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TEXAS REGISTER

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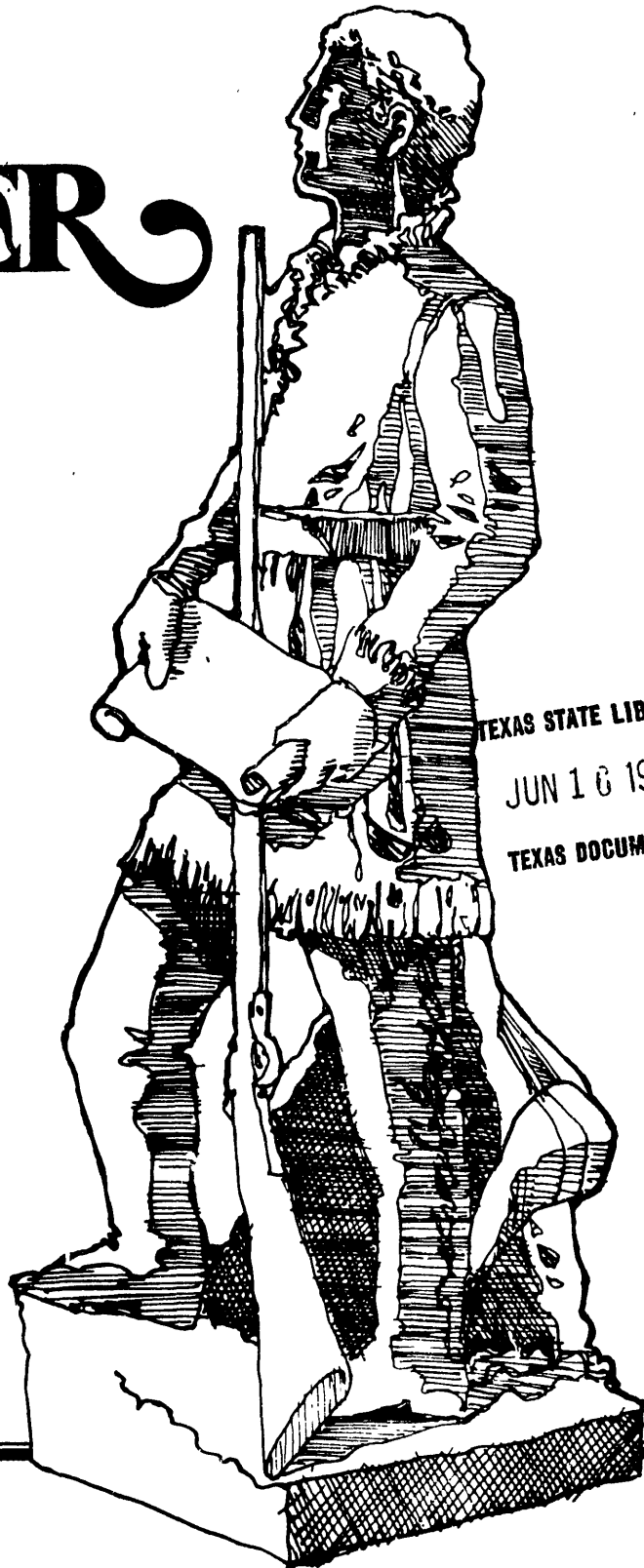
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TEXAS DOCUMENTS

The *Texas Register* is currently in the process of converting to the numbering system found in the *Texas Administrative Code* (TAC). To aid the reader in this conversion, both the 10-digit *Register* number and the new TAC number will be listed for agencies whose rules have been published in the TAC. Emergency, proposed, and adopted rules sections of the *Register* are divided into two classifications: codified and noncodified. Codified rules appear in title number order. Non-codified rules appear in alphabetical order as they have in the past. An "Index of TAC Titles Affected" appears at the end of this issue.

Titles 1, 4, 7, 10, 13, 16, 22, 25, 31, 34, 37, and 43 only of the TAC have now been published. Documents classified in the *Texas Register* to titles not yet published and certain documents affecting titles of the code have been accepted in the non-TAC format and may be renumbered or revised, or both, when initially codified in the TAC.

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

1 is the title (agencies grouped together by subject title which are arranged alphabetically)

TAC is the *Texas Administrative Code*

§27.15 is the section number (27 represents the chapter number and 15 represents the individual rule within the chapter)

Latest Texas Code Reporter
(Master Transmittal Sheet): No. 4, Jan. 81

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Cover illustration represents Elisabet Ney's statue of Stephen F. Austin, which stands in the foyer of the State Capitol.

Artwork: Gary Thornton

**TEXAS
REGISTER**



Office of the
Secretary of State

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- 2082 *MW-349 (RQ-599) (concerning constitutionality of House Bill 995, 67th Legislature, regular session, relating to the use of county law library funds)*
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Texas Civil Statutes, Article 4399, requires the Attorney General of Texas to give written opinions to certain public officials. The Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, §7, requires that a governmental body which receives a request for release of records seek a decision of the attorney general if the governmental body determines that the information may be withheld from public disclosure. Opinions and open records decisions issued under the authority of these two statutes, as well as the request for opinions and decisions, are required to be summarized in the *Texas Register*.

Copies of opinion requests may be obtained from the Opinion Committee, Attorney General's Office, Supreme Court Building, Austin, Texas 78711, telephone (512) 475-5445. Published opinions and open records decisions may be obtained by addressing a letter to the File Room, Fourth Floor, P.O. Box 12548, Austin, Texas 78711, or by telephoning (512) 475-3744. A single opinion is free; additional opinions are \$1.00 a copy.

Opinions

Summary of Opinion MW-345 (RQ-589)

Request from Oscar H. Mauzy, Committee on Jurisprudence, Texas Senate, Austin, concerning constitutionality of House Bill 733.

Summary of Opinion: House Bill 733 is not unconstitutional with respect to objections raised.

Issued in Austin, Texas, on June 4, 1981.

Doc. No. 813691 Susan L. Garrison, Chairwoman
Opinion Committee
Office of the Attorney General

For further information, please call (512) 475-5445

Summary of Opinion MW-346 (RQ-596)

Oscar H. Mauzy, chairman, Committee on Jurisprudence, Texas Senate, Austin, concerning constitutionality of provisions regulating abortion.

Summary of Opinion: The consent provisions of House Bill 578 are constitutional. The parental notification provision would not be held constitutional unless the bill was amended to permit a physician not to notify a pregnant minor's parents whenever the appropriate court finds that the pregnant minor objects to such notification and has sufficient maturity to make the abortion independently; or that notification is not otherwise in the best interests of the minor.

Issued in Austin, Texas, on June 4, 1981.

Doc. No. 813692 Susan L. Garrison, Chairwoman
Opinion Committee
Office of the Attorney General

For further information, please call (512) 475-5445.

Summary of Opinion MW-347 (RQ-554)

Request from John A. Traeger, chairman, Committee on Intergovernmental Relations, Texas Senate, Austin, concerning whether Interlocal Cooperation Act allows local governments to enter into interlocal contracts to provide all forms of insurance.

Summary of Opinion: Under the Interlocal Cooperation Act, local governments may act together to purchase insurance and form self insurance pools to cover governmental functions and services which each contracting local government has statutory or other legal authority to insure.

Issued in Austin, Texas, on June 4, 1981.

Doc. No. 813693 Susan L. Garrison, Chairwoman
Opinion Committee
Office of the Attorney General

For further information, please call (512) 475-5445.

Summary of Opinion MW-348 (RQ-595)

Request from John A. Traeger, chairman, Committee on Intergovernmental Relations, Texas Senate, Austin, concerning whether state may release claims on land deeded to former office of the state superintendent of public instruction.

Summary of Opinion: Senate Bill 1027, if enacted, would be unconstitutional because it would authorize the gratuitous disposition of state property to an individual.

Issued in Austin, Texas, on June 4, 1981.

Doc. No. 813694 Susan L. Garrison, Chairwoman
Opinion Committee
Office of the Attorney General

For further information, please call (512) 475-5445.

Summary of Opinion MW-349 (RQ-599)

Request from Chris Victor Semos, chairman, Committee on Business and Industry, Texas House of Representatives, Austin, concerning constitutionality of House Bill 995, 67th Legislature, regular session, concerning the use of county law library funds.

Summary of Opinion: House Bill 995, 67th Legislature, regular session, if enacted, would not unconstitutionally divert a special fund.

Issued in Austin, Texas, on June 4, 1981.

Doc. No. 813695 Susan L. Garrison, Chairwoman
Opinion Committee
Office of the Attorney General

For further information, please call (512) 475-5445.

Summary of Opinion MW-350 (RQ-600)

Request from Bob Bullock, comptroller of public accounts, Austin, concerning constitutionality of Senate Bill 800, senate redistricting bill.

Summary of Opinion: In preparing a redistricting plan, the legislature need not take into account the number of qualified voters in senatorial districts as required by the Texas Constitution, Article 3, §25, since that requirement was struck down by a federal court.

(1) An apportionment plan may split counties into two or more senatorial districts when an alternative plan could be drawn maintaining county integrity.

(2) A county need not be given the maximum number of full senatorial districts which can be contained within it.

(3) An apportionment plan may combine primarily rural counties with urban areas in a single senatorial district.

(4) The legislature may reapportion on the basis of the recent census figures.

(5) No law requires the legislature to consider in drafting its reapportionment plan the recent election return data required to be submitted to the Department of Justice under the Voting Rights Act.

(6) A reapportionment plan need not protect the districts of incumbents, nor must it guarantee any group legislative seats in proportion to its voting strength.

Issued in Austin, Texas, on June 4, 1981.

Doc. No. 813696 Susan L. Garrison, Chairwoman
Opinion Committee
Office of the Attorney General

For further information, please call (512) 475-5445.

Summary of Opinion MW-351 (RQ-553)

Request from Oscar H. Mauzy, chairman, Committee on Jurisprudence, Texas Senate, Austin, concerning regulation of the location of establishments selling material harmful to minors.

Summary of Opinion: Senate Bill 129 is not facially unconstitutional.

Issued in Austin, Texas, on June 4, 1981.

Doc. No. 813697 Susan L. Garrison, Chairwoman
Opinion Committee
Office of the Attorney General

For further information, please call (512) 475-5445.

Summary of Opinion MW-352 (RQ-556)

Request from Charles W. Evans, chairman, Committee on Government Organization, Texas House of Representatives, Austin, concerning questions regarding proposed legislation placing the National Guard Armory Board under the administrative control of The Adjutant General's Department.

Summary of Opinion: Legislation requiring the Armory Board to utilize the administrative facilities of The Adjutant

General will not preclude the board from issuing bonds or other evidences of indebtedness, nor will such action violate existing covenants relating to the board's indebtedness.

Issued in Austin, Texas, on June 4, 1981.

Doc. No. 813698 Susan L. Garrison, Chairwoman
Opinion Committee
Office of the Attorney General

For further information, please call (512) 475-5445.

Summary of Opinion MW-353 (RQ-601)

Request from Bob Bullock, comptroller of public accounts, Austin, concerning reapportionment of the Texas House of Representatives.

Summary of Opinion: Committee Substitute House Bill 960, the House Representatives' reapportionment bill, would not be held facially unconstitutional for its departures, if any, from the county-line requirements of the Texas Constitution, Article 3, §26.

Issued in Austin, Texas, on June 4, 1981.

Doc. No. 813699 Susan L. Garrison, Chairwoman
Opinion Committee
Office of the Attorney General

For further information, please call (512) 475-5445.

Summary of Opinion MW-354 (RQ-510)

Request from H. S. Harris Jr., chairman, Texas Industrial Accident Board, Austin, concerning whether payments made under Article 8306, §8(b) are terminated by marriage of minor child.

Summary of Opinion: The marriage of a daughter of a deceased employee does not render her ineligible for weekly payments under Texas Civil Statutes, Article 8306, §8(b), so long as she continues to be less than 18 years of age.

Issued in Austin, Texas, on June 4, 1981.

Doc. No. 813700 Susan L. Garrison, Chairwoman
Opinion Committee
Office of the Attorney General

For further information, please call (512) 475-5445.

Open Records Decisions

Summary of Open Records Decision ORD-272 (RQ-462)

Request from Tim Curry, district attorney, Tarrant County, concerning availability under Open Records Act of results of blood alcohol test.

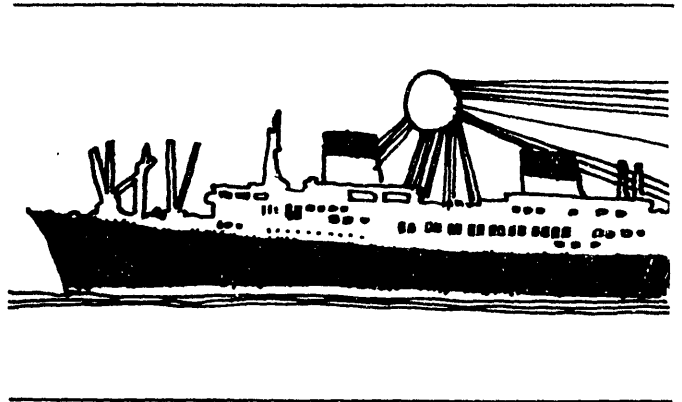
Summary of Decision: A member of the public sought from a public hospital the results of a blood alcohol test performed on a Fort Worth police officer, allegedly shot when another

officer's gun fired during a scuffle with suspects. The police officer died soon after the blood test was taken. The Open Records Act, §3(a)(1), excepts information deemed confidential by a common law or constitutional right of privacy. However, the right of privacy lapses at death, and the results of the blood alcohol test are not protected by §3(a)(1). Nor was the blood test result exempted from disclosure by §3(a)(8), the law enforcement section, since the investigation in which it was involved had been closed.

Issued in Austin, Texas, on June 4, 1981.

Doc. No. 813701 Susan L. Garrison, Chairwoman
 Opinion Committee
 Office of the Attorney General

For further information, please call (512) 475-5445.



Pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, an agency must give at least 30 days notice of its intention to promulgate certain action on a rule. The purpose of proposing rule action is to give interested persons an opportunity to review the proposal and make oral or written comments. "Opportunity for public hearing must be granted if requested by at least 25 persons, by a governmental subdivision or agency, or by an association having at least 25 members." Proposed action is effective as notice on the date published in the *Register*. Unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice, the proposed date of adoption is 30 days after publication. The notice must include a brief explanation of the proposed action; a fiscal impact statement; a request for comments on the proposed action from any interested person; the text of the proposed action, in compliance with the rules of the Texas Register Division; and a statement of the legal authority under which the proposed action is to be promulgated. The certification information, which includes the earliest possible date that the agency may file notice to adopt the proposal, follows each published submission of proposed action. A telephone number for further information is also published.

This section now contains two classifications: codified and noncodified. Agencies whose rules have been published in the *Texas Administrative Code* will appear under the heading "Codified." These rules will list the new TAC number, which will be followed immediately by the *Texas Register* 10-digit number. Agencies whose rules have not been published in the TAC will appear under the heading "Noncodified." The rules under the heading "Codified" will appear first, immediately followed by rules under the heading "Non-codified."

Symbology—Changes to existing material are indicated in *bold italics*. [Brackets] indicate deletion of existing material.

CODIFIED

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 145. Long-Term Care

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

The Texas Department of Health proposes a new subchapter entitled *Minimum Licensing Standards for Facilities Serving the Mentally Retarded Citizens of Texas*, §§145.211-145.218 (301.54.14.001-.008). These sections, when final, will provide an appropriate licensing category which speaks to the care

and services that should be provided for persons with mental retardation who are residents in an institutional or group setting.

Accompanying these sections is the subchapter entitled *Architectural Manual for Facilities Serving the Mentally Retarded*, §§145.231-145.244 (301.54.15.001-.014) which is being published in this same issue of the *Register*.

At the present time, the intermediate care facilities Levels V and VI for the mentally retarded (ICF-MR V, ICF-MR VI) under the Medicaid Program are licensed as nursing homes. The intermediate care facilities Level I for the mentally retarded (ICF-MR I) under the Medicaid Program are not licensed, pending this proposed licensing category.

The proposed sections, and the subsequent final sections, apply to facilities providing care and services for the mentally retarded which come under the scope of Texas Civil Statutes, Article 4442c.

The estimated cost of administering these proposed sections will be \$2,711 for each of the first five years of the program. (Source: Bureau of Long-Term Care and Bureau of Supporting Services). This cost includes the accompanying proposed subchapter entitled *Architectural Manual for Facilities Serving the Mentally Retarded*, mentioned above.

Public comment should be submitted to Cesar M. Elizondo, M.D., chief, Bureau of Long-Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, no later than 30 days after publication in this *Register*.

A public hearing will be conducted on the proposed sections and on the accompanying §§145.231-145.244 (301.54.15.001-.014) on July 8, 1981, at 9 a.m., at the Texas Department of Mental Health and Mental Retardation auditorium, 909 West 45th Street, Austin, Texas. All interested persons in attendance at the hearing will have opportunity to present testimony relevant to the subject; however, excessive or repetitious testimony should be avoided. Associations or other groups are requested to select one spokesperson to present the viewpoints of the association or group. Persons testifying are urged to reduce their testimony to writing.

These sections are proposed pursuant to Texas Civil Statutes, Article 4442c.

§145.211 (301.54.14.001). Introduction.

(a) Authority. The minimum licensing standards for facilities serving the mentally retarded citizens of Texas are promulgated under the authority of Texas Civil Statutes, Article 4442c.

(b) Purpose. To promote the public health, safety, and welfare by providing for the development, establishment, and enforcement of standards:

(1) for the habilitation of individuals based on an active treatment program in institutions of the character defined and covered herein; and

(2) for the establishment, construction, maintenance, and operation of such institutions which view mental retardation and other developmental disabilities within the context of a developmental model in accordance with the principle of normalization.

(c) Philosophy. Facilities licensed under these standards are known as facilities serving the mentally retarded citizens of Texas. Residents, therein, have the same civil

rights, equal liberties, and due process of law as other persons, plus the right to receive active treatment and habilitation. Facilities shall provide and promote services that enhance the development of such individuals, maximize their achievement through an interdisciplinary approach based on developmental principles, and create an environment that is normalized and normalizing.

(d) Scope.

(1) Persons served by these facilities must have a diagnosis of mental retardation or have other neurological conditions closely related to or requiring treatment similar to that required by mental retardation.

(2) Facilities shall be classified as Type A or Type B. Reference §145.217 (301.54.14.007) of this title (relating to Special Provisions for Facilities with 15 Beds or Less (Type B)) for Type B (15 beds or less exceptions). All others shall be classified as Type A.

(3) These licensing standards will apply to facilities providing 24-hour services in single or multiple facilities which provide the basic support, maintenance, and treatment for four or more persons unrelated to the proprietor.

(4) These standards do not apply to residential facilities licensed under Human Resources Code, Chapter 42 or under the authority of Texas Civil Statutes, Article 5547.

(e) General requirements.

(1) Copies of these standards shall be available to all facility personnel, residents, and/or residents' responsible parties. Personnel shall be instructed on the requirements of the law and the regulations pertaining to their respective duties.

(2) Each license, valid for one year, 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. The license shall be posted conspicuously in the area where residents are admitted.

(3) The terms "hospital," "nursing home," "custodial care home," "personal care home," or similar designation *per se*, may not be used as part of the name of the facility. The facility may be part of a licensed hospital, nursing home, or custodial care home if established as a separate distinct part.

(f) Application.

(1) The chief executive officer is the person who shall make application for license and whose name is on the license issued by the licensing agency.

(2) Each applicant for state licensure shall make application using the form available by the licensing agency completed in all areas and accompanied by the fee.

(3) The application for license shall include written approval of the local health officer and the local fire authority having jurisdiction and be based on meeting local applicable health and fire ordinances. Such approval shall be on forms or in a manner determined by the licensing agency.

(4) The applicant shall be of good moral character, be financially responsible, and have physical and mental capability to conduct the operations of the facility pursuant to standards, rules, and regulations adopted by the Texas Board of Health.

(5) Grounds for refusal, withholding, denial, suspension, or revocation of license to operate a facility include: the submission of false information; subterfuge or other means relating to an original or renewal application for licensure; habitual drunkenness; addiction to drugs; disorderly conduct or the violation of any law involving moral turpitude on the part of the facility's owner, chief executive officer, or

employee; willful or repeated action inconsistent with the health and safety of the residents; gross neglect or abuse of the care of the residents; or repeated or gross failure to meet the licensing standards on the part of the owner, chief executive officer, or employee of the facility.

(6) Any owner, chief executive officer, or employee may, with cause, be required by the licensing agency to secure an examination by a physician licensed in Texas, followed by a statement from the physician that to the best of his or her knowledge the person examined is free of transmittable diseases or infections and has no gross physical/mental debility which would adversely affect the person from operating a facility.

§145.212 (301.54.14.002). Administrative Requirements.

(a) Governing body.

(1) The governing body shall assume full legal responsibility for the overall conduct of the facility. If the facility does not have an organized governing body, 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) The ownership of the facility shall be made known to the licensing agency with a list of all individuals exercising control of the facility.

(3) In the case of corporate ownership, the corporation shall:

(A) be responsible for compliance with applicable laws and licensing standards;

(B) establish an internal management audit that assures compliance with state laws and regulations and that ensures effective implementation of policies and procedures;

(C) be responsible for securing, employing, or arranging for the designation of a chief executive officer; and

(D) delegate in writing the responsibilities for the internal operation of the facility and the authority for procurement and direction of competent personnel in accordance with established policy. The chief executive officer may be a member of the governing body.

(b) Policies and procedures.

(1) The facility shall develop and maintain current written policies which shall include philosophy, services provided, charges, refunds, responsibility of the facility, rights and privileges of residents, sections and regulations related to resident management and conduct, and provisions for resident courtesy and respect. This information shall be available as an appropriate document for staff, consumer representatives, and appropriate agencies.

(2) Establish policies and procedures:

(A) that encourage the use of and to maintain in good repair dentures, eye glasses, hearing aids, braces, and other aids prescribed for a resident by the appropriate professional specialist;

(B) to provide an active program of communication; and

(C) which address licensure, certification, or standards for positions in the facility as required for comparable positions in community practice.

(3) Personnel policies shall:

(A) be available to all employees and include a written job description available for all positions;

(B) include a statement that employees with signs and symptoms of a communicable disease will not be permitted to work.

(c) Staff development. Each facility shall:

- (1) implement and maintain programs of employee orientation and training for all employees;
- (2) provide continuing in-service education for employees to establish, update, and improve their skills; and
- (3) document all employee staff development in appropriate files.

(d) Chief executive officer.

(1) There shall be designated a full time chief executive officer of the facility who is:

(A) a licensed nursing home administrator with specialized training in a human services related field or one year of experience in working with mentally retarded persons; or

(B) a qualified mental retardation professional (QMRP).

(2) In the absence of the chief executive officer there shall be one member of the professional staff designated for the administrative direction of the facility at all times.

(e) Qualified mental retardation professional (QMRP). The facility must have a QMRP(s) whose responsibilities include:

(1) supervising the delivery of each resident's individual program plan (IPP);

(2) supervising the delivery of training and habilitation services;

(3) integrating the various aspects of the facility's program;

(4) quarterly reviewing of each resident's IPP to determine progress or lack of progress based on progress notes relating to stated goals and objectives; and

(5) coordinating and monitoring the IPP changes to determine that the documentation justifies the necessity for program changes.

(f) Health and safety laws. The facility shall maintain compliance with all federal, state, and local laws, regulations, and codes pertaining to health and safety.

