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TEXAS DOCUMENTS

TEXAS REGISTER

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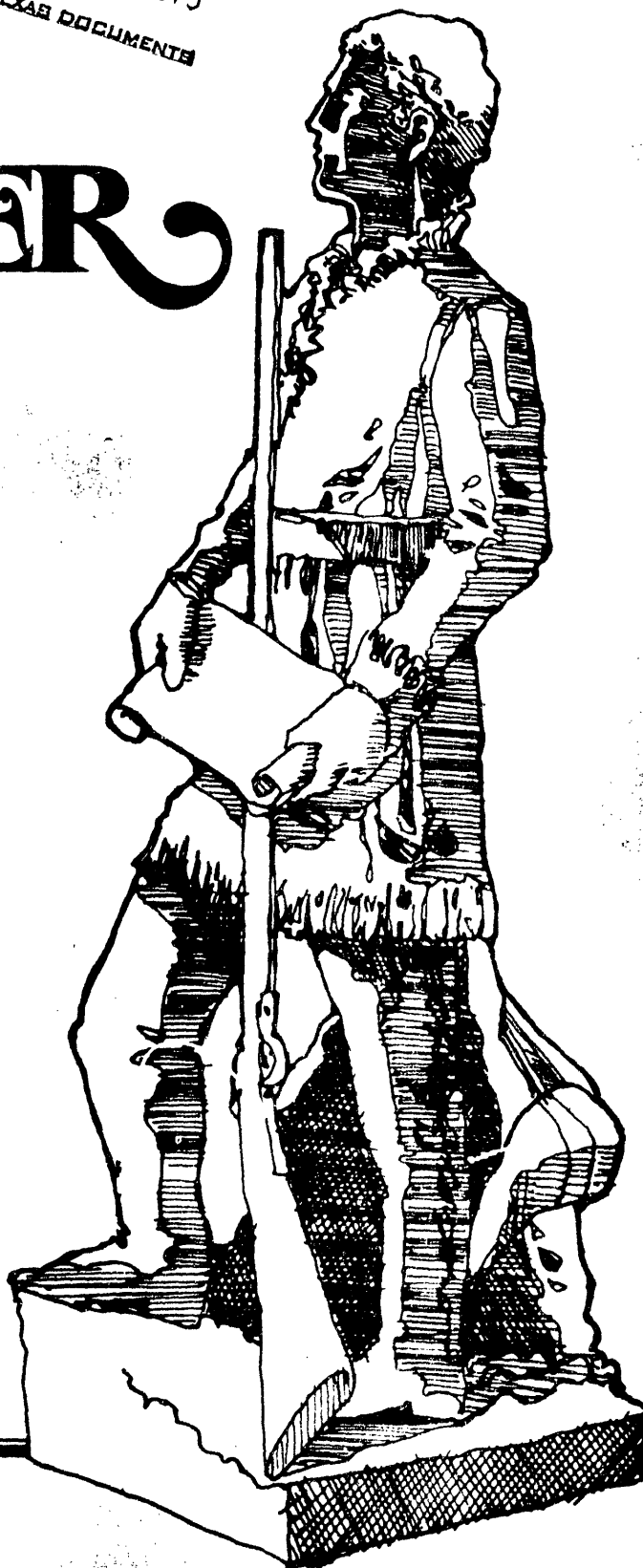
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Office of the Secretary of State

The Department of Mental Health and Mental Retardation proposes amendments which include definitions of aversive procedures and aversive stimuli. In these amendments, aversive procedures are defined as those procedures in which an undesirable response is followed systematically by an intense stimulus, locked time-out (confinement of the patient or resident), contingent restraint (controlling or limiting the physical activity of a patient following an undesirable response), or followed by requiring the patient or resident to engage in a task. An aversive stimulus is defined as any stimulus which is unpleasant or noxious, so that its effect is the suppression of undesirable behavior. Such stimuli include tactile (including electric stimulus), olfactory, auditory, gustatory, and other stimuli which result in acute physical discomfort or pain.

To effect a compromise agreement reached with the Texas Public Employees Association, the State Purchasing and General Services Commission proposes amendments to its rules concerning parking in the Capitol Complex. The major changes follow: (1) waiting lists are abolished except when employee preferences are stated; (2) on an open lot basis, free parking is provided to all state employees wanting such an assignment, and on a reserve space basis, free parking is provided to car pools and to the handicapped; and (3) a limited number (1,000 spaces) of individually reserved space parking will be allocated among affected state agencies, according to number of employees.

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

Artwork: Gary Thornton

TEXAS REGISTER

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*George W. Strake, Jr.
Secretary of State*

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Appointments

Texas Alcoholic Beverage Commission

To be member and chairman for a six-year term to expire November 15, 1985:

Louis M. Pearce, Jr.
P.O. Box 35068
Houston, Texas 77035

Mr. Pearce is being reappointed.

Angelina and Neches River Authority

To the board of directors for a six-year term to expire September 5, 1985:

Steve Lilly
Route 10, Box 7440
Nacogdoches, Texas 75961

Mr. Lilly is replacing Rufus H. Duncan of Lufkin, Angelina County, whose term expired.

Brazos River Authority

To the Board of Directors for a six-year term to expire February 1, 1983:

Jack McGlothlin
P.O. Box 5198
Abilene, Texas 79605

Mr. McGlothlin will be filling the unexpired term of Burford King of Fort Worth, Tarrant County, who resigned.

State Board of Chiropractic Examiners

For a six-year term to expire August 3, 1985:

Jerry E. Whitehead, D.C.
806 South Main
Perryton, Texas 79070

Dr. Whitehead is replacing Dr. John F. Stewart, Jr., of Giddings, Lee County, whose term expired.

Governor's Task Force for Handicapped Citizens

Pursuant to Executive Order WPC-13, for a term at the pleasure of the governor:

MG William A. Harris (retired)
206-B Ruelle
San Antonio, Texas 78209

Statewide Health Coordinating Council

To be chairman, pursuant to Public Law 96-79, Section 1524b(2), National Health Planning and Resources Development Act of 1979:

Louis E. Gibson, M.D.
Navarro County
Corsicana, Texas

For a two-year term to expire October 21, 1981:

David M. Britt
Britt Ranch
Wheeler, Texas 79096 (HSA No. 1 consumer)

Mr. Britt is replacing Frank O. Nelson of Amarillo, Potter County, whose term expired.

Texas Advisory Commission on Intergovernmental Relations

For a six-year term to expire September 1, 1985:

Jeffrey E. Wentworth
County Commissioner, Bexar County
Bexar County Courthouse
San Antonio, Texas 78204

Commissioner Wentworth is replacing Commissioner Clyde C. Anderson of El Paso, El Paso County, whose term expired.

Texas State Board of Examiners of Psychologists

For a six-year term to expire October 31, 1985:

Robert P. Anderson, Ph.D.
40 Lakeshore Drive
Canyon, Texas 79364

Dr. Anderson is replacing Dr. Robert Gordon of Dallas, Dallas County, whose term expired.

Stephen F. Austin State University

To the Board of Regents for a six-year term to expire January 31, 1985:

Ted Bowen
President and Chief Executive Officer
Methodist Hospital
6565 Fannin
Houston, Texas 77030

Mr. Bowen will be filling the unexpired term of Ernest Powers of Carthage, Panola County, who is deceased.

"Texans War on Drugs" Committee

For a one-year term to expire June 7, 1980:

James Floyd Chambers, Jr.
Chairman of the Board and Chief Executive Officer
Dallas Times Herald
1101 Pacific
Dallas, Texas 75265

Issued in Austin, Texas, on December 7 & 10, 1979.

Doc. No. 799376 & William P. Clements, Jr.
799398 Governor of Texas

For further information, please call (512) 475-3021.

Article 4399, Vernon's Texas Civil Statutes, requires the attorney general to give written opinions to certain public officials. The Texas Open Records Act, Article 6252-17a, Section 7, Vernon's Texas Civil Statutes, requires that a governmental body which receives a request for release of records seek a decision of the attorney general if the governmental body determines that the information may be withheld from public disclosure. Opinions and open records decisions issued under the authority of these two statutes, as well as the request for opinions and decisions, are required to be summarized in the *Texas Register*.

Copies of requests, opinions, and open records decisions may be obtained from the Opinion Committee, Attorney General's Office, Supreme Court Building, Austin, Texas 78701, telephone (512) 475-5445.

Requests for Opinions

Summary of Request for Opinion RQ-221

Request from Joe Resweber, county attorney, Harris County.

Summary of Request:

(1) May the Harris County auditor prescribe or require the deposit of the fees collected by the Harris County district attorney pursuant to Vernon's Annotated Code of Criminal Procedure, Article 53.08, in Fund 521, District Attorney Administration Fund, or in the Officers Fee Fund, pursuant to Article 3912e, Section 5, Vernon's Annotated Civil Statutes?

(2) May the county auditor prescribe accounting and control procedures for the fees collected pursuant to Vernon's Annotated Code of Criminal Procedure, Article 53.08?

(3) May the county auditor prescribe accounting and control procedures for the justices of the peace as they pertain to the fees collected in the processing of hot checks for and on behalf of the district attorney?

(4) May the county auditor prescribe that a fee be assessed and collected under Vernon's Annotated Code of Criminal Procedure, Article 53.08, Section (a)(2)(b), in each and every instance in order to have proper accounting and controls for all fees?

Doc. No. 799430

Summary of Request for Opinion RQ-222

Request from Wilhelmina Delco, chairman, Committee on Higher Education, house of representatives, Austin.

Summary of Request: May members of a university board serve on the Texas Guaranteed Student Loan Corporation Board?

Doc. No. 799431

Summary of Request for Opinion RQ-223

Request from Ross Newby, executive director, Texas Commission on Alcoholism, Austin.

Summary of Request: Are schools providing classroom instruction for the education of alcohol-related traffic offenders considered commercial driver training schools under Article 4413(29c), Vernon's Texas Civil Statutes?

Doc. No. 799432

Summary of Request for Opinion RQ-224

Request from Kenneth H. Ashworth, Coordinating Board, Texas College and University System, Austin.

Summary of Request: May a Texas public junior college use state or local funds to pay for active employee enrollment in a federally approved health maintenance organization in lieu of enrollment in the college's health insurance program?

Doc. No. 799433

Summary of Request for Opinion RQ-225

Request from Albert Brown, chairman, Constitutional Amendments Committee, house of representatives, Austin.

Summary of Request: Is Article 2368a, Vernon's Texas Civil Statutes, which requires competitive bidding, applicable to housing authorities?

Doc. No. 799434

Summary of Request for Opinion RQ-226

Request from Randall L. Sherrod, criminal district attorney, Randall County.

Summary of Request: Is the commissioners court required in their duties concerning improvement of county roads to use the elected county surveyor for surveying, or can the court hire an outside firm to independently conduct such surveys?

Doc. No. 799435

Summary of Request for Opinion RQ-227

Request from Henry Wade, district attorney, Dallas.

Summary of Request: Does the County of Dallas have the authority under the statutes of the State of Texas to make payroll deductions from employees' salaries for the purpose of paying employee pledges to the United Way of Greater Dallas?

Doc. No. 799436

Summary of Request for Opinion RQ-228

Request from Cathy M. Barnes, assistant city attorney, El Paso.

Summary of Request: Are records of a city-funded emergency medical service reflecting the transportation of women who are under the care of lay midwives to an emergency room available to a member of the legislature?

Doc. No. 799437

Summary of Request for Opinion RQ-229

Request from A. R. Schwartz, Natural Resources Committee, Texas Senate, Austin.

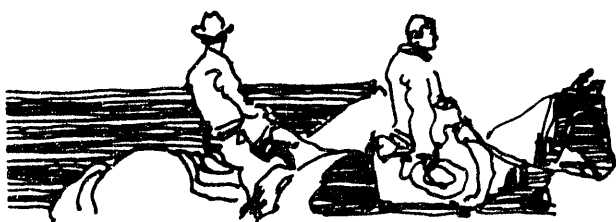
Summary of Request:

(1) May the Board of Regents of Texas A&M University order the name Texas A&M University at Galveston to design-

nate the various academic disciplines and degree programs offered at that institution in the absence of any statutory name; and

(2) Under the circumstances described above, may the regents of Texas A&M University continue to utilize the name approved by them until the legislature acts affirmatively by statute to establish the name?

Doc. No. 799438



Opinions

Summary of Opinion MW-95

Request from Joe Resweber, county attorney, Harris County, concerning access by an individual to his own criminal history record.

Summary of Opinion: A law enforcement agency should permit an individual to review criminal history record information maintained about him and should provide the individual a copy of that portion of the record the accuracy or completeness of which is disputed.

Issued in Austin, Texas, on December 11, 1979.

Doc. No. 799439

C. Robert Heath
Opinion Committee Chairman
Attorney General's Office

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

EMERGENCY RULES

An agency may adopt emergency rules after determining what it considers to be an imminent peril to the public health, safety, or welfare. These rules may be effective immediately on filing with the secretary of state for no more than 120 days, renewable once for no more than 60 days. An agency must submit written reasons, published in the *Register*, for the emergency adoption of rules.

Numbering System—Each rule is designated by a unique 10-digit number which is divided into four units by decimal points. The first unit (three digits) indicates the agency which promulgates the rule. The second unit (two digits) indicates the chapter of rules to which the rule belongs. The third unit (two digits) indicates the subchapter of rules, if any, within the chapter. The fourth unit (three digits) indicates the individual rule.

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

Texas Board of Land Surveying

The Land Surveying Practices Act of 1979, passed by the 66th Legislature, effective June 13, 1979, merged the Board of Examiners for Licensed State Land Surveyors with the State Board of Registration for Public Surveyors creating the Texas Board of Land Surveying. The Act provides that the existing rules may remain in effect for 180 days after passage or sooner ratified by the board.

The board is adopting on an emergency basis portions of existing rules from the State Board of Registration for Public Surveyors and one new rule regarding Registered Professional Engineers practicing surveying. In an effort to insure an orderly transition of duties from the two separate agencies to the Texas Board of Land Surveying and also to continue the provision of services to applicants for registration and to provide interim protection to the public, it is deemed necessary by the board that these rules be adopted on an emergency basis, thereby allowing the board ample time to promulgate new rules as necessitated by the enabling legislation.

General Rules of Procedures and Practices

The Board 408.01.01

These rules are adopted under the authority of Article 5282c, Vernon's Annotated Civil Statutes.

.001. Name. The name of the board shall be Texas Board of Land Surveying. For the purpose of brevity in succeeding rules this organization shall be subsequently referred to as the "board."

.002. Headquarters. The headquarters of the board shall be in Austin, Texas.

.003. Chairman. The chairman shall be the executive officer of the board. When present, he shall preside at all meetings. He shall appoint such committees as the board may authorize from time to time. He shall sign all certificates. He shall perform all other duties usually pertaining to the office of chairman and permitted by law.

.004. Vice Chairman. The vice chairman shall, in the absence or incapacity of the chairman, exercise the duties and shall possess all the powers of the chairman.

.005. Executive Secretary. The executive secretary shall conduct and care for all correspondence in the name of the board. He shall maintain all records prescribed by law. He shall keep a record of all meetings and maintain a proper account of business of the board. He shall be custodian of the official seal and affix same to all certificates and other official documents upon the orders of the chairman and/or of the board. He shall check and certify all bills and check all vouchers (claims) and shall approve same.

.006. Bond. The executive secretary shall furnish a surety bond to the board in the amount of \$5,000, the premium for which shall be paid from the funds of the board. The executive secretary shall be paid such salary as the board may direct. The board shall furnish the executive secretary the necessary equipment, supplies, and stenographic assistance, paying for the same directly on vouchers (claims) handled as prescribed herein and by law.

.007. Executive Committee. The Executive Committee shall consist of the chairman of the board, who shall be chairman ex officio, the vice chairman, and one other member. Its duties shall be to transact all business instructed by the board, during the intervals between board meetings, and to report thereon to the board at its meeting. It shall also recommend to the board such actions in respect to policies and procedures as it may consider desirable.

.008. Special Committees. Special committees shall have such duties as may be assigned by the chairman of the board.

.009. Financial. Payment of all salaries and other operating expenses of the board shall be made by itemized vouchers (claims) on the land surveying fund. Such vouchers (claims) shall be approved by the executive secretary of the board. The secretary shall maintain complete records of the financial transactions of the board as prescribed by the state comptroller and by law.

.010. Vacancies. If for any reason, a vacancy shall occur in the board, the chairman shall call a special meeting for the purpose of preparing a notice to the governor asking for the appointment of a new member to fill the unexpired term. If the vacancy shall occur in the office of the chairman, the vice chairman shall call the meeting.

Doc. No. 799346

Meetings 408.01.02

These rules are adopted under the authority of Article 5282c, Vernon's Annotated Civil Statutes.

.001. Regular Meetings. Two regular meetings shall be held each year, one in August and the other in February, in Austin, Texas, or at such time and place as the majority of the board may designate.

.002. Special Meetings. Meetings may be called at any time by order of the chairman, and may be called by the secretary on the written request of three members. Notice of all regular and special meetings shall be mailed out by the secretary to each member at his last known address at least one week prior to said meeting unless majority of the members of

the board unanimously waive such notice. When executive sessions of the board are called, the chairman shall appoint one member as recorder.

.003. *Proceedings.* *Robert's Rules of Order* shall govern the proceedings of the board except as otherwise provided herein or by statute.

Doc. No. 799347

Definitions 408.01.03

These rules are adopted under the authority of Article 5282c, Vernon's Annotated Civil Statutes.

.001. *Hearing.* Hearing means an adjudicative proceeding concerning the issuance, refusal, suspension, revocation of licenses, and/or registration certificates after which the legal rights, duties, or privileges of an applicant or licensee, are to be determined by the board or the attorney general.

.002. *Rule.* Rule means any board statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the board. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the board and not affecting private rights or procedures. This definition includes substantive regulations.

.003. *Certificate of Registration.* Certificate of registration is a license to practice public surveying or state land surveying in Texas.

.004. *Renewal.* Renewal means the payment of a fee annually as set by the board within the limits of the law for the certificate of registration.

.005. *Seal.* The seal of the board shall be as illustrated, and shall be of a size commercially designated as a two-inch seal, the measurement being two inches between each pair of opposite corners of the exterior octagonal frame.

Doc. No. 799348

Applications, Examinations, and Licensing 408.01.04

These rules are adopted under the authority of Article 5282c, Vernon's Annotated Civil Statutes.

.001. *Applications.*

(a) The board will receive at any time applications from persons who qualify by law and wish to apply to take an examination for registration to practice public surveying and/or state land surveying in Texas. Applications received by the board shall be examined by the secretary for conformity with the rules and regulations governing applications as established by the board. Applications accompanied by proper fees and in the form prescribed by the board shall be entered in the records of the board. Applications not accompanied by proper fees or not conforming entirely to the rules and regulations shall be returned to the applicant. Application forms in duplicate will be furnished by the board. One application is to be returned to the office of the board, the other retained in the applicant's file. Each applicant for registration shall be required to furnish all information requested on the application form. The application form shall

contain general information regarding the applicant, a recent photograph, other registration and memberships, references and qualifications, formal education information with transcripts of college work, personal surveying experience, instructions for filing the form, and a sworn affidavit concerning information contained in the application, and a record of the board.

(b) The application shall be neatly typed or lettered and all questions must be answered. If the answer is negative, use the word "no" or "none." It is the applicant's responsibility to see that all references, transcripts of college work, and any other information required or requested by the board, is received in the office of the board on or before June 15 or December 15 in order for the applicant's file to be considered for the ensuing examination. Applications will not be considered if essential information is lacking. It is important that the experience record of the applicant be completed in detail giving character of work performed, particularly with respect to percentage of time engaged in boundary land surveying as opposed to engineering surveying, title of position, employer, amount of time, and responsibility in each engagement listed. Give total time in actual land and boundary surveying in each engagement. If the space provided in the forms is not sufficient, the applicant may attach as many sheets as are necessary. If the experience is of the character that it cannot be described properly in the tabulated form, he may submit a complete narrative account of his education, professional, or business career. He should keep in mind that favorable action by the board may be facilitated by the submission of comprehensive information. All documents filed with the application shall remain in the permanent files of the board.

(c) Application files are considered initiated the date the application is received with fee. If an application is not received within six months after date of receipt of reference forms and required information, that file will be closed and the applicant so notified at his last known address. There is a one-year limitation on all applications, beginning with the date of initiation.

(d) No credit will be considered for experience obtained in violation of the Land Surveying Practices Act of 1979 or any applicable prior Act governing the surveying profession. Only that experience obtained in regular full-time employment will be considered in evaluating the applicant's record. Full time employment is defined by the board as a minimum of 40 hours per week. In certain instances, the board may require additional proof of such employment.

(e) Each application shall be attested to before a notary public or other official qualified by law to administer oaths.

.002. *Fees.*

(a) The application fee is \$50. Each applicant for registration or licensure shall submit a cashier's check or money order for \$50 with his application. This fee is not returnable. The first registered public surveyor examination fee is \$50, which entitles the applicant to one examination. All subsequent examinations will be \$100.

(b) The first licensed state land surveyor examination fee is \$50, which entitles the applicant to one examination. All subsequent examinations will be \$100.

(c) The fee for reciprocal applicants shall be \$50 for each examination.

(d) The fee for filing an original licensed state land surveyor bond shall be \$5.00.

(e) New registrants will be required to pay a prorated fee as of date of registration.

.003. References.

(a) All references should be chosen carefully for their personal knowledge of the applicant's experience and qualifications. If an applicant does not know three registered public surveyors who are familiar with his surveying experience, he must attach a notarized statement to his application to that effect.

(b) Confidential reference forms furnished by the board shall include the name and address of the person giving the reference and full information in order that the board can better evaluate the applicant's surveying experience and qualifications.

(c) Members of this board shall not be given as references. The board prefers that when an applicant is employed by an organization that includes registered public surveyors, that the applicant use only one reference from a registered public surveyor who is associated with him in such organization. The board reserves the right to ask for additional references.

.004. *Rejections.* Should the board reject the application of any applicant, the fee accompanying the application will be retained by the board as an application fee. In case an application is rejected for any reason, the applicant will be notified by certified mail. The applicant may thereafter file with the board any further evidence or reason to support claim for reconsideration. It is the policy and intention of the board to give a rejected applicant every reasonable opportunity to support claims for reconsideration and to consider such evidence as may have been omitted from, or overlooked, in the original application or examination. An applicant may apply for, and, at the discretion of the board, be granted an interview to state his case.

.005. Examinations.

(a) Registered public surveyor examinations shall be written and so designed to aid the board in determining the applicant's knowledge of surveying, mathematics, surveying laws, and his general fitness to practice the profession as outlined in the Act. The examinations will cover a two-day period and the applicant will be notified at least 10 days in advance. If an applicant fails to respond to two successive notifications, the applicant's file will be closed and will not be reopened without the filing of a new application and fee.

(b) No calculator or computer capable of being programmed will be permitted to be used during any examination. All calculators must be approved by a board member or the executive secretary prior to any examination.

(c) All applicants reapplying under a second application for admission to a registered public surveyors' examination must show an enrollment and completion of either a correspondence course in land surveying equivalent to an international correspondence school course, or land surveying courses in a curriculum equal to that provided at an accredited junior college. This statement must be in the form of a certificate or a certified copy and must be accompanied by a transcript of the grades received.

(d) A grade of 70% or greater on each of the four sections of the examination will be considered a passing grade on the first examination. Thereafter, at its discretion, the board may require 72% or greater to be a passing grade on the second examination and 74% on the third and fourth examinations.

(e) An applicant for second or subsequent examinations who has achieved a grade of 75 on any portion of a previous examination may, at the discretion of the board, be excused from repeating said portion; provided, however, he pays the required fee set by the board. After three examinations the applicant may, at the board's discretion, be required to repeat the entire examination.

(f) In filing an updated application the applicant must update his experience record and secure a reference from each employer since the date of his original application.

(g) Licensed state land surveyors' examinations shall be written and so designed to reflect the applicant's knowledge of the history, files and functions of the General Land Office, survey construction, legal aspects pertaining to state interest in vacancies, excesses, and unpatented lands, and familiarity with other state interests in surface and subsurface rights as covered by existing law.

(h) The licensed state land surveyor examination will be in two four-hour sections and each part graded independently. If an applicant scores less than 70% on either part, that applicant will be required to file an updated application with fee and repeat the entire examination.

.006. Certificate of Registration/Licensure.

(a) The number appearing on the licensed state land surveyor's certificate of licensure is the bond filing number of such licensee and is only for record keeping purposes.

(b) At the time the applicant receives his certificate of registration/licensure, he will also be instructed to secure an impression seal of the type specified by the board. As soon as the registrant has secured his seal, he shall make an imprint thereof and shall forward said imprint to the board for its files. A rubber stamp is not considered an impression seal.

.007. Reciprocal Registration.

(a) Applicants applying for reciprocal registration under Section 20 shall file with the board application forms as described in these rules and such other forms as required by the board.

(b) Applicants for reciprocal registration who have passed a 16-hour examination in another state are required to pass a written examination of eight hours consisting of legal aspects and analytical portions required of all other applicants.

(c) Applicants who are licensed in another state with less than a 16-hour examination must take a written examination of not less than 16 hours.

(d) Any cost for administering a reciprocal examination for this board by another state will be at the expense of the applicant.

Doc. No. 799349

Hearings 408.01.05

These rules are adopted under the authority of Article 5282c, Vernon's Annotated Civil Statutes.

.001. *Purpose of Rules.* To provide for a simple and efficient system of procedure before the board, to insure uniform standards of practice and procedure, notice of board actions, and a fair and expeditious determination of proceedings before the board. These rules shall be liberally construed with a view towards the purpose for which they were adopted.

.002. Filing of Documents. All complaints, motions, replies, answers, notices, and other pleadings relating to any proceeding pending or to be instituted before the board shall be filed with the executive secretary. They shall be deemed filed only when actually received in the board's office.

.003. Computation of Time.

(a) Computing time. In computing any period of time prescribed or allowed by these rules, by order of the board, or by any applicable statute, the period shall begin on the day after the act, event or default in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday.

(b) Extensions. Unless otherwise provided by statute, the time for filing any pleading may be extended by order of the executive secretary, upon written motion duly filed with him prior to the expiration of the applicable period of time for the filing of the same, showing that there is good cause for such extension of time and that the need therefor is not caused by the neglect, indifference or lack of diligence of the movant. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with the filing thereof.

.004. Agreements To Be in Writing. No stipulation or agreement between the parties, their attorneys or representatives, with regard to any matter involved in any proceeding before the board shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated in an order bearing their written approval. This rule does not limit a person's ability to waive, modify or stipulate any right or privilege afforded by these rules, unless precluded by law.

.005. Service in Rulemaking Proceedings. Service of a proposed rule or amendment of any existing rule shall be governed by Section 5(A), et seq., of the Administrative Procedure and Texas Register Act.

.006. Conduct and Decorum. Every party, witness, attorney or other representative shall comport himself in all proceedings with proper dignity, courtesy and respect for the board, the executive secretary and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the Texas State Bar.

.007. Appearances Personally or by Representative. Any person may appear and be represented by an attorney at law authorized to practice law before the highest court of any state.

.008. Motions. Any motion relating to a pending proceeding shall, unless made during a hearing, be written, and shall set forth the relief sought and the specific reasons and grounds therefor. If based upon matters which do not appear of record, it shall be filed with the executive secretary, who shall act upon the motion at the earliest practicable time.

.009. Amendments. Any pleading may be amended at any time upon motion; provided, that the complaint upon which notice has been issued shall not be amended so as to broaden the scope thereof.

.010. Incorporation by Reference of Board Records. Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in the official files and records of the board. This rule shall not relieve any party of the necessity of alleging in detail, if required, facts necessary to sustain his burden of proof, if any, imposed by law.

.011. Motions for Postponement, Continuance, Withdrawal, Dismissal of Other Matters before the Agency.

(a) Motions for postponement, continuance, withdrawal or dismissal of other matters which have been duly set for hearing, shall be in writing, shall be filed with the executive secretary, and distributed to all interested persons, under a certificate of service, not less than five days prior to the designated date that the matter is to be heard. Such motion shall set forth, under oath, the specific grounds upon which the moving party seeks such action and shall make reference to all prior motions of the same nature filed in the same proceeding.

(b) Failure to comply with the above, except for good cause shown, may be construed as lack of diligence on the part of the moving party, and at the discretion of the executive secretary, may result in the dismissal of matter in issue, with prejudice to refile.

(c) Once an application has actually proceeded to a hearing, pursuant to the notice issued thereon, no postponement or continuance shall be granted by the executive secretary without the consent of all parties involved.

.012. Place and Nature of Hearings. All hearings conducted in any proceeding shall be open to the public. All hearings shall be held in Austin, Texas, unless for good and sufficient cause the board shall designate another place of hearing in the interest of the public.

.013. Presiding Officer at Hearings.

(a) The chairman is delegated by the board the authority to preside at hearings, make and issue final orders, decisions and recommendations for the board concerning the issuance, refusal, revocation or suspension of licenses, registration and certificates. He also shall have the authority to rule upon the admissibility of evidence and amendments to pleadings, and by quorum vote of the board may recess any hearing from day to day.

(b) The executive secretary shall have authority to administer oaths and examine witnesses.

.014. Notice and Hearing.

(a) An applicant or licensee is entitled to at least 20 days' notice and a hearing after his original application for examination has been refused.

(b) Notice of hearing for refusal, cancellation, or revocation may be served personally by the board or its authorized representative or sent by United States certified mail addressed to the applicant or licensee at his last known address.

(c) In the event that notice cannot be effected by either of these methods after due diligence, the board may prescribe any reasonable method of notice calculated to inform a person of average intelligence and prudence in the conduct of his affairs. The board shall publish notice of a hearing in a newspaper of general circulation in the area in which the licensee conducts his business activities.

.015. Order of Procedure in Hearings.

(a) In all hearings the board shall be entitled to open and close. After all persons have completed the presentation

of their evidence the chairman may call upon any party or the staff of the board for further material or relevant evidence upon any issue to be presented at further public hearing after notice to all parties of record.

(b) The executive secretary shall direct all persons to enter their appearances on the record. If exceptions to the form or sufficiency of a pleading have been filed in writing at least three days prior to the date of hearing, they shall be heard; otherwise not.

.016. Reporters and Transcript. The cost of a transcript of the proceedings of any hearing shall be paid by the party requesting same in accordance with the provisions of law.

.017. Dismissal without Hearing. The executive secretary may entertain motions for dismissal without a hearing for the following reasons: failure to prosecute; unnecessary duplication of proceedings or res adjudicata; withdrawal; moot questions; or lack of jurisdiction.

.018. Rules of Evidence. In all cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonable prudent men in the conduct of their affairs. The chairman shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

.019. Documentary Evidence and Official Notice.

(a) Documentary evidence may be received in the form of three copies. On request, all parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the chairman may limit those admitted to a number which are typical and representative, and may, in his discretions, require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; provided, however, that before making such requirement, the chairman shall require that all persons of record or their representatives be given the right to examine the documents from which such abstracts were made.

(b) Official notice may be taken of all facts judicially recognizable. In addition, notice may be taken of generally recognized facts within the area of the board's specialized knowledge. All persons shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The special skills or knowledge of the board and its staff may be utilized in evaluating the evidence.

.020. Limitations on Number of Witnesses. The chairman shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

.021. Exhibits.

(a) **Form.** There shall be a brief statement on the first sheet of the exhibit of what the exhibit purports to show. Ex-

hibits shall be limited to facts material and relevant to the issues involved in a particular hearing.

(b) **Tender and service.** The original of each exhibit offered shall be tendered to the chairman for identification; one copy shall be furnished to the executive secretary, and one copy to each other party of record or his attorney or representative.

(c) **Excluded exhibits.** In the event an exhibit has been identified, objected to and excluded, the chairman shall determine whether or not the person offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the chairman with his ruling, and shall be included in the record for the purpose only of preserving the exception.

(d) **After hearing.** Unless specifically directed by the chairman, an exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing. In the event the chairman allows an exhibit to be filed after the conclusion of the hearing, copies of the late-filed exhibit shall be served on all parties of records.

.022. Offer of Proof. When testimony is excluded by ruling of the board the person offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony, prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the board. The board may ask such questions of the witness as they deem necessary to satisfy himself that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross-examination may be preserved without making an offer of proof.

.023. Depositions. The taking and use of depositions in any proceeding shall be governed by Section 14 of the Administrative Procedure and Texas Register Act.

.024. Subpoenas. Subpoenas for the attendance of a witness from any place in the State of Texas at a hearing in a pending proceeding, may be issued by the executive secretary in accordance with the Land Surveying Practices Act of 1979.

.025. Oral Argument. Any party may request oral argument prior to the final determination of any proceeding, but oral argument shall be allowed only in the sound discretion of the chairman. A request for oral argument may be incorporated in exceptions, brief, replies to exceptions, motions for rehearing or in separate pleadings.

.026. Final Decisions and Orders. All final decisions, recommendations and orders of the board shall be in writing and shall be signed by the chairman. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submits proposed findings of fact, the decision shall include a ruling on each proposed finding. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision, recommendation or order shall be delivered or mailed to any party and to his attorney of record.

.027. Administrative Finality.

(a) A decision is final, in the absence of a timely motion for rehearing, and is final and appealable on the date of ren-

dition or the order overruling the motion for rehearing, or on the date the motion is overruled by operation of law.

(b) If the executive secretary finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

.028. Motions for Rehearing. A motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed within 15 days after the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with the executive secretary within 25 days after the date of rendition of the final decision or order.

.029. Rendering of Final Decision, Recommendation or Order. The final decision, recommendation or order must be rendered within 60 days after the date the hearing is finally closed.

.030. Notice of Board's Order.

(a) Any order refusing an application shall state the reasons for refusal, and a copy of the order shall be delivered immediately to the applicant.

(b) An order revoking or suspending a license shall state the reasons for the revocation or suspension, and a copy of the order shall be delivered immediately to the licensee.

(c) Delivery of the board's recommendation of refusal, revocation or suspension may be given by:

(1) personal service upon an individual applicant or licensee; or

(2) sending such notice by United States certified mail addressed to the business premises of the applicant or licensee.

Notice is complete upon performance of any of the above.

.031. The Record.

(a) The record of a hearing shall include:

(1) all pleadings, motions, and intermediate rulings;
(2) evidence received or considered;
(3) a statement of matters officially noticed;
(4) questions and offers of proof, objections, and rulings on them;

(5) proposed findings and exceptions;
(6) any decision, opinion, or report by the chairman presiding at the hearing; and

(7) all staff memoranda or data submitted to or considered by the board in making the decision.

(b) Findings of fact shall be based exclusively on the evidence presented and matters officially noticed.

.032. Ex Parte Consultations. Unless required for the disposition of ex parte matters authorized by law, the chairman delegated the authority to render decisions or to make findings of fact and conclusions of law in hearings may not communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and opportunity for all parties to participate.

.033. Appeals. Appeals will be in accordance with Article 5282c, Vernon's Annotated Civil Statutes, and the Administrative Procedures Act.

.034. Suspension of Rules. In any case in which a public emergency or imperative public necessity so requires, the board may suspend the operation of these rules.

Doc. No. 799350

Registered Professional Engineers in Texas 408.01.06

In adopting these rules, the board recognizes two important requirements it must meet: first, to respect the right to his means of livelihood of the individual who has conscientiously prepared himself to practice the profession of land surveying; and second, to do what is within the power of the board to protect the public against dangers arising from attempts of incompetent or unscrupulous persons to practice the profession of land surveying.

This rule is adopted under the authority of Article 5282c, Vernon's Annotated Civil Statutes.

.001. Registered Professional Engineers in Texas. An engineer now engaged in the practice of land surveying may continue to do so until June 13, 1980, or, if he has an application pending with the board, until such time as the board has taken action on such application.

Doc. No. 799351

Standards of Responsibility and Rules of Conduct 408.02.00

These rules are adopted under the authority of Article 5282c, Vernon's Annotated Civil Statutes.

.001. Ethical Standards.

(a) Inasmuch as the practice of the land surveying profession is essential to the orderly use of our physical environment, and, inasmuch as the technical work resultant thereof has important effects on the welfare, property, economy and security of the public, the practice should be conducted with the highest degree of moral and ethical standards. And inasmuch as the state legislature has vested in the Texas Board of Land Surveying the authority, power and duty to establish and enforce standards of conduct and ethics for public surveyors and licensed state land surveyors to insure compliance with and enforcement of the Texas Board of Land Surveyors, the following standards of responsibility and rules of conduct are hereby promulgated and adopted by the board.

(b) So that every applicant for registration as a public surveyor or licensed state land surveyor shall be fully aware of the great obligation and responsibility due the public, the standards of responsibility are promulgated by the board. In furtherance of this intent, every registrant should endorse the standards of responsibility.

.002. Intent.

(a) The intent shall be:

(1) to create standards of responsibility as guidelines for the profession; and

(2) to create rules of conduct for governance of the profession.

(b) The rule shall be binding on all registrants, but nothing contained therein shall be construed to supersede the statutory law of the state.

(c) The board shall determine what acts constitute violation of the rules and shall institute appropriate disciplinary action which may lead to the revocation of the registration in accordance with the state statutes.

.003. Offer To Perform Services. The client or employer is entitled to a careful and competent performance of services. Competence in performance of services requires the exercise of proficiency, reasonable care and diligence. Therefore, every effort should be made to remain proficient in a field of endeavor, and employment for services to be rendered should not be accepted unless such services can be competently performed. The registrant:

(1) shall accurately and truthfully represent to any prospective client or employer his capabilities and qualifications to perform the services to be rendered;

(2) shall not offer to perform, nor perform, services for which he is not qualified in any of the technical fields involved, by education or experience, without retaining the services of another who is so qualified;

(3) shall not evade his statutory responsibility nor his responsibility to a client or employer.

.004. Conflict of Interests. The acceptance of employment, or engagement to perform services, creates the duties of agent toward the client or employer, requiring the faithful discharge of duty and performance of services, as well as the avoidance of any conflict of interests. All dealings with a client or employer, and all matters related thereto should be kept in the closest confidence. Should an unavoidable conflict of interest arise, the client or employer should be immediately informed of any and all circumstances which may hamper or impair the quality of the services to be rendered. The registrant:

(1) shall not agree to perform services for a client or employer if there exists any significant financial or other interest that may be in conflict with the obligation to render a faithful discharge of such services, except with the full knowledge, approval, and consent of the client or employer;

(2) shall not continue to render such services without informing the client or employer, and all other parties involved, of any and all circumstances involved which may in any way affect the performance of such services, and then only with the full approval of the client or employer;

(3) shall not perform, nor continue to perform services for a client or employer, if the existence of conflict of interest would impair independent judgment in rendering such services;

(4) shall withdraw from employment at any time during such employment or engagement when it becomes apparent that it is not possible to faithfully discharge the duty and performance of services owed the client or employer, and then only upon reasonable notice to the client or employer;

(5) shall not accept remuneration from any party other than his client or employer or a particular project, nor have any other direct or indirect financial interest in other service or phase of service to be provided for such project, unless the client or employer has full knowledge and so approves;

(6) shall keep inviolate the confidences of his client or employer, except as otherwise required in the rules of conduct.

.005. Representations. The highest degree of integrity, truthfulness and accuracy should be paramount in all dealing with, and representations to, others by not misleading in any

way the other's understandings of personal qualifications or information regarding a project. The registrant:

(1) shall not enter into a partnership or any agreement in which any person not legally and actually qualified to perform the services to be rendered has any control over his independent judgment as related to the welfare, property, economy and security of the public;

(2) shall not indulge in publicity that is false, misleading or deceptive;

(3) shall not misrepresent the amount or extent of prior education or experience to any employer or client, nor to the board;

(4) shall as accurately and truthfully represent to a prospective client or employer the costs and completion time of a proposed project as is reasonably possible;

(5) shall not hold out as being engaged in partnership or association with any person or firm unless there exists in fact a partnership or association;

(6) shall not recommend to a client services of another for the purpose of collecting a fee for himself for those services;

(7) shall not practice under any firm name that is misleading as to the identity of those practicing or offering to practice under the firm name, or is misleading as to the type of services the individuals, firm or partnership is authorized and qualified to perform.

.006. Unauthorized Practice. All reasonable assistance in preventing the unauthorized practice of architecture, professional engineering, designing of engineering systems, ar land surveying should be given the board. Unauthorized practice should not be aided in any way. The registrant:

(1) shall make known to the board any unauthorized practice of which he has personal knowledge;

(2) shall divulge any information, of which he has personal knowledge, related to any unauthorized practice to the board upon request of the board or its authorized representatives;

(3) shall not delegate responsibility to, nor in any way aid or abet, an unauthorized person to practice, or offer to practice.

.007. Maintenance of Standards. Aid should be given the board in maintaining the highest standards of integrity and competence of those in its subject profession and occupation. The registrant:

(1) shall furnish the board with any information that comes into his possession, indicating that any person or firm has violated any of the provisions of the registration laws or code;

(2) shall furnish any information he might have concerning any alleged violation of the registration laws or code upon request of the board or its authorized representatives.

.008. Adherence to Statutes and Codes. Strict adherence to practice requirements of related sections of the statutes, the state code and all local codes and ordinances should be maintained in all services rendered. The registrant:

(1) shall abide by, and conform to, the registration and licensing laws of the state;

(2) shall abide by, and conform to, the provisions the state code and all local codes and ordinances;

(3) shall not violate nor aid and abet another in violating a rule of conduct nor engage in any conduct that may adversely affect his fitness to practice;

(4) shall not sign nor impress his seal or stamp upon documents not prepared by him or under his control or knowingly permit his seal or stamp to be used by any other person.

Issued in Austin, Texas, on December 10, 1979.

Doc. No. 799352 Betty J. Pope
Executive Secretary
Texas Board of Land Surveying

Effective Date: December 10, 1979

Expiration Date: April 9, 1980

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

Texas Parks and Wildlife Department

Wildlife

Wildlife Management Areas Hunting, Fishing, and Trapping Proclamation, 1978-79 127.70.13

The Texas Parks and Wildlife Department is renewing the effectiveness of the emergency repeal of Rules 127.70.13.100-133, which constituted the 1978-79 Wildlife Management Areas Hunting, Fishing, and Trapping Proclamation. The repeal will be renewed, effective December 20, 1979, for a 60-day period. Notice of the emergency repeal was published in the August 24, 1979, *Texas Register* (4 TexReg 969).

Doc. No. 799321

Wildlife Management Areas Hunting, Fishing, and Trapping Proclamation, 1979-80 127.70.19

The Texas Parks and Wildlife Department is renewing the effectiveness of the emergency adoption of Rules 127.70.19.134-165, which constitute the 1979-80 Wildlife Management Areas Hunting, Fishing, and Trapping Proclamation. The new rules will be renewed, effective December 20, 1979, for a 60-day period. The new rules were published in the August 24, 1979, *Texas Register* (4 TexReg 2969).

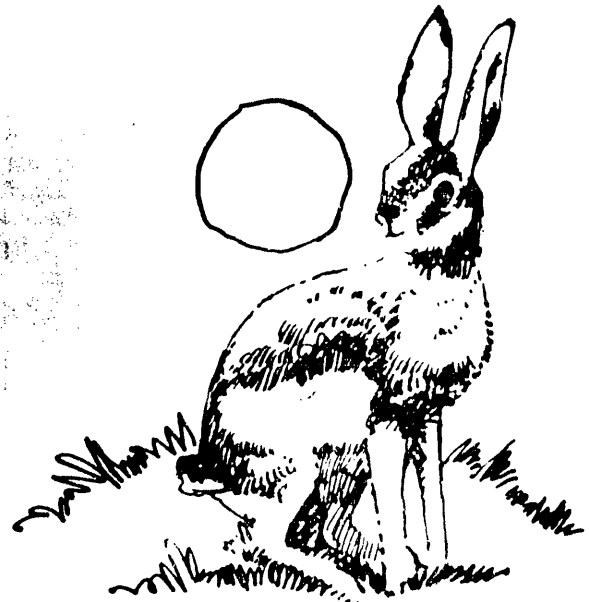
Issued in Austin, Texas, on December 6, 1979.

