident.

(5) Self administration of medica-

tions by residents shall not be permitted except for emergency drugs on special order of the resident's physician, or in a predischarge type program under the supervision of a licensed nurse.

(6) Medication errors and adverse drug reactions shall be immediately reported to the resident's physician. An entry of the incident shall be made in the resident's medical record and an incident report shall be completed and filed in the administrative files. The consultant pharmacist shall be notified of drug reactions no later than the next visit to the facility after the occurrence of the drug reaction. Medication errors include, but are not limited to, administering the wrong medication, administering at the wrong time, administering the wrong dosage strength, administering by the wrong route, and or administering to the wrong resident.

(d) Drugs covered by the Controlled Substances Act.

(1) A separate record must be maintained for each drug covered by Schedules II, III, and IV of the Controlled Substances Act, Texas Civil Statutes, Article 4476-15.

(2) The record for each drug must contain the prescription number, name and strength of drug, date received by facility, date and time administered, name of resident, dose, physician's name, signature of person administering dose, and original amount dispensed, with the balance verifiable by drug inventory at every shift change.

(3) Schedule V drugs shall be exempt from the requirements in paragraph (1) and (2) of this subsection.

(e) Emergency drugs.

(1) Emergency drug kit requirements are as follows.

(A) An emergency drug kit shall be readily available in the facility. Appropriate supplies shall be maintained with the kit for the administration of the emergency drugs. The drugs shall be as determined by the consultant pharmacist, the director of nurses, and the administrator, with consultation from a physician. Controlled substances may be kept in the emergency drug kit in accordance with the Act, §7, as amended by Senate Bill 803, 70th Legislature, 1987, Regular Session.

(B) An emergency drug kit shall be readily available in the facility. Appropriate supplies shall be maintained with the kit for the administration of the emergency drugs. The drugs shall be as determined by the medical advisor, the consultant pharmacist, the director of nurses, and the administrator. Controlled substances may be kept in the emergency drug kit in accordance with the Act, §7, as amended by Senate Bill 803, 70th Legislature, 1987, Regular Session.

(C) Subparagraph (B) of this paragraph shall become effective and replace subparagraph (A) of this paragraph at such time as the requirements of Rider Number 17, H-22, General Appropriations Act for the fiscal 1988-1989 biennium and or Texas Human Resources Code, §22.014, are met, and written notice of same is provided to licensed facilities at least 60 days prior to its effective date.

(2) Stocks of inventoried emergency dangerous drugs may be kept in facilities as follows.

(A) A physician may keep his stock of inventoried emergency dangerous drugs, along with the required supplies for proper administration of the drug, in the locked medication storage area in a sealed container with his name on it. He may order a dose from this stock supply for his facility resident to be administered by the licensed nurse on duty. The physician may authorize, in writing, other physicians to use from the stock supply, or to order the licensed nurse on duty to administer a dose to their resident.

(B) The medical advisor may keep his stock of inventoried emergency dangerous drugs, along with the required supplies for proper administration of the drug, in the locked medication storage area in a sealed container with his name on it. He may order a dose from this stock supply for his facility resident to be administered by the licensed nurse on duty. The medical advisor may authorize, in writing, other physicians to use from the stock supply, or to order the licensed nurse on duty to administer a dose to their resident.

(C) Subparagraph (B) of this paragraph shall become effective and replace subparagraph (A) of this paragraph at such time as the requirements of Rider Number 17, H-22, General Appropriations Act for the fiscal 1988-89 biennium and or Texas Human Resources Code, §22.014 are met, and written notice of same is provided to licensed facilities at least 60 days prior to its effective date.

(3) Oxygen or oxygen concentrators shall be readily available in the facility for resident use in the case of emergency.

(f) Freedom of choice—pharmacy services.

(1) Each resident of the facility or his or her responsible party shall have the right to choose and change the pharmacy of such resident at any time, and the facility shall not interfere with or limit such right, except when such choice of pharmacy creates a noncompliance situation for the facility regarding federal, state, or local laws and regulations. Such changes shall be recorded on the admission record and all other appropriate forms maintained by the facility.

(2) The residents' freedom of choice of pharmacy services will not be considered abridged when the facility's policies require the following written agreements of all providing pharmacies.

(A) that the residents' pharmacy services conform to the type of drug distribution system used by the facility;

(B) that the residents' pharmacy services be available from the pharmacy on a 24-hour basis for emergency medications;

(C) that the residents' medications be delivered to the facility on a timely and reasonable basis; and

(D) that a documented and repeated pattern of failure by the pharmacy to comply with facility policies and procedures related to these standards shall be grounds to preclude the pharmacy from serving facility residents.

(3) The facility may not enter into any agreement with any pharmacy or pharmacies that would hinder a resident's freedom of choice and or would defraud, injure, or harm any resident.

(g) Pharmaceutical services.

(1) A facility which maintains an on-premise licensed pharmacy shall employ a registered pharmacist, in good standing, to practice the profession of pharmacy. The pharmacy and pharmacist shall operate in complete accordance and compliance with laws and regulations promulgated by regulatory agencies having responsibilities for dangerous and controlled drugs.

(2) A facility which does not maintain an on-premise licensed pharmacy shall obtain drugs and medications from community pharmacies and or from physicians who dispense medications to their residents in the course of their practice.

(3) The nondispensing services of a pharmacist, known as the consultant pharmacist or facility pharmacist, shall be contracted for the purpose of ascertaining the status of pharmaceutical services with the facility. The responsibilities, functions, objectives, the terms of agreement, and number of hours per month the consultant pharmacist shall devote to pharmaceutical services in the facility shall be delineated in writing and signed by an authorized representative of the facility and the consultant pharmacist.

(A) The number of hours per month the consultant pharmacist devotes to the pharmaceutical services shall be as follows.

(i) The number of hours per month the consultant pharmacist devotes to the pharmaceutical services for the ordering, storage, administration, disposal, recordkeeping (documentation) of drugs and medications, and drug regimen review shall be based upon the total number of residents in the facility and shall be not less than: four hours for facilities with 60 residents or less; five hours for facilities with 61 to 150 residents; and six hours for facilities with 151 residents and over.

(ii) The number of hours per month the consultant pharmacist devotes to pharmaceutical services for the ordering, storage, administration, disposal, record-

keeping (documentation) of drugs and medications, and drug regimen review shall be based upon the total number of residents in the facility. The facility shall contract with the consultant pharmacist to provide five minutes and or sufficient consultant time per resident to perform the necessary tasks described in this section.

(iii) Clause *(ii)* of this subparagraph shall become effective and replace clause *(i)* of this subparagraph at such time as the requirements of Rider Number 17, H-22, General Appropriations Act for the fiscal 1988-1989 biennium and or Texas Human Resources Code, §22.014, are met, and written notice of same is provided to licensed facilities at least 60 days prior to its effective date.

(B) The facility administrator shall be responsible for the pharmacist requirements being met from the standpoint of quality of services rendered.

(4) For each nondispensing visit to the facility for the purpose of ascertaining the status of pharmaceutical services, the consultant pharmacist shall furnish a written report to the facility administrator of the resultant problems found in the obtaining, storing, administering, disposal, and recordkeeping of drugs and medications.

(5) The consultant pharmacist shall review the drug regimen of each resident at least monthly. Written individual reports shall be submitted to the director of nurses and the administrator and shall indicate irregularities, date of the review, and the signature of the consultant pharmacist completing the review. Each report shall be a separate medical record document, however the document may record the resident's monthly reviews on a continuing basis to provide a profile. The document is maintained as a part of the resident's overall medical record. The findings of the consultant pharmacist shall not limit or restrict physicians from prescribing any drug regimen in the treatment of their nursing facility residents.

(6) Pharmaceutical service policies and procedures shall be developed and maintained as follows:

(A) The consultant pharmacist, along with the facility administrator, director of nurses, and a physician shall develop and maintain up-to-date written pharmaceutical service policies and procedures appropriate for the facility.

(B) The consultant pharmacist, along with the facility administrator, director of nurses, and medical advisor shall develop and maintain up-to-date written pharmaceutical service policies and procedures appropriate for the facility. Appropriate documentation shall assure that policies and procedures are reviewed at least annually.

(C) Subparagraph (B) of this paragraph shall become effective and replace subparagraph (A) of this paragraph at such time as the requirements of Rider Number 17, H-22, General Appropriations Act for the fiscal 1988-1989 biennium and or Texas Human Resources Code, §22.014, are met, and written notice of same is provided to licensed facilities at least 60 days prior to its effective date.

§145.22. Dietary Services.

(a) Dietetic service supervisor.

(1) A person shall be designated by the administrator as a dietetic service supervisor who is responsible for the total food service of the facility. If this person is not a dietitian, regularly scheduled consultation from a dietitian shall be obtained to help assure that the dietary service meets requirements.

(2) The dietetic service supervisor shall participate in regular conferences with the administrator, and have conferences with the director of nurses and the activity director in the development of residents' overall care plans according to identified nutritional problems and nutritional portions of the plans.

(b) The dietitian requirements.

(1) At a minimum, the facility must ensure that the dietitian provides the following consultant hours per month:

(A) for 60 residents or less, eight hours;

(B) for each additional 30 residents or fraction thereof, two hours.

(2) A consultant dietitian's visits must be long enough to allow:

(A) continuing liaison with medical and nursing personnel, which may include accepting changes of diet orders from attending physicians;

(B) identification of the resident's nutritional needs and counseling with the resident or responsible party;

(C) guidance to the dietetic service supervisor and staff;

(D) approval of all menus;

(E) participation in the development or revision of dietetic policies and procedures;

(F) planning and conducting in-service education programs;

(G) development of a plan to meet resident nutritional needs and update the plan as required, and

(H) supervision of preparation of meals, serving of meals, and recording of food intake.

(3) Documentation requirements for consultant dietitian include the following:

(A) The facility must maintain documentation reflecting consultation with a dietitian and make it available for review by licensing agency representatives. The documentation must include at least the following:

(i) name of consultant dietitian;

(ii) dates and hours of consultant's visits;

(iii) evaluation of food service, and

(iv) review of weight and intake of fluids for nutritional and for hydrational purposes, special diets according to physician's orders, and identification of nutritional needs of the residents.

(B) The facility must ensure that the documentation of the consultation is signed and dated at each visit.

(C) The name of the dietitian/consultant dietitian shall be posted in a place for residents to see.

(c) Food service staff. There shall be a sufficient number of food service employees to meet the dietary needs of the residents.

(d) Food service.

(1) At least three meals or their equivalent shall be served daily, at regular times, with not more than a 14-hour span between substantial evening meals and breakfast. Between meals or bedtime snacks of nourishing quality should be offered. If the four or five meal a day plan is in effect, meals and snacks must provide adequate nutritional value.

(2) Menus shall be planned at least one week in advance, and food sufficient to meet the nutritional needs of residents shall be prepared as planned for each meal. The current week's menu shall be in one or more accessible places in the dietary department for use by employees responsible for purchasing, preparing, and serving foods, and shall also be in a place for residents to see.

(3) Menus shall provide a sufficient variety of foods served in adequate amounts at each meal. Menus shall be different for days of each week and shall be adjusted for seasonal use of fresh vegetables and fruits. When substitutions are made, they shall be of comparable nutritional value and shall be noted on substitution lists for the date and meal when substitutions are made.

(4) There shall be an identification system, such as tray cards, to ensure that diets are served according to physicians' orders.

(5) A list of the diet orders for residents will be maintained in the dietary department.

(6) For food preparation for all residents according to the menu, supplies of staple foods for a minimum period of one week and of perishable foods for a minimum period of two days shall be maintained on the premises.

(7) Food preference of residents and second helpings shall be considered when not in conflict with physician's orders. Food must be ground or chopped to meet individual needs. If a resident refuses 50% of foods served, substitutions of comparable nutritional content shall be offered and, if rejected, documented in the medical record.

(8) Food intake of residents shall

be required to be monitored and recorded as follows

(A) Nursing personnel shall be in the dining room during meals to assure the safety of the residents

(B) Deviations from normal food and fluid intake shall be recorded in the medical records

(C) In-between meals, bedtime snacks, and supplementary feedings, either as a part of the overall care plan or as ordered by a physician, including caloric restricted diets, must be documented as accepted or rejected

(9) Effective equipment or procedures shall be available to maintain food at proper temperatures prior to and during serving.

(10) Therapeutic diets shall be prepared and served as prescribed by the resident's attending physician

(A) A current diet manual recommended by the licensing agency shall be readily available for food service personnel.

(B) Persons responsible for the therapeutic diets shall have sufficient knowledge of good food variations to make appropriate substitutions when necessary

(e) Maintenance of sanitary conditions.

(1) Sanitary conditions shall be maintained in the storage, preparation, and distribution of food, according to §§229.161-229.171 of this title (relating to Food Service Sanitation).

(2) Effective procedures for cleaning all equipment and work areas shall be followed consistently.

(3) Dishwashing procedures and techniques shall be well developed and include pre-soaking the silverware. Procedures shall be carried out in compliance with state law and local health codes.

(4) Waste which is not disposed of by mechanical means shall be kept in leakproof non-absorbent containers with close fitting covers and shall be disposed of in a manner that will prevent transmission of disease, a nuisance, a breeding place for flies, or a feeding place for rodents Containers shall be kept clean.

(5) Dry or staple food items shall be stored off the floor in a ventilated room not exposed to contamination by sewage, sewer gases, waste water backflow, contamination by condensation, leakage, drainage, excessive humidity, rodents, or vermin.

(6) Handwashing facilities, including hot and cold water, soap dispensers, and paper towel dispensers, or air dryers, shall be provided in the food preparation area

§145.23. Physical Plant and Environment

(a) Requirements. The requirements of this section are applicable to both new and existing facilities unless stated otherwise

(b) Construction, change in level of care, and waiver

(1) Subchapter Q of this chapter (relating to Planning and Construction for Nursing Homes) is a companion part of this subchapter and must be referenced for new construction, conversions of existing unlicensed buildings, remodeling, additions, and bed additions.

(A) New construction is defined as any construction work which began on or after the effective date of this subchapter and Subchapter Q of this chapter (relating to Planning and Construction for Nursing Homes) The provisions of the chapter or subchapter titled "New Health Care Occupancies" of the Life Safety Code are applicable.

(B) An existing nursing home is defined as one which was operating with a license as a nursing home or custodial care facility on the effective date of this subchapter and Subchapter Q of this chapter (relating to Planning and Construction for Nursing Homes), and has not subsequently become unlicensed. The provisions of the chapter or subchapter entitled "Existing Health Care Occupancies" of the Life Safety Code are applicable.

(C) An existing unlicensed building is defined as any building (or portion thereof) which was not licensed as a nursing home or a custodial care facility on or after the effective date of this subchapter and Subchapter Q of this chapter (relating to Planning and Construction for Nursing Homes), including those which may have carried a license but have become vacant, or those on which the licensee has willfully allowed the license to expire. The provisions of this chapter or the subchapter entitled "New Health Care Occupancies" of the Life Safety Code are applicable.

(2) No construction work, including the addition or removal of walls, doors, and windows, shall be started prior to having plans approved by the licensing agency (Architectural Section) as called for in Subchapter Q of this chapter (relating to Planning and Construction for Nursing Homes) Alterations or new installations of building services equipment, such as mechanical and electrical systems, generators, fire alarm, and detection systems, etc., shall be accomplished as nearly as possible in conformance with the requirements for new construction as required by the Life Safety Code

(3) Routine maintenance, repairs, equipment replacement, upkeep, painting, trim, etc., are not considered as remodeling

(4) Life safety features and equipment that have been installed in existing buildings and are now in excess of that required by the Life Safety Code must continue to be maintained or completely removed with the approval of the licensing agency.

(5) When an existing licensed facility plans building additions or remodeling, which includes construction of additional resident beds, then the ratio of bathing units shall be re-evaluated to meet minimum standards and the square footage of dining and living areas shall be re-evaluated by the licensing agency at a minimum of 19 square feet per bed. Conversion of existing living, dining, or activity areas to resident bedrooms shall not reduce these functions to a total area of less than 19 square feet per bed. The dietary department shall be evaluated by the facility's registered or licensed dietitian or architect having knowledge in the design of food service operations. Such evaluation shall be provided to the licensing agency.

(6) An existing facility licensed and operating at a certain level of resident care and proposing to change the level of care to a higher level shall meet all additional requirements, if any, for the new level of care proposed as required by applicable standards.

(7) The licensing agency may grant a waiver for certain provisions of the physical plant and environment which, in the opinion of the licensing agency, would be impractical for the facility to meet. In granting the waiver, the licensing agency shall determine that there will be no adverse affect on resident health and safety and the requirement, if not waived, would impose an unreasonable hardship on the facility. The licensing agency may require offsetting or equivalent provisions in granting such a waiver.

(c) Applicable codes and standards. Facilities shall meet the requirements of the Life Safety Code, as defined in §145.12 of this title (relating to Definitions), and any other codes and standards of the National Fire Protection Association (NFPA) listed in this section, except as may be otherwise approved or required by the licensing agency In addition, the following codes, standards, or guidelines shall generally govern their subject areas for existing construction.

(1) If the municipality has a building code and a plumbing code, then those codes shall govern

(2) In the absence of such governing municipal codes, nationally recognized codes shall be used, such as the Standard Building Code and the Standard Plumbing Code, both of the Southern Building Code Congress International, Inc Such nationally recognized codes, when used, shall all be publications of the same group or organization to assure the intended continuity.

(3) Heating, ventilating, and air-conditioning systems shall be designed and installed in accordance with NFPA 90A and the Heating, Ventilating, and Air-Conditioning Guide of the American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE), except as may be modified herein

(4) Electrical and illumination systems shall be designed and installed in accordance with NFPA 70 and the Lighting

Handbook of the Illuminating Engineering Society (IES) of North America except as may be modified herein

(5) Handicap provisions are to be designed and installed in accordance with Standard A117 1-1980 of the American National Standards Institute (ANSI) and the requirements of the State Purchasing and General Services Commission for handicapped or disabled citizens

(d) Building structure

(1) Every building and portion thereof shall be capable of sustaining all dead and live loads in accordance with accepted engineering practices and standards

(2) Each building shall be classified as to building construction type for fire resistance rating purposes in accordance with NFPA 220 and the Life Safety Code

(3) Building insulation materials, unless sealed on all sides and edges in an approved manner with noncombustible material, shall have a flame spread rating of 25 or less when tested in accordance with NFPA 255 and NFPA 258.

(e) General requirements

(1) The facility shall be maintained and equipped for the comfort, safety, privacy, and well-being of the residents The facility shall provide furnishings and decorations which promote a homelike atmosphere.

(2) The building and equipment shall be maintained in good repair, operational, sanitary, and free of hazards

(3) No occupancies or activities undesirable to the health, safety, or well-being of residents shall be located in the facility.

(4) There shall be at least one telephone (other than a pay phone) in the facility available to residents and for use in making calls to summon help in case of emergency

(5) In operations where there is a chance of cross-contamination, there shall be provided a separation of clean and soiled operations, so as to lessen the chance of cross-contamination by facility employees, residents, and others Such separation shall be in relation to traffic flow, air currents, air exhaust, water flow, vapors, and other conditions

(6) Floors of the facility shall be level, smooth, and free of any irregularities which might influence safety

(7) Walls and ceilings not specifically described elsewhere shall be cleanable, maintained attractively, and in good repair

(8) Walls and floors shall be kept free of cracks The joint between the walls and floors is to be maintained so as to be free of spaces which might harbor insects, rodents, or vermin

(9) An electric water cooler or water fountain shall be accessible to residents When new drinking fountains are provided, at least one shall be installed to meet ANSI Standard A117 1-1980 for use by the handicapped Fountains existing at the time of the publication of these sections do not have to be altered

(10) The use of common drinking cups or glasses, common towels or washcloths, and common bath soap or hand soap is prohibited

(11) Draperies, curtains (including cubicle curtains), and other similar furnishings and decorations shall be flame resistant in accordance with NFPA 701. Documentation shall be on file in the facility

(12) Public toilet(s) with sanitary handwashing and drying provisions shall be provided or designated At least one toilet shall be accessible to and usable by the handicapped

(f) Site and grounds.

(1) Site grades shall provide for positive surface water drainage so that there will be no ponding or standing water at or near the building such as would present a hazard to health or provide a breeding site or harborage for disease vectors

(2) Outdoor activity, recreational, and sitting spaces shall be provided for residents as space permits

(3) Each facility shall have parking space to satisfy the needs of residents, employees, staff, and visitors Provisions shall be made for handicapped parking and access into the building.

(4) Protection shall be provided for resident safety from traffic or other site hazards by the use of appropriate methods, such as fences, hedges, retaining walls, railings, or other landscaping. Such protection shall not inhibit the free emergency egress to a safe distance away from the building.

(5) Auxiliary buildings located on the site within 20 feet of the main licensed structure and which contain hazardous operations or contents, such as laundries or storage buildings, shall meet the same code requirements for safety as the main licensed structure, or the building shall be moved to be 20 feet or farther away from the main building

(6) Other buildings on the site shall meet the appropriate occupancy section or separation requirements of the Life Safety Code

(7) All outside areas, grounds, adjacent buildings, etc , on the site shall be maintained in good condition and kept free of rubbish, garbage, untended growth, etc., that may constitute a fire or health hazard.

(g) Fire service and access.

(1) The facility shall be served by a paid or volunteer fire department The fire department must provide written assurance to the licensing agency that the fire department can respond to an emergency at the facility within an appropriately prompt time for the travel conditions involved.

(2) The facility shall be served by an adequate water supply that is satisfactory and accessible for fire department use as determined by the fire department serving the facility and by the licensing agency.

(3) There shall be at least one approved readily accessible fire hydrant located within 300 feet of the building. The hydrant shall be on a minimum six-inch service line, or else there shall be an approved equivalent (such as a storage tank). The hydrant, its location, and service line, or equivalent shall be as approved by the local fire department and the licensing agency.

(4) The building shall have suitable fire lanes for access as required by local fire authorities and the licensing agency.

(h) Means of egress

(1) Corridors and other means of egress shall be kept clear of obstructions and shall not be used for any purpose which would interfere with its use as an exit, such as for storage, vending machines, seating, or similar purposes The corridor width shall be maintained at all times

(2) Ways of egress and exit signs shall be illuminated at all times.

(3) In addition to the required illumination (normal and emergency), the facility shall keep on hand and readily available to night staff no less than one working flashlight per nurses station

(4) Doors within the means of egress shall not be equipped with a latch or lock which requires the use of a key or tool to open from the inside of the building. A latch or other fastening device on a door shall be provided with a knob, handle, panic bar, or other simple type of releasing device, the method of operation of which is obvious, even in darkness.

(i) Interior finishes. Interior finishes of walls and ceilings shall have limited flame spread rating as required by the Life Safety Code Where new interior finishes of walls, ceilings, or floors are applied to existing facilities, the new finishes shall meet the requirements for flame spread rating for new construction Fire retardant paints or solutions shall not be applied to new materials in an effort to meet flame spread requirements for new construction. This description of interior finishes does not apply to furniture or accessories

(j) Fire alarms, detection systems, and sprinkler systems. Fire alarms, detection systems, and sprinkler systems shall be as required by the Life Safety Code, NFPA 72A and NFPA 13

(1) Components shall be compatible and laboratory listed for the use intended

(2) Wiring and circuitry for alarm systems shall meet the applicable requirements of NFPA standards, including NFPA 70, for such systems.

(3) Fire alarm systems shall be installed, maintained, repaired, etc., by an agent having a current certificate of registration with the State Fire Marshal's Office of the Texas State Board of Insurance, in accordance with state law A fire alarm in-

stallation certificate shall be provided as required by the Office of the State Fire Marshal.

(4) The fire alarm system shall be designed so that whenever the general alarm is sounded by activation of any device (manual pull, smoke sensor, sprinkler, kitchen range hood extinguisher, etc.) the following shall occur automatically.

(A) smoke and fire doors which are held open by approved device shall be released to close,

(B) air handlers (air conditioning heating distribution fans) serving three or more rooms or any means of egress shall shut down immediately,

(C) smoke dampers shall close, and

(D) the proper zone indicating lights shall show on the fire alarm control panel(s), including auxiliary panels.

(5) Fire alarm bells or horns shall be located throughout the building for audible coverage. Flashing alarm lights (visual alarms) shall be installed to be visible in corridors and public areas, including dining rooms and living rooms.

(6) A master control panel shall be visible at the main nurse station which has alarm and trouble conditions by zones, power on lights, and required signal devices for trouble conditions. All control panels must be listed in accordance with the provisions of the Underwriters Laboratories, Inc. (U.L.), for the intended use, i.e., manual, automatic, and water flow activation. Alarm and trouble zoning shall be by smoke compartments and by floors in multi-story facilities.

