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Texas Register

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Highlights

- ★ The Public Utility Commission of Texas proposes new sections and amendments to existing sections concerning practice and procedure and substantive rules. These rules were serialized in the June 4 issue; proposed date of adoption - July 19 page 2183
- ★ The State Securities Board proposes amendments to sections concerning registration of securities; proposed date of adoption - July 9..... page 2181
- ★ The Texas Antiquities Committee adopts a new section concerning protection of state archaeological landmarks; effective date - June 23 page 2196

How To Use the Texas Register

Texas Register

The *Texas Register* (ISN 0362-4781) is published twice a week at least 100 times a year. Issues will be published on every Tuesday and Friday in 1982 with the exception of January 5, April 27, November 16, November 30, and December 23, by the Texas Register Division, Office of the Secretary of State, 201 East 14th Street, P.O. Box 13824, Austin, Texas 78711-3824, (512) 475-7886.

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

- Governor-- appointments, executive orders, and proclamations
- Secretary of State - Summaries of opinions based on election laws
- Attorney General-- summaries of requests for opinions, opinions, and open records decisions
- Emergency Rules-- rules adopted by state agencies on an emergency basis
- Proposed Rules-- rules proposed for adoption
- Withdrawn Rules-- rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register Division six months after proposal publication date
- Adopted Rules-- rules adopted following a 30-day public comment period
- Open Meetings-- notices of open meetings
- In Addition-- miscellaneous information required to be published by statute or provided as a public service

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

How To Cite: Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg," and the beginning page number on which

that document was published. For example, a document published on page 2402 of Volume 6 (1981) is cited as follows: 6 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: page 2 in the lower left-hand corner of this page is written "7 TexReg 2 issue date," while on the opposite page, in the lower right hand corner, page 3 is written "issue date 7 TexReg 3."

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

Texas Administrative Code

The *Texas Administrative Code* (TAC) is the approved, collected volumes of Texas administrative rules currently being published by Shepard's/McGraw Hill, in cooperation with this office.

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

1 indicates the title under which the agency appears in the *Texas Administrative Code* (a listing of all the titles appears below);

TAC stands for the *Texas Administrative Code*;

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

Latest Texas Code Reporter
(Master Transmittal Sheet): No. 6, July 81

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Emergency Rules

An agency may adopt a new or amended rule, or repeal an existing rule on an emergency basis, if it determines that such action is necessary for the public health, safety, or welfare of this state. The rule may become effective immediately upon filing with the Texas Register Division, or on a stated date less than 20 days after filing for no more than 120 days. The emergency action is renewable once for no more than 60 days.

An agency must submit written reasons, published in the Register, for emergency action on a rule. The submission must also include a statement of the legal authority under which the emergency action is promulgated and the text of the emergency adoption. Following each published emergency document is certification information containing the effective and expiration dates of the action and a telephone number from which further information may be obtained.

Symbology in amended rules. New language added to an existing rule is indicated by the use of bold text. [Brackets] indicate deletion of existing material within a rule.

TITLE 22. EXAMINING BOARDS Part XXII. Texas State Board of Public Accountancy Chapter 501. Rules of Professional Conduct General Provisions 22 TAC §501.2

The Texas State Board of Public Accountancy adopts an amendment to §501.2 on an emergency basis.

Emergency action is required in order to provide clarification to licensees as to how they may handle fee estimates and not violate the board's rules of professional conduct.

This amendment is adopted pursuant to the Public Accountancy Act of 1979, Texas Civil Statutes, Article 41a-1, §6 (as amended, 1981).

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

Competitive bid—A public communication or private communication by a licensee which is a proposal, other than an advertisement or a fee estimate as herein described, to a prospective client to perform professional services when:

(A) (No change.)

(B) the proposal is given with the knowledge that similar proposals are being sought concurrently from one or more other licensees. The fact that a licensee is

invited to make a proposal by a person not already a client is indicative that similar proposals are being invited from other licensees, and it shall be incumbent upon the licensee to ascertain by direct inquiry whether other proposals have been or will be invited. For the purposes of these rules a "fee estimate" shall not be deemed to be a competitive bid. A fee estimate is defined as a written public communication or a written private communication by way of which a licensee or firm of licensees provides to a prospective client at his or its request an estimate of the charges proposed by the licensee or his firm for specific services and which clearly states:

(i) that the amount quoted is an estimate and that the licensee [or firm] will not be bound to provide the subject services for the estimated amount;

(ii) the estimated number of people by classification to be involved in performing the work and the range of education and experience in [of] each classification [person]; and

(iii) the estimated [expected] time to be required for the engagement by personnel classification and the anticipated completion date.

Issued in Austin, Texas, on May 28, 1982.

TRD-824542

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

Effective date: May 28, 1982

Expiration date: September 25, 1982

For further information, please call (512) 451-0241.

Thirty days before an agency intends to permanently adopt a new or amended rule, or repeal an existing rule, it must submit a proposal detailing the action in the *Register*. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the rule. A public hearing on the proposal may also be granted if such a procedure is requested by a governmental subdivision or agency, or by an association consisting of at least 25 members.

Unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice, the proposal may not be adopted until 30 days after publication. The document, as published in the *Register*, must include a brief explanation of the proposed action; a fiscal statement indicating effect on state or local government; a statement explaining anticipated public benefits and possible economic costs to individuals required to comply with the rule; a request for public comments; a statement of legal authority under which the proposed rule is to be adopted (and the agency's interpretation of the legal authority); the text of the proposed action; and a certification statement. The certification information which includes the earliest possible date that the agency may file notice to adopt the proposal, and a telephone number to call for further information, follows each submission.

Symbology in amended rules. New language added to an existing rule is indicated by the use of bold text. [Brackets] indicate deletion of existing material within a rule.

Proposed Rules

TITLE 7. BANKING AND SECURITIES Part VII. State Securities Board Chapter 113. Registration of Securities

7 TAC §113.3, §113.4

The State Securities Board proposes to adopt amendments to §113.3 and §113.4, concerning registration of securities.

Richard D. Latham, securities commissioner, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Latham has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be increased uniformity of standards for registration of securities in Texas with those of other states.

There is no economic cost to individuals who are required to comply with the rule as proposed, as changes are designed to promote uniformity and increase the ability of securities offerings to register in Texas if all other requirements for registration are met.

Comments on the proposal may be submitted to Russell R. Oliver, State Securities Board, P.O. Box 13167, Austin, Texas 78711.

The amendments are proposed under Texas Securities Act, Article 28-1, which provides that the board may adopt rules and regulations governing registration statements and applications.

§133.3. *Fair, Just, and Equitable Standards.* The following factors, among others, will usually be considered in determining whether or not a securities issue is fair, just, and equitable:

(1)-(10) (No change.)

(11) Permitted options and warrants. The following standards will be considered in determining whether or not the issuance of warrants or stock purchase options to those other than all of the purchasers of securities has been justified by the applicant:

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

(C) Options to Underwriters. Options to underwriters will be considered justified if all of the following conditions are met:

(i) If issued to managing underwriters [under a firm underwriting agreement], provided they are not transferable except in cases where the managing underwriter is a partnership and then only among the partners, or if a corporation, then only among the principals (officers and directors or partners) of the corporation.

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

(v) If the options and warrants are issued by a relatively small company in the promotional stage where it appears from all the facts and circumstances that the issuance of options is necessary to obtain competent investment banking service, provided that the direct commissions to the underwriters are lower than the usual and

customary commissions would be in the absence of such options or warrants.]

(v)(vi) That the prospectus issued in connection with the application contains a full disclosure as to the terms and the reason for the issuance of such options and warrants; and further provided that if such reason is in connection with future advisory services to be performed by the underwriter without compensation in consideration for the issuance of such options, that a statement to that effect be placed in the prospectus.

(vi)(vii) That the market value, if any, of the options to underwriters shall be considered in the computation of commissions. An arbitrary value of 21% of the original offering price of such securities [20% of the original exercise price of such options] shall be used in the computation of commissions unless evidence indicates that a contrary valuation exists;

(vii)(viii) The same tests shall be applied to options issued by "selling shareholders" as provided herein, unless evidence indicates that the selling shareholders are so separated from the issuer of the security and so lacking in control of the issuer of the security as to require more liberal treatment.

(ix) The securities covered by the options and warrants consist solely of securities of the same class and of the same issuer as those securities proposed to be sold to the public in the offering under consideration.]

(12)-(13) (No change.)

§113.4. Application for Registration.

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

(g) Marketing expenses.

(1) (No change.)

(2) The expenses of marketing securities paid by the issuer (or program if it is a limited partnership or other syndication type of offering) shall not exceed 20% of the gross proceeds of the offering for offerings of \$3 million or less and shall not ordinarily exceed 19% if the gross proceeds of the offering is \$3,000,001 through \$6 million; 16% of the gross proceeds of offerings \$6,000,001 through \$9 million; and 15% of the gross proceeds of offerings of \$9,000,001 and greater. [The expenses for marketing the securities paid by the program shall not ordinarily exceed 15% of the gross proceeds of the offering.]

(3) For purposes of determining the amount of underwriting compensation received or to be received by an underwriter or a related person, the following items and all other items of value received or to be received by an underwriter or related person from the issuer or an affiliate of the issuer in connection with or related to an offering shall be included:

(A) underwriters discount, commission, or concession;

(B) nonaccountable expense allowances;

(C) expenses incurred by an underwriter or related person payable by the issuer or from the proceeds of the offering, to or on behalf of an underwriter or related person;

(D) fees and expenses of underwriter's counsel;

(E) finder's fees;

(F) wholesaler's fees;

(G) financial consulting and advisory fees,

whether in the form of cash, securities, or any other item of value unless an ongoing relationship between the proposed issuer or affiliate and the proposed underwriter or related person has been established at least 12 months prior to the filing of the registration statement or the relationship, if established subsequent to that time, was not entered into in connection with the offering, and actual services have been or will be rendered which were not or will not be connected with or related to the offering;

(H) stock, options, warrants, and other securities;

(I) special sales incentive items;

(J) a right provided to an underwriter or related person to require the issuer upon demand to register securities on behalf of the underwriter or person in the future at the expense of the issuer, which shall be valued at 1.0% of the gross proceeds of the offering, unless the demand is for only one such registration, in which event the demand registration shall be valued at 0.5% of the gross proceeds of the offering. A right to "piggyback" on a nondemand registration shall be valued at 25% of the gross proceeds of the offering.

(K) commissions, expense reimbursements, or other compensation to be received by an underwriter or related person as a result of the exercise of the conversion within 12 months following the effective date of the offering of warrants, options, convertible securities, or similar securities distributed as part of the offering.

(4) All underwriter compensation set forth in paragraph (3) of this subsection, when added to all other marketing expenses, such as printing costs, registration fees, filing fees, issuer's, attorneys and accounting fees, and miscellaneous marketing expenses shall not exceed the limits imposed in paragraph (2) of this subsection.

(5)(3) To assure compliance with the above, an escrow of the proceeds of the offering may be required.

(h) (No change.)

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

Issued in Austin, Texas, on June 1, 1982.

TRD-824590

Richard D. Latham
Securities Commissioner
State Securities Board

Proposed date of adoption: July 9, 1982

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

**TITLE 16. ECONOMIC
REGULATION**

**Part I. Railroad Commission of
Texas**

**Chapter 5. Transportation Division
Subchapter U. General and Special Rules
of Practice and Procedure**

16 TAC §5.431

The Railroad Commission of Texas proposes amendments to §5.431 (051.03.50.031), concerning reporters and transcripts.

Rory K. McGinty, Transportation Division assistant director, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. McGinty has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be more equitable distribution of transcript costs in protested proceedings before the Transportation Division. The economic cost to individuals who are required to comply with the rule as proposed will be as follows:

The net effect for the industry will be zero, since the rule does not alter the amount of transcript costs born by the parties, but rather alters the assessment of transcript costs among the parties to a proceeding. For any given carrier, the net effect is also likely to be minimal since the benefit experienced in one proceeding will be offset by the disadvantage experienced in another proceeding.

Comments on the proposal may be submitted to Owen T. Kinney, Transportation Division director, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, Article 6252-13a, §13(g), which provides the Railroad Commission of Texas with the authority to assess cost of a transcript to one or more parties.

§5.431 (051.03.50.031). Reporters and Transcript.

(a) **Request for transcript.** When a party makes a written request that proceedings be transcribed, the party shall state in writing its [his] election to furnish its [his] own stenographic reporter or to utilize the reporter on the staff of the agency, if the agency has a stenographic reporter available at the time of the request.

(b) **Assessment of costs.** In the event the agency does not have a stenographic reporter available at the time of the request, or the party elects to furnish a stenographic reporter, the cost of the original transcript shall be assessed [$\frac{1}{2}$ to the party requesting the transcript, the remaining $\frac{1}{2}$] to all [the other] parties equally, except in cases where the commission may determine that the entire cost of the original transcript should be assessed to the applicant. Cases where the entire cost of the original transcript will be assessed to the applicant include, but are not limited to, applications for discontinuance of a railroad agency, applications for authority to deviate from the Texas Clearance Law, and proceedings involving the change or discontinuance of a schedule of motor bus service.

(c) **Transcript charge.** The cost of the original transcript shall not exceed \$2.60 per page plus the cost of postage.

(d)[(b)] **Transcript copies for sale.**

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

(e)[(c)] **Corrections to transcript.** Suggested corrections to the transcript of the record may be offered within 10 days after the transcript is filed in the proceeding,

unless the examiner or the agency shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record, the official reporter, and the examiner. If suggested corrections are not objected to, the examiner will direct the corrections to be made and the manner of making them. In case the parties disagree on suggested corrections, they may be heard by the examiner, who shall then determine the manner in which the record shall be changed, if at all.

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

Issued in Austin, Texas, on May 24, 1982.

TRD-824579

Walter Earl Lillie
Special Counsel
Railroad Commission of Texas

Proposed date of adoption: July 9, 1982

For further information, please call (512) 445-1186.

Part II. Public Utility Commission of Texas

(Editor's note: A notice appeared in the June 4, 1982, issue of the Texas Register, indicating the following proposals would appear in this issue. Proposed date of adoption for the rules is July 19, 1982.)

Chapter 21. Practice and Procedure

16 TAC §21.52

The Public Utility Commission of Texas proposes amendments to §21.52 (052.01.00.085), concerning oral argument before the commission. The agency proposes to amend its rule concerning oral argument to require that oral argument requests be filed three working days rather than merely 72 hours before a commission meeting.

Carolyn E. Shellman, director of hearings and secretary of the commission, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Shellman has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that parties to a proceeding and the commission will be given adequate advance notice of oral argument requests, thus permitting better preparation and a more thorough exploration of important issues. There is no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Carolyn E. Shellman, director of hearings and secretary of the commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

The amendments are proposed under Texas Civil Statutes, Article 1446c, §16, which provides the

Public Utility Commission of Texas with the authority to adopt rules of practice and procedure.

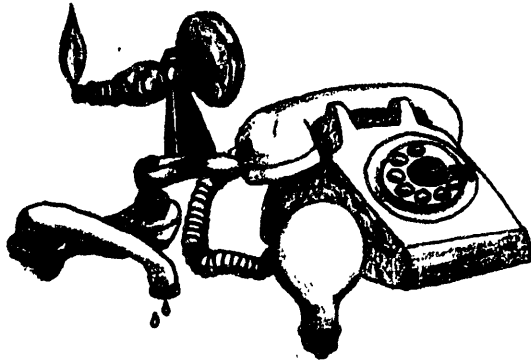
§21.52. (052.01.00.085). Oral Argument Before the Commission. Any party may request oral argument before the commission, but oral argument shall be allowed only at the discretion of the commission. A request for oral argument shall be incorporated in the exceptions, reply to exceptions, motion for rehearing, or in a separate written pleading, filed with the commission and served upon all parties at least three working days before [72 hours in advance of the time at which] the commission will consider the case. If all parties are present at the meeting at which the commission considers the case, the above service requirements may be waived, and the commission may hear oral argument at its discretion.

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

Issued in Austin, Texas, on May 27, 1982.

TRD-824497 Carolyn E. Shellman
Director of Hearings
Secretary of the Commission
Public Utility Commission of
Texas

Proposed date of adoption: July 19, 1982
For further information, please call (512) 458-0100.



16 TAC §21.65

The Public Utility Commission of Texas proposes new §21.65, concerning requests for interim rate relief. The agency proposes the new rule to establish the procedures that will be followed when interim rates are requested. The rule is generally consistent with prior practice but the increased frequency of interim rate requests has necessitated enactment of a formal rule. The rule provides that interim relief will be available only in extraordinary circumstances and will be considered only after the commission has had four weeks to review the evidence supporting the request.

Carolyn E. Shellman, director of hearings and secretary of the commission, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Shellman has also determined that for each year of the first five years the rule as proposed is in effect,

the public benefits anticipated as a result of enforcing the rule as proposed will be that standards for approval of interim rates will let utilities and customers know when the commission feels interim relief is warranted and how interim rate requests will be reviewed. There is no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Carolyn E. Shellman director of hearings and secretary of the commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

The new section is proposed under Texas Civil Statutes, Article 1446c, §16, which provides the Public Utility Commission of Texas with the authority to adopt rules of practice and procedure.

§21.65. Requests for Interim Rate Relief.

(a) This section applies only to rate proceedings over which the commission has original jurisdiction. This section does not apply to tariffs filed pursuant to §23.13 of this title (relating to Statistical Reports).

(b) A public utility filing a petition for interim rate relief shall file, in addition to the rate/tariff change application, a separate motion setting forth its interim rate request. This motion shall state with specificity the justification or grounds on which the interim rate request is based, including but not limited to written prefiled testimony and supporting schedules.

(c) There shall be no consideration of a utility's request for interim rate relief prior to four weeks after the utility has prefiled testimony and supporting schedules in support of its request for interim rate relief unless all parties and the general counsel agree to waive this requirement.

(d) Pursuant to §40(b) of the Act, in any proceeding involving a petition for interim rate relief the burden of proof to show that the proposed interim rate request is necessary shall be on the public utility. The applicant must show the following conditions exist in support of a request for interim rate relief.

(1) The presence of extraordinary circumstances constituting an emergency which would lead the commission to believe that the denial of interim rate relief would cause immediate and irreparable harm to the utility. This showing is a condition precedent to interim rate relief. An emergency may be exemplified by but not limited to such factors as the following:

(A) the existence of a present or clearly imminent threat that annual operating cash flow will render the utility unable to operate and maintain the utility in a manner which will continue to provide adequate service to current customers, or

(B) the existence of a present or clearly imminent threat that the company will be unable to obtain necessary capital funds to finance construction commitments for necessary new or replacement plant, without immediate rate relief.

(2) The interim rate relief sought is at the minimum level necessary to avert the emergency.

(e) Nothing in this section should be read to preclude the commission or the hearings examiner from granting interim rate relief on the basis of mutual agree-

ment of all parties, including the general counsel, in lieu of meeting the standards set forth in subsections (c)-(d).

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

Issued in Austin, Texas, on May 27, 1982.

TRD-824498 Carolyn E. Shellman
Director of Hearings
Secretary of the Commission
Public Utility Commission of
Texas

Proposed date of adoption: July 19, 1982
For further information, please call (512) 458-0100.