Doc. No. 799322 Maurine Ray
Administrative Assistant
Texas Parks and Wildlife Department

Effective Date: December 20, 1979

Expiration Date: February 18, 1980

For further information, please call (512) 475-4875.



Texas State Board of Pharmacy

Licensing Requirements for Pharmacists 393.15.00

The Texas State Board of Pharmacy is renewing the effectiveness of Rules 393.15.00.001-.019, concerning the licensing requirements for pharmacists. The rules were adopted on an emergency basis, effective September 1, 1979. The rules are renewed for a 60-day period, effective December 30, 1979. The texts of the emergency rules were published in the August 28, 1979, *Texas Register* (4 TexReg 3049).

Issued in Austin, Texas, on December 10, 1979.

Doc. No. 799359 Fred S. Brinkley, Jr.
Executive Director/Secretary
Texas State Board of Pharmacy

Effective Date: December 30, 1979

Expiration Date: February 28, 1980

For further information, please call (512) 478-9827.

An agency may adopt a proposed rule no earlier than 30 days after publication in the *Register*, except where a federal statute or regulation requires implementation of a rule on shorter notice.

An agency, on request, shall provide a statement of the reasons for and against adoption of a rule. Any interested person may request this statement before adoption or within 30 days afterward. The statement shall include the principal reasons for overruling considerations urged against the agency's decision.

Numbering System—Each rule is designated by a unique 10-digit number which is divided into four units by decimal points. The first unit (three digits) indicates the agency which promulgates the rule. The second unit (two digits) indicates the chapter of rules to which the rule belongs. The third unit (two digits) indicates the subchapter of rules, if any, within the chapter. The fourth unit (three digits) indicates the individual rule.

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

Texas State Board of Dental Examiners Dental Board Procedures

Rules of Procedure Governing Grievances, Hearings, and Appeals 382.13.02

The Texas State Board of Dental Examiners is proposing an amendment to Rule 382.13.02.038. Presently, there is no meal allowance for witnesses who are forced to come to hearings, generally placed under the rule, and forced to remain until called to testify. The board feels that the \$25 a day allowance is not sufficient for their time and meals. Therefore, the board feels that, in the best interest of the public, witnesses should be allowed \$15 a day for meals and this would encourage their attendance so that justice may be done.

To administer this rule, the board has determined that this amendment would cost the agency approximately \$1,080 per fiscal year. This expense would come out of this agency's appropriations made by the legislature from the funds this agency has on deposit in the state treasury.

Those desiring to comment upon this amendment should direct their comments in writing to the Texas State Board of Dental Examiners, 718 Southwest Tower, 7th and Brazos, Austin, Texas 78701.

This amendment is proposed under the authority of Article 4551d of the Revised Civil Statutes of Texas as amended.

.038. Subpoenas.

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

(d) A witness or deponent who *may or may not be* [is not] a party and who is subpoenaed [or otherwise], compelled, *or requested* to attend any hearing or proceeding to testify or to give a deposition or to produce books, records, papers, or other objects that may be necessary and proper for the purposes of the proceeding under the authority of this section is entitled to receive:

(1) (No change.)

(2) A fee of \$25 a day for each day or part of a day the person is necessarily present as a witness or deponent; *meal expense not to exceed \$15 per day*; further, such person is entitled to be paid an additional fee of not to exceed \$50 for required overnight lodging.

(3) (No change.)

Issued in Austin, Texas, on December 10, 1979.

Doc. No. 799425

Carl C. Hardin, Jr.
Executive Director

Texas State Board of Dental Examiners

Proposed Date of Adoption: January 18, 1980

For further information, please call (512) 475-2443.

Texas Health Facilities Commission Commission

Definitions 315.16.02.200

The Texas Health Facilities Commission proposes an amendment of Rule 315.16.02.200 to expand upon the existing definition of the term "home health agency." The proposal explains the difference between a "certified home health agency" and a "noncertified home health agency."

The proposed amendment will have no fiscal implications for units of local government of the state, according to agency personnel.

Public comment is invited and will be accepted until January 17, 1980. Written comments should be addressed to Dan R. McNery, Texas Health Facilities Commission, P.O. Box 15023, Austin, Texas 78761. A public hearing, material to the adoption of the proposed amendment of the rule, will be held on January 10, 1980, at 1:30 p.m. in the offices of the Texas Health Facilities Commission, 1600 West 38th Street, Suite 305, Jefferson Building, Austin, Texas.

The amendment of this rule is proposed under the authority of Article 4418(h), Texas Revised Civil Statutes.

.200. Home Health Agency.

(a) Home health agency is a person that provides a home health service for pay or other consideration in a patient's residence, ordinarily according to a written and signed plan of treatment.

(b) *A certified home health agency is a home health agency that holds a letter of approval signed by an official of the U.S. Department of Health, Education, and Welfare which finds the said agency in compliance with the conditions of participation for home health agencies under Title XVIII and Title XIX of the Social Security Act.*

(c) *A home health agency that does not hold a letter of approval from the U.S. Department of Health, Education, and Welfare is a noncertified home health agency.*

Doc. No. 799417

The commission proposes to amend Rules 315.16.02.228, .245, and .334 and Rules 315.17.01.230 and .240. The rule amendments are intended to eliminate references to intermediate care facility-II (ICF-II) care. The commission is aware that the Texas Department of Human Resources is proposing rules which would establish one level of intermediate care under Title XIX or Medicaid Program. This change would become effective on February 1, 1980. The elimination of the ICF-II level would affect the commission's application of the Texas Health Planning and Development Act to nursing homes in the state that receive Medicaid reimbursement. The effect of the amendments would be to provide commission recognition of one level of intermediate care and allow those facilities with ICF-II-certified beds to reclassify those beds as intermediate care beds (the single level of intermediate care) without a certificate of need or an exemption certificate.

The proposed amendments will have no fiscal implications for units of local government of the state, according to agency personnel.

Public comment is invited and will be accepted until January 17, 1980. Written comments should be addressed to Dan R. McNery, Texas Health Facilities Commission, P.O. Box 15023, Austin, Texas 78761. A public hearing, material to the adoption of the proposed amendment of the rules, will be held on January 10, 1980, at 1:30 p.m. in the offices of the Texas Health Facilities Commission, 1600 West 38th Street, Suite 305, Jefferson Building, Austin, Texas.

315.16.02.228, .245, .334

The amendment of these rules is proposed under the authority of Article 4418(h), Texas Revised Civil Statutes.

.228. Service. The term "service" includes but is not limited to the following: nuclear medicine, emergency medicine, radiology (diagnosis), computerized tomographic head scanning, computerized tomographic whole body scanning, radiation therapy, pharmacy, inpatient psychiatric care, outpatient psychiatric care, surgery, physical medicine, outpatient services, intensive care, progressive care, coronary care, respiratory therapy, pediatrics, neonatology, gynecology, obstetrics, anesthesiology, laboratory, acute renal dialysis, chronic dialysis maintenance, general medical care, dietary services, social services, speech therapy, physical therapy, vocational or occupational therapy, pathology, custodial care, [or] intermediate [care facility-II (ICF-II) care] nursing care, [or intermediate care facility-III (ICF-III) care,] skilled nursing care, home health aid care, intermediate care facility-mentally retarded-V (ICF-MR-V) care, and intermediate care facility-mentally retarded-VI (ICF-MR-VI) care, alcohol or drug detoxification, neurology, orthopedics, extended care, home care, and family planning.

.245. Increase in Level of Care. Increase in level of care is a reclassification of beds in an existing skilled nursing facility or intermediate care facility as follows: (1) from custodial care [or intermediate care facility-II (ICF-II)] to intermediate [care facility-III (ICF-III) or] nursing care; or (2) from custodial care or intermediate *nursing* care [facility-II (ICF-II)] to skilled nursing care; or (3) from nursing care or intermediate care facility-III (ICF-III) to skilled nursing care.

.334. Reduction in Level of Care. Reduction in level of care is a reclassification of beds in an existing intermediate care facility or skilled nursing facility as follows: (1) from skilled nursing care to intermediate [care facility-III (ICF-III) or] nursing care; or (2) from skilled nursing care to intermediate care facility-II (ICF-II) or custodial care; or (3) from intermediate care facility-III (ICF-III) or nursing care to intermediate care facility-II (ICF-II) or custodial care.

Doc. No. 799416

Explanation of the Act

Explanation of Terms and Phrases 315.17.01.230, .240

The amendment of these rules is proposed under the authority of Article 4418(h), Texas Revised Civil Statutes.

.230. Increase in Level of Care—Skilled Nursing Facility. An increase in level of care in an existing skilled nursing facility involving reclassification of more than 10 beds or 10% of the total number of licensed beds in the facility, whichever is less, over a two-year period from [intermediate care facility-II (ICF-II) or] custodial care to intermediate *nursing* care [facility-III (ICF-III) or nursing care,] or from [intermediate care facility-III (ICF-III) or] *intermediate* nursing care to skilled care is a change in bed capacity.

.240. Increase in Level of Care—Intermediate Care Facility. An increase in level of care in an existing intermediate care facility offering intermediate [care facility-III (ICF-III) or] nursing care involving reclassification of more than 10 beds or 10% of the total number of licensed beds, whichever is less, over a two-year period, from [intermediate care facility-II (ICF-II) or] custodial care to intermediate [care facility-III (ICF-III) or] nursing care, is a change in bed capacity.

Doc. No. 799418

315.17.01.040

The Texas Health Facilities Commission proposes an amendment of Rule 315.17.01.040 to classify the conversion of a noncertified home health agency to a certified home health agency as a substantial expansion of a service currently offered. The effect of this amendment would be to require a noncertified home health agency to obtain a certificate of need to become a certified home health agency.

The proposed amendment will have no fiscal implications for units of local government of the state, according to agency personnel.

Public comment is invited and will be accepted until January 17, 1980. Written comments should be addressed to Dan R. McNery, Texas Health Facilities Commission, P.O. Box 15023, Austin, Texas 78761. A public hearing, material to the adoption of the proposed amendment of the rule, will be held on January 10, 1980, at 1:30 p.m. in the offices of the Texas Health Facilities Commission, 1600 West 38th Street, Suite 305, Jefferson Building, Austin, Texas.

The amendment of this rule is proposed under the authority of Article 4418(h), Texas Revised Civil Statutes.

.040. Substantial Expansion of Home Health Agency Services [Addition of Subunit or Branch Office] The phrase "substantial expansion of a service currently offered" includes:

- (1) the establishment of a subunit or a branch office by an existing parent home health agency;
- (2) the conversion of a noncertified home health agency to a certified home health agency.

Issued in Austin, Texas, on December 11, 1979.

Doc. No. 799419 Melvin Rowland
Chairman
Texas Health Facilities Commission

Proposed Date of Adoption: January 18, 1980
For further information, please call (512) 475-6940.

Texas Department of Human Resources

Medicaid Eligibility

Income for Individuals Related to the SSI Program 326.25.34

The Department of Human Resources proposes to amend Rule 326.25.34.003 about procedures for deeming income in its Medicaid eligibility rules. The procedures for deeming income from a parent and the spouse of a parent to a child applying for or receiving Medicaid assistance are being amended to agree with current SSI eligibility policy. These procedures must be followed in determining eligibility for three months prior coverage or Type Program 03 assistance for any applicant/recipient under age 18 (or age 18 to 21 and attending school) who resides with his or her parent(s). For children currently eligible under TP03, these new procedures are to be applied at the time of the next periodic review.

The department has determined that the cost of implementing the proposed amendments, as appropriated by the 66th Legislature, will be approximately \$3,014 for fiscal year 1980 and \$9,861 for fiscal year 1981. Budget recommendations for the following years are: \$14,021 for fiscal year 1982; \$19,852 for fiscal year 1983; and \$27,074 for fiscal year 1984.

Written comments are invited and may be sent to Susan L. Johnson, administrator, Handbook and Procedures Development Division—560, Department of Human Resources, John H. Reagan Building, Austin, Texas 78701, within 30 days of publication in this *Register*.

The following amendments are proposed under the authority of the Human Resources Code, Chapter 32.

.003. Procedures for Deeming Income.

- (a) (No change.)
- (b) An individual's income includes all of his or her own income in cash or in kind, both earned and unearned. It also includes all of the income of his or her eligible spouse. In addition, an individual's income is deemed to include:
 - (1) (No change.)
 - (2) Certain income of a parent and the spouse of such a parent who lives in the same household during any part of a calendar month if the individual is a blind or disabled child (if the parent or spouse of the parent is not a member of an

AFDC group). In determining the amount of the parent's (and the parent's spouse's, if any) income available to the blind or disabled child, the following procedures apply:

(A) **Determine the gross earned and unearned income of the parent(s).** [determine the number of eligible and ineligible children under age 18 or age 21 and attending school;]

(B) **Determine the total amount of allocations for ineligible children under age 21 residing in the same household.** The amount of the allocation per child is equal to the difference between the SSI couple SPA and the individual SPA less the amount of the child's own nonexempted income. [determine the gross earned and unearned income of the parent and parent's spouse;]

(C) **Subtract the total amount of allocations for ineligible children in the household from the parent(s) unearned income.** Any unmet remainder of the allocation is deducted from the earned income of the parent(s). [from the combined earned income of the parent and the parent's spouse, deduct \$65 as a work-related expense allowance (total income equals net earned income plus unearned income);]

(D) **Any remaining income of the parent(s) is further reduced as follows:** [deduct an amount equal to the monthly SSI standard payment amount for an individual as a living allowance for one parent; an amount equal to the monthly SSI standard payment amount for an eligible couple as a living allowance for two parents;]

(i) **If all remaining income is earned income, deduct \$85 plus twice the SSI standard payment amount for an individual if there is one parent, or for a couple if there are two parents.**

(ii) **If all remaining income is unearned income, deduct \$20 plus the SSI standard payment amount for an individual if there is one parent, or for a couple if there are two parents.**

(iii) **If remaining income includes both earned and unearned income, deduct \$20, first from unearned income and then from earned if unearned income is less than \$20. Then, from remaining earned income, deduct \$65 plus half of the remainder. Then, from the sum of remaining earned and unearned income, subtract an amount equal to the SSI standard payment amount for an individual if there is one parent, or a couple if there are two parents.**

(E) **Any income remaining from the calculation in subparagraph (D) is divided equally among all eligible children in the household to establish each child's deemed income.** [deduct \$65 for each ineligible child (if an ineligible child has income in his own right, reduce the \$65 deduction by the gross amount of the ineligible child's income; if the child's own income exceeds \$65, no deduction is allowed and the child and his income are excluded);]

(F) **the remainder of the parent's (and parent's spouse's) income is deemed equally to the child(ren) eligible for SSI, and is added to any other income of the child before extending the general income exclusions.]**

Issued in Austin, Texas, on December 11, 1979.

Doc. No. 799420 Jerome Chapman
Commissioner
Texas Department of Human Resources

Proposed Date of Adoption: January 18, 1980
For further information, please call (512) 475-4601.

Texas Department of Labor and Standards

Employment Agency Division

Labor Agencies 063.22.10.003, .014

The Texas Department of Labor and Standards is proposing to amend Rules 063.22.10.003 and .014, concerning forms for licensing, transporting workers out of state, and insurance requirements, respectively. These amendments are being proposed to bring the existing rules in accord with revisions contained in House Bill 710, which was passed by the 66th Session of the Texas Legislature and signed into law by Governor Clements.

Under House Bill 710, an occupation tax is no longer exacted. The repeal of the occupation tax by the statute will result in a loss of income to the General Revenue Fund of \$9,450 and a loss of income to the school fund of \$3,150 according to agency personnel. These amendments have no other fiscal implication to the state or to units of local government.

Public comment on the proposed amendments is invited. Comments should be submitted in writing to Blake Travis, legal counsel, Texas Department of Labor and Standards, P.O. Box 12157, Austin, Texas 78711.

These amendments are proposed under the authority of Texas Revised Civil Statutes, Article 5221a-5, Section 12A.

.003. Forms.

- (a) (No change.)
- (b) The requirements for application[,] and bonding[, and occupation tax] are described specifically in Section 3 [and Section 4] of the labor agency law, and applicants should consult these sections for requirements for licensing.

(c) (No change.)

.014. Liability Insurance.

- (a)-(d) (No change.)
- (e) Satisfactory evidence that other insurance is in force which *satisfies* [satisfied] in whole or *in* part the insurance coverage requirements will be accepted as showing compliance with the insurance requirement to the extent of such coverage. (Example: License with existing *worker's* [workmen's] compensation insurance may meet part of the liability requirements of this Act.)

Doc. No. 799411

063.22.10.008

(Editor's note: The text of the following rule proposed for repeal will not be published. The rule may be examined at the offices of the Texas Department of Labor and Standards, third floor, Sam Houston Building, Austin, or at the Texas Register Division offices, 503E Sam Houston Building, Austin.)

The Texas Department of Labor and Standards is proposing to repeal existing Rule 063.22.10.008, concerning subagents. This repeal is necessary because of changes to the labor agency law contained in House Bill 710 which was passed by the 66th Legislature, Regular Session, and signed into law by the governor. Under the revisions contained in House Bill 710,

all persons who engage in labor agency activities must be registered as labor agents. No subagency or agency relationship is recognized.

The department has determined that the repeal of this rule will have no fiscal implications for the state or for units of local government.

Written comments are invited and should be sent to Blake Travis, legal counsel, Texas Department of Labor and Standards, P.O. Box 12157, Austin, Texas 78711.

This repeal is proposed under the authority of Texas Revised Civil Statutes, Article 5221a-5 12A.

.008. Subagents.

Doc. No. 799412

Licensing and Regulating Auctioneers 063.44.00

The Department of Labor and Standards is proposing to amend its rules concerning the licensing and regulating of auctioneers—Rules 063.44.00.002-.004, .007-.009, .011, .013, and .020. Texas Revised Civil Statutes, Article 8700, Section 9, authorizes the commissioner of labor and standards to make reasonable rules and regulations concerning the administration of the auctioneering law. These amendments will clarify and condense the existing rules as a benefit to the public and licensees.

Department of Labor and Standards personnel have determined that the adoption of these amendments will have no fiscal implications for the state or for units of local government.

Public comment on these proposed amendments is invited. Persons wishing to comment should submit their written comments to Blake Travis, legal counsel, Texas Department of Labor and Standards, P.O. Box 12157, Austin, Texas 78711.

These amendments are proposed under the authority of Texas Revised Civil Statutes, Article 8700, Section 9.

.002. *Mailing Address.* [Administration of Act.] [The commissioner of the Texas Department of Labor and Standards hereby establishes an Auctioneer Division for the purpose of administering the provisions of Article 8700, Vernon's Annotated Civil Statutes.] To expedite communications to the department, all correspondence should be addressed to the Texas Department of Labor and Standards, [Auctioneer Division,] P.O. Box 12157, Capitol Station, Austin, Texas 78711.

.003. Licenses.

- (a) Any person, as defined in Section 1 of Article 8700, Texas Revised Civil Statutes [Vernon's Texas Civil Statutes], who as a bid caller, with or without receiving or collecting a fee, commission, or other valuable consideration, sells or offers to sell property at an auction must first obtain an *auctioneer* [auctioneer's license] or associate auctioneer's license from the Texas Department of Labor and Standards.

- (b) All applicants for an *auctioneer* [auctioneer's license] or associate auctioneer's license are to obtain all necessary forms from the Texas Department of Labor and Standards[, Auctioneer Division]. A person applying for

either license will be required to complete an application, be covered under a \$5,000 bond, supply two identification photographs, pay the appropriate license fee, and furnish a sales tax permit number or exemption affidavit. All bonds must run concurrently with the license.)

(c) *All licenses expire one year from date of issuance.*

(d) *Report any change of address to the Austin office of the Texas Department of Labor and Standards.*

.004. License Requirements.

(a) Auctioneer license requirements.

(1) *A person applying for an examination must complete an application for an auctioneer's license, furnish a \$5,000 surety bond, and pay the required license and examination fee; furnish a limited sales tax number or proof of exemption, furnish two identification photographs one by 1-1/2 inches in order to establish his eligibility to take the examination. All fees to be cash, postal money order, or certified funds (made payable to the State of Texas). A nonresident's application must be accompanied by a written irrevocable consent to service of process.* [Oral examinations will be given only on dates of regularly scheduled written examinations. Oral examinations will be given only to persons who are incapable of reading or writing.]

(2) *Examination date and time will be set by the department.* [Examination for licensed auctioneer applicant will not be required if applicant shows proof on a form furnished by this department that he or she has bid-called in at least five auctions during a 12-consecutive month period since September 1, 1975, as a pocket card carrier under supervision of licensed auctioneers.]

(3) *A fee of \$25 will be charged for each examination.* [A person applying for an examination must first have completed an application for an auctioneer's license, have furnished a bond, and have paid the required license fee in order to establish his eligibility to take the examination.]

(4) *The examination fee cannot be refunded if study material has been mailed even if the examination is not taken, unless the department is notified 10 days prior to the exam date.* [In case of failure of the examination, the fee will not be refunded. The fee cannot be refunded if study material has been mailed even if the examination is not taken, unless the department is notified 10 days prior to the exam date. The examination fee will be required every time the examination is taken.]

(5) *In case of failure of the examination, the examination fee will not be refunded.*

(6) *The license fee will be refunded if applicant fails examinations.*

(7) *Oral examinations will be given only to persons who are incapable of reading or writing.*

(8) *Examination for an auctioneer license will not be required if applicant shows proof on a form furnished by this department that he or she has held an associate auctioneer license, and has bid-called in at least five auctions during a 12-consecutive month period since May 30, 1977, under supervision of licensed auctioneers.*

(b) Associate auctioneer license requirements.

(1) *A person applying for an associate auctioneer license must complete an application for an associate auctioneer license, furnish a \$5,000 surety bond, two identification photos one by 1-1/2 inches, and pay the required license fee. Fee to be cash, postal money order, or cer-*

tified funds made payable to the State of Texas. A nonresident's application must be accompanied by a written irrevocable consent of service of process. [Associate auctioneers must be employed by and under the direct on-premises supervision of a licensed auctioneer while selling or offering to sell at an auction. An associate shall offer his or her services only to an auctioneer licensed in Texas and shall not in any way compensate the licensed auctioneer other than by his or her auctioneer services rendered during the associate's employment.]

(2) *Associate auctioneer applicants or licensees will be required to provide a limited sales tax permit number if one has been issued by comptroller of public accounts.* [Any change of employment by a licensed associate auctioneer must be submitted to this office prior to such action, and a letter must be submitted from the former employer stating number of auction sales participated in and types of activities in nature of experience gained.]

(3) *Associate auctioneers must be employed by and under the direct on-premises supervision of a Texas licensed auctioneer while selling or offering to sell at an auction. An associate auctioneer shall offer his or her services only to a Texas licensed auctioneer. There must be a legitimate employer-employer relationship between the associate and the licensed auctioneer.* [Associate auctioneer applicants will not need a sales tax number or exempt affidavit since the licensed auctioneer under whom he is employed will be responsible for tax collection.]

(4) *Any change of employment by a licensed associate auctioneer must be submitted to this office prior to such action, and a letter must be submitted from the former employer stating number of auction sales at which the associate participated in as bid-caller.* [The associate auctioneer is also required to furnish this department with a \$5,000 surety bond, cash performance alternative, or be covered under his employer's bond. All bonds must run concurrently with the license.]

(c) *License and bond renewal. Each auctioneer* [A] *license and bond must be renewed within 30 days after expiration. A bond renewal certificate issued by the bonding company must accompany the renewal application. An* [A] *auctioneer license not renewed within 30 days of the expiration date will not be issued [renewed] without first taking and passing the written examination administered by the department* [meeting competency requirements]. Whoever acts as an auctioneer within that 30-day period after expiration of the license may be subject to the penalties under Section 11(a) of the Act.

(d) *Report change of address immediately to Austin office of Texas Department of Labor and Standards.*

.007. *Cancelling Surety Bond.* The surety company issuing a bond pursuant to the provisions of the Texas Auctioneer Law, Article 8700, *Texas Revised Civil Statutes* [Vernon's Annotated Civil Statutes], may at any time cancel this bond by giving 30 days written notice to the Texas Department of Labor and Standards prior to the cancellation of the bond.

.008. *Cash Performance Alternative.* A cash performance alternative filed pursuant to the provisions of the Texas Auctioneer Law, Article 8700, *Texas Revised Civil Statutes* [Vernon's Annotated Civil Statutes], in lieu of a surety bond, may be an irrevocable assignment of security [or irrevocable letter of credit] issued by a national or state bank, or savings

and loan association, subject to the express approval of the commissioner of the Texas Department of Labor and Standards. Each assignment [or letter] shall remain in effect for a period of three years in order to be approved by the commissioner. Forms for filing [an irrevocable letter of credit or] a letter of assignment *of security* is provided by the *department* [Auctioneer Division] upon request.

.009. *Maintaining Bond.* The \$5,000 surety or cash performance bond *shall* [should] be maintained in full *for one year from issued date of license*. Failure to do so, in compliance with the Texas Auctioneer Law, Article 8700, *Texas Revised Civil Statutes* [Vernon's Annotated Civil Statutes], *will be cause for the commissioner of Texas Department of Labor and Standards to call an administrative hearing to suspend, revoke, or leave in good standing the auctioneer's license* [may subject the license holder to a hearing before the commissioner of the Texas Department of Labor and Standards regarding the suspension or revocation of the auctioneer's licensel.

.011. *Limited Sales Tax Permit Number Provisions.* A limited sales tax permit number obtained from the Comptroller of Public Accounts of Texas must be furnished on the application form. [if such number is required of the applicant by the comptroller under applicable rules of that agency. Thereafter, any time a limited sales tax permit is required by the comptroller, that number shall be immediately supplied to the Department of Labor and Standards at the Austin office.] If no limited sales tax permit is required of an applicant by the comptroller of public accounts, then the applicant must furnish this department [the limited sales tax permit number of his or her primary employer or employers from whom he or she is to serve as an auctioneer or] an affidavit *from the Austin office of the comptroller of public accounts* stating the reasons no sales tax permit number is needed.

.013. *Charitable or Nonprofit* The exemption contained in Section 2(3) of Article 8700, *Texas Revised Civil Statutes* [Vernon's Annotated Civil Statutes], consists of an auction of assets or donated property which is conducted by a charitable or nonprofit organization for the organization's sole benefit. Otherwise, the statute will require that a licensed auctioneer be used to conduct the auction.

.020. *Administrative Procedures.* *When a preliminary administrative determination is made that a license will not be issued to an applicant, or before a license is suspended, or before a license is revoked, the applicant or licensee will be given a hearing which shall substantially comply with the Administrative Procedure and Texas Register Act, Article 6252-13a, Vernon's Annotated Civil Statutes.*

[(a) Notice. Notice will include the time, place, and nature of the hearing, a statement of legal authority and jurisdiction for the hearing, and a reference to the particular section of the statutes and rules relied upon. A short and plain statement of the matters asserted shall also be provided. This notice shall be given at least 30 days prior to the date of such hearing by registered or certified mail.

[(b) Parties. Parties to the hearing will be named in the hearing notice. Any other persons desiring to be made a party to a hearing must file a written request to the department no later than five days prior to the scheduled hearing.

[(c) Docket of hearings. As each hearing is called, the department shall designate it by consecutive numbers called "hearing number," and shall keep a record which will show in convenient form the number of the hearing, the place and time of the hearing, the names of the attorneys, the names of all parties to the hearing, the nature of the hearing, and all subsequent proceedings in the matter including the dates thereof.

[(d) Counsel. The applicant or licensee may be accompanied in the hearing by legal counsel, except that this right may be expressly waived.

[(e) Presentation of case. The commissioner may authorize a member of his legal staff, an assistant attorney general, or member of the Auctioneer Division to present the department's case. The commissioner may serve as the hearing officer in this proceeding or he may designate another person to serve in that capacity. At no time, however, will the hearing officer be a person who has taken any part in the investigation or presentation of the case in question.

[(f) Order and argument. The hearing officer may determine the order of presentation by the parties, and may set a reasonable time limit for any oral argument offered by a party.

[(g) Evidence. The hearing will be conducted in an impartial manner, and the central purpose of it will be to gather all reliable information which would be probative of the issued involved. Rules of evidence as applied in nonjury civil cases in the district courts of Texas shall be followed. Evidence not otherwise excluded by statute may be admitted however if it is of the type commonly relied upon by reasonable prudent persons, and if it is in the judgment of the hearing officer at that time necessary for a full and fair adjudication of the questions raised. Objections to offers may be made and will be noted in the record as will offers of proof. If such challenged evidence is admitted, the hearing officer will note in his decision what weight, if any, he has given such evidence in the fact finding which was necessary to the decision.

[(h) Written evidence. Subject to the requirements in Section (g) above, any part of the evidence may be admitted in writing, if such admission will expedite the hearing and will not substantially prejudice the rights of the parties. The opposing party will be given an opportunity at the hearing to controvert such written evidence.

[(i) Response, cross. Parties shall be given opportunity to respond, present evidence, and argue on all issues appropriate to such a hearing, and may conduct cross-examinations required for full and true disclosure of the facts.

[(j) Exclusions. Irrelevant, immaterial, or unduly repetitious evidence will be excluded from the hearing process.

[(k) Official notice. The hearing officer may take official notice of facts judicially cognizable, and of generally recognized facts within the area of the department's specialized knowledge. The parties will be notified when such notice is taken, and they will be afforded an opportunity to contest the material so noticed.

[(l) Summary ruling. The hearing officer may, upon his own motion or that of either party, make summary ruling in favor of the applicant or licensee at any time during the proceedings.

[(m) Decisions. The hearing officer shall make rulings based on a preponderance of the evidence, and such decisions or orders will be rendered within 60 days of the close of the hearing. Any decision adverse to an applicant or licensee will

be provided in writing or stated in the record. Final decisions will include findings of fact and conclusions of law separately stated. If either party submitted proposed findings of fact, the decision shall include a ruling on each proposed finding. Parties shall be notified either personally or by mail, if written request for such notice is made, of the decision or order of the hearing officer.]

Issued in Austin, Texas, on December 7, 1979.

Doc. No. 799413 Lias B. "Bubba" Steen
Commissioner
Texas Department of Labor and
Standards

Proposed Date of Adoption: January 18, 1980
For further information, please call (512) 475-6560.

Texas Department of Mental Health and Mental Retardation

Client (Patient) Care

Behavior Therapy Modification Programs

302.04.07.003, .005, .006, .008-.010, .012

The Texas Department of Mental Health and Mental Retardation proposes to amend Rules 302.04.07.003, .005, .006, .008-.010, and .012 of its subchapter of rules governing behavior therapy modification programs at departmental facilities. Contemporaneously with the filing of the proposed amendments, the department is proposing to repeal Rules .007, .013, and .015 of the same subchapter of rules.

The proposed amendment to Rule .003 would delete paragraphs (2)-(6), all of which contain definitions, and would substitute in their place a new paragraph (2) which would define the term "aversive procedures" to mean those procedures in which an undesirable response targeted for reduction or elimination is followed systematically by the presentation of an intense aversive stimulus, locked time-out, contingent restraint, or a requirement to engage in an effortful task. The proposed amendment would also add new subparagraphs (A)-(C) to paragraph (2), which would define "aversive stimulus," "contingent restraint," and "locked time-out," respectively. Also, the proposed amendment would add a new subparagraph (D) which would define "effortful task" and new clauses (i)-(iii), which would define "restitutional overcorrection," "forced exercise," and "negative practice," respectively; and (iv), which would provide that simple correction or restitution procedures are not considered aversive unless the task lasts longer than a total of 10 minutes or the resident or patient resists the manual guidance. The remainder of the rule would be renumbered accordingly.

The proposed amendment to Rule .005 would amend subsections (a) and (i) of the rule. Subsection (a) would be amended to provide that one member of the Department's Committee on Behavior Modification will represent the Community Services Division of the Central Office instead of Program Support Services as the rule currently provides, since a Central Office Program Support Services section no longer exists. Subsection (i) of the rule would be amended by deleting

paragraph (2) of the rule, which requires the Departmental Committee on Behavior Therapy Modification to approve the appointment of a behavior therapy modification director for each departmental facility, and would renumber the paragraphs of subsection (i) accordingly. The proposed amendment to subsection (i) would also substitute the words "aversive procedures" for the words "punishment of contingent stimulate" wherever those words appear in the paragraphs of subsection (i). The proposed amendment would also amend what is now paragraph (4) to provide that a quarterly evaluation report from each facility that has utilized programs employing aversive procedures is to be sent to the Department Committee on Behavior Therapy Modification and that the report include a graphic display of the progress of each individual in an aversive program and would delete the requirement that a complete written treatment or curriculum for each aversive program and the recorded progress of each patient or resident in the program be sent to the committee. The proposed amendment would also add language to what is now paragraph (5) to provide that the committee's on-site visit per year to aversive programs be for the purposes of evaluation and continuation approval.

The proposed amendment to Rule .006 would amend subsections (b), (e), and (h) of the rule. Subsection (b) would be amended by deleting the requirements that the Facility Committee on Behavior Therapy Modification have no more than five members and that members must be knowledgeable about the techniques of behavior therapy modification, and by adding language to recommend that at least one member of the facility committee be a physician. Subsection (e) would be amended by adding language to provide that the chairperson of the facility committee shall provide a copy of the committee's minutes to the superintendent and to the Department Behavior Therapy Modification Committee. Subsection (h) would be amended by designating what is now subsection (h)(2) as paragraph (1), by designating what is now paragraph (1) as (2), and by adding language to what would become paragraph (2) to provide that skill acquisition programs utilizing simple positive reinforcement need not be reviewed if they fall within the guidelines established by the facility committee and to provide that programs requiring review include programs designed for the reduction or elimination of maladaptive behavior, group programs such as token economies or step systems, and programs involving special situations or techniques not covered by the guidelines established by the facility committee. Paragraph (3) would be amended by deleting the phrase "including those programs already in existence" from the statement requiring the facility committee to establish guidelines for evaluation of all facility programs utilizing behavior therapy modification techniques. Paragraph (4) would also be amended by substituting the words "aversive procedures" for the words "punishment by contingent stimulation."

The proposed amendment to Rule .008 would amend subsection (c) of the rule by substituting the words "locked time-out" for the word "seclusion" and by substituting the word "meal" for the word "diet."

The proposed amendment to Rule .009 would amend the rule by substituting the words "aversive procedures" for the words "punishment by contingent stimulation" wherever those words appear in the rule. Subsection (c)(4) would be amended to make clear that no program employing aversive

procedures may be initiated until a program for differentially positively reinforcing a class of behaviors which are incompatible with the undesirable response or responses is designed and targeted for simultaneous implementation with the program utilizing aversive procedures. Subsection (c)(9), which requires written informed consent before a program employing aversive procedures may be initiated, would be completely rewritten to specify how informed consent may be obtained in a variety of situations depending upon whether the patient or resident has been voluntarily or involuntarily admitted to the facility, whether the patient or resident is under 18 years of age or has a guardian, and what type of admission or commitment is the basis for the patient's or resident's presence at the departmental facility. The rewritten paragraph (9) would also provide for the indefinite suspension of written informed consent requirements in certain situations.

The proposed amendment to Rule .010 would amend subsections (b)-(e) of the rule. The proposed amendment would delete the phrases "from the effective date of these rules until one year thereafter," "within nine months from the effective date of these rules," and "within one year from the effective date of these rules" from subsections (b)-(e), respectively. The purpose of the amendments is to delete the time requirements contained in the rule. The proposed amendment would also substitute the words "aversive procedures" for the words "punishment by contingent stimulation" in subsection (c)(2) of the rule.

The proposed amendment to Rule .012 would amend paragraphs (1) and (4) of the rule. Paragraph (1) would be amended to make clear that a staff psychiatrist or psychologist must confirm the need and probable effectiveness of the program in writing in the patient's or resident's clinical record before the requirements of the department's rules governing behavior therapy modification program, 302.04.07, may be suspended for up to 14 calendar days in the event of a behavioral crisis. Paragraph (4) would be amended to provide that in a behavioral crisis the rules may be so suspended if the program is submitted to the departmental committee at the earliest practicable time.

Promulgation of the proposed amendments to Rules .003, .005, .006, .008-.010, and .012 will have no known fiscal implications for the state or for units of local government (source: Legal and Claims Division).

Public comment on the proposed amendments is invited. Persons may submit their comments by writing to John J. Kavanagh, M.D., commissioner, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711, or by telephone at (512) 454-3761.

The amendments to Rules .003, .005, .006, .008-.010, and .012 are proposed under the authority contained in Section 2.11(b) of Article 5547-202, Texas Civil Statutes.

.003. Definitions. In these rules:

(1) (No change.)

(2) **"Aversive procedures"** means those procedures in which an undesirable response targeted for reduction or elimination is followed systematically by the presentation of an intense aversive stimulus, locked time-out, contingent restraint, or a requirement to engage in an effortful task.

(A) **"Aversive stimulus"** means a stimulus which is undesirable (unpleasant or noxious) such that its effect is the suppression of the specific behavior upon which it is immediately contingent. For purposes of these rules, such stimuli include tactile (including faradic), olfactory, auditory, gustatory, and other stimuli which result in acute physical discomfort or pain.

(B) **"Contingent restraint"** means the systematic application for a specified period of time of any physical device, or the application of physical resistance by another person, to the body of a patient or resident in such a way as to limit or control with the least amount of force necessary the physical activity of the patient or resident following a previously identified response targeted for reduction or elimination.

(C) **"Locked time-out"** means the confinement of a patient or resident alone in a locked room or other isolated area from which the patient's or resident's egress is physically prevented following the occurrence of a targeted undesirable response.

(D) **"Effortful task"** means a task requiring physical effort by a resident or patient following an undesirable response and in which the completion of the task is directed or even manually guided by staff. Three common examples are restitutional overcorrection, forced exercises, and negative practice. Simple correction and restitution are not considered aversive procedures for the purposes of this rule except under certain conditions.

(i) **"Restitutional overcorrection"** means a procedure in which a patient or resident is required to correct the consequences of a disruptive response by performing a task which restores the environment to a state even more improved than existed before the disruptive behavior. An example would be the requirement that a disruptive resident or patient polish all the tables in the dormitory as a consequence of knocking over one of them.

(ii) **"Forced exercise"** means a procedure in which a resident or patient is manually guided by staff to perform a series of physical movements which are incompatible with the undesirable response which they systematically follow. An example would be the guided movement of a self-abusive resident or patient's arms through a series of positions away from the body.

(iii) **"Negative practice"** means a procedure in which a patient or resident is required to repeatedly engage in an effortful task which is topographically similar to the undesirable response which the procedure systematically follows. An example is a program in which a patient or resident who strikes others being required to repeatedly strike a punching bag following each occurrence of striking behavior.

(iv) **Simple correction or restitution procedures are not considered aversive unless the task lasts longer than a total of 10 minutes or the resident or patient resists the manual guidance.**

"Negative reinforcement" means the procedure in which the emission of a previously specified response results in the removal or termination of an ongoing, aversive stimulus and results in an increase in the rate of that response.

(3) **"Time-out"** means a procedure which decreases the frequency of a behavior by removing the individual from reinforcing events or situations for a brief specified period of time. A well designed time-out procedure not only includes specific criteria for initiating a time-out period, but also in-

cludes definite criteria for terminating the period. Time-out shall not be construed as an "aversive stimulus" unless it utilizes restraint or seclusion.

(4) "Response cost" means a procedure in which a positive reinforcer is lost or some penalty is invoked contingent upon inappropriate behavior. Fines and withdrawal of privileges represent common forms of response cost. Response cost shall not be construed as an "aversive stimulus."

(5) "Punishment by contingent stimulation" means a procedure in which an aversive stimulus is presented immediately following the emission of a previously selected response. This procedure results in a decrease in the rate or total elimination of the inappropriate response.

(6) "Aversive stimulus" means a stimulus which is undesirable (unpleasant or noxious) such that its effect is the suppression of the specific behavior upon which it is immediately contingent. For purposes of these rules, such stimuli include tactile (including faradic), olfactory, auditory, gustatory, and other stimuli which result in acute physical discomfort or pain.

(3)(7) "Informed consent" means the knowing consent of an individual or his legally authorized representative, so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion. The basic elements information necessary to informed consent include:

(A) a fair explanation of the procedures to be followed, and their purposes, including identification of any procedures which are experimental;

(B) a description of any attendant discomforts and risks reasonable to be expected;

(C) a description of any benefits reasonably to be expected;

(D) a disclosure of any appropriate alternative procedures that might be advantageous for the subject;

(E) an offer to answer any inquiries concerning the procedures;

(F) an instruction that the person is free to withdraw his consent and to discontinue participation in the project or activity at any time without prejudice to the subject.

(4)(8) "Department" means the Texas Department of Mental Health and Mental Retardation.

(5)(9) "Commissioner" means the commissioner of the Texas Department of Mental Health and Mental Retardation.

(6)(10) "Superintendent" means the superintendent or director of a facility of the department.

(7)(11) "Patient or resident" means any person receiving the services of the facility as a resident or in any outpatient or outreach program of the facility.

(8)(12) "Behavior therapy modification director" means the individual appointed by the superintendent and approved by the Departmental Committee on Behavior Therapy Modification to chair the Facility Committee on Behavior Therapy Modification, represent the facility committee to the departmental committee, consult with program directors, and coordinate activities of the facility committee. The behavior therapy modification director shall be knowledgeable in the specifics of behavior therapy modification principles and theory as well as have had applied experience in behavior therapy modification techniques.

(9)(13) "Program director" means the person at the unit level who is responsible for the development, coordina-

tion, implementation, and evaluation of individualized patient or resident programs in behavior therapy modification on that unit. Coordination may involve obtaining approval for the program from the unit director (or team coordinator) as well as his or her subsequent commitment to provide adequate staff hours for implementation of the program.

(10)(14) "Formalized behavior therapy modification program" means a written statement of the application of behavior therapy modification techniques to one or more patients or residents which contains clear specifications of behavioral objectives, reliable and representative baseline data, detailed procedures for implementing the program, methods for evaluating program effectiveness, alternate treatment strategies, and procedures for making needed program revisions.

(11)(15) "Psychiatrist" means a physician licensed to practice medicine in Texas who has had at least three years formal training in psychiatry or is a diplomate in psychiatry of the American Board of Psychiatry and Neurology.

(12)(16) "Psychologist" means a person certified or licensed to practice psychology in Texas.

(13)(17) "Behavioral crisis" means:

(A) the overt behavior of the patient or resident is manifestly dangerous to the life or safety of others, or

(B) the overt behavior of the patient or resident constitutes an imminent danger to the life or health of the patient or resident and is so confirmed in writing in the clinical records of the patient or resident by a licensed physician, and

(C) the patient's or resident's condition is such that other therapeutic approaches are precluded or are ineffective.

.005. *The Departmental Committee on Behavior Therapy Modification: Membership, Meetings, and Duties.*

(a) The Departmental Committee on Behavior Modification shall consist of at least seven persons to be appointed by the commissioner, one person to represent at least each of the following:

(1) Central Office Mental Health Services;

(2) Central Office Mental Retardation Services;

(3) Central Office *Community Services* (Program Support Services);

(4) Legal and Claims Office;

(5) the state schools;

(6) the state hospitals.

(b)-(h) (No change.)

(i) Duties of the Departmental Committee on Behavior Therapy Modification shall be as follows:

(1) approve or disapprove all programs that utilize *aversive procedures* [punishment by contingent stimulation];

(2) approve the appointment of a behavior therapy modification director for each facility;

(2)(3) with the assistance of representatives of the facility committees, develop an evaluation process including evaluation procedures for programs utilizing *aversive procedures* [punishment by contingent stimulation];

(3)(4) require *an* [one] evaluation *report quarterly* [procedure each year including a written report] from each facility that has utilized programs employing *aversive procedures* [punishment by contingent stimulation]. This documentation shall include but not be limited to *a graphic display of the progress of each individual in an aversive program* [the complete written treatment or curriculum descrip-

tion prepared for each program utilizing punishment by contingent stimulation, and the recorded progress of each patient or resident in the program];

(4)(5) make at least one on-site visit per year to programs employing *aversive procedures* [punishment by contingent stimulation] for the purposes of evaluation and continuation approval;

(5)(6) develop and approve staff training objectives and curriculum in accordance with Rule .010 of these rules.