(7) Remote annunciator panels, equipped with alarm by zone and trouble signals, shall be located at auxiliary or secondary nurse stations on each floor or major subdivisions of single story facilities, that will indicate the alarm condition of adjacent zones and the alarm conditions at all other nurse stations.

(8) Manual pull stations shall be provided at all exits, living rooms, dining rooms, and at or near the nurse stations.

(9) The NFPA 13 sprinkler system shall be interconnected with the fire alarm panel as a separate zone for alarm and trouble. Activation of the tamper switch will provide a trouble condition on the fire alarm panel which will not impair the operation of the alarm.

(10) The kitchen range hood extinguisher shall be interconnected with the fire alarm system. This interconnection may be a separate zone on the panel or combined with other initiating devices located in the same zone as the range hood is located.

(11) Partial sprinkler systems (those provided only for hazardous areas) shall be interconnected to the fire alarm system and comply with the Life Safety Code. Each partial system shall have a valve with a supervisory switch to sound a trouble signal, water flow switch to activate the fire alarm, and an end of line test drain.

(k) Subdivision of building spaces--(smoke barriers).

(1) Subdivision of building spaces shall be as required by the Life Safety Code.

(2) The facility shall maintain the integrity of smoke barrier walls, including those parts of walls in attics and other concealed spaces.

(3) The facility shall maintain the integrity of smoke dampers in air ducts.

(l) Emergency electrical services. Emergency electrical services shall be provided to comply with the provisions of NFPA 70. This includes such items as emergency power provided by generator or batteries for fire alarm systems, emergency egress lighting, nurse call systems, TV cameras and monitors (if used for corridor observation), life support systems, designated wall receptacles, etc.

(1) Life safety systems. Life safety systems shall include:

(A) illumination for means of egress, nurse stations, medication rooms, dining and living rooms, and areas immediately outside of exit doors,

(B) exit signs and exit directional signs required by the Life Safety Code,

(C) alarm systems, including fire alarms activated by manual stations, water flow alarm devices of sprinkler systems, fire and smoke detecting systems, and alarms required for nonflammable medical gas systems if installed. Where hospital type functions are included in the nursing home facility, applicable standards shall apply,

(D) task illumination and selected receptacles at any required or provided generator set location,

(E) selected duplex receptacles, including receptacles in resident corridors, nurse stations, medication rooms, including biologicals refrigerator, etc., if a generator is required or provided;

(F) nurse calling systems,

(G) elevator cab lighting, control and communication systems,

(H) equipment necessary for maintaining telephone service; and

(I) those paging or speaker systems that are necessary for the emergency plan for communication during emergency. Radio transceivers that are necessary for emergency use shall be capable of operating for at least one hour upon total failure of both normal and emergency power.

(2) Critical systems. Where critical systems are provided, there shall be a delayed automatic or manual connection. Critical systems consist of nonlife safety equipment, such as kitchen equipment (refrigerator, freezer, ice maker, etc.), and temporary operation of an elevator.

(3) Details. The emergency lighting shall be automatically in operation within 10 seconds after the interruption of normal electric power supply. Emergency service to receptacles and equipment may be delayed automatic or manually connected. Receptacles connected to emergency power shall be of a uniform and distinctive color. Stored fuel capacity shall be sufficient for not less than four-hour operation of required generator.

(4) Emergency motor generator, if required or provided.

(A) Any emergency generators shall be installed in accordance with NFPA 37 and NFPA 99.

(B) Generators located on the exterior of the building shall be provided with a noncombustible protective cover or be protected as per manufacturer's recommendations.

(C) Motor generators fueled by public utility natural gas shall have the capability to be switched to an alternate fuel source. (Reference NFPA 70).

(5) Wiring. Wiring for the emergency system shall be in accordance with NFPA 70.

(m) Portable fire extinguishers. Portable fire extinguishers shall be provided and maintained to comply with the provisions of NFPA 10. This includes such items as type of extinguishers (A, B, or C), location and spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent (with any necessary servicing), and hydrostatic testing as recommended by manufacturer.

(1) Portable type ABC or BC chemical extinguishers shall not be located in resident corridors. Extinguishers in resident corridors shall be 2½ gallon pressurized water or other type approved by the licensing agency and spaced so that travel distance is not more than 75 feet.

(2) Extinguishers shall be installed on supplied hangers or brackets or be mounted in cabinets approved by the licensing agency.

(3) Extinguishers shall be surface wall-mounted or recessed in cabinets where they are not subject to physical damage or dislodgement.

(4) Extinguishers having a gross weight not exceeding 40 pounds shall be installed so that the top of the extinguisher is not more than five feet above the floor. Extinguishers having a gross weight greater than 40 pounds shall be installed so that the top of the extinguisher is not more than 3½ feet above the floor. In no case shall the clearance between the bottom of the extinguisher and the floor be less than four inches.

(5) Portable extinguishers provided in hazardous rooms shall be located as close as possible to the exit door opening and nearest the latch (knob) side.

(n) Elevators, escalators, and moving walks. Elevators shall comply with the provisions of the Life Safety Code and American National Standard Institute Safety Code for Elevators, Dumbwaiters, Escala-

tors and Moving Walks (ANSI A17.1). Elevators are required for buildings having residents' facilities (such as bedrooms, dining, or recreation areas) or services (such as diagnostic or therapy) located on other than the main entrance floor. Passenger elevators, escalators, and walks shall be inspected by a qualified agent at least every six months. Freight elevators and dumbwaiters shall be inspected every 12 months.

(o) Rooms and areas.

(1) Resident bedrooms.

(A) Bedrooms shall be arranged and equipped for adequate care, comfort, and privacy of the residents.

(B) Bedrooms shall have at least 100 square feet of usable space per bed for a one-bed room.

(C) Bedrooms shall have at least 80 square feet of usable space per bed for multi-bed rooms. An exception would be bedrooms that have at least 72 square feet per bed for semi-private or ward and are approved by the licensing agency prior to the adoption of these sections may continue to be licensed.

(D) No more than four beds shall be in any one bedroom unless specifically approved otherwise in writing by the licensing agency. The total number of beds in ward rooms with three or more beds shall not exceed 50% of the total facility capacity in existing facilities unless approved by the licensing agency.

(E) Each resident bedroom shall have at least one operable outside window which can be readily opened from the inside, without the use of tools, to permit the venting of smoke and to permit any occupant to have access to fresh air in case of emergency. The height of the window sill (opening) shall not exceed 36 inches above the floor. The minimum area of windows in each bedroom shall equal at least 8.0% of the room area. Operable window sections may be restricted to not more than six or not less than four inches for security or safety reasons if approved in writing by the licensing agency. Each window shall be provided with a flame-retardant shade, curtain, or blind.

(F) Appropriate measures shall be taken, through the use of cubicle curtains, screens, or procedures, to protect the privacy and dignity of the residents. Curtains and screens shall be rendered and maintained flame resistant.

(G) All resident bedrooms shall open upon an exit corridor or living area.

(H) The width and length of bedrooms and the arrangement shall assure appropriate resident circulation, especially in relation to emergency evacuation and to usual wheelchair movement. Bedrooms should not be less than 10 feet in the smallest dimension. There shall be at least 36 inches between beds and should be at least 18 inches between any bed and the adjacent parallel wall that restricts access by the resident (i.e., bed sides should not have to be placed against a wall to meet other spacing requirements). Beds shall not extend into the bedroom door opening, nor shall any other piece of furnishing or equipment be located such as to preclude or inhibit the removal of any bed or ready closing and latching of the bedroom door in an emergency.

(I) Each resident shall have a bed (minimum 36 inches wide) with a headboard of sturdy construction, a comfortable mattress of the proper length with a moisture proof cover, and a comfortable pillow. Each bed shall be provided with suitable bedspreads, blankets, etc., to assure the comfort and warmth of each resident, and shall not be passed from resident to resident without first being laundered.

(J) Each resident shall have a comfortable chair, a bedside cabinet, and closet or wardrobe space for clothing and personal belongings. Closet space shall have at least 16 inches of hanging space per bed and have closeable door(s). Each bedroom shall be provided with at least one (noncombustible) wastebasket.

(K) The bed of each resident with physician's orders for bedrails shall have bedrails affixed to both sides of the bed.

(L) Each bed shall have access to a nurse call device that is part of an electrical nurse call system.

(M) Each bed shall be provided with an appropriate, safe, durable, nonglare permanently bed mounted or wall mounted reading light fixture. The fixture shall be wired in accordance with NFPA 70. Such fixtures should be mounted at least five feet six inches above the floor. The switch shall be within reach of a resident in the bed.

(N) At least one duplex receptacle shall be provided for each bed. Other duplex receptacles shall be provided as needed and/or as required by the NFPA 70.

(O) Each bedroom shall be assured having general lighting, either by means of appropriate combination reading light or by means of separate fixture.

(P) For emergency separation from fire and smoke, bedroom doors shall be maintained to close completely without dragging or binding, to latch securely, and to fit reasonably tight in the frame. The gap between the floor and the bottom of the closed door shall not exceed ¾ inch.

(Q) When an isolation room is provided or required, it shall have a special nonrecirculating air system and a complete bathroom.

(R) Vacant bedrooms may not be used for hazardous activities or hazardous storage, unless specifically approved by the licensing agency in writing.

(S) Bedrooms shall be identified with a raised or recessed unique number placed on or near the door. Refer to subsection (p)(3) of this section regarding ANSI standards.

(T) Residents must be permitted and encouraged to have personal possessions in their rooms that do not interfere with their care, treatment, or well-being, or that of other residents.

(2) Nursing units.

(A) Nursing units shall be provided for proper and efficient service to residents. Each nursing unit shall have a nurses station which is an area designated as the focal point for all shifts for the administration and supervision of resident care activities for a designated number of resident bedrooms. The station shall be arranged for efficiency and shall include provision for necessary records. For each operating shift, each nursing unit shall have a nurse or individual in charge, as required under §145.17(a) of this title (relating to Nursing Services). If resident bedrooms are more than 150 feet walking distance by indoor corridor passages from that area, an auxiliary station, assigned to the designated nurses station, must be established and manned by nursing personnel. If the corridor is observable by direct line of sight from inside the nurses station or from within 24 inches of the counter or wall of the nurses station, an auxiliary station is not necessary. The licensing agency may allow a 10% deviation from the 150 feet requirement. An auxiliary station is regarded as a nurses station for purposes of corridor observation. Auxiliary stations shall be equipped with a voice communication system connected to the nurses station to which it is assigned.

(B) Each nurses station must be equipped to register residents' calls through a communication system from resident areas, including bed, toilet, and bathing facilities. The call cord does not have to be accessible in all parts of the room, but must be accessible to the resident. The system must be connected to on and off switches operable at each bed, toilet unit, and bathing unit. Each call entered into the system shall activate a corridor dome light above the bedroom, bathroom, toilet, corridor door that opens onto a corridor, a visual signal at the nurses station which indicates the room from which the call was placed, and an audible signal of sufficient amplitude to be clearly heard by nursing staff. The amplitude or pitch of the audible signal shall not be such that it is irritating to residents or visitors. The system shall be designed such that calls entered into the system may be cancelled only at the calling station. Intercom type systems shall be installed only after approved by the licensing agency.

(C) There shall be sufficient, lockable, enclosed medicine storage spaces, medicine room, or medication cart. The medication storage area shall be furnished with a refrigerator. There shall be sufficient space available for medication preparation

area equipped with a sink having hot and cold water. When not in use, the medication cart must be secured in a locked medication storage room designated only for the storage of medications. Only authorized personnel shall have access to the medication storage area and the medication cart. Medication storage and preparation areas shall be adequately ventilated and temperature controlled.

(D) A clean utility room shall be provided and shall contain a sink with hot and cold water. It shall be part of a system for storage and distribution of clean and sterile supply materials and equipment.

(E) A soiled utility room shall be provided and contain a flushing fixture, and a sink with hot and cold water. It shall be part of a system for collection and cleaning or disposal of soiled utensils or materials.

(F) Soiled linen rooms shall be provided as needed and required commensurate with the type of laundry system used. These rooms shall have adequate forced exhaust ducted to the exterior. Air shall be exhausted continually whenever there are soiled linens in the room. A soiled linen room may be combined with a soiled utility room.

(G) Clean linen storage shall be provided and conveniently located to resident bedroom areas.

(H) Corridor handrails shall be provided on each side of resident use corridors on all walls 18 inches or greater. These rails shall be substantially anchored to withstand downward force and shall be mounted 33 to 36 inches from the floor.

(3) Residents' bathing and toilet facilities.

(A) Bedrooms not provided with their own (or shared) direct access toilets and baths shall have general use baths and toilets conveniently located for each sex.

(B) Bathtubs or showers shall be provided at a minimum rate of one for each 20 beds which are not otherwise served by bathing facilities directly accessible from resident bedrooms.

(C) In toilet facilities designed for multi-resident use, water closets shall be separated in such a manner that they can be used independently and afford privacy. Toilet paper in a suitable dispenser shall be provided within reach of each toilet.

(D) Water closets and lavatories shall be provided at a minimum rate of one for each eight beds which are not otherwise served by these fixtures directly accessible from resident bedrooms. A lavatory shall be provided in or adjacent to each area having a water closet.

(E) Lavatories shall be equipped with a mixer faucet and hot and cold water.

(F) There shall be a sufficient number of toilet rooms and bathing areas designed to accommodate residents in wheelchairs, including space in or around fixtures. Proper heights, locations, and installations shall be made for grab bars, and any mirrors, and accessories provided.

(G) Grab bars and lavatories shall be substantially anchored to withstand sustained and repeated downward and outward pressure. Grab bars shall be provided at all resident water closets and bathing fixtures. New grab bar installations shall meet ANSI requirements.

(H) Floors, walls, and ceilings shall be non-absorbent, cleanable surfaces. Floors and tub or shower standing surfaces shall be slip resistant.

(I) Doors to bathing and toilet facilities shall be wide enough for safe and easy passage of wheelchair residents. Folding or sliding doors shall not be used unless it can be established that no safety hazard exists.

(J) Resident baths or toilets having privacy locks will require that keys for opening the doors are kept readily available to the staff.

(K) Provision shall be made for sanitary hand washing and drying by staff, visitors, or residents at each lavatory.

(L) Bathrooms and toilet rooms shall have effective forced air or gravity exhaust to the exterior.

(M) Bathing areas shall be provided with safe heating.

(N) Bathtubs, showers, and lavatories shall be kept clean and in proper working order. They shall not be used for laundering or for storage of soiled materials or for the cleaning of mops, brooms, etc.

(O) Nurse call devices must be provided at resident use baths and toilets and be within easy reach of residents from those units.

(P) Electrical outlets in wet areas shall be provided with ground fault interruptors. This does not include toilet rooms where there are no bathing units.

(4) Resident living areas.

(A) Resident living areas such as living rooms, daytrooms, lounges, recreation rooms, and sunrooms shall be provided to meet the needs of the residents' comfort. Combined living and dining areas should be not less than 19 square feet per bed, but must not be less than 10 square feet per bed.

(B) No single room less than 100 square feet shall be included as part of the acceptable total area required.

(C) At least one living area shall have an outside window.

(D) Living areas shall be provided with comfortable furniture of substantial construction and be appropriately decorated to provide a pleasant and comfortable environment for residents and visitors. Furnishings and decorations shall not obstruct exits or ways of egress.

(5) Dining areas.

(A) Dining space shall be provided to adequately serve needs of the residents and provide an efficient, sanitary, and pleasant environment for dining.

(B) Facilities having continuing deficiencies in the service of meals directly attributable to inadequately sized dining areas will be required to submit a special plan of correction specifying how meal planning or service will be changed, or provide other means to correct the deficiency. This corrective plan will be prepared by a registered or licensed dietitian. Reference Subchapter Q of this chapter (relating to Planning and Construction for Nursing Homes) for dining and living area requirements related to proposed bed increases.

(6) Kitchens.

(A) Nursing facility kitchens will be evaluated on the basis of their performance in the sanitary and efficient preparation and serving of meals. Consideration shall be given to planning for the type of meals served, the overall building design, the food service equipment, arrangement, and the work flow involved in the preparation and delivery of food. Evaluation shall be based on the number of meals served. Continuing problems directly attributable to an inadequately sized kitchen area will require submission of a special plan of correction specifying how the kitchen area will be changed. This corrective plan will be approved by a registered or licensed dietitian or architect having knowledge in the design of food service operations. Reference §§229.161-229.171 of this title (relating to Food Service Sanitation).

(B) Kitchen temperature, at peak load, shall not exceed a temperature of 85°F measured over the room at the five foot level. Sufficient heating shall be provided to maintain an average temperature of not less than 70°F in winter (with exhausts operating) at the five-foot level.

(C) The kitchen shall have operational equipment for preparing and serving meals and for refrigerating and freezing of perishable foods, as well as equipment in, and or adjacent to, the kitchen or dining area for producing ice.

(D) The kitchen shall have facilities for washing and sanitizing dishes and cooking utensils. Such facilities shall be adequate for the number of meals served and the method of serving (permanent or disposable dishware, etc.). The kitchen shall contain a multi-compartment sink large enough to immerse pots and pans. In all facilities, a mechanical dishwasher is required for sanitizing dishes. Separation of soiled and clean dish areas shall be maintained, including air flow and traffic flow.

(E) The kitchen must have an adequate supply of hot and cold water. Hot water for sanitizing purposes shall be 180°F or the manufacturer's suggested temperature for chemical sanitizers, as specified for the system in use. For mechanical dishwashers the temperature measurement is at the manifold. Hot water for general kitchen use shall be 140°F.

(F) A kitchen must have at least one handwashing lavatory in the food preparation area. The dish washing area shall have ready access to a handwashing lavatory or handsanitizing device. Handwashing lavatories shall be provided with hot and cold running water, a sanitary soap dispenser, and paper towel dispenser (or hot air dryer).

(G) Nonabsorbent smooth finishes or surfaces shall be used on kitchen floors, walls, and ceilings. Such surfaces shall be capable of being routinely sanitized to maintain a healthful environment.

(H) A janitor's closet with service sink shall be easily and readily accessible to the kitchen.

(I) Kitchen exhaust hood at cooking equipment and its attached automatic chemical extinguisher shall comply with NFPA 96. The licensing agency may waive certain details of NFPA 96 for existing kitchen exhausts at cooking equipment provided that basic function and safety are not compromised.

(7) Food storage areas.

(A) Food storage areas shall provide for storage of a seven-day minimum supply of nonperishable (staple) foods and a two-day supply of perishable foods at all times.

(B) Shelves and pallets shall be moveable wire, metal, or sealed lumber, and walls must be finished with a nonabsorbent finish to provide a cleanable surface.

(C) Dry food storage shall have a venting system to provide for reliable positive air circulation.

(D) The maximum room temperature for food storage shall not exceed 85 F at all times. The measurement shall be taken at the five-foot level.

(E) No foods shall be stored on the floor. Dunnage carts or pallets may be used to elevate foods not stored on shelving.

(F) Sealed containers shall be provided for storing dry foods after the package seal has been broken.

(G) Food storage areas may be located apart from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(8) Auxiliary serving kitchens (those not contiguous to food preparation serving area).

(A) Where service areas other than the kitchen are used to dispense foods, these shall be designated as food service areas and shall have equipment for maintaining required food temperatures while serving.

(B) Separate food service areas shall have handwashing facilities as a part of the food service area.

(C) Finishes of all surfaces except ceilings shall be the same as those required for dietary kitchens.

(9) Administrative and public areas. Facilities shall have administrative areas) for normal business transactions and maintenance of records.

(10) Laundry.

(A) Laundry facilities must be located in areas separate from resident rooms. The laundry shall be designed, constructed, and equipped and appropriate procedures shall be utilized to assure that laundry is handled, cleaned, and stored in a sanitary manner.

(B) Laundry for general linen and clothing shall be arranged so as to separate soiled and clean operations as they relate to traffic, handling, and air currents. Suitable exhaust and ventilation shall be provided to prevent air flow from soiled to clean areas.

(C) Floors, walls, and ceilings shall be non-absorbing and easily cleanable.

(D) Soiled linen shall be stored and or transported in closed or covered containers. Soiled linen storage or holding rooms shall have effective forced air or gravity exhaust ducted to the exterior.

(E) Laundry areas shall have air supply and ventilation to minimize mildew and odors. Doors shall not remain open, for sanitation and safety reasons.

(F) Room size, and number and type of appliances shall provide efficient, sanitary, and timely laundry processing to meet the needs of the facility.

(G) The laundry, if located in the facility, shall meet Life Safety Code requirements for separation and construction for hazardous areas.

(H) Resident use laundry. This service, if provided, shall be limited to not more than one residential type washer and dryer per laundry room. This room shall be classified as a hazardous area as per the Life Safety Code.

(12) Personal grooming area. Space and equipment shall be provided for the hair care and grooming needs of the residents. Hair care and grooming service will be provided in resident bedrooms or in designated areas which are not in a way of egress.

(13) Storage rooms. General and or specific storage areas shall be provided as needed and required for safe and efficient operation of the facility. Items shall not be stored in inappropriate places such as corridors or rooms which are not equipped for special hazard protection.

(14) Janitor closets. In addition to the janitors' closet called for in certain departments, other janitors' closets shall be provided throughout the facility to maintain a clean and sanitary environment. All such closets shall have effective forced air or gravity exhaust ducted to the outside.

(15) Sterilizing and disposal facilities.

(A) An effective system for sterilization of equipment and supplies shall be provided for reusable items requiring such sterilization.

(B) A policy and procedure for the safe and sanitary disposal of infectious waste shall be provided. Space and facilities shall be provided for the sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization, removal, or contract with outside resources, or by a combination of these techniques.

(16) Maintenance engineering service and equipment areas.

(A) The facility shall provide storage for building equipment, supplies, tools, parts, and yard maintenance equipment.

(B) Volatile liquids and supplies may not be kept within the main building housing residents.

(17) Oxygen. The facility shall implement procedures that assure the safe and sanitary use and storage of oxygen.

(p) Handicapped provisions.

(1) The facility shall provide and mark at least one parking space for the handicapped.

(2) The facility shall provide wheelchair access into the building by use of ramps and curb breaks. Ramps shall not slope more than 1:12 (one unit of rise to 12 units of run).

(3) Room identification signs or letters shall be installed four feet six inches to five feet above finished floor and located on the corridor walls adjacent to the latch side of the door jamb. Letters or numbers on signs shall be raised or recessed at least 1/32 inch minimum. Characters shall be at least 5/8 inch in height and no higher than two inches.

(4) Grab bars at toilet and bathing units for handicapped shall be 1¼ inch to 1½ inch in diameter.

(5) Handicapped toilet facilities shall be available and shall be of sufficient size to accommodate wheelchairs.

(6) Water closet seat height in toilet facilities equipped for the handicapped shall be 17 to 19 inches from floor.

(7) Mirrors and dispensers for handicapped facilities shall be no higher than 40 inches above the floor.

(8) Drinking fountains or coolers installed to meet handicapped requirements shall meet ANSI A117.1 (i.e., up front spout and controls no more than 36 inches from floor maximum).

(9) Public telephones, if provided, shall meet ANSI A117.1. Mounting height shall not exceed 48 inches to coin slot.

(q) Lighting and illumination. Current recommendations of the Illumination Engineering Society of North America shall be followed to achieve proper illumination characteristics and lighting levels throughout the facility. Minimum illumination shall be 10 foot candles in resident rooms during the day and 20 foot candles in corridors, nurses' stations, dining rooms, lobbies, toilets, bathing facilities, laundries, stair-

ways, and elevators during the day. Illumination requirements for these areas apply to lighting throughout the space and should be measured at approximately 30 inches above the floor anywhere in the room. Minimum illumination for overbed reading lamps, medication preparation or storage areas, kitchens, and nurse's station desks shall be 50 foot candles during the day. Illumination requirements for these areas apply to the task performed and should be measured on the task.

(r) Heating, ventilating, and air-conditioning systems (HVAC).

(1) The heating system shall be capable of maintaining a temperature of not less than 72°F at the resident level in all resident use areas. Auxiliary heating devices permanently installed, such as heat strips in ducts, electric ceiling mounted heating units, and electric baseboards, may be used to augment a central heating system as approved by the licensing agency.

(2) The cooling system shall be capable of maintaining a temperature suitable for the comfort of the residents in resident-use areas.

(3) Air flow shall be directed or adjusted so that a resident is not in direct drafts that could be harmful to the health and comfort of the resident.

(4) Unvented heating units and portable heaters are prohibited.