Chapter 23. Substantive Rules General

16 TAC §23.3

The Public Utility Commission of Texas proposes amendments to §23.3 (052.02.01.013), concerning definitions. The agency proposes to amend its definition of fuel adjustment and fuel cost factors to include in the definitions a reference to fuel purchased from a qualifying facility. The amendment recognizes the commission's rule on cogeneration and was made necessary by the enactment of that rule.

Carolyn E. Shellman, director of hearings and secretary of the commission, has determined that for the first five-year period this rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Shellman has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be a clearer definition of fuel cost that includes purchases from a qualifying facility. Because costs will be recoverable cogeneration will also be encouraged thus benefiting utilities and their customers as the need for additional plant is diminished or postponed. There will be no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Carolyn E. Shellman, director of hearings and secretary of the commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

The amendments are proposed under Texas Civil Statutes, Article 1446c, §16(a), which provides the Public Utility Commission of Texas with the authority to adopt rules needed to implement Federal Energy Regulatory Commission rules pertaining to energy production by cogenerators and small power producers.

§23.3 (052.02.01.013). Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Fuel adjustment factor—A computed number which, when multiplied by the number of kilowatt-hours consumed by a customer during a billing period, will pro-

duce a fuel adjustment charge to the customer. The total of these charges to all customers is the difference in the cost of fuel experienced by the utility during the calendar month that most closely corresponds to the billing period and the cost of fuel that would have been experienced if the price of fuel had been equal to that price stated in the tariff of the utility. The cost of fuel may include the cost of economy energy, hydroelectric energy, power and energy purchased from a qualifying facility, and the fuel cost component of purchased power.

Fuel cost factor—A computed number which, when multiplied by the number of kilowatt-hours consumed by a customer during a billing period, will produce a fuel cost charge to the customer. The total of these charges to all customers is the cost of the fuel consumed in generating energy by the utility during the calendar month that most closely corresponds to the billing period. The cost of fuel may include the cost of economy energy, hydroelectric energy, power and energy purchased from a qualifying facility, and the fuel cost component of purchased power.

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

Issued in Austin, Texas, on May 27, 1982.

TRD-824499 Carolyn E. Shellman
Director of Hearings
Secretary of the Commission
Public Utility Commission
of Texas

Proposed date of adoption: July 19, 1982
For further information, please call (512) 458-0100.

Service

16 TAC §23.34

The Public Utility Commission of Texas proposes amendments to §23.34 (052.02.04.044), concerning discontinuance of service. The agency proposes to amend its discontinuance of service rule to allow a limited late payment charge on delinquent residential bills and to prohibit utilities from mailing late and disconnect notices until after the due date of the bill. The purpose of the amendment is to allow utilities to recover the processing costs of handling late bill payments for residential as well as commercial and industrial customers and to insure that timely payments are acknowledged.

Carolyn E. Shellman, director of hearings and secretary of the commission, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Shellman has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that the reason for late payment charges will be clearly defined and utilities may begin to recover the average cost of processing delinquent bills from the customers who cause the

cost. Further, customers will be provided adequate time to pay delinquent bills thus preventing disconnection. Residential customers who pay bills late every month could incur maximum charges of \$2 for each month, for each year from 1982-1986.

Comments on the proposal may be submitted to Carolyn E. Shellman, director of hearings and secretary of the commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

The amendments are proposed under Texas Civil Statutes, Article 1446c, §58, which provides the Public Utility Commission of Texas with the authority to prescribe rules and conditions for the discontinuance of service.

§23.34 (052.02.04.044). Discontinuance of Service.

(a) (No change.)

(b) A one-time charge to encourage timely payment of bills and defray the cost incurred in collecting late payments [penalty not to exceed 5.0%] may be made on delinquent [commercial or industrial] bills; however, the late payment service charge may not exceed 5.0% for nonresidential bills, and, for residential bills must be based on the estimated average cost to process late payments, not to exceed \$2 [no such penalty shall apply to residential bills under this rule].

(c) A customer's utility service may be disconnected if the bill has not been paid or a deferred payment agreement entered into within 22 days from the date of issuance and if proper notice has been given. Proper notice shall consist of a separate mailing or hand delivery at least seven days prior to a stated date of disconnection, with the words "termination notice" or similar language prominently displayed on the notice. The information included in the notice shall be provided in English and Spanish as necessary to adequately inform the customer. If mailed, the cut-off day may not fall on a holiday or weekend, but shall fall on the next working day after the seventh day. Payment at a utility's authorized payment agency is considered payment to the utility. The company shall not issue late notices or disconnect notices to the customer earlier than the working day after the due date so that a reasonable length of time is allowed to ascertain receipt of payment by mail or at the utility's authorized payment agency.

(d)-(h) (No change.)

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

Issued in Austin, Texas, on May 27, 1982.

TRD-824500 Carolyn E. Shellman
Director of Hearings
Secretary of the Commission
Public Utility Commission of
Texas

Proposed date of adoption: July 19, 1982
For further information, please call (512) 458-0100.

16 TAC §23.35

The Public Utility Commission of Texas proposes amendments to §23.35 (052.02.04.045), concerning applicant deposits. The agency proposes to amend its rule concerning deposit requirements for utility customers to give customers who are asked to increase the amount of their deposit an additional three days in which to do so.

Carolyn E. Shellman, director of hearings and secretary of the commission, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering rule.

Ms. Shellman has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be an additional three-day period for customers to make new deposits thus avoiding disconnection. There are no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Carolyn E. Shellman, director of hearings and secretary of the commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §35b, which provides the Public Utility Commission of Texas with the authority to establish regulations, standards, and conditions for public utilities to follow pertaining to the supply of the utility service.

§23.35 (052.02.04.045). Applicant Deposit.

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

(d) Amount of deposit and interest for permanent residential, commercial, and industrial service and exemption from deposit.

(1) The required deposit shall not exceed an amount equivalent to 1/6 of the estimated annual billings. If actual use is at least twice the amount of the estimated billings, a new deposit may be required to be made within five [two] days. If such additional deposit is not made, the utility may disconnect service under the standard disconnection procedure.

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

(e)-(j) (No change.)

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

Issued in Austin, Texas, on May 27, 1982.

TRD-824501 Carolyn E. Shellman
Director of Hearings
Secretary of the Commission
Public Utility Commission
of Texas

Proposed date of adoption: July 19, 1982
For further information, please call (512) 458-0100.

16 TAC §23.36

The Public Utility Commission of Texas proposes amendments to §23.36 (052.02.04.046), concerning billing. The agency proposes to amend its billing rules to permit unlimited back billing for interstate toll charges and to substitute the term "late payment charge" for "late payment penalty" in billing rules for electric, water, and sewer utilities. The latter tracks a change to §23.44 that is simultaneously being proposed. The former is being proposed consistent with an opinion from the commission's general counsel that interstate toll charges are under the exclusive jurisdiction of the Federal Communications Commission so this commission has no authority to prohibit their collection.

Carolyn E. Shellman, director of hearings and secretary of the commission, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Shellman has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that customers will be advised that there are costs associated with late payment and only the delinquent individuals rather than all ratepayers will bear this expense. Additionally, commission rules are being clarified to more accurately reflect jurisdiction. There will be no added cost of compliance with either of these amendments because the toll charges are already recoverable through other means and the other amendment is merely a wording change.

Comments on the proposal may be submitted to Carolyn E. Shellman, director of hearings and secretary of the commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

The amendments are proposed under Texas Civil Statutes, Article 1446c, §58, which provides the Public Utility Commission of Texas with the authority to prescribe rules and conditions for the discontinuance of service.

§23.36 (052.02.04.046). *Billing.*

(a) Rendering and form of bills.

(1) Telephone utilities.

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

(C) If billings for telephone utility services are found to differ from the utility's lawful rates for the services being purchased by the customer, a billing adjustment shall be calculated by the utility. If the customer is due a refund, an adjustment shall be made for the entire period of overcharge. If the customer was undercharged, the utility may back bill the customer for a period not to exceed six months from the date the utility initially notifies the customer of the amount of the undercharge and the total additional amount that will be due. A telephone utility may back bill for a period exceeding six months on interstate charges, but may not disconnect for failure to pay interstate charges incurred six months prior

to the current billing. Said amount shall be added to the next regular billing. If the underbilling is \$25 or more, the company shall offer to such customer a deferred payment plan option, for the same length of time as that of the underbilling.

(2) Electrical utilities.

(A) (No change.)

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

(i)-(vi) (No change.)

(vii) The date by which the customer must pay the bill in order to avoid a late payment service charge [penalty].

(viii) The total amount due after addition of any charge [penalty] for nonpayment within a designated period. [The terms "gross bill" and "net bill" or other similar terms implying the granting of a discount for prompt payment shall be used only when an actual discount for prompt payment is granted. The terms shall not be used when a penalty is added for nonpayment within a designated period.]

(ix)-(xi) (No change.)

(C) (No change.)

(3) Water and sewer utilities.

(A) (No change.)

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

(i)-(iv) (No change.)

(v) The date by which the customer must pay the bill in order to avoid addition of a late payment service charge [penalty].

(vi) The total amount due after addition of any charge [penalty] for nonpayment within a designated period. [The terms "gross bill" and "net bill" or other similar terms implying the granting of a discount for prompt payment shall be used only when an actual discount for prompt payment is granted. The terms shall not be used when a penalty is added for nonpayment within a designated period.]

(vii)-(ix) (No change.)

(C) (No change.)

(b) (No change.)

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

Issued in Austin, Texas, on May 27, 1982.

TRD-824502

Carolyn E. Shellman
Director of Hearings
Secretary of the Commission
Public Utility Commission of
Texas

Proposed date of adoption: July 19, 1982
For further information, please call (512) 468-0100.

16 TAC §23.38

The Public Utility Commission of Texas proposes amendments to §23.38 (052.02.04.048), concerning line extensions and responses to requests for service. The agency proposes to amend its rules concerning service policies for electric utilities to require that

line extension charges be cost based, and that when service cannot be provided within seven working days customers be told the anticipated completion date. These amendments are designed to insure that utility customers pay only the cost of service provided them and that the service be readily available as requested.

Carolyn E. Shellman, director of hearings and secretary of the commission, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Shellman has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that existing utility customers will not be burdened by the cost of extending facilities to new customers, and new customers requesting service that cannot be immediately provided will know how long they can expect to wait for service. There is no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Carolyn E. Shellman, director of hearings and secretary of the commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

The amendments are proposed under Texas Civil Statutes, Article 1446c, §35(b), which provides the Public Utility Commission of Texas with the authority to fix just and reasonable standards, regulations, or practices for utilities to follow with respect to the service furnished.

§23.38 (052.02.04.048). New Construction.

(a) (No change.)

(b) Line extension and construction charges. Every utility shall file its extension policy as required in §23.24(b)(1) of this title (relating to Form and Filing of Tariffs). The policy shall be consistent, nondiscriminatory and subject to the approval of the commission. No contribution in aid of construction may be required of any customer except as provided for in the extension policy; however, the extension policy shall assure that extensions of service are revenue justified so as not to burden existing customers. Where service is being switched between electric companies, the electric utility disconnecting such customer shall be permitted to charge the customer a disconnection fee of an amount set forth in its tariff, and such fee shall be based upon the average direct labor and vehicle costs of disconnecting such customer and any distribution facilities rendered idle and not useable elsewhere on the system based upon the original cost of such facilities less depreciation and salvage. Prior to any disconnection under this section, the customer shall pay the disconnecting electric utility for service up through the date of disconnection and the charges for disconnection set forth in this rule. Upon payment of such charges the utility shall give the customer a paid receipt. The connecting electric utility may not provide service to said customer until it has evidence from the disconnecting elec-

tric utility that the customer has paid for electric service through the date of disconnection and any charges for disconnection under this rule.

(c) Response to request for service. Every telephone and electric public utility shall serve each qualified applicant for service within its certificated area as rapidly as is practical. Those applications for new electric service not involving line extension or new facilities should be filled within seven working days; application for new telephone service not involving line extension or new facilities shall be filled in accordance with §23.51(c)(2)(A) of this title (relating to Telephone Utilities). **If a line extension is required or if facilities are not available, the telephone or electric utility shall inform the customer within seven working days of receipt of the application, giving the customer an estimated completion date.** Those applications for telephone and electric residential service requiring line extensions should be filled as quickly as possible and shall be filled within 90 days unless unavailability of materials causes unavoidable delays. In the event that residential service is delayed in excess of 90 days after an applicant has met credit requirements and made satisfactory arrangements for payment of any required construction charges, a report shall be made to the commission listing the name, location, and cause for delay. Unless such delays are due to causes which are reasonably beyond the control of the utility, delay in excess of 90 days shall constitute refusal to serve, and consideration may be given to revoking the certificate of convenience and necessity or to granting a certificate to another utility to serve the applicant, or refusal may be considered in arriving at a proper return on the invested capital of the utility.

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

Issued in Austin, Texas, on May 27, 1982.

TRD-824503

Carolyn E. Shellman
Secretary of the Commission
Director of Hearings
Public Utility Commission of
Texas

Proposed date of adoption: July 19, 1982
For further information, please call (512) 458-0100.

Special Rules

16 TAC §23.51

The Public Utility Commission of Texas proposes amendments to §23.51 (052.02.05.051), concerning automatic dialing-announcing devices. The agency proposes to amend its rule concerning the use of automatic dialing-announcing devices (ADAD's) over public utility telephone networks by requiring automatic termination of the call within 30 seconds if the call is not completed. This amendment allows the called party more time to answer the phone and permits the devices to be used more effectively.

Carolyn E. Shellman, director of hearings and secretary of the commission, has determined that for the first five period the rule will be in effect, there will be no

fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Shellman has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that the called party will have adequate time to answer the phone before the ADAD is disconnected and the ADAD's will be used more effectively for the calling party's benefit. There is no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Carolyn E. Shellman, director of hearings and secretary of the commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

The amendments are proposed under Texas Civil Statutes, Article 1446c, §35(b), which provides the Public Utility Commission of Texas with the authority to establish reasonable regulations and practices for public utilities to follow with respect to the services they furnish.

§23.51 (052.02.05.051). Telephone Utilities.

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

(h) Automatic dialing-announcing devices.

(1) (No change.)

(2) No telephone utility shall knowingly permit an automatic dialing-announcing device to be connected to or operated over its telephone network unless:

(A) (No change.)

(B) the ADAD is used in conformance with the following:

(i) The device, within 15 seconds after the called party hangs up, automatically creates a disconnect signal or on hook condition which allows the called party's line to be released. The device terminates all calls, and a disconnect or on hook condition is created, when the call is not completed with 30 [15] seconds;

(ii)-(v) (No change.)

(C) (No change.)

(3) (No change.)

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

Issued in Austin, Texas, on May 27, 1982.

TRD-824504 Carolyn E. Shellman
Secretary of the Commission
Director of Hearings
Public Utility Commission of
Texas

Proposed date of adoption: July 19, 1982
For further information, please call (512) 458-0100.

16 TAC §23.59

The Public Utility Commission of Texas proposes new §23.59 (052.02.05.059), concerning wheeling charges. The agency proposes to adopt a new rule governing the costs of wheeling firm power between

electric utilities. It will be applicable to transactions not subject to the jurisdiction of the Federal Energy Regulatory Commission when wheeling terms cannot otherwise be established by agreement among all parties to the transaction. The rule prescribes the compensation the wheeling utility shall receive for this transmission service.

Carolyn E. Shellman, director of hearings and secretary of the commission, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Shellman has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that, in the absence of an agreement by all parties to a wheeling transaction, the rule will prescribe the wheeling charge that may be imposed. Basing this charge on the utility's cost of service helps to insure that it is fair and reasonable. Customers of the wheeling utility will therefore not have to subsidize wheeling costs and charges will be high enough to encourage construction of the transmission facilities which make wheeling possible. There is no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Carolyn E. Shellman, director of hearings and secretary of the commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

The new section is proposed under Texas Civil Statutes, Article 1446c, §37 and §38, which provide the Public Utility Commission of Texas with the authority to fix proper and adequate rates for each public utility, with rates being broadly defined by §3 of the same statute to include any compensation or charge collected for the transmission of electricity.

§23.59 (052.02.05.059). Wheeling Service for Transmission of Firm Power.

(a) Application. This section of the commission's substantive rules applies to the regulation of the charges for wheeling services incident to a purchase and sale of firm power between electric public utilities and/or municipally owned electric utilities. The application of this rule shall be limited to transactions which are not subject to the jurisdiction of the Federal Energy Regulatory Commission, and for which agreement from all affected parties on the terms and conditions of the transaction cannot otherwise be obtained. Nothing in this rule shall affect the validity of any contract for wheeling service entered into before the adoption of this rule.

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

(1) ERCOT—The Electric Reliability Council of Texas.

(2) ERCOT engineering subcommittee or its successor in function—A subcommittee made up of representatives of ERCOT utilities charged with coordinating

studies regarding the planning of the ERCOT generation and transmission system facilities.

(3) **ERCOT security center**—One of two offices which are geographically located in North and South Texas, and which maintain constant surveillance of the status of operating conditions of the generation and transmission systems of the ERCOT utilities. The centers act as a centralized coordinator for the collection and dissemination of information for the individual utilities.

(4) **Firm power**—The power that is furnished by one utility for use of another utility under a commitment to provide such power as the purchaser may demand it, rather than on an "as available" basis.

(5) **Wheeling**—The provision of transmission service by other utilities when two utilities commit to a sales/purchase agreement for firm power.

(c) **Compensation.** In every transaction within the application of this rule, the utility providing wheeling service shall be entitled to compensation monthly from the purchasing utility as specified in paragraphs (1)-(3).

(1) **Facilities charge for wheeling transactions of more than 25 megawatts.** The facilities charge shall be determined as follows:

(A) The annual cost of providing transmission service on the system of the utility supplying wheeling service shall be determined from the wheeling utility's cost of service study as most recently approved by the commission. If a cost of service study is not available, the cost shall be based on the annual expenses found in FERC expense accounts 560-573 (or accounts with similar contents) plus the depreciation, federal income tax and other associated taxes, and the commission allowed rate of return based on FERC plant accounts 350-359 (or accounts with similar contents), less accumulated depreciation. It is recommended, though not required by the commission, that municipally owned utilities providing wheeling service use the cost of service study most recently approved by their regulatory body or, in the absence of such a study, the expenses and plant accounts as outlined in this subparagraph.

(B) Each utility subject to requests for wheeling shall determine at least annually the megawatt-miles for that transmission system used in subparagraph (A) of this paragraph in determining the annual cost of providing transmission service. The megawatt-miles for a system shall be the sum of the products of 60% of the thermal rating of each line (75° C conductor, 25° C air, 1.4 mph wind and new wire) times the length in miles of the line, for transmission lines whose nominal operating voltage is at least 60,000 volts when measured phase to phase.

(C) The changes in megawatt power flows resulting from a wheeling operation shall be determined at least annually from peak load period power flow studies that employ the most recently revised data base and applicable programs maintained by the ERCOT engineering subcommittee.

(D) The magnitude of the vector difference in power flows as determined in subparagraph (C) of this paragraph shall be multiplied times the length of the respective line. The megawatt-mile changes for all lines shall be summed to determine the total megawatt-mile change on the system.