.006. *Facility Committee on Behavior Therapy Modification: Membership, Meetings, and Duties.*

(a) (No change.)

(b) The facility committee shall consist of not less than three [and not more than five] members of whom one shall be the behavior therapy modification director and the others of whom shall be appointed by and shall serve at the pleasure of the superintendent of the facility. *It is recommended that at least one member be a physician.* [Members must be knowledgeable about the techniques of behavior therapy modification.]

(c)-(d) (No change.)

(e) The chairperson shall cause minutes to be kept of all actions or decisions of the committee and shall provide a copy of the minutes to the superintendent and to the Department Behavior Therapy Modification Committee.

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

(h) Duties of the Facility Committee on Behavior Therapy Modification shall be as follows:

(1) *Establish procedures and guidelines for the use of behavior therapy modification techniques throughout the facility.* [Review and approve all formalized behavior therapy modification programs conducted in the facility.]

(2) *Review and approve formalized behavior therapy modification programs conducted in the facility. Skill acquisition programs utilizing simple positive reinforcement need not be reviewed if they fall within the guidelines established by the committee. Programs requiring review include but are not limited to:*

(A) *programs designed for the reduction of elimination of maladaptive behavior,*

(B) *group programs (for example, token economies or step systems), and*

(C) *programs involving special situations or techniques not covered by the guidelines established by the committee.*

[Establish procedures and guidelines for the use of behavior therapy modification techniques throughout the facility.]

(3) Establish guidelines for evaluation of all facility programs[, including those programs already in existence,] utilizing behavior therapy modification techniques. These guidelines shall be subject to the superintendent's approval.

(4) Assist the departmental committee in the establishment of guidelines for the evaluation of programs utilizing *aversive procedures* [punishment by contingent stimulation.]

(5)-(7) (No change.)

.008. *Conditions for Initiation or Approval of Behavior Therapy Modification Programs.*

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

(c) No behavior therapy modification program shall deprive a patient or resident of a basic human need such as a bed, except as required by the dictates of safety during

locked time-out [seclusion]. No behavior therapy modification program shall deprive a patient or resident of a nutritious meal [diet], nor shall it alter the consistency of food texture of regularly prescribed meals.

(d)-(e) (No change.)

.009. *Special Conditions for Initiation or Approval of Programs Employing Aversive Procedures (Punishment by Contingent Stimulation).*

(a) All programs employing *aversive procedures* [punishment by contingent stimulation] must meet the requirements of Rule .008 of these rules.

(b) No program employing *aversive procedures* [punishment by contingent stimulation] may be initiated until at least two of the three following criteria have been met:

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

(3) Behavior therapy modification techniques and procedures not employing *aversive procedures* [punishment by contingent stimulation] have been attempted and have failed to remove the problem behavior or behaviors. Facts concerning dangerous behavior, ineffectiveness of other approaches, or failure of other therapy shall be documented in each patient's or resident's record.

(c) No program employing *aversive procedures* [punishment by contingent stimulation] may be initiated until the following conditions, in addition to those required in subsection (a) and (b) of this rule, have been met:

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

(4) A program for differentially *positively* reinforcing a class of behaviors which are incompatible with the undesirable response (responses) is designed and targeted for simultaneous implementation with the program utilizing *aversive procedures* [punishment by contingent stimulation].

(5)-(8) (No change.)

(9) Written informed consent as defined in these rules has been obtained as follows [from]:

(A) *If the patient or resident has been admitted voluntarily and is 18 years of age or older, written informed consent should be obtained from:*

(i) *the patient or resident if he or she is mentally competent to give such consent;*

(ii) *the guardian of the person of the patient or resident who has been adjudicated incompetent by a court of competent jurisdiction.*

[the patient or resident if he or she is mentally competent to give such consent.]

(B) *If the patient or resident has been admitted voluntarily and is under 18 years of age, written informed consent should be obtained from:*

(i) *the parent, managing conservator, or guardian of the person of the client if he or she has been admitted under Article 5547-300 (Mentally Retarded Persons Act of 1977);*

(ii) *the patient or resident and the parent, managing conservator, or guardian of the person of the patient or resident if he or she has been admitted under Article 5547-1, et seq., Vernon's Texas Civil Statutes (Texas Mental Health Code);*

(iii) *the parent, managing conservator, or guardian of the person of the patient or resident if he or she has been admitted voluntarily under Article 5561c, Vernon's Texas Civil Statutes (Texas Alcoholism Statute);*

[the guardian of the person of any patient or resident who has been adjudicated incompetent by a court of competent jurisdiction, or]

(C) *If the patient or resident has been admitted voluntarily under Article 3196c-1, Vernon's Texas Civil Statutes (drug addiction), written informed consent must be obtained from the patient or resident without regard to his age.* [the responsible parent of any child under age of 18 years.]

(D) *Any questions concerning the applicability of these rules on obtaining informed consent should be referred to the department's Legal Division.*

(E) *In applying an aversive program to any voluntarily admitted patient or resident who has the legal authority to give his own consent, e.g., a voluntarily admitted competent adult, a voluntarily admitted minor under the Mental Health Code, or a voluntarily admitted drug abuse patient of any age, staff should be aware that such persons can withdraw their consent at any time. If the client withdraws his consent, the program shall be discontinued. If the client does not withdraw his consent, the staff shall document that the client was informed of the right to withdraw from the program and that he chose not to.*

(F) *The requirement of subsection (c)(9) of this rule to obtain written informed consent may be indefinitely suspended if all the following conditions are met:*

(i) *the patient or resident himself is not competent to give written informed consent,*

(ii) *no guardian of the person has been established or all efforts to locate the responsible parent of a child under age 18 have failed,*

(iii) *an independent psychiatrist or psychologist, who is not an employee of the facility, has provided in writing in the patient's or resident's clinical record confirmation of the need and probable desirable consequences of the program,*

(iv) *the Facility Behavior Therapy Modification Committee has confirmed the need for and the probable desirable consequences of the program,*

(v) *the superintendent has approved the program in writing in the patient's or resident's clinical record, and*

(vi) *the program has been approved by the departmental committee.*

(10) *For a patient or resident who has been court committed, aversive procedures may be employed if:*

(A) *an independent psychiatrist or psychologist who is not an employee of the facility has provided in writing in the patient's or resident's clinical record confirmation of the need and probable desirable consequences of the program,*

(B) *the Facility Behavior Therapy Modification Committee has confirmed the need for and the probable desirable consequences of the program,*

(C) *the superintendent has approved the program in writing in the patient's or resident's clinical record, and*

(D) *the program has been approved by the departmental committee.*

(d) All programs involving *aversive procedures* [punishment by contingent stimulation] must identify individual patients or residents and must be reviewed and ap-

proved by the facility committee, superintendent, and the Departmental Committee on Behavior Therapy Modification before initiation or approval of the program.

(e) Medical authorization by a licensed physician must be placed in the record of each individual patient or resident who is to participate in a program employing *aversive procedures* [punishment by contingent stimulation] to assure that no medical contraindications exist.

(f) Documentation must be made in the patient's or resident's record immediately upon the presentation of an aversive stimulus *or the implementation of an aversive procedure*. This documentation must include who administered the aversive stimulus *or procedure* and the setting in which it was administered. Indication must also be given as to why aversive stimulus *or procedure* was administered and what the outcome was.

(g) Authorization for time extension of any program involving *aversive procedures* [punishment by contingent stimulation] must be approved by the facility committee.

(h) Any increase in the intensity of aversive stimuli *or procedure*, unless specified in the original application, must be approved by the facility committee, superintendent, and the departmental committee before initiation.

.010. *Staff Training in Behavior Therapy Modification.*

(a) (No change.)

(b) *The* [From the effective date of these rules until one year thereafter,] training of staff members shall be the responsibility of the program director, assisted by facility staff development services, the training curriculum to be approved by the Facility Behavior Therapy Modification Committee.

(c) [Within nine months from the effective date of these rules,] The Departmental Committee on Behavior Therapy Modification, assisted by representatives of facility committees on behavior therapy modification and by facility coordinators for staff development shall develop and approve training objectives and curriculum materials for:

(1) general training of facility staff in the theory, principles, and procedures of behavior therapy modification techniques,

(2) specific training programs using *aversive procedures* [punishment by contingent stimulation].

(d) *The* [Within one year from the effective date of these rules,] facility offices for staff development, assisted by program directors and facility behavior therapy modification committees shall provide staff training in accordance with the training objectives and curriculum developed and approved by the Departmental Committee on Behavior Therapy Modification.

(e) [After one year from the effective date of these rules,] Staff members may be approved for participation in behavior therapy programs based on any one or combination of the following:

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

.012. *Exception to These Rules: Behavioral Crisis.* The requirements of these rules may be suspended for a period not to exceed 14 calendar days in the event of a behavioral crisis for a patient or resident subject to the following conditions:

(1) the need for *and* [a] probable effectiveness of the program is confirmed in writing in the clinical record of the patient or resident by a *staff* psychiatrist or [a] psychologist.

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

(4) the program *is submitted to* [for approval by the facility committee, and, if appropriate, the departmental committee, is sought] at the earliest practicable time.

Doc. No. 799360

302.04.07.007, .013, .015

(Editor's note: The texts of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, or in the Texas Register Division offices, 503E Sam Houston Building, Austin.)

The Texas Department of Mental Health and Mental Retardation proposes to repeal Rules 302.04.07.007, .013, and .015 of its subchapter of rules governing behavior therapy modification programs at departmental facilities. Contemporaneously with the filing of the proposed repeals, the department is proposing to amend Rules .003, .005, .006, .008-.010, .012 of the same subchapter of rules.

Rule .007 required action to be taken within one year and within 90 days after the subchapter of rules originally became effective on December 19, 1975. Therefore, by its own terms, actions required by the rule had to be completed before January 1, 1976, and in order to bring the subchapter of rules up-to-date it is necessary to repeal the rule.

The content of Rule .013 will be moved to Rule .009(c) by virtue of a proposed amendment filed contemporaneously with this proposed repeal; therefore, Rule .013 would be repetitive and should be repealed. Rule .015 serves no useful purpose and, therefore, is surplusage and should be repealed.

The repeal of Rules .007, .013, and .015 will have no known fiscal implications for the state or for units of local government (source: Legal and Claims Division).

Public comment on the proposed repeal is invited. Persons may submit their comments by writing to John J. Kavanagh, M.D., commissioner, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711, or by telephone at (512) 454-3761.

The repeal of Rules .007, .013, and .015 is proposed under the authority contained in Section 2.11(b) of Article 5547-202, Texas Civil Statutes.

- .007. *Approval of Existing Behavior Therapy Modification Programs.*
- .013. *Exception to These Rules: Unavailability of Responsible Party to Give Written Informed Consent.*
- .015. *Effective Date.*

Issued in Austin, Texas, on December 10, 1979.

Doc. No. 799361

John J. Kavanagh, M.D.
Commissioner

Texas Department of Mental Health and
Mental Retardation

Proposed Date of Adoption: January 18, 1980

For further information, please call (512) 454-3761, ext. 241.

Texas Board of Licensure for Nursing Home Administrators

Examination 391.03.00

The Texas Board of Licensure for Nursing Home Administrators is proposing to amend Rule 391.03.00.003, Requirements for Licensure, by amending the licensure requirements in order to upgrade the nursing home administrator's profession and insure the public that the board's goal is to license only quality administrators, thus better serving the residents of nursing homes throughout the state.

The present minimum requirement (Rule .003(b)(8)), which requires that an applicant serve a six-month internship, complete the 200-hour course, and obtain the associate degree in long-term health care or its equivalent within four years from the date of licensure at the rate of 12 hours per year, will be in effect until June 30, 1982. After June 30, 1982, the minimum requirement for applicants will be 60 semester hours, 36 of which must be in long-term health care, a six-month internship, and completion of the 200-hour course (this change deletes the four-year, 12-hour per year portion of the rules and requires that this be the minimum level of entry) and will be in effect from July 1, 1982, to June 30, 1984. After June 30, 1984, the minimum requirement for applicants will be 90 semester hours, a six-month internship, and completion of the 200-hour course, or an associate degree in long-term health care administration, and completion of the 200-hour course in nursing home administration. After June 30, 1986, the minimum requirement will be a bachelors degree, a six-month internship, and completion of the 200-hour course.

A correction is also being made to these rules, changing the description of the six-month internship, 200-hour course reference from Rule .003(c) to .003(d). This was previously submitted incorrectly.

This change will have no fiscal implications.

Public comment on the proposed amendment of Rule .003 is invited. Persons should submit their comments in writing to Mable Staton, executive secretary, P.O. Box 9706, Austin, Texas 78766.

This amendment is proposed under the authority of Article 4442d, Vernon's Annotated Civil Statutes.

.003. *Requirements for Licensure.*

(a) (No change.)

(b) Upon proper application for license and payment of the required application fee of \$70, the board shall administer the national association board examination (NAB), the state board examination (an examination designed to test the applicant's knowledge of laws, rules, and regulations relating to Texas nursing home programs), and the suitability examination to any person who fulfills any one of the following requirements, *except, however, effective July 1, 1986, each person must fulfill one of the requirements described in conditions (1), (2), (3), and (4):*

(1) The applicant has obtained a masters degree or higher educational achievement in long-term health care administration, including an internship approved by the educational institution bestowing the degree.

(2) The applicant has obtained a masters degree or higher educational achievement in health care administra-

tion with a completed internship approved by the educational institute bestowing the degree. If the said masters degree or higher educational achievement is not in long-term health care administration, the board may require the applicant to complete or to have completed training and/or experience in long-term health care administration approved by the board.

(3) The applicant has obtained a bachelors degree in long-term health care administration, including an internship approved by the educational institution bestowing the degree. The board strongly recommends that an applicant with a bachelors degree in long-term health care administration, take the 200-hour course in nursing home administration described in Rule .003(d) [(c)].

(4) The applicant has obtained a bachelors degree [in a field related to long-term health care administration as approved by the board] and has successfully completed the six-month internship described in Rule .003(d) [(c)] *and the 200-hour course in nursing home administration described in Rule .003(d)*. [The board strongly recommends that an applicant with a bachelors degree in a related field take the 200-hour course in nursing home administration described in Rule .003(c).]

(5) The applicant has completed successfully a board-approved associate degree program in long-term health care administration from an accredited college or university which includes a completed internship approved by the educational institution bestowing the associate degree, *and has successfully completed the 200-hour course in nursing home administration described in Rule .003(d)*. [The board strongly recommends that an applicant with an associate degree in long-term health care administration take the 200-hour course in nursing home administration described in Rule .003(c).] *This rule will be in effect until June 30, 1986.*

(6) The applicant has completed successfully a board-approved curriculum of at least 60 semester hours in long-term health care administration from an accredited college or university equivalent to the associate degree program described in paragraph (5), *the six-month internship described in Rule .003(d), and the 200-hour course in nursing home administration described in Rule .003(d)*. [The board strongly recommends that the applicant with at least 60 semester hours in long-term health care administration take the 200-hour course in nursing home administration described in Rule .003(c).] *This rule will be in effect until June 30, 1984.*

(7) The applicant has completed successfully at least 90 hours of academic credit from an accredited college or university, the six-month internship described in Rule .003(d) [(c)], and the 200-hour course in nursing home administration described in Rule .003(d) [(c)]; provided, however, if the applicant has more than 60 such hours, he shall be permitted to take the required examination after successful completion of the six-month internship and the 200-hour course in nursing home administration. Upon passing the required examination, if all other requirements for licensure are met, the applicant shall be licensed subject to meeting one of the following conditions:

(A) within four years from the date of licensure, successful completion of 90 hours of approved academic credit at the rate of at least 12 hours per year;

(B) within four years from the date of licensure, the successful completion of 36 hours of approved academic

credit in long-term health care administration or a related field approved by the board.

If the applicant fails to satisfy either of the conditions, his license shall be revoked. *This rule will be in effect until June 30, 1982.*

(8) The applicant has completed successfully at least 60 hours of academic credit from an accredited college or university, 36 of which must be in long-term health care administration or a related field approved by the board, the six-month internship described in Rule .003(d) [(c)], and the 200-hour course in nursing home administration described in Rule .003(d) [(c)]; provided, however, that the applicant with less than 60 hours of such academic credit, upon successful completion of the six-month internship and the 200-hour course in nursing home administration shall be permitted to take the required examinations. Upon passing such examination, if all other requirements for licensure are met, the applicant shall be licensed subject to completing successfully within four years from the date of licensure, at the rate of at least 12 hours per year, the minimum required 60 hours of academic credit from an accredited college or university, at least 36 hours of which must be in long-term health care administration or a related field as approved by the board. If the applicant fails to satisfy this requirement to which his license is made subject, the license shall be revoked. An additional year will be granted to those administrators who were licensed July 1, 1976, through July 1, 1977, to obtain the 12 hours of academic credit per year which is required to maintain their licenses. *This rule shall be in effect until June 30, 1982.*

(9) The applicant is an administrator-in-training who:

(A) entered the AIT Program prior to July 1, 1975;

(B) has completed successfully the 200 hours of curriculum required;

(C) served the one-year internship required of AITs; and

(D) forwarded all quarterly reports to the office of the board.

Any such administrator-in-training who comes under the provisions of this section shall have until July 1, 1977, to pass successfully the required examinations; otherwise, he shall be required to make new application and meet the requirements for licensure in effect at the time of application.

(10) *Effective July 1, 1982, the applicant has completed successfully at least 90 hours of academic credit from an accredited college or university, the six-month internship described in Rule .003(d), and the 200-hour course in nursing home administration described in Rule .003(d). This rule will be in effect until June 30, 1986.*

(11) *Effective July 1, 1982, the applicant has completed successfully at least 60 hours of academic credit from an accredited college or university, 36 of which must be in long-term health care administration or a related field approved by the board, the six-month internship described in Rule .003(d), and the 200-hour course in nursing home administration described in Rule .003(d). This rule shall be in effect until June 30, 1984.*

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

Doc. No. 799428

Education 391.04.00

The Texas Board of Licensure for Nursing Home Administrators is proposing to amend Rule 391.04.00.003(a)(2) by changing the amount of continuing education awarded administrators who attend college from 10 hours to 20 hours for each three-hour college course that deals with the "core of knowledge" as outlined under Rule .002. This amendment was made due to a re-evaluation of the actual time spent in a college class for three hours credit, versus time spent in clock hour seminars. The Texas Board of Licensure is also proposing to add paragraph (5) to Rule .003 allowing nursing home administrators to obtain 40 hours of continuing education credit for attending the 200-hour course in nursing home administration. The change is proposed in order to give nursing home administrators equal credit for the 200-hour course as they receive for each three-hour college credit course.

These changes will have no fiscal implication.

Public comment on the proposed amendments to Rule .003 is invited. Persons should submit their comments in writing to Mable Staton, executive secretary, P.O. Box 9706, Austin, Texas 78766.

These amendments are proposed under the authority of Article 4442d., Vernon's Annotated Civil Statutes.

.003. Continuing Education Programs of Study.

(a) All licensed nursing home administrators are required to have a minimum of 40 hours of continuing education for each two-year licensure period in a continuing education program approved by the board in order to obtain license renewal. The following are recognized by the board as acceptable continuing education requirement programs:

(1) Time spent in participating in seminars approved by the board. For each hour of time spent in each seminar, the licensed nursing home administrator is entitled to one hour of credit in the continuing education requirement program.

(2) Time spent in college as reflected by college credits according to the transcript submitted to the board. Credit for 20 [10] hours on continuing education shall be allowed for each three-hour college course completed dealing with the core of knowledge as outlined under Rule .002(2)(A)(a)(2).

(3) Time spent at a regularly scheduled chapter meeting. However, for each regular chapter meeting, the licensed nursing home administrator is entitled to one-half hour credit toward the continuing education requirement program, and no more than six hours credit per licensing period may be obtained through time spent at regularly scheduled chapter meetings.

(4) Credit of 15 hours continuing education will be given to administrators who attend preceptor seminars. An additional 15 hours will be awarded a preceptor who completes training a student in the required internship program prescribed elsewhere in these rules. No partial credit shall be given in the event that the required training is not fully completed.

(5) *Credit of 40 hours of continuing education credit will be given to administrators who complete the 200-hour course in nursing home administration. Credit will be given under the curriculum area of college.*

All credit toward the continuing education requirement, regardless of which of the above five [four] areas serves as the source for such credit, shall be subject to approval or dis-

approval by the board upon the board's investigation and study of the program or function serving as the basis for the time spent in continuing education by licensed nursing home administrators. All sources of credit for continuing education are to be considered by the board on their merits, and no approval of any program, course, or source of credit toward the continuing education requirement shall be made without the board's consideration.

(b)-(i) (No change.)

Issued in Austin, Texas, on November 29, 1979.

Doc. No. 799429

Mable Staton
Executive Secretary
Texas Board of Licensure for Nursing
Home Administrators

Proposed Date of Adoption: January 18, 1980

For further information, please call (512) 926-9530.

State Purchasing and General Services Commission

Executive Administration Division

Parking 028.11.03

The State Purchasing and General Services Commission is proposing certain amendments to its rules on parking in the Capitol Complex and on property administered by the commission, in order to give effect to a compromise agreement reached with the Texas Public Employees Association (TPEA) concerning such parking. The commission had earlier proposed and adopted changes in its parking rules to implement a program which would provide parking for more employees through reserved lot parking, encourage energy conservation measures through preferences for car pools, and discourage individually assigned spaces as an ineffective use of parking facilities. Our intent was to give each of the 7,000 state employees working in the complex an assignment to park if they wanted one.

Because the program sought to implement reserved lot assignments and increase charges for individually reserved space assignments, the TPEA sought to enjoin the commission from enforcing certain of the rules, and a declaratory judgment determining their validity. In the case of Texas Public Employees Association, et al., v. Robert H. Dedman, et al., No. 298,090, in the 261st Judicial District Court, Travis County, Texas, judgment was entered on November 26, 1979, declaring that certain of the parking rules were "invalid and void to the extent that they utilize the 'open lot' parking concept; the Court expressly finding that the Defendants' enabling statute requires Defendants to provide individual, assigned parking spaces to State employees."

Subsequent to this ruling, the commission met on November 30, 1979, to consider what action to take. In consultation with members and officers of TPEA and with the speaker of the house of representatives, a compromise was reached whereby the commission would rewrite its rules, effective March 1, 1980, to provide free parking on an "open lot" basis to all state employees wanting an assignment, and on a reserved space basis to bonafide car pools and handicapped state employees; and to provide approximately 1,000 individually reserved space assignments to state employees willing to pay a \$10 per month charge for parking.

The bulk of these changes, made necessary by the compromise agreement, fall in Rules 028.11.03.031, .034, and .035, although other parking rules are also affected. The key changes are to: (1) abolish waiting lists except where employee preferences are stated (Rule .031), (2) remove parking charges for "open lot" parking, assignments to car pools, and assignments to the handicapped (Rules .034 and .035), and (3) provide for a limited amount of reserved space parking allocated among affected state agencies according to number of employees (Rule .031).

The parking program administered by the commission is funded entirely out of charges collected from state employees for parking assignments. Annually, the charges collected have been close to \$150,000. By charging only for individual space assignments, and limiting those to no more than 1,000 spaces, the commission anticipates its collected charges to drop to \$120,000 annually. Based solely upon the cost of maintenance and administration, this amount will be adequate to operate the program for the remainder of the biennium. Necessary capital expenditures after the biennium could not readily be funded from the charges collected under the proposed program.

Public comment on the proposed amendments is invited. Interested persons should submit their comments in writing to James H. Quick, general counsel, State Purchasing and General Services Commission, P.O. Box 13041, Austin, Texas 78711.

These amendments are proposed under the authority of Section 4.12 of Article 601b, Vernon's Texas Civil Statutes.

.030. General.

(a) **Objective.** The overall objective is to provide for the most equitable, efficient, and economical parking facilities for state employees, state officials, and the visiting public in the Capitol Complex area in accordance with the general law as set out in Sections 4.12 and 4.14 of Article 601b, Vernon's Texas Civil Statutes. *In addition to a limited amount of individually reserved space parking, for which a charge will be made, these rules allow for free parking to employees who will accept assignments to park anywhere in a lot to which they are assigned. Car pooling and assignments to handicapped employees will be stressed and supported by free reserved space parking in a lot near the employees' work location. Full and effective utilization of the state's parking facilities in the Capitol Complex will be sought through this program as the commission attempts to foster concepts of energy conservation and alleviation of traffic congestion in center city areas in cooperation with equally concerned governmental and societal entities.*

(b) **Administration.** [Parking in the Capitol Complex.] Parking in the Capitol Complex is administered by the Executive Administration Division and its Security Section with full authority to carry out the responsibilities of the commission.

(c) Definitions.

(1) **"Availability for assignment."** *This term shall refer to the status of a lot or garage, either a part or the whole of which is used for open assignment within the lot or garage and shows a utilization of its open parking areas of less than 100% during peak use hours.*

(2) **"Handicapped employee."** *A state employee may be considered handicapped for purposes of space*

assignment hereunder if the nature of the handicap impairs mobility to the degree that walking any appreciable distance to the employee's work station would be difficult, if not impossible, for the employee to accomplish, if a licensed physician has determined that the employee's handicap meets the degree of mobility impairment set out above, and the handicap is not of temporary nature. (See Rule .036(a) for temporary assignments.)

(3) **"Open assignment" or "open parking."** *Sometimes referred to as "reserved lot assignment or parking," this term refers to an assignment of a right to park anywhere within a given area and is contrasted with an individually reserved, or specific, space assignment.*

.031. Assignment to a Reserved Space or Facility.

(a) The assignment to a reserved space or facility is considered a privilege which can be revoked at any time for nonpayment or noncompliance with the parking regulations. In addition, this privilege may be revoked to permit implementation of changes in the parking system or these rules as mandated by the commission. Revocation because of commission mandate will give the employee losing an assignment a priority for reassignment to a space or facility available to that employee. The acceptance and use of a parking assignment constitutes acceptance of all rules and regulations regarding such assignment. Subject to the priority of assignment established in Section 4.12(c) of Article 601b, Vernon's Texas Civil Statutes, and in Rule .035, employees of state agencies are eligible for assigned parking so long as they offer four hours or more a day within the Capitol Complex. Assignments *may be* [are] based on waiting lists maintained by the commission. *Applications for parking assignments received after the effective date of these rules, if no assignments acceptable to the employee are available at the time of the application,* [Applications for parking assignments received after December 1, 1979,] shall be placed on waiting lists applicable only to those lots or garages designated for use of the building where the applicant is employed. The commission shall designate lots or garages to the use of particular buildings in order to give better distribution to parking utilization. New applications, *not immediately assignable,* shall be [are] date and time stamped as they are received by the commission, and [applicants are] placed on the respective lists in chronological order. Assignments from those lists will be made on a "first-on, first-off" basis, but see the exceptions for new lots or parking garages described in Rule .032, or for car pools described in Rule .038.

(b) All assignments relinquished, cancelled, terminated, or forfeited shall become reassignable in accordance with these rules on the effective date of relinquishment, cancellation, termination, or forfeiture.

(c) In making assignments to reserved facilities where, by specific commission action, individual space assignments are not permitted either in the whole or in part of the lot or garage, the commission may assign more individuals to park in the lot or garage than there are spaces available. Determination of the *number of assignments to such an area* [percentage of overbooking] which will be allowed by this subsection shall be based upon information obtained during peak utilization periods. Adjustments in the *number of permitted assignments* [percentage] may be made from time to time as circumstances warrant, in an effort to obtain full utilization of state parking facilities.

(d) **Allocation of spaces available for assignment.**

(1) Spaces on the driveways of the Capitol shall be individually assigned according to the requirements of Section 4.12(c) of Article 601b, Vernon's Texas Civil Statutes (see also Rule .035 *supra* relating to priority of assignments).

(2) Twenty percent of all remaining spaces administered by the commission shall be reserved for individual assignment as follows:

(A) From this 20%, or approximately 1,000 spaces, those spaces required to be set aside "in state parking lots proximately located to the Capitol" for the use of the legislature and its administrative staff shall be deleted.

(B) The balance of the 20% shall be allocated by the commission to the state agencies housed in the Capitol Complex, or on other state property administered by the commission, on the basis of the ratio of the number of employees working for that agency in the Capitol Complex or in other state buildings administered by the commission to the total number of all such employees. (Working employees shall be those that are scheduled to work at least four hours a day during the normal state work week within the hours of 7 a.m. to 6 p.m.) The commission will insure that all agencies are allocated at least one space for individual assignment no matter what the ratio for that agency would require.

(3) Spaces set aside for specific assignment to car pools and handicapped employees, and spaces reserved for visitor parking and for parking state-owned vehicles shall not be counted as part of the 20% set aside for individual assignment in (2) above, but shall be located, if at all possible, adjacent to such spaces.

(4) All other spaces, whether a part or the whole of a lot or garage shall be marked for open assignment in accord with these rules.

.032. New Lots or Parking Garages. Whenever a new lot or parking garage is opened for operation, assignments to that lot or garage will be made first to those employees who had surface parking on locations where the new lots or garages were erected, and were temporarily displaced by reason of such construction. **Additional and further assignments will be made in accord with these rules.** [Subject to the priorities of Rules .035 or .038, further assignments to the new lots or garages will be made from the chronological listing of those employees who, on the date the new lot or garage is opened, did not have an assignment and had on file a completed application for assignment. To accomplish this assignment, the commission will prepare and mail a letter to employees on the chronological listing advising them of the new lot or garage, and asking them to respond if they are interested in being considered for assignment at the location. Assignments will be made from the listing in chronological order with those employees who respond within the time designated in the letter. After filling all available assignments in this manner, responding employees who did not receive an assignment because of demand shall be put on a new waiting list for that lot or garage. Refusal to accept an assignment in a new lot or garage will not result in removal or displacement from any previously existing waiting list.]

.034. Monthly Parking Charges, Payment, and Refunds.

(a) Charges. The commission has determined that a reasonable monthly charge for assigned parking in accordance with Section 4.12 of Article 601b, Vernon's Texas Civil

Statutes, shall be: **\$10 for individual employees assigned reserved spaces within a lot or garage. All other assignments, including specific space assignments to car pools and to handicapped employees, shall be free.**

[(1) \$6.00 for car pools given priority spaces pursuant to Rule .038;

[(2) \$12 for individual employees assigned reserved spaces within a lot or garage; and

[(3) \$3.00 for assignment of the right to park in a particular lot or garage.]

(b)-(c) (No charge.)

.035. Priority of Assignment.

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

(d) The commission may assign an appropriate number of individual parking spaces to elected state officials and appointed heads of state agencies who occupy space in state buildings located within the bounds of the Capitol Complex as defined in Section 4.12(a) of Article 601b, Vernon's Texas Civil Statutes.

(e) If spaces are available, the commission may assign parking spaces to handicapped state employees and other state employees of state agencies occupying space in state buildings located within the bounds of the Capitol Complex as defined in Section 4.12(a) of Article 601b, Vernon's Texas Civil Statutes. Within this category of employees, and for the purpose of equitable administration of available parking spaces within the Capitol Complex, the commission will fill requests for space in the following manner:

(1) Handicapped employees who register with the commission shall be entitled to properly designed parking space as near as possible to the building in which they work and shall be placed at the head of the appropriate waiting list, without regard to the time or date of their applications.]

(2) **Employees forming car pools in accord with Rule .038 shall be entitled to a specific space assignment as near as possible to their work location.**

(3) [(2)] All other assignments will be made in accord with Rule .031.

(f) To implement the requirements of subsections (a)-(c) of this rule, the commission shall not be required to assign all of the spaces available to it; but the commission in its discretion may make use of any unassigned spaces so designated under this subsection, so long as that use is in accord with Section 4.12 of Article 601b, Vernon's Texas Civil Statutes, and these rules.

[(g) In order to permit greater utilization of the parking facilities in the Capitol Complex, the commission may designate certain lots or garages, or portions thereof, for general, unreserved parking by employees assigned to the particular lot or garage in accord with Rules .031 and .035(e)(2). This designation shall not apply to priorities referred to in Rule .035(a)-(d) and (e)(1).]

.038. Car Pools.

(a) (No change.)

(b) To qualify for [priority] assignment under this rule, a car pool must have at least **three** [two] participating state employees who normally drive their cars to work in the Capitol Complex. [Larger pools will be given precedence for assignment over smaller pools.]

(c) Responsibility for [payment of the quarterly parking fees for] the car pool [as described in Rule .034(a)(1)] shall be given to a designated member of the pool, whose identification as such shall be recorded in the parking

records at the commission. Notice to the designated member for any purpose set out in these rules shall be deemed notice to all members of the pool.

(d) [Priority to] A newly established car pool, meeting the requirements of this rule as determined by the commission, shall be *assigned a reserved space* [the right to be assigned the first available reserved space] within a lot or garage designated in the pool's application for assignment, where the lot or garage has at least 150 spaces within its confines.

(e) Assignment of space to a pool shall result in the automatic forfeiture of any outstanding parking assignments to the members of the pool, and/or removal from any lists]. Subsequent departure of a pool member, or dissolution of the pool itself will not restore any parking assignment previously forfeited by a member[, but priority will be given to former pool members for parking assignments in accord with these rules if the employee gave up an assigned space in the formation of the pool].

(f) Departure of a pool member will not work an automatic forfeiture of the pool assignment unless the membership falls below *three* [two] as a result, and a new member cannot be found within 60 days to restore the pool to the minimum qualifying number.

(g) Dissolution of a pool for any reason will not give the individual members any right to the priority space assigned to that pool.

.040. Offenses under Section 4.12 of Article 601b, Vernon's Texas Civil Statutes.

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

(g) If an assignment is forfeited following the commission of an offense as described in this rule, eligibility *for re-assignment* [to be placed on a waiting list] shall not be

regained prior to the expiration of a six-month period following the notice of forfeiture.

.041. Violation of Rules.

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

(e) Upon receipt of a written notice of appeal, the commission will provide the employee an opportunity within 10 working days to present reasons in writing as to why the permit should not be forfeited. The commission's final decision on this appeal, to be presented not later than five working days after receipt of the employee's reasons, shall respond to the employee's several points and shall set out its reasons for accepting or rejecting each one. If an employee's assignment is forfeited hereunder and the employee still needs parking space, the employee shall be eligible *for reassignment after the expiration of 90 days from the date of notice of forfeiture* [immediately to be placed on a waiting list for the lot of his or her choice].

.043. Normal Duty Hours. Assignments on surface lots or in garages shall allow the permitted employee to utilize the assignment only on state working days, during the hours 7 a.m. through 6 p.m., inclusive. Outside of these hours, a permitted state employee shall have a general right to park in nonutilized lots and garages within the Capitol Complex, but shall have no special right to park in any [individually assigned] space, and security officers of the commission may not be asked by an employee to enforce an otherwise lawful right to park in the complex.

Issued in Austin, Texas, on December 12, 1979.

Doc. No. 799442

Homer A. Foerster
Executive Director
State Purchasing and General Services
Commission

Proposed Date of Adoption: January 18, 1980

For further information, please call (512) 475-5966.

An agency may adopt a proposed rule no earlier than 30 days after publication in the *Register*, and the adoption may go into effect no sooner than 20 days after filing, except where a federal statute or regulation requires implementation of a rule on shorter notice.

An agency, on request, shall provide a statement of the reasons for and against adoption of a rule. Any interested person may request this statement before adoption or within 30 days afterward. The statement shall include the principal reasons for overruling considerations urged against the agency's decision.

Numbering System—Each rule is designated by a unique 10-digit number which is divided into four units by decimal points. The first unit (three digits) indicates the agency which promulgates the rule. The second unit (two digits) indicates the chapter of rules to which the rule belongs. The third unit (two digits) indicates the subchapter of rules, if any, within the chapter. The fourth unit (three digits) indicates the individual rule.

Texas Commission on the Arts Agency Procedures 353.01.00

The Texas Commission on the Arts has adopted rules 353.01.00.001-.010, which outline the procedures of the commission. These rules were published as proposed in the November 14, 1978, issue of the *Texas Register* (3 TexReg 3973), Rules .001-.012. In the interest of clarity, these rules have been changed by combining like articles and sections; adding the requirements for a quorum of committee meetings; changing the name of the Grant Applications Committee to the Assistance Review Committee and the name of the Arts Constituency Committee to the Liaison Committee; deleting standing committees for education, long range planning, and legislative appropriations.

These rules are adopted under the authority of Article 6144g, as revised, Vernon's Texas Civil Statutes.

.001. Purpose. The commission shall carry out the purpose prescribed by law to the Texas Commission on the Arts.

.002. Officers.

(a) The officers of the commission shall be a chairman, the immediate past chairman (if still a member of the commission), a vice chairman, a secretary, and a treasurer. These officers shall perform the functions prescribed by law or assigned them by the commission from time to time and shall perform all functions customarily performed by such officer.

(b) All officers shall be elected from the membership of the commission.

(c) Election of officers shall be held at the regular May meeting of each year and will take office the following September.

(d) Should an officer resign, the chairman will appoint a successor.

(e) The chairman shall preside at all meetings of the commission. If the chairman is unavailable, the vice chairman shall act in his stead.

(f) No member shall hold more than one office at a time and no member shall be eligible to serve more than two consecutive terms in the same office.

.003. Meetings.

(a) The commission shall hold four regular business meetings annually, in September, December, February, and May. A majority of the commissioners will set the date of regular meetings. Grant applications submitted to the commission will normally be considered at its December and May meetings.

(b) The chairman, executive committee, or a majority of the commissioners may call a special meeting of the commission at any time by giving at least one week's notice to all commissioners.

(c) The chairman or a majority of the commissioners will designate the place of all meetings.

(d) One-third of the members of the commission shall constitute a quorum and whenever a majority vote of the commission is required, this is deemed to mean a majority of those members present at a meeting having a quorum.

(e) No proxies are permitted at any meeting of the commission.

(f) At least one week prior to regular meetings, the staff shall furnish the members with necessary materials.

.004. Committees.

(a) All committee chairman, with the exception of the chairman of the Assistance Review Committee, and committee members shall be appointed by the commission chairman at the first regular meeting of the commission after the chairman is elected.

(b) The term of all committee memberships shall be until the next commission meeting following the termination of the term of the chairman who appointed them, or such earlier date as the chairman may designate, or until their replacement has been named.

(c) All vacancies on any committee shall be filled by the chairman.

(d) The chairman and vice chairman shall be ex officio members of each committee.

(e) A quorum at each committee meeting shall consist of half of its members.

(f) Summary minutes will be kept of all standing committee meetings, copies of which shall be promptly distributed to all committee members for review and then distributed to all commissions.

(g) The standing committees shall be the following:

(1) The executive committees shall consist of the officers of the commission, the chairmen of standing committees, and no more than three members of the commission appointed at the pleasure of the chairman. It shall act for the entire commission whenever necessary between meetings of the commission.

(2) The Administrative Committee shall consist of at least three members. The committee may recommend to the commission policies and guidelines and may work with the executive director in developing and implementing such policies and shall conduct an annual review and evaluation of commission activity and develop and control internal operating budgets.

(3) The Assistance Review Committee shall consist of at least three members and shall review, with assistance from the staff and advisory panels applications for assistance

submitted to the commission and then make recommendations to the commission. The vice chairman of the commission shall serve as the chairman of this committee. The committee shall recommend to the commission grant submission criteria.

(4) The Business Involvement Committee shall consist of at least three members and shall be responsible for coordinating activities of the commission and the business community. Reports and recommendations will be presented to the commission.

(5) The Governor's Mansion Committee shall consist of at least three members and shall be responsible for the statutory duties of the commission in regard to the Governor's Mansion. Reports and recommendations will be presented to the commission.

(6) The Liaison Committee shall consist of at least three members and shall be responsible for coordinating activities of the commission and approved statewide organizations.

(h) Special committees may be appointed from time to time by the chairman who shall designate the duties and term of such committees.

.005. Staff.

(a) Within the policies and guidelines established by the commission, the executive director shall have the responsibility to develop programs, employ staff, and to carry out operations. The executive director shall be an ex-officio member of all commission committees other than the nominating committee.

(b) No employee of the commission shall accept any office, employment, or position on any committee, governing board, or other position of possible influence, authority, or responsibility with any organization connected with the arts, whether with or without compensation, without the prior consent of the commission. No employee of the commission shall accept any honorarium or other remuneration for services rendered to any arts organization, nor own any interest in any arts organization or engage in any business, or enterprise connected with the arts without the prior consent of the executive director and the commission. It is anticipated that consent to any such outside activity will not be granted in the event the organization is one which is eligible to be a grantee of the commission or which is affiliated with one or more organizations which are eligible to be grantees of the commission.

(c) The term "employee" as used herein is not deemed to include consultants or advisors to the commission who are engaged on a contractual basis from time to time to advise the commission on limited, specific matters.

.006. Advisory Panels.

(a) The commission shall establish and appoint advisory panels consisting of at least twelve consultants in the various artistic disciplines and such other areas as the commission may deem necessary. At least five panel members are required for a quorum.

(b) The following panels are among those established: dance, education, literature, media, music, partnership, theatre, and visual arts/architecture.

(c) All current panel members' terms will expire August 1, 1980. In January of 1980 the chairman of the commission will accept nominations for new panel members. The commission will select twelve members per panel by the end of June 1980: four members will be appointed for one-year

terms, four members for two-year terms, and four members for three-year terms. Current members may be reappointed for one-year terms only. The chairperson of each panel will be designated by the commission chairman prior to the first meeting in each fiscal year. Only those members who are entering their second or third year of membership will be eligible to serve as chairperson. Members may not be reappointed until one year has elapsed from a prior term, i.e., three-year term, one year off before eligible to serve again.

(d) Vacancies in unexpired terms will be filled by the chairman for the remainder of the term.

(e) Panelists who fail to attend two consecutive meetings shall be replaced by the commission chairman to fill the unexpired term.

(f) An advisory panel nominating committee shall, each year, make nominations in writing to the commission for members of the advisory panel.

.007. Advisory Councils.

(a) The advisory council shall consist of such former members of the Texas Fine Arts Commission or the Texas Commission on the Arts as desired to continue their work for the commission, and shall serve so long as they wish to continue their support of the commission. Such commitment may require periodic reaffirmation, in writing, at the discretion of the chairman.

(b) The chairman's advisory council shall consist of such past chairmen of the Texas Fine Arts Commission or the Texas Commission on the Arts as desired to continue their work for the commission, and shall serve so long as they wish to continue their support of the commission. Such commitment may require periodic reaffirmation, in writing, at the discretion of the chairman.

(c) Duties of these advisory councils shall be to advise the commission and staff at their request and to assist with other commission duties and functions as requested. These advisory councils may meet periodically, at the call of the chairman, to review activities of the commission.

.008. Travel.

(a) All staff travel must have prior approval of the executive director and will be reviewed by the administrative committee.

(b) All travel by the commissioners (other than to and from commission and committee meetings) must be approved by the chairman.

.009. *Parliamentary Authority.* Rules contained in the current edition of *Roberts' Rules of Order*, newly revised, shall govern this commission in all cases to which they are applicable and in which they are not inconsistent with these rules, state or federal law, and any special rules this commission may adopt.

.010. Amendment.

(a) These rules can be amended at any regular or special meeting of the commission by a two-thirds vote, provided that the amendment has been submitted in writing at least seven days prior to the meeting.

(b) The staff will advise the proper governmental authority of any change in these rules as required by law.

Doc. No. 799399

Commission Practices 353.02.00

The Texas Commission on the Arts has adopted Rules 353.02.00.001-.011, which outline the practices of the commission. These practices define the functions of the commission regarding quality, sesquicentennial, major arts organizations, commission observation, project limitation, nondiscrimination, assistance review, federal legislation, resources for arts programs, state plan implementation and review, and Governor's Mansion.