(5) The facility shall be well ventilated through the use of windows, mechanical ventilation, or a combination of both. Rooms and areas which do not have outside windows and which are used by residents or personnel shall be provided with functioning mechanical ventilation to change the air on a basis commensurate with the room usage. Air systems shall provide for the induction and mixing of at least 10% outside fresh air into the facility unless otherwise approved by the licensing agency (i.e., 100% continuous recirculation of interior air in most areas is not acceptable). When certain rooms or areas are dependent on a central air system for proper ventilation, including exhaust, that central air system fan shall run continuously.

(6) Operable outside windows shall be provided with insect screens. Outside doors shall be self closing to control entry of insects. All exterior doors shall be effectively weather stripped.

(7) Heating and air conditioning systems shall be provided with clean and effective air filters.

(8) Ducts and piping subject to surface condensation shall be insulated to prevent such condensation at least in areas which may affect sanitation or cause building deterioration.

(9) A comfortable temperature for residents when bathing shall be provided by methods such as central heating and/or by auxiliary units.

(10) Heating, ventilating, and air conditioning systems shall comply with the provisions of applicable NFPA standards. Ducts are to be of a Class A material (non-combustible). Gas fired equipment shall be in rooms of one-hour fire resistive construction and provided with sprinkler protection. Combustion air for gas fired equipment shall be ducted from the exterior.

(11) Air flow shall be designed to prevent cross contamination within any area where applicable, such as laundries and kitchens, as well as the system or facility as a whole.

(12) With relationship to adjacent areas, a positive air pressure shall be provided for clean utility rooms, clean linen rooms, and medication rooms. Conditioned supply air shall be introduced into these rooms.

(13) With relationship to adjacent areas, a negative air pressure shall be provided for soiled utility rooms, soiled laundry rooms, bathrooms, toilets, and other odor producing rooms. Air from these rooms shall not be recirculated, but instead shall be exhausted through ducts to the exterior by effective means.

(14) Facility temperature shall be maintained for the comfort of residents.

(s) Plumbing.

(1) If the municipality has a plumbing code, that code shall be used as a basis for determining the correctness of plumbing installation. In the absence of a municipal code, a nationally recognized plumbing code shall be used, such as the Standard Plumbing Code of the Southern Building Code Congress International, Inc.

(2) The water supply shall be of safe sanitary quality, suitable for use, and adequate in quantity and pressure. The water shall be obtained from a water supply system, the location, construction, and operation of which are approved by the Texas Department of Health.

(3) Sewage shall be discharged into a state approved sewerage system or septic system; otherwise, the sewage shall be collected, treated, and disposed of in a manner which is approved by the Texas Department of Health.

(4) The wastewater drainage and sewerage system shall assure that sanitation is maintained for residents. Wastewater or sewage shall not be discharged on the surface of the ground. In no case shall traps be allowed to lose their seal. Appliances shall have air gaps as required for connections to the sewerage system. Venting shall assure a rapid flow of wastewater in the sewage system.

(5) The interior cold water supply system and piping shall be so placed or so insulated as to prevent condensation drip in habitable areas and in storage areas.

(6) Backflow preventers or vacuum breakers shall be installed with any water supply fixture where the outlet or attachments may be submerged.

(7) Resident-use hot water shall be reliably controlled, such as by thermostatic or mixing valves, to not exceed 110°F at each fixture (and not less than 100°F). An upper limit deviation of 5°F is allowed for fluctuation in supply water temperature, temperature variance due to distance between heater and fixture, volume and timing of hot water usage, and other factors.

(8) Hot water for other usages shall be provided at the temperatures required for the appliance or fixture or for the operation involved, such as dishwashing and laundry.

(9) The supply quantity of hot water shall be adequate for normal peak load usage. Facilities which continue to experience a shortage of hot water shall remedy the situation by such means as adding storage tanks, adding or increasing the size of water heaters, or other approved means.

(10) Water heaters shall be equipped with pressure temperature relief valves.

§145.24. Environmental Services.

(a) Housekeeping services.

(1) The facility shall provide sufficient housekeeping and maintenance personnel, equipment, and supplies to maintain the interior and exterior of the facility in a safe, clean, orderly, and attractive manner. Nursing personnel shall not be assigned housekeeping duties.

(2) Housekeeping personnel shall utilize accepted practices and procedures to keep the facility free from offensive odors, accumulations of dirt, rubbish, dust, and hazards.

(3) Floors shall be maintained in good condition and cleaned regularly. Polishes on floors shall provide a nonslip finish, and throw or scatter rugs, and/or any loose floor covering shall not be used except for non-slip entrance mats.

(4) Occupied resident rooms shall be cleaned and put in order at least daily.

(5) Mop heads shall be of the removable type and shall be laundered or replaced at frequent intervals to insure cleanliness.

(6) Deodorizers shall not be used to cover up odors caused by insanitary conditions or poor housekeeping practices. Odor control shall be achieved by prompt cleansing of bedpans, urinals, and commodes, by the prompt and proper care of residents and soiled linens, by good housekeeping procedures, and by approved ventilation.

(7) Storage areas shall be kept safe and free from accumulations of extraneous materials such as refuse, discarded furniture, and newspapers. Combustibles such as cleaning rags and compounds shall be kept in closed metal containers and labeled as to contents.

(8) Attics, mechanical rooms, boiler rooms, and other similar areas shall not be used for storage purposes.

(9) The grounds shall be kept neat and free from refuse and litter. Areas around buildings, sidewalks, gardens, and patios shall be kept clear of dense undergrowth.

(10) All bleaches, detergents, disinfectants, insecticides, and other poisonous substances shall be kept in a safe place accessible only to employees. They shall not be kept in containers previously containing food or medicine. Containers must be labeled.

(b) Pest control.

(1) An effective, safe, and continuing pest control program against insects, rodents, and vermin shall be in operation in the facility. Pest control services shall be provided by personnel of the nursing care facility or by contract with a licensed pest control company. Care shall be taken to use the least toxic and least flammable effective insecticides and rodenticides. These compounds shall be stored in nonfood preparation and storage areas. Poisons shall be under lock.

(2) The facility shall protect against harborages and entrances for insects, rodents, and vermin.

(3) Garbage and trash shall be stored in enclosed containers, protected against leakage, contact with disease vectors, and access to animals. It shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises in conformity with state and local practices. Garbage and trash containers shall be maintained free of accumulations and coatings of garbage. Garbage storage areas shall be kept clean and in a state of good repair.

(c) Linen.

(1) The nursing care facility shall have available at all times a quantity of linen essential for the proper care and comfort of residents. Linens shall be handled, stored, and processed so as to control the spread of infection.

(2) Linen will be maintained in good repair. Worn or damaged linen will be discarded and replaced.

(3) Linen shall be washed, dried, stored, and transported in a manner which will produce hygienically clean linen. The washing process must have a mechanism for soil removal and bacteria kill.

(4) The linen supply shall be at least three times the usual occupancy, with at least one complete set of linen (one towel, one washcloth, one pillow case, and two sheets) clean and available for use at any time.

(5) Clean linen shall be stored in a clean linen area easily accessible to the personnel.

(6) Clean towels and washcloths shall be provided to each resident as needed or desired. Towels and washcloths shall be stored in a sanitary manner between uses by the resident and shall not be used by more than one resident between launderings.

(7) Soiled linen and clothing shall be stored separately from clean linen and clothing. Soiled linen and clothing shall be stored in well ventilated areas, and shall not be permitted to accumulate in the facility. Soiled linen and clothing shall be transported in enclosed approved bags or containers. Such bags or containers shall not be reused to transport or store clean items.

(8) Soiled linen shall not be sorted, laundered, rinsed, or stored in bathrooms, residents rooms, corridors, kitchens, or food storage areas, except however, soiled linen and clothing may be rinsed in a bathroom water closet.

(9) Resident's personal clothing that is not soiled with body wastes may be stored in a closed container in the residents closet. The clothing must be collected and cleaned at least weekly.

(10) Facility staff shall wash their hands both after handling soiled linen and before handling clean linen.

§145.25. *Safety Operations.*

(a) The facility must have a written plan with procedures to be followed in an internal or external disaster and for the care of casualties.

(1) The facility must maintain the plan and procedures at the nurses station and with department managers within the facility. The facility must ensure that the plan and procedures are reviewed at least annually. Changes in administrator, construction, or emergency phone numbers will require the facility to review and possibly modify the disaster plan. All reviews of disaster plans must be documented.

(2) The facility must include in the disaster plan evacuation routes and procedures to be followed in the event of fire, explosion, or other disaster. The plan must also include procedures for the prompt transfer of casualties, medical records, medications, and notification of appropriate persons.

(3) All employees must be familiar with the disaster plan and must be instructed in the location and use of the facility's alarm systems, fire-fighting equipment, and procedures. The facility must post fire and explosion evacuation routes prominently throughout the facility. The facility must have a fire safety plan within the disaster plan. The fire safety plan must be rehearsed quarterly on each shift with at least one rehearsal conducted each month. A comprehensive fire drill report form shall be completed for each rehearsal of the fire safety plan.

(4) In smaller, simple one story buildings where all exits are obvious, the licensing agency may not require the posting of evacuation routes.

(b) The facility shall have an emergency contingency plan to ensure the residents' comfort and safety, including the provision of potable water. An emergency electrical system must be adequate to power lights at nursing stations, telephone switchboard, night lights, exit signs and emergency egress lighting, boiler room, and fire alarm system until other arrangements can be made.

(c) Emergency telephone numbers shall be clearly posted on or near each phone. Emergency telephone numbers shall include the local fire department, ambulance, and police.

(d) The facility shall report to the licensing agency all fire incidents and disasters as soon as possible. Telephone reports shall be followed by written reports. Failure of the fire alarm, emergency power, or sprinkler system shall require that all facility staff be informed of conditions, and the facility shall take special precautions such as establishing a fire watch, appropriate to the situation. These situations shall be reported to the local fire authority.

(e) Severe weather drills and other emergency drills shall be held as needed and as called for by the facility's policy and procedure manual.

(f) The fire alarm and sprinkler systems shall be inspected and tested at least once every three months by a licensed agent. Each such quarterly inspection and test shall be of the complete system, including smoke dampers, individual sprinkler heads, etc. A standard report form of the inspection shall be completed by the agent and kept on file by the facility. The report shall include the signature of the person making the inspection and the date of the inspection. The facility shall maintain a current contract on file for the services of the inspecting company.

(g) The facility may, at its own discretion, make simple periodic tests of the basic fire alarm system, such as by activating a manual pull station, particularly when conducting required fire drills. At any time the facility staff verifies or suspects some malfunction of the system, the condition shall be immediately investigated and corrected.

(h) Emergency generators, if required or provided, shall be maintained in operating condition at all times. They shall be inspected and run, under load, for at least 30 minutes each week. A signed or initialed record or log shall be kept on file by the facility. The condition and proper operation of the emergency egress lighting should also be checked at this time.

(i) A functional test shall be conducted on every required battery emergency lighting system at 30-day intervals for a minimum of 30 seconds. An annual test shall be conducted for a 1½ hour duration. Equipment shall be fully operational for the duration of the test. Written records of testing shall be kept by the owner for inspection by the authority having jurisdiction.

(j) Automatic fixed dry chemical extinguishers mounted in kitchen range hoods shall be inspected and serviced by a licensed agent (Type A license with the State Fire Marshal's Office) at least once every six months. A written, signed report shall be left on file with the facility. The hood, exhaust ducts, and filters shall be kept clean and free of accumulations of grease.

(k) Portable fire extinguishers shall be visually inspected monthly by facility staff and shall have maintenance provided annually by a licensed agent in accordance with NFPA 10. A record of the annual maintenance shall be kept in the facility. Portable extinguishers shall be protected from damage and shall be kept on their mounting brackets or in cabinets at all times.

(l) Facilities using gas shall have the gas piping lines from the meter and appliances tested for leaks annually by a qualified person. A written, signed report shall be made of these tests and kept on file. Any unsatisfactory conditions shall be noted and corrected promptly.

(m) Smoking policies shall be formulated and adopted by the facility. The policies shall comply with all applicable codes, regulations, and standards, including local ordinances. It is the responsibility of the facility to inform residents, staff, visitors, and other affected parties of smoking policies through distribution and or posting. The facility is responsible for enforcement of smoking policies which shall include at least the following provisions.

(1) Smoking tobacco, matches, lighters, or other smoking paraphernalia are not permitted to be kept or stored in a resident's room or in their possession without supervision.

(2) Smoking by residents on the premises is permitted only when supervised by staff of the facility or visitors. The type of supervision (individual versus group supervision) will be determined by the resident's medical condition. The resident must be within direct view of the smoking supervisor, in reasonably close proximity of the supervisor, and the supervisor must be able to quickly respond in the event of an emergency. Additionally, the supervisor, whether staff or visitor, must be aware of these responsibilities. A facility may establish a no-smoking policy for any public areas of the facility.

(3) Smoking shall be prohibited in any room, ward, or compartment where flammable liquids, combustible gases, or oxygen are used or stored and in any other hazardous locations. Such areas shall be posted with "No Smoking" signs.

(n) No storage is permitted in rooms with gas-fired equipment. Bulk storage of volatile or flammable liquids or materials shall not be allowed anywhere within the building.

(o) Extra precautionary measures, such as a fire watch, shall be taken during any period that basic fire protection equipment, such as fire alarm systems or sprinkler systems, are nonfunctional. All staff and the local fire department shall be made aware of the problem.

(p) Medical equipment, carts, wheelchairs, tables, furniture, dispensing machines, and similar physical objects, shall not be stored in corridors or other ways of egress.

(q) Smoke doors, fire doors, and doors to hazardous rooms must be kept closed and shall not be propped or wedged open. Only approved devices such as alarm activated electromagnetic hold-open devices may be used to hold such doors open, except doors to rooms classified as severe hazard.

(r) Electrical extension cords shall not be used on a permanent or semi-permanent basis as a substitute for approved wiring methods. Approved electrical receptacles shall be provided in quantity and location for the normal use of appliances.

(s) All abandoned utilities such as electrical wiring, ducts, and pipes, shall be removed from the facility when no longer usable.

This agency hereby certifies that the 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 19, 1987.

TRD 8706963 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

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Subchapter Q. Planning and Construction for Nursing Homes

★25 TAC §§145.271-145.285

The new sections are adopted under Texas Civil Statutes, Article 4442c, §7, which provide the Texas Board of Health with the authority to adopt rules covering minimum licensing standards and construction standards for long term care facilities.

§145.271. Introduction and Application.

(a) This subchapter is written for, and shall apply to, new construction, including conversions, additions, and remodelings. The requirements of the Life Safety Code, Standard 101 of the National Fire Protection Association (NFPA) (hereafter referred to as the Life Safety Code, or the Code), as required under Texas Civil Statutes, Article 4442c, §4A, and other applicable NFPA codes and standards referenced in NFPA 101 shall apply unless otherwise noted or modified in these sections. The provisions of the chapter or subchapter entitled "New Health Care Occupancies" of the Life Safety Code are applicable.

(1) Life Safety Code, NFPA 101, is a registered trademark of the National Fire Protection Association, Inc., Quincy, Massachusetts 02269.

(2) These sections also describe minimum requirements for space use and other architectural and environmental aspects deemed necessary to provide a favorable environment for nursing home residents.

(3) The definitions listed in §145.12 of this title (relating to Definitions) also apply to the sections in this subchapter.

(4) In addition to the Life Safety Code and the standards referenced therein, this subchapter is subject to the codes, standards, and requirements established by the following: Underwriters Laboratories, Inc. (UL); the American National Standards Institute, Inc. (ANSI); the National Electrical Code (NFPA 70): the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE); and the American Society for Testing Materials (ASTM). Various references to these entities will be made throughout these sections.

(b) Existing nursing homes shall meet, as a minimum, the requirements of Existing Health Care Occupancies of the Life Safety Code. See §145.23(b)(1)(B) of this title (relating to Physical Plant and Environment.)

(c) Section 145.23 of this title (relating to Physical Plant and Environment) is a companion part of this subchapter. This subchapter must be referenced for new facilities for any requirements that may be in conflict with or exceed Subchapter B of this chapter (relating to Minimum Licensing Standards for Nursing Homes).

(d) All applicable local, state, or national codes and ordinances shall be met as determined by the authority having jurisdiction for those codes and ordinances and by the licensing agency. Any conflicts shall be made known to the licensing agency for appropriate resolution.

(e) The design of structural systems shall be done by or under the direction of a professional engineer who is currently registered by the Texas State Board of Registration for Professional Engineers. New facility construction and projects of unusual complexity require that plans and specifications be done by or under the the direction of an architect currently registered by the Texas State Board of Architectural Examiners. Documents shall bear the legible seal of the architect and of the engineer(s).

(f) When an existing licensed facility plans building additions or remodeling which includes construction of additional resident beds, then the ratio of bathing units shall be reevaluated to meet minimum standards and

the square footage of dining and living areas shall be reevaluated by the licensing agency at a minimum of 19 square feet per bed. Conversion of existing living, dining, or activity areas to resident bedrooms shall not reduce these functions to a total area of less than 19 square feet per bed. The dietary department shall be evaluated by the facility's registered or licensed dietitian or architect having knowledge in the design of food service operations. Such evaluation shall be provided to the licensing agency.

(g) No construction or demolition shall be started prior to submittal of final plans to the licensing agency for review and approval. See §145.275 of this title (relating to Exit Provisions) for remodeling safety requirements.

(h) No building shall be occupied by residents prior to inspection and approval to occupy by the licensing agency.

(i) Please note that Subchapter B of this chapter (relating to Minimum Licensing Standards for Nursing Homes) specifies many requirements for procedures, policies, and services which should be studied for proper functional planning for resident services.

(j) Questions pertaining to architectural or code requirements should be directed to the licensing agency: Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3188 (Quality Standards Division, Architectural Section).

(k) The words "shall" or "must" are requirements. The word "should" is a recommendation which is expected to be followed unless there is valid reason not to do so.

(l) Nothing in these sections shall be construed as prohibiting a better type of building or construction, more space, services, features, or greater degree of safety than the minimum requirements specified herein.

§145.274. Architectural Space Planning and Utilization. See §145.284 of this title (relating to Plans and Specifications) for drawings and specifications required for review and construction purposes.

(1) Resident bedrooms. Each resident bedroom shall meet the following requirements.

(A) The maximum room capacity shall be four residents.

(B) No more than 25% of the total licensed beds shall be in bedrooms with more than two beds each.

(C) Minimum bedroom area, excluding toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, shall be 100 square feet in single occupancy rooms and 80 square feet per bed in multi-bed rooms

(D) The minimum room dimension shall be 10 feet. The room shall be designed to provide at least 36 inches between beds and 24 inches between any bed and the adjacent (parallel) wall.

(E) Each room shall have at least one operable outside window arranged and located so that it can be easily opened from the inside without the use of tools or keys. The maximum allowable sill height (to opening) shall not exceed 36 inches above the floor. All operative windows shall have insect screens. The minimum area of window(s) in each bedroom shall equal at least 16 square feet or 8.0% of the room area, whichever is larger.

(F) Each room shall have general lighting, bed reading lights, and night lighting. The night light shall be switched just inside the entrance to each resident room with a silent type switch. A durable nonglare (opaque front panel) reading light securely anchored to the wall, integrally wired, shall be provided for each resident bed. The switch shall be within reach of a resident in the bed.

(G) Two duplex (or a four-plex) grounding type receptacles shall be provided beside the head of each bed. Other walls shall have duplex receptacles as needed for T.V., radio, razors, hairdryers, clocks, etc., and/or as required by the NFPA 70, National Electrical Code, NFPA 70 is a registered trademark of the National Fire Protection Association, Inc., Quincy, Massachusetts 02269.

(H) Each resident shall have access to a toilet room without entering the general corridor area. One toilet room shall serve no more than two resident rooms. The toilet room shall contain a water closet and a lavatory. The lavatory may be omitted from a toilet room which serves two bedrooms if each such resident room contains a lavatory. See paragraph (3)(A) of this subsection for baths and other toilet facility requirements.

(I) Each resident shall have a bed with a comfortable mattress, a bedside stand with at least two enclosed storage spaces, a dresser, and closet or wardrobe space providing privacy for clothing and personal belongings. Clothes storage space shall provide at least 22 inches of lineal hanging space per bed and have closeable doors. Chairs (and space) shall be provided for use by residents and/or visitors.

(J) All beds shall have provisions for accepting castors with wheel-locking devices, and all bedfast resident beds shall have castors installed.

(K) Each room shall open onto an exit corridor and shall be arranged for convenient resident access to dining, living, and bathing areas.

(L) Visual privacy (such as cubicle curtains) shall be available for each resident in multi-bed rooms. Design for privacy shall not restrict resident access to entry, lavatory, or toilet, nor shall it restrict bed evacuation or obstruct sprinkler flow coverage.

(M) At least one noncombustible wastebasket shall be provided in each bedroom.

(N) See the requirements in §145.281(d)(4) of this title (relating to Electrical) for nurse call systems.

(2) Nursing service areas. The service areas listed following shall be located in or readily available to each nursing unit. The size and disposition of each service area will depend upon the number and types of beds to be served. Each service area may be arranged and located to serve more than one nursing unit, but at least one such service area shall be provided on each nursing floor. The maximum distance from a resident room door to a nurse station shall be 150 feet.

(A) Nurse stations shall be provided with space for nurses' charting, doctors' charting, and storage for administrative supplies. Nurses' stations shall be located to provide a direct view of resident corridors. A direct view of resident corridors is acceptable if a person can see down the corridors from a point within 24 inches of the outside of the nurse station counter or wall.

(B) Lounge and toilet room(s) shall be provided for nursing staff.

(C) Lockers and/or security compartments shall be provided for the safekeeping of personal effects of staff. These shall be located convenient to the duty station of personnel or in a central location.

(D) Clean utility room(s) shall contain a work counter, sink with high neck faucet with lever controls, and storage facilities. It shall be part of a system for storage and distribution of clean and sterile supply materials.

(E) Soiled utility room(s) shall contain a water closet or equivalent flushing rim fixture, a sink large enough to submerge a bedpan with spray hose and high neck faucet with lever controls, work counter, waste receptacle, and linen receptacle. It shall be part of a system for collection and cleaning or disposal of soiled utensils or materials. A separate handwash sink shall be provided if the bedpan disinfecting sink cannot normally be used for handwashing.

(F) Provision shall be made for convenient and prompt 24-hour distribution of medication to residents. Medication preparation room shall be under the nursing staff's visual control and contain a work counter, refrigerator, sink with hot and cold water, and locked storage for biologicals and drugs and shall have a minimum area of 50 square feet. The minimum dimension shall be five feet six inches. An appropriate air supply shall be provided to maintain adequate temperature and ventilation for safe storage of medications. For purposes of storage of unrefrigerated medications, the room temperature shall be maintained between 59° and 86°F.

(G) Provision shall be made for separate closets or room for clean linens. Corridors shall not be used for folding or cart storage. Storage rooms shall be located and distributed in the building for efficient access to bedrooms.

(H) Soiled linen rooms shall be provided as required in paragragh (12) of this

section.

(I) A nourishment station is usually required in all but the smaller facilities and shall contain a sink equipped for handwashing, equipment for serving nourishment between scheduled meals, refrigerator, and storage cabinets. Ice for residents' service and treatment shall be provided only by icemaker units. This station may be furnished in a clean utility room.

(J) An equipment storage room shall be provided for equipment such as intravenous stands, inhalators, air mattresses, and walkers.

(K) Parking spaces for stretchers and wheelchairs shall be located out of the path of normal traffic.

(3) Residents' bathing and toilet facilities.

(A) Bathtubs or showers shall be provided at the rate of one for each 20 beds which are not otherwise served by bathing facilities within residents' rooms. At least one bathing unit shall be provided in each nursing unit. Each tub or shower shall be in an individual room or enclosure which provides space for the private use of the bathing fixture, for drying and dressing, and for a wheelchair and an attendant. Each general use bathing room (those not directly serving adjoining bedrooms) shall be provided with at least one water closet (in a stall, room, or area for privacy) and one lavatory. Such bathing room(s) shall be located conveniently to the bedroom area it serves and shall not be more than 100 feet from the farthest bedroom. See requirements in paragraph (1)(H) of this subsection for resident toilets at bedrooms. Each facility shall provide at least one whirlpool tub unit as one of the required bathing units.

(B) At least 10% of bathrooms and toilet rooms, fixtures, and accessories shall be designed and provided to meet ANSI criteria for the handicapped unless otherwise approved by the licensing agency.

(C) All rooms containing bathtubs, sitz baths, showers, and water closets, subject to occupancy by residents, shall be equipped with swinging doors and hardware which will permit access from the outside in any emergency.