(E) The annualized facilities charge for providing transmission service is then found by dividing the total megawatt-mile change as found in subparagraph (D) of this paragraph by the system megawatt-miles as found in subparagraph (B) of this paragraph, and then multiplying the resulting quotient by the transmission service costs found in subparagraph (A) of this paragraph, provided, however, that the facilities charge shall not exceed the wheeling utility's annual transmission service cost per megawatt of peak demand times the change in megawatt flow across the wheeling utility's boundary, calculated as ½ of the sum of the absolute value of all tie line flow changes due to the wheeling.

(2) **Facilities charge for wheeling transactions of 25 megawatts or less.** It is the purpose of this subsection to simplify the determination, calculation, and disbursement of facilities charges resulting from small power transfers and incurred by small utilities.

(A) **Application.** It shall be the option of a utility receiving wheeling service to select the method of calculating wheeling charges described in this section provided it does not have interconnections with more than one other utility and the total of all firm purchased power contracts with utilities other than the utility to which the purchasing utility is connected does not exceed 25 megawatts.

(B) **Facilities charge.** The utility which is directly connected to the purchasing utility and providing wheeling service under this subsection shall be entitled to a facilities charge monthly from the purchasing utility which shall be determined as follows.

(i) The annual cost of providing transmission service on the system of the utility supplying wheeling service shall be determined as prescribed in subsection (c)(1)(A) of this section.

(ii) The wheeling charge per megawatt is found by dividing the transmission service costs found in clause (i) of this subparagraph by the system peak demand of the previous year.

(iii) The annualized facilities charge for providing transmission service is found by multiplying the megawatts contracted for in the firm power purchase by the wheeling charge cost per megawatt found in clause (ii) of this subparagraph.

(iv) If the aggregate of transactions performed under this section impacts the system of a utility, which is not eligible for facilities charges, by increasing its boundary flow, calculated as outlined in subsection (c)(1)(E) of this section, by 50 megawatts or more, it may demand facilities charges based on the method outlined in subsection (c)(1) of this section.

(3) **Provision for losses.**

(A) The losses incurred by the utility providing wheeling service due to any firm power transaction shall be determined from the scheduled hourly transfer used in conjunction with loss matrices produced by the ERCOT engineering subcommittee. These loss matrices shall indicate the magnitude and distribution of losses associated with the transfer.

(B) Under normal circumstances, losses shall be repaid in kind. At the election of the utility providing wheeling services, losses may be accumulated for later payback scheduling at a time agreeable to the utility

receiving wheeling service. If both parties agree, losses may be repaid in any other manner. However, in the event that mutual agreement cannot be reached, if the utility receiving wheeling service determines that losses are not to be repaid in kind, compensation for such losses shall be paid to the wheeling utility monthly and shall be based on the wheeling utility's cost of its highest-priced fuel prorated over the time used during the month in which the wheeling transaction occurs, and if the utility providing wheeling service determines that losses are not to be repaid in kind, compensation shall be based on the wheeling utility's average cost of fuel during the period. The most recently available monthly average system heat rate shall be used to convert the fuel price to a charge per kilowatt-hour for the losses. If, as a result of a wheeling transaction, the level of losses on a system are of a low magnitude such that accurate determination is impractical, payment for such losses may, if both utilities agree, be ignored.

(d) Tariffs and enforcement.

(1) Each utility providing wheeling service subject to this rule shall, within 60 days of the effective date of this rule, file a general tariff conforming to subsection (c) of this section.

(2) No utility may participate in a transaction which utilizes wheeling service provided by other utilities without the consent of all affected utilities. However, no intermediate utility may refuse to provide wheeling service except as outlined in subsection (e) of this section.

(3) Utilities are authorized to charge any other utility according to the tariff filed pursuant to this subsection. This tariff may also include a penalty for unauthorized use of wheeling service, which may be no more than twice the normal wheeling charges.

(e) General provisions.

(1) A utility may suspend transmission wheeling service during any emergency declared by an ERCOT security center or the successor in function of an ERCOT security center.

(2) The obligation to provide wheeling service shall be subject to:

(A) the availability of capacity on the wheeling utility's bulk transmission and related facilities during the period for which wheeling service is requested; and

(B) the determination that such wheeling service will not create an undue interference with the wheeling utility's obligation to provide service to any of its other customers including other electric utilities interconnected with the wheeling utility. This determination as to availability of capacity and potential interference with other obligations shall be made by the utility whose transmission system will be affected by such wheeling service in the exercise of its engineering discretion.

(3) A utility agreeing to supply transmission wheeling service shall give priority to requests to use its facilities in the order in which written agreements are executed.

(f) Processing of requests for wheeling. All requests for wheeling services shall be made in writing at least 90 days in advance of the date on which wheeling is proposed to begin and shall provide information in sufficient detail to allow evaluation of the transaction. Whenever a utility has been requested to furnish a response to a re-

quest for wheeling, it shall respond in writing with an answer to the request within 30 days unless the power transfer is of such magnitude, duration, and/or complexity that additional time is needed to evaluate its impact. Under no circumstances shall a response be made later than 60 days following the date of the request. The answer shall include cost information reasonably necessary to enable the inquiring utility to evaluate the impact of the wheeling costs on its proposed firm power purchase, or in the case of denial of wheeling service, an explanation of the reasons for denial. The cost of applicable power flow studies, if performed, shall be borne by the inquiring utility.

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

Issued in Austin, Texas, on May 27, 1982.

TRD-824506

Carolyn E. Shellman
Secretary of the Commission
Director of Hearings
Public Utility Commission of
Texas

Proposed date of adoption: July 19, 1982

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

TITLE 22. EXAMINING BOARDS

Part III. Texas Board of Chiropractic Examiners

Chapter 71. Application and Applicants

(Editor's note: The text of the following rule proposed for repeal will not be published. The rule may be examined in the offices of the Texas Board of Chiropractic Examiners, 5555 North Lamar, Austin, or in the Texas Register Division office, 503E Sam Houston Building, Austin).

22 TAC §71.5

The Texas Board of Chiropractic Examiners proposes the repeal of §71.5, concerning approved chiropractic schools and colleges.

Edna A. Parsons, executive secretary, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Parsons has also determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule as proposed will be that, by repealing the existing rule and renumbering the section, the board rules will be more consistent and comprehensible.

There is no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Edna A. Parsons, executive secretary, 5555 North Lamar, Building H-103, Austin, Texas 78751.

The repeal is proposed under Senate Bill 109, 67th Legislature, 55, and Texas Civil Statutes, Article 4512b, which provides the Texas Board of Chiropractic Examiners with the authority to repeal any board rules as they deem necessary.

§71.5. Approved Chiropractic Schools and Colleges.

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

Issued in Austin, Texas, on May 25, 1982.

TRD-824600 Edna A. Parsons
Executive Secretary
Texas Board of Chiropractic
Examiners

Proposed date of adoption: July 9, 1982
For further information, please call (512) 453-1703.

22 TAC §71.5

The Texas Board of Chiropractic Examiners proposes new §71.5, concerning approved chiropractic schools and colleges.

Edna A. Parsons, executive secretary, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Parsons has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be a higher quality of doctors practicing chiropractic through the establishment of guidelines for chiropractic schools and colleges.

There is no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Edna A. Parsons, executive secretary, 5555 North Lamar, Building H-103, Austin, Texas 78751.

The new section is proposed under Texas Civil Statutes, Article 4512b, §4a, which provides the Texas Board of Chiropractic Examiners with the authority to promulgate procedural rules and regulations.

§71.5. Approved Chiropractic Schools and Colleges.

(a) The board shall annually review and approve those chiropractic schools whose graduates are eligible for examination and licensure under the provisions of Texas Civil Statutes, Article 4512b, §10.

(b) A bona fide reputable, chiropractic school is a school which:

- (1) holds institutional status with an approved accrediting agency, or
- (2) can otherwise show proof of reputable status and give a valid reason why status with an approved accrediting agency has not been obtained.

(c) The board shall annually determine which accrediting agencies are approved. Factors to be considered are:

- (1) quality of standards;
- (2) expertise in the field of chiropractic education;
- (3) extent of investigation;
- (4) recognition by reviewing bodies such as United States Office of Education and Council on Post-Secondary Accreditation.

(d) The "better class" of chiropractic schools referenced under §10 of the Chiropractic Act are schools which are accredited by an approved accrediting agency.

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

Issued in Austin, Texas, on May 25, 1982.

TRD-824601 Edna A. Parsons
Executive Secretary
Texas Board of Chiropractic
Examiners

Proposed date of adoption: July 9, 1982
For further information, please call (512) 453-1703.

Chapter 75. Rules of Practice [The Board]

22 TAC §75.2

The Texas Board of Chiropractic Examiners proposes new §75.2, concerning unauthorized instruments.

Edna A. Parsons, executive secretary, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Parsons has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be to limit and regulate the use of unauthorized instruments within the chiropractic profession.

There is no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Edna A. Parsons, executive secretary, 5555 North Lamar, Building H-103, Austin, Texas 78751.

The new section is proposed under Texas Civil Statutes, Article 4512b, which provides the Texas Board of Chiropractic Examiners with the authority to promulgate rules and regulations.

§75.2. Unauthorized Instruments. Chiropractors in Texas are not authorized by law to use diagnostic instruments and/or instruments for treatment, the use of which are not taught in the regular course of instruction in a college whose graduates are allowed to take the board

exam and which do not come within the scope of chiropractic as defined by Texas Civil Statutes, Article 4512b, §1.

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

Issued in Austin, Texas, on May 25, 1982.

TRD-824602 Edna A. Parsons
Executive Secretary
Texas Board of Chiropractic
Examiners

Proposed date of adoption: July 9, 1982
For further information, please call (512) 453-1703.

22 TAC §75.3

The Texas Board of Chiropractic Examiners proposes new §75.3, concerning diagnostic techniques.

Edna A. Parsons, executive secretary, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Parsons has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be to help chiropractors better utilize diagnostic techniques and help the board regulate diagnostic techniques within the scope of practice.

There is no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Edna A. Parsons, 5555 North Lamar, Building H-103, Austin, Texas 78751.

The new section is proposed under Texas Civil Statutes, Article 4512b, which provides the Texas Board of Chiropractic Examiners with the authority to promulgate rules and regulations.

§75.3. Diagnostic Techniques. Diagnostic techniques are authorized where necessary to make proper diagnosis preparatory to spinal treatment. Such techniques include, but are not limited to: x-rays and physical examination, but shall not include vaginal, rectal, or breast examinations.

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

Issued in Austin, Texas, on May 25, 1982.

TRD-824603 Edna A. Parsons
Executive Secretary
Texas Board of Chiropractic
Examiners

Proposed date of adoption: July 9, 1982
For further information, please call (512) 453-1703.

22 TAC §75.4

The Texas Board of Chiropractic Examiners proposes new §75.4, concerning adjunctive therapy.

Edna A. Parsons, executive secretary, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Parsons has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be to achieve better results with chiropractic treatment and to regulate modalities within the scope of practice.

There is no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Edna A. Parsons, 5555 North Lamar, Building H-103, Austin, Texas 78751.

The new section is proposed under Texas Civil Statutes, Article 4512b, which provides the Texas Board of Chiropractic Examiners with the authority to promulgate rules and regulations.

§75.4. Adjunctive Therapy. The use of adjunctive therapy modalities are authorized for treatment of spinal or spinal related conditions with the exception of those modalities prohibited under §75.2 of this title (relating to Unauthorized Instruments).

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

Issued in Austin, Texas, on May 25, 1982.

TRD-824604 Edna A. Parsons
Executive Secretary
Texas Board of Chiropractic
Examiners

Proposed date of adoption: July 9, 1982
For further information, please call (512) 453-1703.

22 TAC §75.5

The Texas Board of Chiropractic Examiners proposes new §75.5, concerning the payment of actual expenses for witnesses.

Edna A. Parsons, executive secretary, has determined that for the first five-year period the rule will be in effect, there will be fiscal implications as a result of enforcing or administering the rule. The rule will cost the state an estimated additional \$300 each year for years 1982-1986. There is no reduction in state cost, no increase or loss in revenue, and no effect on local government.

Ms. Parsons has also determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule as proposed will be the ability to better protect the consumer by being able to have expert

witnesses at administrative hearings. There is no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Edna A. Parsons, 5555 North Lamar, Building H-103, Austin, Texas 78751.

The new section is proposed under Texas Civil Statutes, Article 4512b, §4a, which provides the Texas Board of Chiropractic Examiners with the authority to promulgate procedural rules and regulations.

§75.5. Witness Fees. The Texas Board of Chiropractic Examiners agrees to pay actual expenses for witnesses that testify at administrative hearings before the board.

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

Issued in Austin, Texas, on April 19, 1982.

TRD-824805 Edna A. Parsons
Executive Secretary
Texas Board of Chiropractic
Examiners

Proposed date of adoption: July 9, 1982
For further information, please call (512) 453-1703.

education and experience to prospective clients, since contracts for professional accounting services may be awarded on the basis of demonstrated competence and qualifications.

There is no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Gary McNeil, Texas State Board of Public Accountancy, 3301 Northland Drive, Suite 500, Austin, Texas 78731.

The amendments are proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provides the Texas State Board of Public Accountancy with the authority to promulgate rules deemed necessary to effectuate the purposes of the Public Accountancy Act of 1979, as amended, including rules of professional conduct to insure that competitive practices of licensees serve the best interest of the public.

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

Issued in Austin, Texas, on May 28, 1982.

TRD-824543 Bob E. Bradley
Executive Director
Texas State Board of Public
Accountancy

Proposed date of adoption: July 29, 1982
For further information, please call (512) 451-0241.

Part XXII. Texas State Board of Public Accountancy

Chapter 501. Rules of Professional Conduct

General Provisions

22 TAC §501.2

(Editor's note: The Texas State Board of Public Accountancy proposes for permanent adoption the amendments it adopts on an emergency basis in this issue. The text of the amendments is published in the Emergency Rules section.)

The Texas State Board of Public Accountancy proposes amendments to §501.2, concerning the definition of "fee estimate" included in the definition of competitive bid. The amendment provides clarification to licensees as to how they may handle fee estimates and comply with the rules of professional conduct of the board.

Bob E. Bradley, executive director, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Bradley has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be a more practical and understandable means of communicating a licensee's

Part XXIV. State Board of Veterinary Medical Examiners

Chapter 571. Licensing Examinations

22 TAC §571.8

The Texas Board of Veterinary Medical Examiners proposes amendments to §571.8, concerning overall averages.

Roger D. Shipman, executive secretary, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Shipman has also determined that for each year of the first five years the rule as proposed is in effect, that there will be no public benefits anticipated as a result of enforcing the rule as proposed.

There is no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Roger D. Shipman, executive secretary, Texas Board of Veterinary Medical Examiners, 3810 Medical Parkway, Suite 119, Austin, Texas 78756, (512) 458-1183.

The amendments are proposed under Texas Civil Statutes, Article 7485a, §7, which provides the Texas Board of Veterinary Medical Examiners with the authority to make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act.

§571.8. Overall Average.

[(a)] To be eligible for a license, an applicant for the examination must attain an overall minimum average grade of 75 on all subjects with a minimum grade of 50 on any one subject in the short answer or station identification practical. The minimum score on any one subject of less than 50 must be reviewed by the members of the board before the individual is required to be reexamined on the subject failed. Upon reexamination, the applicant must attain a minimum score of 75 on the subject in which he was reexamined. The member of the board whose subject was failed is to submit the applicant's papers and a key to the board office for submission to the other board members for concurrence in the failure and imposition of the reexamination requirement. In the event the applicant is required to retake any part of the examination at the discretion of the board, it may be administered by the staff at the board office in Austin, or at any other place designated by the board. All examinations administered under this section shall be administered on the same day and within 45 days from the date of the letter notifying the applicants of failure requiring reexamination. One unsuccessful attempt to obtain a passing score of 75 on the below 50 failure will result in the applicant being required to participate in the full short answer practical at the next regularly scheduled examination or subsequent thereto.

[(b)] Three unseccessful attempts by an applicant to pass the veterinary licensing examination required by the Texas board shall bar such applicant from all future examination; provided, however, following the expiration of not less than one year from date of the third examination failed, if the applicant presents evidence satisfactory to the Texas State Board of Veterinary Medical Examiners of remedial educational experience, then the board in its sole discretion may authorize an additional examination.]

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

Issued in Austin, Texas, on May 28, 1982.

TRD-824561 Roger D. Shipman
Executive Secretary
State Board of Veterinary
Medical Examiners

Proposed date of adoption: July 9, 1982
For further information, please call (512) 468-1183.

TITLE 34. PUBLIC FINANCE
Part VII. State Property Tax Board
Chapter 161. Valuation Procedures
34 TAC §161.9

The State Property Tax Board proposes new §161.9, which adopts by reference a manual concerning the appraisal of land restricted to recreation, park, and scenic uses. The "Guidelines for Appraisal of Recreation, Park, and Scenic Land" contains application verification procedures and valuation methods and principles to be used when appraising property in this classification.

Brian E. Brown, attorney, Office of General Counsel, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Brown has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be to provide procedures to be used by chief appraisers to appraise land restricted to use as recreation, park, or scenic land. There will be no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted in writing to H. Jack Woods, general counsel, State Property Tax Board, P.O. Box 15900, Austin, Texas 78761.

The new section is proposed under Property Tax Code, §23.83(e), which provides the State Property Tax Board with the authority to promulgate rules specifying the methods to apply and the procedures to use in appraising land under this section.

§161.9. Appraisal of Recreation, Park, and Scenic Land. The State Property Tax Board adopts by reference "Guidelines for the Appraisal of Recreational, Park, and Scenic Land" to be effective August 3, 1982. This document is published by and available from the State Property Tax Board, 9501 IH 35 North, P.O. Box 15900, Austin, Texas 78761.

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

Issued in Austin, Texas, on June 2, 1982.

TRD-824589 Kenneth E. Graeber
Executive Director
State Property Tax Board

Proposed date of adoption: July 9, 1982
For further information, please call (512) 837-8622.

Adopted Rules

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

The document, as published in the *Register*, must indicate whether the rule is adopted with or without changes to the proposal. The notice must also include paragraphs which: explain the legal justification for the rule; how the rule will function; contain comments received on the proposal; list parties submitting comments for and against the rule; explain why the agency disagreed with suggested changes; and contain the agency's interpretation of the statute under which the rule was adopted.

If an agency adopts the rule without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. The text of the rule, as appropriate, will be published only if final action is taken with alterations to the proposal. The certification information, following the submission, contains the effective date of the final action, the proposal's publication date, and a telephone number to call for further information.

TITLE 13. CULTURAL RESOURCES

Part IV. Texas Antiquities Committee

Chapter 41. Practice and Procedure—Office of the State Archeologist

13 TAC §§41.2, 41.4, 41.6, 41.11, 41.12,
41.16-41.18, 41.24

The Texas Antiquities Committee adopts amendments to §§41.2, 41.4, 41.6, 41.11, 41.12, 41.16-41.18, and 41.24, without changes to the proposed text published in the April 16, 1982, issue of the *Texas Register* (7 TexReg 1533).

The amendments assist in further protection of state archeological landmarks. They determine the site of and designate landmarks and require permit conditions.