(g) Consultation and contract agreements.

(1) The facility must maintain current policies and procedures that address the provision of required services when the facility does not employ qualified professionals to furnish such services.

(2) Written agreements with appropriate qualified professionals outside the facility will be in effect.

(3) Such agreements must contain the responsibilities, functions, objectives, and other terms of the agreement with each such resource delineated in writing. They shall be signed by the chief executive officer and the qualified professional.

(h) Admission, transfer, and discharge.

(1) Each facility must maintain a policies and procedures manual which states the criteria a resident must meet to be eligible for admission.

(2) There shall be documentation in each resident's record that the facility's interdisciplinary team determined that admission to the facility was based on the facility's capability of meeting the basic support, maintenance, and treatment needs of the resident.

(3) Transfer.

(A) Hospitals.

(i) The facility shall have a transfer agreement with one or more hospital(s), sufficiently close by to make feasible the proper transfer of a resident, copies of his or her record for provision of in-patient hospital services, and provision for emergency care when needed.

(ii) Transfer agreements shall be signed by the administrator of the hospital, or his or her designated representative, and the chief executive officer and contain the hospital Medicare provider number.

(B) Other facilities. The facility shall have policies and procedures which address the transfer or discharge of residents to another facility.

(4) Discharge. At the time of discharge, the facility must enter in the resident's record a summary of findings, progress, and plans of active treatment, and any plans relating to appropriateness of post discharge services.

(i) Interdisciplinary team. The interdisciplinary team shall be composed of the QMRP, direct care staff, and professional staff necessary to address the basic support, maintenance, and treatment needs of each resident as identified in the initial assessment. This shall include the resident and/or legal guardian, as appropriate.

(1) Within 30 days after admission the interdisciplinary team shall develop an IPP to meet the resident's needs.

(2) The interdisciplinary team shall review the status of each resident and develop recommendations for the IPP annually.

(A) There shall be written documentation of the annual interdisciplinary team meeting which addresses appropriateness of placement, the least restrictive alternatives, resident's legal status, the need of guardianship, if appropriate, and the capability of the resident to exercise his or her civil and legal rights.

(B) The report of this annual interdisciplinary team meeting shall be kept in the resident's active record, available to staff, and interpreted to parents or legal guardian and residents when appropriate.

(j) Unusual occurrence.

(1) The facility shall have policies which address unusual occurrences and include notification of the Texas Department of Health, Bureau of Long-Term Care, Austin, Texas.

(2) Procedures shall provide for:

(A) the prompt notification of next of kin or legal guardian;

(B) establishing and documenting time of injury or death; and

(C) in case of death, authorizing release of the body, obtaining a proper consent for performance of an autopsy, and reporting the findings to the family upon request.

(k) Activity schedules.

(1) There shall be an activity schedule for each resident covering seven days a week which:

(A) does not allow periods of unscheduled activity to extend longer than three continuous hours;

(B) allows free time as identified by the interdisciplinary team and documented in the IPP; and

(C) includes planned activities outdoors all year round.

(2) All residents, including the multiple handicapped or nonambulatory, shall spend a major portion of the daylight hours out of bed and out of the bedroom area in planned daily activities and exercise periods by whatever method or devices necessary to accomplish this goal.

(l) Resident living.

(1) Residents should reside in, or be transferred to, the least restrictive setting in keeping with their level of functioning.

(2) Grouping of residents are made according to social, intellectual, and chronological age, unless the housing is planned to promote the growth and development of all housed together. Residents shall not be segregated on the basis of physical handicaps.

(3) Each resident shall have neat, clean, suitable, appropriate seasonable clothing that is, when necessary, identified and is of sufficient quality so he or she may be dressed daily.

§145.213 (301.54.14.003). Behavior Management.

(a) General.

(1) The facility shall have current policies and procedures concerning control and discipline of residents. These policies and procedures shall:

(A) be directed toward maximizing the growth and development of the individual;

(B) be available to residents and their legal guardians;

(C) be formulated with resident participation where appropriate; and

(D) stipulate that discipline of a resident by another resident is not allowed unless it is part of an organized self-governed program which is conducted in accordance with written policy and approved by the human rights committee.

(2) Resident behavior that requires formal programmed intervention to modify the behavior shall specify:

(A) the behavioral objectives of the program;

(B) the method to be used;

(C) the schedule for use of the method;

(D) the person responsible for the program; and

(E) the data to be collected to assess progress toward the objectives.

(3) Behavior management programs do not employ, or result in, denial of a nutritionally adequate diet.

(4) Corporal punishment is prohibited by written policy and not employed.

(5) Seclusion is not employed.

(b) Restraints.

(1) The facility shall have policies and procedures governing the use of chemical and physical restraint.

(2) Chemical or physical restraint shall not be used:

(A) as punishment;

(B) for the convenience of staff; and

(C) as a substitute for programs.

(3) Physical restraints shall be as follows:

(A) Policies and procedures shall specify:

(i) when physical restraints may be used;

(ii) what staff members are authorized to use them; and

(iii) the method for monitoring and controlling its use.

(B) Physician's orders. Physician's order for physical restraints may not be in effect for longer than 12 hours.

(C) Restraints. Residents placed in restraints:

(i) shall be checked every 30 minutes with documentation of such checks kept in the resident record;

(ii) shall be taken out of the restraint every two hours and exercised for a period of not less than 10 minutes; and

(iii) must exhibit the behavior for which he or she was placed in the restraint before the restraint is reapplied.

(D) Physical restraints—emergency. Only if absolutely necessary, to protect the resident from injuring him or herself or others, emergency physical restraints may be employed in the following situations:

(i) it may be authorized by a professional person of the facility who has been designated in written policies and procedures; and

(ii) the authorization must be promptly reported to the physician and an order obtained.

(E) Physical restraints—(nonemergency and non-behavior modification programs). On a nonemergency basis physical restraints shall be authorized in writing by the physician which describes:

(i) the device;

(ii) the conditions for its use;

(iii) the period of time that the order is in effect;

and

(iv) the steps that are being taken by the facility's interdisciplinary team to alleviate the conditions necessitating the restraint and documented in the resident's record.

(F) Chemical restraints. Chemical restraints must be:

(i) ordered by the physician; and

(ii) administered in accordance with those written orders.

(G) Behavior Modification Programs. Behavior Modification Programs which involve time-out, time-out devices, or aversive stimuli shall:

(i) document that less restrictive methods have been systematically demonstrated to be ineffective;

(ii) comply with subsection (a)(2) of this section;

(iii) be approved by the human rights committee;

(iv) have the consent of the resident's parents, legal guardian, or resident, as appropriate;

(v) have physical restraints used as a time-out device approved by the physician or authorized QMRP;

(vi) not include closed doors; and

(vii) not use rooms for time-out in which the door can be locked.

(c) Supportive and protective devices. Mechanical devices for support and protection shall:

(1) be described in policies and procedures;

(2) be documented by the interdisciplinary team in each resident's IPP with approval and direction for use; and

(3) include a description of:

(A) the device;

(B) the purpose;

(C) the condition for its use; and

(D) a written goal or objective related to the use of the device.

§145.214 (301.54.14.004). Direct Care Staffing Ratio.

(a) General.

(1) There shall be sufficient adequately trained and competent staff available to conduct the active treatment programs and provide for the health and safety of the residents.

(2) Direct care staff shall:

(A) receive instruction, supervision, and consultation from appropriate professional staff to fulfill their responsibilities;

(B) not be diverted excessively from active treatment programs to perform housekeeping, laundry, or clerical duties not related to resident programming; and

(C) be administratively responsible to a person whose training and experience is appropriate to the program.

(b) On-duty staffing ratios. For each 24 hours there shall be at least:

(1) A ratio of 1:3.2 for:

(A) children under the age of six years;

(B) residents who are overly aggressive, assaultive, severely hyperactive, or have demonstrated psychotic-like behavior or a security risk; and

(C) resident living units serving the severe and profoundly retarded or physically handicapped resident.

(2) a ratio of 1:4.0 for the mild to moderate level residents requiring active treatment in the areas of refinement of skills and prevocational training;

(3) a ratio of 1:8.0 for residents involved in sheltered workshop programs or vocational training programs.

§145.215 (301.54.14.005). Professional and Special Services.

(a) General.

(1) Programs and services. All programs and services provided by the facility or for the facility by outside agencies or individuals must meet the standards of quality of services required in this section.

(2) Requirements of facility. The facility:

(A) shall provide sufficient space, equipment, and supplies outside of the bedroom area to carry on and conduct an efficient and effective program in all areas of professional and special services; and

(B) must have available enough qualified staff and support personnel to carry out the professional and special services in accordance with the needs of the residents.

(3) Professional evaluations. Residents shall have:

(A) an initial, and at least annual thereafter, medical examination, social summary, and psychological evaluation with diagnosis; and

(B) a dental evaluation (see dental services, subsection (c) of this section);

(C) a speech/language/hearing screening (see speech/language/hearing services, subsection (1) of this section);

(D) other professional evaluations as determined by the initial assessment;

(E) assessments based upon reliable and valid instruments and used as a basis for establishing the IPP; and

(F) their IPP reviewed by a member(s) of the interdisciplinary professional team at least monthly with such review entered in the resident record.

(b) Training and habilitation services.

(1) The facility shall:

(A) provide training and habilitation services to all residents regardless of age, degree of retardation, or accompanying disabilities or handicaps;

(B) demonstrate evidence of services designed to meet the individual needs of the residents.

(2) All residents who are incontinent shall be bathed or cleaned immediately upon voiding or soiling.

(3) The facility must establish policies and procedures which address the weighing of each resident monthly unless special needs require more frequent weighing to ensure that each resident maintains a normal weight. Weight records shall be kept in the resident's record.

(4) Each resident shall have his or her height measured every three months until he or she reaches the age of maximum growth. Height records shall be kept in the resident's record.

(c) Dental services.

(1) Current written policies and procedures must provide for a comprehensive diagnostic dental service that includes a complete extra-oral and intra-oral examination with findings documented.

(2) The facility shall provide for the provision of emergency dental treatment on a 24-hour-a-day basis by a qualified dentist.

(3) Each dentist or dental hygienist providing services to the facility must be licensed to practice in the state.

(4) A comprehensive diagnostic dental service shall be provided within 30 days after admission or within six months prior to admission.

(5) There shall be a system established which demonstrates and assures that each resident is re-examined as needed, not less than once a year.

(6) A permanent dental record shall be maintained in each resident's record.

(d) Food and nutrition services.

(1) Dietitian.

(A) A full time qualified dietitian (see definition for dietitian under §145.218 (301.54.14.008) of this title (relating to Definitions)) shall be responsible for the total food service of facilities with 200 or more beds.

(B) A part-time qualified dietitian (see definition for dietitian under §145.218 (301.54.14.008) of this title (relating to Definitions)) shall direct the total food service in facilities with less than 200 beds.

(C) A full-time qualified dietetic supervisor (see definition for dietetic service supervisor under §145.218 (301.54.14.008) of this title (relating to Definitions)) shall be designated the responsibility for food service in the absence of dietitians.

(2) Required services. Required services include, but are not limited to:

(A) menu planning;

(B) initiating food orders or requisitions;

(C) storing and handling of food;

(D) food preparation;

(E) food serving;

(F) orientating, training, and supervising food service personnel;

(G) participating in determining dietary staffing; and

(H) participating in interdisciplinary team, when appropriate.

(3) Dietetic service personnel.

(A) The dietetic service department shall be staffed, and resident services available, for a minimum of 14 hours each day.

(B) Dietetic service employees shall not have assigned duties outside the dietetic service department prior to assigned duties in the dietetic service department if such work assignments interfere with the sanitation, safety, or time required for dietary work assignments.

(4) Resident nutrition and planning.

(A) The nutritional needs of residents shall be met in accordance with the recommended dietary allowances of the food and nutrition board of the National Research Council, National Academy of Sciences; adjusted for age, sex, ac-

tivity, and disability; through a nourishing well-balanced diet unless contraindicated by medical needs.

(B) At least three meals shall be served daily, at regular times. There shall be:

(i) not more than a 14-hour span between a substantial evening meal and breakfast of the following day (a resident may choose a continental breakfast at flexible times on weekends and holidays);

(ii) not less than 10 hours between breakfast and the evening meal of the same day;

(iii) meal times comparable to those normally existing in the community;

(iv) nourishing between meal and bedtime snacks offered based on individual need as determined by the interdisciplinary team; and

(v) when appropriate, sack lunches meeting the nutritional needs of the residents, or lunch money provided as part of the active treatment program.

(C) Menus for general use and therapeutic modified diets shall be written one week in advance. Menus shall be reviewed and revised to accommodate seasonal foods, provide variety, and include traditional ethnic and geographically preferred foods.

(D) Menus shall be posted at convenient locations in the:

(i) food service areas; and

(ii) living unit.

(E) There shall be, at all times, according to the menu:

(i) supplies of staple foods and dry stores for a seven-day minimum;

(ii) a minimum of two days of perishable foods; and

(iii) records of food purchased for preparation and menus as served shall be filed and maintained for at least 30 days.

(F) Emergency foods and supplies must be maintained in accordance with the facility's disaster plan with at least enough for two days that is:

(i) dated; and

(ii) rotated to insure usage within safe shelf life.

(G) If the facility accepts or retains individuals for whom a therapeutic or modified diet is ordered, these diets shall be:

(i) prescribed by the resident's physician as part of the IPP with a record of the prescription on file;

(ii) planned, prepared, and served by persons who have received adequate instruction in the service of diets; and

(iii) periodically reviewed and adjusted as needed.

(H) A current diet manual recommended by the licensing agency shall be readily available for food service and health service personnel.

(I) Food shall be served:

(i) in appropriate quantity;

(ii) at an appropriate temperature;

(iii) in a form consistent with the developmental level of the resident; and

(iv) with appropriate utensils.

(J) Tube-feedings and opened cans of commercial, reconstituted dry commercial, or formulas prepared in the facility must be dated, labeled, refrigerated if indicated, and used within 24 hours.

(5) Food preparation/meal service/resident feeding.

(A) Food preparation.

(i) Persons responsible for the preparation and serving of therapeutic diets shall be trained in dietary restrictions and food patterns to make comparative value substitutions when necessary.

(ii) Food preferences of residents shall be considered in meal preparation and shall be served when such preferences are not in conflict with physician's orders.

(iii) Food served to residents and not consumed shall be discarded.

(B) Food handling techniques. Proper food handling techniques shall be practiced throughout food storage, preparation, and service according to Texas Department of Health (§§229.161-229.171 (301.73.11.001-.011) of this title (relating to Food Service Sanitation)).

(C) Meal service.

(i) All residents shall eat or be fed in dining rooms except where contraindicated by the attending physician and the decision of the interdisciplinary team responsible for the IPP.

(ii) Dining areas shall be equipped with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each resident.

(iii) Dining rooms shall be adequately supervised to direct the self-help feeding programs and to assure that each resident receives an adequate amount of food.

(iv) Direct care staff shall:

(I) provide dining room assistance; and

(II) be trained in proper feeding techniques to aid residents needing assistance with eating.

(v) individuals needing special devices or equipment to assist with eating or drinking shall have such items provided.

(I) Special devices or equipment shall be determined as part of the interdisciplinary team evaluation.

(II) Residents needing special devices or equipment shall be trained in their use by the direct care staff under the direction of qualified professional personnel.

(vi) Procedures shall be established and followed for handling all equipment and foods for isolation tray services.

(vii) The facility shall insure that:

(I) residents eat in a manner consistent with their developmental needs; and

(II) residents eat in an upright position, unless medically contraindicated.

(6) Sanitary conditions. Sanitary conditions shall be maintained in the storage, preparation, and distribution of food according to Texas Department of Health sections §§229.161-229.171 (301.73.11.001-.011) of this title (relating to Food Service Sanitation).

(7) Kitchens.

(A) Kitchens shall be evaluated according to the:

(i) type of meals served;

(ii) overall building design;

(iii) food service equipment and arrangement; and

(iv) work flow involved in the preparation and delivery of food.

(B) The dishroom area shall have ready access to hand-washing lavatory or hand-sanitizing device.

(i) Hand-washing lavatories shall be provided with:

- (I) hot and cold running water;
- (II) soap; and
- (III) individual towels, preferably paper towels, or a hand-drying device.

(ii) Common use towels shall not be used.

(C) A mechanical dishwasher shall be provided.

(D) Plans for construction of new facilities shall contain a detailed kitchen layout (according to the architectural manual for facilities serving the mentally retarded §§145.231-145.244 (301.54.15.001-.014) of this title (relating to Architectural Manual for Facilities Serving the Mentally Retarded)), prepared by, or under the direction of, a registered dietitian having knowledge in design of food service operations.

(8) Serving kitchens.

(A) Serving kitchens shall:

- (i) be designated as food service areas;
- (ii) have equipment for maintaining required food temperatures while serving; and
- (iii) have hand-washing facilities (reference paragraph 7(B) of this subsection).

(B) Finishes of all surfaces, except ceiling, shall be the same as those required for dietary kitchens or comparable areas (reference §§145.231-145.244 (301.54.15.001-.014) of this title (relating to Architectural Manual for Facilities Serving the Mentally Retarded).)

(9) Food storage areas.

(A) Food storage areas shall provide for storage of a seven-day minimum supply of nonperishable foods at all times.

(B) Room temperature for food storage shall not exceed 85°F at the five foot level at any time.

(C) Foods shall not be stored on the floor. Dunnage carts or pallets may be used to elevate foods not stored on shelving.

(D) Sealed containers shall be provided for storing dry foods after the package seal has been broken.

(10) Dining rooms.

(A) In existing buildings, separate living or activity areas may also be designated as dining areas provided hygienic practices and sanitary procedures are followed. Activity tables and tray-equipped mobile chairs may be used for meal service.

(B) Dining space may be used for other resident or staff activities when not in use for resident dining or being cleaned, if such activities do not interfere with resident meal service.

(e) Medical services.

(1) There shall be formal arrangements to provide medical services that include care for medical emergencies on a 24-hour-a-day basis. The facility shall:

(A) designate a physician responsible for the general health conditions and practices of the facility;

(B) have effective arrangements for prompt medical and remedial services that the facility does not regularly provide; and

(C) define the scope of medical services to include but not be limited to all prescribed physician services.

(2) Orders prescribing bedrest or prohibiting residents' being out-of-doors shall be reviewed by a physician at least every three days.

(3) When medical needs prevent residents from being dressed daily in his or her own clothes there shall be a physician's order.

(4) The physician shall write progress notes as appropriate to the medical needs of the resident.

(f) Health services.

(1) Health services shall be provided in accordance with resident needs under the supervision and direction of a licensed nurse, full time, seven days a week, on the day shift. If the health services supervisor is a licensed vocational nurse, consultation must be provided by a registered nurse not less than four hours each week, in addition to the required registered nurse participation.

(2) There shall be sufficient health services staff on duty and awake 24 hours a day to carry out the various nursing functions and to take prompt appropriate action in case of injury, illness, fire, or other emergency.

(3) Health service personnel at all levels of experience and competence shall:

(A) be assigned responsibilities in accordance with their qualifications;

(B) be provided appropriate professional nursing supervision;

(C) be trained in detecting signs of illness or dysfunction that warrant medical or nursing intervention, first aid for accident or illness, and basic skills required to meet the health needs and problems of the residents; and

(D) document in each resident's record as defined in facility policies and procedures. Any condition affecting the health and safety of a resident requires documentation in the record on each shift until the condition is resolved.

(4) There shall be registered nurse participation as appropriate, but not limited to:

(A) preadmission evaluation, study, and plan;

(B) placement of the resident at the time of admission;

(C) periodic re-evaluation of quality of services and programming;

(D) development of discharge plans;

(E) referral to appropriate community resources;

and

(F) planning and implementation of staff development as appropriate.

(5) Health services must provide for the control of communicable diseases and infections by developing procedures for protective and preventive measures.

(6) Goals or objectives shall be developed as appropriate for the individual health needs of each resident and be incorporated into the IPP.

(g) Pharmaceutical services.

(1) A pharmacist shall be responsible for developing, coordinating, and reviewing the facility's pharmaceutical services.

(A) The pharmacist may be an employee of the facility or a contracted pharmacist outside the facility.

(B) The number of hours devoted shall be sufficient to carry out the pharmacist's nondispensing responsibilities to the facility and shall be delineated in writing.

(C) At least monthly, regularly scheduled visits shall be made to carry out the pharmaceutical services' responsibilities.

(2) There shall be a pharmaceutical service committee that includes, at least, the facility's:

- (A) physician;
- (B) pharmacist;
- (C) registered nurse; and
- (D) chief executive officer.

(3) The facility shall follow a current manual relating to all pharmaceutical services that:

- (A) is developed and reviewed, at least annually, by the pharmaceutical service committee;
- (B) details and outlines policies and procedures that govern, but are not limited to, the:
 - (i) obtaining of drugs;
 - (ii) storage of drugs;
 - (iii) safe administration of drugs;
 - (iv) disposal of drugs no longer in use;
 - (v) accountability and record keeping for drugs;
 - (vi) self-administration of drugs;
 - (vii) use of investigational drugs and sample drugs; and

(viii) reporting of adverse drug reactions and drug recalls to federal/state agencies.

(C) Defines staff functions and responsibilities; and

(D) Documents for each resident, an individual record profile of all legend and nonlegend medications dispensed including quantities and dates of dispensing.

(4) The facility pharmacist shall:

(A) participate, as necessary, in the continuing interdisciplinary team evaluation for individual residents receiving drug therapy by:

- (i) direct participation in the interdisciplinary team; or
- (ii) indirect participation through an appropriate written document to the interdisciplinary team.

(B) Establish quality specifications for all drug purchases and insure that they are met;

(C) Have arrangements for obtaining residents' needed/emergency medications on a 24-hour basis; and

(D) Furnish, for each nondispensing visit, a written report to the facility's chief executive officer and other staff, ascertaining the status of pharmaceutical services, any problems found but not limited to the obtaining, storing, administering, disposal, and record keeping of drugs and medications; as set forth by the pharmaceutical service committee.

(5) The drug regimen of each resident shall be reviewed at least monthly by the facility's pharmacist.

(A) Separate and individual written records for each resident shall be maintained to indicate irregularities, date drug regimen review was completed, and signature of pharmacist completing the drug regimen review.

(B) The residents' written drug regimen review reports detailing irregularities shall be reviewed/monitored by the health service supervisor.

(C) The monthly drug regimen review shall not limit or restrict physicians from prescribing any drug regimen in the treatment of the residents.

(6) The facility shall have a written drug reference system approved by the pharmaceutical service committee.

(A) A copy of the drug reference shall be readily available to all staff who administer medications to the resident.

(i) The drug reference shall cross-index conversely proprietary drug names with their generic drug names.

(ii) All information contained in the drug reference system shall be readily retrievable.

(7) Drugs and medications.

(A) Identification shall be maintained up to administration for all drugs and medications.

(B) The label of each resident's individual drug container shall be completed in accordance with all federal and state statutes, and there shall be, affixed to the immediate container in which said drug is delivered, a label which clearly indicates:

- (i) the resident's full name;
- (ii) prescribing physician's name;
- (iii) prescription number;
- (iv) name and strength of the drug;
- (v) amount dispensed;
- (vi) date of issue;
- (vii) directions for use;
- (viii) expiration date of all time-dated drugs; and
- (ix) the name, address, and telephone number of the dispensing pharmacy.