(D) Bathing areas shall be provided with safe and effective auxiliary or supplementary heating. Bathing areas shall be free of drafts, and shall have adequate exhaust ducted to the outside to minimize excess moisture retention and resulting mold and mildew problems.

(E) Tubs and showers shall be provided with slip proof bottoms.

(F) Lavatories and handwashing facilities shall be securely anchored to withstand an applied downward load of not less than 250 pounds on the front of the fixtures.

(G) Provision shall be made for sanitary hand drying at lavatories. There shall be paper towel dispensers, or separate towel racks, separate toothbrush holders, etc.

(H) Mirrors shall be arranged for convenient use by residents in wheelchairs as well as by residents in a standing position and the minimum size shall be 15 inches in width by 30 inches in height, or tilt type.

(I) Rooms with toilets shall be provided with effective forced air exhaust ducted to the exterior to help remove odors. Ducted manifold systems are recommended for some multiple type installations.

(J) Floors, walls, and ceilings shall have nonabsorbent surfaces, be smooth, and easily cleanable.

(4) Sterilizing and disposal facilities.

(A) An effective system for sterilization of equipment and supplies shall be provided.

(B) Space and facilities shall be provided for the sanitary storage of waste by incineration, mechanical destruction compaction, containerization removal, or by a combination of these techniques.

(5) Resident living areas. Social-diversional spaces such as living rooms, dayrooms, lounges, sunrooms, etc., shall be provided on a sliding scale as follows:

Number of Beds	Area Per Bed (Minimum)
4-15	18 square feet (minimum 144 square feet)
16-20	17 square feet
21-25	16 square feet
26-30	15 square feet
31-35	14 square feet
36-40	13 square feet
41-50	12 square feet
51-60	11 square feet
61 and over	10 square feet (Example: 100 beds = 1,000 square feet.)

(A) Where a required way of exit (or a service way) is through such living (or dining) area, a pathway equal to the corridor width will normally be deducted for calculation purposes and discounted from that area. Such exit pathways must be kept clear of obstructions.

(B) Each resident living room and dining room shall have at least one outside window. The window area shall be equal to at least 8% of the total room floor area. Skylighting may be used to fulfill 1/2 of the 8% minimum area.

(A) Where a required way of exit (or a service way) is through such living (or dining) area, a pathway equal to the corridor width will normally be deducted for calculation purposes and discounted from that area. Such exit pathways must be kept clear of obstructions.

(B) Each resident living room and dining room shall have at least one outside window. The window area shall be equal to at least 8.0% of the total room floor area. Skylighting may be used to fulfill ½ of the 8.0% minimum area.

(C) See §145.271(f) of this title (relating to Introduction and Application) for bed capacity increases to existing facilities.

(D) Open or enclosed seating space shall be provided within view of the main nurse station that will allow furniture or wheelchair parking that does not obstruct the corridor way of egress.

(6) Dining space. Dining space shall be adequate for the number of residents served, but no less than 10 square feet per resident bed. See §145.271(f) of this title (relating to Introduction and Application) for bed capacity increases to existing facilities.

(7) Dietary facilities.

(A) Kitchens (main dietary) shall be as follows:

(i) Kitchens will be evaluated on the basis of their performance in the sanitary and efficient preparation and serving of meals to residents. Consideration shall be given to planning for the type of meals served. The overall building design, the food service equipment, arrangement, and the work flow involved in the preparation and delivery of food. Plans shall include a large-scale detailed kitchen layout designed by a registered or licensed dietitian or architect having knowledge in the design of food service operations.

(ii) Kitchens shall be designed so that room temperature, at peak load (summertime), shall not exceed a temperature of 85°F measured over the room at the five foot level. The amount of supply air shall take into account the large quantities of air that may be exhausted at the range hood and dishwashing area.

(iii) Operational equipment shall be provided as planned and scheduled by the facility consultants for preparing and serving meals and for refrigerating and freezing of perishable foods, as well as equipment in, and/or adjacent to, the kitchen or dining area for producing ice.

(iv) Facilities for washing and sanitizing dishes and cooking utensils shall be provided. Such facilities shall be designed based on the number of meals served and the method of serving (permanent or disposable dishware, etc.). As a minimum, the kitchen shall contain a multi-compartment sink large enough to immerse pots and pans. In all facilities, a mechanical dishwasher is required for washing and sanitizing dishes. Separation of soiled and clean dish areas shall be maintained including air flow.

(v) A vegetable preparation sink shall be provided. It shall be separate from the pot sinks.

(vi) A supply of hot and cold water shall be provided. Hot water for sanitizing purposes shall be 180°F or the manufacturer's suggested temperature for chemical sanitizers. For mechanical dishwashers, temperature measurement is at the manifold.

(vii) A kitchen shall be provided with a hand-washing lavatory in the food preparation area with hot and cold water, soap, paper towel dispenser, and waste receptacle. The dish room area shall have ready access to a handwashing lavatory.

(viii) Staff rest room facilities with lavatory shall be directly accessible to kitchen staff without traversing resident use areas. The rest room door shall not open directly into the kitchen (i.e., provide a vestibule).

(ix) Janitorial facilities shall be provided exclusively for the kitchen and shall be located in the kitchen area.

(x) Nonabsorbent smooth finishes or surfaces shall be used on kitchen floors, walls, and ceilings. Such surfaces shall be capable of being routinely cleaned and sanitized to maintain a healthful environment. Counter and cabinet surfaces, inside and outside, shall also have smooth, cleanable, relatively nonporous finishes.

(xi) Operable windows shall have insect screens provided.

(xii) Doors between kitchen and dining or serving areas shall have ¼ inch fixed wire glass view panel mounted in a steel frame. Reference §145.278(d) of this title (relating to Hazardous Areas).

(xiii) See §145.278 of this title (relating to Hazardous Areas) for hazardous area requirements.

(xiv) A garbage can or cart washing area with drain and hot water shall be provided.

(xv) Floor drains shall be provided in the kitchen and dishwash areas.

(xvi) Vapor removal from cooking equipment shall be designed and installed in accordance with NFPA 96.

(xvii) Grease traps shall be provided as required.

(xviii) See §145.271(f) of this title (relating to Introduction and Application) for bed capacity increases to existing facilities.

(B) Food storage areas shall be as follows.

(i) Food storage areas shall provide for storage of a seven day minimum supply of nonperishable foods at all times.

(ii) Shelves shall be adjustable wire type. Walls and floors must have a nonabsorbent finish to provide a cleanable surface. No foods shall be stored on the floor; dollies, racks, or pallets may be used to elevate foods not stored on shelving.

(iii) Dry foods storage shall have an effective venting system to provide for positive air circulation.

(iv) The maximum room temperature for food storage shall not exceed 85°F at any time. The measurement shall be taken at the highest food storage level but not less than five feet from the floor.

(v) Food storage areas may be located apart from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(C) Auxiliary serving kitchens (not contigious to food preparation, serving area) shall be as follows.

(i) Where service areas other than the kitchen are used to dispense foods, these shall be designated as food service areas and shall have equipment for maintaining required food temperatures while serving.

(ii) Separate food service areas shall have hand-washing facilities as a part of the food service area.

(iii) Finishes of all surfaces, except ceilings, shall be the same as those required for dietary kitchens or comparable areas.

(8) Administrative and public areas.

(A) The following elements shall be provided in the public area.

(i) The entrance shall be at grade level, sheltered from the weather, and able to accommodate wheelchairs. A drive-under canopy should be provided for the protection of residents or visitors entering or leaving a vehicle. The latter may be a secondary entrance.

(ii) The lobby shall include:

(I) storage space for wheelchairs (if more than one is kept available);

(II) a reception and/or information area (may be obviously adjacent to lobby);

(III) waiting space(s);

(IV) public toilet facilities for the handicapped (may be adjacent to lobby);

(V) public access telephone(s), at least one, shall be installed to meet ANSI standards; and

(VI) drinking fountain(s). These may be provided in a common public area and at least one shall be installed to meet ANSI standards.

(iii) A lobby may also be use-designed to satisfy a portion of the minimum area required for resident living room space.

(B) The following shall be provided in the administrative area:

(i) general or individual offices(s) for business transactions, medical and financial records, administrative and professional staff, and for private interviews relating to social service, credit, and admissions.

(ii) a multipurpose room for conferences, meetings, and health education purposes, including facilities for showing visual aids; and

(iii) storage and work area for office equipment and supplies shall be provided and accessible to the staff using such items.

(C) Toilet facilities for the handicapped shall be available in the building.

(9) Physical therapy facilities.

(A) Physical therapy facilities shall be provided if required by the treatment program and may include the following:

(i) treatment area(s) with space and equipment for thermotherapy, diathermy, ultrasonics, and hydrotherapy: provision for cubicle curtains around each individual treatment area: hand-washing facility(ies) (one lavatory or sink may serve more than one cubicle); and facilities for the collection of soiled linen and other material that may be used in the therapy;

(ii) an exercise area;

(iii) storage for clean linen, supplies, and equipment used in therapy:

(iv) residents' dressing areas, showers, lockers, and toilet rooms if the therapy is such that these would be needed at the area;

(v) service sink located near therapy area; and

(vi) wheelchair and stretcher storage

(B) The facilities stated in subparagraph (A)*(iii)-(vi)* of this paragraph may be planned and arranged for shared use by occupational therapy residents and staff if the treatment program reflects this sharing concept.

(10) Occupational therapy. Occupational therapy shall be provided if required by the treatment program. The following may be included:

(A) an activities area which shall include sink or lavatory and facilities for collection of waste products prior to disposal; and

(B) storage for supplies and equipment used in the therapy.

(11) Personal grooming area (barber/beauty shop). A separate room with appropriate equipment shall be provided for hair care and grooming needs of residents in facilities with over 60 beds.

(12) Laundry/linen services.

(A) On-site processing shall be as follows.

(i) Due to the high incidence of fires in laundries, it is highly recommended that the laundry be in a separate building 20 feet or more from the main building. If the laundry facility is located within the main building, it shall be separated by minimum one-hour fire construction and sprinklered, and shall be located in a remote area away from resident sleeping areas. Access doors shall be from the exterior or interior nonresident use area such as a service corridor (not a required exit) which is separated from the resident area.

(ii) If linen is to be processed on the site, the following shall be provided:

(I) a soiled linen receiving, holding, and sorting room with a rinse sink. This area shall have a floor drain and forced exhaust to the exterior which shall operate at all times there is soiled linen being held in the area;

(II) a laundry processing room with equipment which can process seven days needs within a regularly scheduled work week. Hand-washing facilities shall be provided. The washer area shall have a floor drain;

(III) storage for laundry supplies;

(IV) clean linen inspection and mending room or area and a folding area;

(V) a clean linen storage, issuing, or holding room or area;

(VI) janitors' closet containing a floor receptor or service sink and storage space for housekeeping equipment and supplies; and

(VII) sanitizing (washing) facilities and a storage area for carts.

(iii) Soiled and clean operations shall be planned to maintain sanitary flow of functions as well as air flow. If carts containing soiled linens from resident rooms are not taken directly to the laundry area, intermediate holding rooms shall be provided and located convenient to resident bedroom areas.

(iv) Laundry areas shall have adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire wall separation.

(v) Provisions shall be made to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.

(B) As regards to off-site linen processing, the following shall be provided on the premises:

(i) a soiled linen holding room (provided with adequate forced exhaust ducted to the exterior);

(ii) clean linen receiving, holding, inspection, sorting, or folding, and storage room(s); and

(iii) sanitizing facilities and a storage area for carts.

(C) Resident use laundry, if provided, shall be limited to not more than one residential type washer and dryer per laundry room. This room shall be classified as a hazardous area as per the Life Safety Code.

(13) General storage.

(A) A general storage room(s) shall be provided as needed to accommodate the facility's needs. It is recommended that such area provide at least two square feet per resident bed. This area would be for such items as extra beds, mattresses, appliances, and other furnishing and supplies.

(B) Storage space with provisions for locking and security control should be provided for residents' personal effects which are not kept in his or her room.

(14) Janitors' closet. In addition to the janitors' closet called for in certain departments, a sufficient number of janitors' closets shall be provided throughout the facility to maintain a clean and sanitary environment. These shall contain a floor receptor or service sink and storage space for housekeeping equipment and supplies.

(15) Maintenance/engineering service and equipment areas. Space and facilities for adequate preventive maintenance and repair service must be provided. The following spaces are needed (it is suggested that these be part of a separate laundry building or area).

(A) A storage area for building and equipment maintenance supplies, tools, and parts shall be provided.

(B) A space for storage of yard maintenance equipment and supplies, including flammable liquids bulk storage, shall be provided separate from the resident occupied facility.

(C) A maintenance/repair workshop of at least 120 square feet and equipment to support usual functions is recommended.

(D) A suitable office or desk space for the maintenance person(s) is recommended (this may be located within the previously stated repair shop area) with space for catalogs, files, and records.

(16) Isolation room. Under skilled health care programs, an isolation room with a resident toilet and bathing room and provision for staff hand-washing is required. An anteroom is recommended. Such area(s) shall be designed to minimize cross contamination. The rooms shall have a negative air pressure and air shall be 100% exhausted to the exterior.

(17) Oxygen. The storage and use of oxygen and equipment shall meet applicable NFPA standards for oxygen, including NFPA 56F.

§*145.275. Exit Provisions.* Exit provisions, including doors, corridors, stairways, and other exitways, locks, and other applicable items shall conform to the requirements of the Life Safety Code and of this subchapter in order to assure that residents can be rapidly and easily evacuated from the building at all times, or from one part of the building to a safe area of refuge in another part of the building. (Reference Life Safety Code requirements concerning means of egress }

(1) Bedroom space arrangement and doors and corridors shall be designed for evacuation of bedfast residents by means of rolling the bed to a safe place in the building or to the outside.

(2) Public assembly, living rooms, dining rooms, etc., with a capacity of 50 or more persons or greater than 1,000 square feet shall have two means of exit remote from each other. Outswinging doors with panic hardware shall be provided for these exits.

(3) Exit doors and ways of egress shall be maintained clear and free for use at all times. Furnishings, equipment, carts, etc., shall not be left to block egress at any time.

(4) Steps in interior ways of egress are prohibited. If changes of elevation are necessary within ways of egress, approved ramps (maximum slope of 1:12) shall be used.

(5) Any remodeling, construction, additions, etc., of occupied buildings which involve exitways and exit doors shall be accomplished without compromising the exits or creating a dead end situation at any time. Acceptable alternate temporary exits may be approved, or residents(s) in the area involved may have to be relocated until construction blocking the exit is completed. Other basic safety features such as fire alarms, sprinkler systems, and emergency power shall also be maintained operational.

(6) Doors in means of egress shall be as follows.

(A) Locking hardware or devices which are capable of preventing or inhibiting immediate egress shall not be used in any room or area that can be occupied.

(B) A latch or other fastening device on an exit door shall be provided with a knob handle, panic bar, or similar releasing device. The method of operation shall be obvious in the dark without use of a key, and operable by a well known one-action operation that will easily operate with normal pressure applied to the door or to the device toward the exterior. Locking hardware which prevents unauthorized entry from the outside (only) is permissible. Permanently mounted hold-open devices to expedite emergency egress and prevent accidental lock-out shall be provided for exterior exit doors as well as self closing devices.

(C) No screen or storm door shall swing against the direction of exit travel where main doors are required to swing out.

(D) To aid in control of wandering residents, buzzers or other sounding devices may be used to announce the unauthorized use of an exit door. Other methods include approved emergency exit door locks or fencing (with gate) outside of exit doors which enclose a space large enough to allow the space to be an exterior area of egress and refuge away from the building.

(E) Inactive leaves of double doors may have easily accessible and easily operable bolts if the active leaf is 44 inches wide. Center mullions are prohibited.

(F) Resident baths or toilets having privacy locks will require that keys or devices for opening the doors are kept readily available to the staff.

(G) Folding or sliding doors shall not be used in exit corridors or exitways. Sliding glass doors may be used as secondary doors from residents bedrooms to grade or to a balcony, or as secondary doors in certain other areas where the primary designated exit door requirements are met. Doors to bathroom and other resident-use areas shall be the side-hinged swinging type. Corridor doors to rooms shall swing into the room or be recessed so as not to extend into the corridor when open; doors ordinarily kept closed, however, may be excepted. Corridor door frames shall be steel in accordance with the Life Safety Code.

(7) Horizontal exits, if provided, shall be according to the Life Safety Code.

(8) Areas outside of exterior exit doors (exit discharge) shall be as follows.

(A) Provision shall be made to accommodate and facilitate continuation of emergency egress away from a building for a reasonable distance beyond the outside exit door, especially for movement of nonambulatory resident in wheelchairs and beds. Any condition which may retard or halt free movement and progress outside the exit doors will not be allowed. Ramps shall be used outside the exit doors in lieu of steps whenever possible.

(B) The landing outside of each exit door shall be essentially the same elevation as the interior floor and level for a distance equal to the door width plus at least four feet. Generally, the difference in floor elevation at an exterior door shall not be over ½ inch with the outside slope not to exceed ¼ inch per foot sloping away from the door for drainage on the exterior. In locations north of the +20 F Isothermal Line as defined in the *ASHRAE Handbook of Fundamentals*, the landing outside of all exit doors shall be protected from ice build-up which would prohibit the door from opening and be a slip hazard.

(C) Emergency egress lighting immediately outside of exit doors is required as a part of the building emergency lighting system. Photocell devices may be used to turn lights off during day light hours.

(9) Reference §145.281 of this title (relating to Electrical) for requirements of emergency lighting system.

(10) Reference the Life Safety Code for requirements of interior finishes of ways of egress (flame spread of floor, wall, and ceiling finishes). Reference §145.273(e) of this title (relating to General Considerations) for interior finishes of other areas.

§145.276. Smoke Compartmentation (Subdivision of Building Spaces).

(a) Smoke compartmentation shall be as described in the Life Safety Code and, in addition, as described in this section.

(b) An exit sign shall be provided on each side of corridor smoke doors unless otherwise directed by the licensing agency.

(c) The metal frames for the wire glass view panels in smoke doors shall be steel unless otherwise approved by the licensing agency. The bottom of the view panel shall not be higher than 54 inches above the floor. Pairs of opposite (double egress) swinging smoke doors in corridors shall have push/pull hardware. The door leaves shall align in the closed position.

(d) Smoke barrier walls in concealed spaces, such as attics, shall have prominent signs on each side that read "Warning: Smoke fire barrier. Properly seal all openings."

(e) Provisions shall be made for reasonable access to concealed smoke barrier walls for maintaining smoke dampers and so that walls and dampers can be visually checked periodically for conformance by facility staff, servicemen, and inspectors. Access shall provide for visual inspection of both sides of the wall, and of all parts (end to end and top to bottom). Ceiling access panels shall be prefabricated metal panel or equal and be at least 20 inches by 20 inches with no obstructions above (such as ducts) to hamper entrance, and it shall be fire rated if required to maintain ceiling-roof or ceiling-floor fire rating. Access shall be provided for both sides of the wall.

(f) Air systems should be designed to avoid having ducts which penetrate smoke barrier walls, thus eliminating the need for smoke dampers which are often a problem to maintain in proper and reliable working condition.

§145.277. Fire Protection Systems.

(a) Fire protection systems include detection, alarm, and communication systems, fixed automatic extinguishment systems, and portable extinguishers. Such systems shall meet the requirements of the Life Safety Code, and of this section. Components shall be compatible and laboratory listed for the use intended.

(b) Fire protection systems shall meet the requirements of all applicable NFPA standards, such as NFPA 72A for alarm systems, etc., as referenced in the Life Safety Code. Wiring and circuitry for alarm systems shall meet the applicable requirements of NFPA standards, including the NFPA 70 for such systems.

(c) Reference §145.281 of this title (relating to Electrical) for related requirements of emergency electrical systems. Reference §145.280(4) of this title (relating to Mechanical) for sprinkler systems.

(d) Partial sprinkler systems (those provided only for hazardous areas) shall be interconnected with the fire alarm and comply with the Life Safety Code. Each partial system shall have a valve with a supervisory switch to sound a trouble signal, water flow switch to activate the fire alarm, and an end of line test drain.

(e) Fire alarm systems shall be installed (maintained, repaired, etc.) by an agent having a current certificate of registration with the State Fire Marshal's Office of the Texas State Board of Insurance, in accordance with state law. A fire alarm installation certificate shall be provided as required by the Office of the State Fire Marshal.

(f) The fire alarm system shall be designed so that whenever the general alarm is sounded by activation of any device (manual pull, smoke sensor, sprinkler kitchen range hood extinguisher, etc.) the following shall occur automatically.

(1) Smoke and fire doors which are held open by approved devices shall be released to close.

(2) Air handlers (air conditioning/heating distribution fans) serving three or more rooms or any means of egress shall shut down immediately.

(3) Smoke dampers shall close.

(4) The proper zone indicating lights shall show on the fire alarm control panel(s), including auxiliary panels.

(g) Fire alarm bells or horns shall be located throughout the building for audible coverage. Flashing alarm lights (visual alarms) shall be installed to be visible in corridors and public areas, including dining rooms and living rooms in a manner that will identify exit routes.

(h) A master control panel shall be visible at the main nurse station which has alarm and trouble conditions by zones, power on lights, and required signal devices for trouble conditions. All control panels must be listed UL for the intended use, i.e., manual, automatic, and water flow activation. Alarm and trouble zoning shall be by smoke compartments and by floors in multi-story facilities.

(i) Remote annunciator panels, equipped with alarm by zone, or devices, trouble and power on lights shall be located at auxiliary or secondary nurse stations on each floor, and will indicate the alarm condition of adjacent zones and the alarm conditions at all other nurse stations.

(j) Manual pull stations shall be provided at all exits, living rooms, dining rooms, and at or near the nurse stations.

(k) The sprinkler system shall be interconnected with the fire alarm panel as a separate zone for alarm and trouble. Activation of the tamper switch will provide a trouble condition on the fire alarm panel which will not impair the operation of the alarm.

(l) The kitchen range hood extinguisher shall be interconnected with the fire alarm system. This interconnection may be a separate zone on the panel or combined with other initiating devices located in the same zone as the range hood is located.

(m) Portable fire extinguishers shall be provided throughout the facility as required by NFPA Standard 10 and as determined by the local fire department and the licensing agency.

(1) Portable type ABC or BC chemical extinguishers shall not be located in resident corridors. Extinguishers in resident corridors shall be 2½ gallon pressurized water or other type approved by the licensing agency and so spaced that travel distance is not more than 75 feet.

(2) Extinguishers shall be installed on hangers or brackets supplied or mounted in approved cabinets. Recessed cabinets are required for extinguishers located in corridors.

(3) Extinguishers installed under conditions where they are subject to physical damage shall be protected from impact or dislodgement.

(4) Extinguishers having a gross weight not exceeding 40 pounds shall be installed so that the top of the extinguisher is not more than five feet above the floor. Extinguishers having a gross weight greater than 40 pounds shall be installed so that the top of the extinguisher is not more than 3½ feet above the floor. In no case shall the clearance between the bottom of the extinguisher and the floor be less than four inches.

(5) Portable extinguishers provided in hazardous rooms should be located as close as possible to the exit door opening and nearest the latch (knob) side.

§145.280 Mechanical. The design of the mechanical systems shall be done by or under the direction of a registered professional (mechanical) engineer approved by the Texas State Board of Registration for Professional Engineers to operate in Texas, and the parts of the plans and specifications covering mechanical design shall bear the legible seal of the engineer. Reference the requirement concerning building services of the Life Safety Code for requirements pertaining to utilities, heating ventilating and air-conditioning systems, vertical conveyors, and chutes. Reference §145.274 of this title (relating to Architectural Space Planning and Utilization) for required plumbing fixtures in specific use areas.

(1) Plumbing.

(A) All plumbing systems shall be designed and installed in accordance with the requirements of the plumbing code of the municipality. In the absence of a municipal code, a nationally recognized plumbing code shall be used, such as the Standard Plumbing Code of the Southern Building Code Congress International, Inc. Any discrepancy between an applicable code and those standards shall be called to the attention of the licensing agency for resolution.

(B) Supply systems shall assure an adequacy of hot and cold water. An average rule of thumb design for hot water for resident usage (at 110°F) is to provide 6½ gallons per hour per resident in addition to kitchen and laundry use.

(C) Water supply shall be from a department approved system or from a system regulated by an entity responsible for water quality in that jurisdiction as approved by the licensing agency.

(D) The sewage system shall connect to a department approved system or to a system regulated by an entity responsible for water quality in that jurisdiction as approved by the licensing agency.

(E) The minimum ratio of fixtures to residents shall be as required in §145.274(3) of this title (relating to Architectural Space Planning and Utilization).