Comments were received from one person, Mr. Robert B. Baldwin III, by letter dated May 7, 1982. Mr. Baldwin thought that the entire set of rules were being adopted. The rules were previously adopted on March 10, 1981, and this submission is merely to correct section numbers of those rules and to make minor editorial changes.

The amendments are adopted under Texas Civil Statutes, Article 6145-9, which provides the Texas Antiquities Committee with the authority to promulgate rules, determine the site of and designate landmarks, and to require permit conditions.

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

Issued in Austin, Texas, on May 24, 1982.

TRD-824510

Curtis Tunnell
Executive Secretary
Texas Antiquities Committee

Effective date: June 23, 1982

Proposal publication date: April 16, 1982

For further information, please call (512) 475-3092.

Chapter 45. State Archeological Landmarks

Protection of State Archeological Landmarks

13 TAC §45.4

The Texas Antiquities Committee adopts amendments to §45.4, without changes to the proposed text published in the March 23, 1982, issue of the *Texas Register* (7 TexReg 1232).

The Texas Natural Resources Code authorizes the Texas Antiquities Committee to annually update the list of state land tracts in Texas submerged lands. The amendment will update for this year the list of state land tracts in Texas submerged lands.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Natural Resources Code, Chapter 191, which provides the Texas Antiquities Committee with the authority to annually update the lists of the state land tracts in Texas submerged lands.

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

Issued in Austin, Texas, on May 20, 1982.

TRD-824511 Curtis Tunnell
Executive Secretary
Texas Antiquities Committee

Effective date: June 23, 1982
Proposal publication date: March 23, 1982
For further information, please call (512) 475-3092.

**TITLE 22. EXAMINING BOARDS
Part XXIV. State Board of
Veterinary Medical Examiners
Chapter 571. Licensing
Reciprocal**

22 TAC §§571.31-571.35

The State Board of Veterinary Medical Examiners adopts the repeal of §§571.31-571.35, without changes to the proposed notice of repeal published in the March 12, 1982, issue of the *Texas Register* (7 TexReg 1026).

The repeal ensures that only qualified veterinary practitioners are licensed to practice veterinary medicine in Texas. In addition, this conforms the administrative rules to the current Veterinary Practice Act as amended during the 67th Texas Legislature. This repeal requires that all practitioners desiring a Texas license be required to successfully participate in the licensing examination to obtain a license.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 7465a, §7, which states that the board may make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act.

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

Issued in Austin, Texas, on May 28, 1982.

TRD-824562 Roger D. Shipman
Executive Secretary
State Board of Veterinary
Medical Examiners

Effective date: June 22, 1982
Proposal publication date: March 12, 1982
For further information, please call (512) 458-1183.

**TITLE 40. SOCIAL SERVICES AND
ASSISTANCE
Part I. Texas Department of
Human Resources**

(Editor's note: Because the Texas Department of Human Resources' rules have not yet been published

in the Texas Administrative Code (TAC), they do not have designated TAC numbers. For the time being, the rules will continue to be published under their Texas Register Division numbers. However, the rules will appear under the agency's correct title and part.)

This is the second part of a three-part serialization of adoptions submitted by the Texas Department of Human Resources. A list of the rules, containing the publication date of the proposed rules and the effective date of the adopted rules, appeared in the June 4, 1982, issue of the *Texas Register*. The rest of the rules will appear in the June 11 issue.

ICF/SNF

**Governing Body and Management
326.29.20.001-.019**

The Texas Department of Human Resources adopts new Rules 326.29.20.001-.019 with changes to the proposed text published in the December 4, 1981, issue of the *Texas Register* (6 TexReg 4429).

These rules are justified because federal law requires that standards be enforced in nursing facilities if federal funds are used to pay for care.

The rules will function by describing the standards to be used in governing and managing services provided to recipient-patients in nursing facilities.

The department received 58 comments from individuals and organizations about the rules. The organizations commenting were the Texas Nursing Home Association, David Harmon Enterprises, the Texas Department of Health, Cantex Healthcare Centers, and National Living Centers.

The commentors were neither for nor against the rules, but offered recommendations for changes to the rules as proposed. Some comments were received after the end of the comment period. These comments are not included for discussion here, however, they have been considered in the language of the final rules. The department's decisions about incorporation of the comments are stated in the discussion of each comment. Comments were received on the following sections of the rules.

326.29.20.002 (Governing Body)—One commentor requested that any requirements of the governing body be put in writing. This requirement was stipulated in Rule 326.29.20.001. A commentor also requested that some of the responsibilities of the governing body be deleted as they are unnecessary in the standards and are inherent in business practices and the terms of the office. The department agrees and has changed the proposed material to reflect these changes.

326.29.20.003 (Recipient-patient Admission)—A commentor requested clarification as to whether a facility would be required to retain an individual whose needs the facility could not meet. The

department has included the verbage "and retain" to the opening sentence to clarify the meaning.

326.29.20.005 (Administration)—Several commentors indicated that requiring administrative direction at all times was inappropriate. The department has deleted the language "at all times."

326.29.20.006 (Operating Policies and Procedures)—Some commentors requested the deletion of the word "first" in "first employed" because it is unnecessary. The department agrees and has deleted this word. Commentors also requested that the department substitute the word "may" for "must" to eliminate the mandate that a facility include policies for a service not provided by the facility. The department has made this change in the final rules. In answer to one other comment, the department has agreed to delete "application procedures" from the list of personnel policies and procedures.

Some commentors requested the department to allow the hiring of individuals unable to read and write English because of the critical shortage of personnel. The department disagrees because allowing individuals who cannot communicate in English to work in a nursing facility jeopardizes the health and safety of the recipient-patients. Protection of the recipient-patient is of utmost concern to the department. This requirement has been in previous standards for participation and the department feels that this restriction should remain.

In response to the request to delete the requirement that the assistant commissioner of institutional care services determine proof of rehabilitation, the department agrees that this is inappropriate and has deleted the entire requirement concerning the hiring of persons with felony records.

Commentors requested that the department delete the requirement to make personnel records available for employees' inspection. Since this requirement exceeds current state and federal requirements, the department has deleted it.

Several commentors requested that the rules should state that employees with communicable diseases cannot work in the facility. Subsection (d) states that the facility can not have direct patient staff whose health appears to endanger the health of patients. The department believes that this answers the suggestion.

326.29.20.008 (Staff Development)—Some commentors expressed confusion concerning employees being required to receive orientation and training. The department has rewritten this rule to clarify that the facility must develop and maintain a staff development program as required by the Texas Department of Health Minimum Licensing Standards for Nursing Homes.

326.29.20.009 (Transfer Agreement)—Some commentors felt that it would be impossible for facilities to ensure accountability of a recipient-patient's personal effects left in the facility's control. The department feels that this is not an unreasonable requirement and did not delete it.

326.29.20.010 (Use of Outside Resources)—Several commentors requested deletion of the exemption that outside resources supplied by the controlling entity or owner would not have to prepare written, signed, and dated reports to apprise the administrator of findings and recommendations. The department agrees that this material as written would make it impossible for the Texas Department of Health to determine the responsibility, functions, objectives, and terms of the consultant's contract. Therefore, the department has deleted this exemption.

326.29.20.011 (Consultant Services)—Commentors requested that this rule specify the contents of each 42 Code of Federal Regulations cited and identify the variances between skilled and intermediate care requirements. Since detailed information about consultant services is in other rules, the department decided not to expand this rule beyond what was proposed.

326.29.20.012 (Recipient-patient Care Policies)—Commentors stated that the requirement for dental services in a nursing facility should stipulate that this is limited to a skilled facility only. The department agrees with this comment and has corrected this oversight.

The request to include licensed or registered nurses to the list of professional personnel involved in the development of recipient-patient care policies has been added to this rule. The department feels that it is important to list the minimum level of staff involved in recipient-patient care policies in skilled facilities to ensure uniform practices among facilities.

Several commentors expressed confusion concerning the appropriate staff to execute recipient-patient care policies between intermediate care and skilled care facilities. The department has rewritten this section to distinguish between requirements in an intermediate care facility and skilled nursing facility.

326.29.20.013 (Recipient-Patient Transfer or Discharge)—A commentor expressed concern about the procedures to be followed by the Texas Department of Health if a recipient-patient's status changes. Since there are no current procedures to be followed and this rule goes beyond the standards now being followed by facilities, the department has deleted any references to the Texas Department of Health procedures.

326.29.20.014 (Financial Records)—One commentor suggested that a time limit of five years be required for the retention of financial records. The department disagrees with this comment

because the department must account for all expended federal dollars. It is extremely difficult to audit all facilities within a five-year period. If this rule was changed, facilities would discard their records before an audit, making it impossible for the department to account for federal dollars. The requirement to have facilities retain financial records until audited and all exceptions are resolved will remain as proposed.

326.29.20.015 (Financial Audits)—Commentors requested that the department add language to this rule to allow a facility that requests an administrative appeal to exhaust all administrative remedies before being expected to make recoupment of any funds owed. The department disagrees with this request because it would place a restriction on the repayment of recipient funds if ordered by the Office of the Attorney General.

326.29.20.016 (Medical Transportation)—Numerous comments were received concerning medical transportation. Some comments were that nursing facilities are philosophically opposed to being forced to provide transportation. Since transportation costs are covered in the vendor payment, facilities will continue to be required to provide normal transportation to meet the needs of recipient-patients for medical services outside the facility. Other commentors suggested moving transportation costs from the cost report administrative section to the nursing services section. The department disagrees since no relative difference could be gained by changing the section in which transportation costs are claimed. A commentor requested the department to mandate that the volunteer section of the Texas Department of Health provide transportation for recipients in nursing facilities. The department disagrees with this request since nursing facilities are reimbursed for transportation costs. Several comments stated that the definition of normal transportation was ambiguous. The department disagrees, since this definition is based on the current definition used by Medicare. The department has added clarifiers; however, to ensure recipient-patient freedom of choice, to clearly define individuals or groups the nursing facility may not charge transportation services to, and to separate normal transportation from any other type of transportation the facility would not be responsible for. The department added clarifying language only to the proposed text. The department disagrees with comments that stated the department, by its transportation policy, was encouraging physicians not to participate in patient care in the facility. The department feels that eliminating the requirement placed upon nursing facilities for transporting recipients to needed medical services not provided in the facility would jeopardize patient care.

326.29.20.017 (Collection of Applied Income)—Commentors stated that facilities should not be

penalized for using a caseworker's word on the amount of applied income to collect from the recipient-patient. The worker generates the payment plan information and the department feels the facility must accept the word of the worker. Regardless of the source of a payment plan error, the facility must make refunds so the recipient-patient will not be penalized. The department does not agree with the comments made concerning this subject.

326.29.20.018 (Computation of Daily Reimbursement Rate for Recipients) A commentor suggested deleting the sentence that states "this method of computation allows an increase in the daily rate for 31-day months and a decrease for February." The department agrees and has made this change. Another commentor requested adding a section concerning the department's day-of-death policy. This policy was published as an amendment to the department's administrative rules and the department does not intend to include this information in these rules.

326.29.20.019 (Grandfathered ICF II, ICF III, and Skilled, Recipient-Patient Requirements)—One commentor suggested that this rule as written was confusing since it appeared that private pay individuals residing in a nursing facility on March 1, 1980, with a pending application are entitled to an ICF II level of care. This wording has been deleted since it is not the intention of the department to grant an ICF II level of care in the above described circumstances.

The department has made other minor wording changes to the rules, other than changes based on public comments.

New Rules 326.29.20.001-.019 are adopted under Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

.001. Purpose of Governing Body. The facility must have a governing body to assume legal responsibility for the determination and implementation of policy, management, operation, and finances of the facility.

.002. Governing Body. The governing body must have written policies and procedures that are formally adopted, dated, updated periodically, and available to all of its members, staff, recipient-patients, family or legal representatives of the recipient-patients, and the public. The policies and procedures govern all services provided and include types of services offered. The governing body must appoint a qualified nursing facility administrator as the official representative of the governing body, and designate the administrator's responsibilities and authority.

.003. Recipient-Patient Admission. The facility must admit and retain only recipient-patients whose health care needs can be met through services from the facility staff, in cooperation with community resources or other providers under contract with the facility. There must be

reciprocal agreements stating the degree of care the facility is staffed and equipped to provide and the kind of recipient-patient the facility will accept. A physician must order admission. Facilities must have written and dated admission policies which are approved by the governing body, and revised as necessary. The facility must not discriminate against any individual in its admission policies or basic services if the discrimination is based on that individual's race, color, national origin, age, or handicap.

.004. Institutional Plan. The governing body of a skilled nursing facility must prepare an institutional plan which is reviewed and updated annually. The governing body must include in the plan:

- (1) an annual operating budget using generally accepted accounting principles; and
- (2) a three-year capital expenditures plan.

.005. Administration.

(a) The facility must be operated under the supervision of a nursing facility administrator licensed by the Texas Board of Nursing Home Administrators. The administrator, as a professional, must work at least 40 hours per week on administrative duties. The administrator must show his established work pattern on the staffing pattern report which the facility must make available to representatives of the Texas Department of Human Resources and the Texas Department of Health. The administrator must be accountable to the governing body for overall management of the facility. The administrator's authority and responsibilities must be clearly outlined and must include:

- (1) maintaining liaison with the governing body, medical and nursing staff, and other professional and supervisory staff, through regular meetings and periodic reporting;
- (2) adopting and enforcing rules and regulations for the health care and safety of recipient-patients and others, and the protection of their personal property and civil rights;
- (3) establishing standard operating procedures for physician practices in an ICF, in coordination with the director of nursing;
- (4) evaluating, implementing, and documenting disposition of recommendations from the facility's committees and consultants;
- (5) managing the facility through employment of professional and ancillary personnel and through proper delegation of duties;
- (6) naming a responsible employee to act in the administrator's absence so the facility has administrative direction; and
- (7) ensuring that any volunteer program is planned and supervised by a designated employee.

(b) The facility must notify the Texas Department of Health immediately if the facility does not have an administrator. The Texas Department of Health allows 30 days for the facility to secure a replacement administrator before it is considered out of compliance. Another 30 days must elapse before penalties begin.

.006. Operating Policies and Procedures.

(a) The facility must have an administrative manual that outlines the general operating policies and procedures of the facility. The manual must include policies and procedures related to admission and admission agreements, recipient-patient care services, charges, payments, refunds, transfers, discharges, and procedures for receiving and responding to complaints and recommendations.

(b) The facility must have written procedures for moving, transferring, and discharging recipient-patients.

(c) The facility must have written personnel policies and procedures that are explained to employees when first employed and always available to them. The policies and procedures may include job assignment, working hours, overtime, payment, payroll deductions, paydays, insurance, fringe benefits, time off, educational programs, holidays, vacations, sick leave, resignations and terminations, breaks, probation, leaves of absence, dress, and conduct.

(d) Direct patient care staff must not include:

- (1) persons who are mentally, physically, or emotionally unable to perform assigned duties;
- (2) persons whose behavior or health appears to endanger the health, safety, and well-being of recipient-patients;
- (3) persons unable to read and write English.

(e) The facility must ensure that personnel records are current and contain sufficient information to support placement in the assigned position (including a resume of training and experience).

(f) The facility must have written policies for control of communicable diseases in employees, provision of a safe and sanitary environment for recipient-patients and personnel, and reporting and review of accidents involving recipient-patients and personnel. Employees must receive periodic health examinations to ensure the absence of communicable disease. Employees must have a health card or other evidence of compliance with local health codes.

.007. Incident or Accident Reporting.

(a) The facility must detail in the medical record every accident or incident including allegations of mistreatment of recipient-patients by facility staff, medication errors, and drug reactions.

(b) The facility must complete an incident report which contains the name of the recipient-patient; witnesses (if present); date, time, and extent of the accident or incident; circumstances under which it occurred; action taken; and final disposition.

(c) The detailed incident report is kept in the nursing facility administrative office. The facility must report immediately accidents or incidents that endanger the mental or physical health and safety of the recipient-patient and cases of abuse to the attending physician, the responsible party, and the family. The facility must document the notification in the recipient-patient's medical record.

(d) The facility must make incident reports available for review, upon request and without prior notice, by representatives of the U.S. Department of Health and Human Services, the Texas Department of Health, and the Texas Department of Human Resources.

.008. Staff Development.

- (a) Each employee must receive orientation to his position, and to the facility and its policies.
- (b) The facility must provide continuing education and training to develop the skills of its staff. A staff development program must be developed and maintained as required by the Texas Department of Health Minimum Licensing Standards for Nursing Homes.
- (c) The facility must document the content of and the employee's attendance at the in-service training.

.009. Transfer Agreement.

- (a) To ensure continuity of care, the facility must have a written transfer agreement with one or more participating hospitals which:
 - (1) provides for prompt diagnostic and other medical services;
 - (2) ensures accountability for a recipient-patient's personal effects that are left in the facility's control;
 - (3) specifies the steps needed to transfer a recipient-patient in a prompt, safe, and efficient manner;
 - (4) provides for supplying, at the time of transfer, a summary of administrative, social, medical, and nursing information to the facility to which the recipient-patient is transferred (This summary must either be a transcript of the recipient-patient's medical record, an interagency referral form, or a copy of the admission sheet and summary.);
 - (5) ensures that provisions of Title VI of the Civil Rights Act of 1964 are met.
- (b) If a hospital and long-term care facility share a common governing body and administration, a written agreement is not necessary.
- (c) The facility is considered to have met this rule if the state survey agency determines that the facility tried to enter into an agreement but could not, and if it is in the public interest not to enforce this requirement. The facility must document in writing its good faith effort to enter into an agreement.

.010. Use of Outside Resources. If the facility does not employ a person qualified to furnish a specific service, it must have arrangements with outside resources. An outside resource must be a qualified person, agency, or staff of a corporate entity, including temporary personnel agencies, that will provide the service directly to recipient-patients or act as a consultant to the facility.

- (1) If the facility enters into an agreement with any outside resource, the facility must state in the agreement the responsibilities, functions, objectives, and terms of the agreement, including financial arrangements and charges.
- (2) The administrator or his representative and the qualified professional must sign the agreement. If the facility is owned by a corporation, a copy of the agreement signed by the representative of the corporate entity and the qualified professional fulfills this requirement.
- (3) The facility must ensure that outside resources meet the same qualifications that would apply if the services were provided by facility employees.
- (4) The outside resource, if acting as a consultant, must prepare written, signed, and dated reports to apprise the administrator of progress, plans for im-

plementation, evaluation of performance, and recommendations. The administrator must retain the reports for the same time as other recipient-patient's records. Deviations from physician's orders must be reported immediately to the director of nursing, who notifies the attending physician and the administrator. The nurse must also document the deviation in a separate administrative report.

.011. Consultant Services. The qualified consultant must make regular visits of sufficient duration and frequency to ensure that services are rendered in accordance with requirements in 42 Code of Federal Regulations, 405.1132, 405.1130, 405.1131, 405.1127, 405.1125, 442.333, 442.332, 442.344, and 442.345.

.012. Recipient-Patient Care Policies.