Rules .001-.011 are adopted under the authority of Article 614g, as revised, Vernon's Texas Civil Statutes.

.001. Quality. The Texas Commission on the Arts will strive to achieve high quality in all of its program activities. High quality is the goal—both in the product of the programs and in the experiences of those participating in the activity.

.002. Sesquicentennial. The commission will use the Sesquicentennial as the long-range goal—the time by which the programs described in the state plan will have been implemented. The executive director will serve as a commissioner of the Sesquicentennial Commission and the Texas Commission on the Arts budget will cover the expenses of commission participation in this statewide celebration. Whenever possible, grants and other commission projects will be used to coordinate or accommodate the celebration activities in the grantees' community.

.003. Major Arts Organizations.

(a) The commission recognizes the outstanding contributions made by the major arts organizations of Texas. These organizations, traditionally funded through the generous philanthropy of the private sector, through individual and corporate contributions, are the guiding force for the established quality level of the arts in Texas.

(b) It is the intent of the commission that the state participate, at an appropriate level, with federal, municipal, and private entities, to support the continuation of high quality arts output from these major institutions so that their productions, exhibitions, and presentations will continue to be accessible to as many Texans as possible.

(c) For purposes of definition, a major arts organization is a nonprofit organization that consistently produces a high quality product as determined by advisory panels and the commission and evidenced by critical acclaim and public attendance. In addition, a major institution provides services to the community in a variety of ways, such as education and/or enrichment programs for youth, the aged, handicapped persons, tourist development activities, and is involved in current arts trends and experimentation as well as traditional activities.

.004. Commission Observation. The commission will strive to have representation at as many Texas arts events as possible. Whenever commission representatives cannot attend, a letter or telegram expressing state support of the event should be sent.

.005. Project Limitation. Certain projects identified in the state plan and supported through the review process are identified as having a limited life within the commission programs. When such projects have been completed, the designated funds will be made available to other specific projects and/or to general, unspecified arts projects.

.006. Nondiscrimination. No person shall be denied access to, and participation in, commission programs on the basis of race, color, religion, sex, national origin, age, or physical disability. This statement applies to all activities conducted by other agencies, institutions, organizations, vendors, or political subdivisions, where financial assistance in pursuit of those activities is provided, all or in part by the commission.

.007. Assistance Review.

(a) The achievement of the state plan goals will be primarily accomplished by organizations requesting assistance to satisfy the objectives of the state plan in their community and/or discipline. The system of review and recommendation by advisory panels will continue. The commission should maintain the advisory panel system, standardizing operations where beneficial, and supporting each panel's uniqueness where appropriate.

(b) Panel members' roles should be increased as valuable resources for the commission. The commission relies upon panelists as the state's experts in each discipline and the involvement should extend beyond the review of grant applications. Panelists may be asked to observe commission-funded programs and to advise the commission on matters other than grants which pertain to their areas of expertise.

(c) The commission should periodically examine the assistance review process in order to shorten the time between application and award, and to simplify the application procedure without diminishing the thoroughness and quality of the review process.

.008. Federal Legislation.

(a) The commission will maintain contact with the National Endowment for the Arts and other federal agencies in order to be aware of federal legislation or programs that will benefit the people of Texas in the area of the arts.

(b) Staff will research and assemble resource information and files on federal programs and legislation. Proposed changes or new programs will be reported to the commission and field. When needed, items will be either placed on the agenda for commission discussion and possible endorsement, or handled by the executive director in consultation with the chairman and/or the Executive Committee.

.009. Resources for Arts Programs.

(a) The commission will seek funding and/or services from federal, state, and private sources to augment the current level of state and federal funding in support of programs in the Texas State Arts Plan.

(b) The commission will apply for support directly to the funding source to be used for commission activities, to the funding source to be received by the commission on behalf of a contracted agency, or to the funding source on behalf of a contracted agency to be funded directly by the funding source.

(c) The commission policy will be to avoid direct competition with local arts organizations in obtaining private funds and to seek support only for programs of statewide significance.

.010. State Plan Implementation and Review. The commission will publicize the review and update process of the state plan each biennium. Based upon the input from the people, organizations, and communities throughout Texas, the commission will revise the plan, its targets, and measures, the Guide to Assistance, and prepare its annual

budget, grant applications, and appropriation requests. The procedure (examples of biennial process) will be as follows:

- (1) September 1979 meeting—public hearing, revise plan, pass budget, and approve revision to commission systems, such as a revision of the Guide to Assistance and agency procedures and practices;
- (2) December 1979 meeting—adopt rule changes;
- (3) January 1980—print and distribute revised state plan and commission systems; organize work program to achieve targets and to monitor and report progress;
- (4) January-May 1980—based on the state plan, begin to develop legislation program for January 1981 legislative session and prepare state appropriation request for the next biennium;
- (5) June 1980—submit appropriation request to the Legislative Budget Board;
- (6) September 1980—convene statewide Congress on the Arts where all arts-related activities will be reviewed and discussed. Focus on appropriation, state plan, legislation (also to be used for information gathering, needs assessment, problem identification, surveys, and revision to directories);
- (7) September 1980-January 1981—prepare recommendations for legislative programs;
- (8) January-May 1981—67th Legislature;
- (9) April 1981—announce opportunity for input for state arts plan update;
- (10) summer 1981—statewide input and staff work on state arts plan update;
- (11) September 1981—revise state arts plan;
- (12) repeat cycle for next biennium.

.011. Governor's Mansion.

(a) The commission will meet its mandate of overseeing of the public area of the Governor's Mansion as quoted in Article 6144g of Vernon's Texas Civil Statutes. These duties and responsibilities were transferred to the commission with the abolition of the Board of Mansion Supervisors whose enabling statute is Article 678a.

(b) In practice, the commission has directed the Governor's Mansion Committee to work closely with the governor and his wife in matters pertaining to the renovation of the Governor's Mansion. The committee must approve the disposition of historical or valuable items prior to their removal from the mansion. Nonhistorical appliances, office supplies, fixtures, and other items of insignificant value may be disposed of without prior committee approval. However, the removal of such items from the Governor's Mansion should be reported to the committee at its next meeting in order that the commission may fulfill its duties as mandated by the legislature. A formal policy regarding the committee involvement in matters pertaining to the mansion will be adopted once the renovation of the mansion is completed.

Doc. No. 799400

Texas Arts Plan 353.03.00

The Texas Commission on the Arts has adopted by reference Rule 353.03.00.001, which outlines the commission's statement of purpose, goals, and programs proposed for meeting its legislative mandate. A copy of the Texas Arts Plan is attached.

Rule .001 is adopted under the authority of Article 6144g as revised, Vernon's Texas Civil Statutes.

.001. Texas Arts Plan. The commission adopts by reference the Texas Arts Plan. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Capitol Station, Austin, Texas 78711.

Doc. No. 799401

Guide to Assistance for Arts Programs Policies and Procedures 353.04.01

The Texas Commission on the Arts has adopted Rules 353.04.01.001 and .002 with one minor change in the text (the word "special" is deleted under IV, line 2). This Guide to Assistance for Arts Programs, Policies, and Procedures, outlines the procedures an applicant must follow in requesting financial support from the commission.

Rules .001 and .002 are adopted under the authority of Article 6144g as revised, Vernon's Texas Civil Statutes.

.001. General Information.

(a) Eligibility.

(1) Any organization which qualifies as nonprofit, tax-exempt as defined by IRS Code 501(c)3 as amended, or which is public and tax-supported is eligible for support under the Texas Commission on the Arts assistance program.

(2) Organizations which do not meet these requirements may apply under the aegis, or "umbrella," of a qualifying organization which then becomes responsible for all fiscal and contractual agreements.

(b) Types of assistance. The commission awards three types of assistance:

(1) Grants. A grant is a contract between the commission and a nonprofit organization in which the commission agrees to pay the organization a designated amount (up to 50% of cost) to provide a specific arts activity or program for the benefit of the public.

(2) Underwriting. The commission has a "protection against loss" category called "underwriting" for projects that generate income. Priority is given to organizations demonstrating a history of attaining projected revenues. Underwriting projects the sponsor and guarantees that certain fixed and "up front" costs will be covered in the event of disaster or a deficit between actual approved expenses and actual revenue. In this category, the commission will agree to protect the applicant up to an agreed-upon amount. It is expected that the project will operate as budgeted. Unused underwriting funds will be rebudgeted by the commission for other programs.

(3) Endorsement. Organizations receiving funds from the Texas Commission on the Arts may be endorsed by the commission in fund-raising activities, and the executive director may write letters for these organizations to assist their efforts. Organizations not funded may also request commission endorsement for their projects. These requests will be considered through the same review process as requests for funds.

(c) Matching requirements. Funds provided by the state through the grants process must be matched by the application organization; matching funds are generally expected to be in cash or in cash and "in-kind."

(1) Cash includes all actual dollars spent on the project: fees, salaries, material, and may come from ticket sales, contributions, membership fees.

(2) In-kind.

(A) In-kind matching represents the value of non-cash contributions provided by the grantee, other public agencies and institutions, and private organizations and individuals. In-kind may include charges for real property and equipment, and value of goods and services directly benefiting and specifically identifiable to the grant project.

(B) Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor who are not on the payroll of the organization. Each hour of volunteer service may be counted as in-kind if the service is an integral and necessary part of an approved project. Rates for volunteers should be consistent with those regular rates paid to employees or contractors for similar work.

(C) Contributed materials include office supplies, maintenance supplies, or workshop or classroom supplies. Cost assigned to donated materials included as in-kind should be reasonable and should not exceed the cost of the materials to the donor or current market prices, whichever is less, at the time they are charged to the project.

(D) Other necessary charges incurred specifically for and in direct benefit to the grant project in behalf of the grantee may be accepted as in-kind provided that they are adequately supported and permissible under the law.

(d) Assistance review. Organizations wishing to conduct programs identified in the state plan or other art programs of benefit to the people of Texas may request assistance from the Texas Commission on the Arts. The assistance review process will be the basic system used to determine which arts programs and activities will receive financial assistance or endorsement from the commission. Commission funds are not budgeted or assigned by geographic area or artistic discipline. Funds are budgeted for the specific programs of: touring, education, major support, and statewide partners. All other awards will be made with funds budgeted in the general support category. The commission will provide reasonable access to applicants for assistance in the preparation of grant applications. This includes printed material and consultation. Applicants whose applications are not successful will receive explanations or evaluations if requested.

(1) Review procedure.

(A) All applications received by the application deadline are first reviewed by the commission staff to assure eligibility of applicant and the completeness and accuracy of application.

(B) Applications are then reviewed and evaluated by one or more of the commission's eight advisory panels (dance, education, literature, media, music, partnership, theatre, and visual arts/architecture) made up of professionals and lay people in each discipline.

Panel recommendations are made to the commission's Assistance Review Committee.

(C) All applications are reviewed by the Assistance Review Committee and recommendations are made to the full commission.

(D) Applications then receive final review by the full commission at which time awards are made.

(2) Review criteria. The Texas Commission on the Arts considers arts project proposals according to their compatibility with both the local community and state arts plans as well as six important review criteria.

(A) Artistic quality: Degree of professionalism—How will the project upgrade the artistic standards of the organization and community, and improve understanding and appreciation of the arts?

(B) Public participation: Public involvement in organizing, implementing, and evaluating the project, and participation through attendance.

(C) Need for services: Evidence of demand—Are comparable services available now?

(D) Financial need: Based on clearly demonstrated financial need, a realistic budget, and reasonable ratio of program expenditures to administrative costs.

(E) Management capabilities: Ability to complete the project successfully, considering such indicators as governing board, adequate and skilled project personnel, fiscal operations, quality and timeliness of previous grant reports and evaluations.

(F) Other funding sources: Evidence of strong financial commitment to the applicant and the project by other sources, or evidence of exploration of funding sources other than the commission, such as local organizations and agencies, and a reasonable amount of cash matching funds, as well as in-kind contributions or services.

(e) Assistance policies.

(1) Support of resident Texas arts organizations and artists.

(A) The commission recognizes the importance of fostering the growth of our state's arts resources and gives priority to those projects involving resident artists and arts organizations.

(B) While the commission considers its primary responsibility to be the support of resident arts organizations, this does not exclude use of out-of-state organizations which provide services or programs not available within the state, or which supplement those available within the state.

(2) Special constituencies and concerns. The commission encourages projects which reach special audiences comprised of citizens who are not regularly served by arts events. These audiences include the handicapped, institutionalized, elderly, lower income groups, and ethnic minorities.

(3) Colleges and universities. The commission supports college and university arts projects only if a project benefits the community and is easily accessible to persons who are not enrolled as students.

(4) Geographic consideration. Access to the arts for all Texans is a high priority and the commission strives to distribute funding to as many communities and neighborhoods as possible. Special emphasis may be placed on cooperative or touring projects involving major institutions and small communities which do not have reasonable access to museums, performing arts, literary events, or similar activities.

(5) Payment procedures. Up to 80% of a grant award may be paid prior to project completion, if requested, with the balance paid after the project is completed and an evaluation report is filed with the commission.

(6) Visitations/observations. Observations by staff, commissioners, or advisory panel members help the commission learn more about the programs funded than can be conveyed in written project reports. Such on-site visits should be beneficial to the organization as well as to the commission and will enable the commission to better help others who want to conduct similar programs.

(f) Application deadlines and notification.

(1) Application deadlines for the assistance review process are as follows (exceptions: sponsor applications for artist-in-residence programs; emergency or special consideration applications; and sponsor applications for in-state touring and NEA support of dance touring—see individual descriptions for further information):

(A) February 1 for projects beginning no earlier than the following June 1, and for annual review of organizations wishing to participate in Texas touring arts programs;

(B) September 1 for projects beginning no earlier than the following January 1.

(2) Applicants will be notified of action on their proposals immediately following the regular commission meetings in May and December, respectively.

(3) The commission encourages applicants to plan for projects in advance. Specific provisions have been made in the commission budget for organizations needing to plan programs up to two years in advance.

(g) Emergency or special consideration procedure.

(1) The commission, in its assistance review process, may appropriate blocks of funds for small grants which may be awarded to organizations through a special consideration procedure. Currently, this procedure is used for grants in the following categories: arts councils, original works of art, and consultants. Applicants in these categories should submit a letter describing the proposed project to the commission. If the project meets the criteria, and funds are available, a short application form will be sent to the applicant. The executive director, Assistance Review Committee chairman, and commission chairman will approve projects.

(2) The emergency or special consideration procedure may sometimes be used for grants in categories where the commission has not appropriated specific funds. In this case, the Assistance Review Committee chairman, commission chairman, and executive director may approve applications. Requests in excess of \$2,500 require the approval of the commission Executive Committee. However, this procedure will be used rarely because to do so circumvents the advisory panel system.

(h) Special terms and conditions.

(1) Grants from the commission are actually service contracts between the organization and the commission. Grant contracts must be signed and returned immediately. No budget changes can be made without the prior consent of the commission.

(2) The commission requires that each grantee provide assurances of compliance with state and federal laws and regulations pertaining to the following:

(A) Fair labor standards including minimum wage and working conditions.

(B) Civil rights including prohibition against discrimination on the basis of race, color, creed, national origin, sex, age, marital status, or handicap.

(C) Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against handicapped people. Special note is made of the new National Endowment for the Arts regulations, effective May 1979, applying to federal funds awarded to the commission and its subgrantees.

(D) Free access to accounting records relevant to funds expended under terms of the commission grant, for purposes of auditing, examination, excerpting, and transcription.

(E) Observation.

(i) Submitting an application.

(1) Applicants are urged to thoroughly familiarize themselves with the guidelines before beginning to fill out the application forms. Instructions are included with the application forms and the commission staff is available to answer questions and to assist applicants in filling out the application.

(2) Previous applicants should note that the guidelines are updated yearly.

(3) All applicants should notify their local arts councils and elected government officials of their applications.

(4) Incomplete applications will be returned for completion, and must be resubmitted before the appropriate deadline.

(5) Deadlines are firm. Applications must be postmarked by the deadline, or hand-delivered to the commission office in Austin by 5 p.m. on that date or 5 p.m. of the last business day preceding the deadline.

(6) Organizations which have previously been funded must fulfill or be meeting all obligations of the previous grant(s), as stated in the grant contract, before funds for subsequent proposals will be awarded under a new grants period. All grants are subject to audit for compliance with contract provisions.

(7) Applications and detailed supporting information should be submitted to: Texas Commission on the Arts, P.O. Box 13406, Capitol Station, Austin, Texas 78711.

002. Program Information. Applicants should review the Texas State Arts Plan for detailed program descriptions.

(1) Arts programs—organizations and activities.

(A) Major support.

(i) Organizations eligible for funding in the major support category must:

(I) Meet the general eligibility for commission assistance.

(II) Qualify as a major organization which is a nonprofit organization that consistently produces a high quality product as determined by advisory panels and the commission and evidenced by critical acclaim and public attendance. In addition, a major institution provides services to the community in a variety of ways—education activities and programs for special audiences—and is involved in current arts trends and experimentation as well as traditional activities.

(III) Address one or more of the seven purposes identified in the state plan (see Financial Assistance Section of the state plan—"Organization Support").

(IV) Be a public or private agency (including major organizations) with a project that will improve the quality of the arts, improve arts planning and evaluation, increase the accessibility and/or increase the stability of the arts for the people of Texas.

(ii) Funds must be matched three nonstate dollars to one state dollar—maximum awards not to exceed \$25,000 per application.

(B) Statewide partners.

(i) The commission supports increased coordination within arts disciplines and will encourage the development of strong statewide partners in the areas of theatre, dance, music, media, and visual arts similar to the currently existing partner organizations for museums—Texas Association of Museums, and arts councils—Texas Assembly of Arts Councils. The commission will support the existing

partner organizations through funding, technical assistance, and cooperative programming.

(ii) Eligible organizations may apply through the assistance review process. Funding is directly related to the needs of the discipline, the demonstrated ability of the organization to provide needed service, and the number of member organizations being served by the applicant. Funding is limited to flow through funds from federal sources and, in some cases, state support will be considered not to exceed a 1:1 match of the federal funds. For those statewide organizations not receiving federal funds, applications will be considered for funding up to \$10,000 per organization.

(C) General support. Organizations must meet the general eligibility requirements for commission funding. The commission may provide support to a limited number of organizations providing arts services to meet one or more of the seven purposes identified in the state plan (see Financial Assistance Section of state plan—"Organization Support"). Funding requests must be clearly identifiable with a quality arts product, although the product does not have to be a new or special project. General support funding is limited to \$10,000 per project. The following specific areas which are identified in the state plan will also be funded through "general support."

(i) Original works of art.

(I) Planning assistance. The commission appropriates a limited amount of money to assist organizations wishing to encourage the creation of an original work of art. Applicants may receive a maximum award of \$750 to assist in the planning, promotion, and coordination of projects designed to result in the creation of an original work of art. Applications should be made through the "special consideration" process. Funds may not be used to produce the work, pay for material, supplies, or artists fees.

(II) Eligible organizations may apply for an award up to \$5,000 to commission an original work of art. Applicants should be aware that each advisory panel may recommend only one project per year and that the regular "matching requirement" for all awards also applies here.

(ii) Recognition awards. Eligible organizations may apply for an award on behalf of a Texas artist of merit to enable the artist to complete a significant work of art. Applicants should be aware that each advisory panel may recommend only one award per year and that the "matching requirement" for all awards also applies here. Awards in this category may not exceed \$5,000.

(iii) Organizational development support.

(I) Professional staff. Eligible organizations may request assistance for professional staff. Local arts councils and local city governments will be contacted by the commission during the review process to assure that projects funded will be beneficial to the community. Organizations receiving priority rating in this program include arts councils and existing professional organizations demonstrating need for personnel to provide assistance in resource development, management, product development, and/or need to insure organization stability, economic independence, artistic continuity. Awards will not exceed \$6,000 per application.

(II) Intern. Eligible organizations may apply to assist individuals who are interested in embarking upon careers in the arts and/or arts administration to serve one-season or one-year internships. Awards will be to the organization for a maximum of one year per intern. The organization must be capable of providing in-depth artistic or

management experience. Applications must include descriptions of the training program and resumes of professional staff who will participate in supervision/training of the intern and a description of its intern selection process. The organization's application will be reviewed through the assistance review process. Awards will be to the organization, not to the individual, and must be matched 1:1 by the host organization. Awards will not exceed \$3,000 per intern.

(III) Consultants. Eligible organizations may request funds to resolve organizational problems. Awards may be granted to provide support to cover consultant fees, travel, per diem, as well as supplies, equipment rental, or similar expenses related to the consultancy. One-day artists' residencies are also eligible under this category. Applications should be made through the "special consideration" process. A maximum of \$750 will be awarded for each consultation.

(IV) Facility sharing. Eligible organizations may apply for support to locate facilities in which to house arts programs, exhibitions, workshops, and performances for their communities. Support from the commission will be primarily to encourage sharing of existing community facilities, such as schools, community colleges, and recreation centers, and other alternative spaces such as stores, warehouses, churches. Commission support will be awarded to encourage experimentation and funds will be committed primarily to cover any additional costs the owner may experience when making the facility available for arts activities for the community; i.e., extra utilities, incidental supervisory or janitorial costs, or modest remodeling costs. Awards in this area will not exceed \$1,000 per application. In cities/towns where facilities for arts events are nonexistent or totally inadequate, commission support may be awarded in the form of small consultant grants for planning, studies, and fund-raising services required in buying, remodeling, or building arts facilities (see consultant program).

(iv) Limited support for organizations. Eligible organizations may apply for support to initiate and/or experiment with the development of youth arts or arts in community service programs. Commission involvement in these projects is limited both by the amount of financial support and length of time the commission is willing to continue to assist projects in these areas. Advisory panels may recommend no more than two projects per year in each of these areas and projects must show how other, more appropriate agencies, organizations will be encouraged to continue these projects at the completion of the commission's support. Awards are not to exceed \$5,000 per project.

(v) Community arts agencies. Nonprofit community arts councils, units of local government charged with the responsibility for developing and coordinating the arts in their communities and/or other community-wide arts coordinating agencies may apply for financial assistance. Assistance is for the coordinating organization to maintain liaison between the state and its local arts organization, artists, and residents to provide information and technical advice at the local level on behalf of the commission and to obtain, maintain, and communicate to the commission basic information—listing of organizations and pertinent data such as program, participants, community arts plan, financial information—required by the state. Only one application will be awarded per incorporated jurisdiction. In some cases, only may be awarded per county or region. Eligible organizations should include in their applications information from com-

munity arts organizations, school districts, city governments, artists indicating their support of the applicant organization as arts coordinator and liaison. Awards will be based on the number of organizations and individuals being served by the organization. Financial support will be to cover the costs of planning, coordinating, and communicating on behalf of the commission. Awards will not exceed \$10,000 per application.

(2). Education programs.

(A) Artists-in-residence (artist-in-schools and Emergency School Aid Act programs).

(i) Selection procedures for artists and sponsors. Professional artists are placed in primary and secondary schools throughout Texas for residencies ranging in length from one week to nine months. Eligible sponsors may be accredited school districts, nonprofit, tax-exempt organizations, government entities, museums, and arts councils. Sponsors select the type of residency suitable to the needs of the local school district. Under most circumstances, the artist is contracted for 40 hours of service per week. The week is divided into the following components:

(I) 15 hours per week in the classroom—student workshops, lectures, or demonstrations;

(II) two hours per week—teacher workshops designed to insure that teachers will be able to carry through artist-in-residence program ideas once the artist leaves;

(III) three hours per week—community projects which might include community workshops, work in hospitals, jails, and nursing homes, parent and family events, exhibitions, masterclasses, speeches, etc. For residencies of one to four months, this community work will culminate in at least one major community event (exhibit, performance, etc.). For nine-month residencies, artists are required to organize a minimum of two community events.

(IV) 20 hours per week—artist devotes this time to professional development. At the end of the residency, the artist is required to account for this time by presenting an artistic product to the community in the form of an exhibit, performance, etc. The artist will be encouraged to work with the community to produce an original work of art, and will be required to inform the commission of the presentation and, when possible, to send documentation of the event to the commission.

(ii) Artists. Artists must apply by February 1 for programs starting the following September. Applicants are interviewed by a panel of professionals in the various disciplines and a limited number of artists will be approved for participation in the programs. Priority will be given to Texas artists, although non-Texas artists are eligible to participate. It should be noted that selection does not guarantee employment. The commission assists local sponsors in locating qualified artists for residencies from the list of approved artists. Approved artists who do not receive employment contracts will be notified as close to September 1 as possible that residencies have been filled. When vacancies occur, approved artists will be given one week in which to apply. If no applications are received or an approved artist is not selected, the sponsor and the commission will jointly approve the replacement artist in consultation with representatives of the review panel.

(iii) Artist-in-schools sponsors. Sponsors of resident artist programs under the artist-in-schools program must apply by July 1 for programs beginning in September. The education panel will review applications in late July on the basis of the following criteria:

(I) the involvement of parents, teachers, artists, students, administrators, and existing schools and community art organizations in the planning and execution of the proposed program activities;

(II) the commitment to building ongoing arts in education programs in order that residencies become an established part of the school curriculum as reflected through the district's curriculum plan;

(III) the quality of the proposed program and the ability of the school to carry out the program;

(IV) the type of art program currently offered by the school and how the artist-in-schools program would enhance the existing program;

(V) the applicant organization's effective use of previous grants, including sound accounting and prompt and complete reporting procedures;

(VI) the existence of similar programs in the community (i.e., art after school) and whether or not most students would be able to take advantage of this type of program if offered.

Following consideration of the six criteria, final decisions will be made after reviewing the overall geographic, ethnic, rural, and urban distribution of the grant requests. Awards will be made before September 1. Funding for artist-in-schools projects is limited to \$7,500 per application.

(iv) Emergency School Aid Act sponsors. Sponsors of the Emergency School Aid Act special arts project must apply by November 12 for projects beginning the following September. The ESAA Advisory Panel will review applications in late November. Eligible sponsors include any accredited school, K-12, which has between 20% and 80% minority population and is in compliance with HEW regulations under Title VI of the Civil Rights Act of 1964. The district must be implementing a desegregation plan and the art activities must be conducted with students affected by the plan. Projects are funded on a declining scale and funding is limited to \$15,000 per application. Proposals must include the following (application instructions and forms are available at the commission office):

(I) a description of the residency should indicate art disciplines and length of residency desired, grade levels, schools involved, enrollments by minority classification, and art activities envisioned;

(II) a description of how residency activities aid the district's desegregation efforts;

(III) submission of a survey of community resources (arts councils, libraries, and museums) which might be valuable;

(IV) a list of suggestions for involving parents and the community in the program;

(V) submission of the district's curriculum arts plan for the next three years.

(B) Community coordinators. School districts may apply for support for a part-time arts and education coordinator in their district. In school districts sponsoring an artist-in-residence program, the coordinator will be responsible for the administration of the artist-in-residence program. In all cases, the coordinator will work with other school personnel to identify and utilize the available art resources in the community to enrich the school curriculum, to serve as a liaison with community arts organizations, and to research new resources and new ways of using existing resources to provide for arts and education in the school or community. Schools wishing to apply for a school coordinator may apply through

the commission's assistance review process. Awards in this category may not exceed \$6,000 per application.

(C) Touring arts team. Eligible organizations may apply for assistance to experiment with short-term artists in residence projects. A touring arts team will travel to small towns in Texas which ordinarily do not have access to a professional artist. The team will consist of two artists in different disciplines and will conduct workshops for students, teachers, and the community. Sponsors will be responsible for scheduling the teachers and administrators from their district or region for the workshops. Interested sponsor organizations may apply for assistance in this project through the assistance review process. Participants in this program will be encouraged to sponsor an artist-in-residence in future years. Artists wishing to participate should apply through the assistance review process. Awards in this category may not exceed \$300 per sponsor.

(3) Touring programs. The purpose of the touring programs is to bring quality arts events to all communities within the state, encourage the cooperation between small communities to share arts activities, encourage interaction between residents, performers, and artists through residency activities, and showcase quality Texas artists inside and outside the state. Priorities in this area include: in-state touring by Texas artists, in-state touring by non-Texas artists, and dance touring.

(A) In-state touring by Texas artists.

(i) Support for this category is provided in the form of fee support for sponsors of participating touring companies and organizations. The producing organization will submit a request for a specific amount of touring support and, if awarded, will be included in the Texas Touring Arts Program brochure announcing the availability of touring events to the communities.

(ii) The producing organization. Companies and organizations must meet the following commission criteria for participation:

(I) a history of sound artistic and administrative direction;

(II) a good artistic reputation with the ability to submit a representative history that demonstrates a high level of accomplishment;

(III) administrative expertise for touring, including sound budget policies;

(IV) quality productions with high marketability within the state and a residency/performance cost which is in accordance with the commission's funding ability;

(V) quality promotional materials;

(VI) well-developed residency services such as workshops, clinics, and/or other structured programs of educational value;

(VII) nonprofit, tax-exempt, or represented by a nonprofit, tax-exempt fiscal agent.

(iii) The company tour planning process should give consideration to the following needs of sponsors;

(I) provide for events in a wide range of performing spaces;

(II) offer repertoire options with broad appeal;

(III) maintain flexibility in the technical requirements of sponsors;

(IV) provide meaningful residency activities, including workshops, lectures, masterclasses, etc.;

(V) show high artistic and managerial quality;

(VI) keep costs as low as possible.

(iv) Companies must complete the Texas Touring Arts Program performing arts or visual arts application and attach the necessary documentation. These applications are initially reviewed by the appropriate disciplinary panel for quality of product. Applications are subsequently reviewed by a touring committee which will consider the feasibility of company fees as they relate to available funding and make recommendations to the Assistance Review Committee and the commission. Once approved, the company will be notified of the available funding for its tour. The company will then be able to start booking.

(v) The sponsoring organization. Organizations participating as sponsors in the Texas Touring Arts Program should meet the eligibility requirements for assistance from the commission as identified in the Guide to Assistance. Sponsoring organizations are responsible for the selection of touring companies that fit their community's needs and facilities. The sponsor and the company are responsible for booking and contract negotiations. Once negotiations have been finalized, the sponsor must submit a Sponsor Assistance Request form before signing a contract with a company. Upon verification of funding from the commission, contracts may be signed.

(vi) Deadlines. The deadline for all company proposals for the touring season is February 1 (major touring proposals should be submitted at the February 1 deadline one year in advance of the touring season). Determination of awards will be announced in May. For additional assistance in preparing touring proposals or becoming an exhibition sponsor, information may be obtained by contacting the Texas Commission on the Arts.

(B) In-state touring by non-Texas artists. This category is designed to provide assistance to Texas sponsors wishing to present professional talent from outside the state, including international organizations. Support for the non-Texas touring arts organizations will be provided through the assistance review process in amounts not to exceed 50% of the fee.

(C) Dance Touring Program. Under a separate grant from the National Endowment for the Arts, the commission coordinates the endowment's Dance Touring Program within Texas. September 1 to March 3 constitutes the booking season for dance activities occurring between the following June 1 to May 31. Information on dance companies participating in the touring season can be obtained from the endowment or the commission office. Sponsors may receive financial assistance from the endowment up to 30% of a company's fee for professional dance residencies under certain conditions as stated in the endowment guidelines. The commission staff may assist interested sponsors regarding the new Dance Touring Program guidelines. Additional financial support, up to 20% of the Dance Touring Program company fee, may be requested from the commission under the guidelines of the assistance review process.

Doc. No. 799402

Application Materials 353.04.02

The Texas Commission on the Arts has adopted by reference Rules 353.04.02.001-.007, which outline the instructions and application forms for those wishing to request support for arts programs as described in the commission's Guide to Assistance, Policies, and Procedures (Rules 353.04.01.001

and .002). Instructions and application forms are attached for the regular assistance review process, assistance request (short version), Artist-in-Schools Program sponsors, Emergency School Aid Act special arts project sponsors, Texas Touring Arts Program—sponsors, Texas Touring Arts Program—producing organizations (visual arts), and Texas Touring Arts Program—producing organizations (performing arts).

Rules .001-.007 are adopted under the authority of Article 6144g as revised, Vernon's Texas Civil Statutes.

.001. Instructions and Application Form for Assistance Review Process. The commission adopts by reference the instructions and application form for the regular assistance review process as outlined in the commission's Guide to Assistance, Policies, and Procedures. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Capitol Station, Austin, Texas 78711.

.002. Instructions and Application Form for Assistance Request (Short Version). The commission adopts by reference the instructions and application form for assistance request (short version) as outlined in the commission's Guide to Assistance, Policies, and Procedures. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Capitol Station, Austin, Texas 78711.

.003. Instructions and Application Form for the Artist-in-Schools Program Sponsors. The commission adopts by reference the instructions and application form for sponsor applications for the Artist-in-Schools Program as outlined in the commission's Guide to Assistance, Policies, and Procedures. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Capitol Station, Austin, Texas 78711.

.004. Instructions and Application Form for the Emergency School Aid Act Special Arts Project Sponsors. The commission adopts by reference the instructions and application form for sponsor applications for the Emergency School Aid Act special arts project as outlined in the commission's Guide to Assistance, Policies, and Procedures. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Capitol Station, Austin, Texas 78711.

.005. Instructions and Application Form for the Texas Touring Arts Program—Sponsors. The commission adopts by reference the instructions and application form for sponsor applications for the Texas Touring Arts Program as outlined in the commission's Guide to Assistance, Policies, and Procedures. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Capitol Station, Austin, Texas 78711.

.006. Instructions and Application Form for the Texas Touring Arts Program—Producing Organizations (Visual Arts). The commission adopts by reference the instructions and application form for producing organizations' applications for the Texas Touring Arts Program (visual arts) as outlined in the commission's Guide to Assistance, Policies, and Procedures. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Capitol Station, Austin, Texas 78711.

.007. Instructions and Application Form for the Texas Touring Arts Program—Producing Organizations (Performing Arts). The commission adopts by reference the instructions and application form for producing organizations' applications for the Texas Touring Arts Program (performing arts) as outlined in the commission's Guide to Assistance, Policies, and Procedures. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Capitol Station, Austin, Texas 78711.

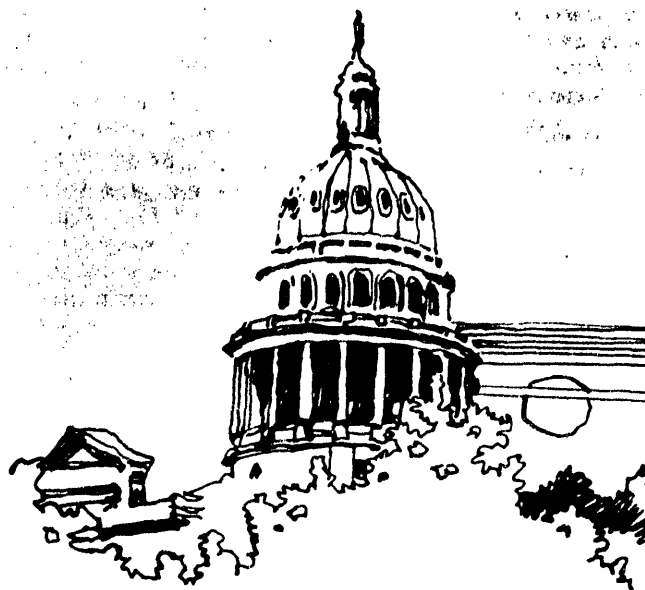
Issued in Austin, Texas, on December 10, 1979.

Doc. No. 799403 Allan K. Longacre II
Executive Director
Texas Commission on the Arts

Effective Date: January 1, 1980

Proposal Publication Date: November 9, 1979

For further information, please call (512) 475-6593.



Texas State Board of Dental Examiners Conduct

Fair Dealing 382.19.15

The Texas State Board of Dental Examiners has withdrawn from consideration for adoption the proposed amendment of Rule 382.19.15.004, Records and Their Transfer. The text of the rule as proposed for amendment was published in the October 23, 1979, *Texas Register* (4 TexReg 3865).

Issued in Austin, Texas, on December 10, 1979.

Doc. No. 799426 Carl C. Hardin, Jr.
Executive Director
Texas State Board of Dental Examiners

Filed: December 11, 1979, 3:51 p.m.

For further information, please call (512) 475-2443.

Texas Education Agency Adaptations for Special Populations

Adoption by Reference 226.35.95

The Texas Education Agency has amended Rule 226.35.95.020, the adoption by reference of the State Plan for Migrant Education. The amendment reflects the adoption of a plan for fiscal year 1980 for funds provided for the education of migrant students under Public Law 95-561.

The rule is adopted with no changes from the text as proposed.

This rule amendment is promulgated under the authority of Section 11.02(a), Texas Education Code and Public Law 95-561.

.020. *State Plan for Migrant Education.* Rules for Migrant Education are contained in the State Plan for Migrant Education (fiscal year 1980) which was developed as a requirement under Public Law 95-561 and which is adopted by this reference as the Texas Education Agency's official rules. A copy is available for examination during regular office hours, 8 a.m. to 5 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency (headquarters) building, 201 East 11th Street, Austin, Texas.

Issued in Austin, Texas, on December 7, 1979.

Doc. No. 799320 A. O. Bowen
Commissioner of Education

Effective Date: December 28, 1979

Proposal Publication Date: November 2, 1979

For further information, please call (512) 475-7077.

Teacher Education

The Teacher Education Review Process 226.61.01

The Texas Education Agency has amended Rule 226.61.01.010, concerning teacher education. The amended rule clarifies that regulations relating to the teacher education process shall govern the approval or disapproval of (1) institutions engaged in the preparation of teachers, (2) individual teacher education programs in such institutions, and (3) licenses and degrees for salary purposes under the Public Education Compensation Plan which are conferred by or based upon credit earned in an approved teacher education institution. The teacher education review process shall be administered through the Texas Education Agency at the direction of the Commission on Standards for the Teaching Profession.

Public review and discussion of the proposed rule were held. The rule is adopted with no change from the text as proposed.

This rule is promulgated under the authority of Section 13.032, Texas Education Code.

.010. General Provisions.

(a) Policy.

(1) The legally constituted authorities of Texas have the responsibility for insuring an adequate supply of

qualified and competent teachers for the state public school system. These policies and procedures relating to the teacher education process shall govern the approval or disapproval of:

(A) institutions engaged in the preparation of teachers;

(B) individual teacher education programs in such institutions; and

(C) licenses and degrees for salary purposes according to the state compensation pay plan for educational personnel, which are conferred by or based upon credit earned in an approved teacher education institution.

(2) The teacher education review process shall include the identification, the coordination of preparation and performance, and the development and continuous reevaluations of programs and institutions concerned with preparing teachers. The process shall be administered through the Texas Education Agency at the direction of the Commission on Standards for the Teaching Profession. The development of the quality of teacher education is a major responsibility of the Texas Education Agency and shall be in accordance with law.

(b) Administrative procedure. The Division of Teacher Education of the Texas Education Agency has the primary responsibility for administering the teacher education program.

Doc. No. 799406

Standards for Teacher Education Institutions 226.61.03

The Texas Education Agency has amended Rule 226.61.03.010, concerning standards for teacher education institutions. These standards are recommended by the Commission on Standards for the Teaching Profession and approved by the State Board of Education. All institutions, branches, clusters, centers, or similar organizational arrangements operating teacher education programs in Texas must be approved by the Commission on Standards for the Teaching Profession. The text of the administrative procedure section of the rule has been deleted.

This amendment is adopted under the authority of Section 13.032, Texas Education Code.

.010. General Provisions.

(a) Policy. Standards which shall be met by colleges and universities to be approved teacher education institutions are recommended by the Commission on Standards for the Teaching Profession and approved by the State Board of Education with the advice and assistance of the commissioner of education. These standards shall be known as Standards for Teacher Education. All institutions, branches, clusters, centers, or similar organizational arrangements operating teacher education programs in Texas must be approved by the Commission on Standards for the Teaching Profession in accordance with one of the following:

(1) Standards for Teacher Education in Texas, 1955, Standards 1-8 inclusive, as amended.

(2) Texas Standards for Teacher Education and Certification, June 1972 as amended in 1973. Institutions which exercise this option for undergraduate programs must meet fully Standard 7 of the 1955 standards as amended. Institutions which offer graduate programs must meet fully Standard 8 of the 1955 standards as amended.

(3) A combination of the Institutional Standards, 1955 or 1972, and the 1955 Program Standards.

(b) Administrative procedure. (Reserved for expansion.)

Doc. No. 799407

The Institutional Review Process 226.61.04.010, .020

The Texas Education Agency has amended Rules 226.61.04.010 and .020, concerning the procedure for review of institutions for teacher education programs and activities and the recognition of degrees for teacher certification purposes.

Public review and discussion of the proposed rules were held. The rules are adopted with no changes from the text as proposed.

These rules are adopted under the authority of Section 13.032, Texas Education Code.

.010. *Institutional Review in General.*

(a) Policy. The Commission on Standards for the Teaching Profession shall be responsible for approving or disapproving institutions for teacher education programs and activities and the recognition of degrees for teacher certification purposes.

(b) Administrative procedure. The staff of the Texas Education Agency, the Division of Teacher Education having primary responsibility, assists in the review of teacher education institutions as requested by the Commission on Standards for the Teaching Profession, as directed by the State Board of Education and the commissioner of education.

.020. *Review of an Institution Requesting Approval of the Teacher Education Program.*

(a) Policy. The review process for an institution requesting approval of a teacher education program shall be administered by the Texas Education Agency in accordance with applicable law and administrative procedures approved by the State Board of Education.

(b) Administrative procedure. Administrative procedures for approval or disapproval of institutions are found in 61.04.021-.029.

Doc. No. 799408

226.61.04.021-.029

The Texas Education Agency has adopted Rules 226.61.04.021-.029, concerning procedures for review of institutions for teacher education programs and activities.

Public review and discussion of the proposed rules were held. The rules are adopted with one change in Rule .023(b)(2) from the text as proposed. In Rule .023(b)(2), the last word of the first sentence should be "visits" rather than "visit." There are no other changes from the text as proposed.

These rules are adopted under the authority of Section 13.032, Texas Education Code.

.021. *Application for Approval.*

(a) Policy. (Reserved for expansion.)

(b) Administrative procedure.

(1) An institution desiring initial approval shall file an application with the Texas Education Agency, listing the teacher education program for which approval is desired. Institutions must reapply for approval near the end of each approval period.

(2) The applying institution shall submit to the agency schedules pertaining to the program for which approval is desired.

.022. *The Visiting Team.*

(a) Policy. (Reserved for expansion.)

(b) Administrative procedure.

(1) A visiting team appointed by the commissioner of education will review the schedules and visit the institution for the purpose of reviewing and reporting on the education program. The visiting team verifies the institutional self-study; reviews the institution's programs; prepares a report to the Commission on Standards for the Teaching Profession noting strengths, weaknesses, and concerns with regard to the institution's program; recommends corrective action which should be taken by the institution to strengthen its program; and proposes to the Commission on Standards for the Teaching Profession its recommendation on approval or disapproval and in the case of approval the length of time and conditions of approval, if any.

(2) The size and composition of the team will be in keeping with the nature and scope of the program being reviewed; however, the visiting team membership shall consist of representatives from a similar type institution, at least one Texas Education Agency staff member, and other appropriate professional personnel.

(3) The expenses incurred by the visiting team are borne by the Texas Education Agency.

.023. *Decision concerning Approval.*

(a) Policy. (Reserved for expansion.)

(b) Administrative procedure.

(1) The Commission on Standards for the Teaching Profession will use all the information submitted about an institution as the basis for making decisions concerning approval or disapproval. Institutions may challenge the report and recommendations of the visiting team to the Commission on Standards for the Teaching Profession.

(2) Approval may be either with or without specific conditions which are to be met by the institution during the years between the visits.

(A) Approval without conditions. Approval without conditions is given when the institution being evaluated is considered to be meeting the standards fully and when no deficiencies are identified. Normally, this approval would be for the maximum time of approval; however, in certain situations the approval without conditions might be for a period of time shorter than that of maximum approval.