(F) For design calculation purposes, resident-use hot water shall not exceed 110°F at the fixture, for purposes of conforming to licensure requirements, an operating system providing water from 100°F to 115°F will be acceptable. Hot water for laundry and kitchen use shall be normally 140°F except that dish sanitizing, if done by hot water, shall be 180°F.

(G) Water closets raised to provide a seat height 17 inches to 19 inches from the floor is required for handicapped standards.

(H) Showers for wheelchair residents shall not have curbs. Tub and shower bottoms shall have a slip resistant surface. Shower and tub enclosures, other than curtains, shall be of tempered glass, plastic, and other safe materials.

(I) Drinking fountains shall not extend into exit corridors.

(J) Fixture controls easily operable by residents shall be provided (such as lever type).

(K) Plumbing fixtures for residents shall be vitreous china or porcelain finished cast iron or steel unless otherwise approved by the licensing agency. Bathing units constructed of Class B fire rated fiberglass are acceptable for use.

(L) Under skilled health care programs, an isolation room with toilet and bathing facility will be required. The isolation area shall have special air flow requirements to control airborne infectious organisms. See §145.274(16) of this title (relating to Architectural Space Planning and Utilization).

(M) Hand-washing sinks for staff use are required in many areas throughout the facility. Reference §145.274 of this title (relating to Architectural Space Planning and Utilization). Lavatories are required to be provided adjacent to water closets in each area.

(N) The soiled utility room shall be provided with a flushing device such as a water closet with bedpan lugs, a spray hose with a siphon breaker or similar device, such as a high neck faucet with lever controls and a deep sink that is large enough to submerse a bedpan. A sterilizer for sanitizing may be used in place of a deep sink.

(O) Siphon breakers (or backflow preventers) are required for any hose

or pipe connection at a plumbing fixture that could be submerged causing backflow cross-contamination. All potable water supply lines shall have back-flow prevention devices in accordance with water distribution regulations of the department.

(P) Clean-outs for waste piping lines shall be provided and located so that there is the least physical and sanitary hazard to residents. Where possible, clean outs shall open to the exterior or areas which would not spread contamination during clean-out procedures.

(2) Heating, ventilating, and air-conditioning systems.

(A) Heating, ventilating, and air-conditioning systems shall be designed and installed in accordance with the Heating, Ventilating, and Air-Conditioning Guide of the ASHRAE, except as may be modified herein.

(B) Heating, ventilating, and air-conditioning systems shall meet the requirements of the Life Safety Code, including NFPA 90A. The plans shall have a statement verifying that the systems are designed to conform to NFPA 90A. Reference §145.276 of this title (relating Smoke Compartmentation (subdivision of Building Spaces)) for conditions related to smoke compartmentation.

(C) Systems using liquified petroleum gas fuel shall meet the requirements of the Railroad Commission of Texas and NFPA 54.

(D) The heating system shall be designed, installed, and functioning to be able to maintain a temperature of at least 75°F for all areas occupied by residents. For all other occupied areas, the indoor design temperature shall be at least 72°F. The cooling system shall be designed, installed, and functioning to be able to maintain a temperature of not more than 78°F. Occupied areas generating high heat, such as kitchens, shall be provided with a sufficient cool air supply to maintain a temperature not exceeding 85°F at the five foot level (with doors kept closed as required by the code for hazardous areas). Supply air volume must be approximately equal to the air volume exhausted to the exterior for such areas.

(E) Air systems shall provide for mixing at least 10% outside air for the supply distribution. Blowers for central heating and cooling systems shall be designed so that they may run continuously.

(F) Floor furnaces, unvented space heaters, and portable heating units are not to be used. Heating devices or appliances must not be a burn hazard (to touch) to residents.

(G) A combustion fresh air inlet shall be provided to all gas or fossil fuel operated equipment in steel ducts or passages from outside the building in accordance with NFPA 54. Such rooms shall also be vented to the exterior to exhaust heated ambient air in the room. Combustion air will require one vent within 12 inches of the floor and one vent within 12 inches of the ceiling.

(H) The location and design of air diffusers, registers, return air grilles, etc., shall be such that residents are not in harmful or excessive drafts in their normal usage of the room.

(I) In areas requiring control of sanitation, the air flow shall be from the clean area to the dirty area. Air supply to food preparation areas shall not be from air which has circulated resident bedrooms, baths, etc.

(J) Air from unsanitary areas such as janitor's closets, soiled linen, soiled utility, and soiled area of laundry rooms, etc. shall not be returned and recirculated to other areas.

(K) Air from isolation rooms shall be 100% exhausted to the exterior and not returned and recirculated. See §145.274 (16) of this title (relating to Architectural Space Planning and Utilization).

(L) Intakes for fresh outside air shall be located sufficiently distant from exhaust outlets or other areas or conditions which may contaminate or otherwise pollute the incoming fresh air. Fresh air inlets shall be appropriately screened to prevent entry of debris, rodents, animals, etc. Provision shall be made for access to such screens for periodic inspection and cleaning to eliminate clogging or air stoppage. (See paragraph (3)(c)*(i)* of this section.)

(M) Systems shall be designed as much as possible to avoid having ducts passing through fire walls or smoke barrier walls. All openings or duct penetrations in such walls shall be provided with approved automatic dampers. Smoke dampers at smoke partitions shall close automatically upon activation of the fire alarm system to prevent the flow of air or smoke in either direction.

(N) Clear view panels shall be provided in the duct to check for proper operation of each smoke damper on a routine basis. View panels may also serve as access for maintenance or a separate access panel shall be provided. Access panels shall be provided (in ceiling or side wall) and location of dampers shall be identified on wall or ceiling of occupied area below.

(O) Fusible links are not approved for smoke dampers.

(P) Central air supply systems and/or systems serving means of egress shall automatically and immediately shut down upon activation of the fire alarm system. (Exception: approved engineered smoke removal systems.)

(Q) Ducts shall be of metal or other approved noncombustible material. Cooling ducts shall be insulated against condensation drip.

(3) Ventilating and exhaust.

(A) Reference paragraph (2) of this subsection for general ventilating systems.

(B) Provisions for natural ventilation using windows or louvers shall be incorporated into the building design where possible and practical. Such windows or louvers shall have insect screens.

(C) Details for the ventilation system are set out in this subparagraph. All air-supply and air-exhaust systems shall be mechanically-operated. The ventilation rates shown in the table in clause *(xii)* of this subparagraph shall be considered as minimum acceptable rates and shall not be construed as precluding the use of higher ventilation rates.

(i) Outdoor air intakes shall be located as far as practical (but normally not less than 10 feet) from exhaust outlets of ventilating systems, combustion equipment stacks, medical vacuum systems, plumbing vent stacks, or from areas which may collect vehicular exhaust and other noxious fumes.

(ii) The ventilation systems shall be designed and balanced to provide the pressure relationship as shown in the table in clause *(xii)* of this subparagraph. A final engineered system air balance report will be required for the completed system to be furnished and certified by the installer.

(iii) The bottoms of ventilation openings shall be not less than three inches above the floor of any room.

(iv) Doors protecting corridors or ways of egress shall not have air transfer grilles or louvers. Corridors shall not be used to supply air to or exhaust air from any room except that air from corridors may be used as make-up air to ventilate small toilet rooms, janitor's closets, and small electrical or telephone closets opening directly on corridors, provided that such ventilation can be accomplished by door undercuts not exceeding ¾ inches.

(v) All exhausts shall be continuously ducted to the exterior. Exhausting air into attics or other spaces is not permitted. Duct material shall be steel.

(vi) All central ventilation or air-conditioning systems shall be equipped with filters of sufficient efficiency to minimize dust and lint accumulations throughout the system and building, including supply and return plenums and ductwork. Filters with an efficiency rating of 80% or greater (based on ASHRAE) are recommended. Filters for individual room units shall be as recommended by the equipment manufacturer. Filters shall be easily accessible for routine changing or cleaning.

(vii) Static pressures of systems shall be within limits recommended by ASHRAE and the equipment manufacturer (upstream and downstream).

(viii) In geographic locations or interior room areas where extreme humidity levels are likely to occur for extended periods of time, apparatus for controlling humidity levels (preferably between 40-60%) are recommended to be installed as a part of central systems and with

automatic humidistat controls.

(ix) Exhaust hoods, ducts, automatic extinguishers, etc., for kitchen cooking equipment shall be as called for in NFPA 96.

(x) Forced air exhaust shall be provided in laundries, kitchens, and dish-washing areas to remove excess heat and moisture and to maintain air flow in the direction of clean to soiled areas.

(xi) Medical isolation rooms, if provided, shall have special air-flow systems to exhaust 100% of the air to the exterior to prevent the spread of infectious air borne organisms. See §145.274(16) of this title (relating to Architectural Space Planning and Utilization).

(xii) Ventilation requirements for nursing areas shall be according to the following table:

VENTILATION REQUIREMENTS FOR NURSING AREAS

Area Designation	Air Movement In Relation To Adjacent Areas	Minimum Total Air Changes Per Hour	All Air Exhausted To Outside	Design Temperature
Patient Room	---	2	---	70/75
Examination and Treatment Room	---	4	No	70/75
Physical Therapy	In	4	No	70/75
Occupational Therapy	---	4	No	70/75
Soiled work or Holding Room	In	6	Yes	---
Clean work or Holding Room	Out	4	No	---
Toilet Rooms	In	10	Yes	---
Bath & Shower Rooms	---	10	No	70/75
Janitors' Closets	In	10	Yes	---

(xiii) With relationship to adjacent areas, a positive air pressure shall be provided for clean utility rooms, clean linen rooms, and medication rooms. Conditioned supply air shall be introduced into these rooms.

(4) Sprinkler systems.

(A) Sprinkler systems shall be provided as required by NFPA 13, and by this manual.

(B) The design and installation of sprinkler systems must meet any applicable state laws pertaining to such systems and one of the following criteria.

(i) The sprinkler system plans and installation must be approved by the State Board of Insurance.

(iii) The sprinkler system must be designed by a qualified registered professional engineer approved by the Texas State Board of Registration for Professional Engineers to operate in Texas. The engineer shall supervise the installation and provide written approval of the completed installation.

(xiii) With relationship to adjacent areas, a positive air pressure shall be provided for clean utility rooms, clean linen rooms, and medication rooms. Conditioned supply air shall be introduced into these rooms.

(4) Sprinkler systems

(A) Sprinkler systems shall be provided as required by NFPA 13, and by this subchapter.

(B) The design and installation of sprinkler systems must meet any applicable state laws pertaining to such systems and one of the following criteria.

(i) The sprinkler system plans and installation must be approved by the State Board of Insurance.

(ii) The sprinkler system must be designed by a qualified registered professional engineer approved by the Texas State Board of Registration for Professional Engineers to operate in Texas. The engineer shall supervise the installation and provide written approval of the completed installation.

(iii) The sprinkler system must be planned and installed in accord with NFPA 13 by firms with certificates of registration issued by the Office of the State Fire Marshal that have at least one full-time licensed responsible managing employee (RME). The RME's license number and signature must be included on the prepared sprinkler drawings.

(C) The approved sprinkler plans shall be submitted to the licensing agency along with final construction plans for general appraisal, review, and record.

(D) Particular attention should be paid to adequate, safe, and reasonable freeze protection for all piping. The design of such freeze protection should minimize the need for dependence on staff action or intervention to provide protection.

§145.281. Electrical.

(a) The design of the electrical systems shall be done by or under the direction of a registered professional electrical engineer approved by the Texas State Board of Registration for Professional Engineers to operate in Texas, and the parts of the plans and specifications covering electrical design shall bear the legible seal of the engineer. Reference Chapter 7, concerning building service and fire protection equipment, of the Life Safety Code for requirements pertaining to utilities, heating, ventilating, and air-conditioning systems, vertical conveyors, and chutes.

(b) Reference §145.277 of this title (relating to Fire Protection Systems) for fire protection systems.

(c) Electrical systems shall meet the requirements of the NFPA 70.

(d) Reference §145.274 of this title (relating to Architectural Space Planning and Utilization) for specific requirements for lighting and outlets at resident bedrooms.

(1) Emergency electrical service

(A) To provide electricity during an interruption of the normal electric supply, an emergency source of electricity shall be provided and connected to certain circuits for lighting and power.

(B) The source of this emergency electrical service shall be as follows:

(i) an emergency generating set when the normal service is supplied by one substation transmission line;

(ii) an emergency generating set or a central station transmission line when the normal electric supply is generated on the premises; or

(iii) from two separate substations or separate and independent utility companies.

(C) Emergency electrical connection service shall be provided to the distribution systems as required by the Life Safety Code and NFPA 99.

(i) Emergency systems shall include the following:

(I) illumination for means of egress, nurse stations, medication rooms, dining and living rooms, group bathing rooms (those not directly connected to resident bedrooms), and areas immediately outside of exit doors;

(II) exit signs and exit directional signs required by the Life Safety Code;

(III) alarm systems, including fire alarms activated by manual stations, water flow alarm devices of sprinkler systems, fire and smoke detecting systems, and alarms required for nonflammable medical gas systems if installed. Where hospital type functions are included in the nursing home facility, applicable standards shall apply.

(IV) task illumination and selected receptacles at the generator set location;

(V) selected duplex receptacles, including such areas as resident corridors, nurse stations, and medication rooms, including biologicals refrigerator;

(VI) nurse calling systems;

(VII) elevator cab lighting, control, and communication systems;

(VIII) equipment necessary for maintaining telephone service and

(IX) paging or speaker systems if intended for communication during emergency. Radio transceivers where installed for emergency use shall be capable of operating for at least one hour upon total failure of both normal and emergency power.

(ii) Critical systems (delayed automatic or manual connections to critical systems) shall include the following.

(I) Heating equipment shall provide heating for general resident rooms. This will not be required if:

(-a-) the outside design temperature is higher than 20°F (-6°C), or

(-b-) the outside design temperature is lower than 20°F (-6°C) and where selected room(s) is provided for the needs of all confined residents, then only such room(s) need to be heated; or

(-c-) the facility is served by a dual source of normal power.

(II) In instances where interruptions of power would result in elevators stopping between floors, throw-over facilities shall be provided to allow the temporary operation of any elevator for the release of passengers.

(D) The emergency lighting shall be automatically in operation within 10 seconds after the interruption of normal electric power supply. Emergency service to receptacles and equipment may be delayed automatic or manually connected. Receptacles connected to emergency power shall have red face plates. Stored fuel capacity shall be sufficient for not less than four-hour operation of required generator.

(E) The design and installation of emergency motor generators must be in accordance with NFPA 37 and NFPA 99.

(i) Generators shall be a minimum of three feet from the combustible exterior building finish and a minimum of five feet from a building opening if located on the exterior of the building.

(ii) Generators located on the exterior of the building shall be provided with a noncombustible protective cover or be protected as per manufacturer's recommendations.

(iii) Motor generators fueled by public utility natural gas shall have the capability to be switched to an alternate fuel source. (Reference NFPA 70.)

(F) The normal wiring circuit(s) for the emergency system shall be kept entirely independent of all other wiring and shall not enter the same raceways boxes or cabinets. (Reference NFPA 70.)

(2) General lighting requirements

are as follows

(A) All spaces occupied by people, machinery, equipment, approaches to buildings, and parking lots shall have lighting.

(B) The quality, intensity, and type of lighting shall be adequate and appropriate to the space and all functions within the space.

(C) Recommended minimum lighting levels can be found in the *Illuminating Engineering Society (I.E.S.) Lighting Handbook*, latest edition

(D) Nursing unit corridors shall have general illumination with provisions for reduction of light levels at night

(E) Exposed incandescent light bulbs (or other high heat generating lamps) in closets or other such spaces shall be provided with basket wire guards or other suitable shield to prevent contact of combustible materials with the hot bulb and to help prevent breakage.

(F) Exposed incandescent or fluorescent bulbs will not be permitted in food service or other areas where glass fragments from breakage may get into food, medications, linens, or utensils. All fluorescent bulbs will be protected with a shield or catcher to prevent bulb drop-out.

(3) Receptacles (convenience outlets).

(A) Reference §145.274(1)(G) of this title (relating to Architectural Space Planning and Utilization) for receptacles at bedrooms.

(B) Duplex receptacles for general use shall be installed in corridors spaced not more than 50 feet apart and within 25 feet of ends of corridors.

(C) Receptacles shall be provided for essential needs such as medication refrigerators and life support systems or equipment At least one outlet in each resident corridor shall be provided with emergency electrical service. All receptacles on emergency circuits shall be clearly, distinctly, and permanently identified, such as using a red face plate and/or a small label that says "Emergency."

(D) Receptacles in the remainder of the building shall be sufficient to serve the present and future needs of the residents and equipment.

(E) Location of receptacles (horizontally and vertically) should be carefully planned and coordinated with the expected designed use of furnishings and equipment to maximize their accessibility and to minimize conditions such as beds or chests being jammed against plugs used in the outlets.

(F) Exterior receptacles shall be an approved waterproof type.

(G) Ground fault interruption protection shall be provided at appropriate locations such as at whirlpools and other wet areas as defined in the National Electrical Code.

(4) Nurse call systems.

(A) A nurse call system consists of power units, annunciator control units, corridor dome stations, emergency call stations, bedside call stations, and activating devices The units shall be compatible and laboratory listed for the system and use intended.

(B) Each resident bedroom shall be served by at least one calling station and each bed shall be provided with a call switch. Two call switches serving adjacent beds may be served by one calling station. Each call entered into the system shall activate a corridor dome light above the bedroom/bathroom/toilet corridor door, a visual signal at the nurses station which indicates the room from which the call was placed, and a continuous or intermittent continuous audible signal of sufficient amplitude to be clearly heard by nursing staff. The amplitude or pitch of the audible signal shall not be such that it is irritating to residents or visitors. The system shall be designed such that calls entered into the system may be cancelled only at the calling station. Intercom type systems shall be installed only after approved by the department.

(C) Nurse calling systems which provide two-way voice communication shall be equipped with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operating

(D) A nurse call emergency switch(es) shall be provided for residents use at each resident's toilet, bath, and shower. Such switches shall be usable by residents using the fixtures and by a collapsed resident lying on the floor.

§145.284. Plans and Specifications

(a) Submittal of preliminary plans.

(1) When construction is contemplated for new buildings, additions, conversion of buildings not licensed by the licensing agency (including formerly licensed nursing homes), or remodeling of existing licensed facilities, one copy of the preliminary proposed plans shall be submitted to the licensing agency (Architectural Section) for review prior to the preparation of working drawings. For additions, an overall plan similar to §145.285(c)(3) of this title (relating to Construction and Initial Survey of Completed Construction) shall be included.

(2) Fees for plan reviews will be required in accordance with §145.93 of this title (relating to Fees for Plan Reviews and Building Inspections).

(3) The project will be considered abandoned and the plans will be destroyed if final plans are not submitted to the licensing agency within 12 months from the submittal date of the preliminary plans for review and approval. Resubmittal of plans and additional plan review fees will be required if, after the abandonment period, the project will be constructed.

(4) The plans shall be drawn to scale, shall indicate the usage of all spaces, sizes of areas and rooms, and the type and location of fixed equipment. New construction or additions shall include a site plan showing all pertinent conditions, including grades and all structures on the site. Written approval of the local health authority, building department, and of the local fire marshal having jurisdiction shall be submitted

(5) A general description of the surrounding area and vicinity (commercial, residential, rural, shopping, available transportation, etc) shall be furnished for new locations

(b) Submittal of intermediate plans. Intermediate stage plans and specifications (50% to 75% complete) may be needed for review, particularly on new, larger, or more complex construction projects.

(c) Submittal of final plans.

(1) Before construction is begun, one copy of working drawings and specifications (contract documents) in sufficient detail to interpret compliance with these standards and assure proper construction shall be submitted to the licensing agency for review. These documents shall be prepared according to accepted architectural practice and shall include general construction, special conditions, schedules, and any other pertinent information that the licensing agency may require. In addition, two extra copies of the floor plan (only) shall be submitted with the aforementioned complete set.

(2) The project will be considered abandoned and the plans destroyed if the project is not under construction and continuing progress shown within six months from the date of the final review of the plans. Resubmittal of plans and full plan review fee will again be required if, after the abandonment period, the project will be constructed. Fees will be as required in accordance with §145.93 of this title (relating to Fees for Plan Reviews and Building Inspections).

(3) Final copies of plans shall have (in the reproduction process by which plans are reproduced) a title block showing name of facility person or organization preparing the sheet, sheet numbers, facility address, and drawing date. Certain parts of final plans, designs, and specifications shall bear the seal of a registered professional engineer approved by the State Board of Registration for Professional Engineers to operate in Texas. These certain parts include sheets and sections covering structural, electrical, mechanical, and sanitary engineering. Contract documents for major additions and major remodeling and for the construction of an entirely new facility shall be prepared by an architect licensed by the Texas State Board of Architectural Examiners. Drawings shall bear the seal of the architect.

(4) A final plan for a major addi-

tion to a facility shall include a basic layout to scale of the entire building onto which the addition connects. North direction shall be shown. Usually the entire basic layout can be to scale such as 1/16 inch per foot or 1/32 inch per foot for very large buildings.

(5) Plans and specifications for conversions or remodeling shall be complete for all parts and features involved.

(6) It is the sponsor's responsibility to employ qualified personnel to prepare the contract documents for construction. If the contract documents have errors or omissions to the extent that conformance with standards cannot be reasonably assured or determined, a revised set of documents for review may be requested. For additions and remodeling to existing licensed facilities, construction shall not be started until the final contract documents are reviewed and approved in writing by the licensing agency.

(7) The review of plans and specifications by the licensing agency is based on general utility and conformance with the Life Safety Code, and is not to be construed as all-inclusive approval of the structural, electrical, or mechanical components.

(d) Contract documents.

(1) Site plan documents shall include grade contours, streets (with names), north arrow, fire hydrants; fire lanes, utilities, public or private, fences, unusual site conditions, such as ditches, low water levels, other buildings on-site, and indications of buildings five feet or less beyond site property lines. Site plan documents may include the developed landscaping plan for resident use as called for in §145.272(f) of this title (relating to Location and Site).

(2) Foundation plan documents shall include general foundation design and details.

(3) Floor plan documents shall include:

(A) room names, numbers, and usages; doors (numbered), including swing, windows; legend or clarification of wall types, dimensions, fixed equipment, plumbing fixtures, and kitchen basic layout;

(B) identification of all smoke barrier walls (outside wall to outside wall) or fire walls, and

(C) for both new construction and additions or remodeling to existing buildings, an overall plan of the entire building shall be drawn or reduced to fit on an 8½ inch by 11 inch sheet, submit two reduced plans for file record. (See §145.285(e)(3) of this title (relating to Construction and Initial Survey of Completed Construction.)

(4) Schedules shall include door materials, widths, types, window materials, sizes, types, room finishes, special hardware.

(5) Elevations and roof plan shall include exterior elevations, including material note indications and any roof top equipment; roof slopes, drains, gas piping, etc., and interior elevations where needed for special conditions.

(6) Details shall include wall sections as needed (especially for special conditions), cabinet and built-in work, basic design only, cross sections through buildings as needed; and miscellaneous details and enlargements as needed.

(7) Building structure documents shall include structural framing layout and details (primarily for column, beam, joist, and structural frame building), roof framing layout (when cannot be adequately shown on cross section), cross sections in quantity and detail to show sufficient structural design and structural details as necessary to assure adequate structural design; also calculated design loads.

(8) Electrical documents shall include electrical layout including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices, service, circuiting, distribution, and panel diagrams, exit light system (exit signs and emergency egress lighting); emergency electrical provisions (such as generators and panels), nurse call system, fire alarm and similar systems (such as control panel, devices, and alarms), sizes and details sufficient to assure safe and properly operating systems.

(9) Plumbing documents shall include plumbing layout with pipe sizes and details sufficient to assure safe and properly operating systems, water systems, sanitary systems, gas systems, other systems normally considered under the scope of plumbing, features, provisions for combustion air supply.

(10) Heating, ventilation, and air-conditioning (HVAC) document shall include sufficient details of HVAC systems and components to assure a safe and properly operating installation, including, but not limited to, heating, ventilating, and air-conditioning layout, ducts, protection of duct inlets and outlets, combustion air, piping, exhausts, and duct smoke and/or fire dampers and equipment types, sizes, locations.

(11) Sprinkler systems documents shall include plans and details of full NFPA 13 design systems, plans and details of partial systems provided only for hazardous areas, electrical devices interconnected to the alarm system.

(12) Other layouts, plans, or details as may be necessary for a clear understanding of the design and scope of the project, including plans covering private water or sewer systems shall be reviewed by the local health or wastewater authority having jurisdiction. If no local authority, then the plans will be reviewed by the department.

