

TEXAS REGISTER

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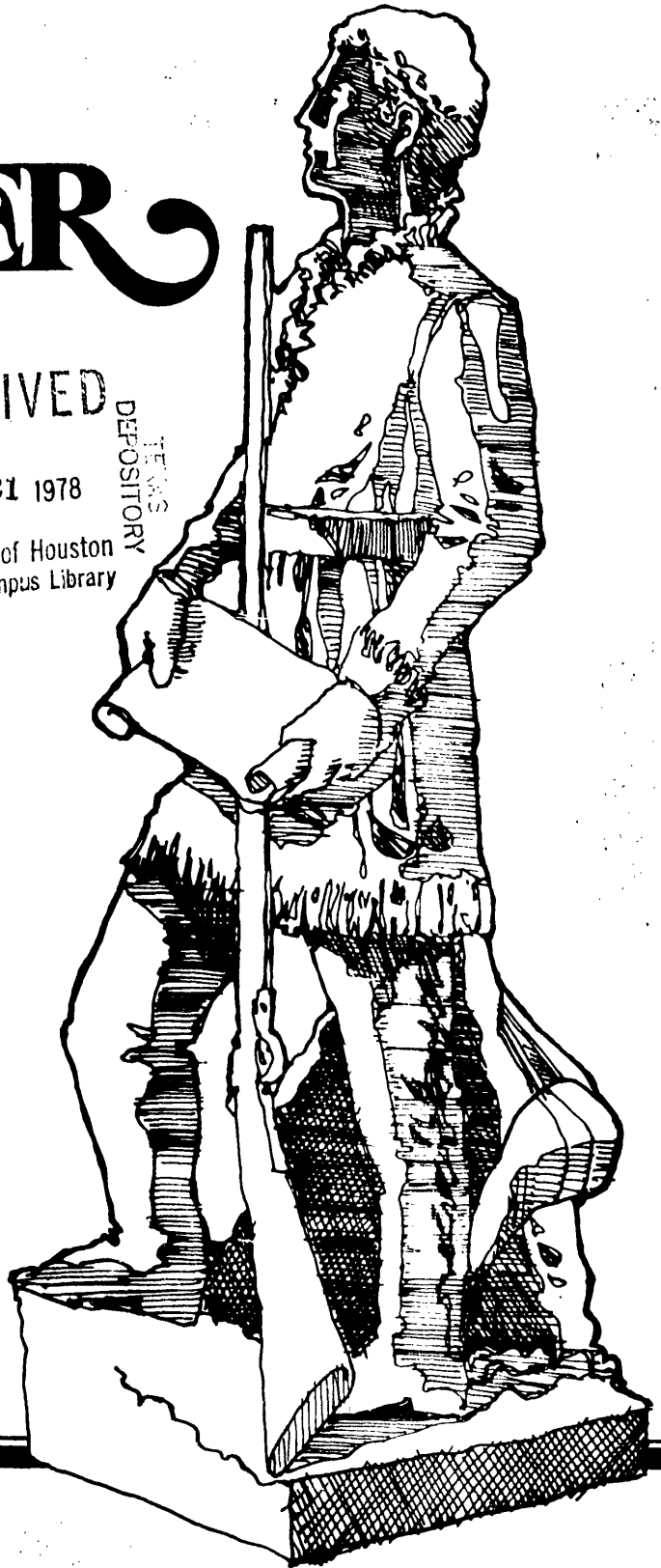
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NOTES ON THE ISSUE

The Mentally Retarded Persons Act of 1977 (Article 5547-300, Texas Civil Statutes) became effective January 1, 1978. To implement provisions of the act, the Texas Department of Mental Health and Mental Retardation is adopting emergency rules concerning the rights of mentally retarded persons. The rules correlate federal and state laws and regulations concerning the rights of mentally retarded persons and give guidelines on how to inform the clients or their guardians or parents of those rights. One of the provisions of the rules requires the department to publish a handbook of rights for mentally retarded clients in the department's facilities and in community centers. Also adopted on an emergency basis by the department are rules on public responsibility committees for community mental health and mental retardation centers and rules governing the comprehensive diagnosis and evaluation of persons to determine eligibility for mental retardation services. Other action by the department includes the proposal of new rules on the disclosure of client-identifying information and the adoption of new rules concerning medical assistants and physician assistants.

The Texas Parks and Wildlife Department is proposing the amendment of existing and the adoption of new rules on park entrance and park user fees. The revisions include the increase of some state park fees and permits, a surcharge for nonresidents, and allowing certain disabled veterans to enter state parks free.

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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The *Register* contains executive orders of the governor; summaries of attorney general's opinions and summaries of requests for opinions; emergency rules, proposed rules, and adopted rules of state agencies; notices of open meetings; and miscellaneous notices of general interest to the public of Texas.

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Appointments

Texas State University System

To the board of regents for a six-year term to expire January 10, 1979:

Philip Gary Warner
1938 West Clay
Houston, Texas 77019

Mr. Warner is replacing J. C. Kellam of Austin, Travis County, who is deceased.

Issued in Austin, Texas, on February 21, 1978.

Doc. No. 781396 Dolph Briscoe
Governor of Texas

For further information, please call (512) 475-4571.



Requests for Opinions Summary of Request for Opinion RQ-1828

Request for opinion sent to the Attorney General's Opinion Committee by M. L. Brockette, commissioner of education, Texas Education Agency, Austin.

Summary of Request:

(1) May \$1,070,000 earned by the investment of a school district's bond proceeds be used lawfully in the construction of a new elementary school building?

(2) If not, what can be done lawfully with this money?

Doc. No. 781422

Opinions Summary of Opinion H-1125

Request from Gibson D. Lewis, House of Representatives, Austin, concerning dues checkoffs by employees of Tarrant County Hospital District.

Summary of Opinion: Hospital districts created pursuant to Article 4494n may institute a dues checkoff program for their employees.

Doc. No. 781423

Open Records Decisions Summary of Open Records Decision 185

Request from W. J. Estelle, Jr., director, Texas Department of Corrections, Huntsville, concerning whether an inmate's correspondence list is public under the Open Records Act.

Summary of Decision: An inmate's correspondence list is excepted from required public disclosure under the Open Records Act.

Issued in Austin, Texas, on February 22, 1978.

Doc. No. 781424

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 Department of Mental Health and Mental Retardation

Other Agencies and the Public

Public Responsibility Committees for Community Mental Health Mental Retardation Centers 302.03.20

Subchapter J of the Mentally Retarded Persons Act of 1977 (the "act"), Article 5547-300, Texas Civil Statutes, contains provisions concerning the establishment, operation, powers, and duties of public responsibility committees at each community mental health and mental retardation center. A public responsibility committee ("PRC") is an independent, impartial third party mechanism composed of individuals not affiliated with a community center which serves to protect, preserve, promote, and advocate for the health, safety, welfare, and legal and human rights of the clients served by a community center. Because of the enactment of Subchapter J of the act, the department must promulgate rules concerning public responsibility committees at community centers. In order that the safeguarding of clients' legal rights by community centers may be accomplished in accordance with the statutory provisions, the department has determined that an imminent peril to the public health, safety, and welfare requires the adoption of Rules 302.03.20.001-.010 on an emergency basis, to become effective immediately upon filing with the Texas Register Division of the Office of the Secretary of State. The Texas Board of Mental Health and Mental Retardation approved Rules 302.03.20.001-.010 at its February 17, 1978, meeting.

Emergency Rules 302.03.20.001-.010 set forth the functions of a PRC, membership requirements for a PRC, requirements for meetings of a PRC, and the procedures and responsibilities for the operations of and investigations conducted by a PRC. The effect of emergency Rules 302.03.20.001-.010 is a set of uniform rules and procedures governing the operation of each PRC at all community centers.

Emergency Rules 302.03.20.001-.010 are promulgated pursuant to the authority of Section 4.01 of Article 5547-204, Texas Civil Statutes, and Sections 50 and 60 of Article 5547-300, Texas Civil Statutes.

.001. Purpose. The purpose of these rules is to clarify the responsibilities, procedures, obligations, and powers of public responsibility committees at all community mental health and mental retardation centers established pursuant to Article 5547-203, Vernon's Annotated Civil Statutes, for mental retardation services.

.002. Application. These rules apply to all community mental health and mental retardation centers established pursuant to Article 5547-203, Vernon's Annotated Civil Statutes.

.003. Definitions. In these rules,

(a) "Center" means a community center for mental health and mental retardation services established pursuant to Article 5547-203, Vernon's Annotated Civil Statutes.

(b) "Local establishing agencies" means those agencies which have established community mental health and mental retardation centers as defined in Article 5547-203, Vernon's Annotated Civil Statutes.