(B) Approval with conditions. Approval with conditions is given when it is considered that the programs of the institution being evaluated do not meet the standards fully and/or when it is considered that the institution should take specific corrective action within a specified period of time. The conditions to be met by the institution shall be specified along with the time line for the institution to report its action to the Commission on Standards for the Teaching Profession. It is understood that approval with conditions means that the approval of the institution after the first reporting period depends upon its satisfying the Commission on Standards for

the Teaching Profession that it is successfully correcting the conditions specified in the team's findings. Failure on the part of the institution to satisfy the Commission on Standards for the Teaching Profession shall bring the matter of the institution's approval back to Commission on Standards for the Teaching Profession for reconsideration.

.024. Time of Approval.

- (a) Policy. (Reserved for expansion.)
- (b) Administrative procedure. Approval of an institution of higher education for preparing professional school personnel is given for a period of from one to five years. The years and conditions of approval which are to be met by the institution are based upon the team's evaluation of the programs of preparation at the institution at the time of the visit.

.025. Deferred Status.

- (a) Policy. (Reserved for expansion.)
- (b) Administrative procedure. When conditions of teacher education at an institution are judged to be so critical that immediate corrections are necessary or when conditions are judged to be so unstable that time is needed for the institution to take action to stabilize the conditions, action on approval of a given institution may be deferred. Deferment would be until the next meeting of the Commission on Standards for the Teaching Profession or until another specified meeting. Upon recommendation, the chief administrator of the institution would be invited to meet with the Commission on Standards for the Teaching Profession regarding the conditions noted. During the intervening time, the teacher education staff of the Texas Education Agency, the chair of the team which visited the institution, or other entity designated by the Commission on Standards for the Teaching Profession shall work with the administration of the institution in the development of a satisfactory plan and commitment for upgrading the conditions noted. The plan and commitment shall become the basis for discussion when the chief administrator meets with the Commission on Standards for the Teaching Profession. A maximum of one year deferral time may elapse after which the institution shall automatically become disapproved, or approval shall be discontinued, if it has not taken action to meet the standards regarding the conditions noted.

.026. Provision for Students Already Enrolled in Institutions Which Withdraw or Are Disapproved.

- (a) Policy. (Reserved for expansion.)
- (b) Administrative procedure. If an institution desires to withdraw from or is disapproved for teacher education, it will submit to the Texas Education Agency a list of those students of junior standing or above presently enrolled in the program so that recommendations for certification for those students will be honored. Recommendations from institutions and applications for certificates from students admitted to the teacher education program after the disapproval date will not be honored.

Reference Bulletin 651, Texas Education Agency, Standards for Teacher Education in Texas, November 1964.

.027. Annual Reports.

- (a) Policy. (Reserved for expansion.)
- (b) Administrative procedure. Institutions placed on the approval list shall make annual reports to the Texas Education Agency. The Commission on Standards for the

Teaching Profession may request additional information from institutions regarding compliance with the standards.

.028. Changes in Teacher Education Program.

- (a) Policy. (Reserved for expansion.)
- (b) Administrative procedure. If an institution on the approved list proposes to make changes in its teacher education program, a schedule shall be prepared describing the proposed additions, deletions, or alterations. Such changes will be approved or disapproved by the Commission on Standards for the Teaching Profession until the next regularly scheduled visit of the institution's teacher education program by an evaluation team.

.029. Initial Application for Approval.

- (a) Policy. (Reserved for expansion.)
- (b) Administrative procedure.
 - (1) An application shall be preceded by a letter of intent from the chief administrative officer of the institution, setting forth the declaration of the governing board of the institution to prepare teachers according to the adopted standards. The letter is to include a year-by-year plan for institutional development to meet standards fully and should be accompanied by letters from local school superintendents outlining their intent to cooperate with the institution in the program of teacher preparation with specific communications channels established.
 - (2) A statement of progress from the Southern Association of Colleges and Schools, with a specific date scheduled for an institutional visiting team shall also be included. Dates when on-campus consultative visits were made by representatives of the Southern Association of Colleges and Schools shall be given. A statement that the college is making satisfactory progress toward accreditation, from the Advisory Committee of the Southern Association of Colleges and Schools, which visits the college during the year the first class is to be graduated, shall be on file. Before a junior college in transition to senior college status can be approved to prepare teachers as a four-year institution, it must have Southern Association of Colleges and Schools accreditation as a junior college.

(3) Applications shall be processed according to current policy. A self-study shall be developed, and a favorable report from a visiting team from the Texas Education Agency shall be on file.

(4) The Commission on Standards for the Teaching Profession shall publish a list of certificate programs for which the institution is tentatively approved. The Texas Education Agency will accept for a one- to five-year period the recommendations of the institution for certificates for its graduates.

Doc. No. 799409

Teacher Education Programs and Institutions 226.61.96

The Texas Education Agency has amended Rules 226.61.96.030, .040, .041, and .050, concerning standards for teacher education programs and institutions.

Public review and discussion of the proposed rules were held. The rules are adopted with one change from the text as proposed. In Rule .040, the list of alternative sets of standards for approval of teacher education institutions has been

deleted. Instead, to avoid duplication, reference is made to Policy 61.03 (Rule 226.61.03.010).

These rules are promulgated under the authority of Section 13.032, Texas Education Code.

.030. Organization and Procedures for Approval of Teacher Education Programs—June 10, 1972.

(a) The certification of teachers and other school personnel is based upon approval by the Commission on Standards for the Teaching Profession of institutions of higher learning for teacher preparation and of specific programs offered by the institutions. Although the certification of teachers and other school personnel is legally a responsibility of the state, it is desirable that the state have continuous advice and counsel from the total profession, the schools, and the institutions of higher learning involved in teacher education in order that the total teacher education-teacher certification process may be kept responsive to the needs of the state. To facilitate such a process, the following organization and procedures operate.

(b) State Board of Education.

(1) Membership (statutory)—one member elected from each congressional district established by law to serve for a term of six years (Texas Education Code: Section 11.21; Section 11.22).

(2) Functions related to teacher education and certification (statutory). Refer to Policy 61.02.

(c) Commission on Standards for the Teaching Profession. Refer to Policy 61.02.

(d) (No change.)

.040. Applicable Standards for Approval of Teacher Education Institutions.

(a) Institutions seeking approval or reapproval for preparing teachers and other school personnel may choose, from among several alternatives, a set of standards to be used as a basis for the approval of that institution. The alternatives are set out in Policy 61.03.

(b) The alternative selected should be clearly identified in the application presented. Programs submitted in each of the three alternative plans are subject to approval by the Commission on Standards for the Teaching Profession.

.041. Standards for Teacher Education in Texas, 1955 as amended in 1961: Standards I through V.

(a) Standard I: Basic Considerations.

(1) (No change.)

(2) To be approved for teacher education, a college or university shall:

(A)-(J) (No change.)

(K) Institutions are encouraged to develop and plan programs for that portion of their student body identified as exceptionally able students. Identification of the exceptionally able student in teacher preparation should include, in addition to academic achievement, factors such as emotional maturity and skill in human relations. The following principles shall serve institutions in constructing programs for exceptionally able students preparing for teaching:

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

(iv) Programs for exceptionally able students preparing to teach shall be approved by the Commission on Standards for the Teaching Profession.

(v) (No change.)

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

.050. Program Requirements for Preparation of School Personnel—Standards for Teacher Education in Texas, 1955 as Revised through May 8, 1976: Standards VII and VIII.

(a) Standard VII—Instructional Patterns: Teacher Education Programs at the Undergraduate Level.

(1) (No change.)

(2) Preparation in areas of specialization.

(A) (No change.)

(B) Provisional certificate, teachers of young children, ages three through eight. Teacher certification requirements for the provisional certificate, teachers of young children, ages three through eight, may be found in rule Chapter 226.62.07.

(C) (No change.)

(D) Bilingual education.

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

(iv) Requirements for bilingual endorsement.

Requirements for the bilingual education endorsement may be found in Rule 226.62.19.060.

(No change in the rest of the rule.)

Issued in Austin, Texas, on December 11, 1979.

Doc. No. 799410

A. O. Bowen

Commissioner of Education

Effective Date: January 1, 1980

Proposal Publication Date: October 26, 1979

For further information, please call (512) 475-7077.

Texas Energy and Natural Resources Advisory Council

Texas Energy Development Fund 161.01.00

The Texas Energy and Natural Resources Advisory Council has adopted the amendments to Rules 161.01.00.001-.006 with a minor change in the outline lettering scheme in Rule .002.

These amendments are adopted under the authority of Senate Bill 921, 66th Legislature, Regular Session, and Article 4413(47b), Section 6, Vernon's Annotated Civil Statutes, as amended.

.001. Criteria for Funding.

(a) On the basis of the language of the Energy Development Act, supra, and expressed concerns of energy policy makers, energy development contracts shall be awarded on the basis of the following general funding criteria:

(1) that projects have specific application to the energy needs of Texas;

(2) that projects bring energy technology closer to commercialization, and that the technology show promise for significant contribution within the next 25 years, with preference for projects demonstrating current or near term economic feasibility;

(3) (No change.)

(4) that the projects neither be redundant nor substitute for existing funding; and

(5) that the projects fall within the scope of research, development, and demonstration related to alternate energy supplies and energy conservation technologies.

(b) In addition to these general criteria, funding of specific projects will be contingent upon meeting the stan-

dards set forth with regard to Solicitation and Submission of Proposals (Rule .002) and Evaluation and Selection of Proposals (Rule .003).

.002. Solicitation and Submission of Proposals.

(a) The procedure for solicitation and submission of proposals is based on consideration of (1) the kinds of problems being encountered in Texas to which energy RD&D might speak, (2) the levels of funding necessary to obtain significant results, and (3) the potential for stimulating participation by other agencies, organizations, or individuals.

(b) Proposal priorities. Proposal priorities will be established by internal assessment of energy-related RD&D needs and activities, by interaction with the council and related state agency personnel, and by open consultation with identified external experts and concerned citizens in the research areas of council interest. The proposal solicitation process will then be initiated on the basis of these established priorities.

(c) Proposal solicitation process. Proposals will be solicited by the issuance of "statements of program intent" (SPI). Each SPI will include the following:

- (1) description of project objective;
- (2) description of funding considerations;
- (3) explanation of review criteria and procedures;
- (4) deadline and address for proposal submission;
- (5) target date for contract award;
- (6) detailed guidelines for proposal contents;
- (7) designation of contact person for additional information;
- (8) statement of contract terms and required completion date; and
- (9) statement regarding proprietary information and patents.

All SPIs will be published in the *Texas Register* and will be distributed to state depository libraries, to appropriate journals and periodicals, and to a mailing list of those who indicate interest in receiving them. Notice of the availability of the SPIs will be communicated by news release through the Capitol press and other appropriate media. Release of an SPI in no way guarantees that all or any of the funds designated will be awarded. The council retains the right to make no award in the event that no acceptable proposal is submitted in a given area.

(d) Submission of proposals. The proposal format will be designed to insure sufficient information for evaluation, but the staff reserves the right to request further information if necessary. Voluminous proposals are neither necessary nor desired due to staff and budgetary limitations. Five to 10 double-spaced typed pages, excluding appendices, should ordinarily be adequate. Unless otherwise indicated with regard to a specific solicitation, 10 copies of the full proposal must be received in the Energy Analysis and Development Division offices on or before the submission deadline for the proposal to receive consideration under a given solicitation. Proposals should address the following concerns:

- (1) project classification:
 - (A) project title and number as listed in the specific SPI, or
 - (B) category title (e.g., solar, wind, lignite, etc.) if not addressing a specific identified project (in which case the proposal should include a statement of how the project meets the funding criteria outlined in Rule .001 above);

(2) discussion of how the proposer intends to fulfill the requirements of the project, including description of end product in detail identifying existence of proprietary information and any subcontracts planned;

(3) availability of matching funds and/or services indicating amount and sources;

(4) verifiable resumes of principals and subcontractors (including names, addresses, and phone numbers) and a summary of pertinent experience of proposing organization;

(5) site(s) of proposed project;

(6) time schedule for work to be performed by principals and subcontractors;

(7) itemized cost breakdown, including profit margin and indication of application of matching funds;

(8) economic justification of the project including present costs and anticipated cost reductions or proposals for obtaining cost data;

(9) suggested monitoring procedures,

(10) other information as indicated by specific project descriptions; and

(11) clear identification of any proprietary information.

(e) Eligible proposers. In order to assure equitable distribution of the funds and to avoid conflict of interest, the following criteria are established for acceptability of proposers:

(1) Texas-based proposers will be given priority consideration, and only in unusual circumstances will this priority be disregarded;

(2) projects to be conducted in Texas will be given priority consideration, and only in unusual circumstances will this priority be disregarded;

(3) individual members of the council, TENRAC staff members, or their immediate families are not eligible; and

(4) members of the pool of technical experts are eligible to submit proposals in which case their participation in the evaluation process will be appropriately limited.

(f) Unsolicited proposals. Any proposal which is not responsive to a specific solicitation as described in Rule .002(c) is an unsolicited proposal provided it satisfies the general requirements of Rule .002(d). Unsolicited proposals will receive appropriate consideration within time and funding limitations in accordance with accepted evaluation and selection procedures (Rule .003).

(g) Preproposals. Funding inquiries which describe potential development projects but which do not satisfy the requirements for proposal submission will be considered preproposals which may become the basis of subsequent proposal solicitation or request for submission of an unsolicited proposal.

.003. Evaluation and Selection of Proposals.

(a) Upon receipt, proposals will be referred to the TENRAC staff member responsible for the related technology area. The responsible TENRAC staff member will review each proposal and will forward the proposals to an impartial group of technical experts (as described in Rule .003(b) below) for evaluation. The TENRAC staff will make every effort to obtain reviews for each proposal by at least one technically qualified person in each of the following fields: federal research and development, state agency, university, and private industry.

(b) A pool of technical experts will be selected by the director of the Energy Analysis and Development Division. Specific proposal evaluators will be selected from this pool by

the responsible TENRAC staff member in consultation with the manager of the Technology Development Section. This selection will be made in a manner which will minimize conflicts of interest while maintaining the highest available level of expertise in the proposal area. Evaluators will be required to indicate potential conflicts of interest so that evaluations can be weighed accordingly. For protection of proprietary information, evaluators will sign statements of confidentiality.

(c) In addition to providing specific comments, each of the evaluators will rate the proposals in the following categories, where appropriate:

(1) degree to which the proposal is responsive to the fund's overall purpose and funding criteria and/or the specific purpose of an individual solicitation;

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

(10) other information as may be required for a specific project.

(d) Each responsible TENRAC staff member will prepare for the Technology Development Review Committee a summary of all proposals submitted in his project area, a summary of the evaluations, and identification of potential conflicts of interest. This committee will be composed of the director of the Energy Analysis and Development Division and the manager and professional staff members of the Technology Development Section.

(e) On the basis of this information and its own investigation, the Review Committee will submit to the executive director its recommendations with regard to each proposal. Upon approval of the executive director with appropriate concurrence of the council, the director of the Energy Analysis and Development Division will be authorized to enter into contract arrangements with the proposing party.

.004. Project Reporting Requirements. A contract technical monitor will be designated either from among the TENRAC staff or outside consultants for each contract. This person will be responsible for monitoring the progress of the contract to assure that the Texas Energy and Natural Resources Advisory Council is receiving satisfactory performance of contract terms. Contract progress reports will be submitted by the contractor at scheduled intervals during the contract period. The requirements and dates for each progress report will be identified in the contract itself. In addition, the contractor will be required to submit within 30 days of project completion three copies of a draft final written report for review and evaluation. When agreement is reached as to final report form and content, the contractor will be required to submit a camera-ready original and 25 copies of the final report which shall then be the basis for final payment authorization.

.005. Disbursement of Contracted Funds and Project Cost Accounting.

(a) Two vehicles for contracting will be used for contracts under the Energy Development Act. An "interagency contract" governed by the State Purchasing and General Services Commission will be used for contracting with state agencies and state universities. For private contractors, a "professional services" contract between the contractor and the council will be drawn. In both instances, contracts entered into shall contain terms and conditions considered appropriate to protect the interests of the state and those of the contractor.

(b) State of Texas contractors will be paid on an actual cost reimbursement basis provided for by State Purchasing and General Services Commission rules and regulations. Private contractors will be paid on a fixed contract amount basis in most cases; however, consideration will be given to special circumstances requiring some other basis of compensation. Unless otherwise provided, payment for services rendered shall be upon completion of predetermined phases of the project and after certification by the contract monitor. In instances in which more frequent payments are requested due to the nature of the work performed or the condition of the contractor, a case-by-case review will be made and appropriate accommodations provided when possible. State of Texas entities shall be reimbursed, based upon their actual costs incurred, upon submission and approval of proper invoices and supporting documentation. Other contractors shall be paid on the basis provided in the contract upon submission of proper vouchers. In each case, 10% of the contract amount shall be retained for final payment until after receipt and acceptance of all required reports and documentation.

(c) Contractors shall maintain satisfactory financial accounts, books, papers, documents, and records, and shall make same available for examination and audit by the staff of TENRAC and other authorized representatives of the state. Such materials shall be retained by the contractor for three years following final payment and termination of the contract. Accounting by contractors shall be in a manner consistent with generally accepted accounting procedures.

.006. Dissemination of Results.

(a) Results of all projects completed under contract with the agency will be submitted in the form of a written report or other printed material (including data, charts, computer programs, maps, or drawings) which will then become public information. Contractors will be available for brief presentations of results as required by TENRAC. When the final result includes a demonstration, specific hardware, or a proprietary process, provisions will be made on a case-by-case basis. It is expected that machinery, buildings, and building systems will be subject to a period of inspections or monitoring by the state or its designated representative or be made accessible to the public as appropriate. Specific provisions will be made in each contract to cover this contingency initially, as well as to establish eventual ownership at the conclusion of a period of monitoring and/or accessibility.

(b) In the event that federal, private, university, or other state agency funding is also used for completion of a project, public availability of results, patent application authority, and terms for monitoring, inspection, and ownership will be negotiated with all the parties involved in accordance with applicable federal and state regulations.

(c) In the absence of statutory or contractual limitations, the contractor may apply for patents on any discoveries made through his project. If the contractor does not wish to make the application, he shall notify the contract monitor, and the state may request and receive title to the discovery. If the contractor receives a patent, the State of Texas shall be

entitled to an irrevocable, nonexclusive, royalty-free license to use for governmental purposes under the patent.

Issued in Austin, Texas, on December 10, 1979.

Doc. No. 799405 Milton L. Holloway, Director
Energy Analysis and Development
Division
Texas Energy and Natural Resources
Advisory Council

Effective Date: January 1, 1980

Proposal Publication Date: October 23, 1979

For further information, please call (512) 475-5583.

Office of the State Entomologist

Bees

Beekeeping 179.01.01

The state entomologist has adopted the repeal of Rules 179.01.01.001-.004, concerning general beekeeping.

This repeal is adopted under the authority of Article 550, Vernon's Annotated Civil Statutes.

Doc. No. 799369

Protective Quarantine 179.01.02

The state entomologist has adopted the repeal of Rules 179.01.02.001-.008, concerning protective quarantine.

This repeal is adopted under the authority of Article 550, Vernon's Annotated Civil Statutes.

Issued in Austin, Texas, on December 4, 1979.

Doc. No. 799370 Dr. Neville P. Clarke
Director
Texas Agricultural Experiment Station

Effective Date: December 31, 1979

Proposal Publication Date: October 9, 1979

For further information, please call (713) 845-2516.

Registration 179.01.03

The state entomologist has withdrawn from consideration for adoption proposed Rule 179.01.03.001, Registration. The text of the rule, as proposed for amendment, was published in the October 9, 1979, issue of the *Texas Register* (4 TexReg 3670).

Issued in Austin, Texas, on December 4, 1979.

Doc. No. 799371 Dr. Neville P. Clarke
Director
Texas Agricultural Experiment Station

Filed: December 10, 1979, 2:03 p.m.

For further information, please call (713) 845-2516.

Identification 179.01.04

The state entomologist has adopted Rule 179.01.04.001 requiring all apiaries within the state to display the name and address or state-registered brand of the apiary owner with no changes in the proposed text.

This rule is promulgated under the authority of Article 550, Vernon's Annotated Civil Statutes.

.001. *Identification.* Each apiary in the State of Texas must display either:

- (1) the name and address of the apiary owner; or
- (2) the state-registered brand of the apiary owner obtained under the provisions of Article 565a, Vernon's Annotated Civil Statutes.

Doc. No. 799372

Interstate Permits 179.01.05

The state entomologist has adopted Rule 179.01.05.001, concerning the owner of a colony of honeybees to obtain a permit prior to moving the bees into Texas from out of state with one change in the text proposed. Due to comments received, reference to the registered location was deleted from proposed subsection (c).

This rule is promulgated under the authority of Article 550, Vernon's Annotated Civil Statutes.

.001. *Interstate Permits.*

(a) No colonies of honeybees, used honey combs, used bee hives, or used apiary equipment shall be moved into Texas from outside of the state unless it is accompanied by a permit issued by the Office of the State Entomologist of Texas.

(b) An individual or organization seeking to move honeybees, their combs, or hives into Texas from outside the state shall submit an application for a permit to the Office of the State Entomologist at least 10 days prior to the date the colony will reach Texas.

(c) The applicant for a permit must include the following information:

(1) the name, permanent address, and permanent telephone number of the individual or organization proposing to move the colony into Texas;

(2) the number of hives to be moved into Texas;

(3) the approximate date that the hives will be placed in each county;

(4) Texas address and phone number, if available, where the individual or organization making the application may be readily contacted at the time the colonies are in Texas.

(d) When the movement of honeybees into Texas originates in a state which has designated some state or local authority, such as a state entomologist or foulbrood inspector, to inspect honeybees, their combs, and hives for contagious and infectious diseases and to issue certificates that said honeybees, their combs, and hives are free of infectious and contagious disease, the application for permit shall be accompanied by a certified copy of a certificate of inspection signed by such proper authority of the state or origination certifying that the bees being moved appear to be free from contagious and infectious disease. Such certificate must be based upon an actual inspection of the bees themselves made within a period of 60 days preceding the proposed date of entrance of the bees into Texas.

(e) When the movement of honeybees into Texas originates in a state which has not designated some state or local authority to inspect honeybees, their combs, and hives for contagious and infectious disease, the application for permit

shall be accompanied by a sworn affidavit, executed by the owner of the colony, duly acknowledged by a notary public, stating that the colony is apparently free of contagious and infectious disease.

(f) The Office of the State Entomologist shall issue a permit for shipment of honeybees into Texas after receipt of an application submitted in conformity with this rule; provided, however, that the Office of the State Entomologist shall retain the right to inspect any colony after it has been moved into the state and withdraw such permit and place the diseased colony under quarantine upon the finding of any contagious or infectious disease.

(g) Permits issued for interstate movement of bees shall expire 60 days from date of issuance.

Doc. No. 799373

Intrastate Permits 179.01.06

The state entomologist has adopted Rule 179.01.06.001 concerning the owners of honeybee colonies and used apiary equipment to obtain a permit prior to the movement of bees or equipment across a county line with one change in the text proposed. Due to comments received, reference to the registered location was deleted from proposed subsection (c).

This rule is promulgated under the the authority of Article 550, Vernon's Annotated Civil Statutes.

.001. Intrastate Permits.

(a) No colonies of honeybees, used honey combs, used bee hives, or used apiary equipment shall be moved from one county to another county in the state unless it is accompanied by a permit issued by the Office of the State Entomologist. A permit shall be issued after an inspection by the Office of the State Entomologist has shown the bees, combs, hives, and apiary equipment to be moved to be free from disease.

(b) When the Office of the State Entomologist determines that it is impractical for it to conduct the inspection described in (a) above, a permit for movement of bees, combs, hives, or apiary equipment may be issued by the Office of the State Entomologist upon presentation to that office of a sworn affidavit, executed by the owner of the bees, combs, hives, and apiary equipment to be moved, and duly acknowledged by a notary public, stating that the shipment is apparently free of contagious and infectious disease. The Office of the State Entomologist shall retain the right to inspect any bees, combs, hives, or apiary equipment after a permit has been granted and to withdraw such permit and place the diseased bees, combs, hives, or apiary equipment under quarantine upon the finding of any contagious or infectious disease.

(c) The applicant for a permit must include the following information:

(1) the name, permanent address, and permanent telephone number of the individual or organization proposing to move colony from one county to another in the state;

(2) the number of hives to be moved;

(3) the approximate date that the hives will be placed in each county.

(d) Permit issued for intrastate movement of bees is valid for all movement of bees between counties listed on permit and expires August 31, end of fiscal year.

Doc. No. 799374

Apiary Quarantine 179.01.07

The state entomologist has adopted Rule 179.01.07.001, concerning the established conditions under which the Office of the State Entomologist can establish and maintain a quarantine of an apiary where American foulbrood or any other infectious and contagious disease of honeybees is known to exist with no changes in the proposed text.

This rule is promulgated under the authority of Article 550, Vernon's Annotated Civil Statutes.

.001. Apiary Quarantine.

(a) All apiaries wherein American foulbrood or any other infectious or contagious disease of honeybees is known to exist, by virtue of inspection by the Office of the State Entomologist, shall be quarantined by the Office of the State Entomologist.

(b) The quarantine of an apiary by the Office of the State Entomologist shall be established by notifying the apiary owner of the presence of the contagious or infectious disease and/or placing quarantine signs on the location quarantined.

(c) The removal of any bees, nuclei, combs, and apiary appliances or fixtures from any quarantined apiary is prohibited, except as the Office of the State Entomologist may specifically permit or authorize in writing.

(d) A quarantine established by the Office of the State Entomologist shall exist until such time as the Office of the State Entomologist determines and declares such apiary to be free from contagious or infectious disease; provided, however, that the Office of the State Entomologist shall review a quarantined apiary at least once every 30 days for the continued existence of contagious or infectious disease.

Issued in College Station, Texas, on December 4, 1979.

Doc. No. 799375

Dr. Neville P. Clarke
Director

Texas Agricultural Experiment Station

Effective Date: December 31, 1979

Proposal Publication Date: October 9, 1979

For further information, please call (713) 845-2516.

Texas Department of Human Resources

Food Stamps

Definition of Income 326.15.41

The Department of Human Resources adopts the amendments to its rules concerning the standard utility allowance and telephone allowance which is used in calculating shelter costs for households participating in the Food Stamp Program. These amendments were published in the November 2, 1979, issue of the *Texas Register* (4 TexReg 3971). The Food Stamp Act of 1977 required states to provide a standard utility and telephone allowance and to update the utility standard at least annually to reflect changes in the cost of utilities. The department has reviewed the current utility allowance of \$83 as requested by the United States Department of Agriculture (USDA) and has determined that inflation and price increases have impacted the economy greater than is reflected in the current standard. Therefore, these amendments are adopted to adjust the utility standard to \$90

to be effective January 1, 1980. These amendments delete references to the current allowances but do not add the proposed allowance change to the actual rule. Any future adjustments in the utility allowance will be published in the "In Addition" section of the *Register*.

No comments were received on the amendments which are adopted with no changes to the proposed text.

These amendments are adopted under the authority of the Human Resources Code, Chapter 33, with the approval of the Texas Board of Human Resources.

.066. Standard Utility Allowance.

(a) A standard utility allowance for use in calculating shelter costs may be claimed instead of actual utility expenses by households incurring utility costs separate and apart from their rent or mortgage payments. Households which do not incur any separate utility charges or which are billed separately only for telephone costs, water, sewage, and garbage collection fees may not claim the standard utility allowance. These households are, however, entitled to claim the actual costs for any utility expense it does pay separately.

(b) (No change.)

.067. Telephone Allowance. A mandatory telephone allowance is provided for households which are not entitled to claim the standard utility allowance but which do incur separate telephone expenses. In calculating shelter expenses for such households, the telephone allowance must be used, even if actual costs are higher.

Issued in Austin, Texas, on December 11, 1979.

Doc. No. 799421 Jerome Chapman
Commissioner
Texas Department of Human Resources

Effective Date: January 1, 1980

Proposal Publication Date: November 2, 1979

For further information, please call (512) 475-4601.

The Department of Human Resources adopts the amendment to Rules 326.30.19.002 and 326.31.19.002 about charges to the recipient-patient which are not included in the monthly vendor payment in its Intermediate Care II and III Facility rules, as proposed in the August 24, 1979, issue of the *Texas Register* (4 TexReg 2977). In response to recent requests and increased costs, the department is raising the allowable charge for oxygen from \$.10 per liter/per minute flow per hour to \$.20 per liter/per minute flow per hour for Intermediate Care facilities. Oxygen, so used, must be properly charted in the patient's clinical record as to time and quantity. The department is also requiring, in order to substantiate the amount charged, that documentation be entered in the patient's financial records as to time, quantity, and amount charged.

One comment was received during the comment period. The comment, from the Texas Nursing Home Association, was strongly supportive of the amendment and it is adopted without changes to the proposed text.

Intermediate Care II Facility

Services and Supplies Included in the Vendor Payment 326.30.19

The following amendment is adopted under the authority of the Human Resources Code, Chapter 32, with the approval of the Texas Board of Human Resources.

.002. Exceptions to Current Maximum Recognized Monthly Rate. No charges will be permitted by the Intermediate Care II facility to the recipient-resident with a status of "Intermediate Care II," to his family, guardian, sponsor(s), or any other source, over and above the current maximum recognized monthly rate except for the following items:

(1) **Oxygen.** If prescribed in writing by the physician, the cost of oxygen may be charged at the rate of \$.20 per liter/per minute flow per hour. Oxygen, so used, must be properly charted in the patient's clinical record as to time and quantity. In addition, to substantiate the amount charged, documentation must be entered in the patient's financial records as to time, quantity, and amount charged.

(2) **Parenteral fluids** (intravenous or subcutaneous replacement of fluids). If prescribed in writing by the physician as emergency treatment, parenteral fluids may be charged at the usual and customary rate for the unaltered fluid content only. This charge may only be made when the parenteral fluids are used therapeutically or for supplementary feedings. This must be properly charted as to the frequency and quantity. Charges for the above, if originating in the Intermediate Care II facility, must be properly itemized.

Doc. No. 799353

Intermediate Care III Facility

Services and Supplies Included in the Vendor Payment 326.31.19

The following amendment is adopted under the authority of the Human Resources Code, Chapter 32, with the approval of the Texas Board of Human Resources.

.002. Charges. No charges will be permitted by the nursing home to the patient-recipient with a patient status of Intermediate Care III, to his family, guardian, sponsor(s), or any other source, over and above the current maximum recognized monthly rate except for the following items:

(1) **Oxygen.** If prescribed in writing by the physician, the cost of oxygen may be charged at the rate of \$.20 per liter/per minute flow per hour. Oxygen, so used, must be properly charted in the patient's clinical record as to time and quantity. In addition, to substantiate the amount charged, documentation must be entered in the patient's financial records as to time, quantity, and amount charged.

(2) **Parenteral fluids** (intravenous or subcutaneous replacement of fluids). If prescribed in writing by the physician, parenteral fluids may be charged at the usual and customary rate for the unaltered fluid content only. This charge may only be made when the parenteral fluids are used therapeutically or for supplementary feedings. This must be properly charted as to the frequency and quantity. Charges for the above, if originating in the nursing home, must be properly itemized and must be submitted to the case public assis-

tance worker for budgeting purposes and/or approval. Items chargeable, but not budgetable, will be returned to the nursing home for proper billing distribution.

Doc. No. 799354

Skilled Nursing Facility

Services and Supplies Included in the Vendor Payment 326.32.17

The Department of Human Resources adopts the amendment to Rule 326.32.17.002, about charges to the recipient-patient which are not included in the monthly vendor payment in its Skilled Nursing Facility rules, as proposed in the September 15, 1978, issue of the *Texas Register* (3 TexReg 3242). The amendment raises the allowable charge for oxygen from \$.10 per liter/per minute flow per hour to \$.20 per liter/per minute flow per hour.

One favorable comment was received and the amendment is adopted without changes to the proposed text.

The following amendment is adopted under the authority of the Human Resources Code, Chapter 32, with the approval of the Texas Board of Human Resources.

.002. Additional Charges. Additional charges may not be made by the facility for any services except oxygen. If prescribed by the physician, the cost of oxygen may be charged at the rate of \$.20 per liter/per minute flow per hour. Oxygen so used must be properly charted in the patient's clinical record as to time and quantity. In addition, to substantiate the amount charged, documentation must be entered in the patient's financial record as to time, quantity, and amount charged.

Issued in Austin, Texas, on December 10, 1979.

Doc. No. 799355 Jerome Chapman
Commissioner
Texas Department of Human Resources

Effective Date: December 31, 1979

Proposal Publication Date: August 24 & September 15, 1979
For further information, please call (512) 475-4601.

Nursing Facility Administration

Support Documents 326.33.99

The Department of Human Resources has amended Rules 326.33.99.200, .203, and .204, concerning cost-related reimbursement for long-term care facilities in its nursing facility administration rules, as proposed in the September 28, 1979, issue of the *Texas Register* (4 TexReg 3540). The department is adopting these amendments in an effort to establish more reasonably cost-related rates for long-term care facilities.

The department provided a 60-day public comment period on the proposed amendments instead of the usual 30-day period in order to allow interested citizens ample opportunity to make their feelings known. A public hearing was held in Austin, Texas, on Wednesday, October 31, 1979, to accept public comments from interested parties concerning the proposed amendments.

Numerous comments were received by the department on the proposed amendments. All comments were taken into consideration and the proposals were revised to incorporate appropriate changes. These changes are described below:

(1) Interest expense. The proposed amendment specified that the interest expense on loans from related parties was an unallowable cost for loans executed on and after January 1, 1979. The adopted amendment specifies that these interest expenses would be allowable if the loan were necessary, the interest rate reasonable, and the loan evidenced in writing with the provider as maker or co-maker of the note. Many comments recommended this change.

(2) Clarification of definition of owner's equity. No changes were made.

(3) Occupancy adjustment. The proposed amendment specified that facility and administration costs would be adjusted to reflect per diem costs at the 90% occupancy level for facilities with occupancy rates less than 90%. The adopted amendment specifies that facility and administration costs will be adjusted to reflect per diem costs at the 85% occupancy level for facilities with occupancy rates less than 85%. Comments generally favored the 85% figure as being more reasonable than the 90% figure. Although the occupancy adjustment remains 85%, the items adjusted now include all facility costs and administrative costs rather than fixed realty costs only. One minor change removes Utilization Review Committee expense as an administration cost. This item is being deleted because it was proposed in error.

The following amendments are adopted under the authority of the Human Resources Code, Chapter 32, with the approval of the Texas Board of Human Resources.

.200. Reimbursement Methodology for Rates for Skilled Nursing Facilities and Intermediate Care Facilities. The Texas Department of Human Resources will reimburse long-term care facilities on a cost-related basis for care rendered to recipients in ICF-II, ICF-III, and skilled levels of care. Rates will be determined for the ICF-II, ICF-III, and skilled levels of care on a statewide basis. These cost-related rates will be set using financial and statistical information from cost reports which must be completed by each participating provider at least annually.

(1) Major characteristics:

(A) statewide uniform rates;
(B) reimbursement rates determined prospectively;

(C) reimbursement rates set for each level of care—SNF, ICF-III, and ICF-II;

(D) certain allowable costs adjusted to a minimum occupancy rate of 85%;

(E) certain non-Medicaid related expenses reduced or removed;

(F) return on owner's net equity of proprietary providers included as an allowable cost;

(G) reimbursement rates established at the 60th percentile provider cost.

(2) Cost-finding methodology.

(A) Allowable costs submitted in cost reports will be adjusted as shown below.

(i) Facility and administration costs will be lowered to reflect per diem costs at the 85% level of occupancy for providers with occupancy rates less than 85%.

(ii) Expenses incurred to produce revenues for non-Medicaid required services will be reduced to an amount

which allows for a reasonable profit not to exceed the maximum Title XVIII rate of return on owner's equity.

(iii) Expenditures from gifts, grants, donations, endowments, and trusts will be removed.

(iv) Interest expenses will be reduced by interest income not to exceed total reported interest expenses.

(B) A return on owner's equity of proprietary providers will be included as an allowable cost by the application of a rate of return to reported owner's equity. The rate of return shall not exceed the maximum rate allowed under Title XVIII.

(C) Projected costs. Adjusted costs are multiplied by applicable estimated rates of increase to project costs for the various reporting periods to a common year. Cost increase factors are derived, as appropriate, from the National Bureau of Labor Statistics consumer and producer price indices, the Fair Labor Standards Act's minimum wage provisions, the Social Security Administration's scheduled increases in Federal Insurance Contributions Act (FICA) amounts, and others.

(D) Level of care projected costs. Projected level of care costs are determined through a cost allocation method which allocates costs to each level of care. Projected costs for days of service (which are provided in beds classified higher than the patient) are determined using mismatch ratios to weigh daily service costs. The mismatch ratios are derived from predictor equations which predict mismatch free daily service costs.

(E) Cost area cost determination. Level of care projected costs per patient day will be combined into the four cost areas as shown below:

(i) patient care cost—daily service expense; laundry, linen, and housekeeping expense; activity services expense; social service expense; training expense; consultant expense;

(ii) dietary care cost—food and food service expense; dietary consultant expense;

(iii) facility cost—building, equipment, and capital expense; operation and maintenance expense;

(iv) administration cost—administrative expense.

(F) Provider cost arrays. Cost area provider costs will be rank-ordered from low to high to produce projected cost arrays.

(3) Reimbursement rate determination.

(A) Cost area reimbursement rates. Cost area reimbursement rates are determined by selecting the 60th percentile costs for each cost area for each level of care from the arrays of projected provider costs.

(B) Level of care reimbursement rates. Cost area reimbursement rates are summed to determine the level of care reimbursement rates.

(4) Appeals procedure. The Department of Human Resources will resolve appeals in accordance with its established administrative procedures.

.203. Allowable Costs. The following described items of expense are not intended to be exhaustive of all possible allowable costs. They are intended to serve only as a general guide. Detailed are many types of costs which can reasonably be anticipated to be incurred in a long-term care facility. The absence of a particular type of cost does not necessarily mean that it is not an allowable cost.

(1) (No change.)

(2) List of allowable costs.

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

(D) Real property and personal property expense.

(i)-(ii) (No change.)

(iii) Interest expense. Generally, interest expenses are allowable on loans for the acquisition of allowable items. Examples include mortgage loans, equipment loans, and working capital loans. However, in order for interest expenses on loans to be considered an allowable cost, borrowings must conform to all of the following specifications: (1) the loan must be necessary in the provision of patient and resident care; (2) borrowings must be in conformity with prudent financial management practices; (3) the loan must be evidenced in writing; (4) the loan must be in the name of the provider entity as maker or co-maker of the note.

(iv)-(v) (No change.)

(E) (No change.)

(F) Return on net invested equity of proprietary providers. Net invested equity is defined as the long-term care provider's allowable assets less its allowable liabilities. Loans from stockholders, owners, partners, related organizations, and related parties to pay for allowable items of expense for which interest expenses are unallowable are considered to be advances of capital—not liabilities—for the purposes of determining allowable net invested equity.

.204. Unallowable Costs. The following described items of expense are not intended to be exhaustive of all possible unallowable costs. Rather, they are intended to be a general guide to various unallowable costs which may be encountered in long-term care facilities. The absence of a particular type of cost does not necessarily mean that it is an allowable cost.

(1) (No change.)

(2) List of unallowable costs.

(A)-(P) (No change.)

(Q) Interest expense. Interest is unallowable on loans to pay for unallowable items and on that portion of interest paid which is reduced or offset by interest income except interest income from funded depreciation accounts or qualified pension funds.

Doc. No. 799422

Intermediate Care Facility for Mentally Retarded

Support Documents 326.35.99

The Department of Human Resources has amended Rules 326.35.99.200, .203, and .204, concerning cost-related reimbursement for intermediate care facilities for the mentally retarded in its ICF-MR rules, as proposed in the September 28, 1979, issue of the *Texas Register* (4 TexReg 3541). The department is adopting these amendments in an effort to establish more reasonably cost-related rates for ICF-MR facilities.

The department provided a 60-day public comment period on the proposed amendments instead of the usual 30-day period in order to allow interested citizens ample opportunity to make their feelings known. A public hearing was held in Austin, Texas, on Wednesday, October 31, 1979, to accept public comments from interested parties concerning the proposed amendments.

Numerous comments were received by the department on the proposed amendments. All comments were taken into consideration and the proposals were revised to incorporate appropriate changes. These changes are described below:

(1) The proposal had established three groups for rate setting purposes. It was determined after much comment and study that separating into three groups for rate setting would be inequitable. The current methodology will continue to be used to set individual facility caps.

(2) New facilities will be reimbursed at the 60th percentile by peer group. The four groups are state schools, ICF-MR-I, ICR-MR-V, and ICR-MR-VI. The proposal had established three groups—state schools, facilities with 15 beds or less, and all others. The "all other" group was composed of ICF-MR-V and ICF-MR-VI providers. The differences in programmatic requirements and costs between the ICF-MR-V and VI as disclosed by public comment dictated a separate new facility rate for ICF-MR-V's and ICF-MR-VI's.

(3) In order to preclude hardships to new facilities currently under construction, the new facility rate exception was extended to March 31, 1980, for those facilities under construction.

(4) An adjustment was made to the efficiency incentive of \$2.00 to follow recognized inflationary periods.

(5) The proposed amendment specified that the interest expense on loans from related parties was an unallowable cost for loans executed on and after January 1, 1979. The adopted amendment specifies that these interest expenses would be allowable if the loan were necessary, the interest rate reasonable, and the loan evidenced in writing with the provider as maker or co-maker of the note. Many comments recommended this change.

(6) The department has added a sentence to a portion of the rule which was not changed in the proposed version (Rule .200(2)(H)). "Individual facility rate corrections will be made from audited cost reports" was added at the request of provider groups.

The following amendments are adopted under the authority of the Human Resources Code, Chapter 32, with the approval of the Texas Board of Human Resources.

.200. Reimbursement Methodology for Vendor Rates. The Texas Department of Human Resources will reimburse ICF-MR long-term care facilities on a cost-related basis for care rendered to recipients. Daily rates will be determined on a facility-by-facility basis at least annually. These cost-related daily rates will be set using financial and statistical information from cost reports which must be completed by each participating provider at least annually.

(1) Introduction.

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

(C) Each facility which serves the mentally retarded in Texas will be reimbursed on the basis of that facility's historical allowable cost. Before setting rates for next year's patient-day reimbursement, the historical cost base will be inflated by appropriate national and state economic indices. Allowable cost area ceilings will be set at the 90th percentile ranking by cost area for all full-year providers. Each facility's administration and facility costs will be adjusted if the occupancy rate falls below 90% for the reporting year. A bonus will be paid on daily rates for efficient operation. Facilities with less than a full year historical base will be reimbursed on the basis of the 60th percentile for each cost area for similar ICF-MR facilities submitting complete

year cost reports for the previous year. This reimbursement methodology applies to state-owned proprietary and non-proprietary institutions. Governmental providers will not be eligible for the incentive amount. Reimbursement to state institutions will be in accordance with applicable state laws and federal regulations.

(2) Detailed plan characteristics.

(A) (No change.)

(B) Prospective. Rates will be set on a prospective basis. The costs of each facility will be evaluated and a patient daily rate set for cost-reimbursement purposes.

(C) Classes of reimbursement. Payments will be made on reported allowable facility costs irrespective of patient classification or mix.

(D) (No change.)

(E) Cost-containment ceilings. All ICF-MR patient-days in the state will be ranked according to cost for each designated cost area; patient care services, dietary services, and administrative and facility services. The 90th percentile cost will be considered the maximum allowable cost which the state will reimburse to any facility for cost incurred in the patient care, dietary, and combined administrative and facility cost areas. No cost incurred above the 90th percentile cost area ceiling will be considered as allowable cost when calculating the facility's reimbursement rate. The maximum allowable reimbursement rate cannot exceed the 90th percentile ranking of all full-year ICF-MR providers.