(C) Small multiple dose drug containers shall be placed into another container upon which the pharmacy's regular label, properly completed, is affixed.

(D) Multiple dose containers of drugs which are too small for a regular prescription label to be affixed shall have a strip label attached which contains the name of the resident and the prescription number.

(E) There shall be a medication storage room that:

- (i) permits all drugs and medication to be stored under lock and key;
- (ii) has separately locked, permanently affixed, compartments within the medicine storage room for storage of Schedule II drugs of the Controlled Substances Act, and for other controlled or dangerous drugs as deemed necessary by the facility;
- (iii) is large enough to store all the facility's drugs and medication;
- (iv) has individual storage compartments sufficient in dimensions to store each resident's medications;
- (v) has a sink equipped with hot and cold water;
- (vi) has a refrigerator large enough for medication storage, supplemental feedings, and other substances specifically ordered by the resident's physician that requires refrigeration;

(vii) is large enough to provide for the setting up of medications except when the facility uses a medication storage and distribution cart system;

(viii) provides for the storage of medication distribution carts, if used in the facility;

(ix) allows all drugs and medications to be stored under proper conditions including but not limited to sanitation, temperature, light, moisture, and ventilation;

(x) allows medications "for external use only" to be kept in compartments or cabinets and kept separate from internal medications;

(xi) allows poisons to be stored in a locked compartment or cabinet and kept separate from all internal and external medications;

(xii) has readily available items necessary for the proper administration of all medications; and

(xiii) does not contain or maintain dangerous

and/or controlled drugs not dispensed, except as permitted in the emergency drug kit.

(F) All medications shall be ordered in writing by the resident's physician.

(i) Verbal orders may be taken from a physician only by a licensed nurse, pharmacist, or another physician, immediately reduced to writing and signed by the individual taking the order.

(ii) Verbal orders shall be transmitted to the physician within 24 hours, be countersigned, and in the resident's record within seven days.

(iii) All residents' medication orders shall state the specific length of time to be administered or the number of doses to be administered, or the facility's licensed nurse shall obtain such information from the physician within 72 hours from the date of the order.

(iv) All medication refills shall be called into the issuing pharmacy at least 72 hours prior to the administration of the last available dose.

(G) All drugs and medication shall be kept and stored in their originally received containers. Transferring between containers is a dispensing function and shall be done in compliance with Texas Drug Regulations.

(H) The licensed nurse shall call the issuing pharmacist and/or facility pharmacist and report any errors suspected or found in the medicine dispensed by the pharmacy.

(I) Medication administration errors and drug reactions must be reported immediately to the treating and/or prescribing physician.

(i) A written report of the incident shall be made.

(ii) The facility pharmacist shall be notified of the incident.

(J) Medications which have been discontinued by order of the physician, medications of deceased residents, and/or medications which have passed an expiration date shall be kept under separate lock and key, and kept separate from those medications currently in use.

(K) Medications shall be disposed of in accordance with regulations set forth by the Texas Department of Health.

(L) Medications are released to residents or legal guardians only on written authorization of the attending physician.

(8) Administration of medication.

(A) Medications are administered only by physicians, licensed nursing personnel, or by nonlicensed personnel who have completed the Texas approved training program in medication administration, Texas Department of Health (§145.121 (301.54.08.001) of this title (relating to Training Program)). 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.

(i) The person who prepares the medication dose shall administer the dose and properly record the medication administered in the appropriate resident's record, including dosage, strength, and method of administration.

(ii) Medications prescribed and labeled for one resident are not administered to any other resident.

(B) Self-administration of medications by residents is not permitted except for each medication specifically ordered by the resident's physician, or in a training program under the supervision of a licensed nurse.

(9) Drugs covered by the Controlled Substances Act of 1970, and/or Texas Civil Statutes, Article 4476-15, require:

(A) a separate inventory record for each drug covered by Schedules II, III, and IV of the Controlled Substances Act. The inventory record for each drug must contain the following information:

- (i) prescription number;
- (ii) name and strength of drug;
- (iii) date received by facility;
- (iv) date and time administered;
- (v) name of resident;
- (vi) dose ordered;
- (vii) physician's name;
- (viii) signature of person administering dose;

and

(ix) original amount dispensed with balance verifiable by drug inventory.

(B) Schedule II drug balances shall be verified by inventory each shift change.

(C) Schedule III and IV drug balances shall be verified by inventory at least once a week.

(D) Schedule V drugs shall be excluded from the inventory record keeping requirements.

(10) Emergency drug kit.

(A) The staff physician shall keep his stock of inventoried emergency drugs in the locked medication storage room in a sealed box or container with his or her name on it.

(B) An emergency drug kit shall be readily available to each area in the facility where medications are administered which:

(i) contain drugs appropriate to the needs of the resident; and

(ii) has an inventory list (name and strength of drug and quantity) on the outside of the kit signed by the staff physician.

(C) The pharmaceutical service committee shall develop policies and procedures that detail the control and use of the emergency drug kit.

(h) Physical and occupational therapy services.

(1) Physical and occupational therapy services shall be provided, as appropriate, based on individual resident needs:

(A) directly, through personal contact between therapists and residents;

(B) indirectly, through contact between therapists and other persons involved with the residents; and

(C) that are designed to:

(i) preserve and improve abilities for independent function; and

(ii) prevent, insofar as possible, irreducible or progressive disabilities.

(2) Physical therapy services must be ordered by the attending physician.

(3) Physical and occupational therapy support personnel must work under the supervision of the qualified therapist.

(i) Psychological services.

(1) Psychological services shall be provided to facilitate the optimal development of each resident:

(A) directly, through personal contact between psychologists and residents; and

(B) indirectly, through contact between psychologist and other persons involved with the residents.

(2) Psychological services to residents shall include

but are not limited to evaluation, consultation, therapy, staff training, and program development.

(j) Recreational services.

(1) Recreational staff shall have:

- (A) demonstrated proficiency; and
- (B) experience in conducting activities in one or more recreational program areas.

(2) Recreational services shall:

(A) coordinate with other services and programs for each resident in accordance with their IPP, including community services when appropriate;

(B) provide recreation and activity programs that are:

(i) designed and constructed appropriate for the age of the resident regardless of their disability;

(ii) appropriate for the developmental level of the resident; and

(iii) accessible to the resident.

(C) Document recreational interest in each resident's record which shall include the extent and level of the resident's participation.

(k) Social services.

(1) There shall be policies and procedures which address the provision of social services on an initial and ongoing basis to each resident, including but not limited to:

(A) initial and at least annual social evaluations to determine the need for placement and consideration of alternatives;

(B) social services at discharge or upon request for release.

(2) The facility shall have a qualified social worker and support staff sufficient to assure maximizing the social functioning of each resident.

(l) speech/language/hearing services.

(1) These services shall be provided:

(A) directly, between speech-language pathologists, audiologists, and resident; and

(B) indirectly, working with other personnel in implementing communication improvement programs in environmental settings.

(2) Services include:

(A) initial screening of residents regarding speech and hearing functions;

(B) comprehensive speech/language/hearing evaluations as indicated by screening results; and

(C) participation in staff development for direct care and other staff.

(3) Audiological services shall be based on audiological assessment of established criteria and procedures for audiological assessment as required of audiologists certified by the American Speech-Language-Hearing Association (ASHA).

(4) Trained personnel may perform the screening and evaluation functions under the direction of a qualified speech-language pathologist or audiologist.

(m) Resident record services.

(1) Policies and procedures. The facility shall have written policies and procedures which address all operational aspects of the record service.

(2) Requirements. An organized record service shall:

(A) provide for an individual resident record;

(B) be in conformity with facility policies and procedures regarding planning, continuous evaluation, and follow-up of the resident's active treatment program

throughout his or her residence, post discharge, and readmissions;

(C) be accessible to authorized personnel;

(D) be legally protective of the rights of the residents, facility, and staff;

(E) have a permanent master alphabetical index of all residents admitted;

(F) have a comprehensive symbols and abbreviations legend;

(G) maintain the confidentiality of record information;

(H) retain records a minimum of three years following discharge or, if the resident is a minor, three years after they reach the age of majority; and

(I) assure that all record entries are legible, dated, and signed by the recorder.

(3) Supervisor. There shall be one qualified employee designated supervisor of resident record service with additional support staff to perform record keeping duties.

(4) Content.

(A) Upon admission the facility shall enter in each resident's active treatment record basic personal statistical data necessary to complete the certificates as required by Texas Civil Statutes, Article 4477, Rule 50a, legal status, and health information necessary for active treatment planning.

(B) The following information shall be entered in the resident's active treatment record:

(i) an update of the pre-admission evaluation;

(ii) a report of the interdisciplinary team's 30-day review;

(iii) an individualized program plan;

(iv) reports of regular, at least annual, review and evaluation of the program, developmental progress, and status of each resident;

(v) observation/progress notes of the resident's response to his or her program recorded to enable evaluation of the program's efficacy;

(vi) reports of incidents, periods of restraints, seizures, and immunizations;

(vii) records of family visits, contacts, resident absences, and correspondence pertaining to the resident; and

(viii) appropriate authorizations and consents.

(C) Discharge summary. (Reference §145.212(h)(4)(A) (301.54.14.002(h)(4)(A) of this title (relating to Administrative Requirements)).

(n) Volunteer services. Facilities which have a program of volunteer services must have policies and procedures for their volunteer program which:

(1) delineate the activities and responsibilities of volunteers;

(2) when necessary, designate a member of the staff as volunteer coordinator; and

(3) delineate training and orientation requirements dependent on level or degree of volunteer participation.

§145.216 (301.54.14.006). *Physical Environment.*

(a) Companion licensing standards. Sections 145.231-145.244 (301.54.15.001-.014) of this title (relating to Architectural Manual for Facilities Serving the Mentally Retarded) is a companion part of these licensing standards and should be referenced for more detailed architectural and safety requirements than are contained in §145.236 (301.54.15.006) of this title (relating to Exit Provisions) and

§145.237 (301.54.15.007) of this title (relating to Architectural Space Planning (Type A Facilities)).

(b) Physical plant.

(1) For new or existing buildings, remodelings, additions, or conversions, reference the Texas Department of Health, §§145.231-145.244 (301.54.15.001-.014) of this title (relating to Architectural Manual for Facilities Serving the Mentally Retarded), for all requirements. See §145.217 (301.54.14.007) of this title (relating to Special Provisions for Facilities with 15 Beds or Less (Type B)) for exceptions and special requirements for Type B facilities of 15 beds or less.

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

(A) Prior to beginning any work, plans shall be submitted to the licensing agency for review as called for in the manual.

(B) Before licensure the facility shall be approved by the licensing agency, local fire marshal, health authority, and building inspection department, if applicable, having jurisdiction for compliance with local codes or ordinances.

(C) The facility shall meet the requirements of the Life Safety Code, 1976 Edition, (NFPA 101) and other codes or standards as referenced in the manual.

(D) Reference the architectural manual for requirements for the following spaces:

- (i) outdoors and recreational;
- (ii) total "ancillary" resident use space within the building;
- (iii) "social-diversional" spaces such as living rooms, dayrooms, lounges, etc.;
- (iv) bedrooms;
- (v) bathing rooms and toilets;
- (vi) dining areas;
- (vii) physical therapy and other therapies;
- (viii) training spaces, such as classrooms; and
- (ix) other spaces, both resident use and nonresident use.

(E) Buildings shall be of recognized permanent type construction as distinguished from movable buildings or construction. Buildings shall be structurally sound with regard to actual or expected dead, live, and wind loads.

(F) The facility shall be located so as to promote, at all times, the health, comfort, safety, and well-being of the residents. Any site conditions that can be considered a fire, health, or physical hazard shall have corrections made as determined by the licensing agency.

(G) Cooling and heating shall be provided, as necessary, for resident comfort. Heating systems in resident use areas shall be capable of maintaining a minimum temperature of 68°F, and cooling of 80°F maximum.

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

(I) Illumination, either natural or artificial, shall be provided to supply the needs of the residents without eye strain or glare.

(J) Interior finishes (walls, ceilings, floor coverings) shall be documented to meet flame spread requirements as called for in the architectural manual.

(K) Curtains, draperies (and their linings) shall be flame retardant.

(L) Wastebaskets shall be noncombustible, such as metal.

(M) Portable heaters and open-flame heating devices are prohibited. All fuel-burning heating devices shall be vented. Working fireplaces are acceptable if of safe design and construction and if screened or otherwise suitably enclosed.

(N) The facility shall be served by a paid or volunteer fire fighting unit as approved by the licensing agency. The fire fighting unit shall be capable of arriving at the facility not more than five minutes after receiving the call. Water supply for fire fighting purposes shall be as required or approved by the fire fighting unit and the licensing agency. The facility shall have emergency fire lanes for access of fire apparatus as required or approved by local authorities.

(O) All fires shall be reported to the licensing agency within 72 hours. However, any fire causing injury or death shall be reported immediately. A telephone report shall be followed by a written report on a form which is available from the licensing agency.

(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. 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) Regulations pertaining to the control and supervision of smoking shall be established and posted throughout the facility. Smoking in bed shall be prohibited. Ashtrays and butt receptacles of noncombustible material and safe design shall be provided.

(R) An initial and annual pressure test of the facility's gas lines shall be provided. Any unsatisfactory conditions shall be corrected promptly.

(S) There shall be at least one telephone in the facility readily available to either staff or residents to use in case of an emergency. Emergency telephone numbers shall be conspicuously posted at the telephone.

(T) An adequate supply of hot water shall be provided. The hot water system connected to all resident use fixtures shall deliver warm water, no hotter than 110°F at the fixture.

(U) Storage requirements are as follows:

(i) Storage items shall be neatly arranged and placed to minimize fire hazard. Gasoline, volatile materials, paint, and similar products shall not be stored in the building housing residents except as may be approved by the local fire marshal. Accumulations of extraneous material and refuse shall not be permitted.

(ii) Bulk storage of hazardous items such as janitor supplies and equipment shall be provided in closets or spaces separate from resident use areas. Closets or spaces shall be maintained in a safe and sanitary condition and ventilated in a manner commensurate with the use of the closet or space.

(iii) 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.

(iv) The building shall be kept in good repair; electrical, heating, and cooling systems shall be maintained in a safe manner. Use of electrical appliances, devices, and lamps shall be such as not to overload circuits or cause excessive lengths of extension cords.

(v) There shall be space for equipment for daily out-of-bed activity for all residents who are not yet mobile except those who have a short term illness or those few residents for whom out-of-bed activity is a threat to life.

(vi) There shall be suitable storage space accessible to the resident for personal possessions such as toys, prosthetic equipment, and resident clothes.

(V) Reference the architectural manual for requirements for:

(i) fire alarm, smoke detection, and sprinkler systems;

(ii) emergency power, emergency egress lighting, and exit signs;

(iii) portable fire extinguishers;

(iv) building construction types; and

(v) elevators, chutes, and stairs.

(W) The facility must have building accessibility and useability by physically handicapped people as follows:

(i) be accessible to, and usable by, all residents, personnel, and the public; and

(ii) meet the requirements of "American National Standards Institute, Inc." (ANSI) Standards A117.1 (1980) "Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People."

(X) The licensing agency may waive, for as long as it considers appropriate, specific provisions of ANSI Standards A117.1 (1980) if:

(i) the provision would result in unreasonable hardship on the facility if strictly enforced; and

(ii) the waiver does not adversely affect the health and safety of the residents.

(Y) The licensing agency may waive specific provisions of the Life Safety Code, dealing with fire protection, 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 cost (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) Emergency plan and procedures.

(A) The facility must have a written staff organization plan and detailed written procedures to meet all potential emergencies and disasters such as fire, severe weather, and missing residents.

(B) The facility must:

(i) clearly communicate and periodically review the plan and procedures with the staff;

(ii) post the plan and procedures at suitable locations throughout the facility;

(iii) update the plan and procedures as needed to reflect current conditions, but not less than yearly; and

(iv) report disasters such as explosions, major wind damage, etc., as well as major hazardous conditions such as basic failure of the fire alarm system or sprinkler system within 72 hours to the licensing agency. (Reference subsection (a)(2)(O) of this section for reporting of fires).

(2) Evacuation drills.

(A) The facility must hold fire evacuation drills at

least every three months for each shift of personnel (12 per year) and under varied conditions to:

(i) insure that all personnel on all shifts are trained to perform assigned tasks;

(ii) insure that all personnel on all shifts are familiar with the use of the facility's fire fighting and fire alarm equipment; and

(iii) evaluate the effectiveness of emergency and disaster plans and procedures.

(B) The facility must:

(i) actually evacuate residents to safe areas during at least one evacuation drill each year on each shift;

(ii) make special provisions for the evacuation of the physically handicapped, such as fire chutes and mattress loops with poles;

(iii) write and file a report and evaluation of each evacuation; and

(iv) investigate all accidents and take corrective action to prevent similar accidents in the future.

(C) Drills for emergencies, such as severe weather, shall be held as appropriate and as called for in the facility's policies.

(d) Sanitary environment.

(1) Wastewater and sewage shall be discharged into a state approved municipal sewerage system. Any exception shall be as approved by the Texas Department of Health.

(2) Water supply shall be as approved by the Texas Department of Health. Quantity and pressure shall be as necessary to serve the needs of the facility.

(3) Waste, trash, and garbage shall be disposed from the premises at regular intervals in accordance with state and local practices. Excessive accumulations are not permitted. Outside containers shall have tight fitting lids left in closed position. Containers shall be cleaned regularly.

(4) The building and ground shall be kept neat and free of refuse, litter, extraneous materials, and unsightly or injurious accumulations.

(5) The facility will make every effort possible to guard against insects, rodents, rainwater, and other conditions adversely affecting a sanitary environment or the well-being of the residents.

(6) Operable windows shall be insect screened.

(7) The facility shall be kept free of offensive odors, accumulations of dirt, rubbish, dust, and hazards. Floors shall be maintained in good condition and cleaned regularly. Walls and ceilings shall be structurally maintained, repaired, and repainted or cleaned as needed. Storage areas, attics, and cellars shall be free of refuse and extraneous materials.

(e) Maintenance.

(1) Policies and procedures shall provide for a preventive maintenance program with sufficient trained and experienced personnel.

(2) Walls, doors, and ceilings shall be maintained free from holes, cracks, falling plaster or paint, and shall be cleaned and painted regularly with lead-free paint.

(f) Housekeeping.

(1) There shall be policies and procedures that will provide sufficient housekeeping personnel to maintain the exterior of the facility in a safe, clean, orderly, and attractive manner.

(2) Housekeeping personnel shall utilize accepted practices and procedures to keep the facility free from offensive odors, hazardous, and accumulations of dirt, rubbish, and dust.

(3) Floors shall be maintained in good condition and cleaned regularly. Polishes on floors shall provide a nonslip finish.

(g) Laundry.

(1) There shall be:

(A) policies and procedures for laundry services to assure that proper sanitary procedures are in effect;

(B) linen available at all times, in a quantity at least three times the usual occupancy, for proper maintenance and hygiene of the residents. Linens shall be handled, stored, and processed so as to control the spread of infection.

(2) Clean linen shall be stored in a clean closet, easily accessible to the personnel.

(3) Soiled linen and clothing shall be transported or stored in approved containers or bags.

(A) soiled laundry storage shall be in separate, well ventilated areas and shall not be permitted to accumulate in other areas of the facility.

(B) Soiled bags or containers shall not be used to convey clean linens.

(C) Soiled linens shall not be sorted, laundered, rinsed, or stored in bathrooms, resident rooms, corridors, kitchens, or food storage areas.

§145.217 (301.54.14.007). Special Provisions for Facilities with 15 Beds or Less (Type B).

(a) All standards in this document apply to facilities with 15 beds or less. Exceptions in the areas of programs, services, life safety code, and environment are contained in the following section for Type B occupancy.

(1) To qualify for these exceptions each resident must, upon admission and annually, be certified by:

(A) a physician as not in need of professional nursing services on an ongoing basis;

(B) a physician or psychologist who meets the definition of QMRP (see definition for physician under §145.218 (301.54.14.008) of this title (relating to Definitions)):

(i) fully ambulatory;

(ii) capable of following directions;

(iii) capable of taking appropriate action for self-preservation under emergency conditions; and

(iv) mentally capable of self-administration of medication or has the mental capacity to learn through enrollment in a self-administration of medication habilitation training program.

(2) Waivers may be granted by the licensing agency on an individual basis if not fully ambulatory. To qualify, individual residents who are certified as "mobile nonambulatory" and capable of independent bed-to-chair transfer:

(A) must have their bedroom on the ground floor with a door directly to the exterior;

(B) all ancillary areas such as living, dining, bathrooms, etc., must be accessible to, and provide for, his or her specific handicap; and

(C) waivers for individuals not fully ambulatory shall not exceed 50% of the total licensed occupancy capacity of the building unless otherwise approved by the licensing agency.

(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 or less).

(b) Architectural and fire safety.

(1) For new or existing buildings, reference the architectural manual for facilities serving the mentally

retarded, Texas Department of Health, §§145.231-145.244 (301.54.15.001-.014) of this title (relating to Architectural Manual for Facilities Serving the Mentally Retarded) for all requirements.

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

(A) Type B facilities shall be a single building (under one roof) such as a detached "single-family" type dwelling except as otherwise approved by the licensing agency. A "distinct part" of a building, such as a portion of a nursing home or an apartment building, is not permitted.

(B) Plans shall be submitted to the licensing agency as called for in the architectural manual. For existing buildings an acceptable floor plan, drawn to scale, giving pertinent information shall be submitted for review prior to an on-site inspection by the licensing agency.

(C) Each bedroom shall have an outside window readily 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).

(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 stairs 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.

(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.

(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 be exempted).

(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 are not permitted). (Facilities which were ICF-MR certified prior to the date of these standards may be exempted.)

(H) The facility shall be serviced by a paid or volunteer fire fighting unit as approved by the licensing agency. Water supply for fire fighting purposes shall be as required or approved by the fire fighting unit and the licensing agency.

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

(J) Hot water temperature for resident use may exceed 110°

(c) Programs and services.

(1) health services.

(A) Subsection (f)(1), (2), (3), and (4)(B), and (E)

of §145.215 (301.54.14.005) of this title (relating to Professional and Special Services) as not required.

(B) There shall be:

(i) a responsible staff member on duty 24 hours a day who is immediately accessible to the residents to take reports of injuries, symptoms of illness, and emergencies;

(ii) a contract for the services of a registered nurse, public health nurse, or agency under the direction of a registered nurse whose services shall include, but are not limited to:

(I) monitoring minor illnesses, injuries, or emergencies;

(II) participating in the development of the individual's program plan, as appropriate;

(III) providing consultation on the health aspects of the resident as appropriate; and

(IV) planning, monitoring, and evaluating each resident on a self-administration medication program as appropriate, but no less than monthly.

(2) Food and nutrition services.

(A) Subsection (d)(1)(A), (B), and (C); (2)(G); (3); (4)(E)(iii); (I)(iii), and (J); (5)(A)(i) and (ii), (B); (6); (7)(A), (B), and (C); (8); (9) of §145.215 (301.54.14.005) of this title (relating to Professional and Special Services) are not required.

(B) Changes:

(i) §145.215(2)(F) (301.54.14.14.005(d)(2)(F) of this title (relating to Professional and Special Services)—orienting and training personnel in food services.

(ii) §145.215(d)(4)(C) (301.54.14.005(d)(4)(C) of this title (relating to Professional and Special Services)—menus shall be written two days in advance.