(c) "Board" means the board of trustees appointed to govern a community center for mental health and mental retardation services.

(d) "Director" means the individual appointed by a board of trustees to administer a community center for mental health and mental retardation services.

(e) "PRC" means public responsibility committee.

(f) "Client" means a person receiving mental retardation services from a center.

(g) "Department" or "TDMHMR" means the Texas Department of Mental Health and Mental Retardation.

(h) "Affiliated" means any employment, financial, or other relationship between a person and a center or TDMHMR, i.e., full or part-time employee, member of a governing board or panel, paid or unpaid consultant, contractor, supplier, or a person related to any of such persons within the second degree of consanguinity or affinity. Persons thus prohibited from serving on a PRC include spouse, parent, grandparent, sibling, child, or grandchild, or any of these relationships to a spouse of an employee, member of a governing board or panel, consultant, contractor, or supplier.

(i) "Legally adequate consent" means consent given by a person or his legally authorized representative when each of the following conditions has been met:

(1) **Legal capacity:** The person giving the consent is of the minimum legal age and has not been adjudicated incompetent to manage his personal affairs by an appropriate court of law, or the person giving the consent is the parent of a patient or client under 18 years of age who is not and has not been married or has not had his disabilities of minority removed for general purposes, or the person giving consent is the guardian who, under court order, has been appointed guardian of the person of the patient or client.

(2) **Comprehension of information:** The person giving the consent has been informed of and comprehends the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure, and the fact that withholding or withdrawal of consent shall not prejudice the future provision of care and services to the client.

(3) **Voluntariness:** The consent has been given voluntarily and free from coercion and undue influence.

(j) "Fiscal year" means the period of time between the first day of September and the last day of the next August, inclusive.

(k) "Advocacy system" means the system of advocacy for the developmentally disabled, created pursuant to Section 113 of Public Law 94-103.

.004. Functions of the PRC. The PRC is an independent, impartial third party mechanism which serves to protect, preserve, promote, and advocate for the health, safety, welfare, and legal and human rights of the clients served by a center. Its functions shall include, but are not limited to, the following:

(1) protecting and advocating for the health, safety, welfare, and legal and human rights of clients served by a center;

(2) inquiring into or investigating and responding to comments, suggestions, or complaints made with regard to clients of a center;

(3) ensuring that clients are informed of their rights and the means of protecting those rights; and

(4) submitting instances of abuse or denial of rights to the appropriate authorities and the advocacy system for appropriate action.

Members of the PRC should be especially familiar with the center and its policies concerning clients' rights.

.005. Membership.

(a) Seven persons who are neither affiliated with the center, nor are clients, shall be selected by the local establishing agencies to serve voluntarily as members of the PRC. The committee shall include representation by parents, guardians, consumer groups, and organizations which advocate for clients. In making such appointments, the local establishing agencies shall consult with the local parents' associations and interest groups within the service delivery area, if any exist, to secure recommendations for such appointments. Consultation shall include informing local parents' associations and interest groups of the selection process, time and place of the meeting, and an invitation to submit nominations. Public notice shall be given of the members selected.

(b) PRC members must reside in the area served by the center and must be capable of mature, objective judgment of medical, legal, social, and ethical considerations pertaining to the committee's work. They shall be chosen without regard to sex, race, color, creed, national origin, age, or handicap.

(c) At no time shall a majority of any PRC be composed of relatives of clients, nor shall any members be affiliated with the center in any manner as defined by .003(h) of these rules.

(d) The PRC shall at the beginning of each fiscal year elect one of its members as chairperson and another member as secretary.

(e) Members shall be appointed to serve a one-year term. No members shall serve more than 10 consecutive terms. A current roster of all PRC members will be maintained by Community Services Division, Central Office, and may be forwarded to the advocacy system.

(f) Broad general knowledge of the center is essential for all PRC members. They shall participate in training related to their assignment as a member of a PRC.

(g) A member who, in the absence of an acceptable reason, fails to attend two consecutive quarterly meetings of the PRC shall automatically be dropped from membership.

(h) Any member of a PRC who fails to comply with the provisions of these rules may be removed by the local establishing agencies upon recommendation by a majority of the PRC. Replacement of the members shall be in accordance with the provisions of paragraph .005 of these rules.

(i) PRC members and staff should cooperate with each other to develop good working relationships, mutual acceptance, and cooperation.

.006. Meetings.

(a) The PRC shall meet as often as necessary to fulfill its duties, but at least quarterly. In investigating an instance of client abuse or denial of rights, the PRC shall initiate an investigation or inquiry within 10 days of receipt of a complaint. The PRC shall determine the times and locations of its meetings. There must be a quorum of the committee present at the meeting to conduct business. The quorum of the committee shall be a majority of its total membership, and votes shall be decided by a simple majority of those present.

(b) The PRC may request a staff member to attend a meeting.

(c) Staff members may ask to attend PRC meetings. Permission for such attendance shall be granted at the discretion of the PRC.

(d) Members of a PRC shall serve without compensation other than reimbursement for actual expenses, including travel expenses necessarily incurred in the performance of their duties.

.007. Procedures and Responsibilities.

(a) Each center shall be responsible for informing clients, their families, and the general public of the existence, purpose, and composition of the PRC. Each center shall:

(1) at least annually, distribute news releases to news media, stressing the fact that the PRC is an independent, impartial body and that none of its members are affiliated with the center or TDMHMR;

(2) publish brief statements of PRC purpose and accessibility in issues of all center publications;

(3) post printed notices conspicuously in all appropriate center buildings; and

(4) include PRC information among handout materials routinely given to newly admitted clients, their families, and new employees. (See Exhibit A—.03.20.007.)

(b) Each PRC shall receive, investigate, and report complaints made to it by or on behalf of clients and shall make appropriate recommendations to the director, and, if necessary, to the board. The PRC will respond to questions related to its purpose.

(c) The PRC shall record all complaints received in the PRC log, illustrated in Exhibit E—.03.20.007 which is attached to and made a part of these rules.

(d) The PRC must have its own post office box. Rental fees shall be paid by the center.

(e) Complaints must be sent directly to the PRC. All complaints must be reduced to writing and should be signed. However, a PRC member, upon receipt of an anonymous complaint, may reduce the complaint to writing and bring it to the PRC's attention. If a complainant is unable to sign or write, the complaint may be dictated and the complainant's mark confirmed by a witness. If a member of the PRC

receives an oral complaint, that member must reduce that complaint to writing and present it to the PRC.

(f) During an investigation, PRC members may interview the following persons, where appropriate:

- (1) the complainant;
- (2) the client, if other than the complainant;
- (3) any other client involved in the complaint as participant or observer;
- (4) family members;
- (5) staff members;
- (6) other nonstaff (volunteers).

(g) When investigating complaints of abuse or denial of rights of a client, the PRC shall have the authority with or without notice to inspect the center which offers services to the mentally retarded person and records relating to the diagnosis, evaluation, or treatment of such person, as those records relate to the complaint of abuse or denial of rights.

(h) PRC members should observe the center's established schedules and procedures during the investigation of any complaint.

(i) When the PRC determines that an instance of abuse or denial of rights has occurred which involves a client, the PRC shall report this instance to the advocacy system and to the appropriate authorities.

(j) Each PRC shall maintain confidential records of complaints received, acknowledge receipt of complaints (see Exhibit C—.03.20.007, which is attached to and made a part of these rules), and inform the clients and/or complainants of any action taken (see Exhibit D—.03.20.007, which is attached to and made a part of these rules). PRC stationery may be used for correspondence and notices (see Exhibit B—.03.20.007, which is attached to and made a part of these rules).

(k) The chairperson will each month send a copy of the PRC log to:

- (1) the board, and
- (2) the director.

The PRC shall present an annual report of its work to the board, the advocacy system, and the Community Services Division, Central Office, TDMHMR. This report shall include a description of all complaints processed and action taken to remedy the complaint, if any. The names of all individuals involved shall be kept confidential.

(l) To assure compliance with the legal requirements of confidentiality relating to matters concerning clients, no individual member of the PRC or the PRC shall make statements regarding either a complaint or an investigation, except as provided in (b) above, unless legally adequate consent is obtained for the release of the information held by the PRC.

(m) The responsibility to provide redress to justifiable complaints shall not lie with the PRC. The director shall take such corrective action as is appropriate and report his action to the PRC. If corrective action is not taken by the director within a reasonable time, or if the action is deemed insufficient or inappropriate by the PRC, the PRC may file a written appeal to the board, with a copy of the written appeal to the Community Services Division, Central Office, TDMHMR.

(n) When appropriate, the PRC may assist a patient or client in securing legal counsel, but may not offer any legal advice.