(F) Efficiency incentive. In lieu of a return on net invested equity of proprietary providers, an efficiency incentive will be paid. This is applicable for nongovernment providers only. To encourage efficient operations when reported costs are below the percentile cost caps in the three cost areas, the state pays an efficiency bonus in the amount of 6.0% of the projected cost for each cost area. The cost-containment incentive amount will be added to the facility's allowable cost area amount in calculating its patient-day reimbursement rate for the next period. For any cost area, the incentive amount may not exceed the projected 90th percentile cost ceiling in that area. The maximum efficiency incentive that may be paid will be determined from the 1979 base \$2.00 amount inflated/deflated by the appropriate implicit price deflator or the gross national product.

(G) (No change.)

(H) Cost reporting and frequency. The same cost-reporting and auditing methodology will be used under the facility-by-facility scheme as is currently practiced under long-term care policy. The frequency of reporting will continue to be annual, tied to the facility's fiscal year, with the exception that facilities may submit a six-month report for adjustment to their daily rate. Cost reports are required to be submitted within three months of the fiscal year reporting period. For fiscal and six-month adjustment cost reports, a facility rate may be established within 90 to 180 days. Individual facility rate corrections will be made from audited cost reports.

(I) Occupancy factor. The facility-by-facility cost-finding methodology will be based on an occupancy rate of 90% for the yearly average. A facility which reports occupancy below 90% will have an occupancy rate adjustment applied to adjust all reported administrative and facility costs.

(J)-(K) (No change.)

(L) New facility exception. New facilities (facilities which have no prior operating history) will be paid a daily rate equal to the sum of applicable 60th percentile

projected cost area amounts in its group for its first full year of contract operations. Payment will be made at the new-facility rate until the first year cost report is received, verified, and an individual facility rate is established. A retroactive adjustment to the vendor rate paid will be made based on the established individual facility rate for Medicaid days of service provided after the first year of operation.

(i) Four groups of ICF-MR facilities will be established in order to determine new-facility rates for similar institutions. The same methodology will be used to determine reimbursement rates within each group. The four groups are: state-operated ICF-MR facilities, ICF-MR-I facilities, ICF-MR-V facilities, and ICF-MR-VI facilities.

(ii) All facilities which are contracted for more than one level of ICF-MR care will be paid a composite new-facility rate determined by the weighted average of contracted beds until an individual facility rate may be established.

(iii) New facilities are required to submit a cost report within three months after the completion of their first year of operation under the program. This requirement is necessary to establish individual rates for those facilities which have no cost reporting history. This requirement is in addition to the annual fiscal year cost report in the event the first year of operation and fiscal year do not coincide. A contract/ownership change does not necessarily constitute a new-facility vendor rate. Established facility-by-facility rates will apply to a given facility until historical cost data is provided by the new owner.

(iv) Prior established new-facility rates. New facilities that are Title XIX certified and contracted prior to January 1, 1980, and receiving an established 60th percentile new-facility rate may continue to receive their 1979 new-facility rate (\$41.20) if the proposed new-facility group rate is less than their current rate. Those facilities that are not contracted and certified but have started construction prior to December 6, 1979, may receive the \$41.20 new-facility rate if they are licensed prior to March 31, 1980.

(v) Negotiated new-facility rate exception. New facilities may request a reimbursement rate that is less than the established 60th percentile new-facility rate. This may be allowed due to facility budget constraints. The negotiated rate would remain fixed for a reimbursement period and over-reimbursement procedures would still apply. An increased rate would not be approved during the negotiated rate reimbursement period unless mandated changes occur.

(M)-(N) (No change.)

203. Allowable Costs. The following described items of expense are not intended to be exhaustive of all possible allowable costs. They are intended to serve only as a general guide. Detailed are many types of costs which can reasonably be anticipated to be incurred in a long-term care facility. The absence of a particular type of cost does not necessarily mean that it is not an allowable cost.

(1) (No change.)

(2) List of allowable costs.

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

(D) Real property and personal property expense.

(i)-(ii) (No change.)

(iii) Interest expense. Generally, interest expenses are allowable on loans for the acquisition of allowable items. Examples include mortgage loans, equipment loans, and working capital loans. However, in order for interest ex-

penses on loans to be considered an allowable cost, borrowings must conform to all of the following specifications:

(I) the loan must be necessary in the provision of patient and resident care;

(II) borrowings must be in conformity with prudent financial management practices;

(III) the loan must be evidenced in writing;

(IV) the loan must be in the name of the provider entity as maker or co-maker of the note.

(iv)-(v) (No change.)

(E) (No change.)

204. Unallowable Costs. The following described items of expense are not intended to be exhaustive of all possible unallowable costs. Rather, they are intended to be a general guide to various unallowable costs which may be encountered in long-term care facilities. The absence of a particular type of cost does not necessarily mean that it is an allowable cost.

(1) (No change.)

(2) List of unallowable costs.

(A)-(P) (No change.)

(Q) Interest expense. Interest expenses are unallowable on loans to pay for unallowable items of expense; and on that portion of interest paid which is reduced or offset by interest income except interest income from funded depreciation accounts or qualified pension funds.

(R)-(CC) (No change.)

Issued in Austin, Texas, on December 11, 1979.

Doc. No. 799423

Jerome Chapman

Commissioner

Texas Department of Human Resources

Effective Date: January 1, 1980

Proposal Publication Date: September 28, 1979

For further information, please call (512) 475-4601.

State Board of Insurance

Health Maintenance Organizations

Health Maintenance Organizations 059.24.22

The State Board of Insurance, effective January 1, 1980, repeals Rules 059.24.22.001-.010, which set out rules and regulations for health maintenance organizations. New rules with respect to health maintenance organizations are submitted simultaneously with this repeal and are to be effective at the time this repeal becomes effective.

These rules are repealed under the authority of Article 20A.22 of the Texas Insurance Code.

Doc. No. 799387

General Provisions 059.51.01

The State Board of Insurance has adopted new Rules 059.51.01.001 and .002 for health maintenance organizations. These rules set forth the purpose and scope of this chapter and define certain terms used in this chapter. After considering comments submitted in writing and at the public hearing held at the State Board of Insurance on November 21, 1979, and staff recommendations, the board has revised the proposed text in the following ways: (1) the statute

references in Rules .001 and .002(b)(2) have been corrected, (2) a typographical error in Rule .002(b)(2) has been corrected, and (3) a definition of "rules" has been added and subsequent definitions renumbered accordingly.

These rules are to become effective on January 1, 1980, and have been adopted under the authority of Article 20A.22 of the Texas Insurance Code.

.001. Purpose and Scope. The following provisional rules implement the Texas Health Maintenance Organization Act, Senate Bill 180, enacted by Acts 1975, 64th Legislature, pages 514-530, Chapter 214, first effective December 1, 1975, and as amended, arbitrarily codified by Vernon's Texas Statutes as Chapter 20A, Texas Insurance Code.

(1) **Severability.** Where any terms or sections of these rules are determined by a court of competent jurisdiction to be inconsistent with the Texas Health Maintenance Organization Act, as identified by these rules, the Act will apply but the remaining terms and sections of these rules will continue in effect.

(2) **Effect of rules.** The rules set forth herein are prescribed to govern the performance of appropriate statutory and regulatory functions and are not to be construed as limitations upon the exercise of statutory authority by the State Board of Insurance, the commissioner of insurance, or the Texas Department of Health.

(3) A violation of the lawful rules, regulations, or orders of the commissioner or board made pursuant to these rules constitutes a violation of the Texas Health Maintenance Organization Act.

.002. Definitions.

(a) The definitions found in Section 2 of the Texas Health Maintenance Organization Act as amended, codified by Vernon's Texas Statutes as Article 20A.02, Texas Insurance Code, are hereby incorporated in these rules.

(b) As used in these rules, unless the context of its use clearly indicates otherwise:

(1) **"Act"** means the Texas Health Maintenance Organization Act, Senate Bill 180, enacted by Acts 1975, 64th Legislature, pages 514-530, Chapter 214, first effective December 1, 1975, and as amended, arbitrarily codified by Vernon's Texas Statutes as Chapter 20A, Texas Insurance Code.

(2) **"Agent"** means a health maintenance organization agent as defined in Article 20A.15(a) of the Act.

(3) **"Capitation"** means the average amount of money required per enrollee to administer the health maintenance organization and to provide covered services to an enrollee for a specified time period.

(4) **"Code"** means the Texas Insurance Code, 1951, as amended.

(5) **"Copayment"** means an additional charge to an enrollee for a service which is not fully prepaid.

(6) **"HMO"** means a health maintenance organization which has been issued a certificate of authority under the Act.

(7) **"Out-of-area benefits"** means the benefits that the HMO covers when its members are outside the geographical limits of the HMO service area.

(8) **"Premium"** means the prospectively determined rate, based on the capitation, that is paid by or on behalf of a subscriber for specified health services.

(9) **"Primary care physician"** means a physician who is responsible for providing initial and primary care to pa-

tients, maintaining the continuity of patient care, and initiating referral for specialist care. Primary care physicians usually include general practitioners, internists, pediatricians, obstetrician/gynecologists, and family practitioners.

(10) **"Qualified HMO"** means an entity which has been federally approved under Title XIII of the Public Health Service Act, Public Law 93-222 as amended.

(11) **"Rules"** means all rules under Chapter .51 relating to HMOs.

(12) **"Schedule of charges"** means an exhibit showing:

(A) the capitation and any formulas which are used by the HMO as the basis for computing the chargeable rate; and

(B) the specific rates or premiums to be charged for a single enrollee, a two-member family, three-member family, etc.

(13) **"Service area"** means the geographical area within which direct service benefits are available and accessible to HMO enrollees.

(14) **"Subscriber"** means:

(A) if nongroup coverage, the person who is the policy holder and is responsible for payment of premiums to the HMO; or

(B) if group coverage, the person who is the certificate holder and whose employment or other status, except for family dependency, is the basis for eligibility for membership in the HMO.

Doc. No. 799388

Name Reservation Procedures 059.51.02

The State Board of Insurance has adopted new Rules 059.51.02.001-.009, regarding procedures for the reservation of a name by a proposed health maintenance organization. After considering comments submitted in writing and at the public hearing held at the State Board of Insurance on November 21, 1979, and staff recommendations, the board has revised the proposed text in the following manner: (1) the \$25 filing fee required in order to reserve a name has been deleted in Rules .002 and .006(1) and .006(2)(A); (2) Rule .002(2) has been revised, consistent with the Texas Health Maintenance Organization Act, to refer to the "basic organizational document;" (3) Rule .004 has been revised to indicate that Health Maintenance Organization name requests will be reviewed in the same manner as name requests received from insurance companies; and (4) a typographical error in Rule .006(2) has been corrected.

These rules are to become effective January 1, 1980, and have been adopted under the authority of Article 20A.22 of the Texas Insurance Code.

.001. How to Obtain Forms. The Reservation of Name form and all other HMO forms may be obtained by contacting the office of the HMO coordinator.

.002. Fee and Information Required. The Reservation of Name form (HMO Form No. 1) must be submitted and approved prior to submission of the application for a certificate of authority.

(1) The name, address, and title or relationship to the organization of each organizer must be shown on the back of HMO Form No. 1, along with the same information about any affiliated organization(s).

(2) An organization's name reservation must be approved by the State Board of Insurance before the basic organizational document is filed with the secretary of state. The same exact name must be used with both state agencies.

.003. *Certain Words May Not Be Used in Name.* Unless licensed as an insurer, no HMO may use in its name any of the following words: insurance, casualty, surety, or mutual.

.004. *Criteria.* The Company License Section of the State Board of Insurance reviews requests for reservation of names in the same manner as for insurance companies according to Board Order No. 9066 which took effect on January 30, 1967.

.005. *Use of the Term "HMO;" Use of Trademarks, "dba's."*

(a) While in the process of planning or development, the phrase "HMO" may be used as a part of the organization's name as long as the developmental status of the organization is made clear in all dealings with employers, individuals, prospective policyholders, news media, etc.

(b) If a trademark, service mark, or "dba" is to be used, it must first be filed with and approved by the commissioner.

(c) After certification, the name approved by the commissioner must be used by the HMO on all advertising and forms distributed to the public.

.006. *Time Limits; Renewal Requirements.* The following time limits and renewal requirements have been established for names reserved for use by a proposed HMO.

(1) The requested name is reserved for 365 days from the date the name is approved by the commissioner.

(2) At least 30 days before the end of this 365-day period, an organization which has not submitted an application for a certificate of authority may request that the name be reserved for an additional 365-day period by submitting the following:

(A) another completed name reservation form; and

(B) a statement explaining the current status of the organization and the estimated date on which an application for a certificate of authority will be filed;

(C) in addition, if the organization is financed by any federal grants, a copy of the letter from HEW which notified the organization of the approval of the present grant must be submitted. The type, amount, and expiration date of the grant must be detailed.

(3) Renewal requests may not be submitted more than 60 days before the end of the 365-day reservation period.

(4) If the information detailed above in (2) is not received at least 30 days before expiration of the 365-day name reservation period, the name expires and any request to renew the name reservation is treated as a new name reservation request.

(5) If the renewal request is received at least 30 days prior to the expiration date and if the statement of status sufficiently explains why the organization has not yet filed an application for a certificate of authority, then the name may be extended as of the previous expiration date for another 365-day period.

(6) The requirements of (2) above must be met each time a 365-day name reservation period ends.

.007. *Effect of Filing for or Receiving Certificate of Authority.* Once an application for a certificate of authority has been filed, the name reservation no longer must be renewed. If a certificate of authority is denied, the name

reservation is cancelled on the date of the denial order. If a certificate of authority is granted, the name is reserved for use by the HMO as long as the certificate of authority is in effect.

.008. *Effect of Withdrawing Application for Certificate of Authority.* If an application is filed and then withdrawn or delayed at the request of the applicant, then at the time of the withdrawal the applicant must request that the name continue to be reserved and estimate the date upon which the application will be refiled. If a 365-day name reservation period expires during the withdrawal period, then the requirements in Rule .006(2) must be met in order for the name reservation to be continued.

.009. *Situations in which Name Reservation Will Cease.* A name will cease to be reserved in the following situations:

(1) whenever an applicant fails to request renewal at least 30 days before the end of a 365-day name reservation period;

(2) whenever an application for a certificate of authority is denied; or

(3) whenever a certificate of authority is revoked.

Doc. No. 799389

Application for a Certificate of Authority 059.51.03

The State Board of Insurance has adopted new Rules 059.51.03.001-.007, regarding the required form and content and the procedures for reviewing an application for a certificate of authority to operate a health maintenance organization. After considering comments submitted in writing and at the public hearing held at the State Board of Insurance on November 21, 1979, and staff recommendations, the board has revised the proposed text in the following manner: (1) in Rule .001 the amount of filing fee has been deleted since the fee is specified in the Texas HMO act; and (2) the description of required information in Rules .004(5), (9), (10), (13), (16), and (19) have been clarified.

These rules are to become effective January 1, 1980 and have been adopted under the authority of Article 20A.22 of the Texas Insurance Code.

.001. *Filing Fee.* The filing fee required by Article 20A.32(a), Texas Insurance Code, must accompany the application. The fee is not returnable.

.002. *Binding and Indexing Requirements.*

(a) An original and four complete copies of the application must be submitted in three-ring binders, so that pages may be easily replaced when necessary. Additional copies of certain items are required as explained in Rule .004 below.

(b) Dividers with identifying tabs must precede each separate exhibit.

(c) Each application must contain a table of contents.

(d) Narrative material must be typed, double-spaced. Both sides of a page may be used. All pages must be clearly legible and numbered.

(e) Identical forms, lists, or other such documents should not be used in more than one section of the application. Instead of using the same information in more than one place, refer to the page or pages on which the required form or list may be found.

(f) The original copy of the application becomes the charter file; therefore, all signatures on required forms in the original copy must be originals, not photo copies.

(g) The application is subject to the Texas Open Records Act, Article 6252-17a, Texas Revised Civil Statutes.

.003. Revisions during Review Process.

(a) Revisions during the review of the application must be addressed to: HMO Coordinator, State Board of Insurance, 1110 San Jacinto, Austin, Texas 78786. The applicant must include an original and one copy of the transmittal letter plus the number of copies of any revision specified below.

(b) The applicant must submit an original plus four copies of any revised page unless additional copies are required by Rule .004.

(c) If a page is to be revised, the complete new page must be submitted with the changed item or information "red-lined" or otherwise clearly designated on all copies except the "original" page, which is placed in the charter file copy of the application.

(d) If substantial revisions are submitted less than 15 days prior to the date scheduled for the hearing, it may be necessary for the applicant to waive the statutory 120-day limit within which the commissioner must render a decision on the application. The hearing will be reset accordingly.

.004. Contents. Contents of the application must include the following items in order as listed:

(1) A completed HMO Form No. 2, "Application for a Certificate of Authority."

(2) The basic organizational documents and all amendments thereto, with a notarized certification bearing the original signature of an officer of the applicant, and the incorporation certificate with charter number and seal indicating certification by the Secretary of State of Texas, if applicable. If medical care is to be provided by contract with a professional association or a corporation formed pursuant to Article 4509a, Texas Revised Civil Statutes, the organizational documents of such association or corporation must also be submitted.

(3) The bylaws, rules and regulations, or any similar document regulating the conduct of the internal affairs of the applicant with a notarized certification bearing the original signature of an officer of the applicant, and the bylaws of any professional association or 4509a corporation which will provide medical care.

(4) Information about officers, directors, and staff:

(A) A completed "Officers and Directors Page" (HMO Form No. 3); and

(B) "Biographical Data" forms (HMO Form No. 4) must be submitted for all persons who are to be responsible for the day-to-day conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing body or committee, the principal officers, shareholders of the applicant if a corporation, or all partners or members in the case of partnership or association. Any relationship between the HMO and any affiliate or other organization in which a shareholder with 10% or more interest also has an interest, must be clearly identified. One additional copy of HMO Form No. 3 and of each HMO Form No. 4 must be submitted in an envelope marked to indicate its contents.

(5) The minutes of the applicant's organizational meetings, indicating the type of each meeting and the date, certified as true and correct by the notarized original sig-

nature of the person responsible for the maintenance of such documents, and sealed with the applicant's seal, if any. The minutes must designate the officer or officers who are responsible for the handling of the funds of the applicant. Written evidence of a decision by any professional association or 4509a corporation to contract with the applicant must be submitted. Minutes or formal resolutions must be submitted where applicable.

(6) A chart or list clearly identifying the relationships between the applicant and any affiliates, and a list of any currently outstanding loans or contracts to provide services between the applicant and the affiliates.

(7) Surety bonds for officers and employees who may have access to funds. These bonds must be written by a corporate surety company authorized to write surety bonds in Texas as prescribed by Article 20A.30, Texas Insurance Code. Bond forms approved by the State Board of Insurance must be used.

(A) Surety bonds for officer(s) responsible for handling funds must be made payable to the State Board of Insurance for the use and benefit of the applicant in an amount not less than \$25,000 for each officer, and

(B) Separate or blanket surety bonds for all office employees who may have access to any of the organization's funds must be made payable to the State Board of Insurance for the use and benefit of the applicant in an amount not less than \$1,000 per covered employee.

(C) In addition to the copies of the bonds submitted in the application, one duplicate original copy of each bond must be submitted in an envelope marked to identify its contents. These copies will be file-marked and returned to the applicant if a certificate of authority is granted.

(8) If the applicant is licensed as an HMO in another state:

(A) a copy of the certificate of authority from the domiciliary state's licensing authority, and

(B) a power of attorney executed by the applicant appointing the commissioner and his successors in office, or a duly authorized deputy, as the attorney of such applicant in and for this state, upon whom all lawful processes in any legal action or proceedings against the HMO on a cause of action arising in this state may be served.

(9) A copy of either:

(A) the acceptance letter indicating that a request for a certificate of need, exemption certificate, or declaratory ruling has been filed with and accepted by the Texas Health Facilities Commission (THFC), or

(B) a certificate of need, exemption certificate, or declaratory ruling issued by the THFC, or

(C) a written legal opinion by an attorney for the applicant explaining why the applicant does not fall under the jurisdiction of the THFC, confirmed by copies of correspondence received from the THFC by the applicant.

(10) A complete description of the complaint resolution procedure to be used in handling both informal and formal complaints and samples of any forms to be used in the procedure. The complaint procedure must:

(A) designate a specific employee by title as being responsible for administering the complaint system;

(B) include a provision for timely notification of the enrollee as to the progress of the investigation of the complaint and of the decision;

(C) include an explanation of any right to and procedure for appeal if the enrollee is dissatisfied with the decision;

(D) provide for written complaint reports which must include a complete description of the complaint and its resolution;

(E) provide for regular review by management and the governing body of complaint reports in order to assure the appropriateness of the action taken and the elimination of problems which led to the complaint; and

(F) provide for a log or list of all written complaints and responses to be retained for at least three years. The log must include at a minimum:

(i) classification of each complaint by type, and

(ii) the disposition of and total amount of time required to process each complaint.

(11) A description of the procedure by which enrollees are afforded the opportunity to participate in matters of policy and operation. The description must explain the methods used to select enrollee representatives to serve on the HMO board of directors or on any standing committees or advisory panels. The minutes of all meetings of such enrollee committees or panels must be retained for review during examinations and site visits.

(12) The evidence of coverage to be issued to enrollees, any group agreement which is to be issued to employers, unions, trustees, or other organizations as described in Rule 059.51.06.001-.011. In addition to the bound copies, two copies of each evidence of coverage, group agreement, and all related forms must be submitted in an envelope marked to show its contents.

(13) The schedule of charges to be used. Adequate supporting information and certification by a qualified actuary must be included, as specified in Rule 059.51.08.002 of these rules.

(14) Any advertising or sales material. In addition to the bound copies, two copies of each piece must be submitted in an envelope marked to show its contents.

(15) A brief but complete general narrative description of the applicant, its health care plan or plans, facilities, and personnel. The following specific information shall be included:

(A) a history of the development and the goals and objectives of the applicant;

(B) a diagram or flow chart showing how the organizational structure facilitates the provision of health care services;

(C) a list of key administrative staff assignments showing the name and experience of the individual chosen for each position. If any duties are to be performed by or with the assistance of an outside consultant, the name of each consultant, the specific services to be provided, and any common financial or beneficial ownership of the consultant and the applicant must be identified;

(D) a general description of arrangements or contracts with physicians and other providers regarding the provision of health care;

(E) a description of all present and proposed facilities to be utilized by the applicant including the services to be offered at each facility, its hours of operation, and overall capacity; and

(F) a description of the service area, including socioeconomic level, major employers, and/or industries, number of persons eligible for Medicaid or Medicare, popula-

tion statistics, the geographic boundaries, and any geographic barriers.

(16) A map of the service area, with key and scale, which shows county lines and appropriate major streets. The map must show the location of the applicant's administrative offices and sufficient physician and other health care delivery sites to demonstrate adequate availability of and accessibility to health care in the service area.

(17) A description of the proposed marketing plan, including the following information:

(A) an outline of the main strategy to be used;

(B) the methods of compensating marketing personnel;

(C) any training plan or requirements for individuals who will act as agents of the applicant; and

(D) HMO Form No. 7 describing the target groups expected to offer the HMO to employees during its first three years of operation.

(18) A copy of any contract executed or to be executed between the applicant and:

(A) any person listed on the officers and directors page;

(B) any physician, medical group, or association of physicians, or any other provider;

(C) any agent or agency;

(D) any person who will perform management, administrative, or data processing services; and

(E) a sample copy of the contract between the medical group, physicians association, or 4509a corporation and an individual physician.

(19) A list of physicians, hospitals, and other providers to be used by the applicant inside the service area indicating for each physician:

(A) medical specialty and board certification or eligibility status;

(B) Texas license number;

(C) business address; and

(D) hospitals at which primary care physicians have staff privileges.

(20) A description of the quality assurance program including a peer review program to meet the quality of health care requirements outlined in Article 20A.05(a)(2)(B), Texas Insurance Code. Arrangements for sharing pertinent medical records between physicians and providers within the HMO and assuring the record's confidentiality must be explained.

(21) Financial information.

(A) An audited annual financial statement including: balance sheets, statement of income and expenses, sources and application of funds, assets and liabilities, and the auditor's certificate and footnotes.

(B) Projected financial statements for the first three years of operation, including balance sheet projections, capital expenditures, loans and cash flow schedules, and the projected break-even date. The credentials of the person making the projections must be included.

(C) If the applicant wishes to request a waiver of initial capital and surplus requirements, as described by Rule 059.51.09.001, the application must include a written request along with supporting documentation. The commissioner may require additional information during his consideration of this request.

(22) Insurance and other protection against insolvency.

(A) A reinsurance agreement described in Article 20A.05(b)(2)(C)(iii), Texas Insurance Code, covering excess of loss, stop-loss, and/or catastrophes. The agreement must provide that the commissioner will be notified no less than 60 days prior to cancellation or reduction of coverage.

(B) Any conversion policy offered by an insurer to HMO enrollees who leave the HMO and the service area.

(C) Any other arrangements offering protection against insolvency.

(23) Authorization for disclosure to the commissioner of the financial records of the applicant. Disclosure of financial records of affiliates may also be required. The individual to be contacted for a qualifying examination must be identified.

(24) Such other information as the commission may require for proper consideration.

.005. Preliminary Review of Application. Under Article 20A.05 of the Texas Insurance Code, the commissioner is authorized to either issue or deny a certificate of authority to establish and operate a health maintenance organization within 120 days of the receipt of an application. The application is considered received as of the date on which all material required by Rule .004 is received by the commissioner.

.006. Withdrawal of an Application. An applicant may, upon written notice showing good cause, request withdrawal of an application and may resubmit an amended application within 90 days after withdrawal without paying an additional application fee. The amended application will be considered to be a new application. Applications resubmitted more than 90 days after the date of withdrawal must be accompanied by a new filing fee and treated as a new application.

.007. Request to Extend 120-Day Review Period.

(a) The applicant may request in writing that final action on an application for a certificate of authority be delayed. Such request must include:

- (1) the reason for the delay, and
- (2) the proposed length of time of the delay.

(b) The commissioner may grant a delay of final action to an applicant who has demonstrated a need therefor.

Doc. No. 799390

Regulatory Requirements of an HMO Subsequent to Issuance of a Certificate of Authority 059.51.04

The State Board of Insurance has adopted Rules 059.51.04.001-.005, regarding regulatory requirements of health maintenance organizations which have received a certificate of authority. After considering comments submitted in writing and at the public hearing held at the State Board of Insurance on November 21, 1979, and staff recommendations, the board has revised the proposed text in the following manner: (1) a typographical error in Rule .001(1)(D) has been corrected; (2) Rule .001(2) through (8) have been rearranged and renumbered with one change to the text in order to be more readable; (3) Rule .001(7)(A), which was proposed as .001(5)(A) regarding compliance with the law and rules of the Texas Health Facilities Commission, has been expanded and now reads the same as Rule 059.51.03.004(9); (4) Rule .003(a)(1) has been expanded to clarify annual statement fil-

ing requirements; and (5) Rule .005(b) regarding monetary penalties has been deleted and Rule .005(a)(2) has been revised accordingly.

These rules are to become effective January 1, 1980, and have been adopted under the authority of Articles 20A.04(b) and 20A.22 of the Texas Insurance Code.

.001. Filing Requirements. Subsequent to the issuance of a certificate of authority, each HMO is required to file certain information with the commissioner, either for approval prior to effectuation or for information only.

(1) An HMO shall file with the commissioner a written request to modify the following previously approved operations or documents and receive the commissioner's approval prior to effectuating such modifications:

(A) the basic organizational document such as the articles of incorporation or partnership agreement;

(B) the bylaws;

(C) the certificate of authority from the domiciliary state's licensing authority and a power of attorney, if the HMO is a foreign-licensed HMO;

(D) the evidence of coverage and related forms, as described in Rule 059.51.06.001;

(E) the officers' and employees' bonds, if all bonds are to be cancelled or if the bonding company is to be changed;

(F) the service area description;

(G) the complaint procedures;

(H) the enrollee participation mechanism;

(I) the form of all contracts between the HMO and any physicians, other providers, persons responsible for the conduct of the affairs of the HMO listed in Article 20A.04(a)(3), Texas Insurance Code, and any exclusive agency or management contracts described in Article 20A.18, Texas Insurance Code;

(J) the stop-loss or reinsurance agreements if changing the carrier or description of coverage;

(K) the quality assurance program;

(L) any change in more than 10% of control of the HMO, as defined by Article 21.49-1, Texas Insurance Code;

(M) the purchase, lease, construction, renovation, operation, or maintenance of hospitals, medical facilities, or both, and such other property as may reasonably be required for the principal or administrative offices or for such other purposes as may be necessary in the transaction of the business of the HMO. If approval by the Texas Health Facilities Commission is required, the acceptance letter from the Texas Health Facilities Commission indicating that a complete request has been filed must be a part of the filing; and

(N) the making of a loan or loans to a medical group or to corporations under the control of the HMO for the purpose of acquiring or constructing medical facilities or hospitals or in the furtherance of a program providing health care services to enrollees, after such facilities have received an acceptance letter from the Texas Health Facilities Commission, if required.

(2) Material filed under this paragraph (2) is not to be considered approved but may be subject to official review. Within 30 days of the effective date, an HMO must file with the commissioner, for information only, additions, deletions, and modifications to the following previously approved operations and documents:

(A) the list of officers and directors and a biographical data sheet for each person listed under Article

20A.04(a)(3), Texas Insurance Code; the minutes of the meeting at which the officer or director was chosen must be filed as soon as available;

(B) any amendments to bonds for officers and employees;

(C) any certificate of need, declaratory ruling, or exemption certificate required by Article 4418h, Texas Revised Civil Statutes;

(D) the sources of financial support;

(E) the schedule of charges as described in Rules 059.51.08.001-.007; and

(F) any sales and advertising material and newsletters.

(3) A request to modify the application which requires the commissioner's approval is not considered complete until all necessary supporting documentation has been received. The HMO will be notified by letter of the date on which the filing is considered complete.

(4) Any modification for which the commissioner's approval is required is considered approved unless disapproved within 30 days from the date the filing is complete; provided that the commissioner may postpone the action for such further time, not exceeding an additional 30 days, as necessary for proper consideration. The HMO will be notified by letter of any postponement.

(5) The filings required in (1) and (2) above must be accompanied by an HMO Form No. 5 and four copies of the following:

(A) an HMO Form No. 8 for each new, revised, or replaced evidence of coverage, as described in Rule 059.51.06.003(2); and

(B) a transmittal letter.

(C) Such supporting documentation as considered necessary by the commissioner for review of the filing.

(6) Subsequent to the issuance of a certificate of authority, on or before March 1 of each calendar year, each HMO must file with the HMO coordinator two copies of an updated list of physicians and other providers.

(7) Any request to expand the service area or to add new services or benefits must first comply with any pertinent requirements of the Texas Health Planning and Development Act, Article 4418h, Vernon's Texas Civil Statutes, and the rules of the Texas Health Facilities Commission promulgated thereunder. The HMO must provide the commissioner with the following information to support a request to expand the area served by the HMO:

(A) a copy of either:

(i) the acceptance letter indicating that a request for either a certificate of need, exemption certificate, or declaratory ruling has been filed with and accepted by the Texas Health Facilities Commission (THFC), or

(ii) the certificate of need, exemption certificate, or declaratory ruling issued by the THFC, or

(iii) a written legal opinion by an attorney for the applicant explaining why the proposed expansion of service area does not fall under the jurisdiction of the THFC, confirmed by copies of correspondence received from the THFC by the applicant.

(B) if prior action of the HMO's board is required, minutes of the board meeting at which expansion was authorized and any related amendments to the basic organizational document or bylaw:

(C) a map of the new service area showing locations of primary care physicians, hospitals, and emergency care facilities;

(D) any contracts or agreements with physicians and other providers in the new area;

(E) a list of all physicians and other providers who have agreed to provide services in the new area;

(F) if the new area is not contiguous with the previously approved area, the following additional information must be provided:

(i) a brief narrative description of the administrative arrangements and other pertinent information;

(ii) biographical data sheets for the management staff assigned to the new area;

(iii) enrollee participation plan for the new area;

(iv) marketing information about the new area including demographic material, three-year enrollment projections using HMO Form No. 7, and proposed advertising and sales material;

(v) evidence of coverage to be used in the new area; and

(vi) rates to be charged and actuarial certification;

(G) such other information as the HMO or commissioner may consider necessary to adequately describe the proposal.

(8) The "Annual Information to Enrollees" required by Article 20A.11, Texas Insurance Code, must be submitted to the commissioner at least 30 days prior to its release to enrollees, along with a description of the method of distribution to be used. The required information must be distributed no later than June 1 of the following year.

.002. *Examination.* The commissioner is authorized to make a complete examination of the affairs of each health maintenance organization as often as is deemed necessary, but not less frequently than once every three years. Expenses of the examination must be paid by the HMO examined.

.003. *Annual and Other Reports.*

(a) *Annual reports.*

(1) Each HMO must file an annual report and an annual financial statement with the commissioner on or before March 1 of each year. This report, covering the preceding calendar year, must be verified by at least two officers of the HMO and accompanied by the filing fees specified in Article 20A.32(b), Texas Insurance Code.

(2) The annual report must be on forms prescribed by the State Board of Insurance, and the annual statement must be certified by an independent public accountant.

(3) The original must be filed with the State Board of Insurance. Photocopies, including all attachments, must be sent to both the Health Department and the HMO coordinator.

(b) *Other reports.*

(1) Federally qualified HMOs must submit to the HMO coordinator one copy of all routine report forms required by the federal office of HMOs on the date such report forms are submitted to the federal office of HMOs.

(2) During the first three years of operation, all HMOs must file semi-annual reports on forms prescribed by the State Board of Insurance.

(A) The commissioner may require additional reports whenever he considers such reports necessary.

(B) The semi-annual reports need not be audited. The original must be submitted to the State Board of Insurance, with photocopies to the Health Department and the HMO coordinator.

(C) No filing fee is required for semi-annual report filings.

.004. Site Visits.

(a) The Health Department is authorized to make an examination concerning the quality, availability, and accessibility of health care services as often as is deemed necessary.

(b) A representative of the commissioner is authorized to visit each HMO annually, or as frequently as necessary, to review the books and operations of the HMO.

(c) The HMO must make available during such visits all books and records relating to its operation.

.005. Penalties.

(a) Failure to comply with the Act or these rules or other regulations or orders of the commissioner or State Board of Insurance may result in:

- (1) additional reporting requirements, or
- (2) a cease and desist order, or
- (3) suspension or revocation of the certificate of authority.

Doc. No. 799391

Licensing and Regulation of HMO Agents 059.51.05

The State Board of Insurance has adopted Rules 059.51.05.001-.010, regarding the licensing of agents to represent health maintenance organizations. After considering comments submitted in writing and at the public hearing held at the State Board of Insurance on November 21, 1979, and staff recommendations, the board has revised the proposed text in the following manner: (1) Rule .001(3) regarding temporary agents licenses, has been deleted and a new Rule .011 has been adopted in order to clarify temporary license requirements; (2) in Rule .009, the form which must be submitted to cancel an appointment is more clearly identified; and (3) Rule .010(H) has been revised to include both Health Maintenance Organization and health insurance coverage.

These rules are to become effective on January 1, 1980, and have been adopted under the authority of Article 20A.15 of the Texas Insurance Code.

.001. *General.* No person may perform the acts of an HMO agent within this state unless such person:

- (1) has an appointment by an HMO with a valid Texas certificate of authority; and
- (2) has a valid HMO agent's license.

.002. *Clearance if Licensed by Another State.* An applicant for a resident HMO agent's license who was previously licensed as an HMO agent in another state must present proof of clearance from that state before an application for a Texas license can be considered complete.

.003. *Nonresident Licenses.* An individual who is not a resident of Texas may be licensed as an HMO agent upon compliance with the provisions of the Texas HMO Act and these rules, provided that the state in which the individual

resides accords the same privilege to a citizen of Texas. The commissioner is authorized to enter into reciprocal agreements with the appropriate official of any state whereby any examination of any applicant from such other state is waived, provided that:

- (1) a written examination is required of applicants for an HMO agent's license in the other state;
- (2) the appropriate official of the other state certifies that the applicant holds a currently valid license as an HMO agent in such other state by passing a written examination or holds a currently valid license issued because of the applicant's exemption from the requirements of an examination;
- (3) the applicant has no place of business in Texas for the transaction of business as an HMO agent;
- (4) in the other state, a resident of Texas may obtain an HMO agent's license upon satisfying the foregoing conditions and without discrimination as to fees or otherwise in favor of the residents of the other state; and
- (5) payment of fees as required by the Texas HMO Act.

.004. *Application for License Prior to Certificate of Authority.* After an applicant for a certificate of authority has been notified that the application has been accepted for review, applications for HMO agent's licenses may be submitted along with the required fees, and the required examination for an HMO agent's license may be taken by persons who wish to represent the applicant as agents. Each applicant for an HMO agent's license will be notified of the results of the examination, but no license will be issued until after a certificate of authority is issued by the commissioner.

.005. *License Application Requirements.* In applying for a license, each applicant must submit the following:

- (1) a completed application, signed by an officer of the HMO (note: an officer may not sign the appointment form in his own application for an agent's license);
- (2) two recent clear and close-up photographs of the applicant, at least two inches by three inches in size;
- (3) the license fee;
- (4) the examination fee; and
- (5) the initial appointment fee.

.006. *Written Examination.* The commissioner is authorized to issue the applicant a license after the applicant has passed a written examination approved by the commissioner, unless the applicant is exempt from examination requirements as provided in Rule .003.

(1) The examination shall cover the Texas HMO Act, rules and regulations for health maintenance organizations issued by the State Board of Insurance, pertinent sections of the Texas Insurance Code, and general history and information about HMOs.

(2) A study guide is available from the State Board of Insurance and is the sole source of examination questions. The manual and the examination may be changed at any time.

(3) The examination is given at the same times and places as other agent's examinations.

(A) Each applicant is mailed a schedule showing places and dates on which examinations are conducted and an Examination Reservation Request form.

(B) The Examination Reservation Request form must be received by the Agents License Division, State Board of Insurance, no less than 10 days prior to the desired examination date.

(C) The examination must be scheduled within 90 days of the date an application is approved.

(4) The HMO and the applicant are notified if the applicant fails the examination.

(5) A new examination fee must be paid for each re-examination and the applicant must reschedule the exam within 90 days of notification of failure.

(6) The examination fee may be returned only if the applicant gives the commissioner at least 24 hours prior notice of an emergency situation and receives the commissioner's approval to cancel the scheduled examination. In such cases, the fee may be applied to a future examination, at the request of the applicant.

.007. Renewal. The HMO agent's license expires two years after the date of issue unless renewal is requested in writing and a renewal fee is paid prior to the expiration of the license.

(1) Prior to the expiration date, a notice of the renewal date is mailed to the agent at the address on file in the Agents License Division, State Board of Insurance. The agent must immediately notify the Agents License Division of any address change.

(2) When an agent renews a license, all appointments then in effect are automatically renewed.

(3) At the discretion of the commissioner, an individual whose license as an HMO agent has expired, may, within one year of the date of the expiration, be issued a new license upon payment of all applicable fees but without retaking the written examination.

.008. Additional Appointments. An HMO agent may be appointed to represent more than one HMO upon the submission of an additional appointment form and payment of the appointment fee.

.009. Termination of Appointment. Upon terminating the appointment of an HMO agent, the HMO must immediately complete the Form 108, Notice of Cancellation of Appointment, which is on the reverse side of the form which was mailed to the HMO by the Agents License Division to acknowledge the appointment of that agent. Form 108 must be mailed to the Agents License Division, with photocopy to the HMO coordinator. The appointment is cancelled as of the date on which the cancellation notice is received in the Agents License Division unless the license was cancelled or expired prior to the date the notice is received.

.010. Suspension of License. The commissioner may suspend, revoke, or refuse to renew an agent's license for statements or actions which are untrue, unfair, misleading, deceptive, or which encourage misrepresentation. Grounds and procedures for such actions are outlined below.

(1) A license may be denied, or a license duly issued may be suspended or revoked or the renewal thereof refused by the commissioner if, after notice and hearing provided, he finds that the applicant:

(A) has willfully violated any provision of the HMO laws of this state; or

(B) has intentionally made a material misstatement in the application for such license; or

(C) has obtained, or attempted to obtain, such license by fraud or misrepresentation; or

(D) has misappropriated or converted to his or the HMO's own use or illegally withheld money belonging to an enrollee; or

(E) has otherwise demonstrated lack of trustworthiness or competence to act as an HMO agent; or

(F) has been guilty of fraudulent or dishonest practices relative to the HMO; or

(G) has materially misrepresented the terms and conditions of HMO contracts; or

(H) has made or issued, or caused to be made or issued, any statement misrepresenting or making incomplete comparisons regarding the terms or conditions of any health coverage contract issued by an insurer or HMO, for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract or allow it to lapse for the purpose of replacing such contract with an HMO contract; or

(I) has obtained, or attempted to obtain such license, not for the purpose of holding himself out to the general public as an HMO agent, but primarily for the purpose of soliciting, negotiating, or procuring contracts covering himself or members of his family or his business associates; or

(J) is not of good character or reputation.

(2) Before any license is denied, except for failure to pass a required written examination, or is suspended or revoked, or the renewal thereof refused hereunder:

(A) The commissioner will give notice of his intention to do so, by registered mail, to the applicant for or holder of such license and to the HMO whom he represents or who desires that he be licensed, and set a date not less than 20 days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the HMO may appear to be heard and produce evidence.

(B) In the conduct of such hearing, the commissioner or any regular salaried employee designated by him for such purpose is authorized to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records, or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee.

(C) Upon termination of such hearing, findings will be reduced to writing and, upon approval by the commissioner, filed in his office and notice of the findings sent by registered mail to the applicant or licensee and the HMO concerned.

(3) No applicant or licensee whose license has been denied, refused, or revoked hereunder, except for failure to pass a required written examination, is entitled to file another application for a license as an HMO agent within one year from the effective date of such denial, refusal, or revocation is sought within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the commissioner unless the applicant shows good cause why the denial, refusal, or revocation of his or her license should not be considered a bar to the issuance of a new license.

.011. Temporary Licenses.

(a) If the commissioner of insurance is satisfied with the honesty and trustworthiness of the applicant, a temporary HMO agent's license may be issued, to be effective for 90 days, without requiring the applicant to pass a written examination.

(b) A temporary license may be issued to any person who has been appointed or who is being considered for appointment as an HMO agent by an HMO immediately upon

receipt by the commissioner of an application executed by such person as required by Rule .005, together with a certificate signed by an officer or properly authorized representative of such HMO stating:

(1) that such HMO has investigated the character and background of such person and is satisfied that such person is trustworthy;

(2) that such person has been appointed or is being considered for appointment by such HMO as its agent; and

(3) that such HMO desires that such person be issued a temporary license.

(c) If such temporary license is not received for the commissioner within seven days from the date on which the application and certificate were delivered to or mailed to the commissioner, the HMO may assume that such temporary license will be issued in due course and the applicant may proceed to act as an agent.

(d) No temporary license shall be renewable nor issued more than once in a consecutive six-month period to the same applicant; and no temporary license shall be granted to any person who does not intend to actively sell HMO products to the public generally.

(e) The commissioner shall have the authority to cancel, suspend, or revoke the temporary appointment powers of any HMO, if, after notice and hearing, he finds that such HMO has abused such temporary appointment powers. In considering such abuse, the commissioner may consider, but is not limited to the number of temporary appointments made by an HMO, and the percentage of appointees sitting for the examination as HMO agents. Each HMO is responsible for requiring at least 70% of such HMO's applicants for temporary licenses during a fiscal year to sit for the examination.