(iii) §145.215(d)(4)(D) (301.54.14.005(d)(4)(D) of this title (relating to Professional and Special Services)—menus shall be posted in the kitchen and shall be available to residents.

(iv) §145.215(d)(4)(E) (301.54.14.005(d)(4)(E) of this title (relating to Professional and Special Services)—there shall be, according to the menus, a two day supply of food at all times.

(v) §145.215(d)(4)(H) (301.54.14.005(d)(4)(H) of this title (relating to Professional and Special Services)—a current diet manual, recommended by the licensing agency, shall be readily available for personnel.

(C) New requirements.

(i) Designation of staff member. The facility must designate a staff member who is trained or experienced in nutrition, food production, and/or home management to direct food and nutrition services.

(ii) Resident nutrition and planning.

(I) Residents shall participate in menu planning, shopping, money management, dining room and kitchen cleaning, and food storage, preparation, and service as appropriate to their IPPs.

(II) The residents shall:

(-a-) be trained in appropriate procedures for food storage, preparation, and kitchen cleaning after food preparation; and

(-b-) have access to the kitchen, participate in the preparation of meals and snacks as planned in the menus and IPPs, and have use of the kitchen for storage and preparation of personal snacks when not contraindicated by the IPP.

(III) Types of meal service shall:

(-a-) be consistent with the philosophy of the residential facility;

(-b-) provide experiences with different meal service, i.e., restaurants, cafeterias, family style service, picnics, and others.

(IV) Records of money spent for food shall be filed and maintained for at least 30 days.

(iii) Food preparation/meal service/resident feeding.

(I) Food handling techniques. Accepted sanitary food handling techniques shall be practiced throughout food storage, preparation, and service.

(II) Meal service. Residents shall eat in a manner consistent with their developmental needs.

(iv) Maintenance of sanitary conditions.

(I) Perishable foods shall be stored at the proper temperatures to conserve nutritive values.

(II) Effective instruction, procedures, and schedules for cleaning and maintenance of all equipment and work areas shall be established and followed consistently.

(III) Sanitary dishwashing procedures and techniques shall be followed.

(IV) Waste which is not disposed of by mechanical means shall be kept in leakproof, nonabsorbant containers with close fitting covers and is disposed of daily in a sanitary manner.

(v) Kitchens. The facility shall have a kitchen or dietary area to meet the general food service needs of the residents. It shall include provisions for dish and utensil cleaning, refuse storage and removal, and the storage, refrigeration, preparation, and serving of food.

(3) Pharmaceutical services.

(A) Residents mentally capable of self-administration of medications shall:

(i) possess and maintain their own medications;

(ii) have an individual storage space that permits each resident to store their medications under lock and key. The key shall be kept in the resident's and/or appropriate facility staff's possession.

(iii) have accessibility to a refrigerator to store their medications that require refrigeration;

(I) provide the refrigerator shall be used only for medication storage, supplemental feedings, or other substances specifically ordered by the resident's physician that require refrigeration.

(II) The refrigerator shall permit the content to be stored under lock and key.

(iv) Be responsible for obtaining their medications directly from the dispenser, or inform the appropriate facility staff that medications are needed.

(B) Residents enrolled in a self-administration of medications habilitation training program shall:

(i) be designated at one of the following levels of training and supervision;

(I) maximum level;

(II) moderate level; and

(III) minimum level.

(ii) have the training in coordination with, and as a part of, the resident's total active treatment program;

(I) There shall be a written plan for each resident in terms of training level and needs.

(II) The plan shall be evaluated at least

monthly by the registered nurse and written documentation made of the resultant evaluation.

(iii) have a specified time frame for the completion of the training program in terms of the written plan.

(C) All resident's medications shall be stored in a locked medication storage area.

(D) The facility shall have readily available to the residents, items necessary for the proper self-administration of their medication.

(E) The following paragraphs under §145.215(g) (301.54.14.005(g)) of this title (relating to Professional and Special Services) pharmaceutical services, shall apply to Type B facilities.

(i) Section 145.215(g)(7)(A), (B), (C), and (D) (301.54.14.005(g)(7)(A), (B), (C), and (D)) of this title (relating to Professional and Special Services);

(ii) Section 145.215(g)(7)(I) and (K) (301.54.14.005(g)(7)(I) and (K)) of this title (relating to Professional and Special Services).

(F) The facility may not choose to apply the pharmaceutical services exceptions to its Type B facility. The facility shall then apply the regulation governing a Type A facility.

(4) Staffing (reference §145.214(b)(3) (301.54.14.004(b)(3)) of this title (relating to Direct Care Staffing Ratio)).

(5) Laundry. There shall be linen available at all times in a quantity for proper maintenance and hygiene of the residents.

§145.218 (301.54.14.008). Definitions. The following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise.

Active treatment—An aggressive and organized effort to fulfill each individual's fullest functional capacity in accordance with an individual plan of care, professionally developed, and supervised activities, experiences, and therapies.

Adaptive behavior level—The effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of his or her age and cultural group.

Ambulatory—Able to walk without assistance.

Architect—A person registered by the State Board of Architectural Examiners as practicing architecture in Texas.

Assessment—The identification of the resident's present developmental level; strengths, abilities, and needs; the condition that impedes development and cause, if appropriate.

Aversive stimuli—A class of stimulus events that neither:

(A) strengthens the behavior that precedes its reduction, termination, or avoidance (negative reinforcement); nor

(B) weakens nor suppresses the behavior that precedes it (punishment).

Behavior management—Efforts to modify maladaptive or problem behaviors and to replace them with behaviors that are adaptive and appropriate.

Behavior modification—A technique that is based on reliable data covering the functional relationship between an environmental event and a behavioral event and that is designed to alter the frequency of the behavioral event by manipulating the environment that it is related to.

Chief executive officer—The individual appointed by the governing body of a facility to act in its behalf in the overall management of the facility. Job titles may include, but are not limited to, superintendent, director, and administrator.

Controlled substances—See Texas Civil Statutes, Article 4476-15 and the Federal Controlled Substances Act of 1970.

Corporal punishment—The application of a painful stimulus to the body in an attempt to terminate behavior or as a penalty for behavior.

Dangerous drugs—See Texas Dangerous Drug Act, Texas Civil Statutes, Article 4476-14.

Dead time—Unscheduled or unstructured time during which no alternative activities are effectively available to the individual so that there is nothing for the individual to do except wait for the next activity.

Dental exam.

(A) Intra-oral exam is a clinical examination by a dentist of the teeth and gums, including the lips, tongue, and tissues of the roof and floor of the mouth.

(B) Extra-oral exam is a clinical examination by a dentist of external features of the face, head, and neck, including palpitation of the cervical lymph nodes, for symptoms of disease or abnormal condition.

Developmental model—The view that behavior can be modified and all mentally retarded persons are capable of growth, development, and learning.

Dietary technician—An associate of arts graduate in nutrition and food management.

Dietetic service supervisor:

(A) a person who is a qualified dietitian;

(B) is a qualified dietary technician with an associate of arts degree and 15 hours of dietetic continuing education annually;

(C) is a graduate of a dietetic assistant 90-hour training program accredited by the American Dietetic Association and has had 10 hours of dietetic continuing education annually;

(D) is a graduate of a state approved course that provided 90 or more hours of classroom instruction in food service supervision;

(E) has training and experience in food service supervision and management in a military service equivalent in content to the programs in subparagraphs (B), (C), or (D) listed in this section and has had their training credentials evaluated and approved by the chief, nutritional services, of the licensing agency.

Dietitian:

(A) registered dietitian. A professional dietitian who is currently registered by the American Dietetic Association; or

(B) a qualified dietitian is a dietitian who is eligible for registration by the American Dietetic Association under its requirements or 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.

Direct care staff—All persons responsible for giving

direct personal and programming services to residents on a daily basis.

Direct supervision—Means that work is performed under the guidance and direction of a supervisor who is responsible for the work, plans the work and methods, is present in the facility and available to answer questions and deal with problems that are not strictly routine, and regularly reviews the work performed and is accountable for the results.

Discharge summary—A report, written at the time of a resident's discharge from the facility, describing dates of admission and discharge, the status of the resident at the time of admission, progress toward habilitation goals during his or her stay, final results of treatment, plans for provision of post discharge services, and signature of the recorder.

Discipline—Is aimed at teaching the resident self-control, and as such, utilizes acceptable teaching techniques and methods.

Distinct part—A designated part of an existing facility approved as a distinct section by the Texas Department of Health.

Emergency drug kit—The emergency drug kit contains:

(A) drugs approved by the pharmaceutical service committee in accordance with all laws and regulations;

(B) drugs in quantities no greater than required to meet the facility's immediate emergency crisis;

(C) drugs which, when used, shall be reported to, and replaced by, the facility pharmacist consistent with the needs of the facility; and

(D) drugs that shall be maintained in a common container that is:

(i) adequate in size to organize and/or categorize the stored drugs;

(ii) portable or readily movable to the site of the facility's emergency;

(iii) sealable with a sealing device that destructs upon opening the container;

(iv) resealed only by the facility pharmacist.

Evaluation—A process that determines the degree of the deficit, and what interventions and services are needed for independent functioning and includes a diagnosis.

Facility—A building consisting of one or more floors or one or more units, or as a distinct part of:

(A) a licensed hospital; or

(B) a licensed nursing home, and is licensed as a facility serving the mentally retarded citizens of Texas by the Texas Department of Health.

Free time—Unstructured time during which there are alternative activities available for the individual's choice, with appropriate equipment or materials, if needed.

Governing body—The policy making authority, whether an individual or a group, that exercises general direction over the affairs of a facility and establishes policies concerning its operation and the welfare of the individuals it serves.

Habilitation—The process by which the staff assists an individual to acquire and maintain those life skills that enable the individual to cope more effectively with the demands of his or her own person and environment and to raise the level of his or her physical, mental, and social functioning. Habilitation includes but is not limited to programs of formal structured education and treatment.

Human rights committee—A group of persons desig-

nated by the facility responsible for reviewing and approving the facility's behavior modifications program involving the use of time-out devices or the use of aversive stimuli and monitoring the individual's response to the program and revising the plan accordingly.

Individual program plan (IPP)—A written plan of intervention and action that is developed by an interdisciplinary team on the basis of assessment results and modified at frequent intervals with the participation of all concerned. It specifies goals and objectives and identifies a continuum of development, outlining projected progressive steps and the developmental consequences of services.

Interdisciplinary team—A group of persons designated by the facility that is drawn from, or represents, those professions, disciplines, or service areas that are relevant to identifying an individual's needs and designing a program to meet them, and that is responsible for evaluating the individual's needs, developing an individual plan of care to meet those needs, periodically reviewing the individual's response to the plan, and revising the plan accordingly.

Licensing agency—The Texas Department of Health.

Licensed nurse.

(A) **Registered nurse.** A nurse registered/reregistered by the Board of Nurse Examiners for the State of Texas.

(B) **Licensed vocational nurse.**

(i) A nurse who is a graduate of a state approved school of vocational nursing and who is currently licensed as a vocational nurse by the Texas State Board of Vocational Nurse Examiners.

(ii) A nurse who is not a graduate of an approved school of vocational nursing, but who is currently licensed by a waiver as a vocational nurse by the Texas State Board of Vocational Nurse Examiners.

Living unit—A residential structure that includes sleeping areas and may also contain dining and activity areas.

Medication aide—A nonlicensed person who has met all requirements of, and successfully completed, the Texas Department of Health approved training program in medication administration.

Mobile nonambulatory—Unable to walk without assistance, but able to move from place to place with the use of a device such as a walker, crutches, a wheelchair, or a wheeled platform.

Nonambulatory—Unable to walk without assistance.

Nonmobile—Unable to move from place to place.

Normalization—The principal of helping developmentally disabled individuals to obtain a level as close to the normal as possible by making available to them patterns and conditions of every day life that are as close as possible to the norms and patterns of the main stream of society. Specifically, as culturally normative as possible to elicit and maintain behaviors and characteristics, taking into account local and subcultural values and mores.

Occupational therapist—Same as requirements under QMRP occupational therapist without specialized training or one year of experience in treating or working with the mentally retarded.

Occupational therapy assistant—A person who is eligible for certification as a certified occupational therapy assistant (C.O.T.A.) by the American Occupational Therapy Association under its requirements in effect on the publication of these standards or has two years of appropriate experience as

an occupational therapy assistant and has achieved a satisfactory grade or a proficiency examination approved by the secretary of health and human services except that such determination of proficiency shall not apply with respect to persons initially licensed by a state or seeking initial qualifications as an occupational therapy assistant after December 21, 1977.

Pharmacist—A person licensed by the Texas State Board of Pharmacy to practice the profession of pharmacy and to prepare, compound, and dispense practitioner's prescriptions, drugs, medicines, and poisons.

Physical therapist—Requirements are the same as a physical therapist under QMRP without specialized training or one year of experience in treating or working with the mentally retarded.

Physical therapy assistant—A person who is licensed as a physical therapy assistant, if applicable, and has graduated from a two year college level program approved by the American Physical Therapy Association, has two years of appropriate experience as a physical therapy assistant, and has achieved a satisfactory grade on a proficiency examination approved by the secretary of health and human services, except that such determination of proficiency shall not apply with respect to persons initially licensed by a state, or seeking initial qualifications as a physical therapy assistant after December 31, 1977.

Physician—A practitioner licensed by the Texas Board of Medical Examiners engaged in active practice of medicine.

Poison—Any substance that federal or state regulation requires 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.

Psychologist—A psychologist licensed according to Texas Civil Statutes, Article 4512c, and have experience or training in the field of mental retardation.

Qualified mental retardation professional (QMRP)—A person who has specialized training or one year of experience in treating or working with the mentally retarded and meets the educational requirements of 42 Code of Federal Regulations 442.401.

Resident record.

(A) **Active.** The document located in the living unit which contains current, useful information that enables those caring for the resident to perform their job.

(B) **Inactive.** Portions of a current resident's record that are no longer pertinent to the provision of current active treatment which have been thinned from the active record.

(C) **Discharged.** The document of a discharged resident which contains the cumulative active treatment record(s) for that entire length of stay.

(D) **Access (to resident records).** The act of viewing a resident's record.

(E) **Duplication (of resident records).** The act of making an exact copy of any portion or all of a resident record.

(F) **Release (of resident record information).** The act of revealing to authorized parties, via verbal or written communication, information from resident records.

Resident record supervisor—An individual who has supervisory and practical medical records work experience.

Resident record support employee—A clerical or technical employee who has received on-the-job training in record keeping work or has past record keeping experience.

Restraints.

(A) **Chemical restraints.** A psychotropic drug or sedative prescribed and authorized by a physician which interferes with the resident's participation in his active treatment program or is frequently used in lieu of alternative intervention.

(B) **Physical restraints.** Any physical or mechanical device which physically prevents a resident from doing what he might voluntarily do on his own, limits movement or normal function of a portion of the individual's body, and is inconsistent with the principles of normalization. Totally enclosed cribs and barred enclosures shall be considered restraints.

Screening—Screening refers to a brief testing and/or observation procedure. A screening procedure represents only the first step in identifying needs and is designed to answer only one question "Does an individual show characteristics indicating a need for further assessment?"

Seclusion—The placement of a resident alone in a locked room.

Serving kitchens—Where service areas other than the kitchen are used to dispense food.

Social work assistant or aide—An individual employed by the facility to provide social work services as outlined in §145.215(k) (301.54.14.005(k)) of this title (relating to Professional and Special Services), social services. This individual must meet the following qualifications:

(A) have a high school diploma or G.E.D.; and

(B) work under the direct supervision of a qualified social worker who is physically present on the premises during the delivery of social work services.

Social worker (qualified)—A person who is licensed, if applicable, and a graduate of a school of social work accredited or approved by the council on social work education, and has one year of social work experience in a health care setting.

Speech pathologist or audiologist—Same as requirements for QMRP without the specialized training or one year of experience in treating or working with the mentally retarded.

Supportive device—A device used under the supervision of qualified professional persons to provide support for the achievement of functional body position or proper balance.

Time-out—Time out from positive reinforcement: a behavior modification procedure in which, contingent upon the emission of undesirable behavior, the individual is removed from the situation that affords positive reinforcement.

Unusual occurrences—Any events/situations which significantly affect the health status or well-being of residents, including emergencies, serious illnesses, incidents, death, etc.

Volunteer—Anyone who offers service to, or in behalf of, residents without expectation of reimbursement for that service. Volunteers complement and supplement the work of the staff.

Volunteer coordinator—A paid staff person whose responsibility it is to plan, organize, supervise, direct, and evaluate the facility's program of volunteer activity.

Issued in Austin, Texas, on June 3, 1981.

Doc. No. 813684 Lynn McGuirt, R.N.
Deputy Commissioner for Special
Health Services
Texas Department of Health

Proposed Date of Adoption: July 13, 1981

For further information, please call (512) 458-7470.

Subchapter O. Architectural Manual for Facilities Serving the Mentally Retarded

The Texas Department of Health proposes to adopt §§145.231-145.244 (301.54.15.001-.014) contained in the new subchapter entitled Architectural Manual for Facilities Serving the Mentally Retarded. These sections are intended to accompany proposed §§145.211-145.218 (301.54.14.001-.008) in the new subchapter entitled Minimum Licensing Standards for Facilities Serving the Mentally Retarded Citizens of Texas, which, when final, will provide an appropriate licensing category which speaks to the care and services that should be provided for persons with mental retardation who are residents in an institutional or group setting.

The subchapter entitled Architectural Manual for Facilities Serving the Mentally Retarded explains in detail the architectural and safety requirements called for in the subchapter Minimum Licensing Standards for Facilities Serving the Mentally Retarded Citizens of Texas.

The reasons for providing this licensing category and the rules pursuant thereto are described in the preamble to §§145.211-145.218 (301.54.14.001-.008) which are proposed in this same issue of the *Register*.

The estimated cost of administering these proposed sections will be \$2,711 for each of the first five years of the program (source: Bureau of Long-Term Care and Bureau of Supporting Services.) This cost includes the accompanying proposed sections in the subchapter entitled Minimum Licensing Standards for Facilities Serving the Mentally Retarded Citizens of Texas previously mentioned.

Public comment is invited and should be submitted to Cesar M. Elizondo, M.D., chief, Bureau of Long-Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, no later than 30 days following publication of this *Register*.

A public hearing will be conducted on these sections and on the accompanying §§145.211-145.218 (301.54.14.001-.008) on July 8, 1981, at 9 a.m., at the Texas Department of Mental Health and Mental Retardation auditorium, 909 West 45th Street, Austin. All interested persons in attendance at the hearing will have opportunity to present testimony relevant to the subject; however, excessive or repetitious testimony should be avoided. Associations or other groups are requested to select one spokesperson to present the viewpoints of the association or group. Persons testifying are urged to reduce their testimony to writing.

These sections are proposed pursuant to Texas Civil Statutes, Article 4442c.

§145.231 (301.54.15.001). 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, 1976 edition, (Standard 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.

(b) The "Classification of Occupancy" type (Chapter 4 of the Code) 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 "Health Care" occupancies, Chapter 10.

(2) Type B facilities—Chapter 11, Residential 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. (reference §145.217(a)(1) (301.54.14.001(a)(1)) of this title (relating to Introduction).

(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.

(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.

(e) Additions or remodelings, where construction or demolition is involved, may require conformance with the 1976 code (in part or whole) as determined by the licensing agency.

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

(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.

(h) Conditions or construction not specifically covered in this manual shall be subject to requirements in the referenced codes and in §§145.211-145.218 of this title (relating to Minimum Licensing Standards for Facilities Serving the Mentally Retarded Citizens of Texas).

(i) For equivalency concepts (such as variances or waivers) see Life Safety Code, §1-4.2.

(j) For occupancy requirements, see Code, §1.5. 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) Copies of the Life Safety Code (NFPA Standard 101) 1976 edition, may be purchased from:

National Fire Protection Association
 Batterymarch Park
 Quincy, Massachusetts 02269
 ATTN: Publication Sales Division
 (Price approximately \$7 as of April 1981)

§145.232 (301.54.15.002) Planning and Construction Procedures.

(a) Submittal of preliminary plans (Types A and B).

(1) When construction is contemplated for new buildings, additions, conversion of buildings not licensed by the licensing agency, or remodeling of existing licensed facilities, one copy of the preliminary proposed plans shall be submitted to the licensing agency (architectural section—MR Program) for review prior to the preparation of working drawings.

(2) Type A only—Registered architect. The construction contract documents for new buildings, new additions, and major remodeling (normally exceeding \$50,000), shall be prepared by a registered architect licensed by the Texas Board of Architectural Examiners, unless otherwise approved by the licensing agency.

(3) Types A and B—The plans shall be drawn to scale, shall indicate the usages of all spaces, sizes of areas and rooms, and the kind 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 within 20 feet of the facility. Written approval of the local health authority, building department, and of the local fire marshal having jurisdiction shall be submitted.

(4) Types A and B—Specific information regarding the fire fighting unit (personnel, equipment, response time, etc.) and the location and capacity of water supply available for fire fighting shall also be submitted for new locations (new locations are those which are not currently licensed or ICF-MR certified by this agency).

(5) Types A and B—A general description of the surrounding area and vicinity (commercial, residential, rural, shopping, available transportation, etc.) shall be furnished for new locations.

(6) If applicable, a certificate from the Texas Health Facilities Commission will be required before the licensing agency can progress beyond review of preliminary plans.

(b) Submittal of intermediate plans Types A and B—Intermediate stage plans and specifications (50%-75% complete) may be needed for review, particularly on larger or more complex construction projects.

(c) Submittal of final plans.

(1) Types A and B—Before construction is begun, 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.

(2) Types A and B—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 (may not be required for some Type B facilities).

(3) Types A and B—A final plan for a major addition 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.

(4) Types A and B—New construction, minimum plans required.

(A) Plans.

(i) Plot plan:

- (I) streets (with names);
- (II) fire hydrants;
- (III) fire lanes;
- (IV) utilities, public or private;
- (V) unusual site conditions, such as ditches, high water levels, excessive slopes;
- (VI) fences;
- (VII) other buildings on site, and indications of buildings five feet or less beyond site property lines;
- (VIII) for additions to existing ICF-MR certified facilities, sufficient indication of plot details and connection to existing buildings.

(ii) Foundation plan:

- (I) general foundation design;
- (II) details.

(iii) Floor plans:

- (I) room names and usages;
- (II) doors, including swing;
- (III) windows;
- (IV) legend or clarification of wall types;
- (V) dimensions;
- (VI) fixed equipment;
- (VII) plumbing fixtures;
- (VIII) kitchen basic layout;
- (IX) identification of any smoke barrier walls (outside wall to outside wall) or fire walls.

(iv) Schedules:

- (I) door materials, widths, types;
- (II) window materials, sizes, types;
- (III) room finishes;
- (IV) special hardware.

(v) Elevations:

- (I) exterior elevations, including material note indications;
- (II) interior elevations where needed for special conditions.

(vi) Details:

- (I) wall sections—as needed (especially for special conditions);
- (II) cabinet and built-in work, basic design only;
- (III) cross sections through building as needed;
- (IV) miscellaneous details and enlargements as needed.

(vii) Building structure:

- (I) structural framing layout and details (primarily for column, beams, joist, and structural frame building);
- (II) roofing framing layout (where cannot be adequately shown on cross section);

(III) cross sections in quantity and detail to show sufficient structural design;

(IV) structural details as necessary to assure adequate structural design—also calculated design loads.