(13) Specifications shall include installation techniques, quality standards and/or manufacturers, references to specific codes and standards, design criteria, special equipment, hardware, painting, and any others as needed to amplify drawings and notes.

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 19, 1987.

TRD-8708[illegible]

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

[illegible]

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VIII. Commission on Fire Protection Personnel Standards and Education

Chapter 235. Policy

Maximum Hours Accreditation Higher Levels of Firefighter Certification

★37 TAC §235.1

The Commission on Fire Protection Personnel Standards and Education adopts the repeal of §235.1, without changes to the proposed text published in the February 24, 1987, issue of the *Texas Register* (12 TexReg 593).

The repeal of this section is required in order to adopt a new section for effective administration of Texas Civil Statutes, Article 4413(35), by the commission.

The repeal functions to provide the commission with a greater range of training subjects that are acceptable, than the range that was designated in the old section.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4413(35), §1, which authorize the commission to promulgate rules and regulations for the administration of the Act

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 21, 1987

TRD 8707077 Ray L Goad
Executive Director
Commission on Fire Protection Personnel Standards and Education

Effective date September 11, 1987
Proposal publication date February 24 1987
For further information, please call (512) 474 8066

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Definition of a Full Paid Fire Fighter

★37 TAC §235.11

The Commission on Fire Protection Personnel Standards and Education adopts the repeal of §235 11, without changes to the proposed text published in the February 24, 1987, issue of the *Texas Register* (12 TexReg 593)

The repeal deletes old language that is no longer used, and is necessary to adopt new definitions to track current statutes, and to provide for efficient agency administration of current statutory legislation

The repeal provides the agency with the means to adopt a new definition that closely parallels current statutory language

No comments were received regarding adoption of the repeal

The repeal is adopted under Texas Civil Statutes, Article 4413(35), §1, which authorize the commission to promulgate rules and regulations for the administration of the Act

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 21, 1987

TRD 8707078 Ray L Goad
Executive Director
Commission on Fire Protection Personnel Standards and Education

Effective date September 11, 1987
Proposal publication date February 24 1987
For further information, please call (512) 474-8066

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 12. Child Nutrition Programs

Child Care Food Program

★40 TAC §§12.22, 12.23, 12.26

The Texas Department of Human Services (DHS) adopts amendments to §§12 22, 12 23, and 12 26, without changes to the proposed text published in the July 17, 1987, issue of the *Texas Register* (12 TexReg 2331)

The justification for the amendments to is to update cross references in these sections to other DHS chapters In addition, the amendment to §12 26 incorporates an option provided in 7 Code of Federal Regulations Part 226 to require that Child Care Food Program (CCFP) contractors request a hearing by the United States Department of Agriculture (USDA) if they appeal actions taken by DHS based on federal audit findings

The sections as amended will function as DHS' rules concerning audits, overpayments, and contractor appeals of DHS decisions in the CCFP

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

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 24, 1987

TRD-8707084 Marlin W Johnston
Commissioner
Texas Department of Human Services

Effective date September 14, 1987
Proposal publication date July 17, 1987
For further information, please call (512) 450-3766

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Chapter 15. Medicaid Eligibility

Subchapter GG. Resources for Individuals Related to the SSI Program

★40 TAC §15.3206, §15.3225

The Texas Department of Human Services adopts amendments to §15.3206 and §15 3225, without changes to the proposed text published in the June 2, 1987, issue of the *Texas Register* (12 TexReg 1771)

The amendments are necessary to ensure that the income resulting from transfer of all or partial interest in an excluded homestead can no longer be shielded from consideration for Medicaid-eligibility purposes

The amendment to §15.3206 will function by specifying that, if a client does not live in his home and transfers all or partial ownership of it for less than market value, DHS considers as a countable asset the difference between the home's market value and the value of the retained interest The amendment to §15 3225 makes that section consistent with §15.3206

No comments were received regarding adoption of the amendments

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

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

Issued in Austin Texas on August 24 1987

TRD-8707087 Marlin W Johnston
Commissioner
Texas Department of Human Services

Effective date October 1, 1987
Proposal publication date June 2, 1987
For further information, please call (512) 450-3766

The Texas Department of Human Services (DHS) adopts amendments to §15.3301 and §15.3412, without changes to the proposed text published in the July 3, 1987, issue of the *Texas Register* (12 TexReg 2143)

The amendments are necessary to clarify that clients' payments to nursing homes are based on clients' available income rather than on gross income

The amendment to §15 3301 will function by revising the definition of unearned income to make it consistent with §15.3412 as amended. The amendment to §15 3412 will function by specifying that, although income taxes withheld from retirement, pension, and disability benefits are not deductible for eligibility determinations, they are deductible from applied-income calculations

No comments were received regarding the adoption of the amendments

Subchapter HH. Income for Individuals Related to the SSI Program

★40 TAC §15.3301

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

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

Issued in Austin, Texas, on August 24, 1987

TRD-8707085 Marlin W Johnston
Commissioner
Texas Department of Human Services

Effective date October 1, 1987
Proposal publication date July 3, 1987
For further information please call (512) 450-3766

Subchapter II. Budgeting for Individuals Related to the SSI Program

★40 TAC §15.3412

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

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

Issued in Austin Texas, on August 24 1987

TRD-8707086 Marlin W Johnston
Commissioner
Texas Department of Human Services

Effective date October 1 1987
Proposal publication date July 3, 1987
For further information, please call (512) 450-3766

Part IX. Texas Department on Aging

Chapter 255. State Delivery Systems

Area Agency Designation

★40 TAC §255.36

The Texas Department on Aging adopts new §255.36, with changes to the proposed text published in the May 8, 1987, issue of the *Texas Register* (12 TexReg 1502)

The new section provides the basis for the standardization of area agencies on aging and more efficient delivery of services based on this standardization

The new section provides policies and procedures for the operation of area agencies in the areas of documentation of structure, qualifications of staff, development of services, planning, coordination, training, technical assistance, monitoring and evaluation of service providers, advocacy, and the establishment and involvement of area agency on aging advisory councils

No public comments were received regarding adoption of the new sections, however, final review by TDoA staff resulted in the addition of language in subsection (a)(1) and (2) to expand information regarding organizational charts and job descriptions, and subsection (b)(2)(B), to identify the requirement referred to in paragraph (2) as that of the direct service of coordination as authorized under the Older Americans Act Because of the complexity of providing this service, a separate section will be developed at a later date establishing how area agencies on aging will provide this service. The term "full time" was inserted in subsection (a)(2) to perpetuate terminology associated with the description of this position

The new section is adopted under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department

§255.36. Operating an Area Agency on Aging.

(a) Area agency organization. AAAs are the single organizational unit with authority to conduct Older Americans Act programs within each designated planning and service area in the state. AAAs will develop and maintain an organizational structure which will effectively administer Older Americans Act (OAA) programs and responsibilities. In addition to the requirements established in §255.35 of this title (relating to Staffing of Area Agencies on Aging), the following additional criteria will be followed to structure area agencies on aging.

(1) The area agency shall have an organizational chart which identifies:

(A) the area agency on aging as a single organization unit;

(B) the area agency on aging director;

(C) all paid and volunteer staff;

(D) each staff position assigned, including part-time;

(E) lines of authority for all paid and volunteer staff, and

(F) the percent of time of each position which is dedicated to aging program activities that is compensated through direct charges to the aging grant.

(2) Job descriptions for all positions specified on the organizational chart shall be developed and maintained and will include statements which define:

(A) the responsibility of the area agency director to supervise all full-time, part-time, and volunteer staff assigned to the area agency; and

(B) the specific duties and responsibilities performed by part-time grantee staff charged directly to the area agency administrative allocation and the percent of work activity compensated from Title III funds as a result of that activity.

(3) The full time area agency director should be qualified by education and/or experience to administer, coordinate, and supervise all duties and functions of the area agency. Typical qualifications would encompass many of the following:

(A) academic preparation or experience in public administration, planning, social work, gerontology, or related fields;

(B) demonstrated ability to manage Older Americans Act programs or similar programs;

(C) demonstrated leadership and public relations abilities;

(D) ability or experience in working with older persons;

(E) ability to prepare clear oral and written reports;

(F) familiarity with private and public, local, state, and federal agencies and programs serving older persons;

(G) qualified persons aged 60 and over (preference shall be given to such persons for full or part-time positions); and

(H) an affirmative action, hiring

program in accordance with §§251.4, 251.5 and 251.8 of this title relating to Adoption by Reference 45 Code of Federal Regulations Part 80; Adoption by Reference 45 Code of Federal Regulations Part 84, and Civil Rights Policy and Procedure, respectively)

(b) Area agency activities AAAs will administer the provisions of the Older Americans Act as it relates to Title III program regions in accordance with the approved area plan, and state and federal fiscal and programmatic rules, regulations, and statutes

(1) AAAs will facilitate the development of a continuum of services for older persons, from preventive and supportive services (e.g., employment, health promotion, transportation, nutrition) to long-term care services (e g., home health, home and community based services, housing alternatives, and institutional care) To do this, AAAs will:

(A) develop and publish methods by which priority of services are determined,

(B) develop a comprehensive and coordinated system of supportive and nutrition services, and multipurpose senior centers;

(C) determine the need for supportive and nutrition services, multipurpose senior centers, and services for the identification, prevention, and treatment of abuse, neglect, and exploitation of older persons,

(D) evaluate the effectiveness of the use of resources in meeting such needs, and

(E) enter into contracts with providers of such services for the provision of services to meet the need

(2) The area agency on aging shall have principal responsibilities for carrying out activities necessary for effective planning on behalf of older persons in their planning and service area. The planning responsibilities include.

(A) developing and updating the area plan to meet the needs of the older persons as determined by the area agency,

(B) coordinating regional planning and development of activities to the purposes of the Older Americans Act (in accordance with TDoA sections governing coordination by area agencies, to be published at a later date),

(C) engaging in planning, program development, advocacy, coordination, implementation, and administrtion of a broad range of supportive and nutrition services to older persons within the planning and service area, and

(D) identifying the needs of older persons on a continuing basis through the gathering and analysis of data Each area shall assist the state agency in the design, development, and conduct of the statewide needs assessment The needs assessment may be updated periodically by the area agency during each two year planning cycle on a format approved by the state agency The outcomes of the needs assessment shall be utilized by the area agency in its area plan and should reveal the following

(i) the identification of those persons of greatest economic or social need,

(ii) the identification of the needs of the frail elderly;

(iii) the identification of services most needed in the PSA;

(iv) the establishment of priorities for funding decisions and service system development within the PSA,

(v) the establishment of a plan to target services to those individuals of greatest economic or social need;

(vi) the identification of available resources which meet, or can be used to meet the needs of older persons;

(vii) measurable and attainable objectives which are set out in the area plan and development of strategies or action plans which detail the activities to be used in accomplishing these objectives; and

(viii) the establishment of procedures which provide for the utilization of information obtained from public hearings, the advisory council, local officials, older persons, and the general public in the planning and service area of the area agencies on aging

(3) The area agency shall provide for a training and technical assistance program necessary for the implementation of the area plan and programs, including in-service training to staff of the area agency, advisory council members, volunteers, grantees, service contractors, and providers under the area plan

(A) The area agency shall develop and implement a training plan for staff development and service provider training each budget year based on information obtained from an assessment of training needs and requests made by the staff, grantees, and contractors under the area plan.

(B) The area agency shall provide funds for and assure the availability of area agency and contractor staff to attend training as required by the state agency

(C) The Texas Department on Aging will provide suggested topics for training and modules on the OAA advisory council training. TDoA will also provide information regarding special training needs established as a result of federal or state initiatives to establish new programs or enhance existing programs for the elderly Training plans and implementation will be monitored quarterly by TDoA program liasons Area agencies should discuss and request their training needs with their TDoA program liaison The liaison will coordinate the training request with the appropriate specialty staff

(4) AAAs will conduct periodic program reviews of activities and services funded under the area plan, and furnish appropriate technical assistance to providers of supportive and nutrition services, and multipurpose senior centers Area agencies on aging will visit service providers to review accomplishment of program objectives and determine effectiveness of programs for which funds have been granted under Title III of the Older Americans Act. Visits will take the following characteristics:

(A) the monitoring of the performance of all service providers to which the area agency has awarded a grant or contract at least quarterly;

(B) the conducting, at least annually, of a comprehensive onsite assessment of each service provider funded under the area plan. This visit will be accomplished in the following manner.

(i) An assessment instrument and criteria will be developed which shall be available to contractors/grantees at least 15 days in advance of the on-site assessment.

(ii) The procedures for each assessment as follows:

(I) a meeting with the director of the grantee or contractor agency to explain the purpose of the visit, review the agenda and subject areas to be reviewed, procedures to be followed, and to answer any questions the service provider poses;

(II) a preliminary discussion with the grantee or contractor representative and other appropriate staff covering grantee or contractor characteristics, expectations, achievements, problems, and accomplishments since the last assessment;

(III) the use of the instrument for a systematic examination of the components to be assessed during the visit;

(IV) the conducting of an exit interview with the director of the grantee or contractor agency to report findings such as strengths, weaknesses, needed corrective actions (as indicated);

(V) the completion of a written report, including a summary of the overall plan, progress, and achievements made by the grantee or contractor in carrying out previous recommendations for corrective action. The report shall also identify needed technical assistance and available resources for same. A copy of the report shall be sent to the grantee or contractor within 30 days following the date of the evaluation visit;

(VI) the development and implementation by the area agency of a plan of follow-up assessment visits to assure that the grantee or contractor carries out each corrective action recommended. Such a plan shall address a provision for technical assistance to the grantee or contractor when appropriate; and

(VII) a consultation of the results of all assessments and monitorings during the annual refunding process to determine if all stipulations have been accomplished Consideration should be given to placing conditions on grants of contracting activities if assessment findings have not been remedied during the ending program contract period

(5) Area agencies on aging shall

provide leadership and advocacy for older persons within the PSA, including the monitoring and evaluating of actions and issues which affect older persons within the PSA. Advocacy is defined as nonlobbying activities designed to create a change in attitudes and stereotypes, legislation, and agency policies which should benefit both older individuals and groups of older persons. Area agencies on aging will promote the active involvement of older persons and other citizens, and representatives of Texas public, voluntary, and proprietary organizations in program planning, ensuring community awareness of and involvement in addressing the needs of residents of long term care facilities in order to facilitate identification and resolution of the needs of older individuals. Activities on behalf of older Texans are:

(A) reviewing and commenting on state plans and grant applications, budgets, and policies which affect older persons,

(B) conducting public hearings on the needs of older persons for determining the needs of such persons. Public hearings are conducted to provide opportunities for older persons (and those representing older persons) to voice their concerns,

(C) coordinating area planning and development of activities related to the purposes of the Older Americans Act,

(D) representing the interests of older persons before legislative, executive, and regulatory bodies in their PSA,

(E) providing technical assistance to agencies, organizations, associations, or individuals representing older persons,

(F) acting on behalf of older individuals by receiving and investigating complaints and resolving specific problems, and

(G) organizing activities which influence other agencies and organizations to make changes which will benefit older persons, especially those with the greatest social and economic need.

(6) Area agencies on aging are required in the Older Americans Act, §306 (a)(6)(j), to identify the public and private nonprofit entities involved in the prevention, identification, and treatment of abuse, neglect, and exploitation of older individuals, and based on such identification, determine the extent to which the need for appropriate services for such individuals is unmet. The definitions for abuse, neglect, and exploitation are as follows:

(A) abuse - the willfull infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm or 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,

(B) 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 such goods or services,

(C) exploitation - the illegal or improper act or process of a caretaker using the resources of an elderly person for monetary or personal benefit, profit, or gain.

(7) Area agencies will establish and utilize an advisory council. In order to facilitate the involvement of older persons and other interested individuals and organizations within the PSA in the development and implementation of the area plan, each area agency shall assist in the establishment and support of advisory councils. Responsibilities of the advisory council to support the area agency should encompass the following activities:

(A) advice on all matters relating to the development and administration of the area plan, area plan implementation, area plan annual amendment, and other amendments to the area plan as may be necessary throughout the program period;

(B) conducting public hearings and review of the documents before and after the public hearings are conducted on the area plan,

(C) reviewing and commenting on area agency's request for state agency approval of amendment to area plan, including transfer of funds from one funding category to another among Part B, Part C1, and Part C2, federal/state funds;

(D) reviewing and commenting on community policies, programs, and actions affecting older individuals; representing the interests of older persons; and encouraging the involvement of older persons,

(E) insuring, in collaboration with the grantee agency, that the advisory council membership is constituted as follows:

(i) More than 50% of the members shall be 60 years of age or older, including those of greatest economic or social need and clients of services funded by the area agency.

(ii) Minority older individuals shall be represented at least in proportion to their number in the PSA.

(iii) Each of the counties within the PSA shall have at least one representative on the area agency advisory council, this representative shall be either a representative of the county council; this representative shall be either a representative of the county council on aging, where applicable, or a representative appointed by the County Commissioners Court, if the county has no county council on aging.

(iv) Local elected officials will be members.

(v) Members of the general public will be members.

(vi) Participants of Title III services will be members.

(vii) Additional membership will be determined by the area agency.

(8) Council members who are Title III subcontractors shall not vote on agenda items that would be considered conflict of interest. Advisory council members who have a conflict of interest on any agenda item of a meeting will refrain from comment and abstain from voting. This action should be recorded in the minutes of the meeting to stand as an official record of the abstention. A conflict of interest would be indicated when an individual:

(A) is employed by, cohabitates with, or is the spouse of an employee or council member, or participates in the management of a business entity, agency, or other organization regulated by or receiving funds from Title III programs;

(B) uses or receives a substantial amount of tangible goods, services, or funds from programs authorized by the Older Americans Act of 1965, as amended.

(9) Area agencies shall develop, implement, and make public advisory council bylaws governing at least the following:

(A) the role and functions of the advisory council;

(B) the number and characteristics of membership;

(C) the procedures for membership selection, and

(D) the procedures for the conduct of the advisory council's business and activities.

(10) The area agency shall provide staff support to the council to facilitate its purpose and functions. Examples of ways staff can assist advisory councils include, but are not limited to, the following:

(A) orienting new advisory council members;

(B) sharing agency information with council members,

(C) briefing members about upcoming programs and problems affecting older persons;

(D) updating members on state and federal legislative actions;

(E) providing training;

(F) meeting preparations, including notification, agenda, and minutes;

(G) reviewing and drafting recommendations for the grantee board; and

(H) contacting absent council members.

(11) Advisory councils may meet monthly, but shall meet at least bimonthly. Business meetings shall be publicized and adhere to the Open Meetings Act. Records of actions taken at all meetings shall be available to the public for review.

(c) County, sub-regional, and activity councils. Area agencies on aging should encourage development of county, sub-regional, and activity councils when the creation of these councils will result in greater awareness, participation, and/or support of programs for senior Texans.

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 19, 1987

TRD-8706979 O. P. (Bob) Bobbitt
Executive Director
Texas Department on Aging

Effective date: September 10, 1987
Proposal publication date: May 8, 1987
For further information, please call (512) 444-2727

Statutes and Regulations

★40 TAC §255.37

The Texas Department on Aging adopts new §255.37, with changes to the proposed text published in the May 15, 1987, issue of the *Texas Register* (12 TexReg 1536).

The new section increases management efficiencies by local providers and standardizes methods for contracting and reimbursement on a unit of service provided basis.

The new section permits the establishment of unit rate contracting by area agencies on aging with service providers supplying services to the elderly under Title III of the Older Americans Act.

Comments were received regarding adoption of the new section. One commenter was concerned that performance based unit rate contracting would provide a disincentive to the expansion of aging services and would increase recordkeeping. In addition, further consideration by the TDoA staff resulted in the deletion of health screening and residential repair from the list of services required to be contracted for as too difficult to track according to this methodology. Panhandle Community Services of Wellington commented against adoption of the new section.

Regarding contracting disincentives, TDoA believes the contracting methodology does not limit service expansion. Experience indicates that funding limitations is the factor which has historically limited expansion of services. Regarding deletion of health screening and residential repair, the great variability of these services which are allowable preclude useful cost comparisons under performance based unit rate contracting. Regarding recordkeeping, there is no intent to increase this function. The intent is to refine and improve this function where it is currently inadequate.

The new section is adopted under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

§255.37. Contract and Reimbursement Methodology for Aging Services Provided Under the Older Americans Act.

(a) General information. The Texas Department on Aging (TDoA) purchases a variety of aging services through area agencies on aging (AAAs) under the Older Americans Act of 1965, as amended. Prior to the implementation of this chapter, a majority of the contracts to providers of aging services have been negotiated as cost reimbursement contracts with the AAAs paying all allowable operating costs of the service providers. The cost reimbursement methodology of contracting provides no rewards for management efficiencies to the service providers. Therefore, as an incentive for improved management practices and at the encouragement of both the Administration on Aging (AoA) and the Texas Legislative Budget Board, TDoA will implement performance based unit rate contracts and has specified aging services which will be contracted under performance based unit rate reimbursement contracts.

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

(1) Initiation year—The first fiscal year during which unit rates and line item expenditures will be reviewed by the AAA and service providers to establish valid data from which to base the second year's contracted unit rate. During the initiation year, unit rates may be more easily renegotiated by the AAA and/or the service provider in an effort to allow both parties a no-risk year during which adequate methods for determining service costs are established. The initiation year data developed would then provide a base of information from which to prepare future unit rate proposals.

(2) Performance based unit rate contract—A contract for service which reimburses the service provider at a contractually negotiated fixed rate for a unit of service provided according to specified performance standard.

(3) Performance standards—The minimum standards under which aging services may be contracted with Older Americans Act funds, as published in the Texas Administrative Code by the Texas Department on Aging.

(c) Phase-in of services. Nutrition and supportive services will be phased-in according to the following timetables. The schedule provides the latest dates possible for implementation, however, sooner implementation than the dates on the schedule is allowed and encouraged.

(1) Nutrition services. The initiation year for phase-in of the nutrition services indicated is fiscal year 1988/October 1, 1987. The following services are included in nutrition services:

(A) congregate meals,
(B) home-delivered meals,
(C) nutrition outreach,
(D) nutrition education, and
(E) nutrition coordination.

(2) Supportive services. The initiation year for phase-in of the supportive services indicated is fiscal year 1989/October 1, 1988. The full implementation date is fiscal year 1990/October 1, 1989. The following services are included in supportive services:

(A) transportation,
(B) information and referral,
(C) legal assistance,
(D) homemaker,
(E) adult day care, and
(F) case management.

(d) Request for proposals. Area agencies on aging annually issue requests for proposals (RFPs) to be completed by applicant agencies desiring to provide aging services in Texas. In order to transition into the performance based unit rate reimbursement methodology of contracting, certain information must be included by the AAAs in the RFPs which they issue to applicants.

(1) Content. RFPs issued by AAAs should include the following information.

(A) General information. This section should include details regarding the purpose of the RFP, authority of the issuing agency, submission procedures, required proposal content, proposal review criteria, appeals procedures, award process (including description of performance based unit rate contracts), and contractor responsibilities.

(B) Scope of work. Clear and concise guidelines must be included identifying the following:

(i) specific service(s) for which the AAA wishes to contract;

(ii) the number of service units to be provided in specified geographical areas (i.e., county, city, neighborhood);

(iii) staffing and other administrative requirements;

(iv) performance standards to be followed;

(v) the number of unduplicated persons to be served during the project period,

(vi) reporting requirements (including budgetary information), and

(vii) any special requirements.

(2) Allowable exceptions. Allowable exceptions to the required RFP content listed in paragraph (1) of this subsection include the following: RFPs for nutrition services issued prior to May 30, 1987. AAAs which have issued RFPs for nutrition services prior to May 30, 1987, were not provided adequate notice by the TDoA to insert required contents or initiate changes to their RFPs to be able to comply with the new section, and are therefore exempt from the content requirement. However, exempt AAAs must provide all nutrition service applicants a written notification that fiscal year 1988 nutrition service contracts will be negotiated as performance based, unit rate contracts with requirements for the implementation of cost accounting procedures, nutrition standards, and unit rate reporting.

(e) Contract negotiations. AAAs annually contract for a variety of aging services

to be provided within their geographical jurisdictions. In order to establish performance based unit rate contracts, AAAs must include the following components in the contracts for service provision.

(1) Performance standards. A contractual requirement that the service provider will provide the specified service in accordance with TDoA's adopted service standards. In the absence of adopted standards for any specific service, the AAA must identify the performance standards which the provider will be expected to follow until such time as TDoA has adopted standards for that service.

(2) Cost accounting. In order to establish and track service costs accurately, each service provider must have an accounting system which will identify all costs for each specific service being provided. Therefore, the AAA should contractually require that the provider have adequate accounting records to review and manage service costs. To assist in standardizing service cost information, TDoA has established a preferred chart of accounts for use by service providers. A copy of the chart of accounts is available upon request to TDoA.