(o) A center may use these rules as a guideline for PRC's to safeguard the rights of all persons served by the center.

.008. Exhibits. The following exhibits are attached to and are a part of these rules:

(a) Exhibit A—.03.20.008—Notice. This document illustrates a form that may be used to inform people of the existence of the center's public responsibility committee as well as the nature of its work, its address, and the fact that it is independent of the center.

(b) Exhibit B—.03.20.007—Stationery for the public responsibility committee serving patients of Austin State Hospital. This document illustrates a type of stationery that may be used by a public responsibility committee. The stationery may be used by the committee for its correspondence and notices.

(c) Exhibit C—.03.20.007—Acknowledgment. This form gives a sample form which may be used by a center's public responsibility committee in acknowledging the receipt of a complaint and assuring an investigation of the complaint.

(d) Exhibit D—.03.20.007—Notice informing clients or complainants of any action taken. This exhibit illustrates a form that may be used by a center's public responsibility committee to inform any person who has complained to it that the committee has completed its investigation of the complaint. This form also informs the complainant of whatever action has been taken as a result of the investigation.

(e) Exhibit E—.03.20.007—PRC log. This exhibit illustrates the form to be used by the center's public responsibility committee for the recording of all of the complaints reviewed by the committee.

(f) Exhibit F—.03.20.008—Format for informed consent. This exhibit provides forms for certificates with reference to the securing of legally adequate consent for the disclosure of client-identifying information.

.009. Distribution.

(a) These rules shall be distributed to members of the Texas Board of Mental Health and Mental Retardation, assistant commissioners, deputy commissioners, section chiefs, Central Office; superintendents of all TDMHMR facilities; directors of all community centers for mental health and mental retardation services; and chairpersons of public responsibility committees, all centers.

(b) The director of each center shall disseminate the information contained herein to all appropriate staff members and volunteers.

.010. Effective Date.

(a) These rules shall become effective immediately upon filing with the Texas Register Division of the Office of the Secretary of State.

(b) Upon the effective date of these rules, all other orders and instructions, verbal or written, on this subject are rescinded.

Client (Patient) Care

Rights of Mentally Retarded Clients

302.04.34

Subchapters C, D, and E of the Mentally Retarded Persons Act of 1977 (the "act"), Article 5547-300, Texas Civil Statutes, contain an enumeration of rights guaranteed to mentally retarded persons, clients, and residents. Section 26 of the act requires the Texas Department of Mental Health and Mental Retardation to promulgate rules and regulations to ensure the implementation of those rights. In order to implement the statutory provision and to inform mentally retarded persons and their advocates concerning their rights, the department has determined that an imminent peril to the public health, safety, and welfare requires that Rules 302.04.34.001-.011 be adopted on an emergency basis, to become effective immediately upon filing with the Texas Register Division of the Office of the Secretary of State. Rules 302.04.34.001-.011 were approved by the Texas Board of Mental Health and Mental Retardation at its February 17, 1978, meeting.

Emergency Rules 302.04.34.001-.011 set forth the rights guaranteed under the act and reference federal laws and regulations which affect those rights. Some of the rights guaranteed by the act are: right to protection from exploitation and abuse; right to least restrictive living environment; right to education; right to equal employment and housing opportunities; right to treatment and habilitation; right to comprehensive diagnosis and evaluation; right to presumption of competency; right to fair compensation for labor; right to individualized habilitation plan; right to be free from unnecessary and excessive medication; right to submit grievances; and right to prompt, adequate, and necessary medical and dental care and treatment.

Emergency Rules 302.04.34.001-.011 also require the department to publish a handbook of rights entitled, *Rights and Privileges of the Mentally Retarded in Facilities of the Texas Department of Mental Health and Mental Retardation and Community Centers*. The handbook will be printed in both English and Spanish and will interpret the various rights in simple, nontechnical language. The handbook will be the only publication on rights distributed to clients of the department and community centers. Copies of the handbook must be prominently displayed at places in the facility frequented by mentally retarded clients in social activities.

Emergency Rules 302.04.34.001-.011 also require that all clients be given a copy of the handbook and be orally informed of their rights in plain and simple language or in a manner tailored to meet the client's ability to comprehend.

Emergency Rules 302.04.34.001-.011 are promulgated pursuant to the authority of Section 4.01 of Article 5547-204, Texas Civil Statutes, and Sections 26 and 60 of Article 5547-300, Texas Civil Statutes.

.001. Purpose. These rules set forth the rights provided to mentally retarded persons in Texas under the provisions of the Mentally Retarded Persons Act of 1977, Article 5547-300, Vernon's Texas Civil Statutes. Certain rights granted by federal law are referenced where they affect the rights provided under the act.

It should be emphasized that the rights granted the mentally retarded under the Mentally Retarded Persons Act in some instances are a reiteration of the rights which belong to all citizens of the State of Texas under the laws and the constitutions of the United States and the State of Texas. As with the constitutional rights enjoyed by all citizens, the rights of the mentally retarded must be exercised in such a way that they do not conflict with the rights of other persons. It is the policy of this department that the rights of the mentally retarded be made known to those clients served by this department and that they be assisted in exercising such rights in a manner which protects the rights of all persons.

.002. Application. These rules apply to all facilities of the Texas Department of Mental Health and Mental Retardation serving mentally retarded persons and to community mental health and mental retardation centers organized pursuant to Section 3.01 of the Texas Mental Health and Mental Retardation Act, as amended, Article 5547-201 to 5547-204, Vernon's Annotated Civil Statutes, which provide mental retardation services.

.003. Definitions. In these rules,

(a) "Residential care facility" means any facility operated by the department or a community center that provides 24-hour services, including domiciliary services, directed toward enhancing the health, welfare, and development of persons with mental retardation.

(b) "Resident" means a person living in and receiving care, treatment, training, or education in a residential care facility of the department or a community center.

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

(d) "Commissioner" means the Commissioner of Mental Health and Mental Retardation.

(e) "Superintendent" means the director of any residential care facility.

(f) "Board" means the Texas Board of Mental Health and Mental Retardation.

(g) "Client" means a person receiving mental retardation services from the department or community center.

(h) "Community center" means an entity organized pursuant to Section 3.01 of the Texas Mental Health and Mental Retardation Act, as amended, Article 5547-201 to 5547-204, Vernon's Annotated Civil Statutes, which provides mental retardation services.

(i) "Director" means the director of a community center.

.004. Rights of Mentally Retarded Persons. The following rights are granted to mentally retarded persons in Texas under the Mentally Retarded Persons Act of 1977, Article 5547-300, Vernon's Texas Civil Statutes. They cannot all be provided solely through the efforts of the department, but clients of the department and community centers must be advised of them.

(a) All rights, benefits, and privileges guaranteed by the constitutions and laws of the United States and Texas except where lawfully restricted.

(b) Right to protection from exploitation and abuse.

(c) Right to least restrictive living environment.

(d) Right to education. The Education of Handicapped Children regulations, 42 Federal Register 42474 (Tuesday, August 23, 1977), 45 Code of Federal Regulations Part 100b, Parts 121a and 121m, (herein called education regulations),

also mandate an appropriate free education to all handicapped persons between the ages 3 through 18 by September 1, 1978, and between the ages 3 through 21 by September 1, 1978. Education under these regulations includes but is not limited to special education, physical education, and vocational education. The education regulations mandate a hearing before an impartial hearing officer where a parent of a minor, a mentally retarded person who is legally capable of exercising his or her own rights, or a surrogate parent under the education regulations wishes to contest the educational program for an individual under these regulations. Education regulations also provide for an independent educational evaluation. The Mentally Retarded Persons Act of 1977 does not place an age limit on the right to education.

(e) Right to equal opportunities in employment. Regulations promulgated under Section 504 of the Rehabilitation Act of 1973, 42 Federal Register 22676 (Wednesday, May 4, 1977), 45 CFR Part 84, also provide that certain organizations hire the handicapped, including the mentally retarded, where they are capable of performing the job involved.

- (f) Right to equal housing opportunities.
- (g) Right to treatment and rehabilitative services.
- (h) Right to comprehensive diagnosis and evaluation.

There is also a right under this act to an administrative hearing to contest the findings of such a diagnosis as well as the right to an independent diagnosis and evaluation.

- (i) Right to presumption of competence.
- (j) Right to due process in guardianship proceedings, and in admission to residential services under the act.
- (k) Right to fair compensation for labor. Clients of the department receive such compensation in accordance with Rules of the Commissioner of MH/MR Affecting Client (Patient) Care, Client Workers, 302.04.33, and Article 5159d, Vernon's Texas Civil Statutes. Clients of community centers receive such compensation in accordance with federal and state laws and regulations, such as the Fair Labor Standards Act.