- (a) The facility must have written policies to govern the nursing care and related medical or other services provided. They should contain plans for promoting self-care and independence and should include the following:
 - (1) admission, transfer, and discharge policies (including categories of recipient-patients accepted and excluded);
 - (2) physician services;
 - (3) nursing services;
 - (4) dietary services;
 - (5) restorative services;
 - (6) pharmacy services;
 - (7) ancillary diagnostic services;
 - (8) care of recipient-patients in an emergency, during a communicable disease episode, and if critically ill or mentally disturbed;
 - (9) a disaster plan;
 - (10) in a skilled facility, dental service (An advisory dentist participates in the staff development program for nursing and other appropriate personnel at least annually. The dentist recommends oral hygiene policies and practices for the care of recipient-patients. Professional judgment by the facility management and the advisory dentist will dictate the amount of time and the length of each visit to the facility. The facility should have a cooperative agreement with a dental service, and maintain a list of local dentists for recipient-patients who do not have a private dentist.);
 - (11) social services;
 - (12) recipient-patient activities;
 - (13) clinical records;
 - (14) hospital agreements;
 - (15) utilization review.
- (b) The recipient-patient care policies are developed in a skilled facility by the medical director. The recipient-patient care policies are developed in an intermediate care facility by professional personnel, including one or more physicians and licensed or registered nurses, and a registered pharmacist. The advisory group must review the policies at least annually.
- (c) In a skilled facility, the medical director or the director of nurses is designated, in writing, to be responsible for the execution of recipient-patient care policies. In an ICF, the director of nurses is designated, in writing, to be responsible for the execution of recipient-patient care policies. If the responsibility for day-to-day execution of these policies has been assigned to a registered

nurse in a skilled facility, the medical director serves as the advisory physician from whom the nurse receives medical guidance.

.013. Recipient-patient Transfer or Discharge. Except in an emergency, recipient-patients are not transferred or discharged without prior consultation with the responsible party and attending physician.

.014. Financial Records.

(a) The nursing facility staff must maintain current financial records in accordance with recognized fiscal and accounting procedures. The facility must ensure that records clearly identify each charge and payment made on behalf of each recipient-patient residing in the facility. The facility must clearly state in its records to whom charges were made and for whom payment was received.

(b) The facility must make financial records and supporting documents available for review by the Department of Health and Human Services, the Texas Department of Health, and the Texas Department of Human Resources at any time within working hours and without prior notification. The facility must keep the financial records in the facility until audited by the department and all exceptions are resolved. The facility must also keep for the same period of time, supporting fiscal documents and other records necessary to ensure claims for federal matching funds.

.015. Financial Audits.

(a) The Texas Department of Human Resources will audit all facilities periodically. A facility will be notified of the audit plans and will be given a report of the final audit findings. If vendor payment problems are found, the Nursing Home Billing Services Section, Provider Services Division, will work with the facility to reconcile the discrepancies. If the findings show that refunds are due recipient-patients or their responsible parties, the regional staff will assist the facility in reconciling the audit findings. Upon receipt of an audit exception, the facility must provide additional documentation, reach a final agreement, or make restitution within 60 days, or request a hearing within 10 days.

(b) If the facility does not pay the amount due the recipient-patient within the specified time frame, beginning on the 60th day the department may withhold other funds due the facility without providing advance notice. The department will release funds when the facility produces documentation that it has refunded the proper amount to the recipient-patient or responsible party.

(c) The department may require the facility to pay the recipient-patient refund amount to the department plus any anticipated cost (including personnel salaries) which would be incurred by the department in making the refund to the proper party.

(d) On change of ownership, the facility will be audited before final settlement with the previous owner.

.016. Medical Transportation.

(a) The nursing facility is responsible for providing normal transportation for the recipient-patient to medical services outside the facility. The medical services must have been ordered by the attending physician.

(b) Normal transportation is to and from the medical care provider of the recipient-patient's choice,

who is generally available and used by residents of the locality for medical care included under the Texas Medical Assistance Program. If a Title XIX provider is not in the locality, transportation is to and from the nearest appropriate Title XIX provider if the recipient-patient so chooses. The term "locality" means the service area surrounding the nursing facility from which individuals ordinarily come or are expected to come for inpatient or outpatient services which the recipient-patient requires.

(c) Transportation charges (which also include non-emergency, routine ambulance services) involved in certification or recertification of a recipient-patient are the responsibility of the nursing facility.

(d) The facility may not charge the department's health insuring agent, the recipient-patient, the family, or responsible party for normal transportation, as defined in subsection (b) of the rule. Normal transportation charges are covered in the monthly vendor rate. The facility may not use the department's community-based Title XIX medical transportation program.

(e) Charges for the following medically necessary ambulance services are not the responsibility of the nursing facility, but are payable by the department's health insuring agent as a Medicaid benefit. They must be properly documented with a physician's authorization and in accordance with the department's health insuring agent's guidelines for payment of ambulance services.

(1) Emergency ambulance services.

(2) Nonemergency ambulance services (except for certification or recertification) for recipient-patients who must be transported by litter or who must have a life-sustaining support system. This group includes the severely disabled who must be transported in such a fashion, and those who are unable to ride in other means of transportation for stated medical reasons.

(f) If ambulance services are reimbursable by the department's health insuring agent, they are not the responsibility of the recipient-patient, the family, or responsible party.

(g) Nursing facilities are encouraged to use family, friends, sponsors, civic groups, or charitable organizations as resources for transportation services. If normal transportation is not obtainable from these sources, the facility must provide or purchase the appropriate services.

.017. Collection of Applied Income.

(a) Nursing facilities may collect from the recipient-patient only the applied income that is specified on the recipient-patient's payment plan forms.

(b) If a payment plan appears incorrect, the facility administrator should contact the local DHR worker to correct the plan. Even if a recipient-patient's income increases, the administrator must not collect an increased payment until the plan is changed. The administrator should not collect an increased payment in anticipation of a payment plan increase, since the department does not make retroactive increases.

(c) If an admitted recipient-patient does not have a payment plan, the administrator should contact the local worker for help in determining how much applied income is owed. If the forthcoming forms indicate a lesser payment, the administrator should refund the excess immediately and notify the worker.

(d) Facilities that collect payments (part applied income, part Medicaid) in excess of the vendor rate are in violation of department regulations and of Public Law 95-142 which makes "solicitation of supplementation" a felony.

(e) Regional department staff must report any violations. If an investigation shows that the facility has violated this rule, a recommendation for withholding vendor payments, contract termination, referral to the courts, or other contract action may be made.

.018. Computation of Daily Reimbursement Rate for Recipients.

(a) Reimbursement is computed by multiplying the established daily rate by the number of days in the month. The recipient-patient's applied income is then subtracted and the result is divided by the number of days in the month.

(b) A facility may not collect more than the applied income reported on the payment plan form in a 31-day month.

.019. "Grandfathered" ICF II, ICF III, and Skilled Recipient-Patient Requirements.

(a) ICF II level of care determinations are limited to Title XIX recipient-patients who had an ICF II, ICF III, or skilled level-of-care determination and were residing in a nursing facility on March 1, 1980.

(b) ICF II level of care determinations are available to persons who had an ICF II, ICF III, or skilled level of care on March 1, 1980, and leave the nursing facility for a hospital stay, therapeutic home visit, or other Title XIX service, and return to a nursing facility with no break in Medicaid eligibility. These recipient-patients retain their benefits regardless of subsequent level-of-care determinations, with the exception of a denial of level of care.

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

Issued in Austin, Texas, on May 26, 1982.

TRD-824480 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: July 1, 1982

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For further information, please call (512) 441-3355,
ext. 2037.

Physician Services

326.29.30.001-.008

The Texas Department of Human Resources adopts new Rules 326.29.30.001-.008, with changes to the proposed text published in the December 4, 1981, issue of the *Texas Register* (6 TexReg 4429).

These rules are justified because federal law requires that standards be enforced in nursing facilities if federal funds are used to pay for care.

The rules will function by describing the standards to be used in providing physician services as part of the services to recipient-patients in nursing facilities.

The department received 12 comments from individuals and organizations about the rules. The organizations commenting were the Texas Department of Health, the Texas Nursing Home Association, and National Living Centers.

The commentators were neither for nor against the rules, but offered recommendations for changes to the rules as proposed. Some comments were received after the end of the comment period. These comments are not included for discussion here; however, they have been considered in the language of the final rules. The department's decisions about incorporation of the comments are stated in the discussion of each comment. Comments were received on the following sections of the rules.

326.29.30.001 (Introduction)—Commentors suggested that the department add Public Law 90-248, Observance of Religious Beliefs, Section 1907. This was included in previous standards and has been added to Rule 326.29.62.013. A commentor mentioned that recipient-patients are admitted by order of physicians, and the word "recommendation" should be changed to "order." The department agrees and has made this change.

326.29.30.002 (Admission Information)—Commentors indicated that facilities have difficulty gathering all the required patient information at the time of admission, and that gathering information about discharge is included on the department's Form 3652. It was suggested that we delete "at admission" and "the recipient-patient's discharge potential." The department disagrees with the suggestion. This information needs to be gathered at the time of admission because it is necessary to develop a plan of care, and this requirement is currently in SNF and ICF standards. Information about discharge potential is needed in greater detail than the "yes" or "no" answers on the Form 3652; therefore, these items remain as they were proposed.

326.29.30.003 (Physician Supervision)—Commentors suggested that the rules should allow physicians to give telephone orders to other professional personnel besides physicians, pharmacists, and licensed nurses. The department disagrees because of the risk involved relative to the patient's safety. If all orders go through certain licensed staff, they can be coordinated safely with the recipient-patient's overall plan of care. Federal regulations require this for all pharmaceutical orders; therefore, the suggestion was not incorporated into the adopted rule.

A commentor suggested that the department should accept an examination done by physicians within seven days of admission to an SNF. Five days is the federal requirement, so the requirement is not changed.

326.29.30.004 (Visit Schedules in SNFs)—Commentors stated that the requirement for

physician's progress notes needed clarification. This has been rewritten. Federal requirements are that progress notes be written and signed by a physician at each visit.

326.29.30.005 (Visit Schedules in ICFs)—Commentors suggested that the rules should outline the procedures by which alternate physician visit schedules can be arranged for ICF recipient-patients. The department agrees and the rules have been amended to include the procedures for securing approval of alternate schedules for ICF recipient-patients.

326.29.30.007 (Availability for Emergency Recipient-patient Care)—One commentor asked the department to delete the requirement that a list of physicians names, their on-call duty days, and telephone numbers be posted at each nursing station for emergency use. This requirement has been modified to require that only a list of physicians and their telephone numbers be posted at each nursing station for emergency use. Physicians' answering services provide the names of alternate physicians on call, thereby eliminating the need to post on-call duty days.

326.29.30.008 (Dental Services)—Commentors asked that the department amend this rule to make the requirement applicable only to SNF facilities, and to delete the option of using a dental hygienist in the staff development program. The department agrees and has made this change.

The department made minor wording changes other than changes based on public comments.

New Rules 326.29.30.001-.008 are adopted under Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

.001. Introduction. Recipient-patients are admitted to a facility only upon the order of a physician. The medical care of each recipient-patient must be supervised by a physician. Each recipient-patient or responsible party will have, to the extent possible, freedom of choice of physicians.

.002. Admission Information. At admission, the facility must obtain recipient-patient information from a physician, including current medical findings, diagnoses, orders for immediate care, and the recipient-patient's discharge and rehabilitation potential. If medical orders cannot be obtained upon admission, the medical director in a SNF or an emergency physician may give temporary orders until the attending physician fulfills this responsibility.

.003. Physician Supervision.

(a) The health care of every recipient-patient must be supervised by a physician who:

(1) evaluates the recipient-patient's immediate and long-term needs (The evaluation is based on the recipient-patient's medical history and physical examination, which is conducted within 48 hours of admission and entered in the recipient-patient's record. A com-

parable examination, completed within five days before admission to a SNF and 14 days before admission to an ICF, and available at the time of admission, is acceptable.);

(2) prescribes a regimen of medical care based on the medical evaluation;

(3) reviews the recipient-patient's medical plan of care, updates the medical regimen, and makes written comments about the recipient-patient's condition.

(b) The attending physician must:

(1) follow facility policies governing physician practices;

(2) record results of each visit to a recipient-patient in the recipient-patient's medical record;

(3) give telephone orders only to physicians, pharmacists, and licensed nurses;

(4) make arrangements for the recipient-patient's care in the attending physician's absence.

.004. Visit Schedules in SNFs.

(a) In SNFs, the attending physician must visit the recipient-patient at least once every 30 days for the first 90 days following admission.

(b) At these visits, the attending physician must review the recipient-patient's total plan of care (including medications and treatments), and revise the plan if necessary.

(c) Each time a physician visits a recipient-patient, he must complete and sign progress notes in the recipient-patient's medical record. The physician must sign all his orders.

(d) After the 90th day following admission, the attending physician may determine and justify in the recipient-patient's medical record that the recipient-patient's condition does not require visits at 30-day intervals. An alternate schedule may be adopted if:

(1) the schedule does not exceed 60 days between visits;

(2) the facility has notified the Texas Department of Health, long-term care unit of the visit schedule and has provided justification;

(3) the Texas Department of Health, long-term care unit has evaluated the recipient-patient's need for monthly physician visits as well as the recipient-patient's need for skilled nursing services; and

(4) the Texas Department of Health, long-term care unit has concurred with the alternate schedule.

.005. Visit Schedule in ICFs. In ICFs, the attending physician must see the recipient-patient whenever necessary, but at least once every 60 days, unless the physician decides that this frequency is unnecessary, records the reason, and provides an alternate plan for visits. An alternate schedule may be adopted if:

(1) the facility has notified the Texas Department of Health, long-term care unit of the visit schedule and has provided justification;

(2) the Texas Department of Health, long term-care unit has evaluated the recipient-patient's need for physician visits every 60 days as well as the recipient-patient's need for intermediate nursing services; and

(3) the Texas Department of Health, long-term care unit has concurred with the alternate schedule.

.006. Recertification Requirements. Physicians' 60-day recertification statements documenting the need for continued health care services are placed in each recipient-patient's medical record and reviewed on a regular basis by the Texas Department of Health, long-term care unit staff. The recertification should state, "I hereby certify that this patient continues to require nursing facility care."

.007. Availability for Emergency Recipient-Patient Care.

(a) The facility must have written procedures, at each nursing station, for obtaining emergency physician services at all times.

(b) A qualified physician must furnish emergency medical care to a recipient-patient if the attending physician is not immediately available.

(1) The facility must post a schedule of names and telephone numbers of physicians at each nursing station.

(2) The facility must include in the emergency procedures the immediate care of the recipient-patient, names of persons to be notified, and a list of reports to be prepared.

.008. Dental Services. The facility must have a written plan to assist recipient-patients to obtain routine and emergency dental care. The facility must:

(1) maintain a list of local dentists for recipient-patients who do not have a private dentist;

(2) assist the recipient-patient, if necessary, to arrange for transportation to and from the dentist's office;

(3) in SNFs, ensure that a dentist participates at least annually in the facility's staff development program. He should recommend oral hygiene policies and practices for the care of recipient-patients.

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

Issued in Austin, Texas, on May 26, 1982.

TRD-824481 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

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ext. 2037.

Nursing Services

326.29.31.001-.017

The Texas Department of Human Resources adopts new Rules 326.29.31.001-.017 with changes to the proposed text published in the December 4, 1981, issue of the *Texas Register* (6 TexReg 4429).

These rules are justified because federal law requires that standards be enforced in nursing facilities if federal funds are used to pay for care.

The rules will function by describing the standards to be used in providing nursing services as part of the services to recipient-patients in nursing facilities.

The department received 75 comments from individuals and organizations about the rules. The organizations commenting were Texas Nursing Home Association, Personnel Pool of America, Inc., Personnel Finders, Upjohn Healthcare Services, Nurses P.R.N., Nursefinders, National Living Centers, Staff Builders Health Care Services, Kimberly Nurses, Texas Department of Health, and Cantex Healthcare Centers.

The commentors were neither for nor against the rules, but offered recommendations for changes to the rules as proposed. Some comments were received after the end of the comment period. These comments are not included for discussion here; however, they have been considered in the language of the final rules. The department's decisions about incorporation of the comments are stated in the discussion of each comment. Comments were received on the following sections of the rules.

326.29.31.001 (Twenty-Four Hour Services)—

One commentor requested deleting or clarifying the statement "Facilities must have 24-hour nursing services from enough qualified nursing personnel to meet the total nursing needs of recipient-patients." The department disagrees with this comment and has retained the statement. A similar statement has been in the standards for participation since 1969 to ensure that recipient-patients' nursing needs are met, since some recipient-patients may require nursing services which are greater than the minimum requirements in the standards for participation. Also, similar language is contained in the federal regulations. Many comments were received requesting that licensed nurses from temporary pool services be allowed to serve as day shift charge nurses. Commentors referred to the licensed nurse shortage in Texas and indicated that licensed nurses from temporary pools were necessary and qualified to provide the required licensed nurse staffing. The department agrees with these comments and the wording prohibiting temporary personnel from serving as day shift charge nurses has been deleted. Two commentors requested that temporary personnel be allowed to serve as directors of nursing. The department disagrees with their comments and has retained the prohibition against using temporary personnel as directors of nursing. The department believes that directors of nursing must be permanent employees to provide necessary continuity in planning, leadership, and direction. One commentor requested deletion of the requirement that a full-time licensed nurse be on call and immediately available by telephone for temporary personnel on the afternoon and night shift. The department disagrees and has retained the requirement as a necessary safeguard for recipient-patients. Temporary personnel may be unfamiliar with the nursing needs of the recipient-

patients and should be able to obtain advice or guidance from a full-time licensed nurse as needed.

326.29.31.002 (ICF II Staff Requirements); 326.29.31.003 (ICF Staff Requirements); 326.29.31.004 (SNF Staff Requirements)— Numerous comments were received about the staffing requirements in relation to the design of the facility. Several commentors suggested that the staffing requirements should be met "regardless of architectural design or number of nursing stations." Based on discussions with the Blue Ribbon Committee for Standards Review, the department has revised the wording in each rule to indicate that all bedroom corridors must be observable from a nursing station by direct line of sight or by mechanical means at all times. Also, a sentence has been added stating that there must be a minimum of one nursing station per floor in multi-storied buildings.

326.29.31.005 (Other Staff Requirements)— One commentor requested that this rule end after the third sentence. The department disagrees with this comment. The information in this rule will be retained to ensure that recipient-patients' nursing needs are met. Another commentor requested that the word "prevention" in paragraph (2) be changed to "discourage" when referring to care of contractures and decubiti. The department disagrees and is retaining the original wording which was agreed upon by the Blue Ribbon Committee for Standards Review. Also, the department prefers to emphasize the importance of nursing care that prevents decubiti and contractures from occurring.

Two commentors requested that paragraph (4) be revised to indicate that nursing personnel shall detect and correct situations that have a high probability of causing accidents or injuries to patients. Since this requirement is contained in Rule 326.29.31.012, paragraph (15), the department did not include it in paragraph (4). Wording has been added to paragraph (4) to state that there must be enough nursing personnel to ensure that recipient-patients are protected from accidental injury "by the correct use of ordered safety measures."