(3) Reporting requirements. Service contracts contain certain provisions for reporting requirements which the AAA specifies. Under performance based unit rate contracts, the AAA must assure that the reporting requirements include a provision for adequate reporting and documentation of eligible units of service provided and the number of unduplicated persons who received the services. Additionally, it should be clearly understood by the service providers, during contract negotiations, that payments for service will be based upon the number of service units provided.

(f) Direct services. AAAs which provide any of the specified services in subsection (c) of this section as a direct service must also prepare for unit rate reimbursement for services provided. Each AAA providing direct services in subsection (c) of this section will be required to complete a section of the fiscal year 1989 area plan amendments which will specify the unit rates identified for applicable direct services of the AAA. All other requirements regarding performance standards, cost accounting, and reporting requirements will apply to AAAs in direct service provision.

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

Issued in Austin, Texas, on July 18, 1987.

TRD-8706980 O. P. (Bob) Bobbitt
Executive Director
Texas Department on Aging

Effective date: September 10, 1987
Proposal publication date: May 15, 1987
For further information, please call (512) 444-2727.

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Chapter 265. Grant Related Income

Statutes and Regulations

★40 TAC §265.1

The Texas Department on Aging adopts an amendment to §265.1, without changes to the proposed text published in the May 8, 1987, issue of the *Texas Register* (12 TexReg 1504).

The amendment incorporates guidelines from the Administration on Aging regarding the elimination of deduction alternative in use of program income earned from meal contributions into the Texas Administrative Code, and updates the policies and procedures of the Texas Department on Aging regarding uses of program income.

The amendment helps assure that standard practices are followed by Title III service providers who handle program income throughout the state.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

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

Issued in Austin, Texas, on August 19, 1987.

TRD-8706981 O. P. (Bob) Bobbitt
Executive Director
Texas Department on Aging

Effective date: September 10, 1987
Proposal publication date: May 8, 1987
For further information, please call (512) 444-2727.

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State Board of Insurance Exempt Filings

State Board of Insurance Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act, and the final actions printed in this section have not been previously published as proposals.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 1110 San Jacinto Street, Austin.)

The State Board of Insurance has adopted a filing by the Department of Labor and Standards, of a revised bond form for manufacturers, retailers, brokers, and installers of manufactured homes.

In accordance with the provisions of the Insurance Code, Article 5.97, a text of the proposed filing has been filed in the office of the chief clerk of the State Board of Insurance since June 24, 1987. The proposed filing has been available for public inspection for 15 days and a public hearing was not requested by any party.

The revised form incorporates amendments to the Texas Manufacturing Housing Standards Act adopted by the 70th Legislature, 1987 (House Bill 855). The consumer's assignee provision and the parenthetical reference to the individual bond limits have been deleted. Additional changes were made to clarify the terms of the bond. The revised form is to become effective at and after 12:01 a.m. on the 15th day after notice of this action is published in the *Texas Register*.

This notice is filed pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on August 19, 1987.

TRD-8707062 Nicholas Murphy
Chief Clerk
State Board of Insurance

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

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 *Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agendas than what is published in the *Register*.

Texas Department of Agriculture

Tuesday, September 1, 1987, 8:30 a.m. The Texas Department of Agriculture will meet in the Ninth Floor Conference Room, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the department will conduct a public hearing to review comments regarding proposed changes to department rules concerning fees charged for inspection of nursery and floral stock (8:30-10:30 a.m.), and fees charged for seed certification on an acreage and a per field basis (10:30 a.m.-12:30 p.m.).

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

Filed: August 21, 1987, 2 p.m.
TRD-8707057

Texas Animal Health Commission

Friday, August 21, 1987, 1 p.m. The Texas Animal Health Commission met in emergency session on the First Floor, Conference Room, 210 Barton Springs Road, Austin. According to the agenda, the commission considered recommendation to proposed changes to the calfhood vaccination rates paid to private practitioners. The commission also met in executive session to discuss the vacant position of assistant executive director and the reassignment of duties of area personnel as permitted by Texas Civil Statutes, Article 6252-17, §2(g). The emergency status was necessary because practicing veterinarians in the state must have notice prior to September 1, 1987, of any changes in the fee schedule for calfhood vaccination.

Contact: Jo Anne Conner, 210 Barton Springs, Austin, Texas 78704, (512) 479-6697.

Filed: August 20, 1987, 3:55 p.m.
TRD-8707015

Texas School for the Deaf

Friday, August 21, 1987, 1 p.m. The Governing Board for Texas School for the Deaf met for an emergency agenda revision at the Diagnostic Center, 601 East Airport Drive, Austin. According to the agenda, the board approved scheduled/unscheduled Texas Teacher Appraisal System visits and approved other appraisers; selected board meeting date in October; and held orientation to the TTAS Professional Growth Plan. The emergency status was necessary because of a change in location due to failure of air conditioning system, therefore the governing board needed approval on TTAS appraisers prior to the appraisal period commencing.

Contact: Susan Nixon, 1102 South Congress Avenue, Austin, Texas 78764, (512) 440-5335.

Filed: August 20, 1987, 1:15 p.m.
TRD-8707000

Texas Employment Commission

Tuesday, September 1, 1987, 8:30 a.m. The Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda, the commission will approve prior meeting notes; hear public comment; discuss Temple and Lufkin local office projects; budget and staffing update; employment service; unemployment insurance; administrative and fiscal matters; and set the date of and agenda for the next meeting. The commission also will meet in executive session to discuss Fidel B. Ibarra, Jr., et al. v. TEC, et al. and Tullis v. Grisham, et al., and any actions resulting from executive session.

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

Filed: August 24, 1987, 3:46 p.m.
TRD-8707139

General Land Office

Thursday, August 27, 1987, 1:30 p.m. The Veterans Land Board of the General Land Office met for an emergency agenda revision in Room 831, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the board discussed potential litigation concerning violation of the rules and regulations of the Veterans Land Board. The emergency status was necessary because the board needed to discuss potential litigation concerning violation of the rules and regulations of the Veterans Land Board.

Contact: Jack Giberson, Stephen F. Austin Building, Room 836A, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5254

Filed: August 20, 1987, 3:23 p.m.
TRD-8707013

Texas Grain Sorghum Producers Board

Thursday, September 3, 1987, 9 a.m. The Texas Department of Agriculture of the Texas Grain Sorghum Producers Board will meet in Room 203, West Tower, Hyatt Regency-DFW Airport, Dallas. According to the agenda, the board will consider minutes; hear the financial report; discuss elevators-CCC collection problems; consider least-cost ration formulations; Middle East-North African feeding trials; Asian tea projects; Mexico Ascites trials, metabolizable energy study, broiler quality study; domestic promotion, EPA insecticide restriction; sorghum information review; trade policy review; installation of new directors; hear a report from the Nominating Committee-election of officers, discuss 1987-1988 budget, and consider other business.

Contact: Elbert Harp, P.O. Box 530, Abernathy, Texas 79311-0530, (806) 298-2543

Filed: August 21, 1987, 2 p.m.
TRD-8707058

State Department of Highways and Public Transportation

Monday, August 31, 1987, 10 a.m. The State Highways and Public Transportation Commission of the Texas Department of Highways and Public Transportation will meet in Room 101-A, Dewitt C. Greer Building, 11th and Brazos Streets, Austin. According to the agenda, the commission will execute contract awards and routine minute orders; consider presentations from previous public hearing dockets as necessary; and review staff reports relative to planning and construction programs and projects.

Contact: Lois Jean Turner, Room 203, Dewitt C. Greer Building, 11th and Brazos Streets, Austin, Texas 78701, (512) 463-8616

Filed: August 21, 1987, 2:26 p.m.
TRD-8707059

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Texas Department of Human Services

Thursday-Friday, September 17-18, 1987, 1 p.m. The Advisory Council for Social Work Certification of the Texas Department of Human Sevices will meet on the Fourth Floor, Conference Room 4W, West Tower, 701 West 51st Street, Austin. According to the agenda, on Thursday the council will approve minutes; discuss development of goals and objectives for fiscal year 1988; and discuss project priorities and funding. On Friday, the council will hear the end of year report; staff reports; and discuss proposed rule changes.

Contact: Michael O. Doughty, P.O. Box 2960, Austin, Texas 78751, (512) 450-3255

Filed: August 24, 1987, 2.17 p.m.
TRD-8707127

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Texas Industrial Accident Board

Monday, August 24, 1987, 9:30 a.m. The Texas Industrial Accident Board met in Room 107, Bevington A. Reed Building, 200 East Riverside Drive, Austin. Agendas follow.

The board held an open meeting to discuss approval of board minutes; medical cost evaluation implementation, and reviewed board files (this portion closed pursuant to workers' compensation statute).

Contact: Inez "Tippy" Foster, 200 East Riverside Drive, First Floor, Austin, Texas 78704, (512) 448-7960

Filed: August 20, 1987, 3:29 p.m.
TRD-8707014

The board reviewed and discussed board activities. Item three on the agenda will become item four.

Contact: Inez "Tippy" Foster, 200 East Riverside Drive, First Floor, Austin, Texas 78704, (512) 448-7960

Filed: August 21, 1987, 9:23 a.m.
TRD-8707027

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State Board of Insurance

The State Board of Insurance met or will meet in the State Insurance Building, 1110 San Jacinto, Austin. Dates, times, and agendas follow.

Tuesday, August 25, 1987, 10 a.m. The board met in Room 414 for an emergency agenda revision to discuss an amendment to the personnel manual, pursuant to House Bill 81, 70th Legislature, Second Called Session, relating to internal postings of non-entry level classified positions. The emergency status was necessary to allow processing of relevant postings as soon as possible after September 1, 1987.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6328

Filed: August 20, 1987, 1.52 p.m.
TRD-8707011

Tuesday, August 25, 1987, 10 a.m. The board met in Room 414 for an emergency agenda revision and considered emergency adoption and proposal for permanent adoption of an amendment to 28 TAC §1.704, concerning rules about summary procedure and notice for processing of routine matters by the State Board of Insurance. The emergency status was necessary to implement a recent amendment to the Insurance Code, Article 1.33(b), by House Bill 81, to provide citizens with rapid action by the board on routine applications.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6328

Filed: August 24, 1987, 4:20 p.m.
TRD-8707141

Tuesday, September 1, 1987, 9 a.m. The Commissioner's Hearing Section will conduct a public hearing in Room 342 to consider the application of FC Acquisition Corporation, a Delaware corporation, which is an indirect wholly-owned subsidiary of Tomas and Nettleton Financial Corporation, a Delaware corporation, to acquire control of First Continental Life and Accident Insurance Company of Houston, Texas.

Contact: O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498

Filed: August 24, 1987, 11:07 a.m.
TRD-8707110

Tuesday, September 1, 1987, 10 a.m. The board will meet in Room 414 to consider final action on amendment to Rule 120 of the Texas Automobile Manual; discuss possible interpretations of the T.I.C. Article 21.50, as presented by General Electric Mortgage Insurance Company, consider emergency adoption and proposal for permanent adoption of an amendment to 28 TAC §1.304, board orders on several different matters as itemized on the complete agenda: fire marshal-personnel, commissioner-consider adoption on an emergency basis and proposal for permanent adoption of rules to implement Senate Bill 357; consider for adoption on an emergency basis, and proposal for permanent adoption of rules to implement House Bill 2022, all as itemized on the complete agenda; personnel matters, and pending and contemplated litigation.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6328

Filed: August 24, 1987, 4:20 p.m.
TRD-8707140

Wednesday, September 2, 1987, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 342 to conduct a formal hearing to consider the acquisition of Americana Life Insurance Company, Houston, by Great Southwest Life Insurance Company, Houston.

Contact: J. C. Thomas, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6524

Filed: August 24, 1987, 11.07 a.m.
TRD-8707109

The State Board of Insurance will meet in Room 101, John H. Reagan Building, 15th Street and Congress Avenue, Austin. Dates, times, and agendas follow.

Wednesday, September 9, 1987, 9 a.m. The board will consider a petition by Texas Workers' Compensation Assigned Risk Pool for elimination of premium discounts on pool risks, and for approval of an amendment to the pool's surcharge formula, and discuss the amount of servicing fee paid to the servicing carriers by the Texas Workers' Compensation Assigned Risk Pool, in accordance with the rules, regulations, and by-laws of the pool.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6328

Filed: August 20, 1987, 4:23 p.m.
TRD-8707016

Wednesday, September 9, 1987, 9 a.m. The board will consider public hearing of possible approval or other action on amendments to the by-laws, rules, and regulations of the Texas Workers' Compensation Assigned Risk Pool under legal authority of the Texas Insurance Code, Articles 5.76 and 5.96, with agenda items as follows: petitions by Texas Workers' Compensation Assigned Risk Pool for elimination of premium discounts on pool risks, and for approval of amendment to the pool's surcharge formula, and discussion of amount of servicing fee paid to the servicing carriers by the pool in accordance with the rules, regulations, and by-laws of the pool.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6328.

Filed: August 24, 1987, 9:59 a.m.
TRD-8707103

Friday, September 25, 1987, 9 a.m. The board will consider a petition by Texas Medical Liability Insurance Underwriting Association for modification of rates for medical professional liability insurance for physicians, surgeons, and other non-institutional health care providers, and for hospitals and other institutional health care providers.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6328.

Filed: August 20, 1987, 4:23 p.m.
TRD-8707017

Monday, October 12, 1987, 9 a.m. The board will review standard and uniform rules and rates for general liability insurance.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: August 20, 1987, 4:23 p.m.
TRD-8707018

Tuesday, October 13, 1987, 9 a.m. The board will review standard and uniform rules and rates for general liability insurance and public hearing on amendments thereto under legal authority of the Texas Insurance Code, Articles 5.14, 5.15, 5.19, and 5.97.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: August 24, 1987, 12:51 p.m.
TRD-8707121

Monday, October 26, 1987, 9 a.m. The board will discuss amendments to workers' compensation insurance manual rules, endorsements and policy forms, rating plans, including retrospective rating plans, classification plans, and statistical plans, and revision of worker's compensation and employers' liability insurance rates and rating values based on experience and the statutorily mandated benefits increase.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: August 20, 1987, 4:22 p.m.
TRD-8707019

Tuesday, October 27, 1987, 9 a.m. The board will consider amendments to workers' compensation insurance manual rules, endorsements and policy forms, rating plans, including retrospective rating plans, classification plans and statistical plans, and revision of workers' compensations and employers' liability insurance rates and rating values based on experience and the statutorily mandated benefits increase after public hearing thereon under legal authority of the Texas Insurance Code, Articles 5.55-5.57, 5.60, and 5.96, and Texas Civil Statutes, Article 6252-13a.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: August 24, 1987, 12:51 p.m.
TRD-8707120

Texas Commission on Law Enforcement Officer Standards and Education

Wednesday, September 9, 1987, 10 a.m. The Texas Commission on Law Enforcement Officer Standards and Education will meet in Room 310, Old Supreme Court Room, Capitol Building, Austin. According to the agenda, the commission will recognize visitors, hear minutes, consider six proposed amendments to commission rules, consider six proposed new commission rules, consider final order of suspensions and revocations, report voluntary surrenders, discuss unpaid officers, and discuss staff activities.

Contact: David Boatright, 1606 Headways Circle, Suite 100, Austin, Texas 78754, (512) 834-9222.

Filed: August 24, 1987, 2:27 p.m.
TRD-8707128

State Board of Morticians

Tuesday-Thursday, September 1-3, 1987, 9 a.m. daily. The State Board of Morticians will meet on Tuesday and Thursday in Conference Room B, Building B, 8100 Cameron Road, Austin, and on Wednesday at the Marriott Hotel, 6121 IH 35 North, Austin. According to the agenda summary, the board will conduct formal hearings on action of licensees, discuss embalmer practical grades to be certified; review reciprocal applications, discuss FTC rules, transportation companies, contract embalmers, new attorney's position, proposed rules, and conference exams; consider requests for refunds, licensure, and credit for apprentice cases and assistance from Anatomical Board; hear committee, investigators, and executive secretary reports, and review complaints, on September 1. On September 2, the board will review written exams, certify grades, and review any items not considered on September 1. The board will conduct formal hearings on actions of licensees, and discuss any items not covered on September 1 and 2, on September 3, 1987.

Contact: Larry A. Farrow, 8100 Cameron Road, Building B, Suite 550, Austin, Texas 78753, (512) 834-9992.

Filed: August 24, 1987, 9:10 a.m.
TRD-8707101

Pan American University

Monday, August 24, 1987, 10 a.m. The Board of Regents of Pan American University met in the boardroom, Administration Building, Pan American University, Edinburg. According to the agenda, the board met in executive session to discuss contracts between MEC and Associates and Pan American University.

Contact: Miquel A. Nevarez, Pan American University, Edinburg, Texas 78539, (512) 381-2100.

Filed: August 20, 1987, 1:51 p.m.
TRD-8707012

Board of Pardons and Paroles

Monday-Friday, August 31-September 4, 1987, 1:30 p.m. daily except Friday, at 11 a.m. A three member panel of the Board for the Board of Pardons and Paroles will meet at 8610 Shoal Creek, Austin. According to the agenda, the board will receive, review, and consider information and reports concerning prisoner inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: Mike Roach, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

Filed: August 21, 1987, 10:39 a.m.
TRD-8707038

Tuesday, September 1, 1987, 1:30 p.m. The Board of Pardons and Paroles will consider executive clemency recommendations and related actions (other than out of country conditional pardons) including full pardons, restoration of civil rights of citizenship, emergency medical reprieves, commutations of sentence, and other reprieves, remissions, and executive clemency actions.

Contact: Juanita Lamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

Filed: August 21, 1987, 10:40 a.m.
TRD-8707037

Texas State Board of Pharmacy

Tuesday-Thursday, August 25-27, 1987, 8:30 a.m. The Texas State Board of Pharmacy met for an emergency agenda revision at the Austin Marriott Airport Hotel, 6121 IH 35 North at U.S. Highway 290, Austin. According to the agenda, the board considered proposed rule amendment to Chapter 283 and simultaneous emergency adoption of licensing requirements for a pharmacist's expired license, considered proposed agreed board orders, and heard testimony and reviewed evidence of alleged violations of those laws which persons are subject to administrative

sanctions and what [illegible] the sanctions are to take. The emergency status was necessary because the original meeting agenda published on August 21, 1987, had not changed substantively, however, due to a cancellation of a disciplinary hearing, other scheduled agenda items had been rescheduled.

Contact: Fred S. Brinkley, Jr., R.Ph., 8505 Cross Park Drive, Suite 110, Austin, Texas 78754, (512) 832-0661.

Filed: August 24, 1987, 4:25 p.m.
TRD-8707142

Texas State Board of Public Accountancy

Tuesday, September 1, 1987, 9 a.m. The Enforcement Committee (Informal Conferences) of the Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. According to the agenda, the board will review complaints 86-01-151, 85-01-061, 85-05-071, 85-05-081, 84-11-011, and 85-01-031.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: August 21, 1987, 2:25 p.m.
TRD-8707061

Public Utility Commission of Texas

Tuesday, September 1, 1987, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the commission will hold a prehearing conference in Docket 7635 to consider the petition from Southwestern Electric Power Company to refund fuel cost overrecoveries and to set interim fixed fuel factor.

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

Filed: August 24, 1987, 2:41 p.m.
TRD-8707130

Railroad Commission of Texas

Monday, August 24, 1987, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas met for an emergency agenda revision in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. Agendas follow.

The commission considered District 5 for review of temporary field rules for the Alabama Ferry (Woodbine-Dexter) field, Leon County, interim order Docket 5-89,755, considered application of Basin Operating Company, LTD, per well mer special field rules for the Alabama Ferry (Woodbine-Dexter) field, Leon County, interim order Docket 5-90,079. The emergency status was necessary because these items must be taken on less than seven days notice as a matter of urgent public necessity, and were noticed for the meeting of August 17, 1987, and passed.

Contact: Doug Johnson, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6923.

Filed: August 21, 1987, 10:39 a.m.
TRD-8707039

The commission considered the application of Major Petroleum Corporation (A) Rule 37, Missouri-Pacific Railroad lease, well 1, Long Lake field, Anderson County, Rule 27, Case 100,546, and well 2, Long Lake field, Anderson County, Rule 37, Case 100,547. The emergency status was necessary because these items must be taken on less than seven days notice as a matter of urgent public necessity, and the items were properly noticed for the meeting of August 17, 1987, and passed.

Contact: Walter Davis, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6921.

Filed: August 21, 1987, 10:39 a.m.
TRD-8707040

The commission considered the application of Shell Western E. & P., Inc., unitization and secondary recovery, Robertson (San Andres) Unit, Robertson, N. (San Andres) field, Gaines County, Docket 8A-90,593. The emergency status was necessary because the item must be taken on less than seven days notice as a matter of urgent public necessity, and the item was noticed for the meeting of August 17, 1987, and was passed.

Contact: E. M. Rago, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6919.

Filed: August 21, 1987, 10:38 a.m.
TRD-8707041

Monday, August 31, 1987, 9 a.m. The Railroad Commission of Texas will meet in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. The commission will consider and act on division agendas as follows.

The Administrative Services Division director's report on division administration, budget, procedures, and personnel matters, including but not limited to discussion, consideration, and or action on management study, oil and gas general counsel, and oilfield investigator personnel and their operations.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

Filed: August 21, 1987, 10:37 a.m.
TRD-8707042

The Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7251.

Filed: August 21, 1987, 10:37 a.m.
TRD-8707043

The Flight Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Ken Lossler, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-6787.

Filed: August 21, 1987, 10:38 a.m.
TRD-8707044

Various matters falling within the Gas Utilities Division's regulatory jurisdiction.

Contact: Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7003.

Filed: August 21, 1987, 10:35 a.m.
TRD-8707045

The Office of Information Services director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6710.

Filed: August 21, 1987, 10:37 a.m.
TRD-8707046

The LP-Gas Division director's report on division administration, budget, procedures, and personnel matters. Also, consideration of various matters falling within the Railroad Commission of Texas LP-Gas regulatory jurisdiction.

Contact: Thomas D. Petru, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6931.

Filed: August 21, 1987, 10:35 a.m.
TRD-8707047

Various matters falling within the Oil and Gas Division's regulatory jurisdiction.

Contact: Timothy A. Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6713.

Filed: August 21, 1987, 10:36 a.m.
TRD-8707048

Additions to the previous agenda:

Consideration of category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

Contact: Margie E. Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: August 21, 1987, 10:37 a.m.
TRD-8707049

Investigation of cementing practices of Western Company of North America.

Contact: Jim Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6713.

Filed: August 21, 1987, 10:38 a.m.
TRD-8707050

The Personnel Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Mark K. Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

Filed: August 21, 1987, 10:36 a.m.
TRD-8707051

The Office of Research and Statistical Analysis director's report on division administration, budget, procedures, and personnel matters.

Contact: Gail Gemberling, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6976.

Filed: August 21, 1987, 10:37 a.m.
TRD-8707052

The Office of the Special Counsel director's report relating to proposed and pending litigation, including but not limited to discussion/decision in Gas Utilities Docket 500, state and federal legislation, and other budget, administrative, personnel matters, discussion of Huto Oils, et al v. Railroad Commission, C-5937 in the Supreme Court of Texas; Walker Operation Corporation, et al v. Federal Energy Regulatory Commission, U.S. Court of Appeals for the 10th Circuit, 85-2683 and 86-2698, et al, Lone Star Gas Company, et al v. Railroad Commission of Texas and Jim Mattox, in his official capacity as attorney general of the State of Texas, 414,357, 299th District Court; FERC Docket GP86-27-000 (Formerly RM79-76-250) Travis Peak Formation, and FERC Docket RM87-31-000 et al, 18 Code of Federal Regulations Part 271, Tight Gas Formation.

Contact: Walter Earl Lilie, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6900.

Filed: August 21, 1987, 10:38 a.m.
TRD-8707053

Various matters falling within the Surface Mining and Reclamation Division's regulatory jurisdiction.

Contact: J. Randel (Jerry) Hill, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, (512) 463-6900.

Filed: August 21, 1987, 10:36 a.m.
TRD-8707054

Various matters falling within the Transportation Division's regulatory jurisdiction.

Contact: C. Tom Clowe, Jr., P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: August 21, 1987, 10:36 a.m.
TRD-8707055

The Transportation Division will consider amending §5.40, concerning intercorporate transportation exemption, §5.346 and §5.386, concerning evidence of liability coverage.

Contact: C. Tom Clowe, Jr., P.O. Drawer 12967, Austin, Texas 78701, (512) 463-7315.