Doc. No. 799392

Evidence of Coverage 059.51.06

The State Board of Insurance has adopted new Rules 059.51.06.001-.011, regarding required format and content of each evidence of coverage used by a health maintenance organization. After considering comments submitted in writing and at the public hearing held at the State Board of Insurance on November 21, 1979, and staff recommendations, the board has revised the proposed text in the following manner: (1) Rule .001(5) and (7) have been clarified; (2) Rule .004(b) has been revised by deleting the phrase "at any time;" (3) Rule .006 regarding required contents of an evidence of coverage has been revised to more clearly explain the requirements in (9), (10)(A), (10)(C), and (14)(B); (4) Rule .008(2) has been expanded to include the requirement which previously appeared in Rule .010, and Rule .010 has been deleted and subsequent rules have been renumbered accordingly; (5) Rule .008(4) has been expanded to include effective date requirements; and (6) Rule .011, as renumbered, has been changed to clarify the date by which all previously approved evidences of coverage must comply with these rules.

These rules are to become effective January 1, 1980, and have adopted under the authority of Article 20A.22, of the Texas Insurance Code.

.001. Forms which Must Be Approved Prior to Use. No evidence of coverage or amendment thereto may be issued,

delivered, or used in Texas unless it has been filed for review and has received the approval of the commissioner. The following forms must be approved by the commissioner prior to use:

- (1) group agreement;
- (2) certificate issued to each subscriber who is enrolled through a group;
- (3) nongroup agreement;
- (4) group and nongroup applications for coverage;
- (5) group subscriber enrollment form;
- (6) riders, endorsements, amendments;
- (7) any other form that is attached to or made a part of the evidence of coverage.

.002. Filing Requirements with Application for Certificate of Authority. Filing requirements for the evidence of coverage and all related forms when filed as part of the application for a certificate of authority are as follows:

(1) Proposed forms must be either typed, double-spaced, or a printer's proof version.

(2) Applicant will be notified in writing of any deficiencies.

(3) During the 120-day review period, applicant must submit four copies of each new page or form reflecting any revisions. All deficiencies must be corrected and submitted not less than 15 working days prior to the public hearing.

(4) A tentative approval letter may be issued based on typed drafts. Approval based on a printer's proof version will be withdrawn unless final prints are received within 60 days of the date of the approval order. Any discrepancy between the final print and the approved form is grounds for withdrawal of approval.

(5) No form may be used until three copies of the final print have been received by the HMO section. One copy is stamped with the approval order number and date and returned to the HMO for its permanent file.

.003. Filing Requirements Subsequent to Receipt of Certificate of Authority. Subsequent to receipt of a certificate of authority, no evidence of coverage may be amended or altered in any manner and no new evidence of coverage may be used unless the proposed new or revised evidence of coverage has been filed for review and has received the approval of the commissioner.

(1) A form may be submitted for preliminary review in draft form if typed. Such submissions are reviewed for content only. Before a form may be considered filed for approval, either a printer's proof or a final print must be submitted.

(2) Four copies of HMO Form No. 8 must accompany any form or forms submitted for approval. All submissions must be addressed to the HMO coordinator. A transmittal letter must list each form submitted and show the form's number and title or description.

(3) If approval based on a printer's proof is granted, three copies of the final print must be received by the HMO coordinator within 60 days of the date of the approval order. Any discrepancy between the final print and the approved form is grounds for withdrawal of the approval.

(4) No evidence of coverage may be used until three copies of the final print have been received by the HMO coordinator. One copy is stamped and returned to the HMO for its permanent file.

(5) The 30-day review period for an evidence of coverage filed pursuant to this rule and to Article 20A.09,

Texas Insurance Code, begins on the date on which the acceptable, filled-in, completed printer's proof version or final print of the form is received by the HMO coordinator.

(6) The 30-day review period may be extended by up to 30 additional days upon written notice of such extension to the HMO before the expiration of the initial review period.

(7) At the end of the review period, the evidence of coverage is considered approved unless it has already been either affirmatively approved or disapproved by the commissioner's written order.

.004. *Disapproval of an Evidence of Coverage.*

(a) If any portion of any evidence of coverage is disapproved, the commissioner will specify the reason for the disapproval. The commissioner is authorized to disapprove any form or withdraw any previous approval if:

(1) it fails to meet the requirements of the Act or of these rules; or

(2) it does not properly describe the services and benefits; or

(3) it contains any statements that are untrue, unjust, unfair, inequitable, or misleading, or deceptive, or that violate Article 21.21 of the Texas Insurance Code, or any regulations thereunder; or

(4) it provides services or benefits that are too restrictive to achieve the purpose for which the form was designed; or

(5) it fails to attain a reasonable degree of readability, simplicity, and conciseness; or

(6) it is misleading, deceptive, or obscure because of physical aspects such as its format, typography, style, color, material, or organization; or

(7) it provides services or benefits or contains other provisions that would endanger the solidity of the issuing HMO; or

(8) it is contrary to the law or policy of this state.

(b) The commissioner may withdraw approval of any form.

(c) If a form is disapproved, the HMO may file a written request for a hearing on the matter. A hearing will be scheduled within 30 days from the date the request is received.

.005. *Specifications for the Evidence of Coverage.*

(a) The evidence of coverage must be printed on paper of quality suitable for filemarking (not slick-faced) and filing for permanent record.

(b) For the nongroup and group agreements and group certificate and all amendments, type must be light-faced, uniform sized, common-style not less than 10 points in height and with a lowercase unspaced alphabet length not less than 120 points. For other forms, type must be legible.

(c) The style, arrangement, and overall appearance shall give no undue prominence to any portion of the text. The text of the group and nongroup agreements, the certificate, and all amendments includes all printed matter except:

(1) the name, address, and phone number of the HMO;

(2) the name or title of the form;

(3) the captions and subcaptions; and

(4) any brief introduction to or description of the evidence of coverage.

(d) Each evidence of coverage must indicate by example information which will appear in any blanks, with the ex-

ception of singlecase forms which must be filed complete and ready for use.

(e) Each form must be identified by a suitable form number, adequate to distinguish the form from all other forms used by the HMO.

(1) The form number must appear in the lower left-hand corner of the page. In the case of a multiple page form, the form number must appear on the lower left-hand corner of the first page. The same form number with a different appropriate suffix must then appear on each subsequent page of the form. (E.g., if G-100 is the form number assigned to the group contract, page 2 could be G-100-2, etc.)

(2) If a form is to be replaced or revised, a new form number must be assigned. A new edition date added to the original form number is an acceptable way of revising the form number so that it is identifiable from any previously approved form. (E.g., if G-100 was the originally approved form number, the revision may be numbered G-100 Ed. 12/79. Changing the case of the suffix is not considered to be a change in the form number, e.g., "ED" and "ed" or "REV" and "rev" are the same for form numbering purposes.)

(3) Any change in the printed material or form number of an evidence of coverage must be filed and receive approval prior to use. A change in the form number requires prior approval because approval orders refer only to specific form numbers. Any symbol, letter, or number may be used as part of the identifying form number.

(f) Certain language may vary, or be changed, without resubmitting a form for the commissioner's approval.

(1) Changeable language must be enclosed in brackets and is limited to rates, dates, addresses, phone numbers, and other such information, as approved by the commissioner.

(2) An evidence of coverage submitted with extensive changeable language is reviewed as if no changeable language appears. Approval or disapproval is based on the specimen language submitted and no variations are allowed.

.006. *Mandatory Provisions—Group and Nongroup Agreement and Group Certificate.* Each group and nongroup agreement and group certificate must contain the following provisions:

(1) The name, address, and phone number of the HMO and notice of any provision requiring arbitration, indicating the location of such provision within the evidence of coverage, must appear on the face page.

(A) The face page of an agreement is the first page that contains any written material.

(B) If the agreements or certificates are in booklet form, the first page inside the cover is considered the face page.

(2) Arbitration—a description of any required arbitration procedure if enrollee complaints and grievances are resolved through a specified arbitration agreement, the arbitration must be conducted pursuant to the Texas Arbitration Act, Articles 224-238, Vernon's Annotated Texas Statutes.

(3) Benefits—a description of all health care services available to enrollees under the health care plan, including any copayments or deductibles.

(4) Cancellation—a statement that the HMO must give the group agreement holder, in the case of group coverage, or the subscriber, in the case of nongroup coverage, at least 60 days prior notice of any cancellation or termination except termination for nonpayment of premium.

(5) Claim filing procedure—a provision that sets forth that procedure for filing claims, including:

- (A) any required notice to the HMO of a claim;
- (B) how, when, and where to obtain claim forms, if required;
- (C) requirements for filing proper proofs of loss;
- (D) any time limit for payment of claims; and
- (E) notice of any requirement for arbitration of disputed claims.

(6) Complaint procedure—a description of the HMO's method for resolving enrollee complaints, including the address and phone number to which complaints must be directed and notice of any requirements for arbitration.

(7) Conversion privilege—group and nongroup agreements and group certificates must contain a conversion privilege which provides that upon termination of eligibility for membership, each enrollee has the right to convert within 31 days to a nongroup agreement issued by the HMO or by an insurer or group hospital service corporation, without presenting evidence of insurability. No conversion privilege is required when the entire group withdraws from the HMO or for any individual member who was terminated for cause or for nonpayment of copayments or other charges.

(8) Definitions—a provision defining any words in the evidence of coverage which have other than the usual meaning. Definitions must be in alphabetical order.

(9) Effective date—a statement of the effective date requirements for dependents.

(10) Eligibility—a statement of the eligibility requirements for membership including:

(A) the conditions under which dependent enrollees may be added to those originally covered;

(B) any limiting age for subscriber and dependents, including effects of Medicare eligibility; and

(C) a clear statement regarding the coverage of newborn children. No evidence of coverage may contain any provision excluding or limiting coverage for a newborn child. Congenital defects must be treated the same as any other illness or injury for which coverage is provided. The HMO may require that the subscriber notify the HMO during the initial 31 days after the birth of the child and pay any additional premium required to continue coverage for the newborn child.

(11) Emergency services—a description of how to obtain services in an emergency situation including:

(A) any requirements that the HMO be contacted before the enrollee obtains care;

(B) what to do in case of an emergency occurring outside the service area;

(C) what to do in case of a "life-threatening" emergency; and

(D) a statement of any restriction or limitations on out of area services.

(12) Exclusions and limitations—a provision setting forth any exclusions and limitations on health care services, including services for pre-existing conditions.

(13) Incontestability—provisions that:

(A) the form and any attachments constitute the entire contract between the parties; and

(B) in the absence of fraud, all statements made by a subscriber are considered representations and not warranties and that no statement voids the coverage or reduces the benefits thereunder after the form has been in force for two years from its effective date, unless the statement was

material to the risk assumed and contained in a written application. A copy of the written application must have been furnished to the subscriber.

(14) Schedule of charges.

(A) A statement that discloses the HMO's right to change the rates charged and indicates the amount of prior notice which must be given.

(B) Pursuant to Article 20A.09(a)(3)(B)(iv), Texas Insurance Code, a provision disclosing the total amount of payment for health care services which the enrollee is obligated to pay if covered by a nongroup agreement, and an indication in the certificate of whether the plan is contributory or noncontributory if coverage is through a group. This requirement may be satisfied by inclusion of this information on the nongroup application for membership or group subscriber enrollment form.

(15) Service area—a map or clear description of the service area indicating major primary and emergency care delivery sites.

(16) Termination.

(A) a statement of the conditions under which the HMO may terminate the coverage for an enrollee; and

(B) a provision that a child's attainment of a limiting age does not operate to terminate the coverage of the child while that child is incapable of self-sustaining employment due to mental retardation or physical handicap, and chiefly dependent upon the subscriber for support and maintenance. The subscriber may be required to furnish proof of such incapacity and dependency within 31 days before the child's attainment of the limiting age and subsequently as required, but not more frequently than annually following the child's attainment of such limiting age.

(17) Where to obtain services—a statement explaining where and in what manner information is available as to how services may be obtained.

.007. Additional Mandatory Provisions—Nongroup Agreements. Nongroup agreements must contain the following additional mandatory provisions:

(1) Amendments—a provision that, to be valid, any change in the form must be approved by an officer of the HMO and attached to the affected form and that no agent has authority to change the form or to waive any of its provisions.

(2) Grace period—a provision for a grace period of at least 31 days for the payment of any premium falling due after the first premium during which the coverage remains in effect. A charge may be added to the premium by the HMO for late payment received within the grace period.

(3) Reinstatement—provision that clearly sets forth the requirements for reinstatement and discloses how reinstatement changes or affects the rights and coverages originally provided. New evidence of insurability may be required.

(4) Ten days to examine agreement—a provision stating that the person to whom the policy is issued shall be permitted to return the policy within 10 days of receiving it and to have the premium paid refunded if, after examination of the nongroup agreement, such person is not satisfied with it for any reason. If such person pursuant to such provision, returns the nongroup agreement to the issuing HMO or to the agent through whom it was purchased, it is considered void from the beginning and the parties are in the same positions as if no policy had been issued. If services are rendered or claims paid by the HMO during the 10 days, the subscriber is responsible for repaying the HMO for such services or claims.

(5) The original consideration for coverage must be expressed in the agreement or in the application.

.008. Additional Mandatory Provisions—Group Agreement Only. Group agreements must contain the following additional mandatory provisions:

(1) **Amendments**—a provision that, to be valid, any change in the form must be approved by an officer of the HMO and attached to the affected form and that no agent has authority to change the form or waive any of its provisions.

(2) **Certificates**—a provision that the agreement holder must be provided with subscriber certificates to be delivered to each subscriber; that the certificate is a part of the group agreement as if fully incorporated therein; and that any direct conflict between the group agreement and the certificate will be resolved according to the terms which are most favorable to the subscriber.

(3) **Grace period**—a provision for a grace period of at least 31 days for the payment of any premium falling due after the first premium during which the coverage remains in effect. A charge may be added to the premium for late payment received within the grace period.

(4) **New employees**—a provision specifying the conditions under which new subscribers may be added to those originally covered, including effective date requirements.

.009. Optional Provisions. Group and nongroup agreements and group certificates may contain the following optional provisions:

(1) **Coordination of benefits**—a provision that the value of any benefits or services provided by the HMO may be coordinated with any other type of group insurance plan or coverage under governmental programs so no more than 100% of eligible expenses incurred is paid.

(A) If benefits are covered by more than one plan, any plan or plans that do not have a coordination of benefits provision are primary.

(B) Group plans may not coordinate benefits with any type of nongroup plan.

(C) Group and nongroup plans may not coordinate benefits with automobile coverage.

(2) **Subrogation**—a provision that the HMO receives all rights of recovery acquired by an enrollee against any person or organization for negligence or any willful act resulting in illness or injury covered by HMO benefits, but only to the extent of such benefits. Upon receiving such benefits from the HMO, the enrollee is considered to have assigned such rights of recovery to the HMO and to have agreed to give the HMO any reasonable help required to secure the recovery.

.010. Additional Information May Be Required. The commissioner is authorized to require the submission of any other relevant information deemed necessary in determining whether to approve or disapprove a filing made pursuant to this rule.

.011. Time Limit within which Previously Approved Forms Must Be Revised to Comply with These Rules. Any previously approved evidence of coverage delivered or issued for delivery, renewed, extended, or amended in this state must be revised to comply with these rules by no later than December 31, 1980.

Doc. No. 799393

Advertising and Sales Material 059.51.07

The State Board of Insurance has adopted Rules 059.51.07.001-.004, regarding the regulation of advertising and sales material used by health maintenance organizations. After considering comments submitted in writing and at the public hearing held at the State Board of Insurance on November 21, 1979, and staff recommendations, the board has revised the proposed text of Rule .002 regarding criteria used in reviewing advertising and deleted the introductory sentence of Rules .003 and .004 and renumbered the contents of both rules accordingly.

These rules are to become effective January 1, 1980, and have been adopted under the authority of Article 20A.22 of the Texas Insurance Code.

.001. Included Material. The term advertisement includes:

(1) printed and published material and descriptive literature used in newspapers, magazines, radio and television scripts, billboards, and similar displays;

(2) descriptive literature and sales aids of all kinds used by an HMO or its agent or representative for presentation to members of the public, including but not limited to audio-visual presentations, circulars, leaflets, booklets, depictions, illustrations, and form letters; and

(3) prepared sales talks, presentations, and materials developed for repeated use by agents and representatives of the HMO.

.002. Subject to Article 21.21, Texas Insurance Code, and Related Rules. HMOs must comply with all advertising guidelines and rules promulgated pursuant to Article 21.21, Texas Insurance Code, by the State Board of Insurance in the same manner for insurance companies.

.003. Filings Subsequent to Certificate of Authority.

(a) An HMO that wishes to obtain acceptance of advertisements or sales material prior to use must file such advertisements and sales material with the commissioner no less than 60 days prior to the intended date of use.

(b) Such filings must be addressed to the HMO coordinator and must include:

(1) two copies of a transmittal letter listing:

(A) the identifying form number of any printed material submitted;

(B) the form number of the policy form or forms advertised;

(C) the initial number of the advertisements to be printed;

(D) the method or media used for dissemination of the advertisement;

(E) the area in which the advertisement will appear or be distributed; and

(2) three copies of a printer's proof or a "paste-up" of any printed advertisement; three copies of the script and layouts of any audio-visual, radio, or TV presentation.

(c) Three copies of printed advertisements must be submitted in final printed form subsequent to acceptance.

.004. File of All Advertisements.

(a) Each HMO must maintain a complete file containing every written advertisement and typed scripts of every oral or audio-visual advertisement disseminated in this state with a notation attached to each such advertisement indicating the manner, inclusive dates, and extent of distribution.

(b) Such file is subject to inspection by the State Board of Insurance.

(c) All such advertisements must be maintained in file for a period of not less than four years.

Doc. No. 799394

Schedule of Charges 059.51.08

The State Board of Insurance has adopted Rules 059.51.08.001-.006, regarding regulation of health maintenance organization's schedule of charges. After considering comments submitted in writing and at the public hearing held at the State Board of Insurance on November 21, 1979, and staff recommendations, the board has revised the proposed text of Rule .005 to include experience-rated groups, which were previously addressed in proposed Rule .006. Proposed Rule .006 has therefore been deleted and proposed Rule .007 has been renumbered and adopted as Rule .006.

These rules are to become effective on January 1, 1980 and have been adopted under the authority of Article 20A.22 of the Texas Insurance Code.

.001. Must Be Filed Prior to Use. No schedule of charges for enrollee coverage, as defined in Rule 059.51.01.002(b)(12), may be used until a copy of such schedule of charges has been filed with the commissioner.

.002. Actuarial Certification. Each schedule of charges must be accompanied by the certification of a qualified actuary that, based on reasonable assumptions, the rates to be charged are appropriate. An actuary is considered qualified if he or she:

- (1) is a member of the American Academy of Actuaries; or
- (2) is a member of the Society of Actuaries as a fellow; or
- (3) has passed a special actuarial examination given by the Texas State Board of Insurance.

.003. Supporting Documentation. Each schedule of charges must be accompanied by supporting documentation adequate to justify the rates to be charged.

.004. Charges May Not Be Based on Health Status. Charges for any individual's coverage may not be based on the individual's health status.

.005. Rate Variations. Any schedule of charges for a group which varies from the previously filed schedule of charges solely because of additional loading necessitated by special characteristics of that particular group or because of experience rating need not be filed prior to use.

(1) Two copies of a list of all such rates charged during the year must be filed with the commissioner along with the annual report for that year.

(2) Such listing shall include the following information:

- (A) the name of each group;
- (B) the number of employees enrolled as of December 31;
- (C) the renewal date;
- (D) the chargeable rates as of December 31; and
- (E) the reasons for the variation in the schedule of charges.

.006. Schedule of Charges Projected in Application for Certificate of Authority. As part of the application for a certificate of authority, the proposed schedule of charges for the first three years of operations must be submitted. These schedules of charges may be used on the dates projected in the application if the HMO, prior to that date, files notice with the commissioner that actual experience of the HMO has been the same as was projected or that, due to lack of experience, no change from the projected rates is appropriate.

Doc. No. 799395

Financial Requirements 059.51.09

The State Board of Insurance has adopted Rules 059.51.09.001-.004, regarding the financial requirements which must be satisfied in order to receive and retain a certificate of authority to operate a health maintenance organization. After considering comments submitted in writing and at the public hearing held at the State Board of Insurance on November 21, 1979, and staff recommendations, the board has corrected a typographical error in the subchapter title and has revised the proposed title and text of Rule .002. The proposed title "Contingency Fund" has been retitled "Reserve Liability" and this term has been used throughout the rule.

These rules are to become effective January 1, 1980 and have been adopted under the authority of Article 20A.22 of the Texas Insurance Code.

.001. Initial Capitalization.

(a) At the time of the initial qualifying examination and of the hearing, an applicant for a certificate of authority to operate an HMO must have capital and surplus (assets in excess of liabilities) equal to the greater of \$100,000 and the amount projected for operating expenses for the first three months of operations.

(b) This capital and surplus may be held in the form of cash, demand deposits, or any of the permissible investments or loans listed in Rule .003.

(c) After receiving a certificate of authority, the HMO is authorized to use the capital and surplus as working capital.

(d) The initial capitalization requirements may be waived or reduced by the commissioner upon demonstration by the HMO of an alternative means of assuring solvency.

.002. Reserve Liability.

(a) Each HMO must establish a reserve liability to provide funds in case of catastrophe, epidemic, or an unexpected and uncontrollable rise in operating costs.

(b) The HMO must immediately reserve 2.0% of every premium received whenever the reserve liability stands below the lesser of three times the monthly aggregate premium and \$500,000.

(c) In the annual report, the reserve liability must be treated as a liability.

(d) The reserve liability does not have to be held in a separate account and does not have to be funded with allocated assets. It may be loaned or invested as set forth in Rule .003.

(e) The HMO must notify the commissioner prior to any reduction of the reserve liability.

(f) The reserve liability requirement may be waived or reduced by the commissioner if the HMO satisfactorily demonstrates that such contingencies otherwise can be met.

.003. Investments, Loans, and Assets.

(a) In addition to cash and demand deposits, an HMO may own the following investments:

- (1) certificates of deposit;
- (2) share accounts;
- (3) time deposits in federally insured public banks and savings and loan institutions;
- (4) United States government bonds and obligations;
- (5) State of Texas bonds; and
- (6) corporate bonds.

(b) Loans by HMOs are limited to those secured by valid first liens on improved real estate, provided that:

- (1) there is a title insurance policy or attorney's opinion that the borrower owns the real estate;
- (2) there is an appraisal of the real estate and the loan does not exceed 75% of such appraised value;
- (3) there is an executed note evidencing the loan;
- (4) there is a deed of trust; and
- (5) if any part of the value of buildings is required to be included in the value of the real estate to attain the minimum authorized value of the security:

(A) such building is insured against loss by fire in a company authorized to do business in Texas or in the state in which the real estate is located; and

(B) the insurance policy is made payable to the HMO and is in an amount equal to at least 50% of the value of such building, provided that such insurance coverage need not exceed the outstanding balance owed to the HMO when the outstanding balance falls below 50% of the value of such building;

(C) investments and loans are valued by National Association of Insurance Commissioners valuation standards. The commissioner has the right to obtain his own appraisal of real estate securing any loan at the HMO's expense.

.004. Liabilities.

(a) Each HMO must establish and maintain files and records to assure that all of its incurred liabilities, including incurred but unpaid reported and unreported claims, are reflected in its financial reports.

(b) Each HMO must establish a liability for any part of the gross premium paid beyond the financial statement date. The amount of this liability may be reduced for reinsurance with companies licensed to reinsure in Texas.

Doc. No. 799396

Requirements of the Texas Department of Health 059.51.10

The State Board of Insurance has adopted Rule 059.51.10.001, regarding additional requirements imposed on health maintenance organizations by the Texas Department of Health. This rule has been adopted with no change in the text proposed, except for the correction of one typographical error in the second line of the rules as previously printed.

This rule is to become effective on January 1, 1980, and has been adopted under the authority of Article 20A.22 of the Texas Insurance Code.

.001. Health Department May Request Additional Information or Make Additional Requirements. The Texas Department of Health has certain statutory responsibilities in the certification and regulation of health maintenance organizations. In addition to these rules promulgated by the State Board of Insurance, health maintenance organizations must comply with rules adopted by the Texas Department of Health, with the concurrence of the commissioner of insurance, pursuant to Article 20A.05(a)(2)(B) and (C), Texas Insurance Code.

Note: Rules for health maintenance organizations issued by the Texas Department of Health are Rules 301.51.00.001-.012.

Issued in Austin, Texas, on December 11, 1979.

Doc. No. 799397 Pat Wagner
Chief Clerk
State Board of Insurance

Effective Date: January 1, 1980

Proposal Publication Date: November 9, 1979

For further information, please call (512) 475-5400.

Texas Department of Labor and Standards

Employment Agency Division

Examinations 063.22.10

The Texas Department of Labor and Standards has adopted the repeal of Rule 063.22.10.012, concerning the examination under Article 5221a-5, Texas Revised Civil Statutes. The department is repealing this rule because House Bill 710, which was passed by the 66th Session of the Texas Legislature and signed by Governor Clements removes the absolute requirement of an examination.

This repeal is adopted under the authority of Texas Revised Civil Statutes, Article 5221a-5.

Issued in Austin, Texas, on December 6, 1979.

Doc. No. 799414 Lias B. "Bubba" Steen
Commissioner
Texas Department of Labor and
Standards

Effective Date: January 1, 1980

Proposal Publication Date: May 29, 1979

For further information, please call (512) 475-6560.

Texas Department of Mental Health and Mental Retardation

Texas Board of MH/MR

Definition of Terms 302.01.01

Pursuant to the authority contained in Section 2.11 of Article 5547-202, Texas Civil Statutes, the Texas Department of Mental Health and Mental Retardation has adopted Rule 302.01.01.001 to read as follows:

.001. Definition of Terms. As used in these rules and basic and general policies of the Texas Board of Mental Health and Mental Retardation:

(a) "Department" means the Texas Department of Mental Health and Mental Retardation which shall consist of a Texas Board of Mental Health and Mental Retardation, a commissioner of mental health and mental retardation, a deputy commissioner for mental health services, a deputy commissioner for mental retardation services, a deputy commissioner for community services, a staff under the direction of the commissioner and the deputy commissioners, and the following facilities and institutions together with such additional facilities and institutions as may hereafter by law be made a part of the department:

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

(3) the San Antonio State Hospital and the San Antonio State School;

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

(6) the Rusk State Hospital, Rusk State School, and the Skyview Maximum Security Unit;

(7)-(9) (No change.)

(10) the Austin State School;

(11)-(27) (No change.)

(28) the Waco Center for Youth;

(29) the Laredo State Center for Human Development.

(b)-(h) (No change.)

Doc. No. 799362

Organization 302.01.02

Pursuant to the authority contained in Section 2.11 of Article 5547-202, Texas Civil Statutes, the Texas Department of Mental Health and Mental Retardation has adopted Rule 302.01.02.001 to read as follows:

.001. Members; Terms of Office; Chairman; Vice Chairman; Committees.

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

(e) Standing committees of the board are as follows:

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

(5) Personnel Committee.

Doc. No. 799363

Duties 302.01.04

Pursuant to the authority contained in Section 2.11 of Article 5547-202, Texas Civil Statutes, the Texas Department of Mental Health and Mental Retardation has adopted Rules 302.01.04.004, .009, and .010 to read as follows:

.004. Unexpended Balances. All unexpended balances not otherwise restricted may be expended upon approval by the board only for repair of gas lines, steam lines, insulation, and other energy saving equipment.

.009. Appropriation Transfers.

(a) An amount not to exceed 5.0% per year of any item of appropriation made to the Texas Department of Mental Health and Mental Retardation, or to an institution under the jurisdiction of the department, may be transferred to another item of appropriation of the department upon the advance written approval by the Texas Board of Mental Health

and Mental Retardation, following a written request by the commissioner, whenever such board deems that such transfers are necessary to make the most effective and economical use of funds appropriated to the department and institutions or agencies under its jurisdiction. Such transfers:

(1) may be made only for the purpose of providing direct client services;

(2) may not be used for such purposes as administration, construction, or services which only indirectly affect client services;

(3) shall only be made to provide for changes in the number of clients served by a program or an institution; and

(4) shall be in proportion to the change in numbers of clients served by a program, or an institution.

(b) The Texas Board of Mental Health and Mental Retardation may transfer funds appropriated for the payment of utility expenses at an institution under the board's control to other institutions' appropriations items for utilities.

(c) Out of the appropriations to the Central Office of the Department of Mental Health and Mental Retardation for items No. 1, Central Administration Program, and No. 2, Program Administration Services, unless otherwise specifically restricted, the department may transfer such amounts as may be necessary from one subitem to another subitem only within each particular program, except that no transfers shall be made into or out of Item 1.i., Aircraft Operations. Such transfers may be made only upon the advance written approval of the Board of Mental Health and Mental Retardation.

.010. Appointment of Commissioner.

(a) The board shall appoint a qualified person to serve as commissioner. The commissioner holds office at the pleasure of the board.

(b) To be qualified for the office of commissioner, a person must be a physician licensed to practice in this state and must have proven administrative experience and ability.

(c) The responsibilities of the commissioner shall include but not necessarily be limited to the following:

(1) to serve as the state mental health authority;

(2) to document the department's goals and objectives;

(3) to develop procedures to implement the department's goals and objectives;

(4) to document a state planning process;

(5) to develop a written description of the administrative organization of the department and lines of authority and a table of organization;

(6) to exercise all departmental administrative, rulemaking, and decisional powers consistent with the basic and general policies of the board;

(7) to assign department staff to participate in the JCAH accreditation process at departmental facilities;

(8) to assure the establishment of bylaws, rules and regulations, and an organizational chart for department facilities that are consistent with board policy;

(9) to review general findings of and specific recommendations from evaluation studies of the department facilities;

(10) to review and approve all utilization review plans for departmental facilities;

(11) to review annual internal audit reports;

(12) to assure that each department facility develops a program manual which describes the facility's goals and ob-

jectives and the mechanisms to be used in achieving those goals and objectives;

(13) to delegate to the head of each department facility the responsibility for creation of an appropriate administrative and clinical structure to meet the needs of patients and clients entrusted to the care of the department. To this end, the head of each facility is responsible for:

(A) the organization of a set of clinical bylaws, rules, and regulations which establishes responsibility and accountability for the clinical staff of the facility;

(B) the overall operation of the program, including the control, utilization, and conservation of the physical and financial assets of the program and the recruitment and direction of staff;

(C) the biennium review and, if needed, the revision of the bylaws, rules, and regulations mentioned in (A) above;

(D) the annual review of the facility goals and objectives and documentation of said review;

(E) the preparation of and presentation of an annual summary of the facility's progress in meeting its goals and objectives to the commissioner through the offices of the deputy commissioners;

(F) the preparation of programmatic manuals which describes the operation of the facility and all areas of its functioning.

Doc. No. 799364

Basic and General Policies of the Board 302.01.05.003

Pursuant to the authority contained in Section 2.11 of Article 5547-202, Texas Civil Statutes, the Texas Department of Mental Health and Mental Retardation has adopted Rule 302.01.05.003 to read as follows:

.003. *Gifts, Grants, and Donations.*

(a)-(b) (No change)

(c) Gifts, grants, and donations accepted by the department shall be reported to the board with the request for the board's approval of quarterly budgets resulting from acceptance of such grants, gifts, and donations. In addition, the commissioner shall report in writing to the board no later than December 1 the results and benefits realized by the department from each gift, grant, or donation received during the preceding fiscal year.

Doc. No. 799365

302.01.05.015, .016

Pursuant to the authority contained in Section 2.11 of Article 5547-202, Texas Civil Statutes, the Texas Department of Mental Health and Mental Retardation has adopted Rules 302.01.05.015 and .016 to read as follows:

.015. *Approval of Facility Goals.* The board shall annually review and approve each department facility's overall goals and objectives and the results of the evaluation of these goals and objectives as provided by the commissioner.

.016. *Orientation and Continuing Education.*

(a) At the earliest convenient time after assuming office, each newly appointed member of the board shall be

briefed by the commissioner regarding the general operation of the department.

(b) Each member of the board shall be responsible to periodically visit designated department facilities for the purpose of reviewing their general operation and management and reporting their conclusions to the entire board.

(c) The commissioner shall apprise the board of mental health and mental retardation related workshops and educational meetings which the commissioner believes would be of special interest to the members. The members of the board are encouraged to attend such programs as they feel will assist them in the discharge of their duties.

(d) The commissioner shall from time to time report to the board on departmental issues as requested by the board and on other relevant issues that the commissioner determines would assist the board in the discharge of its duties.

(e) Pursuant to the provisions of House Resolution 167, 66th Regular Session of the Texas Legislature, each member of this board shall be furnished a copy of the following constitutional provisions and state statutes:

(1) Article XVI, Sections 12, 33, and 40, Texas Constitution;

(2) Chapters 36 and 39, Penal Code as amended;

(3) Articles 5996-5996g, Vernon's Texas Civil Statutes;

(4) Article 6252-9b, Vernon's Texas Civil Statutes;

(5) Article 6252-17, Vernon's Texas Civil Statutes;

(6) Article 6252-17a, Vernon's Texas Civil Statutes.

The chief of legal services for the department shall immediately notify the members of this board of the modification of any of the aforesaid laws and further shall advise this board of the existence or enactment of any additional laws that relate to the conduct of business by this board or its members. Copies of any such amendments or additional laws shall be promptly furnished each member of this board. The chief of legal services for the department shall advise this board regarding the requirements of all such laws as necessary and shall refer all debatable questions of interpretation of these laws to the Attorney General of Texas. Any member of this board appointed subsequent to the promulgation of this rule shall be furnished a copy of the aforesaid body of laws on or before the first regular meeting of this board after such appointment.

Issued in Austin, Texas, on December 10, 1979.

Doc. No. 799366

L. Gray Beck
Chairman
Texas Board of Mental Health
and Mental Retardation

Effective Date: December 31, 1979

Proposal Publication Date: October 26, 1979

For further information, please call (512) 454-3761, ext. 241.

Client (Patient) Care

Resident Deaths 302.04.14

The Texas Department of Mental Health and Mental Retardation has adopted Rule 302.04.14.007, concerning autopsies for deceased residents of departmental facilities with changes in the text proposed. As a result of a comment received, subsection (e) of Rule .007 has been changed by adding a sentence at the beginning of the subsection to state

that when consent for autopsy is requested, the person from whom consent for autopsy is sought should be given an explanation of what an autopsy is and why an autopsy is needed. Also, in the second sentence of subsection (e), the words "the phone" have been deleted and the word "telephone" substituted in their place.

Rule .007 has been amended under the authority contained in Section 2.11(b) of Article 5547-202, Texas Civil Statutes.

.007. Autopsy.

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

(e) When consent for autopsy is requested, the person from whom consent for autopsy is sought should be given an explanation of what an autopsy is and why an autopsy is needed. When a consent for autopsy is obtained by telephone, there should be two witnesses listening to the telephone conversation, and the contents of the telephone conversation should be documented, signed, and witnessed. Also, permission to tape the telephone conversation during which consent for autopsy is to be obtained should be requested. A follow-up consent for autopsy by telegram should also be obtained from the person who has given consent for autopsy over the telephone. The purpose of this procedure is to substantiate and document a consent for autopsy obtained by telephone.

Doc. No. 799367

Practice and Procedure with Respect to Administrative Hearings of the Department Arising under the Mentally Retarded Persons Act of 1977 302.04.36

Pursuant to the authority contained in Section 2.11(b) of Article 5547-202, Texas Civil Statutes, and Section 60 of Article 5547-300, Texas Civil Statutes, the Texas Department of Mental Health and Mental Retardation has adopted Rule 302.04.36.003 to read as follows:

.003. Applicability and Scope of Rules.

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

(d) These rules shall not apply when an administrative hearing is requested to contest a proposed discharge of a resident who is on a respite or an emergency admission. No administrative hearing to contest a proposed discharge will be available when the resident who would be the subject of the hearing is on a respite or an emergency admission.

Issued in Austin, Texas, on December 10, 1979.

Doc. No. 799368 John J. Kavanagh, M.D.
Commissioner
Texas Department of Mental Health and
Mental Retardation

Effective Date: December 31, 1979

Proposal Publication Date: October 26, 1979

For further information, please call (512) 454-3761, ext. 241.

Texas Parks and Wildlife Department Wildlife

Statewide Hunting, Fishing, and Trapping Proclamation, 1979-80 127.70.01

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing held December 5, 1979, adopted an

amendment to Rule 127.70.01.361(d) which increases the bag and possession limits for striped bass in Lake Texoma. The proposed amendment was published in the October 16, 1979, issue of the *Texas Register* (4 TexReg 3776). The proposed amendment was also presented in public hearings in Cooke and Grayson Counties, held October 22 and 23, 1979, in compliance with Sections 61.101 and 61.102, Texas Parks and Wildlife Code.

The adopted amendment is subject to approval by the Commissioners Court of Grayson County pursuant to Section 61.202, Texas Parks and Wildlife Code.

The amendment is adopted under the authority of Chapter 61, Texas Parks and Wildlife Code.

.361. Freshwater Fish: Bag, Possession, and Size Limits.

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

(d) The daily bag limit on striped bass is five and the possession limit is 10, except in the Toledo Bend Reservoir, where the daily bag limit is two and the possession limit is four. There is no daily bag or possession limit on hybrids of striped bass.

(e)-(o) (No change.)

Issued in Austin, Texas, on December 5, 1979.

Doc. No. 799323 Maurine Ray
Administrative Assistant
Texas Parks and Wildlife Department

Effective Date: December 28, 1979

Proposal Publication Date: October 16, 1979

For further information, please call (512) 475-4931.



Texas Department of Public Safety Organization and Administration General 201.01.06

Pursuant to the authority of Vernon's Civil Statutes, Article 4413(4) and (10), the Texas Department of Public Safety is adopting amendments to Rule 201.01.06.004 with no changes from the text proposed in the November 6, 1979, issue of the *Texas Register* (4 TexReg 4058).

.004. Administration Division. The chief, administration, is responsible to the director for the overall headquarters staff functions as performed by the Identification and Criminal Records Division, Driver and Vehicle Records Division,

Personnel and Staff Services Division, Inspection and Planning Division, Data Processing Division, and Division of Disaster Emergency Services. He is also responsible for liaison and cooperation between his office and the Traffic Law Enforcement and Criminal Law Enforcement Divisions.

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

(3) Personnel and Staff Services Division. The chief of Personnel and Staff Services Division is responsible to the chief of administration for the administration and operation of the headquarters activities related to personnel and training, statistics, general stores and services, physical plant, and the procurement, distribution, maintenance of the automotive fleet and communications equipment, and Headquarters Communications Center operations.

(4)-(6) (No change.)

Issued in Austin, Texas, on December 10, 1979.

Doc. No. 799440 Wilson E. Speir
Director
Texas Department of Public Safety

Effective Date: January 2, 1980

Proposal Publication Date: November 6, 1979

For further information, please call (512) 452-0331.

Inscription of Vehicles 201.01.12

Pursuant to the authority of Vernon's Civil Statutes 6701m-1, the Texas Department of Public Safety is adopting amendments to Rule 201.01.12.001 with no changes from the text proposed in the November 9, 1979, issue of the *Texas Register* (4 TexReg 4125).

.001. *Exemption of Inscription.* The following vehicles are exempt from having printed on them the inscription set out in Vernon's Civil Statutes 6701m-1 because of their use in police and administrative activity that often involves confidential, legal, and personnel investigations which require, on many occasions, that they be able to accomplish the task undetected.

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

(3) Vehicles assigned to and used by the chief of traffic law enforcement; regional commanders; service captains, lieutenants, and sergeants; capitol and mansion security detail; and special quality control vehicles assigned to the Vehicle Inspection Service.

Issued in Austin, Texas, on December 11, 1979.

Doc. No. 799424 Wilson E. Speir
Director
Texas Department of Public Safety

Effective Date: January 1, 1980

Proposal Publication Date: November 9, 1979

For further information, please call (512) 452-0331.

Texas Turnpike Authority

General Rules of Practice and Procedure

102.01.00

Under the authority of Article 6674v, Vernon's Revised Civil Statutes of Texas, the Texas Turnpike Authority has amended Rule 102.01.00.012 to read as follows:

.012. *Meetings.* A regular meeting of the Board of Directors of the authority shall be held within the State of Texas in each calendar quarter, the date and place of each such meeting to be determined by the chairman of the Board of Directors. The chairman may postpone any quarterly meeting until a subsequent quarter if he determines that any regular quarterly meeting is not necessary, but no less than four regular meetings shall be held during each calendar year. Officers of the authority shall be selected at the first regular meeting after the beginning of each odd-numbered year. Special meetings of the Board of Directors may be called at any time by the chairman or at the request of any four members of the Board of Directors. Any such special meeting shall be held at such time and place as is specified by the chairman (if he calls the meeting) or by the four directors (if the meeting is called at their request). At least 10 days notice shall be given of any regular meeting and at least 48 hours notice shall be given of any special meeting. Notice of each meeting shall be given by the secretary-treasurer by letter, telephone, or telegram, but such notice may be waived by the directors.

Issued in Arlington, Texas, on December 10, 1979.

Doc. No. 799356 Harry Kabler
Secretary-Treasurer
Texas Turnpike Authority

Effective Date: December 31, 1979

Proposal Publication Date: November 9, 1979

For further information, please call (817) 261-3151.

The Open Meetings Act (Article 6252-17, Texas Civil Statutes) requires that an agency with statewide jurisdiction have notice posted for at least seven days before the day of a meeting. A political subdivision covering all or part of four or more counties, or an institution of higher education, must have notice posted for at least 72 hours before the scheduled meeting time. Notice of an emergency meeting or an emergency addition or amendment to an agenda must be posted for at least two hours before the meeting is convened. Although some notices may be received and filed too late for publication before the meetings are held, all filed notices will be published in the *Register*. Each notice published includes an agenda or a summary of the agenda as furnished for publication by the agency and the date and time of filing. Notices are posted on the bulletin board outside the offices of the secretary of state on the first floor in the East Wing of the State Capitol. These notices may contain more detailed agendas than space allows to be published in the *Register*.

State Commission for the Blind

Friday, December 14, 1979, 10 a.m. The Board of Directors of the State Commission for the Blind made emergency additions to the agenda of a meeting held in Room 511, Stokes Building, 314 West 11th Street, Austin. According to the agenda summary, the additions concerned the following: introduction of new members; review of minutes of last meeting; status of Visual Research Foundation fund transfer; 1979 fiscal year activity reports; and in executive session, personnel, pursuant to Article 6252-17, Section 2(g), Vernon's Annotated Civil Statutes.

Additional information may be obtained from Jean Wakefield, P.O. Box 12866, Austin, Texas 78711, telephone (512) 475-6810.

Filed: December 11, 1979, 2:47 p.m.
Doc. No. 799404

Office of the Firemen's Pension Commissioner

Wednesday, December 19, 1979, 10 a.m. The State Board of Trustees of the Fire Fighter's Relief and Retirement Fund of Senate Bill 411, as prescribed by Article 6243e.3, Vernon's Texas Civil Statutes, will meet in Room 503-F, Sam Houston Building, Austin, to discuss the pension plan.

Additional information may be obtained from Hal H. Hood, 503-F Sam Houston Building, Austin, Texas 78701, telephone (512) 475-5879.

Filed: December 11, 1979, 10:05 a.m.
Doc. No. 799381

Texas Health Facilities Commission

Thursday, December 20, 1979, 10 a.m. The Texas Health Facilities Commission will meet in Suite 305, The Jefferson Building, 1600 West 38th Street, Austin. According to the

agenda summary, the commission will consider applications for certificates of need as follows:

Zimmerman Medical Clinic Dialysis Center, Houston
AS79-0416-015

The Woodlands Family Health Center, Woodlands
A078-1218-001

Cypress Creek Dialysis Facility, Woodlands
AS78-1208-001

North Houston Dialysis Center, Inc., Houston
AS78-1212-005

Additional information may be obtained from Dan R. McNery, P.O. Box 15023, Austin, Texas 78761, telephone (512) 475-6940.