.005. *Rights of Mentally Retarded Clients.* Clients who receive mental retardation services are specifically granted the following additional rights by the Mentally Retarded Persons Act of 1977, Article 5547-300, Vernon's Texas Civil Statutes:

- (a) Right to least restrictive alternative. Clients of educational programs covered by the Education of Handicapped Children Act are also granted the right to the least restrictive alternative in educational programs, and parents have a right to prior notice under the education regulations before changes in educational placement are made.
- (b) Right to individualized habilitation plan. The education regulations also mandate individual education plans.
- (c) Right to periodic review and reevaluation. A periodic review of educational plans is also mandated by the Education of Handicapped Children Act.
- (d) Right to be informed and participate in planning. This right is also mandated by the Education of Handicapped Children Act with respect to educational planning.
- (e) Right to withdrawal from voluntary mental retardation services.
- (f) Right to be free from mistreatment, neglect, and abuse.

(g) Right to be free from unnecessary and excessive medication.

(h) Right to submit grievances to the appropriate public responsibility committee.

(i) Right to be informed of rights. Parents must also be advised of their rights and those of their minor children under the education regulations.

(j) Right to access to his or her own medical records except where lawfully restricted. Parents of minors and guardians of the person have right to access to educational records under the education regulations. Also, parents of minors and guardians of the person have the right of access of their child's or ward's records under the Education of Handicapped Children Act and the right to seek to amend erroneous information contained in educational records through an administrative hearing under the education regulations.

(k) Right to confidentiality of records except where disclosure is authorized under the Mentally Retarded Persons Act of 1977. A similar provision is included in the education regulations.

(l) Right to an administrative hearing to contest a proposed or refused transfer or discharge, except where such discharge is on the basis that the individual is not mentally retarded.

.006. *Rights of Mentally Retarded Residents.* Residents of residential care facilities have the following additional specific rights under the Mentally Retarded Persons Act of 1977, Article 5547-300, Vernon's Texas Civil Statutes.

- (a) Right to prompt, adequate, and necessary medical and dental care and treatment.
- (b) Right to a normalized residential environment.
- (c) Right to a humane physical environment.
- (d) Right to communication and visits.
- (e) Right to personal property.

.007. *Mentally Retarded Rights Handbook.*

(a) The department will publish a handbook outlining the rights of mentally retarded persons to be entitled *Rights and Privileges of the Mentally Retarded in Facilities of the Texas Department of Mental Health and Mental Retardation and Community Centers*. The department will update and republish said handbook from time to time.

(b) The handbook will be printed in both English and Spanish.

(c) The handbook will contain an interpretation, written in simple, nontechnical language, of the various rights afforded mentally retarded clients of department facilities and of community centers.

(d) Effective immediately, department facilities will cease publication and distribution of their individual pamphlets, brochures, and statements and other materials on rights of the mentally retarded. Only the handbook published by the department will be distributed to mentally retarded clients of department facilities.

(e) Effective immediately, community centers will cease publication and distribution of their individual pamphlets, brochures, statements, and other materials on rights of the mentally retarded. The center must distribute the handbook published by the department or distribute a rights handbook which is approved by the department and which includes all of the material found in the department's handbook.

(f) Upon notification by the department of the availability of the handbook, the superintendent or director of each department facility will order handbooks from Central Office Purchasing and Supply Division, using appropriate B-17a procedures. Community centers will either contract to purchase the handbooks from the department or have them printed in a format approved by the department. Sufficient copies of the handbook will be purchased to distribute a copy to each mentally retarded client and to distribute upon admission a copy to all new mentally retarded clients.

(g) Copies of the handbook will be displayed prominently and at all times in dayrooms, recreation rooms, and other gathering places frequented by mentally retarded clients in social activities.

(h) Cost of printing will be borne by each community center and department facility. Payment will be made by department facilities to Central Office Reproduction Services through the revolving fund transfer. Community centers will purchase the handbooks by contract with the department or through a printer.

(i) Superintendents and directors will make certain an ample supply of handbooks is in inventory to fulfill requirements for a 12-month period and will maintain adequate supply on hand thereafter.

.008. *Communication of Rights.*

(a) All current clients and, upon admission, each new client shall be given a copy of the mentally retarded rights handbook and shall be orally informed of the rights in plain and simple language unless the client is manifestly unable to comprehend the rights.

(b) If a client is manifestly unable to comprehend the rights, a parent of a minor client or the court-appointed guardian of the person of a client, if any, must be informed of the client's rights. The method used to communicate a client's rights to a parent or guardian should be designed for effective communication.

(c) If a client is visually or aurally impaired, the rights of the mentally retarded should be communicated by appropriate means. The method used to communicate rights to the clients should be tailored to meet the client's ability to comprehend.

.009. *References.* Reference is made to the following statutes:

- (a) Article 5547-202, Vernon's Texas Civil Statutes.
- (b) Article 5547-300, Vernon's Texas Civil Statutes, known also as the Mentally Retarded Persons Act of 1977.
- (c) Education of Handicapped Children regulations, 42 Federal Register 42474 (Tuesday, August 23, 1977), 45 CFR Part 100b, Parts 121a and 121m.
- (d) Section 504 of the Rehabilitation Act of 1973, 29 United States Code 706.
- (e) 42 Federal Register 22676 (Wednesday, May 4, 1977), 45 CFR Part 84.
- (f) Rules of the Commissioner of Mental Health and Mental Retardation, Client Workers, 302.04.33.
- (g) Article 5159d, Vernon's Texas Civil Statutes.
- (h) 20 U.S.C. 1401, also known as the Education of Handicapped Children Act.

.010. *Distribution.* These rules shall be distributed to members of the Texas Board of Mental Health and Mental Retardation; assistant commissioners, deputy commis-

sioners, and division and section chiefs of Central Office; superintendents and directors of department facilities; and chairmen of boards of trustees and executive directors of community centers.

.011. *Effective Date.*

(a) These rules become effective immediately upon filing with the Texas Register Division of the Office of the Secretary of State.

(b) On the effective date of these rules, all other instructions, verbal or written, on this subject are rescinded.

Doc. No. 781433

Comprehensive Diagnostic and Evaluation Centers 302.04.35

The Mentally Retarded Persons Act of 1977, Article 5547-300, Texas Civil Statutes, hereinafter referred to as the "act," became effective on January 1, 1978. Section 28(a) of the act provides that "No person shall be eligible to receive mental retardation services, including but not limited to placement in a residential care facility, unless he shall first receive a comprehensive diagnosis and evaluation to determine the need and eligibility for mental retardation services, except" in the cases of emergency and respite care admissions. Section 28(a) further provides that "The diagnosis and evaluation shall be performed at a diagnosis and evaluation center approved by the department." Section 3(25) of the act defines "diagnosis and evaluation team" and provides that such a team "shall be composed only of individuals who are certified pursuant to standards promulgated by the department."

Since after January 1, 1978, no person may be determined to be eligible to receive mental retardation services unless the person has received a comprehensive diagnosis and evaluation at a facility approved by the department and since members of the diagnosis and evaluation team must be certified by the department before the diagnosis and evaluation they perform can be considered to be valid under the act, the Texas Department of Mental Health and Mental Retardation finds that an imminent peril to the public health, safety, and welfare requires that Rules 302.04.35.001-.013 be adopted as emergency rules to become effective immediately upon filing with the Texas Register Division of the Office of the Secretary of State. The Texas Board of Mental Health and Mental Retardation approved Rules 302.04.35.001-.013 at its February 17, 1978, meeting.

Emergency Rules 302.04.35.001-.013 establish the process and criteria for the certification and recertification of approved diagnostic and evaluation centers and teams, sets forth the process for application for certification as an approved diagnostic and evaluation center, sets forth the criteria for certification of individuals who are professionally qualified to become members of a diagnostic and evaluation team, establishes the necessary components of a comprehensive diagnosis and evaluation, and defines the format and documentation required in a comprehensive diagnosis and evaluation.

Emergency Rules 302.04.35.001-.013 are promulgated pursuant to the authority contained in Section 2.11(b), Texas Civil Statutes, and Sections 26 and 60 of Article 5547-300, Texas Civil Statutes.

.001. Purpose. The purposes of these rules are:

(a) to establish departmental rules setting forth the process and criteria for the certification and recertification of approved diagnostic and evaluation centers and teams;

(b) to define the process for application for certification as an approved diagnostic and evaluation center;

(c) to outline criteria for certification of individuals who are professionally qualified to perform as members of a diagnostic and evaluation team;

(d) to establish the necessary components of a comprehensive diagnosis and evaluation;

(e) to define the format and documentation necessary in a comprehensive diagnosis and evaluation.