326.29.31.008 (ICF Director of Nursing)— One commentor requested that subsection (a) specify that the director of nursing must be a full-time employee of the facility. The department agrees and has added this clarification. Another commentor requested that the sentence in subsection (b), which refers to a consultant contract, be modified to provide an exemption if an owner or controlling entity supplies consultants to the facility. The department disagrees with this comment because there must be some type of documentation to verify that consultation is being provided as required. The department has changed the word "contract" to "agreement" to allow more flex-

ibility to facilities which are provided consultation by controlling entities or owners. Also, a reference to Rule 326.29.20.010 concerning documentation required for consultant services, has been added.

326.29.31.009 (SNF Director of Nursing)— One commentor requested that subsection (c) be changed since it is "almost impossible to comply with." The department agrees and has deleted subsection (c) since it exceeds previous requirements for the director of nursing. Subsection (d) has been relettered as subsection (c).

326.29.31.010 (Responsibilities of the Director of Nursing)— One commentor disagreed with subsection (a) which specifies that the director of nursing must work during the day for a minimum of 40 hours a week. The commentor stated that it implied that the director of nursing work on the first shift only. The 40-hour requirement has been a part of the standards since 1969, and the department has chosen to retain the requirement. The department does not agree that the wording implies that the director of nursing must work on the first shift only. Subsection (a) states that the director of nursing may begin work anytime between 6 a.m. and 9 a.m. This will allow him to have contact with staff on the night shift and afternoon shift, as he determines necessary. Another commentor requested that subsection (b) be changed to state that the director of nursing ensures that nursing personnel "provide reasonable protection to" recipient-patients from accident, injury, and infection. The department partially agrees with this comment and has changed the wording to "provide protection." The suggested addition of the word "reasonable" has not been included since it cannot be specifically defined.

Two commentors requested that subsection (b)(13) be deleted. One commentor expressed concern that in an ICF facility, the consultant registered nurse cannot accomplish the screening upon admission. This commentor also thought the requirement would incur additional costs and indicated that goal-directed therapy should be the responsibility of the attending physician. The department has chosen to retain subsection (b)(13) because it is essential that recipient-patients be screened for goal-directed therapy by a registered nurse. The registered nurse is professionally qualified to conduct the screening and the attending physician is responsible for ordering or not ordering goal-directed therapy. The department has modified the requirement to allow a registered nurse consultant in an ICF 10 days from admission to conduct the screening.

326.29.31.011 (Charge Nurse Requirements)— Two persons commented that the wording of subsection (a) was unclear concerning the director of nursing not being able to serve as a charge nurse in a facility of 60 or more beds. The depart-

ment has added a sentence to clarify that in a facility with less than 60 beds, the director of nursing can serve as a charge nurse.

One additional comment suggested that the wording in subsection (a) state that the director of nursing in an ICF must also designate a charge person for the night shift. The department agrees and has added this wording.

326.29.31.012 (Charge Nurse Responsibilities)— One commentor suggested that paragraph (5) be expanded to state that the charge nurse administers or supervises the correct preparation, administration, storage, and acquisition of currently prescribed medications in an appropriate dosage form. The department believes that this information is adequately covered in Rule 326.29.33.009, Pharmacy Services, and has not added the suggested wording here.

One commentor requested that paragraph (8) be clarified to indicate that charting of medications must be done by the person administering the medication. The department agrees and has added the appropriate wording for medications and treatments.

Two comments were received on paragraph (11). One commentor requested that the wording be changed to indicate that charts be signed during the shift in SNFs. The department disagrees with this practice since the charge nurse cannot review all activities that occurred during the shift until the end of the shift. Another commentor also requested that the wording "at the end of the shift for SNFs" be deleted and wording added that for SNFs the charge nurse approves and signs each chart, whether or not observations are recorded during the shift. The department believes that this is addressed in the first part of paragraph (11). A minor wording change has been made for clarification.

Two commentors requested that paragraph (12) be clarified. One requested that wording be added to indicate that a copy of the medical record be forwarded. The department agrees and has added this clarification. The other commentor asked whether transfer forms could continue to be used. The department believes that a transfer form can be considered an abstract of the medical record, and is therefore acceptable under this requirement.

One commentor requested that paragraph (13) be expanded to require the charge nurse to report any variance in the controlled drug inventory to the director of nursing in writing. The department disagrees with this comment because the facility should have flexibility in determining reporting procedures regarding drug inventory variances.

Two commentors requested that paragraph (15) be reworded since the charge nurse cannot ensure patient safety. She can be responsible for detec-

ting and correcting situations that have a high probability of causing accidents or injuries. The department concurs and has revised the wording.

326.29.31.013 (Rehabilitative Nursing Care)— Two commentors indicated that they were not supportive of the requirements in this rule. One commentor stated that the training requirements for rehabilitative nursing should be specified. The department has retained the requirements without change since they are based on federal regulations. If a recipient-patient is in need of rehabilitative nursing, it is essential that nursing personnel provide the necessary components of care. This rule indicates the tasks that are included in rehabilitative nursing. The facility's responsible for providing training to nursing personnel on these tasks as necessary, or as required in the Texas Department of Health Minimum Licensing Standards for Nursing Homes.

326.29.31.014 (General Nursing Care)— Several comments were received on this rule. One commentor indicated that in subsection (a), the director of nursing should be responsible for this requirement rather than the charge nurse. The department disagrees since the nurse in charge is responsible for the supervision of nursing care on her shift. A minor adjustment in wording has been made to subsection (a) to indicate the "nurse in charge" rather than the charge nurse. In facilities with less than 60 beds, the director of nursing can serve as a charge nurse, and may be considered the "nurse in charge."

One commentor requested that subsection (e) be modified to require skin care as needed according to the physician's orders. The department disagrees with this modification and has made no change in the requirement. Recipient-patients in nursing facilities need skin care as part of their routine care. Only special skin care would be ordered by the physician.

Two commentors requested that subsection (f) be revised to require changes in recipient-patients' conditions, diagnoses, and progress to be recorded in the medical record, rather than the nurses' notes. The department believes that nurses' notes, which are part of the medical record, are the appropriate place to record these changes. Wording has been added to indicate that nurses' notes are a part of the medical record.

326.29.31.015 (Supervision of Nutrition)— Two commentors requested that the reference in paragraph (3) to proper temperature of food be deleted or clarified. The department has retained the wording to ensure that if nursing personnel are feeding recipient-patients, the food is at the temperature one would normally expect it to be.

Several commentors requested that paragraph (4) be clarified to indicate that deviations should be reported to the nurse in charge. The department agrees and has added the suggested wording.

One commentor stated that paragraph (4) should be deleted from this rule and placed in Rule 326.29.32.003, Food and Nutrition Services. The department disagrees since the requirement is for nursing personnel, not the dietary consultant.

326.29.31.017 (Conformance with Physician Orders)—One commentor requested that this rule address generic substitution of drugs. The department has addressed generic substitution in Rule 326.29.33.001(d), Pharmacy Services. Therefore, it is unnecessary to include it here.

Several comments were received on subsection (c)(2) regarding the time requirements for the attending physician's signature on verbal orders. The department has reworded this requirement based on current federal regulations and the recommendation of the Blue Ribbon Committee on Standards Review. Seven days will be allowed to return the signed order to the chart instead of five days.

Several comments were received on subsection (e). Two commentors requested that facilities using a cyclic fill program or unit-dose system be exempted from the 72-hour notification requirement. The department disagrees since the 72-hour notification requirement can be met under a cyclic fill or unit-dose system. Several commentors also requested that a statement be added to clarify that medication must be in the facility before the administration of the last dose. The department agrees and has added the statement.

The department made minor wording changes besides those made based on public comment.

New Rules 326.29.21.001-.017 are adopted under Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

.001. Twenty-Four Hour Services. Facilities must have 24-hour nursing services from enough qualified nursing personnel to meet the total nursing needs of the recipient-patient. Nursing personnel include registered and licensed vocational nurses, nurses' aides, and orderlies. It is not a deficiency if the facility has documentation that a nurse has a current temporary work permit from the Texas State Board of Vocational Nurse Examiners or the Texas State Board of Nurse Examiners.

(1) Nursing personnel must be assigned duties consistent with their education and experience, and based on the characteristics of the patient load and the nursing skills needed to provide care to the recipient-patients.

(2) The facility must maintain weekly time schedules showing the number and classification of nursing personnel, including relief personnel, who will work on each unit during each tour of duty.

(3) A graduate vocational nurse who has a temporary work permit must work under the direction of a licensed vocational nurse, registered nurse, or licensed physician who is physically present in the facility.

(4) If the facility uses licensed temporary nursing personnel, the temporary personnel must have the same qualifications that permanent facility employees do. Temporary personnel may not serve as the director of nursing. If temporary personnel are used for afternoon or night shifts, a full-time, currently licensed nurse must be on call and immediately available by telephone. In a SNF, the on-call nurse must be a registered nurse.

.002. ICF II Staff Requirements. ICF II facilities must have a licensed nurse on the day shift. In addition, the attendant ratio for ICF II facilities must be at least one attendant for each 20 patients during a 24-hour period. All bedroom corridors must be observable at all times from a nurses station by direct line of sight or by mechanical means. There must be at least one nurses station per floor in multi-storied buildings.

.003. ICF Staff Requirements.

(a) An ICF must have a registered or licensed vocational nurse full-time, seven days a week on the day shift. For the purposes of this rule, the starting time for the day shift may be between 6 a.m. and 9 a.m., provided the facility specifies in writing the schedule that is followed.

(b) The charge nurse on the afternoon shift must be at least a licensed vocational nurse.

(c) The licensed nurse ratio for each 24-hour period must be at least one nurse to every 30 patients. A licensed nurse is not required for the night shift. All bedroom corridors must be observable at all times from a nurses station by direct line of sight or by mechanical means. There must be at least one nurses station per floor in multi-storied buildings.

.004. SNF Staff Requirements.

(a) A SNF must have a registered nurse full-time, seven days a week on the day shift. For the purposes of this rule, the starting time for the day shift may be between 6 a.m. and 9 a.m. The facility must specify in writing the schedule that is followed.

(b) The ratio of licensed nurses (including director of nurses) for every 24-hour period must be one nurse to every 15 patients in the facility or unit certified to provide skilled care. All bedroom corridors must be observable at all times from a nurses station by direct line of sight or by mechanical means. There must be at least one nurses station per floor in multi-storied buildings.

.005. Other Staff Requirements. The administrator is responsible for always maintaining as many nurses' aides and orderlies as needed to meet the needs of the recipient-patients. The primary duties of aides and orderlies consist of direct patient care and services rather than routine housekeeping, laundry, and dietary functions. Nursing time devoted solely to patient care is included in computing nursing requirements. There must be enough nursing personnel to provide 24-hour nursing service. Personnel will be increased if necessary to ensure that each recipient-patient:

(1) receives prescribed treatment, medication, and diet;

(2) receives proper care for the prevention of contractures and decubiti;

- (3) is kept comfortable, clean, and well-groomed;
- (4) is protected from accidental injury by the correct use of ordered safety measures;
- (5) is treated with kindness and respect.

.006. Waiver of SNF Seven-Day Registered Nurse Requirement. The Secretary of the Department of Health and Human Services may waive the seven-day registered nurse requirement for SNFs for appropriate periods if, based upon documented findings of the state survey agency, the secretary determines that:

- (1) The facility is in a rural area and there are not enough registered nurses to meet the needs of the individual recipient-patients.
- (2) The facility has at least one full-time registered nurse who is regularly on duty at the facility at least 40 hours per week.
- (3) The facility:
 - (A) has only recipient-patients whose attending physicians have documented (through physicians' orders or admission notes) that recipient-patients do not require a registered nurse for a 48-hour period; or
 - (B) has made arrangements for a registered nurse or a physician to spend as much time at the facility as the recipient-patient's attending physician determines is necessary, and who will provide services on days when the full-time registered nurse is not on duty.
- (4) The facility has made and continues to make a good faith effort to comply with the seven-day registered nurse requirement, but compliance is impeded by lack of available registered nurses in that area.

.007. Request for Waiver.

- (a) The facility may request a waiver through the local Texas Department of Health, long-term care unit. Requests may be initiated at any time.
- (b) Approved waivers are valid throughout the facility certification period unless waiver approval is withdrawn. During the recertification survey, determination is made for approval or denial for the next facility certification period. The facility requests a redetermination for a waiver from the Texas Department of Health, long-term care unit at the time the recertification survey is scheduled. At other times if a request is made, the long-term care unit will schedule a visit for waiver determination. Recommendation for approval or denial of a waiver is initially made by the surveyor. Further recommendation is made by the Texas Department of Health state office, and information is submitted to the secretary of the Department of Health and Human Services for final approval or denial.
- (c) To be approved for a waiver, the skilled nursing facility must meet all requirements stated in Rule 326.29.31.006. Also, the skilled nursing facility must be in continuing compliance with these rules. In some instances, the survey agency may require additional conditions or arrangements such as:

- (1) an additional licensed vocational nurse on day shift duty in the skilled distinct part if the registered nurse is absent;
- (2) modification of nursing service operations;

- (3) modification of physical environment relating to nursing service.
- (d) Denial or withdrawal of a waiver may be made at any time if any of the following conditions exist:
 - (1) federal requirements for a waiver are not met on a continuing basis;
 - (2) the level of recipient-patient care is not acceptable;
 - (3) justified complaints are found in areas affecting recipient-patient care.

(e) Skilled nursing facilities must be in a rural area for waiver consideration. Rural is any area outside boundaries of standard metropolitan statistical areas. These areas are defined and designated by the Federal Office of Management and Budget; are determined by population, economic, and social requirements; and are subject to revisions.

.008. ICF Director of Nursing.

- (a) An ICF must have a registered nurse or a licensed vocational nurse who is employed full-time in the facility to supervise and direct nursing services.
- (b) If an ICF employs a licensed vocational nurse to supervise and direct nursing services, the ICF must have an agreement with a registered nurse who must provide the vocational nurse at least four hours of consultation in the facility per week. The agreement between the facility and the consultant must comply with Rule 326.29.20.010, Use of Outside Resources. The registered nurse will not assume director of nursing duties, but will act as a consultant to solve problems involving patient care, conduct in-service training, and maintain proper medical records.
- (c) The director of nursing may be the charge nurse on the day shift.
- (d) If the director of nursing has general administrative responsibilities for the operation and management of the facility, he must have a licensed nurse assistant so that there is the equivalent of a full-time director of nursing.

.009. SNF Director of Nursing.

- (a) A SNF must have a qualified full-time registered nurse as the director of nursing.
- (b) If the director of nursing has general administrative responsibilities for the operation and management of the facility, he must have a registered nurse assistant so that there is the equivalent of a full-time director of nursing.
- (c) A facility providing more than one level of care may have only one director of nursing, but he is not counted in the nursing ratio. If the director of nursing in a single level-of-care facility has administrative duties not totally related to nursing administration, he is not counted in the nursing ratio.

.010. Responsibilities of the Director of Nursing.

- (a) The director of nursing must have written administrative responsibility and accountability for the activities and training of nursing personnel, and may serve only one facility in this capacity. The director of nursing works during the day (defined as starting any time between 6 a.m. and 9 a.m.) and devotes a minimum of 40 hours each week to the nursing service of the facility.

(b) The director of nursing must have at least the following responsibilities.

(1) Developing and maintaining nursing service objectives, standards of nursing practice, nursing policy and procedure manuals, and written job descriptions for each level of nursing personnel.

(2) Scheduling of and participating in daily rounds of all nursing units under his direction which have Title XIX contracted beds.

(3) Coordinating nursing service with other recipient-patient services. This includes meeting with the consultant dietician about recipient-patient menus and meal service when medically indicated.

(4) Recommending the number and levels of nursing personnel to be employed, participating in their recruitment and selection, and recommending termination of employment if necessary.

(5) Participating in nursing staff development.

(6) Ensuring that nursing personnel:

(A) provide treatments, medications, and diets to recipient-patients as prescribed;

(B) provide rehabilitative nursing care to recipient-patients as needed;

(C) keep recipient-patients comfortable, clean, and well-groomed;

(D) provide protection to recipient-patients from accident, injury, and infection; and

(E) assist and train recipient-patients in self-care and encourage them to participate in group activities.

(7) Participating in planning and budgeting for nursing care.

(8) Participating in the development and implementation of recipient-patient care policies.

(9) Developing work schedules to provide optimum recipient-patient care using available personnel.

(10) Ensuring that licensed personnel accompany physicians on rounds.

(11) Ensuring that a nursing care plan is established, reviewed, and modified as necessary for each recipient-patient. The director of nursing may assign a ward clerk, on each shift, to be responsible for charting. This must be done under the direction of the charge nurse, or in ICFs, the individual in charge of each shift. Each chart must be approved and signed by the responsible individual on each shift.

(12) Ensuring that drugs covered by the Controlled Substances Act are verifiable by inventory.

(13) Ensuring that a registered nurse screens recipient-patients within 10 days of admission or readmission to an ICF or at admission or readmission to a SNF to determine the need for goal-directed therapy, unless the attending physician has ordered therapy on admission. If an evaluation by a therapist(s) is indicated during the screening process, the registered nurse contacts the attending physician to discuss the findings.

.011. Charge Nurse Requirements.

(a) In a SNF, the director of nursing must designate a charge nurse to supervise all nursing activities on all shifts. Except in emergencies, the director of nursing in a SNF or ICF may not be the charge nurse if a facility has an average daily occupancy of 60 or more patients. In a facility with less than 60 beds, the director of nursing

can serve as a charge nurse. In an ICF, the director of nursing must designate a charge nurse for the day and afternoon shifts and a charge person for the night shift. The charge nurse may delegate responsibility to nursing personnel for the direct nursing care of specific recipient-patients during each tour of duty on the basis of staff qualifications, size and physical layout of the facility, characteristics of the recipient-patient load, and the emotional, social, and nursing care needs of recipient-patients.

(b) A charge nurse must be a registered nurse or a licensed vocational nurse.

.012. Charge Nurse Responsibilities. The charge nurse:

(1) is responsible during the shift, for the total nursing care of recipient-patients in his assigned unit;

(2) is able to recognize significant changes in the conditions of recipient-patients and take necessary action;

(3) supervises direct patient care personnel in the unit;

(4) ensures that the individual nursing care plan is followed;

(5) administers or supervises the preparation and administration of prescribed medications;

(6) administers or supervises prescribed treatments;

(7) supervises serving of prescribed diets and fluid intake (it is acceptable to document only deviations from normal), and reports persistent unresolved problems to the physician and the director of nursing;

(8) ensures that all medications and treatments are charted "after the fact" by the person administering the medication or completing the treatment on his assigned shift;

(9) supervises the preparation of incident and accident reports;

(10) directs charting on his shift;

(11) approves and signs each chart when observations are made. Each chart must be signed at least daily for ICFs and at the end of each shift for SNFs;

(12) ensures that a copy of the medical records or an abstract of them are forwarded with the transfer of recipient-patients;

(13) ensures that drugs covered by the Controlled Substances Act are verifiable by inventory;

(14) participates in regular staff meetings;

(15) is responsible for the detection and correction of situations that have a high probability of causing accidents or injuries to recipient-patients.