Filed: December 12, 1979, 12:01 p.m.
Doc. No. 799445

State Department of Highways and Public Transportation

Wednesday, December 19, 1979, 9 a.m. The State Highway and Public Transportation Commission will meet in Room 207, second floor, State Highway Building, 11th and Brazos Streets, Austin. According to the agenda summary, the commission will execute contract awards and routine minute orders; consider presentations from previous public hearing dockets as necessary; and review staff reports relative to planning and construction programs and projects. The agenda is available in the second floor office of the minute clerk in the State Highway Building.

Additional information may be obtained from the Office of the Engineer-Director, State Department of Highways and Public Transportation, State Highway Building, Room 203, 11th and Brazos Streets, Austin, Texas 78701, telephone (512) 475-3525.

Filed: December 11, 1979, 10:05 a.m.
Doc. No. 799380

University of Houston

Monday, December 17, 1979, 10 a.m. The Broadcasting, Development, and Public Affairs Committee of the Board of Regents of the University of Houston met in the board room, 220 Ezekiel Cullen Building, at the central campus in Houston, to tour facilities, hear a report on the broadcasting facilities, and discuss proposed rules and regulations.

Additional information may be obtained from Merrill Shields, 911 Walker, Suite 765, Houston, Texas 77002, telephone (713) 749-8083.

Filed: December 10, 1979, 4:48 p.m.
Doc. No. 799343

Monday, December 17, 1979, 10 a.m. The Investment Committee of the Board of Regents of the University of Houston met in Suite 2907, Two Houston Center, Houston, to review portfolio, discuss proposed rules and regulations, and consider informational items.

Additional information may be obtained from Merrill Shields, 911 Walker, Suite 765, Houston, Texas 77002, telephone (713) 749-8083.

Filed: December 10, 1979, 4:49 p.m.
Doc. No. 799344

Monday, December 17, 1979, 2 p.m. The Board of Regents of the University of Houston met in the board room, 220 Ezekiel Cullen Building, at the central campus in Houston, to consider personnel matters in executive session and in open session, small class report, policies manual, HEW resolution, Woodland's lease, resolution to transfer Melrose/Thompson funds, loan agreement, bank resolution, grants, gifts, resolution of authorization to FPC director, lease of university space to Census Bureau, and the president's report.

Additional information may be obtained from Merrill Shields, 911 Walker, Suite 765, Houston, Texas 77002, telephone (713) 749-8083.

Filed: December 10, 1979, 4:49 p.m.
Doc. No. 799345

State Board of Insurance

Tuesday, December 18, 1979, 10 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto, Austin, to consider Docket 5908, application for admission to Texas by BLC Insurance Company, Des Moines, Iowa.

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-4353.

Filed: December 10, 1979, 3:51 p.m.
Doc. No. 799338

Wednesday, December 19, 1979. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto, Austin, at the times indicated below to consider the following dockets:

10 a.m. Docket 5909, application for admission to Texas by Union Central Life Insurance Company, Cincinnati, Ohio

2 p.m. Docket 5910, application for admission to Texas by Ohio National Life Insurance Company, Cincinnati, Ohio

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-4353.

Filed: December 10, 1979, 3:52 p.m.
Doc. Nos. 799339-799340

Thursday, December 20, 1979, 10 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto, Austin, to consider Docket 5911, application for admission to Texas by ITT Lyndon Life Insurance Company, St. Louis, Missouri.

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-4353.

Filed: December 10, 1979, 3:52 p.m.
Doc. No. 799341

Friday, December 21, 1979, 10 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 343, 1110 San Jacinto, Austin, to consider Docket 5907, application for admission to Texas by Seguros Bancomer, S.A., Venustiano Carranza No. 42, Mexico 1 D.F.

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-4353.

Filed: December 10, 1979, 3:52 p.m.
Doc. No. 799342

Board of Pardons and Paroles

Thursday and Friday, December 27-28, 1979, 9 a.m. daily. The Board of Pardons and Paroles will meet in Room 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 this agency; and take action upon gubernatorial directives.

Additional information may be obtained from Ken Casner, 711 Stephen F. Austin Building, Austin, Texas, telephone (512) 475-3363.

Filed: December 11, 1979, 10:06 a.m.
Doc. No. 799382

Texas Parks and Wildlife Department

Tuesday, January 8, 1980, 2 p.m. The Fisheries Division of the Resources Protection Branch of the Texas Parks and Wildlife Department will meet in Room A-200, 4200 Smith School Road, Austin, to consider the application of Johnnie B. Jelks for a permit to remove approximately 1,800 cubic yards of sand and 600 cubic yards of gravel per month from the West Fork of the San Jacinto River by means of dragline for commercial use. The work site would be located approximately seven miles northeast of Spring, Montgomery County, and extending southeast from Wiley-Fussell Drive adjacent to the property of the E. Boettcher Estate.

Additional information may be obtained from Chester Harris, 4200 Smith School Road, Austin, Texas 78744, telephone (512) 475-4831.

Filed: December 12, 1979, 3:46 p.m.
Doc. No. 799449

Texas Board of Private Investigators and Private Security Agencies

Thursday, December 13, 1979, 11:30 a.m. The Texas Board of Private Investigators and Private Security Agencies made an emergency addition to the agenda of a meeting held in Room 127, 105 West Riverside Drive, Austin. According to the agenda summary, the board met in executive session to consider personnel matters and pending litigation.

Additional information may be obtained from Clema D. Sanders, 510 South Congress, Suite 116, Austin, Texas 78704, telephone (512) 475-3944.

Filed: December 13, 1979, 8:36 a.m.
Doc. No. 799456

Texas Prosecutors Coordinating Council

Thursday, December 20, 1979, 10:30 a.m. The Texas Prosecutors Coordinating Council will meet in the Grand Jury Room, Bexar County Courthouse, San Antonio. According to the agenda summary, the council will consider the upgrading of administrative technician II position; procedures booklet; grant adjustment for 51-79-31; and in executive session, pending complaints and disciplinary matters.

Additional information may be obtained from Andy Shuval, P.O. Box 13555, Austin, Texas 78711, telephone (512) 475-6825.

Filed: December 11, 1979, 9:53 a.m.
Doc. No. 799415

Public Utility Commission of Texas

Friday, December 21, 1979, 9 a.m. The Public Utility Commission of Texas will meet in Suite 400N, 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the commission will consider final orders and hear oral argument in the following dockets: 2736; 1909; 2665; 2702; 2717; 2901; 2479, 2766, and 2870; 2836, 2927; 2868; 2909; 2743; 2945; 2857; 2905; 2925; 2949; 2837; 2846; 2865; 2883; 2887; 2890; 2892; 2898; 2899; 2908; 2918; 2921; 2923; 2924; 2932; 2933; 2937; and 2941. The commission will also consider adoption of Substantive Rule 052.02.04.048(b) concerning new construction required by customers transferring electric service. The rule has been submitted to the secretary of state and published in the *Texas Register*.

Additional information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, telephone (512) 458-0100.

Filed: December 12, 1979, 3:58 p.m.
Doc. No. 799453

Monday, January 7, 1980, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 400N, 7800 Shoal Creek Boulevard, Austin, to conduct a hearing on the merits in Docket 2814, the application of Gulf Utility Company for a tariff change within Galveston County.

Additional information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, telephone (512) 458-0100.

Filed: December 11, 1979, 10:08 a.m.
Doc. No. 799385

Monday, February 4, 1980, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 400N, 7800 Shoal Creek Boulevard, Austin, to conduct a hearing on the merits in Docket 2839, the application of the City of Southlake to amend its certificate of convenience and necessity within Tarrant County.

Additional information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, telephone (512) 458-0100.

Filed: December 11, 1979, 10:08 a.m.
Doc. No. 799386

Records Preservation Advisory Committee

Wednesday, December 12, 1979, 2 p.m. The Records Preservation Advisory Committee met in emergency session at the Texas State Library Records Center, 4400 Shoal Creek Boulevard, Austin, to tour and inspect the records center facility.

Additional information may be obtained from Dorman H. Winfrey, P.O. Box 12927, Austin, Texas 78711, telephone (512) 475-2166.

Filed: December 11, 1979, 10:07 a.m.
Doc. No. 799384

State Securities Board

Friday, December 21, 1979, 1:30 p.m. The State Securities Board will meet at 704 LBJ State Office Building, 111 East 17th Street, Austin. According to the agenda summary, the board will consider previously published rules concerning mortgage notes, revenue bonds, registration of securities, dealer examination, and miscellaneous dealer regulations, record keeping requirements of dealers, mutual fund share exchanges, and advertising. New proposals for rules concerning repeal of obsolete rules, requirements for consent to service of process and sales report, and granting of certain exemptions under Section 5.T will also be reviewed. Possible new rules on secondary trading, chartered financial analysts, and tender offers will be reviewed as well as a proposed amendment to Section 5.H of the Act, a procedure for review of board rules, a proposal for representation of the agency in litigation, and general update on agency operations.

Additional information may be obtained from Richard D. Latham, 709 LBJ Building, Austin, Texas 78701, telephone (512) 475-4561.

Filed: December 12, 1979, 4:27 p.m.
Doc. No. 799452

University of Texas at Austin

Thursday, December 13, 1979, 1 p.m. The Athletics Council for Men of the University of Texas at Austin met in Room 240, Bellmont Hall, San Jacinto Street between 21st and 23rd Streets, Austin, and considered the following items: spring golf schedule; ratification for additional track meet in Baton Rouge; affirmation of Sun Bowl budget; report on actions at the SWAC meeting, December 7-8, 1979; budget adjustment—1979-1980; football ticket distribution policy; progress report on athletics fee subcommittee; preliminary general budget considerations for 1980-81; and LeDuc Publications. The council also met in executive session.

Additional information may be obtained from Haila Kauffman, P.O. Box 7399, Austin, Texas 78712, telephone (512) 471-1156.

Filed: December 10, 1979, 12:54 p.m.
Doc. No. 799336

Veterans Land Board

Tuesday, December 18, 1979, 2 p.m. The Veterans Land Board will meet at the Stephen F. Austin Building, 1700 North Congress, Austin, to hear a report of the executive secretary and discuss board policy.

Additional information may be obtained from Richard Keahey, Stephen F. Austin Building, Room 738, 1700 North Congress Avenue, Austin, Texas 78701.

Filed: December 10, 1979, 1:50 a.m.
Doc. No. 799329

Texas Water Commission

Monday, December 17, 1979, 10 a.m. The Texas Water Commission made an emergency addition to the agenda of a meeting held at the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the addition concerned the consideration of a motion for the issuance of commissions and subpoenas by the Tarrant County Municipal Utility District No. 1 in the controversy between the district and Lake Country Estates, Inc.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4514.

Filed: December 12, 1979, 2:50 p.m.
Doc. No. 799451

Tuesday, December 18, 1979, 2 p.m. The Texas Water Commission will meet in Room 124-A, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider whether a temporary order, pursuant to Section 26.0191 of the Texas Water Code, should be issued to Bill Tregellas and Rusty Tregellas, doing business as Figure One Ranch Feedlot, Perryton, concerning the cattle feeding operation located on the west side of and adjacent to FM Road 1265, at a point approximately nine miles south of the intersection of FM Roads 377 and 1265 in Lipscomb County.

Additional information may be obtained from Paul A. Seals, P.O. Box 13087, Austin, Texas.

Filed: December 10, 1979, 2:45 p.m.
Doc. No. 799332

Texas Water Development Board

Tuesday, December 18, 1979, 8:30 a.m. The Texas Water Development Board will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the board will consider the following items: executive director's report; present status of the development fund; financial assistance for City of Detroit; extending deadlines on six TWD fund commitments; recommendation to the governor that he designate City of Edcouch, Henderson County Municipal Water Authority, and City of McKinney as waste treatment management agencies; present status of Federal Construction Grant Program; final adoption of Rules 156.25.03.003, .010, .011, .017, 156.25.10.003, and 156.25.20.003 in order to effectuate House Bill 1794 regarding the requirement of public hearings on waste discharge permit applications; final adoption of amendments to Chapter 18, Domestic Wastewater Treatment Plants, and proposed Rule 156.31.11.014 relating to a fee schedule for Paris-Lamar County Health Department for regulation of private sewage facilities for Lake Crook; in executive session, personnel matters, contemplated litigation and negotiations relating to the sale of water, ownership interest in a state facility, and/or an amendment to a state contract relating to a state facility; and returning to open session, the execution of an amendment to the state contract, a water sale agreement, and/or a sale of storage interest between the board and Lavaca-Navidad River Authority relating to Palmetto Bend Dam and Reservoir.

Additional information may be obtained from Harvey Davis, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-3187.

Filed: December 10, 1979, 2:44 p.m.
Doc. No. 799334

Regional Agencies

Meetings Filed December 10, 1979

The Ark-Tex Council of Governments, Executive Committee, met in the City Council Chambers, Mt. Pleasant, on December 12, 1979, at 6:45 p.m. Further information may be obtained from Laura Jacobus, P.O. Box 5307, Texarkana, Texas 75501, telephone (214) 794-3481.

The Deaf Smith County Fresh Water Supply District No. 1, Board of Supervisors, met in the San Jose Church Building, Hereford, on December 13, 1979, at 7:30 p.m. Further information may be obtained from Roberto C. Gallegos, Route 2, Box 20, Hereford, Texas, telephone (806) 364-2218.

The Education Service Center, Region III, Board of Directors, met at 1905 Leary Lane, Victoria, on December 17, 1979, at 1 p.m. Further information may be obtained from Dennis Grizzle, 1905 Leary Lane, Victoria, Texas, telephone (512) 575-1471.

The Education Service Center, Region X, Board of Directors, will meet in the board room, 400 East Spring Valley, Richardson, on December 20, 1979, at 1:15 p.m. Further information may be obtained from H. W. Goodgion, 400 East Spring Valley, Richardson, Texas, telephone (214) 231-6301.

The Lower Neches Valley Authority, Board of Directors, will meet in the conference room, 7850 Eastex Freeway, Beaumont, on December 18, 1979, at 10:30 a.m. Further information may be obtained from J. D. Nixon, P.O. Drawer 3464, Beaumont, Texas 77704.

The Lower Rio Grande Valley Development Council, Board of Directors, will meet at 311 East Tyler, Harlingen, on December 18, 1979, at 2 p.m. Further information may be obtained from Robert A. Chandler, Suite 207, First National Bank Building, McAllen, Texas 78501, telephone (512) 682-3481.

The San Antonio River Authority, Board of Directors, will meet in the conference room of the general offices, 100 East Guenther Street, San Antonio, on December 19, 1979, at 2 p.m. The Board of Trustees of the Employees Retirement Trust will meet following the 2 p.m. meeting at the same location. Further information may be obtained from Fred N. Pfeiffer, P.O. Box 9284, Guilbeau Station, San Antonio, Texas 78204, telephone (512) 227-1373.

The West Texas Health Systems Agency, Governing Body, will meet in the El Paso Chamber of Commerce Lockhart Room, 10 Civic Center Plaza, El Paso, on December 20, 1979, at 7:30 p.m. Further information may be obtained from Cory Vaughan, 303 North Oregon, Suite 700, El Paso, Texas 79901, telephone (915) 532-2910.

Doc. No. 799330

Meetings Filed December 11, 1979

The Brazos River Authority, Board of Directors, met at 4400 Cobbs Drive, Waco, on December 17, 1979, at 10 a.m. Further information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76710, telephone (817) 776-1441.

The Capital Area Rural Transportation System, Board of Directors, met in the Bastrop County Courthouse, Bastrop. Further information may be obtained from Wanda J. Dyer, 1000 North Lamar, Austin, Texas 78703, telephone (512) 474-8315.

The Copano Bay Soil Conservation District No. 329 will meet at 106 South Alamo, Shay Plaza, Refugio, on December 20, 1979, at 6:30 p.m. Further information may be obtained from Jim Wales, Drawer 340, Refugio, Texas 78377, telephone (512) 526-2334.

The Deep East Texas Council of Governments, Criminal Justice Advisory Board, will meet in Fellowship Hall, First United Methodist Church, 329 North Bowie Street, Jasper, on December 20, 1979, at 10:30 a.m. The Board of Directors will meet on the same date at the same location at 2:30 p.m. Further information may be obtained from Ronald J. Willis and Billy D. Langford, respectively, 272 East Lamar, P.O. Box 1170, Jasper, Texas 75951, telephone (713) 384-5704.

The Education Service Center, Region I, Board of Directors, met at the Tropicana Club, Echo Motor Hotel, 1900 South

Closner, Edinburg, on December 14, 1979, at 6 p.m. Further information may be obtained from Lauro R. Guerra, 1900 West Schunior, Edinburg, Texas 78539, telephone (512) 383-5611.

The Education Service Center, Region V, Board of Directors, will meet in the board room, 2900 North Street, Beaumont, on December 18, 1979, at 1:30 p.m. Further information may be obtained from Fred J. Waddell, 2900 North Street, Beaumont, Texas 77704, telephone (713) 892-9562.

The Education Service Center, Region XX, Board of Directors, will meet at 1550 N.E. Loop 410, San Antonio, on December 19, 1979, at 3 p.m. Further information may be obtained from Dr. Dwain M. Estes, 1550 N.E. Loop 410, San Antonio, Texas 78209, telephone (512) 828-3551.

The Golden Crescent Council of Governments, Executive Committee, will meet in the LaSalle Room, Victoria Bank and Trust Building, 112 Main, Victoria, on December 19, 1979, at 5 p.m. Further information may be obtained from Robert W. Burr, P.O. Box 2028, Victoria, Texas 77901, telephone (512) 578-1587.

The Middle Rio Grande Development Council, Board of Directors, will hold its quarterly meeting at the Civic Center, Uvalde, on December 19, 1979, at 2:30 p.m. Further information may be obtained from Elia G. Santos, P.O. Box 1461, Del Rio, Texas 78840, telephone (512) 775-1581.

The Pecan Valley Mental Health/Mental Retardation Region, Board of Trustees, met at 906 Lingleville Highway, Stephenville, on December 14, 1979, at 6 p.m. Further information may be obtained from Dr. Theresa Mulloy, 906 Lingleville Highway, Stephenville, Texas 76401, telephone (817) 968-4181.

The South Texas Health Systems Agency, Nominating Committee of the Coastal Bend Subarea Health Advisory Council, will meet at the All Saints' Episcopal Church, 3028 South Staples, Corpus Christi, on December 20, 1979, at 12:30 p.m. Further information may be obtained from Douglas M. Wilkey, Texas A&I University, Station 1, Box 2378, Kingsville, Texas 78363, telephone (512) 595-5545.

Doc. No. 799379

Meetings Filed December 12, 1979

The Central Counties Center for MH/MR Services, Board of Trustees, will meet at 302 South 22nd Street, Temple, on December 20, 1979, at 7:45 p.m. Further information may be obtained from Steven B. Schnee, P.O. Box 1025, Temple, Texas 76501, telephone (817) 778-4841.

The City of El Paso Urban Transportation Study, Policy Advisory Committee, will meet in the City Council Chambers, 500 East San Antonio, El Paso, on December 20, 1979, at 2 p.m. Further information may be obtained from Judith M. Price, 106 North Ochoa, El Paso, Texas 79999.

The Guadalupe-Blanco Authority, Board of Directors, will meet at 933 East Court Street, Seguin, on December 20, 1979, at 10 a.m. Further information may be obtained from John H. Specht, P.O. Box 271, Seguin, Texas 78155, telephone (512) 379-5822.

The Houston-Galveston Area Council, Executive Committee, will meet at 3701 West Alabama, Houston, on December 18, 1979, at 9:30 a.m. Further information may be obtained from Jack Steele, P.O. Box 22777, Houston, Texas 77027, telephone (713) 627-3200.

The Lower Colorado River Authority will meet at 3700 Lake Austin Boulevard, Austin, on December 19, 1979, at 9:30 a.m. Further information may be obtained from Charles Herring, P.O. Box 220, Austin, Texas 78767, telephone (512) 474-5931, ext. 330.

The Middle Rio Grande Development Council, A-95 Project Review Committee, will meet in the City Council Chambers, City Hall, Uvalde, on December 19, 1979, at 10 a.m. The Regional Manpower Advisory Committee will meet at the Civic Center in Uvalde on the same date at 1:30 p.m. Further information may be obtained from Elia G. Santos, telephone (512) 775-1581, and Manuel Guerrero, telephone (512) 774-3697, respectively, P.O. Box 1461, Del Rio, Texas 78840.

The North Texas Municipal Water District, Board of Directors, will meet at the NTMWD Central Plant, Wylie, on December 27, 1979, at 4 p.m. Further information may be obtained from Carl W. Riehn, P.O. Drawer C, Wylie, Texas 75098, telephone (214) 442-2217, ext. 26.

The Sabine Valley Regional MH/MR Center, Board of Trustees, will meet at 1501 East Marshall, Longview, on December 20, 1979, at noon. Further information may be obtained from Frances H. Willis, P.O. Box 6800, Longview, Texas 75608, telephone (214) 297-2191.

Doc. No. 799441

Meetings Filed December 13, 1979

The Lubbock Regional MH/MR Center, Board of Trustees, will meet at 1210 Texas Avenue, Lubbock, on December 18, 1979, at 4:30 p.m. Further information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401, telephone (806) 763-4213.

The Education Service Center, Region I, will meet at 1900 West Schunior, Edinburg, on December 18, 1979, at 1:30 p.m. Further information may be obtained from Lauro R. Guerra, 1900 West Schunior, Edinburg, Texas 78539, telephone (512) 383-5611, ext. 110.

The Tri-Region Health Systems Agency, Executive Committee, will meet in Santa Fe No. 3 Room, Starlite Inn Motor Hotel, 3425 South First, Abilene, on December 20, 1979, at noon. Further information may be obtained from Vic Rhoads, 2642 Post Oak Road, Abilene, Texas 79605, telephone (915) 698-9481.

Doc. No. 799459

Texas Air Control Board

Applications for Construction Permits

Notice is given by the Texas Air Control Board of applications for construction permits received during the period of December 3-6, 1979.

Information relative to these applications, including projected emissions and the opportunity to comment or to request a hearing, may be obtained by contacting the office of the executive director at the Central Office of the Texas Air Control Board, 6630 Highway 290 East, Austin, Texas 78723.

A copy of all material submitted by the applicant is available for public inspection at the Central Office of the Texas Air Control Board at the address stated above and at the regional office for the air quality control region within which the proposed facility will be located.

Listed are the name of the applicant and the city in which the facility is located; type of facility; location of the facility (if available); permit number; and type of application—new source or modification.

Week Ending December 7, 1979

Dunes Chemical, Inc., Seagraves; ammonium thiosulfate plant; 8072; new source

Phillips Petroleum Co., Philtex Plant, Borger; ryton (polyphenylene sulfide); 8064; modification

Cities Service Co., Chico; gas engine-driven compressor; East Chico Compressor Station; 8062; new source

Chemical Manufacturing Exchange, Inc., Latexo; amidine unit; 8063; new source

St. Regis Paper Co.—Southland Division, Lufkin; lime kiln—causticizing system, Lufkin Mill; 8068; modification

Lextar, Deer Park; synthetic pulp manufacture; Miller Cutoff Road; 8069; new source

Texas Utilities Services, Inc., Athens; steam generator; Forest Grove Steam Electric Station; 8065; new source

Texas Utilities Services, Inc., Fairfield; steam generator; Big Brown Steam Electric Station; 8066; new source

KMCO, Inc., Crosby; vacuum distillation and storage expansion (Phase I, II, and III); 16503 Ramsey Road; 8067; new source

Denka Chemical Corp., Houston; DCB recovery unit; 8701 Park Place Boulevard; 8070; new source

Sand Trap Service Company, Fort Worth; grease trap waste pretreatment; 1300 Cold Springs Road; 8071; new source

Issued in Austin, Texas, on December 9, 1979.

Doc. No. 799427 Ramon Dasch
Hearing Examiner
Texas Air Control Board

Filed: December 11, 1979, 3:51 p.m.
For further information, please call (512) 451-5711, ext. 401.

Texas Coastal and Marine Council

Notice of Position Vacancy

The Texas Coastal and Marine Council is accepting applications for the position of executive director. Requirements include a bachelor degree, working knowledge of state government and legislative process, and all facets of the Texas coastal region. The executive director will serve as chief administrator of the agency; coordinate coastal and marine-related affairs at the local, state, and federal level; prepare technical reports on coastal and marine-related affairs; review and comment on environmental impact statements; and work with other state agencies on coastal issues; and must be willing to travel.

Applicants should submit resume to Texas Coastal and Marine Council, P.O. Box 13407, Austin, Texas 78711, attention: Jenny Aldridge. Resumes must be received by December 28, 1979, for consideration by the Search Committee. Applicants will be notified of time and place for interviews. Salary—\$2,550 month.

Issued in Austin, Texas, on December 12, 1979.

Doc. No. 799443 Jenny Aldridge
Secretary to the Council
Texas Coastal and Marine Council

Filed: December 12, 1979, 11:22 a.m.
For further information, please call (512) 475-5830.

Coordinating Board, Texas College and University System

Consultant Contract Award

The Coordinating Board, Texas College and University System, has entered into a private consultant contract with Southwest Econometrics, Inc., 3445 Executive Center Drive, Suite 227, Austin, Texas 78731, to develop a statistical model for projecting the number of graduates and completers of postsecondary programs and secondary vocational programs.

The terms of the contract are from December 4, 1979, to August 31, 1980, for a fixed price of \$34,845.

The end product of the contract will be a report summarizing the results, accomplishments, and recommendations. It is anticipated that the final report will be ready for presentation by August 31, 1980.

Issued in Austin, Texas, on December 5, 1979.

Doc. No. 799383 Kenneth H. Ashworth
Commissioner of Higher Education

Filed: December 11, 1979, 10:07 a.m.
For further information, please call (512) 475-4181.

Texas Education Agency

Amended Consultant Proposal Request

Description. The Texas Education Agency is requesting proposals for services to design, develop, and test a comprehensive vocational education evaluation system for Texas. A

contract is expected to be awarded on January 25, 1980. The last day on which proposals will be accepted for evaluation is January 18, 1980. These dates are extensions of the time period stated in the original consultant proposal request which was published in the *Texas Register* on December 7, 1979 (4 TexReg 4442).

Issued in Austin, Texas, on December 10, 1979.

Doc. No. 799337 A. O. Bowen
Commissioner of Education

Filed: December 10, 1979, 11:34 a.m.
For further information, please call (512) 475-2585.

Consultant Proposal Request

Description. The Texas Education Agency desires the services of a programmer to work under contract on a project to implement a new financial management system for the agency.

Environment. Programming is being done in ANSI COBOL for operation in a batch mode on an IBM 3032, OS/MVS using LIBRARIAN for on-line programming. Input/output is via remote job entry. Work is to be done under general supervision of agency analysts as part of a team on this project. Work location is in agency project offices in downtown Austin.

Programmer Qualifications. A minimum of three years recent experience writing programs in COBOL. Financial or accounting application experience preferred. One programmer is required for the term indicated below, possibly supplemented by additional programmers for shorter periods.

Contract Terms. Work is to start within 10 days after January 15, 1980, and will continue to August 31, 1980. Payment will be made monthly at hourly rates for time actually worked.

Bid Specifications. Interested individuals or firms should submit a qualification statement which includes the following:

- (1) description of the firm, particularly outlining its organizational depth in terms of backup or replacement personnel;
- (2) resumes of personnel who would be available for this assignment;
- (3) hourly rates of proposed personnel and description of any additional charges for per diem, supervision, or overhead;
- (4) a list of state agencies or other organizations for which similar services have been performed indicating the person to be contacted.

Bids must be submitted in three copies to John Ready, Document Control Center, Texas Education Agency, 201 East 11th Street, Austin, Texas 78701, by 5 p.m. January 15, 1980.

Selection Process. Bids will be evaluated by a selection committee, and the personnel proposed by the firm tentatively selected will be interviewed. Contract will be awarded based on qualifications, cost, and personal interviews.

Additional Information. For additional information, call Robert L. Baker, director of FMS Project, or William C.

Ostrom, DP implementation team leader, Texas Education Agency, telephone (512) 475-3956.

Issued in Austin, Texas, on December 10, 1979.

Doc. No. 799377 A. O. Bowen
Commissioner of Education

Filed: December 10, 1979, 3:50 p.m.
For further information, please call (512) 475-3272.

Texas Energy and Natural Resources Advisory Council

Request for Proposal

Description of Project Objectives. In accordance with the Texas Energy Development Act of 1977, Article 4413(47b), Vernon's Annotated Civil Statutes, as amended by Senate Bill 921, 66th Legislature, Regular Session, and pursuant to rules adopted for administration of the Energy Development Act, published in the *Texas Register* on December 18, 1979, TENRAC is soliciting proposals for research, development, design, and demonstration of direct solar energy projects. If a demonstration is proposed, it must be justified by optimization to minimize cost.

Specific Project Areas. Proposals in the following solar areas are presently being solicited. Proposals in other solar areas may be solicited at a later date:

- (1) SPI No. 80-S-1—solar-powered residential comfort conditioning in a medium to high humidity environment. Specific projects solicited are cooling by a solar Rankine cycle; cooling by an ammoniate chemical heat pump; demonstration of residential solar desiccant dehumidification.
- (2) SPI No. 80-S-2—thermal storage of solar energy. Specific projects solicited are research or development of advanced storage concepts to be used by electrical utilities for peak shaving; overnight energy storage for commercial buildings.
- (3) SPI No. 80-S-3—industrial solar applications. Specific projects solicited are site-specific study of solar repowering of electrical utilities in Texas; studies or demonstration of industrial process heating of air, water, or other fluid.
- (4) SPI No. 80-S-4—agricultural solar applications. Specific projects solicited are demonstration of heating of animal shelters; demonstration of small-scale solar distilling of fuel alcohol.
- (5) SPI No. 80-S-5—solar lighting for commercial buildings.

Proposals falling into more than one SPI area are acceptable, and all applicable SPI numbers should be indicated on the title page. A proposer may submit more than one proposal in an area, or in other areas, but each proposal must be complete in itself.

Funding. TENRAC expects to fund several projects, not necessarily one in each SPI area and not necessarily limited to one in any SPI area.

Eligibility. The following criteria are established for acceptability of proposers:

(1) Texas-based proposers will be given priority consideration and only in unusual circumstances will this priority be disregarded.

(2) Projects to be conducted in Texas will be given priority consideration and only in unusual circumstances will this priority be disregarded.

(3) Individual members of the council, TENRAC staff, or their immediate families are not eligible.

Proposal Content. Voluminous proposals are not desired. It is suggested that the body of the report be limited to 25 pages, plus appendices. The following points shall be briefly addressed:

(1) projections of significant energy contributions within the next 25 years;

(2) preliminary projection of economic feasibility developing over the next 5-10 years;

(3) significance to Texas;

(4) possible contribution to minimizing undesirable environmental impacts;

(5) project objectives, schedule, plan for accomplishing the work, and suggested project monitoring procedures (reporting, visits, etc.);

(6) key personnel and their responsibilities in the project (append resumes);

(7) budget of funds requested from TENRAC, including but not limited to salaries, indirect charges, travel, consultants, subcontracts, and reproduction; if matching funds are available, including cash value of noncash matching, indicate amounts, sources, and how the matching funds will be used to support the project;

(8) appendices—resumes and other appropriate information.

Review Criteria and Procedures. Evaluation of submitted proposals will be in accordance with rules adopted for administration of the Energy Development Act cited above.

Deadline and Address for Proposal Submission. In order to be considered, 10 copies of a proposal must be received in Room 900, 411 West 13th Street, Austin 78701, no later than 5 p.m. March 1, 1980.

Target Date for Contract Awards. It is anticipated that contract awards will be made about April 15, 1980.

Schedule for Completion. Work to be compensated by state funds (including development of final reports) must be completed by August 31, 1981, or earlier as individual contracts may provide. A draft final or comprehensive progress report will be required no later than May 1, 1981.

Designation of Contact Person for Additional Information. Address questions and requests for additional information to Charles Mauk, Texas Energy and Natural Resources Advisory Council, 411 West 13th Street, Austin, Texas 78701, telephone (512) 475-5588 or STS 822-5588.

Issued in Austin, Texas, on December 12, 1979.

Doc. No. 799444 Roy R. Ray, Jr., Manager
Technology Development Section
Texas Energy and Natural Resources
Advisory Council

Filed: December 12, 1979, 12:09 p.m.

For further information, please call (512) 475-5598.

Texas Health Facilities Commission Applications for Declaratory Ruling, Exemption Certificate, and Transfer and Amendment of Certificate

Notice is given by the Texas Health Facilities Commission of applications (including a general project description) for declaratory rulings, exemption certificates, and transfers and amendments of certificates accepted December 5-11, 1979.

Should any person wish to become a formal party to any of the above-stated applications, that person must file a request to become a party to the application with the chairman of the commission within 25 days after the application is accepted. The first day for calculating this 25-day period is the first calendar day following the date of acceptance of the application. The 25th day will expire at 5 p.m. on the 25th consecutive day after the date said application is accepted. If the 25th day is a Saturday, Sunday, or state holiday, the last day shall be extended to 5 p.m. of the next day that is not a Saturday, Sunday, or state holiday. When a request to become a party is mailed to the chairman of the commission, P.O. Box 15023, Austin, Texas 78761, it must be postmarked no later than the day prior to the last day allowed for filing of a request to become a party.

The contents and form of a request to become a party to an application for a declaratory ruling, exemption certificate, transfer of certificate, or amendment of certificate must meet the minimum criteria set out in Rule 315.20.01.050. Failure of a party to supply the minimum necessary information in the correct form will result in a defective request to become a party and such application will be considered uncontested.

The fact that an application is uncontested will not mean that it will be approved. The application will be approved only if the commission determines that it qualifies under the criteria of Sections 3.02 or 3.03 of Article 4418(h), Texas Revised Civil Statutes, and Rules 315.17.04.010-.030, 315.17.05.010-.030, 315.18.04.010-.030, and 315.18.05.010-.030.

In the following list, the applicant and date of acceptance are listed first, the file number second, and the relief sought and description of the project third. EC indicates exemption certificate, DR indicates declaratory ruling, TR indicates transfer of ownership, AMD indicates amendment of certificate, and CN indicates certificate of need.

Park Plaza Hospital, Houston (12/7/79)
AH79-1205-022

EC—Relocate the medical records department in order to obtain additional space for storage and better efficiency of personnel

Bay Area Nursing Services, Inc., Humble (12/7/79)
AS79-1206-028

DR—That neither a CN nor an EC is required for applicant to continue to provide services of skilled nursing, nurses aide, homemaker, and medical equipment and supplies to residents of Harris, Chambers, and Liberty Counties, and to seek reimbursement through the Medicare/Medicaid Program

**Dallas County Mental Health/Mental Retardation
Community Living Residences III and IV, Dallas
(12/7/79)**

AA79-1206-03

EC—Request to relocate the Community Living Residences III and IV, increase client capacity from 8 to 10 female and from 8 to 10 male ICF/MR Level I clients, and provide services necessary to meet ICF/MR Level I standards

**San Antonio State Chest Hospital, San Antonio (12/7/79)
AA79-1128-013**

EC—Replacement of existing manual-operated, cord telephone system with a new Dimension 400 PBX telephone system

**Hillcrest Baptist Hospital, Waco (12/7/79)
AH78-0721-037A(120779)**

AMD/CN—Request to change the completion deadline in CN AH78-0721-037 from December 7, 1979, to January 31, 1980. The CN authorized the renovation, refurbishing, and relocation of several laboratory functions, office, and conference room

Issued in Austin, Texas, on December 12, 1979.

Doc. No. 799446 Dan R. McNery
 General Counsel
 Texas Health Facilities Commission

Filed: December 12, 1979, 12:01 p.m.

For further information, please call (512) 475-6940.

Texas Department of Human Resources

Notice of Public Hearing

The Texas Department of Human Resources will hold a public hearing on Thursday, December 27, 1979, 1:30-5 p.m., in Room 301, Science Building, Temple Junior College, 2600 South First Street in Temple, for the purpose of receiving comments on proposed rules related to intermediate care facilities and skilled nursing facilities. The proposed rules were published in the *Texas Register* on November 30, 1979 (4 TexReg 4311). The department will also solicit comments related to information published in the same issue of the *Register* regarding alternatives to institutional care. This information describes possible in-home and short-term institutional programs which would be designed to maintain the elderly and the handicapped in their own homes for as long as possible. Sixteen public meetings in other cities throughout the state were held between December 4, 1979, and December 17, 1979, and the meeting scheduled in Temple is another in this series.

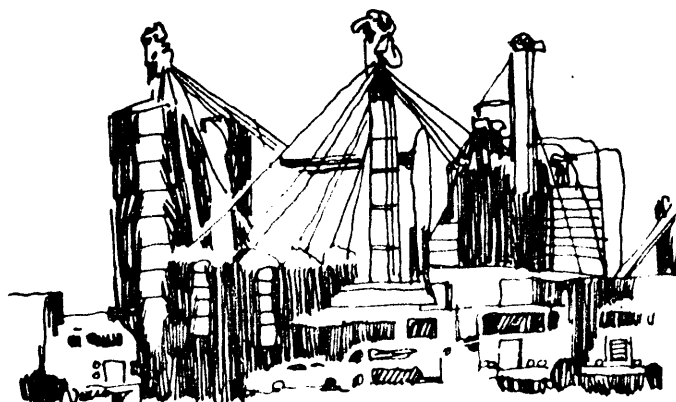
Additional information may be obtained from Sharon Flip-pin, John H. Reagan Building, Austin, Texas 78701, telephone (512) 475-6153.

Issued in Austin, Texas, on December 12, 1979.

Doc. No. 799447 Jerome Chapman
 Commissioner
 Texas Department of Human Resources

Filed: December 12, 1979, 11:58 a.m.

For further information, please call (512) 475-4601.



Railroad Commission of Texas

Correction of Error

Railroad Commission of Texas proposed Rule 051.02.02.036, Oil, Gas, or Geothermal Resource Operation in Hydrogen Sulfide Areas, contained an error as published in the December 7, 1979, *Texas Register* (4 TexReg 4422). The proposed date of adoption for Rule .036 is February 6, 1980.

Gas Utilities Division—Public Hearing

On June 6, 1979, Senate Bill 1095 was signed into law and became effective immediately which added Section 1(a) to Texas Revised Civil Statutes Annotated, Article 6053 (1962), which allows mobile home park owners, operators, or managers to receive gas through master meters and submeter gas to tenants, and requires certain records to be kept. Further, the new Section 1(a) requires the Railroad Commission of Texas to promulgate rules and regulations to carry out the new statutory provisions. Pursuant to that direction, on September 17, 1979, the Railroad Commission of Texas promulgated Gas Utilities Division Special Substantive Rule 051.04.03.040, Gas Distribution in Mobile Home Parks, which was published on October 2, 1979, in the *Texas Register* (4 TexReg 3594) for the purpose of receiving public comment.

On October 10, 1979, the Gas Utilities Division of the Railroad Commission of Texas received a request for a public hearing on the proposed rule from the Texas Manufactured Housing Association. Pursuant to Texas Revised Civil Statutes Annotated, Article 6252-13a, Section 5(c) (Supplement 1979), in the case of a substantive rule, a hearing must be called when requested by an association having at least 25 members. The Texas Manufactured Housing Association which requested a hearing in connection with this rulemaking has approximately 800 members.

A hearing is hereby called to take evidence and hear argument concerning the proposed rule governing gas distribution in mobile home parks as set out above. Parties should be prepared to present evidence regarding their positions on the proposed rule and its impact. If opposed to the proposed rule, parties should present evidence supporting proposed changes and their effect. The hearing will be held January 15, 1980,

at 9 a.m. in Room 305 of the Texas Railroad Commission Building located at 1124 South IH 35, Austin, Texas.

All interested persons or agencies which wish to appear at the hearing must file a written motion to intervene with the director, Gas Utilities Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711, no later than January 5, 1980.

In the event neither the Railroad Commission of Texas nor any of its members is present to preside over and hold said hearing, then and in that event, the director or hearings examiner of the Gas Utilities Division is hereby designated and empowered to hold the same and to do and to perform any act as provided in Texas Revised Civil Statutes Annotated, Article 6519(a) (1975).

Issued in Austin, Texas, on December 6, 1979.

Doc. No. 799335 Joseph J. Piotrowski, Jr., Director
Gas Utilities Division
Railroad Commission of Texas

Filed: December 7, 1979, 4:17 p.m.

For further information, please call (512) 445-1146.

Savings and Loan Department of Texas

Notice of Interest Rate

The following information is made available at this time for the benefit of the public and the financial institutions of Texas.

Pursuant to the provisions of House Bill 409, 66th Legislature of Texas, Regular Session, 1979, the savings and loan commissioner of Texas has ascertained the average per annum market rate adjusted to constant maturities on 10-year U.S. Treasury notes for the calendar month of November 1979 to be in excess of 10%. An additional 2.0% per annum translates to the maximum 12% as provided for by law.

This rate shall govern applicable loans made on or after January 1, 1980, and extending through January 31, 1980.

Issued in Austin, Texas, on December 10, 1979.

Doc No 799378 L. Alvis Vandygriff
Commissioner
Savings and Loan Department of Texas

Filed: December 10, 1979, 4:23 p.m.

For further information, please call (512) 475-7991.

Texas Register

Notice of Schedule Variations

As previously scheduled, in view of the holidays surrounding Christmas and New Year's, the *Texas Register* will not be published on Friday, December 28, 1979, or Friday, January 4, 1980. Deadlines for submission of documents for publication in the first issue of Volume 5, dated January 1, 1980, have also been changed. The deadlines for submission of documents for publication in that issue are as follows: noon Friday, December 21 (all copy except notices of open meetings), and noon Thursday, December 27 (open meeting notices). The regular deadline schedule for submission of documents for publication will resume with the January 8, 1980, issue of the *Register*.

Texas Water Commission

Applications for Waste Discharge Permits

Notice is given by the Texas Water Commission of public notices of waste discharge permit applications issued during the period of December 3-7, 1979.

No public hearing will be held on these applications unless an affected person who has received notice of the applications 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; (2) a brief factual statement of the nature of the interest of the requester and an explanation of how that interest would be affected by the proposed actions; and (3) the names and addresses of all persons whom the requester represents. If the commission determines that the request sets out legal or factual questions within the jurisdiction of the commission and relevant to the waste discharge permit decision, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 45 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by writing Larry R. Soward, assistant chief hearings examiner, Texas Water Commission, P.O. Box 13087, Capitol Station, Austin, Texas 78711, telephone (512) 475-1311.

Listed are the name of the applicant and the city in which the facility is located; type of facility; location of the facility; permit number; and type of application—new permit, amendment, or renewal.

Week Ending December 7, 1979

Uranium Resources, Inc. (Benavides Project), Richardson, Duval County; in situ uranium mine; 3.5 miles east of Bruni, along and north of State Highway 21 and 22; new permit

U.S. Steel Corporation—Texas Uranium Operations, Live Oak County; industrial waste disposal well; 1,450 feet from the northwest line and 1,000 feet from the southwest line of Tract 421, W. N. Fant Survey, Abstract 610; new permit

City of Roanoke, Denton County; sewage treatment plant; approximately 600 feet west and 600 feet north of the intersection of State Highway 114 and U. S. Highway 377; 10259; amendment

El Paso Water Utilities Public Service Board (Socorro Plant); sewage treatment plant; 0.5 mile west of State Highway 258 and four miles south of Loop 375, 10408-08; amendment

Bandera County Water Control and Improvement District No. 1, Bandera, Bandera County; sewage treatment plant; off State Highway 16, approximately 0.5 mile northeast of the intersection of State Highway 18 and FM Road 689; 10121; amendment

Texas Industries, Inc., Colorado County; sewage treatment plant; 2.3 miles west of State Highway 71 adjacent to a county road known locally as South Point Church Road, 5.5 miles south of Altair; new permit

Denton County Municipal Utility District No. 1, Fort Worth, Denton County; sewage treatment plant; 2.5 miles east of the intersection of U. S. Highway 377 and State Highway 114; 11953-01; amendment

Issued in Austin, Texas, December 10, 1979.

Doc. No. 799333 Mary Ann Hefner
 Chief Clerk
 Texas Water Commission

Filed: December 10, 1979, 2:45 p.m.

For further information, please call (512) 475-1311.