.002. Application. These rules governing comprehensive diagnostic and evaluation centers apply to any agency, state school, community mental health and mental retardation center, state hospital, state center for human development, or organization which makes application for or which has obtained certification as an approved diagnostic and evaluation center.

.003. Definitions. For the purposes of these rules,

(a) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.

(b) "Least restrictive alternative" means an available program or facility which is the least confining for the client's condition, service and treatment which is provided in the least intrusive manner, reasonably and humanely appropriate to the individual's needs.

(c) "Center" means a facility approved as an approved diagnostic and evaluation center in accordance with Rule .005 of these rules.

(d) "Comprehensive diagnosis and evaluation" means a study including a sequence of observations and examination of a person leading to conclusions and recommendations formulated jointly, with dissenting opinion, if any, by a diagnostic and evaluation team. The study shall include but not be restricted to a social and medical history, medical, neurological, audiological, visual, educational, appropriate psychological and sociological examinations, and an examination of the person's adaptive behavior.

(e) "Compliance report" means a written report submitted to the commissioner of the Texas Department of Mental Health and Mental Retardation semiannually that attests that the diagnostic and evaluation center or team is in compliance with the standards set forth in this rule.

(f) "Diagnostic and evaluation team" means a team of personnel composed of not less than a core team as defined herein and such other personnel as may be designated by the facility to assist the team.

(g) "Core team" means those members of a diagnostic and evaluation team that are minimally required to perform the diagnosis and evaluation or ensure the performance of the diagnosis and evaluation on each client, *i.e.*, physician, psychologist, social worker, and educational specialist.

(h) "Developmental period" means the period of time between conception and the 18th birthday.

(i) "Certification" signifies that an applicant diagnostic and evaluation center has been approved as such by the commissioner of the Texas Department of Mental Health and Mental Retardation.

(j) "Special certification" means certification extended by the commissioner of the Texas Department of Mental Health and Mental Retardation to a center, the members of whose diagnostic and evaluation teams are composed of staff members from more than one facility.

(k) "Provisional certification" means certification extended by the commissioner of the Texas Department of Mental Health and Mental Retardation for one year to a center, members of whose diagnostic and evaluation team do not meet the standards of this set of rules.

(l) "Individual certification" means the approval by the commissioner of a professional person to serve as a member of a diagnostic and evaluation team.

(m) "Commissioner" means the commissioner of mental health and mental retardation.

(n) "Deputy commissioner" means the deputy commissioner for mental retardation services, for mental health services, or for community services as specified.

(o) "Suspension" means a temporary revocation of certification of an approved diagnostic and evaluation center for failure to comply with the requirements set forth in this set of rules. Certification can be reinstated upon recommendation of the Committee for the Certification of Approved Diagnostic and Evaluation Centers and approval of the commissioner.

(p) "Facility" refers to any agency, state school, community mental health and mental retardation center, state hospital, state center for human development, or other organization which seeks or obtains certification as an approved diagnostic and evaluation center.

.004. Application for Certification as an Approved Diagnostic and Evaluation Center.

(a) Any facility of the department, any community mental health and mental retardation center, as defined in Article 5547-202, Vernon's Annotated Texas Statutes, or any other professional group, agency, or facility may make application for certification as an approved diagnostic and evaluation center.

(b) The application shall be made to the commissioner for mental health and mental retardation, Texas Department of Mental Health and Mental Retardation.

(c) The application shall be submitted on the form attached to these rules as Exhibit A—.04.35.004, and shall contain the following information:

- (1) facility name;
- (2) facility address and telephone number;
- (3) name of the administrator, director, or superintendent of the facility, agency, or group;
- (4) a description of the proposed service region;
- (5) a description of the means and mechanism by which the service will be provided;
- (6) a listing of the proposed members of the diagnostic and evaluation team, showing the area or areas of expertise of each member and providing documentation (*e.g.*, diplomas, licenses, certifications, and so forth), when appropriate. Each proposed team member listed shall sign the application as he or she would sign a diagnosis and evaluation report; and
- (7) other information as required.

.005. Certification and Recertification of Approved Diagnostic and Evaluation Centers.

(a) The commissioner shall appoint a Committee for the Certification of Approved Diagnostic and Evaluation Centers, which shall:

(1) consist of at least five but not more than nine members, selected primarily from and representative of service providers;

(2) have members serving at the pleasure of the commissioner, and/or terms of three years, except the terms of the initial members may be staggered in a manner to be determined by the commissioner;

(3) select a chairman, with the advice of the three deputy commissioners;

(4) consist of but not be limited to a physician, a psychologist, a social worker, an educational specialist, a parent of a mentally retarded person, and such other persons as the commissioner may designate;

(5) review each application for certification as an approved diagnostic and evaluation center and recommend approval or disapproval of the application to the commissioner;

(6) review the credentials of all prospective professionally qualified team members and recommend approval or disapproval of individual certification to the commissioner;

(7) meet at least quarterly, unless the chairman determines that there is no business to conduct;

(8) keep minutes of all committee actions, with the minutes being signed by all members present and filed with the commissioner;

(9) not act unless a quorum of two-thirds of the members is present;

(10) require the agreement of a simple majority of the members present to determine its recommendation(s);

(11) notify by mail each facility at least 30 days prior to the date that a compliance report is due; and

(12) place an approved and diagnostic and evaluation center or team on suspension if a compliance report is more than 30 days overdue. Removal of the suspension will be subject to a site review and/or other action of the committee.

(b) Certification as an approved diagnostic and evaluation center or team shall be for an indefinite term, provided that each facility:

(1) submits a compliance report to the commissioner each six months. The format of the compliance report is attached as Exhibit B—.04.35.005;

(2) notifies the commissioner within 10 days of the loss of any of the core team members. Upon the loss of any core team member, and when there is no certified person to replace the lost member, certification of the center shall be suspended. Suspension may be removed upon recommendation of the committee;

(3) continues to meet certification standards.

(c) All facilities within Texas which are certified as approved centers as of January 1, 1978, may obtain provisional certification for a period of one year, beginning January 1, 1978, upon the recommendation of the deputy commissioner for mental retardation services. Diagnostic evaluations performed during the year of provisional certification shall be performed in accordance with this and other rules of the department. Diagnostic evaluations performed prior to January 1, 1978, by centers approved as of January 1, 1978, shall be considered as complying with the requirements of this rule.

(d) It is the intention of the department that all facilities of the department and community mental health and mental retardation centers shall meet certification standards and become certified as approved diagnostic and evaluation centers by January 1, 1979. Exceptions to this requirement must have the written approval of the commissioner.

(e) Approved diagnostic and evaluation centers shall receive a numbered certificate which shall be signed by the chairman of the Committee for the Certification of Approved Diagnostic and Evaluation Center and the commissioner. This certificate shall be publicly displayed and remains the property of the department and is subject to recall. The certificate number shall appear on all diagnostic evaluations and other correspondence concerning activities of the diagnostic and evaluation center.

(f) Special certification may be granted to a diagnostic and evaluation team composed of certified professional staff members from more than one facility, provided that:

(1) each team member meets appropriate professional certification standards;

(2) the application for certification documents the need for and basis of a multifacility team;

(3) one of the participating facilities assumes responsibility for the team's compliance with these rules.

.006. Certification of Professionally Qualified Members of a Diagnosis and Evaluation Team.

(a) The diagnosis and evaluation team shall consist of the number and type of professionally qualified personnel and other individuals necessary to comprehensively assess the needs of each client, provided that:

(1) a physician, a psychologist, a social worker, and an educational specialist shall comprise a core team for every client;

(2) other professionally qualified persons, and persons without the professional qualifications specified herein, participate as team members when indicated by the needs of the client;

(3) the professionally qualified members of the team accept responsibility for the team's findings and recommendations.

(b) At the time that application for approval as a diagnostic and evaluation center is made, the Committee for the Certification of Approved Diagnostic and Evaluation Centers shall review the qualifications of each professional staff member of each team or center and shall recommend approval or disapproval of individual certification of these individuals to the commissioner.

(c) The commissioner shall send written confirmation to each person who is individually certified as a member of a diagnostic and evaluation team or center. The certification remains in force as long as the individual meets certification standards.