.013. Rehabilitative Nursing Care. The facility must have a program of rehabilitative nursing care that is an integral part of nursing service and is directed toward helping each recipient-patient to achieve and maintain an optimal level of self-care and independence. Nursing personnel must be trained in rehabilitative nursing, and provide rehabilitative services daily for recipient-patients who require them. Nursing personnel must routinely record these services in the recipient-patient's medical record. Rehabilitative nursing services include:

(1) maintaining good body alignment and proper positioning of bedfast recipient-patients;

(2) encouraging and helping bedfast recipient-patients to change positions at least every two hours, day and night, or as prescribed by the attending physician,

to stimulate circulation and discourage decubiti and deformities;

(3) keeping recipient-patients active and out of bed for reasonable periods of time (except if otherwise indicated by the physician's orders) and helping them learn self-care, transfer skills, and walking skills;

(4) helping recipient-patients adjust to their disabilities and to use prosthetic, orthotic, or other adaptive equipment;

(5) helping recipient-patients carry out prescribed restorative procedures and exercises.

.014. General Nursing Care.

(a) All nursing care must be given according to the instructions of the nurse in charge.

(b) Complete baths must be given at least every second day for helpless or chairfast recipient-patients unless an alternative plan is recommended by the physician. Partial baths must be given on the intervening days unless contraindicated. The frequency of bathing should depend on the condition of the recipient-patient, his skin condition, and nature of the impairment.

(c) Ambulatory recipient-patients must receive a complete bath at least once a week.

(d) Incontinent recipient-patients must have daily baths and must be appropriately cleaned after each incontinent episode. Adequate nursing procedures must be used to keep the bedding dry and the recipient-patient comfortable. If the skin is irritated, soothing and healing lotions or creams must be applied, subject to the physician's orders.

(e) Skin care must be given to all recipient-patients.

(f) Changes in recipient-patients' conditions, diagnoses, and progress must be recorded as nurses' notes which are included in the medical record.

(g) Apparent death must be reported immediately to the attending physician and the relatives or guardians of the deceased. The body must not be removed from the facility without physician's authorization (telephone authorization is acceptable if not in conflict with local regulations). The authorization by a justice of the peace, acting as coroner, is sufficient when the attending or consulting physician is not available.

.015. Supervision of Nutrition. Nursing personnel must be aware of the nutritional needs of the recipient-patients and:

(1) encourage recipient-patients to eat in the dining area unless medically contraindicated;

(2) ensure that recipient-patients who do not eat in the dining area are provided their own trays;

(3) assist in the prompt feeding of recipient-patients, if necessary, so that food is served at the proper temperature;

(4) observe food and fluid intake of recipient-patients (Deviations from normal are charted in the patient's medical record and reported to the nurse in charge.);

(5) ensure that drinking water is available to recipient-patients at all times unless medically contraindicated.

.016. Administration of Drugs. The facility must ensure that drugs and biologicals are administered only by a physician, licensed nurse, or an individual who has successfully completed a state-approved training program in medication administration. Proper administration of a drug means that the individual dose must be removed from a previously dispensed, properly labeled container; (including a unit dose container) verified with the physician's orders; and administered to the proper recipient-patient at the proper time.

.017. Conformance with Physician Orders.

(a) The facility must ensure that drugs and biologicals are administered in accordance with the written orders of the attending physician.

(b) The facility must have written policies and procedures that are followed when stopping the administration of drugs. If the amount of medication or the time for discontinuance is not specified, the stop order procedure in the Texas Department of Health Minimum Licensing Standards for Nursing Homes will apply.

(c) Physicians' verbal orders for drugs may be given only to a licensed nurse, pharmacist, or physician, and must be recorded immediately and signed by the person receiving the order.

(1) The facility may permit verbal orders for Schedule II drugs only in an emergency.

(2) In a SNF, verbal orders must be countersigned by the attending physician within 48 hours and returned to the chart within seven days. In an ICF, verbal orders must be countersigned by the attending physician within 72 hours and returned to the chart within seven days.

(d) The facility must notify the attending physician of an automatic stop order before the last dose is administered.

(e) The issuing pharmacist must be notified at least 72 hours before the administration of a recipient-patient's last dose of medicine. The facility must have the medication in the facility before the administration of the last dose. (This does not mean that replacement medications have to be in-house in this period.)

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

Issued in Austin, Texas, on May 26, 1982.

TRD-824482

Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: July 1, 1982

Proposal publication date: December 4, 1981

For further information, please call (512) 441-3355,
ext. 2037.

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Although some notices may be received too late for publication before the meeting is held, all those filed are published in the *Register*. Notices concerning state agencies, colleges, and universities must contain the date, time, and location of the meeting, and an agenda or agenda summary. Published notices concerning county agencies include only the date, time, and location of the meeting. These notices are published alphabetically under the heading "Regional Agencies" according to the date on which they are filed.

Any of the governmental entities named above must have notice of an emergency meeting, or an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published. However, notices of emergency additions or revisions to a regional agency's agenda will not be published since the original agenda for the agency was not published.

All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol. These notices may contain more detailed agendas than space allows to be published in the *Register*.

Automated Information Systems Advisory Council

Thursday, June 17, 1982, 10 a.m. The Board of the Automated Information Systems Advisory Council will meet at the John H. Reagan Building, Austin. Items on the agenda include procurement actions, and fiscal year 1984 and fiscal year 1985 AISAC budget requirements. The board also will meet in executive session.

Contact: John C. Musgrove or Charlotte L. Dale, Room 419, John H. Reagan Building, Austin, Texas, (512) 475-2362.

Filed: June 2, 1982, 3:18 p.m.
TRD-824615

Texas Conservation Foundation

Tuesday, June 8, 1982, 9 a.m. The Board of the Texas Conservation Foundation is rescheduling a meeting to be held at Carrington-Covert Library, 1511 Colorado, Austin. This meeting was originally scheduled for Tuesday, June 8, 1982, at 10:30 a.m. This change of time was necessitated by travel schedules of board members.

Contact: M. J. Hutchinson, Suite 105, 1300 Guadalupe, Austin, Texas 78701.

Filed: June 2, 1982, 9:04 a.m.
TRD-824584

Texas Department of Corrections

Monday, June 7, 1982, 1:30 p.m. The Board of Directors of the Texas Department of Corrections met in emergency session in Room 103, 815 Eleventh Street, Huntsville. Items on the agenda included: discussion of legislation passed during second called session of the 67th legislature. The board also met in executive session to discuss subject matter as authorized by Texas Civil Statutes, Article 6252-17, §2(f). The emergency status was necessary to maximize use of appropriated money.

Contact: W. J. Estelle, Jr., Room 103, 815 Eleventh Street, Huntsville, Texas.

Filed: June 1, 1982, 10:57 a.m.
TRD-824557

Texas State Board of Dental Examiners

Sunday, June 13, 1982, 6 p.m. The Texas State Board of Dental Examiners will meet in the board meeting room, Granada Homotel, Dallas. According to the agenda, the board will discuss legal representation; adopt amendment of 22 TAC §113.2 (382.26.00.002), concerning x-ray labo-

ratories; and discuss a request from the San Antonio Dental School for approval of an IV Conscious Sedation Seminar.

Contact: William S. Nail, 718 Southwest Tower, Austin, Texas 78701, (512) 475-2443.

Filed: June 3, 1982, 9:03 a.m.
TRD-824627

Texas Education Agency

Thursday, June 3, 1982, 9 a.m. The State Board of Education Committee for Investment of the Permanent School Fund of the Texas Education Agency met in emergency session in Room 802, National Building, Ninth and Brazos, Austin. Items on the agenda included: action to be taken as a result of a tender offer by NLT Corporation for controlling interest in American General Corporation. The emergency status was necessary because a prompt response to the tender offer is required.

Contact: Walter Arellano, 201 East 11th Street, Austin, Texas 78701, (512) 475-4791.

Filed: June 1, 1982, 3:03 p.m.
TRD-824578

Thursday, June 10, 1982, 3 p.m. The State Board of Education Steering Committee for Teacher Preparation of the Texas Education Agency will meet in the board conference room, 201 East 11th Street, Austin. Items on the agenda include: requirements for assignment of teachers (ESL); testing program; and certification for vocational education teachers.

Contact: Raymon L. Bynum, 201 East 11th Street, Austin, Texas 78701, (512) 475-3271.

Filed: June 1, 1982, 3:06 p.m.
TRD-824570

Friday, June 11, 1982. The following committees of the State Board of Education will meet at the times and locations indicated.

8:30 a.m. The State Board of Education Committee for Instruction, Research, and Evaluation will meet in the board room, 150 East Riverside Drive, Austin. Items on the agenda summary include: provision of services for students residing in intermediate care facilities for the mentally retarded in Texas; delegation of committee authority; powers of the commissioner of education to impose sanctions; endorsements; school district data submission to the Texas Education Agency; guide for coding Foundation School Program roster of personnel; five-year state plan for vocational education for fiscal years 1983-1987 and the accountability report for fiscal year 1981; Texas state plan for vocational education; responses to the 12th annual report of the Advisory Council for Technical-Vocational Education in Texas; report of the commissioner of education on shortages of sample textbooks in service centers.

8:30 a.m. The State Board of Education Committee for Rules, Budget, and Finance will meet in the conference room, second floor, 158 East Riverside Drive, Austin. Items on the agenda include: request to submit state application for Chapter 2 of the Education Consolidation and Improvement Act for fiscal years 1983-1985; request for authorization to submit an application for a grant to continue operation of the Office of Technical Assistance for Desegregation; resolution concerning proposed federal legislation; 1982-1983 preliminary agency operating plan/budget; preliminary 1984-1985 biennial budget estimates; and proposed legislative recommendations.

11 a.m. The State Board of Education Committee for Board Operating Rules will meet in the board room, 150 East Riverside Drive, Austin. Items on the agenda include: operating rules for the State Board of Education; reimbursement of expenses; and proposed State Board of Education operating rules regarding conflict of interest.

1 p.m. The Joint Committee of members of the State Board of Education and representatives of Texas Department of Mental Health/Mental Retardation will meet in the hearing room, first floor, 150 East Riverside Drive; Austin. Items on the agenda include establishing an understanding of possible overlapping responsibilities and duties and working toward a common goal of achievement in those areas.

1:30 p.m. The State Board of Education Committee for Investment of the Permanent School Fund will meet in the conference room, second floor, 158 East Riverside Drive, Austin. Items on the agenda include review of securities transactions; review of investment portfolio; recommended investment program for June; and estimated funds available for the June program.

1:30 p.m. The State Board of Education Committee for Teacher Preparation, School Support Services, and Special Projects will meet in the board room, 150 East Riverside Drive; Austin. Items on the agenda include additional responsibilities for Regional Education Service Centers on a Pilot Program basis; requirements for assignment of teachers (ESL); testing program; recommendations on accreditation of school districts; recommendations for appointment to Apprenticeship and Training Advisory Committee; and Regional Education Service Centers—status and recommendations.

Contact: Raymon L. Bynum, 201 East 11th Street, Austin, Texas, 78704, (512) 475-3271.

Filed: June 1, 1982, 3:04 p.m.
TRD-824572, 824571, 824573,
824574, 824576, 824575

Friday, June 11, 1982, 1:30 p.m. The State Board of Education Committee for Investment of the Permanent School Fund of the Texas Education Agency made an addition to the agenda of a meeting to be held in the conference room, second floor, 158 East

Riverside Drive, Austin. The addition concerns a proposed amendment to the investment operating manual.

Contact: Raymon L. Bynum, 201 East 11th Street, Austin, Texas, 78704, (512) 475-3271

Filed: June 2, 1982, 4:28 p.m.
TRD-824616

Saturday, June 12, 1982, 8:30 a.m. The State Board of Education of the Texas Education Agency will meet in the board room, 150 East Riverside Drive, Austin. Items on the agenda summary include appeals on decisions of the commissioner; agency administration; Good Neighbor scholarships; request for authorization to apply for funds under the Education Consolidation and Improvement Act, Chapter 2; request for authorization to submit an application for a grant to continue operation of the Office of Technical Assistance for Desegregation; resolution concerning proposed federal legislation; provision of services for students residing in intermediate care facilities for the mentally retarded in Texas; delegation of committee authority; powers of the commissioner of education to impose sanctions; endorsements; guide for coding Foundation School Program roster of personnel; five-year state plan for vocational education for fiscal years 1983-1987 and the accountability report for fiscal year 1981; Texas state plan for vocational education; responses to the 12th annual report of the Advisory Council for Technical-Vocational Education in Texas; report of the commissioner of education on shortages of sample textbooks in Regional Education Service Centers; Governor's Task Force for Handicapped Citizens monitoring and reporting project—annual implementation plan status report; operating rules for the State Board of Education; reimbursement of expenses; additional responsibilities for Regional Education Service Centers on a Pilot Program basis; requirements for assignment of teachers (ESL); testing program; recommendations on accreditation of school districts; recommendation for appointment to the Apprenticeship and Training Advisory Committee; and investment of available funds.

Contact: Raymon L. Bynum, 201 East 11th Street, Austin, Texas, 78704, (512) 475-3271.

Filed: June 1, 1982, 3:07 p.m.
TRD-824569

Texas Register

Friday and Saturday, June 18 and 19, 1982, 9 a.m. and 8:30 a.m., respectively. The Parent Advisory Council for Migrant Education of the Texas Education Agency will meet in the Quality Inn, 411 North Shoreline Boulevard, Corpus Christi. Items on Friday's agenda include training sessions for application terminology, use of computers, and Accutrak tests. Items on Saturday's agenda include update on migrant regulations, nominations information, and report on completed state plan.

Contact: Frank Contreras, 201 East 11th Street, Austin, Texas, 78704, (512) 475-6523.

TRD-824577

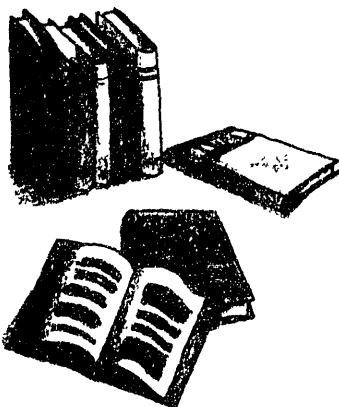
Wednesday, July 7, 1982. The Select Committee on Public Education, Subcommittee on Changing Technology in Instruction, of the Texas Education Agency will meet in the Lieutenant Governor's Committee Room #220, State Capitol. Times and agenda items are as follows:

8:30 a.m. A joint meeting with the Advisory Committee on Changing Technology in Instruction will be held to discuss a draft document concerning changing technology in instruction and recommendations.

1 p.m. The Subcommittee on Changing Technology in Instruction will meet to consider a draft document and recommendations regarding changing technology in instruction.

Contact: Cis Myers, 201 East 11th Street, Austin, Texas, 78704, (512) 475-4536.

TRD-824595, 824594



Office of the Governor

Thursday, June 10, 1982, 1:30 p.m. The Governor's Task Force on Small Business will meet in the Chaparral Club, 3600 Southland Center, Dallas. Items on the

agenda include discussion of the International Trade Subcommittee report, the capital formation and retention report, and additional recommendations of business education and training and regulatory authority reports.

Contact: Arturo Flores, P.O. Box 707, Eagle Pass, Texas 78852.

Filed: June 2, 1982, 2:32 p.m.
TRD-824613

Texas Department of Human Resources

Friday, June 11, 1982, 9 a.m. The Advisory Council for Social Work Certification of the Texas Department of Human Resources will meet in Room 2.122, Joe C. Thompson Center, 26th and Red River, Austin. Items on the agenda include reports of subcommittees on "Social Work as an Autonomous Discipline," and "Understanding the Sunset Process," and formulation of the council's response to the Sunset staff report.

Contact: Michael Doughty, P.O. Box 2960, Austin, Texas 78769, (512) 441-3355, ext. 6039.

Filed: June 2, 1982, 8:51 a.m.
TRD-824581

State Board of Insurance

Thursday, June 10, 1982, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance made an addition to the agenda of a meeting to be held in Room 342, 1110 San Jacinto Street, Austin. The addition concerns Docket 6840—a public hearing to determine whether the insurance agent's license issued to Ben Frank Clifton, and Ben Frank Clifton doing business as B. F. Clifton & Associates and doing business as A & C Excess Facilities should be cancelled, revoked, or suspended.

Contact: John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

Filed: June 2, 1982, 2:27 p.m.
TRD-824612

Texas Board of Irrigators

Wednesday, June 9, 1982, 9:30 a.m. The Texas Board of Irrigators will meet in Room 513, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Items on the agenda summary include approval of minutes; certification of licensed irrigator

examination and licensed installer examination results; recommendations from its Standards of Conduct Committee on new rules; the maintenance person exemption in Texas Civil Statutes, Article 8751, §2(4); the good moral character qualification in Texas Civil Statutes, Article 8751, §8(b); the chairman's report; dates for the next licensed irrigator and licensed installer examinations; and whether to request the attorney general to take enforcement action against Edwin Inman and Derald Evans.

Contact: Joyce Watson, Room 431, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas, (512) 475-8161.

Filed: June 1, 1982, 11:19 a.m.
TRD-824566

Lamar University

Wednesday, June 9, 1982. The following committees of the Lamar University Board of Regents will meet at L.U.-Orange, 410 Front Street, Orange. Times and agendas are as follows:

9:30 a.m. According to the agenda, the Building and Grounds Committee will review bids received and meet in executive session to evaluate personnel.

10 a.m. According to the agenda, the Finance Committee will review the proposed revision of traffic regulations and fees.

10:30 a.m. The Board of Regents will consider approval of minutes (April 14 and May 15); president's reports; financial reports for March and April, 1982; approval of peace officers appointments; approval of Finance Committee recommendations—revision parking fees and regulations for 1982-1983; and approval of Building Committee recommendations on bids received. The board will also meet in executive session to review legal matters.

Contact: Andrew J. Johnson, P.O. Box 10014, Beaumont, Texas 77710, (713) 838-8403.

TRD-824610, 824609, 824611

Texas Department of Mental Health and Mental Retardation

Friday, June 11, 1982. The following committees of the Texas Board of Mental Health and Mental Retardation will meet

in the central office, Room 240, 909 West 45th Street, Austin. Times and agendas are as follows.

9 a.m. According to the agenda, the Personnel Committee will consider reappointment of James Armstrong, Ph.D., to the position of superintendent, Corpus Christi State School; and duties of the commissioner.

10:30 a.m. According to the agenda, the Business Committee will review and approve/disapprove the commissioner's selection of consultant on the department's management information needs; consider for approval the biennial budget request for 1984-1985 biennium, and approve the Capital Construction Program budget request.

1 p.m. According to the agenda, the Ad Hoc Committee on Educational Programs—TDMHMR System, will consider ICF/MR Program and education services; publicly funded MHMR services for emotionally disturbed children and adolescents; development of a coordinate assessment/evaluation and referral effort between school districts' admissions, referral, and discharge process and TDMHMR's diagnostic and evaluation process; funding for educational services in state schools for the mentally retarded, and pending and contemplated litigation.

Contact: Gary E. Miller, M.D., P.O. Box 12668, Austin, Texas 78711, (512) 465-4588.