(viii) Electrical:

(I) electrical layout, including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices;

(II) circuiting;

(III) service, distribution, and panel board;

(IV) exit light system (exit signs and emergency egress lighting);

(V) emergency electrical provisions (generators, panels, etc.), not required for Type B;

(VI) nurse call system (if provided);

(VII) fire alarm and similar systems (control panel, devices, bells, etc.);

(VIII) sizes and details sufficient to assure safe and properly operating systems.

(ix) Plumbing:

(I) plumbing layout;

(II) pipe sizes and details sufficient to assure safe and properly operating systems;

(III) water systems;

(IV) sanitary systems;

(V) gas systems;

(VI) other systems normally considered under the scope of plumbing;

(VII) fixtures;

(VIII) combustion air.

(x) Heating, air conditioning, ventilating:

(I) heating, air conditioning, ventilating layout;

(II) duct layouts;

(III) equipment types, sizes, locations;

(IV) combustion air;

(V) piping layouts;

(VI) exhausts;

(VII) sizes and details sufficient to assure safe and properly operating systems.

(xi) Sprinkler systems (if used):

(I) NFPA 13 design systems;

(II) limited or local sprinkler systems for hazardous areas, etc.;

(III) electrical devices connected to alarm system.

(xii) Other:

(I) other layouts, plans, or details as may be necessary for a clear understanding of the design and scope of the project;

(II) plans covering private water or sewer systems (shall be reviewed by local health or wastewater authority having jurisdiction—if none local, then the Texas Department of Health).

(B) Specifications:

(i) installation techniques;

(ii) quality standards and/or manufacturers;

(iii) references to standards and codes;

(iv) design criteria;

(v) special equipment;

(vi) hardware;

(vii) painting;

(viii) others as needed to amplify drawings and

notes.

(5) Types A and B—Scope and detail of plans and specifications necessary for a project of converting an existing building to an MR facility will have to be determined on an individual basis. In some instances engineering plans or engineer certificates of safety may be required. Conversions involving extensive building changes, such as major bearing structural components or major wall relocations which change space usage and effect the overall plan scheme, shall be covered by plans and specifications comparable to new construction inasmuch as the materials or parts involved apply.

(6) Types A and B—Plans and specifications for extensive remodeling shall include all necessary layouts, designs, and details so that construction will be covered by plans and specifications comparable to new construction inasmuch as the materials or parts involved apply.

(7) Types A and B—Written approval of the local health authority and of the local fire marshal having jurisdiction shall be submitted. If the local governmental unit has a building official charged with enforcement of a local code, that authority's review of the final drawings and specifications is required.

(8) Types A and B—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. Construction should not be started until the final contract documents are reviewed in writing by the licensing agency.

(9) Types A and B—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. Any errors or omissions in the plan review must have the conditions satisfied as further determined after such errors or omissions have become evident. Allow two to four weeks, depending on size of building and complexity of plans, for written review by the licensing agency.

(d) Construction phase.

(1) Types A and B—The licensing agency shall be notified of construction start.

(2) Types A and B—All construction shall be done in accordance with the completed plans and specifications as submitted for review and as modified in accordance with review requirements. Any deviations therefrom must have prior approval of the licensing agency. Revised or "as-built" drawings may be required if the change is significant.

(3) Type A only—An intermediate stage construction inspection by the licensing agency is required for most construction work unless otherwise instructed by the licensing agency. Three weeks notification prior to applying interior wall and ceiling surfaces (except smoke-barrier wall surfaces should be completed) must be given so that the inspector may schedule the intermediate visit.

(4) Types A and B—Upon completion of construction, including grounds and basic equipment and furnishings, a final construction inspection of the facility is required to be performed by the licensing agency (architectural section—MR Program) prior to admitting residents. Three weeks advance notice is needed. The completed construction shall have the approval of the local authorities having jurisdiction, including the fire marshal, health department, and building inspector.

(5) Types A and B—After the completed construction has been inspected by a representative of the MR architectural section of the licensing agency and found acceptable, this information will be conveyed to the licensing officer as part of the information needed to issue a license to the facility. In the case of additions or remodeling of existing facilities, a revision or modification to an existing license may be necessary. Note that the building and grounds must be essentially 100% complete at the time of the initial survey visit for occupancy approval and licensing, including basic furnishings and operational needs.

§145.233 (301.54.15.003). Location and Site.

(a) General.

(1) Types A and B—Site approval is normally given by the health officer and fire marshal having local jurisdiction. Any conditions that might be considered a fire, safety, or health hazard will be grounds for disapproval of the site. Should any problems arise, the licensing agency shall be notified.

(2) Location of new Type A facility. A new Type A building (or additions) shall be located at least 20 feet off the property lines except as otherwise approved by the licensing agency. This is to help prevent situations where an adjacent building may be built on the common property line blocking window views or restricting exits, etc. It is not intended to preclude a favorable plan or design which eliminates such a possibility if less than 20 feet from the property line.

(3) Types A and B—Site grades shall provide for water drainage so that there will be no "ponding" or standing water on the designated site. Grounds in resident-use area shall be relatively level (at least in part, with other parts not exceeding a slope of 1:12 except as otherwise approved by the licensing agency).

(4) Types A and B—To prevent accidents due to lack of visual warning, exit doors from the building shall not open directly onto a street or road for vehicular traffic, but shall be set back at least six feet from the edge of such road (measured from the end of building wall in the case of a recessed door). Exceptions may be made for Type B (for residential "driveways" etc.).

(5) Walks, ramps, and steps shall be provided as required from all exits and shall be of nonslip surfaces free of hazards. Walks shall be at least 48 inches wide except as otherwise approved.

(6) Types A and B—Outdoor activity and recreational spaces must be provided and must be appropriately designed, landscaped, and equipped. Equipment should be appropriate to the type of residents and their needs. Some shaded and/or covered outside areas are usually needed. Such areas should be designed to accommodate residents in wheelchairs or even beds. A minimum rule-of-thumb is that the developed usable outside area should equal at least 1/2 of the total building area. (Exceptions may be made for Type B.)

(7) Type A only—Protection shall be provided from traffic and other site hazards by the use of appropriate methods such as fences, hedges, retaining walls, railings, or other landscaping. Barbed wire fences in all or in part are not permitted. Fencing, walls, etc. shall not inhibit the free emergency egress from buildings.

(8) Type A only—Open or enclosed courts with resident rooms or living areas opening upon them shall be not less than 20 feet in the smallest dimension unless approved otherwise by the licensing agency. Adjacent buildings within

20 feet of the licensed structure shall meet the same code requirements for safety as the licensed structure unless otherwise approved by the licensing agency.

(9) Types A and B—All ancillary buildings on the site used by the residents of the facility shall meet requirements of the Code and this manual as determined by the licensing agency.

(10) Types A and B—All outside areas, grounds, adjacent buildings, etc. on the site shall be kept free of rubbish, garbage, untended growth, etc. that may constitute a fire or health hazard.

(b) Fire service and access.

(1) Types A and B—The facility shall be served by a satisfactory fire department operated by a paid or volunteer organized fire department; the fire station shall be not over three miles (five minutes) away, unless otherwise approved by the licensing agency.

(2) Types A and B—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 (minimum 250 g.p.m. flow).

(3) Types A and B—There shall be at least one satisfactory fire hydrant within 300 feet of the building and otherwise satisfactorily located, the hydrant to be on a minimum six-inch service line or else there shall be an equivalent. Hydrant, location, service line, or equivalent (such as an on-site water storage tank) shall be as approved by the local fire department and the licensing agency. Large facilities may require additional hydrants.

(4) Type A only—The building shall have suitable fire lanes as required by local fire authorities and the licensing agency. Lanes do not necessarily have to go completely around a building. Fire lanes for fire vehicles shall be minimum 14 feet wide and be of suitable all-weather surface (not necessarily asphalt paving). Lanes on building sides that may be approved without provision for allowing fire vehicles shall normally be 10 feet wide minimum. Reserved easements or set backs on adjacent property are usually acceptable, except at exits. Fire lanes shall be kept free of obstructions whether temporary (parked vehicles, equipment) or more permanent.

§145.234 (301.54.15.004) Structural Safety and General Building Requirements

(a) General.

(1) Types A and B—The National Building Code, 1976 edition, is hereby referenced as generally applicable. This code includes allowable working stresses, load requirements, soil bearing values, and other pertinent considerations. Any conflicts with the Life Safety Code shall be resolved as determined by the licensing agency.

(2) Types A and B—Where local codes or ordinances are applicable, the most restrictive parts concerning the same subject item (such as doors) shall apply unless otherwise determined by the authority having jurisdiction for local codes and the licensing agency.

(3) Types A and B—The design of the structural system shall be done by, or under the direction of, a registered professional engineer approved by the Texas State Board of Registration for Professional Engineers to operate in Texas; the parts of the plans and specifications covering the structural design shall bear the legible seal of the engineer. Sound and recognized engineering practice shall be used. The engineer shall be licensed in the area of expertise ap-

plicable to the work he or she is performing (e.g. a licensed chemical engineer might not be approved to do structural plans, etc.). This requirement applies to Type B facilities only in structural designs which are unusual for typical residential construction and as may be requested by the licensing agency.

(b) Types A and B—Quality and test of workmanship.

(1) Workmanship in the preparation and installation of materials shall conform to generally accepted good practice.

(2) In case there is reason to question the safety of a floor, roof, or other structural part of a building, structure load tests or other suitable tests may be required to determine the acceptability of the construction. It will, in this case, be the sponsors responsibility to employ a qualified engineer to conduct tests and determine acceptability or corrections and to pay for such tests.

(3) The building during construction and upon completion shall be subject to inspection by the licensing agency.

(c) Types A and B—Special considerations. Wind load factors used in design shall be greater than those called for in the National Building Code if so determined by the recommendation of the Texas State Board of Insurance; this would primarily apply to coastal areas of Texas.

(d) Types A and B—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 (301.54.15.005). Flame Spread and Related Characteristics.

(a) General. As excessive flame spread and related characteristics have been proven hazardous to life safety of residents by authoritative information from the NFPA and other recognized authorities in this field, the following requirements are listed.

(b) Definitions.

(1) Flame spread shall mean 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 Code, §6-2.

(2) Fuel contribution shall mean the release of heat during burning or combustion.

(3) Smoke density shall mean the release of smoke during burning or combustion.

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

(d) Types A and B—Toxic or poisonous gas.

(1) Materials suspected of having the potential for development of amounts of toxic or poisonous gases while burning to the extent considered hazardous to residents may be rejected by the licensing agency as the authority having jurisdiction until tests or further information is submitted which assures safe conditions.

(2) The guide to determine the toxicity of materials of products subject to question shall be the most recent issue of Hazardous Chemical Data published by NFP and related NFPA information, National Bureau of Standards, or other recognized tests.

(3) Notwithstanding the flame spread classifications defined in the Life Safety Code, any material shown by the test to have a life hazard greater than that indicated by its flame spread classification because of amount or character

(toxic or poisoning gas) of smoke generated, shall be included in the flame spread group appropriate to its actual hazard, as determined by the licensing agency as the enforcing authority.

(c) Soft floor coverings.

(1) Type A only—Sanitation requirements.

(A) Nonabsorbing surfaces are required in bathrooms and other rooms requiring sanitizing.

(B) Soft floor covering such as carpet or felts usually must be of dense loop short pile that is relatively non-absorbing and has a water-resistant backing.

(2) Type A only—Physical hazards.

(A) Thick soft flooring pads are considered as a hindrance to evacuation and the movement of the residents with lessened mobility.

(B) Area rugs are not recommended. If they are used they must be securely fastened to the floor with adhesive or mechanical fasteners. Edges must be secured down to prevent tripping. Throw rugs are generally prohibited because of trip and slip hazards. Throw rugs are defined as less than four feet by six feet (or 24 square feet). Area rugs are four feet by six feet or larger.

(3) Types A and B—Flame spread rates and smoke developed rates (maximums). A flame spread rate of 75 or less and smoke density rate of 125 or less are maximums allowable on soft floor coverings and underpadding, based on American Society for Testing Materials (ASTM) E84 or NFPA 255 tunnel test. The licensing agency reserves the right to accept other test procedures, such as the radiant panel test, in determining suitability of soft floor coverings if and when other test procedures are considered as providing a more accurate correlation to what could be expected in actual average fire conditions. Area rugs as well as wall-to-wall carpets are included.

§145.236 (301.54.15.006). Exit Provisions.

(a) General. In order to assure that residents can be easily and rapidly evacuated from the building or from a section of a building to a safe area of refuge, the requirements of this section of the manual shall be provided as well as all requirements relating to exits in the Life Safety Code.

(b) Basic requirements for exit provisions. Exit provisions for Type A facilities shall be as described in the Life Safety Code, under Chapter 10 for health care occupancies. (§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) Type A only—Evacuation of bedrooms. Facilities shall have the bedrooms, bedroom doors, and corridors arranged for evacuation of bed-fast residents from the bedroom by means of rolling the bed to a safer place in the building or to the outside. Such beds shall have appropriate castors.

(2) Type A only—Dead end corridors. Even though the Life Safety Code allows a dead end corridor up to 30 feet, we recommend that no dead end corridor be designed in any new facility.

(3) Types A and B—Large rooms. Public assembly, living, or dining rooms with a capacity of more than 50 persons or greater than 1,000 square feet shall have two means of obvious exit remote from each other.

(4) Types A and B—Exit doors and ways of egress. Exit doors and ways of egress shall be maintained clear and free for use at all times.

(5) Types A and B—Access. Furnishings, equipment, carts, etc. shall not block egress at any time.

(6) Types A and B—Remodeling, construction, additions. Any remodeling, construction, additions, etc. which involve exit ways and exit doors shall be accomplished in such a manner so as not to compromise the exit, or create a dead end situation at any time (acceptable alternate temporary exits may be approved, or residents in the area involved may have to be relocated until construction blocking the exit is completed).

(7) Doors in means of egress.

(A) Type A only—No screen or storm door shall swing against the direction of exit travel where main doors are required to swing out.

(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 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) Type A only—Inactive leaves of double doors may have easily accessible and easily operable bolts if the active leaf is 44 inches wide.

(E) Types A and B—Bedroom doors shall not have locking devices which inhibit egress from inside the bedroom (a waiver may be considered in specific cases).

(F) Type A only—Resident baths or toilets having privacy locks will require that emergency keys be hung at the doors involved so that staff can enter in an emergency.

(G) Type A only—Any door in the line of exit travel shall be of the swinging (side-hinged) type and shall swing outward with the direction of exit travel. 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 be a balcony, or as secondary doors in other areas where the primary designated exit door requirements are met. Doors to bathrooms, classrooms, and other resident-use areas shall normally be the side-hinged swinging type also. Doors to certain areas such as bedrooms, storage rooms, etc. should usually swing into the room to avoid having the open door obstruct the corridor.

(H) Types A and B—The floor on both sides of an exit door shall be substantially level and shall have essentially the same elevation at both sides of the door, for a distance on each side at least equal to the width of the widest single leaf on the door. Generally, the difference in elevation shall not be over 1/2 inch at an exterior door with a slope not to exceed 1/2 inch per foot sloping away from the offset for drainage on the exterior.

(d) Horizontal exits (Types A and B). A horizontal exit is a way of passage from one building to an area of refuge in another building on approximately the same level, or a way of passage through or around a fire wall or fire partition to an

area of refuge on approximately the same level of the same building, which affords safety from fire or smoke from the area of escape and areas communicating therewith. These doors shall be installed similar to smoke doors in smoke partitions; however, they shall be labeled doors commensurate with the fire wall construction. Horizontal exits shall meet the requirements of the Life Safety Code.

(e) Areas outside of exterior exit doors.

(1) Types A and B—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 residents in wheelchairs and beds. Conditions which may cause a bottle-neck immediately outside the exit doors will not be allowed (see Life Safety Code, §5-7).

(2) Type A only—Emergency egress lighting immediately outside of exit doors is required as a part of the building emergency lighting system. (Photo-cell devices to turn lights off during daylight hours may be used.)

§145.237 (301.54.15.007). Architectural Space Planning (Type A Facilities). (See §145.238 (301.54.15.008) of this title (relating to Architectural Space Planning (Type B Facilities of 15 Bed or Less) for Type B facilities.)

(a) Ancillary resident-use space. The minimum total ancillary resident-use space shall be not less than 35 square feet per bed. Ancillary space includes areas for living, dining, recreation, therapy, training, and other such program areas. It does not include bedrooms, passageways, offices, kitchens, laundries, etc., (more than 35 square feet per bed is usually needed in facilities with less than 60 beds). Facilities which have, or anticipate having, large proportions (approximately 65% or greater) of nonambulatory and/or bedfast residents shall provide at least 50 square feet of ancillary space per bed unless otherwise approved by the licensing agency. Areas providing less space than called for herein cannot be approved except on an individual basis where clearly justified.

(b) Resident bedrooms.

(1) Bedrooms shall be arranged and equipped for adequate personal care and for comfort and privacy. Bedrooms shall have full height walls with doors. (Partial partitions or furnishings are not a substitute.)

(2) Bedrooms shall provide at least 80 square feet for a single occupancy (one bed) and 60 square feet per bed for multiple occupancy. (Note: Room configuration and usability is taken into consideration and there may be instances where the minimum square footage will not be acceptable.) The minimum room dimension shall be at least eight feet for a single room and at least 10 feet for a multiple-bed room, unless otherwise approved by the licensing agency.

(3) No more than four beds shall be in any one bedroom unless approved otherwise by the licensing agency under special waiver conditions.

(4) In the bedrooms and for each resident there shall be a bed with comfortable mattress, comfortable chair, table or dresser, and closet space providing security and privacy for clothing and personal belongings. Closet space shall provide at least 24 inches of lineal hanging space per bed (in certain cases, such as for infants, exceptions may be made). Married couples may share a bed.

(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, §10-2.3.7.

(6) All resident bedrooms shall open onto an exit corridor, living area, or public area and shall be arranged for convenient resident access to dining, living, and bathing areas.

(c) Social—diversional spaces.

(1) Living rooms, dayrooms, lounges, etc., must be provided on a sliding scale as follows (as part of the minimum required "ancillary" space):

| Number of Beds | Area Per bed (minimum) |
|----------------|--|
| 1-15 | 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 equals 1,000 square feet)

(2) In facilities of 60 beds or greater, it is desirable to provide two or more separate areas (the smallest of which should not be less than 160 square feet) for social-diversional activities, in order to avoid an oversized gymnasium-like atmosphere and to prevent interference of multiple activities, thus allowing more flexibility. Conversely, all of the required minimum area should not be broken up into several very small areas only; at least one of the areas should be at least half of the total minimum required space.

(3) In facilities of 20 beds or less, the entire minimum required space should be in one room only. Additional separate rooms or areas may be provided above the minimum.

(4) Where a required way of exit is through a living area, a pathway equal to the corridor width will normally be deducted and discontinued from that area. Such exit pathways must be kept clear of obstructions.

(5) Each resident bedroom, living room, and dining room shall have at least one outside window. Normally, resident classrooms and training areas should also have an outside window unless contraindicated or otherwise approved by the licensing agency. It is recommended that the window area be equal to at least 10% of the total room floor area.

(d) Dining space. Dining space should provide at least 15 square feet per resident bed for single-shift feeding. If procedure is approved for feeding in two shifts, at least eight square feet per resident bed should be provided. These figures should be increased by approximately 50% for facilities with large proportions of nonambulatory residents who can use the dining room.

(e) Physical therapy spaces. Physical therapy spaces, when such therapy is provided within the facility, must be evaluated on an individual facility basis, and will vary with the number and needs of the residents being served. Any such space must accommodate the necessary equipment and provide ample working space for the therapist and residents being treated. It is expected that separate and distinct rooms

or areas will be designated for such therapy when appropriate. A large scale plan should be prepared and submitted indicating all large and major pieces of equipment (in place) to be used in the room.

(f) Training spaces (academic, behavioral, occupational and speech therapy, etc.).

(1) Classroom type space. Classroom type space is anticipated for most training activities. The number and size of such spaces will be evaluated on an individual facility basis and according to program policies and procedures. Generally, training rooms should provide at least 20 square feet per resident trainee within the room except that no training room should be less than 80 square feet. For purposes of calculation, space should be provided for at least 1/3 of the total population at any one time (i.e., plan space for 33 residents in a 100-bed facility).

(2) Planning of training spaces. A person with experience in programing for the mentally retarded, such as a qualified mental retardation professional (QMRP), should be consulted to advise in the planning of needed program, treatment, and other training spaces. The QMRP consultant should provide a written signed statement that he or she has reviewed the plans and finds them acceptable to implement all needed functions and programs in accordance with the requirements. A copy of the plan he or she reviews should be identified and accompany his or her statement.

(g) Kitchens (main/dietary).

(1) 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 for construction of new facilities shall contain a detailed kitchen layout prepared by, or under the direction of, a registered dietitian having knowledge in design of food service operations.

(2) Kitchens shall be designed so that room temperature, at peak load, shall not exceed an average temperature of 85°F measured over the room at the five-foot level. The amount of supply air should take into account the large quantities of air exhausted at the range hood and dish-washing area.

(3) Provide operational equipment as planned and scheduled by the facility's 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.

(4) Provide facilities for washing and sanitizing dishes and cooking utensils. Such facilities will be provided for the number of meals served and the method of serving (permanent or disposable dishware, etc.). As a minimum, the kitchen shall contain a compartmented 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.

(5) Provide a 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.

(6) A kitchen shall be provided with at least one hand-washing lavatory in the food preparation area. The dishroom area shall have ready access to a hand-washing lavatory or hand-sanitizing device. Hand-washing lavatories

shall be provided with hot and cold running water, soap, and individual towels, preferably paper towels; common use towels shall not be used.

(7) In new construction, staff restroom facilities with lavatory shall be accessible to kitchen staff without traversing resident use areas. The restroom door shall not open directly into the kitchen (e.g. provide a vestibule).

(8) In new construction, janitorial facilities shall be provided exclusively for the kitchen and shall be located in and entered from the kitchen.

(9) Nonabsorbent smooth finishes or surfaces shall be used on kitchen floors, walls, and ceilings. Such surfaces shall be capable of being sanitized to maintain a healthful environment.

(10) All operable window openings shall be screened. Doors opening to the outside of the building shall have self-closing devices.

(h) Food storage areas.

(1) In new construction, food storage areas will be planned on the basis of the number and type of resident meals to be served. The size and layout of dry foods storage will be designed by a registered dietitian or a licensed architect having knowledge in design or food services operations.

(2) Food storage areas shall provide for storage of a seven-day minimum supply of nonperishable foods at all times.

(3) Shelves and pallets shall be movable metal or sealed lumber, and walls must be finished with a nonabsorbent finish to provide a cleanable surface.

(4) Dry foods storage shall have an approved venting system to provide for positive air circulation.

(5) 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.

(6) No foods shall be stored on the floor; dunnage carts or pallets may be used to elevate foods not stored on shelving.

(7) Sealed containers shall be provided for storing dry foods after the package seal has been broken.

(8) 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 stores.

(i) Serving kitchens.

(1) 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.

(2) Separate food services areas shall have hand-washing facilities as part of the food service area. An employee toilet shall be provided.

(3) Finishes of all surfaces except ceilings shall be the same as those required for dietary kitchens or comparable areas.

(j) Other spaces.