(d) In order to become certified as a member of the diagnosis and evaluation team:

(1) a physician must be licensed to practice in Texas and must have had one year of special training or one year of experience in mental retardation;

(2) a psychologist must:

(A) be licensed in Texas and have had one year of special training or one year of experience in mental retardation; or

(B) be certified as a psychologist or psychological associate in Texas and have had one year of special training or one year of experience in mental retardation; or

(C) be eligible for certification as a psychologist or psychological associate and supervised by a licensed psychologist, with one year of special training or one year of experience in mental retardation; or

(D) comply with relevant sections of Article 4512c, Vernon's Texas Civil Statutes;

(3) a social worker must have:

(A) a master's degree from an accredited school of social work (M.S.W. or M.S.S.W.) and one year of special training or one year of experience in mental retardation; or

(B) a bachelor's degree in social work or social welfare from an accredited school and one year of special training or two years of experience in mental retardation; or

(C) a bachelor's degree and three years of supervised experience by a person(s) with an M.S.W. or M.S.S.W. degree and one year of special training or one year of experience in mental retardation;

(4) an educational specialist must have:

(A) a bachelor's degree in education with Texas certification and one year of special training or three years of teaching experience in mental retardation; or

(B) a master's degree in education with Texas certification and one year's special training or one year of teaching experience in mental retardation; or

(C) a bachelor's or master's degree in education in the area of vocational rehabilitation or rehabilitation of the mentally retarded and one year experience in mental retardation;

(5) other professionally qualified persons participating as team members, such as nurses, therapists, etc., must meet the standards set forth for qualified mental retardation professionals as cited in 45 CFR 249.12 or 45 CFR 249.13.

(e) The commissioner may grant individual certification to a member of a diagnostic and evaluation team who does not fully meet the requirements of Rule .006(d) of these rules, provided that:

(1) such certification shall be limited to a period of one year;

(2) an individual who does meet the standards of Rule .006(d) of these rules in that field accepts responsibility for supervising the work of the qualified persons and countersigns his or her reports; and

(3) such an exception is necessary to ensure the availability of a diagnostic and evaluation team or center to a particular service region or geographical area.

.007. Minimum Components of a Comprehensive Diagnosis and Evaluation.

(a) Every comprehensive diagnosis and evaluation shall include a sequence of observations and examinations performed or validated and approved by core team members and other professional team members leading to conclusions and findings which best meet and describe the individual's needs. These findings and conclusions shall reflect sensitivity to cultural and ethnic factors surrounding each individual. The observations and examinations shall include but not necessarily be limited to:

(1) a medical examination which:

(A) is conducted according to currently acceptable procedures and methodologies; and

(B) includes a medical history, history of medications, audiological, visual, and neurological screening evaluations; and

(C) other evaluations deemed necessary by the examining physician, such as a genetic screening, dental examination, immunization history, etc.;

(2) a psychological assessment which:

(A) is based in part upon the results of commercially distributed, standardized, psychometric instruments; and

(B) includes estimates of measured intelligence, deficits in adaptive behavior, the behavioral-emotional condition of the individual, and other factors necessary to describe adequately the individual's needs;

(3) a social history/sociological evaluation which:

(A) is obtained in a manner consistent with professionally recognized procedures; and

(B) includes a developmental history, descriptions, and assessments of the family dynamics, cultural and ethnic variables, the legal status of the individual, and other information which reflects the individual's needs;

(4) an educational assessment which:

(A) may be based in part upon a history of the individual's educational/training accomplishments and/or upon the results obtained from standardized tests of academic achievements, if appropriate; and

(B) includes information concerning the educational/training accomplishments and needs of the individual;

(5) an appraisal of adaptive behavior, in accordance with the classification and terminology standards of the American Association on Mental Deficiency, which:

(A) is based in part upon results obtained from appropriate standardized tests but is determined consensually by the diagnostic and evaluation team members; and

(B) estimates the degree to which the individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group;

(6) all other examinations, assessments, and evaluations necessary to describe the individual's needs.

(b) The core team and other team members shall review the results of all examinations, assessments, and evaluations, and all other available information to determine findings and conclusions concerning the individual.

(1) Findings shall include but not be limited to:

(A) a determination of whether or not the individual is mentally retarded, as defined in Article 5547-300, Vernon's Annotated Civil Statutes; and

(B) a description of the special needs of the individual.

(2) Conclusions shall include, but not be limited to:

(A) recommendations concerning the most appropriate and feasible programs and procedures available to meet the needs of the individual; and

(B) a determination that the recommended procedures and programs are the least restrictive alternatives, as defined herein.

(c) All findings and conclusions shall reflect the majority opinion of the core team, and:

(1) findings and conclusions shall be based upon direct interpersonal interaction by team members when possible;

(2) each team member shall sign and date the summary report;

(3) team members dissenting with any or all of the findings and conclusions shall record their reasons for dissent and shall sign and date the report.

(d) A summary report shall be developed by the team and shall be interpreted to the client, the client's parents or guardian, or to other persons or parties responsible for the diagnosis and evaluation, consistent with Article 5547-300, Vernon's Annotated Civil Statutes. This summary report shall contain:

- (1) brief summaries of findings in each of the areas of evaluation, assessment, and examination;
- (2) statements of the conclusions of the team;
- (3) the signatures of each member of the team; and
- (4) the certification number of the approved center.

(e) Each center or diagnostic and evaluation team shall inform each client of the right to appeal the findings and conclusions of the diagnosis and evaluation as required in Article 5547-300, Vernon's Annotated Civil Statutes, procedures provided for in Rules of the Commissioner Governing Practice and Procedure with Respect to Administrative Hearings of the Department in Contested Cases, 302.03.19, and shall maintain documentation that the client was so informed.

.008. Charges for Diagnostic and Evaluation Services. Charges to the client for diagnostic and evaluation services shall be in accordance with:

- (1) provisions stated in Article 5547-300, Vernon's Annotated Civil Statutes;
- (2) Rules of the Commissioner Governing Community Mental Health and Mental Retardation Centers, 302.03.01.010;
- (3) Rules of the Commissioner Affecting Other Agencies and the Public, Collection for Support, Maintenance, and Treatment of Clients, 302.03.03;
- (4) provided, however, that:

(A) the department will not pay for any diagnosis and evaluation performed for an indigent person unless, prior to the performance of the diagnosis and evaluation, an application for the diagnosis and evaluation is made to the department and is accompanied by a fully executed TDMHMR Property and Financial Statement (Form B-6) attached as Exhibit D—.04.35.008;

(B) the department will not pay a community mental health mental retardation center for any diagnosis and evaluation it performs for an indigent person unless the indigent person resides outside the service area of the center and the center has secured the prior approval and designation of the deputy commissioner for mental retardation services. The center is required to give prior notification to the department of the cost of performing the diagnosis and evaluation.

.009. General Provisions.

(a) Members of the diagnostic and evaluation team shall be sensitive to client cultural and/or ethnic factors which may bias results obtained on many evaluative techniques or procedures.

(b) Each center or team shall make necessary provisions to evaluate non-English speaking clients and clients who have other communication deficits.

(c) The diagnosis and evaluation shall be confidential, as required in:

- (1) Article 5547-300, Vernon's Annotated Civil Statutes; and

(2) Rules of the Commissioner of Mental Health and Mental Retardation, 302.03.18.

(d) Where members of a diagnostic and evaluation team cannot reach a consensus with respect to proposed findings and conclusions, all information and the results of all evaluations, examinations, and assessments shall be sent to the deputy commissioner for mental retardation services. The deputy commissioner shall review all information and:

- (1) may refer the client to another approved diagnostic and evaluation center; or
- (2) make recommendations to the center or team concerning resolution of disputes or dissents prohibiting consensus; or
- (3) refer the matter to the Committee for the Certification of Approved Diagnostic and Evaluation Centers for resolution.

(e) Diagnostic and evaluation centers and teams shall utilize the following form and format:

(1) The Medical Report shall be presented on forms which are attached as Exhibit D—.04.35.008.

(2) The Psychological Report shall contain the information and shall be presented in the format shown in Exhibit E—.04.35.008.

(3) The Social History and Sociological Evaluation shall contain the information and shall be presented in the format shown in Exhibit F—.04.35.008.

(4) The Educational Assessment shall contain the information and shall be presented in the format shown in Exhibit G—.04.35.008.

(5) Other evaluations, examinations, and assessments shall be presented according to the format shown in Exhibit H—.04.35.008.

.010. List of Certified Facilities. The department shall publish, not less often than annually, a list of facilities certified for diagnosis and evaluation in accordance with these rules. Such list shall be distributed to the following:

- (a) all county and juvenile court judges;
- (b) all Texas Department of Mental Health and Mental Retardation facilities;
- (c) all community mental health and mental retardation centers;
- (d) Texas Department of Health;
- (e) Texas Department of Human Resources;
- (f) Texas Youth Council;
- (g) Texas Rehabilitation Commission;
- (h) Texas Education Agency;
- (i) other public or private agencies or associations, as appropriate.

.011. Distribution.