Filed: June 1, 1982, 2:43 p.m.
TRD-824560, 824558, 824559

Texas Optometry Board

Thursday, June 10, 1982, 3:15 p.m. The Texas Optometry Board will meet at the Marriott Hotel, 2100 South Braeswood, Houston. Following work sessions of the committees and subcommittees, the board will consider reports of the secretary-treasurer, committees, legal counsel, and executive director; old business to cover advertising, use of deceased person's name in a partnership, national boards, and attorney general opinion request; and new business to cover request/issuance of duplicate licenses, advertising in possible violation of §5.09, and appointment of committees. The board will also meet in executive session to discuss contemplated and pending litigation with board attorney in compliance with Open Meetings Act, Texas Civil Statutes, Article 6252-17, §2(e).

Board examinations will be given on June 11, 1982, at the Marriott Hotel, and on June 12 and 13, 1982, at the University of Houston, College of Optometry.

Contact: Lois Ewald, 5555 North Lamar, Suite H-101, Austin, Texas 78751.

Filed: June 2, 1982, 1:36 p.m.
TRD-824608

Board of Pardons and Paroles

Monday-Friday, June 14-18, 1982, 9 a.m. daily. The Board of Pardons and Paroles will meet at 711 Stephen F. Austin Building, Austin. According to the agenda, the board will review cases of inmates for parole consideration, act on emergency reprieve requests and other acts of executive clemency, review reports regarding persons on parole; review procedures affecting the day-to-day operation of support staff; review and initiate needed rule changes relating to general operation, executive clemency, parole and all hearings conducted by the agency, and to take action upon gubernatorial directives.

Contact: John W. Byrd, 711 Stephen F. Austin Building, Austin, Texas, (512) 475-3363.

Filed: June 2, 1982, 9 a.m.
TRD-824583

Texas State Board of Examiners of Psychologists

Thursday-Saturday, June 10-12, 1982, 9 a.m. daily. The Texas State Board of Examiners of Psychologists will meet in Suite H-126, 5555 North Lamar, Austin. Items on the agenda include rules and regulations; board opinion letters; complaint files; application files; policies and procedures; proposed supervision guidelines; exams; administrative hearings; budget; minutes; emergency funding; and confidentiality law.

Contact: Patti Bizzell, 5555 North Lamar, Suite H-126, Austin, Texas.

Filed: June 1, 1982, 1:29 p.m.
TRD-824565

Public Utility Commission of Texas

Monday, June 14, 1982, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will conduct a prehearing conference in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 4510—

application of Gulf States Utilities Company for authority to change rates.

Contact: Carolyn E. Shellman, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 2, 1982, 9:04 a.m.
TRD-824582

Friday, June 18, 1982, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will conduct a rescheduled hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 4345—application of J & R Water Supply, Inc., for a rate increase within Bell County. This meeting was originally scheduled for July 7, 1982 (7 TexReg 2004).

Contact: Carolyn E. Shellman, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 2, 1982, 1:36 p.m.
TRD-824607

Friday, August 6, 1982, 9:30 a.m. The Hearings Division of the Public Utility Commission of Texas will conduct a hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Dockets 4471 and 4472—applications of Houston Lighting & Power Company to amend certificate of convenience and necessity, and for construction of Malakoff Transmission Line within Henderson County (electric).

Contact: Carolyn E. Shellman, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 2, 1982, 9:04 a.m.
TRD-824585

Board of Tax Assessor Examiners

Thursday, June 10, 1982, 9 a.m. The Board of Tax Assessor Examiners will meet in the Conference Room, 9501 IH 35 North, Austin. Items on the agenda include approval of minutes of May 12, 1982, meeting; action on approval of registered professional assessors and reapplication of registrants; discussion on 1984-1985 budget, new registered professional assessor examination, complaints pending before the board, and procedure involving persons not in compliance with education requirements; old business, and new business. The board will also meet in executive session.

Contact: Ben H. Tow, 9501 IH 35 North, Austin, Texas, (512) 837-9800 or (800) 252-9304.

Filed: June 2, 1982, 9:35 a.m.
TRD-824591

Texas Southern University

Friday, June 11, 1982, 2 p.m. The Texas Southern University Board of Regents will meet in Room 203, Texas Southern University, Student Life Center, Houston. Items on the agenda include minutes, financial reports, review of budgetary changes, approval of short term investments, progress reports on campus construction projects, approval of leaves and out-of-state travel, and approval of real estate purchased. The board will also meet in executive session.

Contact: Everett O. Bell, Texas Southern University, Houston, Texas, (713) 529-8911.

Filed: June 1, 1982, 2:10 p.m.
TRD-824567

Texas Water Commission

Thursday, June 17, 1982, 11 a.m. The Texas Water Commission will meet in Room 119, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, there will be a conference between members of the Texas Water Commission and the members of the Texas Water Development Board.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: June 2, 1982, 3:10 p.m.
TRD-824614

Tuesday, June 22, 1982, 2 p.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the commission will consider the application by the Texas Department of Corrections for renewal of Water Quality Permit 10829-01, to authorize discharge of treated domestic sewage effluent in Brazoria County, San Jacinto-Brazos Coastal Basin.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: June 2, 1982, 11:09 a.m.
TRD-824596

Tuesday, July 6, 1982, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. Items on the agenda summary include application by P. S. Chow for proposed Water Quality Permit 12475-01 to authorize discharge of 357,000 gallons per day of treated domestic sewage effluent, Fort Bend County, San Jacinto-Brazos Coastal Basin; and application by Shefman Investments, Inc., for proposed Water Quality Permit 12498-01 to authorize discharge of treated domestic sewage ef-

fluent at a volume not to exceed a daily average of 430,000 gallons, Harris and Fort Bend Counties, San Jacinto River Basin.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: June 2, 1982, 11:11 a.m.
TRD-824597

Friday, July 9, 1982, 10 a.m. The Texas Water Commission will meet in Room 618, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the commission will conduct hearings on application by White River Municipal Water District to extend the time to commence and complete construction under Permit 2590, and on application 4218 of Texas Municipal Power Agency for a permit to impound not to exceed 91.5 acre-feet of water per annum in an on-channel reservoir on Big Branch, tributary of Gibbons Creek, tributary.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: June 2, 1982, 11:10 a.m.
TRD-824598, 824618.

Wednesday, July 14, 1982, 10 a.m. The Texas Water Commission will meet in Room 618, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the commission will conduct a hearing on application by Lavaca-Navidad River Authority and Texas Water Development Board for an amendment to Certificate of Adjudication 16-2095 to increase the use from Stage I of Palmetto Bend Dam and Reservoir from 75,000 acre-feet annually to the firm yield of Stage I, estimated as 86,710 acre-feet per year.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: June 2, 1982, 11:10 a.m.
TRD-824599

**Regional Agencies
Meetings Filed June 1**

The East Texas Council of Governments, Executive Committee, met at 3800 Stone Road, Kilgore, on June 3, 1982, at 2 p.m. Information may be obtained from Glynn J. Knight, 3800 Stone Road, Kilgore, Texas, (214) 984-3641.

The Panhandle Health Systems Agency, Plan Development Committee, will meet in the first floor conference room, Gibraltar

Savings Building, 801 South Jackson, Amarillo, on June 10, 1982, at 6 p.m. The following committees also will meet at the same location on the same date, at the following times:

Nominating Committee—6:45 p.m.
Governing Body—7:30 p.m.

Information may be obtained from Linda Maxey, P.O. Box 9257, Amarillo, Texas 79105, (806) 372-3381.

The Trinity River Authority of Texas, Central Regional Wastewater System Right-of-Way Committee, will meet by conference call at 5300 South Collins, Arlington. on June 9, 1982, at 8 a.m. Information may be obtained from Geri Elliott, P.O. Box 60, Arlington, Texas 76010, (817) 467-4343.

The Wheeler County Appraisal District met in the district's office, Courthouse Square, Wheeler, on June 7, 1982, at 2 p.m. Information may be obtained from Charles Buzard, P.O. Box 349, Wheeler, Texas 79096, (806) 826-5900.

TRD-824568

Meetings Filed June 2

The Bexar Appraisal District, Board of Directors, will meet at 525 South Main, San Antonio, on June 14, 1982, at 5 p.m. Information may be obtained from William Johns Burnette, P.O. Box 9497, San Antonio, Texas 78204, (512) 224-8511.

The Dewitt County Appraisal District, Board of Directors, will meet at 103 Bailey Street, Cuero, on June 10, 1982, at 7:30 p.m. Information may be obtained from Wayne K. Woolsey, P.O. Box 4, Cuero, Texas 77954, (512) 275-5733.

The Hays County Central Appraisal District, Board of Directors, met in the board room, San Marcos Consolidated Independent School District Building, 501 North LBJ, San Marcos, on June 7, 1982, at 5 p.m. Information may be obtained from William Beare, P.O. Box 1287, San Marcos, Texas 78666, (512) 396-4777.

The High Plains Underground Water Conservation District 1, Board of Directors, will meet in the conference room, 2930 Avenue Q, Lubbock, on June 10, 1982, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181.

The Appraisal District of Jones County, Board of Directors, will meet at 1137 East Court Plaza, Anson, on June 17, 1982, at

9 a.m. Information may be obtained from John Steele, 1137 East Court Plaza, Anson, Texas 79501, (915) 823-2422.

The Scurry County Appraisal District, Board of Directors, will meet at 2612 College Avenue, Snyder, on June 8, 1982, at 7 p.m. Information may be obtained from L. R. Peveler, 2425 College Avenue, Suite 206, Snyder, Texas 79549, (915) 573-8549. TRD-824593

Meetings Filed June 3

The Austin-Travis County Mental Health and Mental Retardation Center, Executive Committee, met in emergency session in Room 301, 1820 East Eighth Street, Austin, on June 3, 1982, at 11:45 a.m. The emergency status was necessary because this was the only time this week the board members could meet. Information may be obtained from Debbie Sandoval, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141, ext. 27.

The Mental Health and Mental Retardation Regional Center of East Texas, Board of Trustees, will meet in the board room, 2323 West Front Street, Tyler, on June 10, 1982, at 4 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (214) 597-1351.

The Fisher County Appraisal District, Board of Directors, will meet in the hospitality room, Fisher County Courthouse, Roby, on June 14, 1982, at 8 p.m. Information may be obtained from Billie L. Holcomb, P.O. Box 516, Roby, Texas 79543.

The Hockley County Appraisal District, Board of Directors, will meet in the board room, 913 Austin Street, Levelland, on June 21, 1982, at 8 p.m. Information may be obtained from Keith Toomire, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654.

The Rusk County Appraisal District, Board of Directors, will meet in the administrative offices, 107 North Van Buren, Henderson, on June 17, 1982, at 1:30 p.m. Information may be obtained from Melvin R. Cooper, P.O. Box 7, Henderson, Texas 75652, (214) 657-9697.

The Swisher County Appraisal District, Board of Directors, will meet in the main office, 130 North Armstrong, Tulia, on June 10, 1982, at 8 p.m. Information may be obtained from Nan Davis, P.O. Drawer 8, Tulia, Texas 79088, (806) 995-3015.

The Trinity River Authority of Texas, Administration Committee, will meet at 5300 South Collins, Arlington, on June 9, 1982, at 10 a.m. Information may be obtained from Geri Elliott, P.O. Box 50, Arlington, Texas 76010, (817) 467-4343. TRD-824629

Thrasher Allen, Inc., a Texas non-profit Corp.,
Burnet

AN82-0528-090

NIEH—Request for a declaratory ruling that a certificate of need is not required for Thrasher Allen, Inc., a Texas non-profit corporation to acquire The Oaks Nursing Home, an existing ICF nursing home located in Burnet, with 52 existing beds and 40 beds approved under Certificate of Need AN81-0407-017, from C. Thrasher Allen doing business as The Oaks Nursing Home.

C. Thrasher Allen, doing business as The Oaks
Nursing Home, Burnet

AN81-0407-017(052482)

CN/AMD—Request for amendment of Certificate of Need AN81-0407-017 which authorized Burnet Health Facilities Development Corp. for C. Thrasher Allen doing business as The Oaks Nursing Home to construct building additions totaling 7,004 square feet; and to contain 42 intermediate beds and an expanded dietary/administrative area resulting in an increase from 52 to 90 beds. The certificate holder requests an increase in the project cost from \$391,776 to \$455,000 and to change the name of the certificate holder to Thrasher Allen, Inc.

Issued in Austin, Texas, on June 2, 1982.

TRD-824586

John L. Darrouzet
Assistant General Counsel
Texas Health Facilities
Commission

Filed: June 2, 1982, 9:07 a.m.

For further information, please call (512) 475-8940.

Texas Tourist Development Agency Consultant Contract Award

Description. This consultant service selection report is filed in accord with the provisions of Texas Civil Statutes, Article 6252-11c. The consultant proposal request was published in the February 19, 1982, issue of the *Texas Register* (7 TexReg 704).

The study is calendar year 1981 estimates of the economic impact of travel on each of Texas' 254 counties, including total travel expenditures, travel-generated payroll, travel-generated employment, state tax receipts, and local tax receipts. Also included will be an addendum providing impact of travel by trip, expenditure, and travel type. The name and business address of the private consultant selected is the U.S. Travel Data Center, 1899 L Street, Northwest, Washington D.C. 20036.

Cost and Dates. The total value of the study is \$27,900, or \$100 for each of the 254 counties, plus \$2,500 for the addendum. Contract shall begin on May 28, 1982, and be completed by mid-September 1982.

Due Dates of Documents. Due date of the document (The Economic Impact of Travel on Texas Counties, 1981), containing all estimates and an analysis, is mid-September 1982.

Issued in Austin, Texas, on May 28, 1982.

TRD-824580

Frank Hildebrand
Executive Director
Texas Tourist Development
Agency

Filed: June 1, 1982, 2:11 p.m.

For further information, please call (512) 475-4326.

Texas State Board of Pharmacy Correction of Error

An adoption submitted by the Texas State Board of Pharmacy and published in the May 28, 1982, issue of the *Texas Register* (7 TexReg 2065) contained two errors as published. The date the adoption was issued was given incorrectly as June 11, 1982. It should read May 21, 1982. The effective date was given incorrectly as June 10, 1982. It should read June 11, 1982.

Office of the Secretary of State Texas Register Correction of Error

The page numbers of the June 4 issue of the *Texas Register* were numbered incorrectly. The June 4 issue should have been numbered 2151 through 2176.

Texas Water Commission Applications for Waste Disposal Permits

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of May 24-28, 1982.

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 person 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 30 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, (512) 475-1311.

Listed are the names of the applicants and the cities in which the facilities are located; type of facility; location of the facility; permit number; and type of application—new permit, amendment, or renewal.

Period of May 24-28, 1982

Irvin Kaplan, Houston; residential and light commercial development; approximately 300 feet west of Kirby Road and approximately 600 feet north of NASA Road 1 in Harris County; 12545-01; new permit

Harris County MUD 5, Houston; treated domestic sewage facilities; northwest Harris County, approximately 1.5 miles west of IH-45, 1,500 feet north of Gears Road, east of Stuebner Airline Drive; 11238-01; renewal

Leon Independent School District, Jewett; an existing public school; approximately five miles southwest of the City of Jewett and approximately 1,000 feet northwest of U.S. Highway 79 in Leon County; 12542-01; new permit

The Town of Anthony; treated domestic sewage facility; approximately 2,000 feet west of State Highway

20 and 4,000 feet south of FM Road 1905 in El Paso County; 10120-01; amendment

Interox America, a partnership of Soltex Peroxygen, Inc. and La Porte Peroxygen, Inc., Deer Park; plant producing hydrogen peroxide and percarbonate of soda; 1230 Battleground Road, Deer Park, Harris County; 02455; renewal

Saber Refining Company, Corpus Christi; petroleum refinery; 6560 Up River Road, Nueces County; 01909; amendment

Henderson County Municipal Water Authority, Chandler; Chandler sewage treatment plant; approximately ½ mile southeast of the city limits of Chandler on Noonday Road in Henderson County; 11012-01; renewal

Montgomery County Municipal Utility District 24, Houston; sewage treatment plant; approximately 2-½ miles east of U.S. Highway 59 and ½ mile northeast of the point where White Oak Creek leaves Montgomery County in Montgomery County; 11789-01; renewal

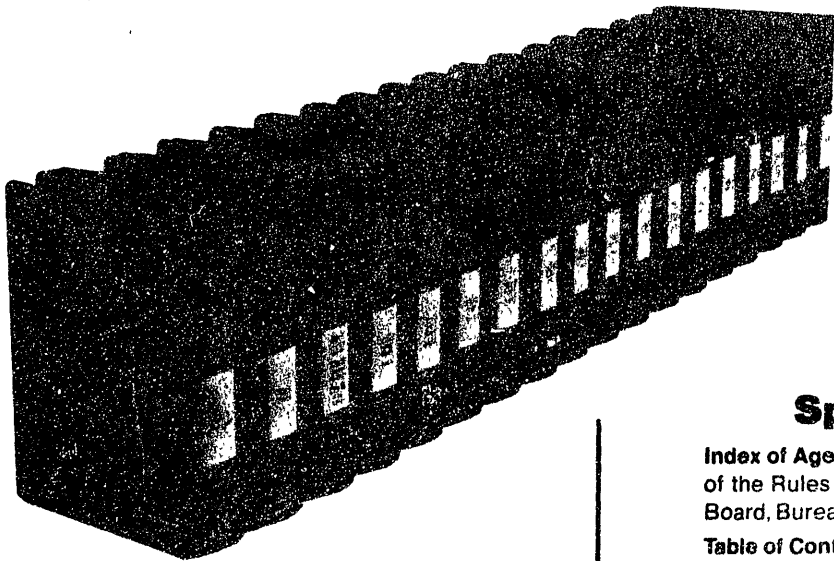
Issued in Austin, Texas, on May 28, 1982.

TRD-824541

Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: May 28, 1982, 11:20 a.m.

For further information, please call (512) 475-4514.



The Texas Administrative Code

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Each complete set of the **Code** will include: an index to locate each agency's rules in the **Code**; a table of contents listing each title, with its parts, chapters, and subchapters; a series of tables listing the constitutional and statutory authority for each rule; the full text of the Administrative Procedure and Texas Register Act; and the full text of the Texas Administrative Code Act.

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Cross References, showing every Part, Chapter, Subchapter, and Section of the Code cited in a Rule

Editor's notes, containing clarifying comments or statements as appropriate

Notes of Decisions, containing a summary of each court decision and Attorney General's opinion that construes a Rule.

For more information please contact:

In eastern Texas: Gayle Carpenter
806-797-4878

In western Texas: Marc McKonic
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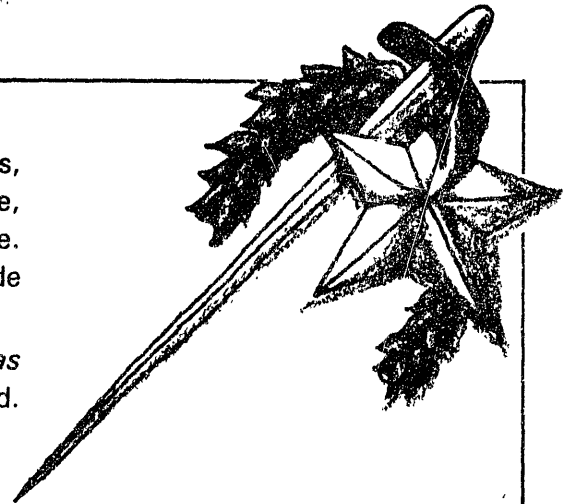
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