(1) Space should be provided for resident evaluations and physical examinations. Exam rooms must be equipped with an appropriate hand-wash sink.

(2) Unless the facility has a contract with a hospital to care for residents requiring isolation, an isolation room shall be provided equipped with a full bathroom (bath, toilet, lavatory) and an appropriate air system which will not return or recirculate the air to other areas in the building.

(3) Bathing units (tubs or showers) shall be provided at a minimum ratio of one per 15 beds. Waterclosets and

lavatories shall be provided at a minimum ratio of one per eight beds. Bathing and toilet facilities should be of a type appropriate to the types of residents and considering their disabilities, and designed for privacy within the room and access to the unit from bedrooms.

(4) Adequate storage space must be provided for equipment, carts, wheelchairs, etc. so as to eliminate the problem of such items being left or stored in corridors, or overcrowding bedroom space.

§145.238 (301.54.15.008). Architectural Space Planning (Type B Facilities of 15 Beds or Less).

(a) Single family type dwelling. Detached single family type dwelling 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, etc., each existing facility must be evaluated independently. "Distinct Parts" of another building are not allowed. Applicable codes include the NFPA 101 Life Safety Code (1976), Chapter 11, Residential Occupancies, §11-5, Lodging or Rooming Houses, and applicable local codes and ordinances.

(b) Space requirements.

(1) Bedrooms:

(A) Same requirements as §145.237(b)(1)-(4) (301.54.15.007(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 or 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) Livingroom space. Livingroom space should provide at least 21 square feet per resident (with a minimum of 144 square feet regardless of number of residents). Living space can include one or more rooms or areas provided that the first such area is at least 144 square feet and any others, thereafter, at least 80 square feet each.

(3) Dining space. Dining space must be large enough to accommodate all residents at one sitting, and should provide at least 15 square feet per resident. Living and dining space may be in one room or area providing a combined total of 36 square feet per resident (21 square feet living plus 15 square feet dining per resident).

(4) Bathrooms. Bathrooms shall provide for individual privacy. Water closets and lavatories shall be provided at a minimum ratio of one for each five residents. There shall be at least one tub or shower for each eight residents. At least one bathroom (with water closets, lavatory, and tub or shower) shall be provided on each sleeping floor accessible to the residents of that floor.

(5) Other. Space for other functions shall include a kitchen of sufficient size and appropriate areas for supervisory staff. An office or other space shall be available for private individual counseling and for the safekeeping of files and records. Where indicated by program, appropriate training space shall be provided. Closets and storage space shall be available as appropriate.

§145.239 (301.54.15.009). Additional Requirements for Type B Facilities.

(a) 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 (§11-5).

(b) Wastebaskets shall be noncombustible and of adequate size (all facilities—new and existing).

(c) Curtains and drapes shall be flame-retardant (all facilities—new and existing).

(d) Bedroom doors shall be at least 1-3/8 inch thick solid core wood (or equivalent) with latching hardware. Louvers or transoms are not permitted. (Facilities ICF-MR certified prior to the date of this publication and having current certification may be exempted.)

(e) 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-inch gypsum board, unless approved otherwise by the licensing agency. (Facilities ICF-MR certified prior to the date of this publication and having current certification may be exempted.)

§145.240 (301.54.15.010). Fire Alarm Systems.

(a) A complete approved smoke detection system (per NFPA-72E series) interconnected to the control panel of the required manual alarm system shall be installed, unless otherwise approved by the licensing agency. The entire system shall meet NFPA standards which includes the National Electrical Code.

(b) After the approved alarm system is installed, it shall be tested (with documentation) at least monthly by the facility staff. There shall be provided a written agreement with a person or company certified by the office of the state fire marshal to service and maintain or repair the system as needed. A complete inspection and test of the system shall be performed and documented semiannually by a person or agent certified by the office of the state fire marshal. A non-functioning alarm system shall be repaired and restored within 36 hours.

(c) Note that alarm systems designed and approved only for normal residential use (NFPA-74) and which do not meet the more stringent requirements of NFPA-72 will not be approved.

(d) Fire alarm plans and specifications shall be submitted to the licensing agency for review prior to installation.

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

§145.241 (301.54.15.011). Exits for Type B Facilities.

(a) Exits shall be in accordance with the Life Safety Code, §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) When one or more outside stairs must be provided for exiting from the second floor of existing buildings, such stairs may be constructed of wood unless local codes require other materials. Such outside stairs shall be adequately lighted. Number, design, and locations shall be as approved by the licensing agency.

(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) (301.54.15.008(b)(1)(B)) of this title (relating to Architectural Space Planning (Type B Facilities of 15 Beds or Less) and Code §11-6.2.2.1.

§145.242 (301.45.15.012). Denial or 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) No valid certificate from the Texas Health Facilities Commission (if applicable). This is normally done at the outset before plans are reviewed.

(2) No written approval by local authorities.

(3) Fire protection systems not installed or not basically working properly (fire alarm systems, emergency power and lighting, sprinkler systems).

(4) All required exits (including bedroom windows in Type B facilities) are not usable according to Code requirements.

(5) Substantial construction changes not meeting §145.232(d)(2) (301.54.15.002(d)(2)) of this title (relating to Planning and Construction Procedures).

(6) Telephone not installed or not properly working.

(7) Sufficient basic furnishings and working essential appliances and equipment to begin operation are not installed or not functioning.

(8) Any other basic operation or safety feature which the surveyor, as the authority having jurisdiction, encounters which in his judgment would preclude safe and normal occupancy by residents.

(9) If the surveyor encounters only less basic (and less important) deficiencies, he may recommend licensure based on an approved written plan of correction for those items by the facility.

§145.243 (301.54.15.013). 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 §145.236(b)(2) (301.54.14.006(b)(2)) of this title (relating to Exit Provisions) of the minimum licensing standards for facilities serving the mentally retarded citizens of Texas and in the Life Safety Code, Chapter 17, §17-1.4, Fire Exit Drills, (general requirements).

(1) Type A facilities shall hold drills as described in Code, §17-4.

(2) Type B facilities shall hold drills as described in Code, §17-4 as applicable (e.g. 17-4.12 for rolling hospital bed castors would not be applicable).

(b) Other evacuation drills and procedures, such as for severe weather, bomb threats, ect., shall be appropriately covered in the facility's policies and disaster plan with drills held accordingly.

§145.244 (301.54.15.014). Miscellaneous.

(a) Types A and B—Portable fire extinguishers.

(1) Portable fire extinguishers shall be provided and maintained in accordance with the Code requirements, including NFPA-10, and as directed by the licensing agency.

(2) Each facility shall be both Class A pressurized water type and Class B and C chemical types. The number,

size, class, and locations of portable extinguishers shall be according to Code and as directed by the licensing agency.

(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) Type A only—Emergency evacuation floor plans.

(1) Emergency evacuation floor plans indicating exits, exit routes, location of portable fire extinguishers, and other pertinent information shall be posted at appropriate locations in the building.

(2) The plan shall be accurate, clear, and concise to serve its intended function.

(d) Type A—Fresh air for facility air conditioning systems. Heating and cooling units for the facility shall be designed and installed so that at least 10% fresh outside air is mixed with the recirculated air for distribution throughout the facility. Facilities with unit or pipe (nonducted) systems shall also provide for 10% fresh air distribution throughout.

(e) Types A and B—Exhaust air.

(1) Electric-powered exhaust to the exterior shall be provided for such rooms as baths, toilets, soiled linen, trash or garbage rooms, soiled utilities, and other such areas where appropriate to exhaust odors, fumes, excessive moisture, etc.

(2) The exhaust system shall be designed and functioning to provide an exhaust capacity commensurate with nationally recognized standards, such as ASHRAE, etc., and as approved by the licensing agency.

(f) Type A—Smoke compartments. Smoke compartments shall be provided as required in the Life Safety Code except that smoke compartments shall be limited to an area of 6,000 square feet.

(g) (Types A and B)—Lighting. General lighting shall be provided commensurate with nationally recognized standards, such as I.E.S. and as approved by the licensing agency.

(h) Types A and B—The licensing agency (surveyor) as the authority having jurisdiction reserves the right to make a professional judgment and determination regarding the safety in general of a facility or the architectural and environmental aspects, in accordance with nationally accepted standards, whether specifically referenced in these standards or not.

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Doc. No. 813685 Lynn McGuirt, R.N.
Deputy Commissioner, Special Health
Services
Texas Department of Health

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For further information, please call (512) 458-7470.



TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. Sales Tax Division—State Taxes

The Office of the Comptroller of Public Accounts proposes to amend §3.316 (026.02.20.036) to clarify when nonretailers must collect tax on the sale of taxable items and when a retailer's sales may be classified as "occasional sales."

There will be no additional costs resulting from the administration and enforcement of the section as amended. There will be a definite negative revenue impact from this amendment; however, due to the lack of historical data, it is not possible to determine the exact amount of such losses. Revenue loss will occur in at least two areas. First, a person who becomes a retailer by making a third sale of taxable items within a 12-month period would no longer be required to collect or pay tax on the first two sales. Second, under the proposed section, retailers would be able to make an occasional sale of an item which they do not sell or offer for sale in the regular course of business. This latter category could include many high priced items such as corporate aircraft and capital assets. The number of such transactions cannot be estimated (source: revenue estimating staff, Office of the Comptroller of Public Accounts).

Public comment is invited and should be submitted in writing to Jim Phillips, P.O. Box 13528, Austin, Texas 78711.

The following amendments are proposed under the authority of Texas Taxation—General Annotated, Article 20.11(a).

§3.316 (026.02.20.036) Occasional Sales.

(a) *Property sold or purchased by way of an occasional sale is exempt from the sales and use tax.* [Receipts from occasional sales are exempted from the taxes imposed by this chapter, except as provided in subsection (d) of this section.]

[(b) Occasional sales fall into three categories:]

(b)(1) *Occasional sales by persons not in the business of selling, leasing, or renting* [nonretailers].

(1)[(A)] One or two sales of taxable items [at retail] during any 12-month period by a person who does not hold himself out as engaging (or who does not habitually engage) in the business of selling taxable items [at retail] *are occasional sales.*

(2)[(B)] The third sale *of a taxable item in a* [any] 12-month period *by a person* [will cause the loss of the] *not previously in the business of selling, leasing, or renting taxable items causes that person to become a retailer. Tax must be collected and reported on the third sale and all subsequent sales unless the sale qualifies for exemption under subsections (c), (d), or (e).* [occasional sale exemption and will require the reporting and repayment of tax on the first two sales including applicable penalty and interest.] *If three or more sales are made in a 12-month period, then the person must obtain a permit. See §3.286 (026.02.20.006) of this title (relating to Seller's Responsibilities—Permits, Collections, Payments, Discounts, Records Required, Suspension). Example: A lump-sum contractor sells a back hoe in October, a bulldozer in December and a crane in February. The contractor has not sold, leased, or rented any construction equipment*

prior to the sale of the back hoe; therefore, the contractor can sell the back hoe and bulldozer tax-free as occasional sales. The sale of the crane is the third sale of construction equipment within 12 months from the sale of the back hoe. The sale of the crane is not an occasional sale. The contractor must obtain a permit and collect tax on the sale of the crane and all subsequent sales of construction equipment.

[(C) The provisions outlined in subparagraphs (A) and (B) do not apply to any sales made by a person:

- [(i) holding a sales or use tax permit, or
- [(ii) who is required to hold such a permit, or
- [(iii) who would be required to hold such a permit if that person were doing business in Texas.

[(D) Sales of taxable items which are unlike the items regularly sold by the seller do not qualify as occasional sales.]

(c) Occasional sales by retailers.

(1) Persons engaged in the business of selling, leasing, or renting taxable items and persons selling, leasing, or renting three or more taxable items in a 12-month period are "retailers" for the purposes of this section.

(2) Sales made by a retailer which are not made "in the regular course of business" may qualify as occasional sales but all sales by a retailer are presumed to be made in the regular course of business and are subject to tax unless the contrary is established. To overcome the presumption, the retailer must show:

(A) the type or types of items the retailer regularly sells, leases, or rents;

(B) that the type of item sold and sought to be exempt from tax as an occasional sale is of a different type;

(C) that the retailer did not issue a resale certificate when the item was acquired (A person who issues or has issued a valid resale certificate for the acquisition of a taxable item has represented that the item will be resold in the regular course of business and the person will be conclusively regarded as a retailer of that item. If a retailer has a resale certificate in error, the certificate may be withdrawn, tax remitted to the vendor and person will not be regarded as a retailer of the item.);

(D) that the retailer has not made more than two sales of similar items in a 12-month period (A person making the third sale of a similar item in a 12-month period will be regarded as making that sale in the regular course of business. Until an intervening 12 months has passed between sales, all subsequent sales of similar items will be considered made in the regular course of business.); and

(E) that the sale was not part of a recurring pattern or a planned series of transactions. (A person who establishes a recurring pattern of sales of items or who has a planned series of sales of items will be regarded as selling, leasing, or renting those items in the regular course of business.) Examples:

(i) An auctioneer sells various items of miscellaneous equipment, no two items the same type. The auctioneer must collect tax on all sales since all sales at auctions are in the regular course of business and miscellaneous sales are a recurring pattern in the auction business.

(ii) The board of directors of a corporation votes to liquidate their production equipment. The equipment is sold piecemeal in numerous transactions. The board of directors has planned a series of sales in the regular course of business. None of the sales of obsolete equipment qualify as occasional sales, unless the requirements of subsections (d) and (e) are met.

(d)[(2)] Sale, lease, or rental of a business or an identifiable segment of a business [assets].

(1)[(A)] The sale, lease, or rental of the entire operating assets of a business or of a separate division, branch, or identifiable segment of a business is an occasional sale.

(2) The sale of the entire operating assets of a separate division, branch, or identifiable segment of a business is an occasional sale if, prior to the sale, the income and expenses attributable to the separate division, branch, or identifiable segment could be separately established from the books of account or record.

(3) For the purposes of this section, a "separate division, branch, or identifiable segment" means an enterprise engaged in providing a product or service to customers, usually for a profit. "Income" means revenue generated by the enterprise in providing the product or service. "Expenses" means those operating expenses incurred by the enterprise in providing the product or services that are directly traceable to that enterprise. "Operating assets" mean those assets used exclusively by the enterprise in providing the product or service but does not mean assets maintained and used for general business purposes in addition to use by the specific enterprise. [For the purpose of this section, a "separate division, branch, or identifiable segment" shall be deemed to exist if, prior to its sale, the income and expenses attributable to such "separate division, branch, or identifiable segment" could be separately ascertained from the books of account or record.]

(4)[(B)] The entire operating assets (excluding intangibles and real property) of the business or of the division, branch, or identifiable segment of the business must be sold in a single transaction to a single purchaser. The sale of the entire operating assets through several transactions to several purchasers will not qualify as an occasional sale under this section. [Under the provisions of Texas Taxation—General Annotated, Article 20.01(F)(2), the entire business or each division, branch, or identifiable segment must be sold in a single transaction to a single purchaser. The sale of all the assets of a business division, branch, or identifiable segment of a business through several transactions to several purchasers will not qualify as an occasional sale.]

(e)[(3)] Transfer without change in ownership. [Substantially similar ownership transfer.]

(1)[(A)] Any transfer of all or substantially all the property held or used by a person in the course of an activity, when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer, is an occasional sale. Since ownership must be transferred, "transfer" does not include the lease or rental of property.

(2) For the purposes of this subsection, stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity are regarded as having the "real or ultimate ownership" of the property of such corporation or other entity. Ownership is "substantially similar" if the

person transferring the property owns 80% or more of the stock in the corporation to which the transfer is being made. Ownership is "substantially similar" if 80% or more the stock in the corporation making the transfer is owned by the transferee. ["Substantially similar" is hereby defined as 80% or more.]

(3) "All or substantially all" of the property will be considered to have been transferred if 80% or more is transferred.

(f)(c) Occasional sales as defined in subsections d and e [paragraphs (2) and (3)] of this section are not restricted by subsections (a) and (b) [Texas Taxation—General, Article 20.01(F)(1)]. Three or more sales of [this] the type defined in subsections (d) and (e) would not result in the loss of the occasional sale exemption. [exemptions in Texas Taxation—General Annotated, Articles 20.01(F)(2) and 20.01(F)(3). These exemptions are available to persons making sales in the regular course of business.]

(g) Resale certificates—occasional sales.

(1) Sale of item purchased tax-free.

(A) When a lessor purchases a taxable item tax-free for rental or lease and later sells, leases, or rents the item by way of an occasional sale as provided in subsection (d) or subsection (e), then the lessor owes tax on the amount by which the lessor's purchase price exceeds the amount of rent, if any, upon which tax has been collected and reported from the prior rental or lease of the item.

(B) If the item was exempt from sales tax when originally purchased by the lessor or if the tax was paid on the full purchase price at the time of purchase by the lessor, then the lessor does not incur sales tax liability on the original purchase price.

(C) The amount paid for an item sold by means of an occasional sale is not subject to tax.

(d) If a person purchases tax-free tangible personal property for renting or leasing and thereafter leases or rents the property by way of an occasional sale, he must include in the receipts from taxable sales the amount by which his purchase price exceeded the amount of rent collected on such property. If the original purchase price was exempt from the sales tax under other provisions of the Limited Sales, Excise, and Use Tax Act or if tax was previously paid on the full purchase price of the tangible personal property, none of the receipts from the occasional sale shall be included.]

Issued in Austin, Texas, on June 8, 1981.

Doc. No. 813723 Bob Bullock
Comptroller of Public Accounts

Proposed Date of Adoption: July 13, 1981
For further information, please call (512) 475-3825.

NONCODIFIED

State Board of Insurance Rating and Policy Forms

Fixing Rates of Automobile Insurance 059.05.01

The State Board of Insurance proposes to amend effective September 1, 1981, Rule 059.05.01.005, which adopted by reference the rules governing the Insuring of Automobiles and Standard Endorsements II (Texas Automobile Manual).

The State Board of Insurance proposes to amend Rule 38, which starts on page 21 of the Texas Automobile Manual to add a new subsection 7 to Section G, Driver Credits. The new subsection 7 is to read as follows:

National Corrective Training Institute—Behavioral Course in Traffic Safety Education Credit.

(a) An auto afforded personal auto coverage shall be subject to a credit of 10% applied to the rate otherwise applicable; provided satisfactory evidence (certificate of completion or photostat thereof issued by National Corrective Training Institute) is presented to the company that the principal operator of such auto has successfully completed the Behavioral Course in Traffic Safety Education.

(b) If the policy insures two or more autos the credit shall apply only to the autos principally operated by the person awarded the Behavioral Course in Traffic Safety Education Certificate of Completion.

(c) The credit shall apply for a period of 36 months subsequent to the date of issuance of the Certificate of Completion. Following such 36 month period in order to again qualify for such credit, the course must be successfully completed and evidence again presented to the company. The credit shall only apply if the Certificate of Completion is issued on or after September 1, 1981.

The purpose of the amendment is to allow a 10% credit on the premiums for certain automobile insurance coverages purchased by individuals that have successfully completed the National Corrective Training Institute's behavioral course in traffic education.

The board simultaneously proposes to amend the endorsement supplement of the Texas Automobile Manual to adopt a new endorsement: 526, Coverage for Damage to Your Auto—Limited Specified Perils, for use with the Texas Personal Auto Policy. The purpose of the proposed endorsement is to permit insurance companies and policyholders to select from a broader range of options as respects physical damage coverage. This proposal allows, subject to rule limitations, insurance companies and policyholders to select more limited groupings of perils instead of full specified peril coverage.

The board also proposes to amend Sections B, C, D, and E of Rule 131—Miscellaneous Coverages on page 75B of the Texas Automobile Manual to delete the reference to personal auto policies inasmuch as the subject sections will be used for the limited specified perils to be afforded on the personal auto policy.



The proposed amendments have no known fiscal effects for the state or for units of local government (source: State Board of Insurance staff).

Public comment is invited and may be submitted in writing to D. E. O'Brien, director, State Board of Insurance, 1110 San Jacinto, Austin, Texas 78786.

The first amendment is proposed under the authority of the Texas Insurance Code, Article 5.01; the second two amendments are proposed under authority of Texas Insurance Code, Articles 5.01 and 5.06.

.005. *Insuring of Automobiles and Standard Endorsements II*. The State Board of Insurance adopts by reference

the rules contained in the *Insuring of Automobiles and Standard Endorsements II* as amended *September* [June] 1, 1981. This document is published by and available from the Texas Automobile Insurance Service Office, One La Costa, Suite 130, 1016 La Posada Drive, Austin, Texas 78752, or the State Board of Insurance, 1110 San Jacinto, Austin, Texas 78786.

Issued in Austin, Texas, on June 3, 1981.

Doc. No. 813687 Pat Wagner
 813722 Chief Clerk
 State Board of Insurance

Proposed Date of Adoption: July 13, 1981
For further information, please call (512) 475-2950.

Pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, an agency may take final action on a rule 30 days after publication of the proposed action in the *Register*. Upon adoption of the action, "the agency, if requested to do so by an interested person either prior to adoption or within 30 days after adoption, shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement its reasons for overruling the considerations urged against its adoption." The action is effective 20 days after filing of the notice of final action with the Texas Register Division unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice. The notice includes whether the action is promulgated with or without changes to the action proposed; a statement of the legal authority under which the final action is promulgated; and the text of the final action, in compliance with the rules of the Texas Register Division. If an agency takes final action on a rule with no changes made to the text as proposed, only the preamble of the notice and statement of legal authority will be published. The text, as appropriate, will be published only if final action is taken with changes made to the proposed action. The certification information, which includes the effective date of the final action, follows each published submission of final action. A telephone number for further information is also published.

An agency may withdraw proposed action or the remaining effectiveness of emergency action by filing a notice of withdrawal with the Texas Register Division. The notice will appear in this section of the *Register* and is generally effective immediately upon filing with the Texas Register Division.

This section now contains two classifications: codified and noncodified. Agencies whose rules have been published in the *Texas Administrative Code* will appear under the heading "Codified." These rules will list the new TAC number, which will be followed immediately by the *Texas Register* 10-digit number. Agencies whose rules have not been published in the TAC will appear under the heading "Noncodified." The rules under the heading "Codified" will appear first, immediately followed by rules under the heading "Non-codified."

CODIFIED

TITLE 10. COMMUNITY DEVELOPMENT

Part IV. Texas Housing Agency

Chapter 131. 1980 Series A Program Guidelines

The Texas Housing Agency permanently adopts §§131.1-131.5 (112.06.00.001-.005) concerning program guidelines for the agency's Single Family Mortgage Purchase

Program 1980 Series A, without changes, as proposed in the September 9, 1980, issue of the *Texas Register* (5 TexReg 3603). At the time the sections were proposed, they were adopted on an emergency basis. The text of the sections appears under the Emergency Rules section (5 TexReg 3591).

The subject of these sections relates to the establishment of the 1980 Series A Mortgage Purchase Program, including procedures for eligible lenders to make commitments to participate in the program, allocation of funds, acceptance in the program, and program guidelines.

These sections are adopted under the authority of Texas Civil Statutes, Article 12691-6 (Supplement 1979).

Issued in Austin, Texas, on May 27, 1981.

Doc. No. 813686 Earline Jewett
Executive Administrator
Texas Housing Agency

Effective Date: September 9, 1980
Proposal Publication Date: June 25, 1981
For further information, please call (512) 475-0812.



TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 405. Client (Patient) Care

Subchapter GG. Regulations for Prescribing of Psychoactive Drugs

The Texas Department of Mental Health and Mental Retardation adopts §405.824 and §405.328 (302.04.39.004 and .008), without changes, as proposed in the January 13, 1981, issue of the *Texas Register* (6 TexReg 149).

The new sections are adopted under authority contained in Texas Civil Statutes, Article 5547-202, §2.11.

Issued in Austin, Texas, on June 4, 1981.

Doc. No. 813721 John J. Kavanagh, M.D.
Commissioner
Texas Department of Mental Health
and Mental Retardation

Effective Date: June 26, 1981
Proposal Publication Date: January 13, 1981
For further information, please call (512) 465-4591.

NONCODIFIED

**Texas Department of Human
Resources**

Nursing Facility Administration

Support Documents 326.33.99

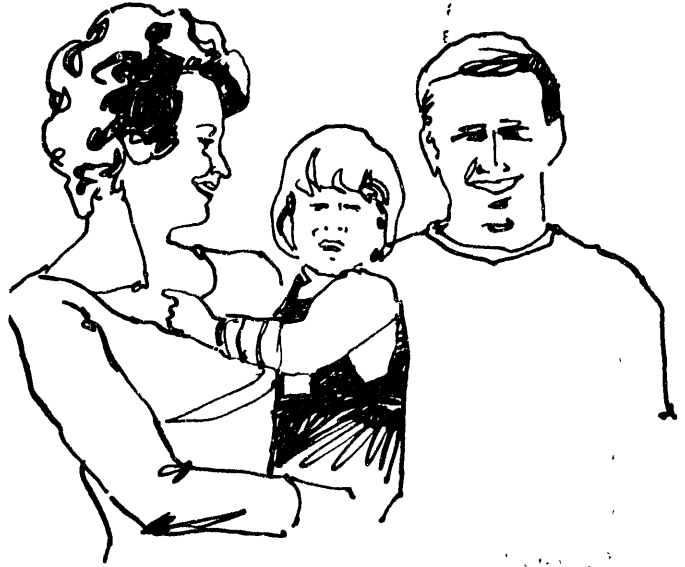
The Texas Department of Human Resources has withdrawn from consideration for adoption the repeal of Rules 326.33.99.201 - 206. The notice of repeal was published in the January 13, 1981, issue of the *Texas Register* (6 TexReg 148).

Issued in Austin, Texas, on June 3, 1981.

Doc. No 813671 Susan L. Johnson, Administrator
Policy Development Support Division
Texas Department of Human Resources

Filed: June 3, 1981, 2:40 p.m.

For further information, please call (512) 441-3355, ext. 2037.



The Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17, requires that an agency with statewide jurisdiction have notice posted for at least seven days before the day of a meeting. An institution of higher education must have notice posted for at least 72 hours before the scheduled meeting time. Although some notices may be received and filed too late for publication before the meeting is held, all filed notices will be published in the *Register*. Each notice published includes the date, time, and location of the meeting; an agenda or a summary of the agenda as furnished for publication by the agency; where additional information may be obtained; and the date and time of filing.

A political subdivision covering all or part of four or more counties must have notice posted for at least 72 hours before the scheduled meeting time. Each notice published includes the date, time, and location of the meeting and where further information may be obtained. These notices are published under the heading "Regional Agencies," alphabetically by date filed.

Any of the governmental entities named above must have notice of an emergency meeting, or an emergency addition or amendment to an agenda, and the reason for such emergency, posted for at least two hours before the meeting is convened. Emergency notices filed by these entities will be published in the *Register*; however, notices of an emergency addition or amendment to an agenda filed by a regional agency will not be published in the *Register* since the original agendas for these agencies are not published.

All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor in the East Wing of the State Capitol. These notices may contain more detailed agendas than space allows to be published in the *Register*.

Governor's Committee on Aging

Friday, June 12, 1981, 10 a.m. The Governor's Committee on Aging will meet at 811 West Live Oak Street, Austin. According to the agenda, the committee will consider the following matters: minutes of the February 26, 1981, meeting; financial report; action of coordinator of aging concerning Harris County AAA; legislative report; state plan changes for fiscal year 1982; approval of Title IV training plan changes fiscal year 1982; Title V Senior Employment Program; report on White House Conference on Aging/Texas Management Information System; and statewide senior olympics. The committee will also meet in executive session to discuss personnel matters.

Information may be obtained from Chris Kyker, P.O. Box 12786, Austin, Texas, (512) 475-2717.

Filed: June 4, 1981, 11:35 a.m.
Doc. No. 813678

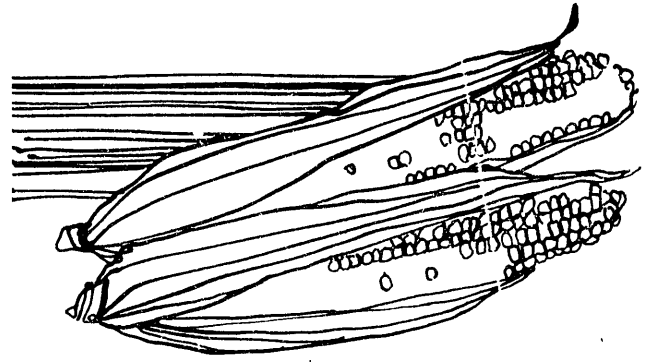
Texas Corn Producers Board

Monday, June 15, 1981, 10 a.m. The Texas Corn Producers Board will meet at the Corn Board Office, 112-A West Bedford, Dimmitt. According to the agenda, the board will

consider the following matters: financial report; export development board report; and research report.

Information may be obtained from Carl King, 112-A West Bedford, Dimmitt, Texas 79027, (806) 647-4224.

Filed: June 5, 1981, 4:16 p.m.
Doc. No. 813720



Texas County and District Retirement System

Friday, June 19, 1981, 9 a.m. The Board of Trustees of the Texas County District Retirement System will meet at the Adam's Mark Hotel, 2900 Briarpark Drive, Houston. According to the summarized agenda, the board will consider the following matters: minutes of March board meeting; applications for service retirement and disability retirement; financial statements; reports from the actuary, director, legal counsel, and investment counsel; actuarial reports; adoption of mortality and other experience tables; contribution rates of participating subdivisions; other business; and set date for September meeting.

Information may be obtained from J. Robert Brown, 802 Perry-Brooks Building, Austin, Texas 78701, (512) 476-6651.

Filed: June 5, 1981, 4:02 p.m.
Doc. No. 813742

Texas Employment Commission

Tuesday, June 16, 1981, 1 p.m. The Texas Employment Commission will meet in Room 644 of the Texas Employment Commission Building, Congress and 15th, Austin. According to the summarized agenda, the commission will consider the following matters: adoption of minutes of June 1, 1981; *Texas Register* liaison—APA/open meetings; applicability of §3(f) to substitute teachers; Appropriations Act; regional office meeting regarding fiscal year 1982 PBP; meet in executive session; selection of group to study utilization of personnel review panels; merit system policies and practices premises leases; and agenda items for July 7, 1981, meeting.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, (512) 458-0100.

Filed: June 8, 1981, 10:48 a.m.
Doc. Nos. 813735 and 813738

Monday, June 22, 1981, 10 a.m. The Public Utility Commission of Texas will conduct a prehearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 3902—application of Cade Lake Water System for a rate increase within Burleson County.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, (512) 458-0100.

Filed: June 8, 1981, 3:53 p.m.
Doc. No. 813746

Tuesday, July 14, 1981, 9 a.m. The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the commission will consider adoption of the following amendments to its Substantive Rules: 052.02.04.042, 052.02.04.044, 052.02.04.046, 052.02.05.051, 052.02.05.057, and 052.02.05.058.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, (512) 458-0100.

Filed: June 8, 1981, 10:45 a.m.
Doc. No. 813740

Monday, August 10, 1981, 10 a.m. The Public Utility Commission of Texas will conduct a hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 3874—application of G. P. Cottle, doing business as Alpha Utility Co., for authority to increase rates within Harrison County.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, (512) 458-0100.

Filed: June 5, 1981, 9:28 a.m.
Doc. No. 813689

Railroad Commission of Texas

Monday, June 8, 1981, 8:30 a.m. The Oil and Gas Division of the Railroad Commission of Texas held an emergency meeting in the first floor auditorium, 1124 IH 35 South, Austin. According to the agenda, the division held a meeting to hear oral argument on the motion for rehearing filed in Oil and Gas Docket 87933—application of Champlin Exploration Company for an exception to SWR 37, Giddings (Austin chalk) (Austin chalk, gas) (Buda) and wildcat fields, Fayette County. Consideration on less than seven days' notice was necessary as a matter of urgent public necessity so that the motion for rehearing could be considered at 9 a.m. on June 8, 1981, the only regularly scheduled meeting date of the Railroad Commission of Texas prior to the date on which the motion for rehearing would be overruled by operation of law.

Information may be obtained from Skipper Lay, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1292.

Filed: June 5, 1981, 2:12 p.m.
Doc. No. 813706

Monday, June 8, 1981, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas made an emergency addition to a meeting held in the first floor auditorium, 1124 IH 35 South. The addition concerned a motion for rehearing in Oil and Gas Docket 87933—application of Champlin Exploration Company for an exception to SWR 37, in the Giddings (Austin chalk) (Austin chalk, gas) (Buda) and wildcat fields Fayette County. Consideration on less than seven days' notice was necessary as a matter of urgent public necessity because the motion for rehearing would have been overruled by operation of law prior to the next regularly scheduled meeting of the Railroad Commission of Texas.

Information may be obtained from Skipper Lay, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1292.

Filed: June 5, 1981, 2:12 p.m.
Doc. No. 813707

Monday, June 8, 1981, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas made an emergency addition to the agenda of a meeting held in the first floor auditorium, 1124 IH 35 South, Austin. The addition concerned consideration of the Dockets 3-76031 and 3-76032, application of W. H. Mengden, Sr., for the establishment of a pooled unit, Dyersday, N.(Y-5) (CM-1) Fields, Harris County. Consideration on less than seven days' notice was necessary as a matter of urgent public necessity. These items were properly noticed for the meeting of June 1, 1981, and were passed at that meeting.

Information may be obtained from Skipper Lay, P.O. Drawer 12967, Austin, Texas 78711, (512) 475-1292.

Filed: June 5, 1981, 2:15 p.m.
Doc. No. 813708

Monday, June 15, 1981, 9 a.m. The Railroad Commission of Texas will meet in the third floor conference room, 1124 IH 35 South, Austin. Following the regular agenda, the commission will go into executive session to discuss personnel actions for all divisions and consult with its legal staff on prospective and pending litigation pursuant to §2g and §2e of the Act, respectively.

Information may be obtained from Carla S. Doyne, 1124 IH 35 South, Austin, Texas 78704, (512) 445-1186.

Filed: June 5, 1981, 2:13 p.m.
Doc. No. 813709

Monday, June 15, 1981, 9 a.m. The Automatic Data Processing Division of the Railroad Commission of Texas will meet in the first floor auditorium, 1124 IH 35 South, Austin. According to the agenda, the division will consider a maintenance agreement for the Standard Register Company used by the commission.

Information may be obtained from Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1204.

Filed: June 5, 1981, 2:13 p.m.
Doc. No. 813710

Monday, June 15, 1981, 9 a.m. The Gas Utilities Division of the Railroad Commission of Texas will meet in Room 107, 1124 IH 35 South, Austin. According to the summarized agenda, the division will consider Gas Utilities Docket 2826—proposed contract between Railroad Commission of Texas and Tele-Techniques, Inc.; Docket 3084, Docket 3101, and the director's report.

Information may be obtained from Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas, (512) 445-1126.

Filed: June 5, 1981, 2:14 p.m.
Doc. No. 813712

Monday, June 15, 1981, 9 a.m. The Liquefied-Petroleum Gas Division of the Railroad Commission of Texas will meet in the first floor auditorium, 1124 IH 35 South, Austin. According to the agenda, the division will consider the director's report.

Information may be obtained from Hugh Keepers, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1301.

Filed: June 5, 1981, 2:13 p.m.
Doc. No. 813713

Monday, June 15, 1981, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas is making an addition to the agenda of a meeting to be held in the first floor auditorium, IH 35 South, Austin. The addition concerns consideration of final action to repeal NGPA rules located at 16 TAC §§3.81-3.84 (051.02.03.001-.004).

Information may be obtained from Priscilla M. Hubenak, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1273.

Filed: June 5, 1981, 2:12 p.m.
Doc. No. 813711

Monday, June 15, 1981, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas will meet in the first floor auditorium, 1124 IH 35 South, Austin. According to the summarized agenda, the division will consider various matters falling within the Railroad Commission's oil and gas regulatory jurisdiction.

Information may be obtained from Jan Burris, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1307.

Filed: June 5, 1981, 2:14 p.m.
Doc. No. 813714

Monday, June 15, 1981, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas is making an addition to the agenda of a meeting to be held in the first floor auditorium, 1124 IH 35 South, Austin. The addition concerns consideration of category determinations under §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108 of the Natural Gas Policy Act of 1978.

Information may be obtained from Madalyn J. Girvin, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1273.

Filed: June 5, 1981, 2:15 p.m.
Doc. No. 813715

Monday, June 15, 1981, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas is making an addition to the agenda of a meeting to be held in the first floor auditorium, 1124 IH 35 South, Austin. The addition concerns con-

sideration of a copier maintenance agreement contract between the Railroad Commission of Texas and Uni-Copy.

Information may be obtained from David M. Garlick, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1313.

Filed: June 5, 1981, 2:14 p.m.
Doc. No. 813716

Monday, June 15, 1981, 9 a.m. The Oil and Gas Division of the Railroad Commission is making an addition to the agenda of a meeting to be held in the first floor auditorium, 1124 IH 35 South, Austin. The addition concerns consideration of adoption of revised Form F-1 of the Natural Gas Policy Act of 1978.

Information may be obtained from Priscilla M. Hubenak, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1273.

Filed: June 5, 1981, 2:13 p.m.
Doc. No. 813717

Monday, June 15, 1981, 9 a.m. The Transportation Division of the Railroad Commission of Texas will meet at 1124 IH 35 South, Austin. According to the summarized agenda, the division will consider various matters falling within the Railroad Commission's transportation regulatory jurisdiction.

Information may be obtained from Owen T. Kinney, 1124 IH 35 South, Austin, Texas 78704, (512) 445-1330.

Filed: June 5, 1981, 2:15 p.m.
Doc. No. 813718

School Land Board

Tuesday, June 16, 1981, 10 a.m. The School Land Board will meet in Room 831, General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the board will consider the following matters: minutes of the previous School Land Board meeting; pooling applications; applications for suspension of leases; excess acreage applications; coastal public lands—easement applications; coastal lease; cabin permit transfer requests; cabin permit terminations; and coastal public lands report on cabin permit renewals.

Information may be obtained from Linda K. Fisher, 1700 North Congress Avenue, Stephen F. Austin Building, Room 835, Austin, Texas 78701, (512) 475-2071.

Filed: June 8, 1981, 3:41 p.m.
Doc. No. 813745

State Board of Examiners in Social Psychotherapy

Saturday, June 13, 1981, 10 a.m. The State Board of Examiners in Social Psychotherapy will meet in Conference Room T-507, 1100 West 49th Street, Austin. According to the summarized agenda, the board will consider the following matters: minutes of January 24, 1981, meeting; executive secretary's report; actions of 1981 Texas Legislature; reports

from Executive Committee, Application Screening Committee, and Complaint Committee; matters relating to the licensure, regulation, and practice of social psychotherapists; March 7, 1981, examination results; licensure renewal for 1981-82; licensure examination scheduled for August 1, 1981; and setting of next meeting date.

Information may be obtained from Daniel L. Boone, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7511.

Filed: June 4, 1981, 3:57 p.m.
Doc. No. 813680

University System of South Texas

Monday, June 15, 1981, 8:30 a.m. The Board of Directors of the University System of South Texas will meet in the board room, University System of South Texas, Kingsville. According to the agenda, the board will consider the following matters: minutes of May 14, 1981, meeting; candidates for president of Texas A&I University in executive session; and board action relative to the presidency at Texas A&I University.

Information may be obtained from Duane M. Leach, P.O. Box 1238, Kingsville, Texas 78363, (512) 595-2215.

Filed: June 8, 1981, 10:26 a.m.
Doc. No. 813726

Texas A&M University System

Thursday, June 11, 1981, 1:30 p.m. The Texas A&M University Board of Regents met in the conference room, third floor, Republic National Bank Building, Dallas. According to the agenda, the board will consider the following matters: sale of Texas A&M University System Board of Regents permanent university fund bonds, new series 1981; names for two dormitories at Texas A&M University; authorization to pay legal fees; appointment of director for the Center for Education and Research in Free Enterprise, Texas A&M University, and appointment of member of its board of consultants; purchase and sale of land; and holidays for system employees.

Information may be obtained from Robert G. Cherry, Texas A&M University System, College Station, Texas 77843, (713) 845-4334.

Filed: June 4, 1981, 3:55 p.m.
Doc. No. 813682

University of Texas System

Thursday and Friday, June 11 and 12, 1981, 1 p.m. and 9 a.m., respectively. The University of Texas System Board of Regents will meet at the Exhibition Gallery, north side entrance of the Union, UT El Paso, El Paso. According to the summarized agenda, the board will consider the following matters: budgets on amendments to 1980-81, calendar for 1981-82, chancellor's docket (index submitted by system ad-

ministration), appointments to endowed positions 1981-82; academic matters for UT Austin—Memorial Stadium option seat plan, affiliation agreements (both academic and medical), student services fee required (UTEP and UTPB); development matters of fund development campaigns, appointments to development boards and advisory councils (including medical institutions); buildings and grounds matters; medical institutions on amendment to medical malpractice self-insurance; land and investment matters; establishment of endowed position and funds, acceptance of bequests, gifts and estates, oil and gas leases, sale of real property; amendment to R&R, trademark registration and license agreement, patent matters, UT Austin—shared parking facility with City of Austin, land acquisition; an executive session to consider pending litigation, negotiated contracts, and personnel matters; and sale of PUF bonds \$43 million.

Information may be obtained from Betty Anne Thedford, P.O. Box N, Austin, Texas 78712, (512) 471-1265.

Filed: June 5, 1981, 1:27 p.m.
Doc. No. 813705



Veterans Land Board

Tuesday, June 16, 1981, 2 p.m. The Veterans Land Board will meet in Room 831 of the Stephen F. Austin Building, Austin. According to the agenda, the board will consider the following matters: approval of the minutes of the May 21, 1981, meeting of the Veterans Land Board; report of the executive secretary; and board policy.

Information may be obtained from Richard Keahey, Stephen F. Austin Building, Room 738, Austin, Texas, (512) 475-3766.

Filed: June 4, 1981, 4:15 p.m.
Doc. No. 813683

Texas Water Commission

Monday, June 15, 1981, 10 a.m. The Texas Water Commission will meet in Room 118 of the Stephen F. Austin Building, 1700 North Congress, Austin. According to the summarized

agenda, the commission will consider the following matters: applications for district bond issues; use of surplus funds; release from escrow; amendment to bond issue; water quality amendment; permits, and renewals; voluntary cancellation and voluntary suspension of water quality permits; and water right application for final decision and commission action.

Information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: June 4, 1981, 2:58 p.m.
Doc. No. 813679

Tuesday, June 23, 1981, 10 a.m. The Texas Water Commission will meet in Room 124A of the Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the commission will consider an application by United States Steel Corporation—Texas Uranium Operations for Water Quality Permit 02415 to discharge an average of 300,000 gallons per day of treated effluent from the Texas uranium operations clay west mining project, Live Oak County, Nueces River Basin.

Information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: June 8, 1981, 3:17 p.m.
Doc. No. 813744

Friday, July 17, 1981, 10 a.m. The Texas Water Commission will conduct hearings in Room 618 of the Stephen F. Austin Building, 1700 North Congress, Austin, on the following applications:

Application 3706A of PIC Realty Corporation for an amendment to Permit 3416 to authorize an increase in the impounding capacity of Reservoir 13 located in the Colorado-Lavaca Coastal Basin for irrigation purposes in Jackson County.

Application 4133 of Waldo Nienstedt for a permit to build and maintain a three section 4.5 acre-foot capacity off-channel reservoir and to use the water impounded therein for industrial (fish farming) purposes, located in the Brazos River Basin, Washington County.

Information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: June 5, 1981, 11:05 a.m.
Doc. Nos. 813703 and 813704

Texas Water Development Board

Tuesday, June 16, 1981, 8:30 a.m. The Texas Water Development Board will meet in Room 118 of the Stephen F. Austin Building, 1700 North Congress, Austin. According to the summarized agenda, the board will consider the following matters: minutes of previous meeting; status of development fund; financial assistance to City of Lefors, Grange County Water Control and Improvement District 1 and City of De Kalb; status of the Federal Construction Grants Program and increase for the City of Groesbeck; final adoption of board rules 156.09.10.004-.009, chapters 25 and 27, relating to underground injection wells and consolidated permitting; and

chapters 22 and 25 relating to industrial solid waste management and consolidated permitting; and activities of the 67th Legislature and the department's legislation program.

Information may be obtained from Harvey Davis, P.O. Box 13087, Austin, Texas 78711, (512) 475-3187.

Filed: June 8, 1981, 3:17 p.m.
Doc. No. 813743

Regional Agencies

Meetings Filed June 4, 1981

The Bexar County Appraisal District held an emergency meeting at the appraisal district office, 533 South Main, San Antonio, on June 5, 1981, at 7:30 p.m. Information may be obtained from the Bexar Appraisal District, 533 South Main, San Antonio, Texas, (512) 224-8511.

The Harris County Appraisal District, Board of Directors, met in Conference Room B, 1750 Seamist, Houston, on June 8, 1981, at 3 p.m. Information may be obtained from Searcy German, 1750 Seamist, Houston, Texas, (713) 861-2530.

The Jasper County Appraisal District will meet at the law offices of Seale, Stover, Coffield and Gatlin, on July 17, 1981, at 7 p.m. The Jasper County Appraisal District will meet at Brookland I. S. D., Tax Office, Brookland, on July 24, 1981, at 7 p.m. Information may be obtained from Frances Horn, P.O. Drawer G, Buda, Texas 77612, (713) 994-5102.

The Nortex Regional Planning Commission, North Texas State Planning Region Consortium, will meet at McBrides Land and Cattle Company, 501 Scott Street, Wichita Falls, on June 18, 1981, at 1 p.m. Information may be obtained from Edwin B. Daniel, 2101 Kemp Boulevard, Wichita Falls, Texas 76309, (817) 322-5281.

The Austin-Travis County MH/MR Center, Operations and Planning Committee, met in the board room, 1430 Collier Street, Austin, on June 9, 1981, at 6 p.m. Information may be obtained from Debbie Sandoval, 1430 Collier Street, Austin, Texas, (512) 447-4141, ext. 39.

The San Patricio County Appraisal District, Board of Directors, met in Room 101 of the Court House Annex, Sinton, on June 11, 1981, at 9:30 a.m. Information may be obtained from Bennie L. Stewart, 313 North Rachal, Sinton, Texas, (512) 364-5402.

The Texas Municipal Power Agency, Board of Directors, met in the agency offices, 2225 East Randol Mill Road, Arlington, on June 11, 1981, at 1 p.m. Information may be obtained from Joel T. Rodgers, 2225 East Randol Mill Road, Arlington, Texas 76011, (817) 461-4400.