- (a) These rules will be distributed to:
 - (1) members of the Texas Board of Mental Health and Mental Retardation;
 - (2) associate commissioners;
 - (3) deputy commissioners;
 - (4) directors and section chiefs of Central Office;
 - (5) superintendents of all state hospitals and state schools for the mentally retarded;
 - (6) directors of state centers for human development, Texas Research Institute of Mental Sciences, and the Rio Grande State Center for Mental Health and Mental Retardation;

(7) members of the Committee for the Certification of Approval of Diagnostic and Evaluation Centers as defined herein;

(8) chairmen of boards of trustees and executive directors of community mental health and mental retardation centers.

(b) A copy of these rules will be provided by the administrative head of any facility certified for diagnosis and evaluation in accordance with these rules to members of a diagnosis and evaluation team.

(c) A copy of these rules may be provided upon request to a client, the parent of a minor client, or the attorney of record of a client.

(d) A copy of these rules may be provided to such other persons, judges, or agencies as may be determined appropriate by the department.

.012. Reference. Reference is made to the following statutes, Rules of the Commissioner of Mental Health and Mental Retardation, and federal regulations:

(1) Article 5547-202, Vernon's Annotated Civil Statutes;

(2) Article 5547-300, Vernon's Annotated Civil Statutes;

(3) Article 4512c, Vernon's Texas Civil Statutes;

(4) 45 CFR 249.12,

(5) 45 CFR 249.13;

(6) Rules of the Commissioner of Mental Health and Mental Retardation Governing Practice and Procedure with Respect to Administrative Hearings of the Department in Contested Cases, 302.03.19;

(7) Rules of the Commissioner Governing Community Mental Health and Mental Retardation Centers, 302.03.01;

(8) Rules of the Commissioner Governing Collection for Support, Maintenance, and Treatment of Clients, 302.03.30;

(9) Rules Governing the Disclosure of Client-Identifying Information Contained in Records of Mentally Retarded Clients of the Texas Department of Mental Health and Mental Retardation and Community Mental Health and Mental Retardation Centers, 302.03.18.

.013. Effective Date.

(a) These rules governing comprehensive diagnostic and evaluation centers become effective immediately upon filing with the Texas Register Division of the Office of the Secretary of State.

(b) On the effective date of these rules, all other orders and instructions, verbal or written, on this subject are rescinded.

Issued in Austin, Texas, on February 23, 1978.

Doc. No. 781434

Kenneth D. Gaver, M.D.

Commissioner

Texas Department of Mental Health

and Mental Retardation

Effective Date: February 23, 1978

Expiration Date: June 23, 1978

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



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 Feed and Fertilizer Control Service

Feed

Labeling 178.01.02.002

The Texas Feed and Fertilizer Control Service proposes to amend Rule 178.01.02.002, entitled "Label Format." The proposal amends the rule by adding Section (h), giving the customer-formula labeling format. This format is one of the two formats adopted under the Uniform Feed Bill by the Association of American Feed Control Officials. The department proposes this amendment to clarify and expand the current feed labeling format.

The department has determined that the proposed amendment has no fiscal implications for the state or for units of local government.

Public comment on the proposed amendment to Rule 178.01.02.002 is invited. Persons should submit their comments in writing to Dr. Flake Fisher, Director, Texas Feed and Fertilizer Control Service, Texas A&M University, P.O. Box 3160, College Station, Texas 77843, or by telephoning the office at (713) 845-1121.

This amendment is proposed under the Texas Commercial Feed Control Act of 1957, Article 3881e, Vernon's Civil Statutes.

.002. Label Format.

(h) *Customer-formula feed shall be accompanied with the information prescribed in this regulation using labels, invoice, delivery ticket, or other shipping document bearing the following information:*

- (1) *the name and address of the manufacturer;*
- (2) *the name and address of the purchaser;*
- (3) *the date of sale or delivery;*
- (4) *the customer-formula feed name and brand name, if any;*

(5) *the product name and net weight of each registered commercial feed and each other ingredient used in the mixture;*

(6) *if a drug-containing product is used:*

(A) *the purpose of the medication (claim statement);*

(B) *the directions for use and precautionary statements as required by Regulations 7 and 8;*

(C) *the established name of each active drug ingredient and the level of each drug ingredient, and the level of each drug used in the final mixture expressed in accordance with Regulation 5(e).*

Doc. No. 781410

178.01.02.004

The Texas Feed and Fertilizer Control Service proposes to amend Rule 178.01.02.004, entitled "Expression of Guarantees." The department proposes this amendment to clarify the guarantee expressions for equivalent protein from nonprotein nitrogen and for protein from natural sources.

The department has determined that the proposed amendment has no fiscal implications for the state or for units of local government.

Public comment on the proposed amendment to Rule 178.01.02.004 is invited. Persons should submit their comments in writing to Dr. Flake Fisher, Director, Texas Feed and Fertilizer Control Service, Texas A&M University, P.O. Box 3160, College Station, Texas 77843, or by telephoning the office at (713) 845-1121.

This amendment is proposed under the Texas Commercial Feed Control Act of 1957, Article 3881e, Vernon's Civil Statutes.

.004. Expression of Guarantees.

(f) Commercial feeds containing any added nonprotein nitrogen shall be labeled as follows:

(1) Complete feeds, supplements, and concentrates containing added nonprotein nitrogen and containing more than five percent protein from natural sources shall be guaranteed as follows: Crude protein, minimum, _____ percent. (This includes not more than _____ percent equivalent protein from nonprotein nitrogen and not less than _____ percent protein from natural sources.)

(2) Mixed feed concentrates and supplements containing less than five percent protein from natural sources may be guaranteed as follows: Equivalent crude protein from nonprotein nitrogen, minimum, _____ percent.

(3) Ingredient sources of nonprotein nitrogen, such as urea, diammonium phosphate, ammonium polyphosphate solution, ammoniated rice hulls, or any other basic nonprotein nitrogen ingredients defined by the Association of American Feed Control Officials shall be guaranteed as follows: Nitrogen, minimum, _____ percent; equivalent crude protein from nonprotein nitrogen, minimum, _____ percent.

Doc. No. 781411

178.01.02.005

The Texas Feed and Fertilizer Control Service proposes to amend Rule 178.01.02.005, entitled "Ingredients, Statements, Definitions, Sampling, and Analysis." The proposal amends the rule by adding Section (k) to the existing rule. Section (k) is proposed to clarify the state reporting analysis of customer-formula feeds.

The department has determined that the proposed amendment has no fiscal implications for the state or for units of local government.

Public comment on the proposed amendment to Rule 178.01.02.005 is invited. Persons should submit their comments in writing to Dr. Flake Fisher, Director, Texas Feed and Fertilizer Control Service, Texas A&M University, P.O. Box 3160, College Station, Texas 77843, or by telephoning the office at (713) 845-1121.

This amendment is proposed under the Texas Commercial Feed Control Act of 1957, Article 3881e, Vernon's Civil Statutes.

.005. *Ingredients, Statements, Definitions, Sampling, and Analysis.*

(j) Except when the director designates otherwise in specific cases, the methods of sampling and analysis shall be the official methods of the Association of Official Analytical Chemists.

(k) *As provided for under Section 5(a) of the act, to measure quality of a customer-formula feed, a chemical analysis will be performed based on computation using average analysis of ingredients used. When a pre-mix, supplement, or concentrate is used as one of the ingredients, the analysis on its label will be used for computation.*

Doc. No. 781412

178.01.02.007

The Texas Feed and Fertilizer Control Service proposes to amend Rule 178.01.02.007, entitled "Nonprotein Nitrogen." The department proposes this amendment to clarify the guarantee expressions for equivalent protein from nonprotein nitrogen and for protein from natural sources.

The department has determined that the proposed amendment has no fiscal implications for the state or for units of local government.

Public comment on the proposed amendment to Rule 178.01.02.007 is invited. Persons should submit their comments in writing to Dr. Flake Fisher, Director, Texas Feed and Fertilizer Control Service, Texas A&M University, P.O. Box 3160, College Station, Texas 77843, or by telephoning the office at (713) 845-1121.

This amendment is proposed under the Texas Commercial Feed Control Act of 1957, Article 3881e, Vernon's Civil Statutes.

.007. *Nonprotein Nitrogen.*

(a) Urea and other nonprotein nitrogen products defined by the Association of American Feed Control Officials are acceptable ingredients in proprietary cattle, sheep, and goat feeds only, provided the parenthetical statement

("For Ruminants Only") is printed on the label directly below the brand or product name on all feeds. These materials shall be considered adulterants in proprietary feeds for other animals and birds; and the following statement of guarantee of crude protein for feeds containing these materials shall be used: Crude protein not less than _____ percent. (This includes not more than _____ percent equivalent protein from nonprotein nitrogen *and not less than _____ percent protein from natural sources.*)

If the equivalent protein from nonprotein nitrogen in a feed exceeds one-third of the total crude protein, or if more than 8.75 percent equivalent protein is from nonprotein nitrogen, the label shall bear adequate directions for the safe use of such feeds and the following or similar statement: Warning (or Caution): Use as directed. The directions for use and the caution statement shall be in type of such size as to render it likely to be read and understood by ordinary persons under customary conditions of purchase and use. This regulation applies to invoiced, labeled customer-formula feeds, as well as registered brand labeled feeds.