Filed: August 21, 1987, 2:30 p.m.
TRD-8707060

Wednesday, September 16, 1987, 10 a.m. The Oil and Gas Division of the Railroad Commission of Texas will meet at the Marriott Hotel North, 611 Northwest Loop 410, San Antonio. According to the agenda, the division will conduct a statewide oil and gas hearing.

Contact: Paula Middleton, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6729.

Filed: August 21, 1987, 10:39 a.m.
TRD-8707056

Texas Savings and Loan Department

Wednesday, September 2, 1987, 9 a.m. The Texas Savings and Loan Department will meet in Suite 201, 2601 North Lamar Boulevard, Austin. According to the agenda, the department will accumulate a record of evidence in regard to the application of Capitol City Savings Association, Austin, Travis County, for a loan office to be located at 4381 Green Oaks Boulevard, Arlington, Tarrant County, from which record the commissioner will determine whether to grant or deny the application.

Contact: Perry Koppa, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: August 20, 1987, 10:22 a.m.
TRD-8706970

Texas State Technical Institute

Monday, August 24, 1987, 10 a.m. The Board of Regents Policy Committee on Human Resources for Texas State Technical Institute met at Boon Chapman, 7600 Chevy Chase Drive, Austin. According to the agenda, the board considered a minute order to contract for TSTI Employees Group Insurance Programs to be acted upon.

Contact: Theodore A. Talbot, TSTI, Waco, Texas, (817) 799-3611.

Filed: August 20, 1987, 10:13 a.m.
TRD-8706999

University Interscholastic League

Wednesday, August 26, 1987, 10 a.m. A three member panel for the State Executive Committee of the University Interscholastic League met in the Conference Room, League Office, 2622 Wichita, UT Campus, Austin. According to the agenda, the committee conducted a hearing to review alleged violations of UIL rules.

Contact: Bonnie Northcutt, P.O. Box 8028, University Station, Austin, Texas 78713, (512) 471-5883.

Filed: August 21, 1987, 4:03 p.m.
TRD-8707073

Board of Vocational Nurse Examiners

Monday-Wednesday, September 21-23, 1987, 8 a.m. The Board of Vocational Nurse Examiners will meet in the Mesquite Room, Executel Motor Inn, 925 East Anderson Lane, Austin. According to the agenda, the board will call to order and conduct administrative hearings; conduct agreed orders voluntary surrenders; approve minutes; hear the executive director's report and education report (concerning program matters and actions), discuss unfinished business (peer assistance and budget update); and discuss new business (election of officers, NCSBN delegate assembly agenda matters). The board also will meet in executive session to discuss personnel matters.

Contact: Joyce A. Hammer, 1300 East Anderson Lane, Building C, Suite 285, Austin, Texas 78752, (512) 835-2071.

Filed: August 21, 1987, 9:19 a.m.
TRD-8707036

Texas Water Commission

Tuesday, September 1, 1987, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider water district escrow releases, rate matter, proposed water quality permits, amendments and renewals, levee project, cancellation of certificate of adjudication, final decisions on water use applications, request for representation by the attorney general's office, bids and awarding contract for court reporting services for fiscal year 1988, and consider adoption of emergency amendments and chapter on water rates.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 20, 1987, 4:12 p.m.
TRD-8707020

Thursday, September 3, 1987, 10 a.m. The Texas Water Commission will meet in Room 124A, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will hear the executive director's report on agency administration, policy, budget, procedures, and personnel matters.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 20, 1987, 4:12 p.m.
TRD-8707021

Thursday, September 10, 1987, 9:30 a.m. The Texas Water Well Drillers Board of the Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the board will consider approval of minutes of the July 2, 1987, meeting, elect officers for fiscal year 1988, consider certification of applicants for registration, applications for driller trainee registration, and consider whether to set the following complaints for formal public hearing before the board or for other appropriate legal action: Tom Arnold, Ron Doyle, and Asher Drilling Corporation, (et al), Ron Doyle and Jeffery Roger, Asher Drilling Corporation (et al), Jay Mack Harvey, John Jenkins, Charlie A. Kuhn, Jimmy Madewell, Cody McCuthchin, Cory Miller, Buddy B. Nelson, Jerry Owens, Bill Phillips, Morris Robinson, John Spivey, Phillip Thomas, and Mike Winstead, consider commission rules implementing House Bill 1347, and hear staff reports.

Contact: Larry Persky, P.O. Box 13087, Capitol Station, Austin, Texas 78711-3087, (512) 463-8069.

Filed: August 25, 1987, 9:49 a.m.
TRD-8707157

Thursday, September 10, 1987, 1:30 p.m. The Texas Water Well Drillers Board of the Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the board will consider revocation or suspension of the water well drillers licenses or imposition of an administrative penalty in the following dockets: WWDB-87-0014, John Brem (License 1693), WWDB-87-0015, Steven Bittle (License 2771-W), WWDB-87-0017, W. R. Doyle (License 02692W), WWDB-87-0018, Charlie A. Kuhn (License 1430-W), WWDB-87-0019, Fernando F. Galindo (License 1776-W), WWDB-87-0020, Wesley James Woods (License 1199), and WWDB-87-0021, Morris F. Robinson, Jr. (License 1464-W).

Contact: Larry Persky, P.O. Box 13087, Capitol Station, Austin, Texas 78711-3087, (512) 463-8078.

Filed: August 25, 1987, 9:49 a.m.
TRD-8707158

Tuesday, September 15, 1987, 2 p.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will discuss whether emergency order 87-8E, issued by the Texas Water Commission on August 11, 1987, to Donna Refinery Partners, Ltd., 1776 Yorktown, Suite 440, Houston, Texas 77056, should be affirmed, modified, or set aside by the Texas Water Commission. The order permitted Donna Refinery Partners, Ltd. to discharge treated wastewater from its Donna Refinery [illegible] on-site aeration pond at a volume not to exceed 450 gallons per day on a 30 day average and 2,500 gallons per day as a daily maximum, for disposal by evaporation.

Contact: Ramon Dasch, P.O. Box 13087, Capitol Station, Austin, Texas 78711, (512) 463-8069.

Filed: August 24, 1987, 11:34 a.m.
TRD-8707116

Thursday, October 8, 1987, 9 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet in City Council Chambers, El Paso City Hall, Santa Fe and Missouri Streets, El Paso. Agendas follow.

El Paso County Water Authority, 1539 Paisano Street, El Paso, Texas 79927, has applied to the Texas Water Commission for renewal of Permit 10795-01, which authorizes the discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 500,000 gallons per day from the Horizon City Sewage Treatment Plant. This facility consists of two aerated lagoons, a sand filter, and chlorine contact chamber. The permittee shall utilize effluent for irrigation of a golf course to the maximum extent possible. Application rates for the irrigated land shall not exceed 5.6 acre feet/acre/year.

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

Filed: August 24, 1987, 11:34 a.m.
TRD-8707117

San Elizario Independent School District, P.O. Box 920, San Elizario, Texas 79849, has applied to the Texas Water Commission for a permit (Proposed Permit 13380-01) to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 40,000 gallons per day from the San Elizario School Wastewater Treatment Facilities. The applicant proposes to construct wastewater treatment facilities to serve two campuses of the district because the land that is currently used for drain fields is needed for additional classroom facilities.

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

Filed: August 24, 1987, 11:34 a.m.
TRD-8707118

Tuesday, October 20, 1987, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Agendas follow.

A public hearing on Application 5151, Grand Prairie Metropolitan Utility and Reclamation District, seeking a permit to maintain two existing off channel reservoirs from West Fork Trinity River, tributary of Trinity River, Trinity River Basin, for recreational purposes, all being more fully set out in the notice, Dallas County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 24, 1987, 11:35 a.m.
TRD-8707112

A public hearing on Application 5152, City of Wichita Falls, seeking a permit to construct and maintain a proposed dam and reservoir on the Wichita River, tributary of the Red River, Red River Basin, for in place recreational use, Wichita County, being more fully set out in the notice.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 24, 1987, 11:35 a.m.
TRD-8707113

A public hearing on Application 08-4278, Floyd A. Wenzel and Lawrence S. Sodolak, a general partnership, seeking a permit to extend the time to complete modifications of two dams authorized by Certificate of Adjudication 08-4278, based on Permit 3744. Certificate of Adjudication 08-4278 authorized the applicants to maintain and modify Timber Lake Dam and Talley Lake Dam forming recreational lakes on unnamed tributaries of the Trinity River, Trinity River Basin, Liberty County, all being more fully set out in the notice.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 24, 1987, 11:35 a.m.
TRD-8707114

A public hearing on Application 5150, Larry and Mary Jean Miles, seeking a permit to construct and maintain a proposed dam and reservoir on an unnamed tributary of Cross Timber Creek, tributary of White Oak Creek, tributary of Sulphur River, Sulphur River Basin, for domestic and livestock use, Hopkins County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 24, 1987, 11:35 a.m.
TRD-8707115

Regional Agencies
Meetings Filed August 20

The Ark-Tex Council of Governments, Executive Committee, met at the Country Club, Greenhill Road, Mt. Pleasant, on August 27, 1987, at 5:30 p.m. Information may be obtained from Susan J. Rice, P.O. Box 5307, Texarkana, Texas 75505, (214) 832-8636.

The Brazos River Authority, Lake Management Committee, will meet in the Supervisor's Office, Possum Kingdom Lake, on August 28, 1987, at 10 a.m. Information

[illegible] 76144.

The Central Appraisal District of Johnson County, Appraisal Review Board, met at 109 North Main, Cleburne, on August 25, 1987, at 9 a.m. Information may be obtained from Jackie Coker, 109 North Main, Cleburne, Texas [illegible] 817/645-3986.

The Coastal Bend Council of Governments, Memorial [illegible] Coastal Bend Council of Governments, [illegible] P.O. Box [illegible] (512) 883-5743.

The Ellis County Tax Appraisal District, met at 406 Sycamore, Waxahachie, on August 24, 1987, [illegible] be obtained from [illegible] P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552.

The Gulf Bend Mental Health and Mental Retardation Center, Board of Trustees, met at 1404 Village Drive, Victoria, on August 27, 1987, [illegible] Information may be obtained from Bill Dunn, 1404 Village Drive, Victoria, Texas 77901, (512) 578-0611.

The Leon County Central Appraisal District, Board of Directors, met in the District Office, Centerville, on August 24, 1987, at 7:30 p.m. Information may be obtained from Tom G. Holder, P.O. Box 536, Centerville, Texas 75833, (214) 536-2252.

The North Central Texas Council of Governments, Executive Board, met on the Second Floor, Centerpoint Two, 616 Six Flags Drive, Arlington, on August 27, 1987, at 12:45 p.m. Information may be obtained from Edwina P. Shire, P.O. Drawer COG, Arlington, Texas 76005-5888, (817) 640-3300.

The Panhandle Ground Water Conservation District 3, Board of Directors, met in the District Office, 300 South Omohundro, White Deer, on August 24, 1987, at 8 p.m. Information may be obtained from Gary L. Walker, Box 637, White Deer, Texas 79097, (806) 883-2501.

The Trinity River Authority of Texas, Board of Directors, met at 5300 South Collins, Arlington, on August 26, 1987, at 10 a.m. Information may be obtained from Jack C. Worsham, P.O. Box 60, Arlington, Texas 76010, (817) 467-4343.

TRD-8706998

Meetings Filed August 21

The Austin-Travis County Mental Health and Mental Retardation Center, Finance and Control Committee Meeting, met in Suite [illegible] Avenue, Austin, on [illegible] Board [illegible] location on August 27, 1987, at 7 a.m. Information may be obtained from Sharon Taylor, 611 South Congress Avenue, Suite 107, Austin, Texas 78704, (512) 447-4141.

The Burnet County Appraisal District, Board of Directors, met at 215 South Pecan Street, Burnet, on September 10, 1987, at 6:30 p.m. Information may be obtained from Annie C. Williams, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291.

The Dallas Area Rapid Transit, Art Committee, met at 601 Pacific Avenue, Dallas, on August 24, 1987, at 2 p.m. The Minority Affairs Committee, Mobility Impaired Task Force, Audit Committee, and Board met at the same location, on August 25, 1987, at [illegible] p.m., [illegible] 3:45 p.m., and 4 p.m. respectively. Information may be obtained from Nancy M. Kelker, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Deep East Texas Regional Mental Health and Mental Retardation Services, Board of Trustees, met in the Administration Facility, Ward R. Burke Community Room, 4101 South Medford Drive, Lufkin, on August 25, 1987, at 5:30 p.m. Information may be obtained from Jim McDermott, Ph.D., 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141.

The Gillespie County Appraisal District, Board of Directors, will meet in the City Hall Assembly Room, Fredericksburg, on September 2, 1987, at 9 a.m. Information may be obtained from Mary Lou Smith, P.O. Box 429, Fredericksburg, Texas 78624, (512) 997-9809.

The Lower Rio Grande Valley Development Council, Board of Directors, met at the Harlingen Chamber of Commerce, 311 East Tyler, on August 27, 1987, at 1:30 p.m. Information may be obtained from Robert A. Chandler, 4900 North 23rd Street, McAllen, Texas 78504, (512) 682-3481.

The Texas Municipal League Risk and Insurance Management Services, Board of Trustees, Workers' Compensation and Joint Self-Insurance Funds, will meet in the Stephen F. Austin Hotel, Seventh Street and Congress Avenue, Austin, on August 30-31, 1987, at 9 a.m. Information may be obtained from Allen L. Hyman, 1020 Southwest Tower, Austin, Texas 78701, (512) 478-6601.

The Texas Panhandle Mental Health Authority, Board of Trustees, met in the Kilgore Atrium, 1200 Wallace Boulevard, Amarillo, on August 27, 1987, at 1 p.m. Information may be obtained from Claire Rigler, P.O. Box 3250, Amarillo, Texas 79106, (806) 353-7235.

The Panhandle Regional Planning Commission, Board of Directors, met in the PRPC Conference Room, 2736 West Tenth Street, Amarillo, on August 27, 1987, at 1:30 p.m. Information may be obtained from Polly Jennings, P.O. Box 9257, Amarillo, Texas 79105-9257, (806) 372-3381.

The Pecan Valley Mental Health and Mental Retardation Region, Board of Trustees, met in the Clinic Office, 104 Charles Street, Granbury, on August 26, 1987, at 8 a.m. Information may be obtained from Dr. Theresa Malloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806.

The Tyler County Tax Appraisal District, Board of Directors, will meet at 103 Pecan, Woodville, on September 1, 1987, at 4 p.m. Information may be obtained from Mary F. Marsh, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.

TRD-8707036

Meetings Filed August 24

The Archer County Appraisal District, Board of Directors, will meet in the Appraisal District Office, 211 South Center, Archer City, on September 9, 1987, at 4:30 p.m. Information may be obtained from Jean James, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172.

The Bexar Appraisal District, Appraisal Review Board, will meet at 535 South Main, San Antonio, on August 28, 1987, at 9 a.m. and on September 1-4, 8-10, 14-18, 21-24, 28-30, 1987, at 8:30 a.m. Information may be obtained from Bill Burnett, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Denton Central Appraisal District, Board of Directors, met in emergency session at 3911 Morse, Denton, on August 25, 1987, at noon. Information may be obtained from John D. Brown, 3911 Morse, Denton, Texas 76205, (817) 566-0904.

The Grand Parkway Association, met in emergency session at 140 East Wing, 5757 Woodway, Houston, on August 26, 1987, at 2 p.m. Information may be obtained from Larry W. Nettles, 2823 First City Tower, 1001 Fannin, Houston, Texas 77002-6760, (713) 654-4586.

The Gregg Appraisal District, Board of Review, will meet at 2010 Gilmer Road, Longview, on September 1, 1987, at 9 a.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (214) 759-0015.

The Heart of Texas Council of Governments, Executive Committee, met in emergency session in the HOTCOG Conference Room, 320 Franklin Avenue, Waco, on

August 27, 1987, at 9:30 a.m. Information may be obtained from Mary McDow, 320 Texas Avenue, Waco, Texas 76701-2297, (817) 756-6031.

The Parmer County Appraisal District, Board of Directors, will meet at 305 Third Street, Bovina, on September 10, 1987, at 8 p.m. Information may be obtained from Ron Proctor, Box 56, Bovina, Texas 79009, (806) 238-1405.

The Sabine River Compact Administration, will meet in the Hilton LBJ Hotel, Dallas, on October 19, 1987, at 2 p.m. Information may be obtained from Max L. Forbes, Jr.

The Sabine Valley Regional Mental Health and Mental Retardation Center, Board of Trustees, will meet in Suite B-1, MR Services Division, 450 East Loop 281, Longview, on September 8, 1987, at 7 p.m. Information may be obtained from Ron Cookston, P.O. Box 6800, Longview, Texas 75608, (214) [illegible].

The San Jacinto River Authority, Board of Directors, will meet in the Lake Conroe Office Building, Highway 105 West, Conroe, on September 1, 1987, at 2 p.m. Information may be obtained from Jack K. Ayer, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111.

The Swisher County Appraisal District, Board of Directors, met at 130 North Armstrong, Tulia, on August 27, 1987, at 7 p.m., rescheduled from August 20, 1987. Information may be obtained from Rose Lee Powell, Box 8, Tulia, Texas 79088, (806) 995-4118.

The Tyler County Tax Appraisal District, Board of Directors, met in emergency session at 103 Pecan, Woodville, on August 24 and 27, 1987, at 4 p.m., and will meet at the same location, on September 1, 1987, at 4 p.m. Information may be obtained from Mary L. Mann, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.

TRD-8707102

Meeting Filed August 25

The Capital Area Planning Council, Regional Health Planning Advisory Committee, will meet in Suite 100, 2520 IH-35 South, Austin, on September 1, 1987, at 10 a.m. Information may be obtained from Manuel Fernandez, 2520 IH-35 South, Suite 100, Austin, Texas 78704, (512) 443-7653.

TRD-8707143

In Addition

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

[illegible] communicating information quickly and effectively, other information of [illegible]

State Banking Board

Notice of Hearing

[illegible] State Banking Board will con[illegible] Wednesday, September 23, 1987, at 9 [illegible] 2601 North Lamar Boulevard, Austin, on the [illegible] company for Austin Trust [illegible]

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, State Banking Department, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Banking Department of Texas

Application to Acquire Control of a State Bank

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

On July 15, 1987, the banking commissioner received an application to acquire control of the Tarrant Bank, Fort Worth, by J. Howard Shelton, Thompson E. Purvis, Jr., Tarrant Bancshares, Inc., and Meto Mitett, all of Fort Worth.

On August 14, 1987, notice was given that the application would not be denied.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on August 14, 1987.

TRD-8706956 William F. Aldridge
Director of Corporate Activities
Banking Department of Texas

Filed: August 19, 1987
For further information, please call (512) 479-1200.

Office of the Governor
Criminal Justice Division

Texas Narcotics Control Program—Grant Announcement

Under the provisions of the Anti-Drug Abuse Act of 1986, Public Law 99-570, Texas Civil Statutes, Article 4413(32a)6 (a)(iii), Texas will receive a federal grant to provide funding for the Texas Narcotics Control Program (TNCP). The governor has designated the Criminal Justice Division, Office of the Governor, to administer the program in the form of grants to units of government. The Criminal Justice Division (CJD) is now accepting grant applications for eligible projects from state agencies and units of local government.

Programs will focus on law enforcement, with emphasis on persons who violate state and local laws relating to the production, possession, and transfer of controlled substances. The funds may be used to support programs which improve the apprehension, prosecution, adjudication, detention, and identification of drug offenders for rehabilitation.

Eligible Projects. Only those projects designed for the purpose of enforcing state and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 United States Code 801 et seq.) are eligible for grant funding. Such projects must conform to the authorized program areas as specified in the Statewide Drug Strategy developed by CJD. Additionally, to be eligible each project must be operated by a state agency, local unit of government, or by a combination thereof, demonstrate that it will carry out congressional intent, which is to ensure that the federal assistance provided is coordinated and integrated with state and local drug enforcement efforts and that the maximum impact on the drug abuse problem in the state is achieved, and be funded by 75% federal funds and 25% non-federal funds. CJD may provide the 25% non-federal amount from existing funds.

Significant Restrictions and Special Requirements. Alcohol-related programs may not be funded under the TNCP, as the Controlled Substances Act expressly states that distilled spirits are not considered a controlled substance under that statute. Total capital expenditures for equipment cannot exceed 20% of the individual grant. Confidential funds require a 25% cash match by local grantees. Funds may not be used to replace federal, state, or local funds that would have been available for narcotics control programs in the absence of Anti-Drug Abuse Act funding. All applications must comply with the program criteria and applicable rules of CJD, and must be submitted in the form prescribed by CJD. CJD reserves the right to negotiate modifications to improve the quality and cost effectiveness of any proposed project and to recommend to the governor the acceptance with modification, or re-

[illegible] of any grant application. This announcement in no way obligates CJD to award grant funds or to pay any costs incurred by applicants as a result of responding to this announcement.

Deadline. Applications must be received at CJD by 5 p.m. on Friday, September 18, 1987. Prospective applicants must submit copies of applications to the state single point of contact or the regional review agency for review as required under the Texas review and comment System (TRACS).

Application Forms and Instructions. Application forms, instructions, and program briefs are available through the regional councils of government. Assistance in preparing applications is available through the councils of government.

Issued in Austin, Texas, on August 21, 1987.

TRD-8707096 Pete Wassdorf
Deputy General Counsel
Criminal Justice Division
Office of the Governor

Filed: August 24, 1987.
For further information, please call (512) 463-1786.

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State Preservation Board

Consultant Proposal Request

The State Preservation Board invites consultant proposals for the position of horticulturist for the Office of the Architect of the Capitol, and files this request under Texas Civil Statutes, Article 6252-11c. This individual will perform landscape architectural work involving the execution of designs, plans, and long-range restoration schemes of the grounds of the Capitol of Texas. Unless a better offer is received, the State Preservation Board intends to award the contract to Garry L. Gore. Individuals interested in making an offer should contact Roy Eugene Graham, AIA, architect of the Capitol, (512) 463-5495. The closing date for receipt of offers of consultant services is October 1, 1987. The architect of the Capitol will review the proposals received and will award the contract on the basis of expertise, previous experience, and education.

[illegible]

TRD-[illegible] [illegible]
[illegible]

Filed: [illegible]
[illegible]

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Public Utility Commission of Texas

Notice of Proceeding for Certification of Cogeneration Agreement

The Public Utility Commission of Texas gives public notice of a joint application filed on June 29, 1987, seeking certification of a cogeneration agreement pursuant to the Public Utility Regulatory Act, §41A. Following is a summary of the nature of the joint application.

Docket Title and Number. Application of EDC One Inc., and Texas Utilities Electric Company for certification of cogeneration agreement. Docket 7623 before the Public Utility Commission of Texas.

The Joint Application. Certification is sought of a cogeneration agreement entered into on June 22, 1987, by EDC One Inc., and Texas Utilities Electric Company which provides for the purchase by Texas Utilities Electric Company of approximately 255 MW of capacity and associated energy from a cogeneration facility to be constructed by EDC One Inc., at a United States Gypsum Company manufacturing facility in Sweetwater, Nolan County, Texas. The Public Utility Commission of Texas is asked to make two determinations: that the payments provided for in the cogeneration agreement are equal to or less than Texas Utilities Electric Company's avoided costs as established by the Public Utility Commission of Texas and in effect at the time the cogeneration agreement was signed, and that the cogeneration agreement provides Texas Utilities Electric Company the opportunity to acquire the cogeneration installation before the installation is offered to another purchaser in the event of its abandonment, or provides other sufficient assurances that Texas Utilities Electric Company will be provided with a comparable supply of electricity, if EDC One Inc., ceases to operate the installation.

Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, (512) 458-0223, or (512) 458-0227, or (512) 458-0221 for teletypewriter for the deaf within 15 days of this notice, provided that any motion to intervene must be filed on or before September 18, 1987.

Issued in Austin, Texas, on August 21, 1987.

TRD-8707065 Philip A. Holder
Secretary
Public Utility Commission of Texas

Filed: August 21, 1987.
For further information, please call (512) 458-0100.

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Texas Water Commission

Enforcement Order

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to the City of San Juan, on August 18, 1987, assessing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Patricia Barnhard, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on August 20, 1987.

TRD-8707024 Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: August 20, 1987.
For further information, please call (512) 463-7898.

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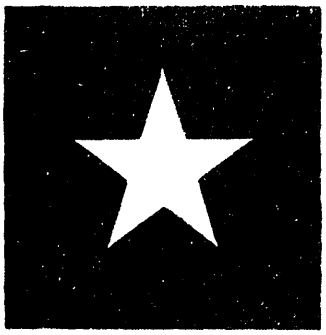

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