Doc. No. 813677

Meetings Filed June 5, 1981

The Archer County Appraisal District, Board of Review, will meet in the Archer County Court House, Archer City, on June 22, 1981, at 10 a.m. Information may be obtained from Pat Wachsman, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172.

The Austin-Travis County MH/MR Center, Board of Trustees, met at 1430 Collier Street, Austin, on June 9, 1981, at 6:30 p.m. Information may be obtained from Debbie Sandoval, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141, ext. 39.

The Bexar Appraisal District met at 533 South Main, San Antonio, on June 11, 1981, at 5 p.m. Information may be obtained from the Bexar Appraisal District, 533 South Main, San Antonio, Texas 78204.

The Brazos Rivr Authority, Administrative Policy Committee, Board of Directors, will meet at 4400 Cobbs Drive, Waco, on June 26, 1981, at 9:30 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76710, (817) 776-1441.

The Camino Real Health Systems Agency, Inc., Board of Directors, met in the second floor conference room, 410 South Main, San Antonio, on June 10, 1981, at 7 p.m. Information may be obtained from Jose Antonio Contreras, 410 South Main, Suite 212, San Antonio, Texas 78204, (512) 225-4426.

The Deep East Texas Council of Governments, Area Agency on Aging (Aging Advisory Council), will meet at the Angelina County Senior Citizens Center, 2801 Valley Avenue, Lufkin, on June 12, 1981, at 1:30 p.m. Information may be obtained from Martha Jones, 272 East Lamar, P.O. Drawer 1170, Jasper, Texas 75951, (713) 384-5704.

The Education Service Center, Region I, Board of Directors, will meet in the administrative conference room, 209 North Water, Corpus Christi, on June 18, 1981, at 6:30 p.m. Information may be obtained from Dr. Thomas Tope, Jr., 209 North Water, Corpus Christi, Texas 78401, (512) 883-9288.

The Education Service Center, Region XX, Board of Directors, will meet at 1314 Hines Avenue, San Antonio, on June 17, 1981, at 3 p.m. Information may be obtained from Dr. Dwain M. Estes, 1314 Hines Avenue, San Antonio, Texas 78208, (512) 271-7611.

The Henderson County Appraisal District, Board of Directors, will meet in Room 202, 101 East Corsicana, Athens, on June 15, 1981, at 7:30 p.m. Information may be obtained from A. K. Monroe, 101 East Corsicana, P.O. Box 430, Athens, Texas. (214) 675-9296.

The Nortex Regional Planning Commission, General Membership Committee, will meet at the McBrides Land and Cattle Company, 501 Scott Street, Wichita Falls, on June 18, 1981, at noon. Information may be obtained from Edwin B. Daniel, 2101 Kemp Boulevard, Wichita Falls, Texas 76309, (817) 322-5281.

Doc. No. 813690

Meetings Filed June 8, 1981

The Brazos River Authority, Lake Management Committee and Board of Directors, will meet in the lake supervisor's office, Possum Kingdom Lake, on June 12, 1981, at 11 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76710, (817) 776-1441.

The Capital Area Planning Council, Executive Committee, will meet in Suite 100, Capital Area Planning Council conference room, 2520 IH 35 South, Austin, on June 23, 1981, at 2 p.m. Information may be obtained from Richard G. Bean, 2520 IH 35 South, Austin, Texas 78704, (512) 443-7653.

The Lower Neches Valley Authority, Board of Directors, will meet in the conference room, Lower Neches Valley Authority Building, 7850 Eastex Freeway, Beaumont, on June 16, 1981, at 10:30 a.m. Information may be obtained from J. D. Nixon, P.O. Drawer 3464, Beaumont, Texas 77706, (713) 289-4011.

The Palo Pinto Appraisal District met at 603 South Oak, Mineral Wells, on June 11, 1981, at 7 p.m. Information may be obtained from H. H. Quillen, 100 Southeast 5th Street, Mineral Wells, Texas 76067, (817) 325-6871.

The Pecan Valley MH/MR, Personnel Committee, held an emergency meeting at the Cuckoo's Nest, Town Square, Granberry, on June 10, 1981, at noon. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas, (817) 965-7806.

The San Antonio River Authority, Board of Directors, will meet in the San Antonio River Authority conference room, 100 East Guenther Street, San Antonio, on June 17, 1981, at 2 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 9284, Guilbeau Station, 100 East Guenther Street, San Antonio, Texas, 78204, (512) 227-1373.

The South Texas Development Council, Board of Directors, will meet at the Jim Hogg County Library, Hebronville, on June 12, 1981, at 4 p.m. Information may be obtained from Julie Saldana, P.O. Box 2187, Laredo, Texas 78041.

The West Texas Health Systems Agency, Governing Body, will meet in the Juarez Room, El Paso Civic Center, One Civic Center Plaza, on June 18, 1981, at 7:30 p.m. Information may be obtained from Cory Vaughan, 303 North Oregon, Suite 700, El Paso, Texas 79901, (915) 532-2910.

Doc. No. 813741

Meetings Filed June 9, 1981

The Central Counties Center for MH/MR Services, Board of Trustees, will meet in Copperas Cove MH/MR Center, 1402 FM Road 116, Copperas Cove, on June 18, 1981, at 7:45 p.m. Information may be obtained from Steven B. Schnee, Ph.D., P.O. Box 518, 302 South 22nd Street, Temple, Texas 76501, (817) 778-4841.

The Central Texas Council of Governments, Executive Committee, will meet at 302 East Central, Belton, on June 25, 1981, at 1 p.m. Information may be obtained from Walton B. Reedy, P.O. Box 729, Belton, Texas 76513, (817) 939-1801.

The Permian Basin Regional Planning Commission, Board of Directors, will meet at the air terminal, Permian Basin Regional Planning Commission's Building, Midland, on June 17, 1981, at 1:30 p.m. Information may be obtained from Pam Hammit, P.O. Box 6391, Midland, Texas 79701, (915) 563-1061.

Doc. No. 813759

The following documents are required to be published in the *Register*: applications to purchase control of state banks filed by the Banking Commissioner of Texas pursuant to Texas Civil Statutes, Article 342-401a(B)(6); changes in interest rate filed by the Savings and Loan Commissioner of Texas pursuant to Texas Civil Statutes, Article 5069-1.07; and consultant proposal requests and awards filed by state agencies, regional councils of government, and the Texas State Library pursuant to Texas Civil Statutes, Article 6252-11c. In order to allow agencies to communicate information quickly and effectively, other information of general interest to the public of Texas is published as space allows.

Texas Air Control Board

Applications for Construction Permits

Notice is given by the Texas Air Control Board of applications for construction permits received during the period of May 25-29, 1981.

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

A copy of all material submitted by the applicant is available for public inspection at the Central Office of the Texas Air Control Board at the address stated above and at the regional office for the air quality control region within which the proposed facility will be located.

Listed are the name of the applicant and the city in which the facility is located; type of facility; location of the facility (if available); permit number; and type of application—new source or modification.

Week Ending May 29, 1981

Apac-Texas, Inc., Houston; production of asphaltic concrete; SH 3; 8805; new source

Dresser Titan, Odessa; silica sand storage tank; 625 South Grandview; 5325A; new source

Stabilized Materials Co., Missouri City; cement stabilized sand; 6600 Sway; 8806; new source

Highland Concrete Co., Inc., Marfa; concrete; Marfa Plant; 8807; new source

Monsey Products Co., Garland; dust collector unit; 3802 Miller Park Drive; 8808; new source

Gulf Chemical and Metallurgical Co., Texas City; tin smelting; FM Road 519; 8809; new source

Diamond, Inc., Houston, trench burner; Gaines Road; 8498A; new source

Amoco Oil Co., Texas City; catfeed residual hydrosulfurization unit and sulfur recovery unit; 2401 Fifth Avenue South; 8810 and 8811; new sources

AC Spark Plug Division, General Manager Corp., Wichita Falls; fuel filter manufacturing; US Highway 277 North, eight miles north of Wichita Falls; 8812; new source

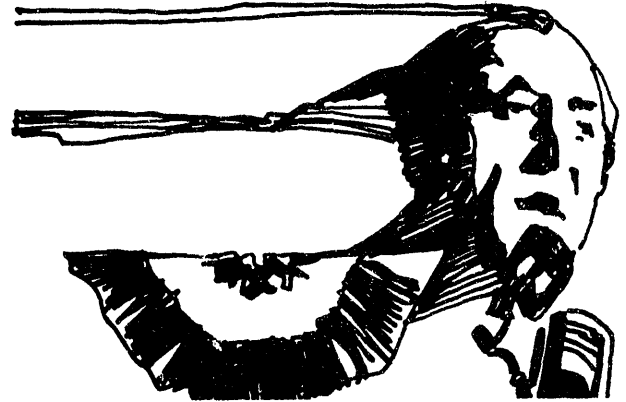
R&R Fabrication, Lumberton; sandblasting; Highway 69; 8813; new source

Issued in Austin, Texas, on June 1, 1981.

Doc. No. 813672 Ramon Dasch
Director of Hearings
Texas Air Control Board

Filed: June 3, 1981, 2:27 p.m.

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



Office of the Attorney General

Solid Waste Enforcements

Notice is hereby given by the State of Texas of the following resolution of a Texas Solid Waste Disposal Act enforcement lawsuit. Thirty days from the date of this notice, an agreed final judgment will be submitted to the court indicated below for entry. The identity of the subject litigation and the terms of the agreed judgment are as follows:

Case Title: State of Texas v. William Max Goodman and All Point Sweepers, Inc.,

Cause Number and Court: 35,376-A; 240th Judicial District, Fort Bend County

Waste Site: Two miles south of State Highway 90-A on Staffords Road

Injunction: Defendants permanently enjoined to comply with the Act, rules and regulations of the department and are specifically enjoined from causing, allowing, or permitting the use or operation of the above described property as a landfill site in violation of the Act, or the rules and regulations of the Department of Health.

Civil Penalty: Costs of court

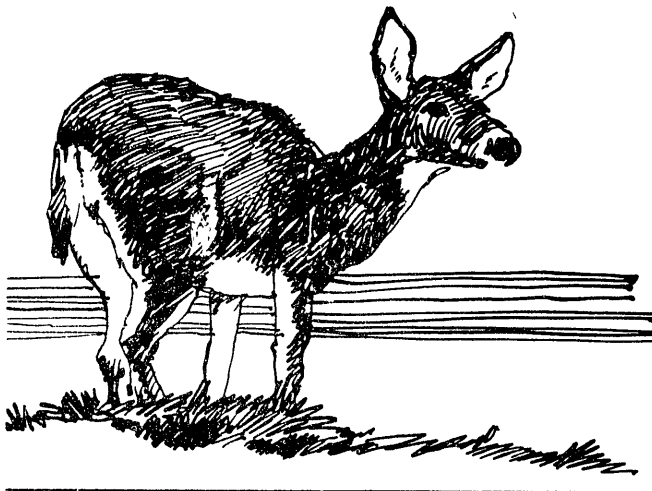
This agreed judgment will be submitted in resolution of alleged violations of the Texas Solid Waste Disposal Act and agency regulations promulgated thereunder. Comments and

requests for copies/inspection of the judgment may be directed to Texas Attorney General's Office, Environmental Protection Division, 1220 Dallas Street, Suite 202, Houston, Texas 77002, (713) 650-0670.

Issued in Austin, Texas, on May 21, 1981.

Doc. No. 813676 Nancy Korte Pecht
Assistant Attorney General

Filed: June 4, 1981, 9:25 a.m.
For further information, please call (512) 475-5445.



Comptroller of Public Accounts

Administrative Decision

Summary of Administrative Decision 11,749

For copies of the following recent opinion selected and summarized by the administrative law judges, contact the administrative law judges, P.O. Box 13528, Austin, Texas 78711. Copies will be furnished without charge and edited to comply with our confidentiality statutes.

Summary of Decision: With regard to petitioner's request for waiver of penalty, the hardships it cites as the basis for its claim that it exercised reasonable diligence to timely pay its tax—poor intracorporate communication, a high turnover rate, a heavy work load, and an office move—do not justify petitioner's apparent inability to react to any and all forms of written communication from, as well as personal contact with the comptroller's office. Decision rendered February 3, 1981.

Issued in Austin, Texas, on June 3, 1981.

Doc. No. 813673 Bob Bullock
Comptroller of Public Accounts

Filed: June 3, 1981, 10:56 a.m.
For further information, please call (512) 475-1938.

Office of Consumer Credit Commissioner

Rate Ceilings

Pursuant to the provisions of the 67th Legislature of Texas, Regular Session, 1981, House Bill 1228, the Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Article 1.04, Title 79, as amended (Texas Civil Statutes, Article 5069-1.04).

| Type of Rate Ceiling | Effective Period ⁽¹⁾ | Type of Transaction | |
|------------------------------------|---------------------------------|--|--|
| | | Consumer ^{(2)/} Commercial ⁽³⁾ through \$250,000 | Commercial ⁽⁴⁾ over \$250,000 |
| Indicated rate (weekly rate) | 6/15/81-6/21/81 | 24% | 28% |
| Monthly (variable commercial only) | 6/1/81-6/30/81 | 24% | 28% |
| Quarterly | 7/1/81-9/30/81 | 24% | 27.73% |
| Annual ⁽⁵⁾ | 7/1/81-9/30/81 | 24% | 24.10% |

- (1) Dates set out above are inclusive.
 (2) Credit for personal, family, or household use.
 (3) Credit for business, commercial, investment, or other similar purpose.
 (4) Same as ⁽³⁾ above, except excluding credit for agricultural use.
 (5) Only for open end as defined in Texas Civil Statutes, Article 5069-1.01.

Issued in Austin, Texas, on June 8, 1981.

Doc. No. 813725 Sam Kelley
Consumer Credit Commissioner

Filed: June 8, 1981, 9:15 a.m.
For further information, please call (512) 475-2111.

Texas Health Facilities Commission

Applications for Declaratory Ruling, Exemption Certificate, and Transfer and Amendment of Certificate

Notice is hereby given by the Texas Health Facilities Commission of application (including a general project description) for declaratory ruling, exemption certificate, transfer of certificate, and amendment of certificate accepted during the period of June 4 and 5, 1981.

Should any person wish to become a formal party to any of the above-stated applications, that person must file a request to become a party to the application with the chairman of the commission within 25 days after the application is accepted. The first day for calculating this 25-day period is the first calendar day following the date of acceptance of the application. The 25th day will expire at 5 p.m. on the 25th consecu-

tive day after the date said application is accepted. If the 25th day is a Saturday, Sunday, or state holiday, the last day shall be extended to 5 p.m. of the next day that is not a Saturday, Sunday, or state holiday. A request to become a party should be mailed to the chairman of the commission, P.O. Box 15023, Austin, Texas 78761, and must be received at the commission no later than 5 p.m. of the last day allowed for filing of a request to become a party.

The contents and form of a request to become a party to an application for a declaratory ruling, exemption certificate, transfer of certificate, or amendment of certificate must meet the minimum criteria set out in §511.5 (315.20.01.050). Failure of a party to supply the minimum necessary information in the correct form will result in a defective request to become a party and such application will be considered uncontested.

The fact that an application is uncontested will not mean that it will be approved. The application will be approved only if the commission determines that it qualifies under the criteria of Texas Civil Statutes, Article 4418(h), §3.62 or §3.03, and §§505.81 and §505.82 (315.17.04.010 and .030), §§505.91-505.93 (315.17.05.010, .020, and .030), §§507.81-507.83 (315.18.04.010, .020, and .030), and §§507.91-507.93 (315.18.05.010, .020, and .030).

In the following list, the applicant and date of acceptance are listed first, the file number second, the relief sought third, and description of the project fourth. EC indicates exemption certificate, DR indicates declaratory ruling, TR indicates transfer of ownership of certificate, AMD indicates amendment of certificate, and CN indicates certificate of need.

Southmore Medical Center, Pasadena (6/4/81)

AH81-0521-011

EC—Request to relocate telemetry equipment presently utilized on the fifth floor nursing unit to the third floor nursing unit; (nurse/patient ratio on the third floor is 2:1 versus 4:1 on the fifth floor nursing unit)

Medical Plaza Hospital, Fort Worth (6/5/81)

AH81-0602-014

EC—Request to acquire an argon laser surgical system (or equivalent for installation in an existing operating room)

Twelve Oaks Medical Center, Inc., Houston (6/5/81)

AH81-0601-008

EC—Request to acquire a Siemens PHO/Gamma LFOV nuclear camera as replacement of the existing Searle PHO/Gamma HP nuclear camera

Lewisville Memorial Hospital, Lewisville (6/5/81)

AH81-0601-010

EC—Request to expand radiology service through acquisition of a Diasonics Realtime ultrasound scanner with video recorder

Schleicher County Medical Center, Eldorado (6/5/81)

AH80-0501-021A (060181)

AMD/CN—Request to extend the completion deadline in Certificate of Need AH80-0501-021 which authorized a construction and renovation project at the Schleicher County Medical Center

The Methodist Hospital, Houston (6/5/81)

AH81-0602-012

EC—Request to expand the existing physical therapy and occupational therapy services by a total of 2,226 square feet and relocate the main occupational therapy area from space in the basement to an area on the first floor of the main building

Medical Plaza Hospital, Fort Worth (6/5/81)

AH81-0602-016

EC—Request to acquire a portable ophthalmic operating microscope, tilting carrier, and related accessories for use in an operating room dedicated to eye surgery use

Terrell Community Hospital, Terrel (6/5/81)

AH81-0601-005

EC—Request to construct a free-standing modular type building containing 1,152 square feet of useable space for office and classroom use

Hendrick Medical Center, Abilene (6/4/81)

AH79-1231-014A (050681)

AMD/CN—Due to the publication of an incorrect file number in the May 19, 1981, issue of the *Texas Register* (6 TexReg 1868), the commission is reaccepting an application to amend Certificate of Need AH79-1231-014 for an increase in the project cost limitation and to extend the completion deadline. (The certificate of need to be amended granted the certificate holder authority to establish an inpatient psychiatric service (20 beds) through the conversion of 20 medical/surgical beds and renovation of 7,769 square feet currently utilized for laboratory purposes, and authorized the new services of occupational therapy, psychiatric social services, and psychological therapy. The project will not increase the licensed capacity of the hospital.)

Issued in Austin, Texas, on June 8, 1981.

Doc. No. 813724

Linda E. Zatopek
Assistant General Counsel
Texas Health Facilities Commission

Filed: June 8, 1981, 10 a.m.

For further information, please call (512) 475-6940.

Public Hearing

The Texas Health Facilities Commission will conduct a hearing regarding the statewide appropriateness of end-stage renal disease services in Texas. The hearing is scheduled for Thursday, June 25, 1981, at 10 a.m., in the offices of the commission at 1600 West 38th, Suite 305, Austin.

Interested persons may attend the hearing and present testimony related to the statewide appropriateness of ESRD services.

Issued in Austin, Texas, on June 3, 1981.

Doc. No. 813688

Linda Zatopek
Assistant General Counsel
Texas Health Facilities Commission

Filed: June 4, 1981, 4:26 p.m.

For further information, please call (512) 475-6940.

Texas Department of Mental Health and Mental Retardation

Correction of Error

The original *Texas Administrative Code* numbering scheme for Texas Department of Mental Health and Mental Retardation Rules 302.04.39.001-.008 was incorrectly assigned. Each time the rules have appeared in the *Texas Register* they have been published as §§405.751-405.758; they should instead be numbered §§405.821-405.828.

Texas Water Commission

Applications for Waste Discharge Permits

Notice is given by the Texas Water Commission of public notices of waste discharge permit applications issued during the period of June 1-5, 1981.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain (1) the name, mailing address, and phone number of the person making the request; and (2) a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 45 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by writing Larry R. Soward, assistant chief hearings examiner, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-1311.

Listed are the name of the applicant and the city in which the facility is located; type of facility; location of the facility; permit number; and type of application—new permit, amendment, or renewal.

Week Ending June 5, 1981

City of Garland; Ray Olinger steam electric station; southeast of Little Ridge Park in Collin County; 01923; renewal

Gifford-Hill and Company, Inc., Dallas; wastewater treatment facility; west of the community of Matthews in Colorado County; 01328; amendment

Lower Colorado River Authority, Austin; Sam Gideon Steam Electric Station; adjacent to Lake Bastrop in Bastrop County; 02052; renewal

National Pipe and Tube Company, Inc., Liberty; steel pipe and tube manufacturing plant; 319 Independence Drive in Liberty County; 02017, renewal

American Teachers Association, Inc., Houston; domestic sewage facility; between Kingwood Drive and Northpark Boulevard in Montgomery County; 11649-01; renewal

McLennan County Water Control and Improvement District 2, Elm Mott; domestic sewage facility; south of FM Road 308 in McLennan County; 10344-01; renewal

Gordon A. Posey (Posey Mobile Home Park), Plano; domestic sewage facility; south of State Highways 121 and 75 in Collin County; 11023-01; renewal

State Department of Highways and Public Transportation, Wichita Falls; domestic sewage facility; within the right-of-way in the rest area on the southwest side of U.S. Highway 287 in Clay County; 11800-01; renewal

Robert D. Hensley and Jerry Todd, doing business as Hank's Creek Marina, Huntington; domestic sewage facility; about seven miles north of Zavalla in Angelina County; 11229-01; renewal

Texas Department of Corrections (Ramsey Unit II), Huntsville; domestic sewage facility; on the bank of Oyster Creek in Brazoria County; 10991-01; renewal

Lake Bayou, Inc., Alvin; domestic sewage facility; on the north side of Chocolate Bayou in Brazoria County; 11397-01; renewal

Nufuels Corp., WDW-197 through WD-200, Corpus Christi; disposal wells; on the north side of State Highway 359 in Duval County; WDW-197, WDW-198, WDW-199, WDW-200; new permits

City of Jacksboro; wastewater treatment plant; west of State Highway 148 in the Jack County; 10994-01; amendment

Louisiana-Pacific Corp., Jasper; Jasper Sawmill Plant; west of the AT and SF Railroad, north of the City of Jasper; 01611; renewal

Houston Lighting and Power Company, Houston; Limestone steam electric generating station; adjacent to and on the west side of Farrar in Limestone County; 02430; new permit

Southwestern Electric Power Company, Shreveport, Louisiana; Wilkes Steam Electric Station; adjacent to Johnson Creek Reservoir in Marion County; 01331; renewal

American Chrome and Chemicals, Inc., Corpus Christi; inorganic chemicals plant; south of the Corpus Christi inner harbor at the north end of Buddy Lawrence Drive in Nueces County; 00349; renewal

Melvin Shumate, doing business as Shumate Hog Farm, Emory; confined feeding operation for swine; north of Emory in Rains County; 02501; new permit

Issued in Austin, Texas, on June 5, 1981.

Doc. No. 813702 Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: June 5, 1981, 11:04 a.m.
For further information, please call (512) 475-4514.

Each issue of the *Register* includes a conversion table of *Texas Administrative Code* titles affected for that issue. Once a month a guide to agency activity for the previous month is published, as well as a cumulation of TAC titles affected for the previous month. Quarterly and annual indexes to the *Texas Register* are published separately and bound in light blue for distinction.

TAC Titles Affected in This Issue

The following is a list of the chapters of each title of the *Texas Administrative Code* affected by documents published in this issue of the *Register*. The listings are arranged in the same order as the table of contents of the *Texas Administrative Code*.

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Part IV. Texas Housing Agency

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25 TAC §§145.211-145.218 (301.54.14.001-.008) ... 2085

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