(b) On labels such as those for medicated feeds which bear adequate feeding directions and warning statements, the presence of added nonprotein nitrogen shall not require a duplication of the feeding directions or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of nonprotein nitrogen.

Doc. No. 781413

Procedures for Paying the Inspection Fee 178.01.04

The Texas Feed and Fertilizer Control Service proposes to amend Rule 178.01.04.002, entitled "Certificates." The proposal amends the rule by changing Section (c) of the existing rule to omit the set inspection fee of 10 cents per ton. In the proposed amendment, the inspection fee is specified "as prescribed by the Board of Regents of the Texas A&M University System." This allows the inspection fee to fluctuate without having to continuously amend this rule. The proposed amendment also sets up regulations for notifying the public of any change in the inspection fee amount.

The department has determined that the proposed amendment has no fiscal implications for the state or for units of local government.

Public comment on the proposed amendment to Rule 178.01.04.002 is invited. Persons should submit their comments in writing to Dr. Flake Fisher, Director, Texas Feed and Fertilizer Control Service, Texas A&M University, P.O. Box 3160, College Station, Texas 77843, or by telephoning the office at (713) 845-1121.

This amendment is proposed under the Texas Commercial Feed Control Act of 1957, Article 3881e, Vernon's Civil Statutes.

.002. *Certificates.*

(c) Each manufacturer or other person who pays the inspection fee by the use of tax tags or certificates shall main-

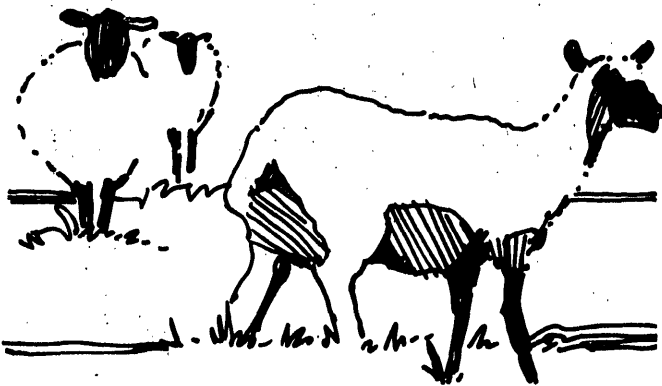
tain records reflecting the total tonnage of all commercial feed handled and the portion of such tonnage that is subject to the inspection fee *as prescribed by the Board of Regents of the Texas A&M University System*. Any change regarding inspection fees will be published prior to September 1st of the state fiscal year when such fees become effective [of 10 cents per ton]. All such records shall be preserved and retained in usable condition and shall be available for examination by the director or his representative for a period of not less than two years unless otherwise authorized by the director, and the director may require the retention of such records for a period of more than two years in instances where it is deemed desirable to do so.

Issued in College Station, Texas, on February 13, 1978.

Doc. No. 781414 Dr. Flake L. Fisher
Director
Texas Feed and Fertilizer Control
Service

Proposed Date of Adoption: April 3, 1978

For further information, please call (713) 845-1121.



Texas Department of Mental Health and Mental Retardation

Other Agencies and the Public Disclosure of Client-Identifying Information Contained in Records of Mentally Retarded Clients of the Texas Department of Mental Health and Mental Retardation and Community Mental Health and Mental Retardation Centers 302.03.18

The Texas Department of Mental Health and Mental Retardation is proposing to adopt Rules 301.03.18.001-.012, which

would govern the disclosure of client-identifying information contained in records of mentally retarded clients of the department and community centers. Proposed Rules 302.03.18.001-.012 cannot become effective unless and until they are approved by the Texas Board of Mental Health and Mental Retardation. Rules 302.03.18.001-.012 were approved by the board at its February 17, 1978, meeting.

Proposed Rules 302.03.18.001-.012 would set forth uniform procedures and policies for the disclosure of information contained in mentally retarded clients' records. The proposed rules would also specify the applicable law and would assist facility and community center personnel and the public in determining what information, if any, concerning a client may be disclosed in a given situation.

The effect of proposed Rules 302.03.18.001-.012 would be a set of rules that are to be applied to all facilities of the department and community centers serving mentally retarded clients. The proposed rules would also serve to protect the rights of such mentally retarded clients with regard to the disclosure of information concerning them.

The promulgation of proposed Rules 302.03.18.001-.012 has no known fiscal implications for the state or for units of local government. (Source: Legal and Claims Division of the Texas Department of Mental Health and Mental Retardation.)

Public comment on proposed Rules 302.03.18.001-.012 is invited. Persons should submit their comments in writing to Kenneth D. Gaver, M.D., Commissioner, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711, telephone (512) 454-3761.

Rules 302.03.18.001-.012 are proposed under the authority of Section 2.11(b) of Article 5547-202, Texas Civil Statutes, and Sections 57(h) and 60 of Article 5547-300, Texas Civil Statutes.

.001. Purpose.

(a) The purpose of these rules is to collect the relevant rules of law and department and community center policies concerning the disclosure of mentally retarded client-identifying information and group them in a single set of guidelines:

(1) for use by department and community center employees whose duties include the release of mentally retarded client-identifying information in appropriate situations;

(2) for use by members of the general public who are or may be interested in obtaining mentally retarded client-identifying information; and

(3) to protect the rights of mentally retarded clients with regard to disclosure of client-identifying information.

(b) It is also the purpose of these rules to make a clear distinction between the law and rules governing the disclosure of identifying information concerning a mental health client (Article 5547-87, Vernon's Annotated Civil Statutes, and Rules 302.03.15.001-.018); the regulations and rules governing the disclosure of identifying information concerning drug and alcohol abuse clients (42 Code of Federal Regulations Part 2 and Rules 302.03.15.001-.018); and the law and rules governing the disclosure of identifying information concerning mentally retarded clients (Section 57 of

Article 5547-300, Vernon's Annotated Civil Statutes, and these rules). The status of the client must always be taken into consideration in approaching any situation involving disclosure of client-identifying information. Any questions that arise concerning the status of a client and which law governs disclosure in a given situation should be addressed to the department's Legal Division prior to the disclosure of any client-identifying information.

.002. *Application.* These rules apply to all facilities of the Texas Department of Mental Health and Mental Retardation and community centers serving mentally retarded clients.

.003. *Definitions.* In these rules:

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

(b) "Community center" means an entity organized pursuant to Section 3.01 of the Texas Mental Health and Mental Retardation Act, as amended (Article 5547-201 to 5547-204, Vernon's Annotated Civil Statutes), which provides mental retardation services.

(c) "Adult" means a person:

(1) who is 18 years of age or older; or

(2) who is under 18 but:

(A) is or has been legally married; or

(B) whose disabilities of minority have been legally

removed.

(d) "Competent adult" means an adult who has the ability to comprehend the effect and consequences of giving an authorization for disclosure of client-identifying information and who has not been adjudged incompetent by a court of competent jurisdiction.

(e) "Incompetent adult" means an adult:

(1) who has been adjudged incompetent by a court of competent jurisdiction; or

(2) who does not in fact have the ability to comprehend the effect or consequences of giving an authorization for disclosure of client-identifying information.

(f) "Minor" means a person who is not an adult.

Specifically, a minor is a person under 18 and:

(1) who is not and never has been legally married; and

(2) whose disabilities of minority have not been legally removed.

(g) "Client-identifying information" means the name, address, social security number, or similar information by which the identity of a client can be determined either directly or by reference to other publicly available information. The term does not include a client-identifying number assigned by a facility or community center. The statutes, regulations, and rules requiring that client-identifying information be kept confidential apply regardless of the means or methods utilized for the storage and retrieval of such information.

(h) "Client" means a person who, voluntarily or involuntarily, is seeking, receiving, or who has received mental retardation services from the department or a community center.

(i) "Facility" means all state mental hospitals, state schools for the mentally retarded, state human development centers, the Rio Grande State Center for Mental Health and Mental Retardation, the Texas Research Institute of Mental Sciences, and their respective outreach, day care centers and clinics, and the Central Office of the Texas Department of Mental Health and Mental Retardation.

.004. *Statute and Federal Regulations Governing Disclosure.*

(a) The state statute which governs the disclosure of identifying information concerning clients is Article 5547-300, Vernon's Annotated Civil Statutes, Section 57 of which reads as follows:

Section 57. Confidentiality of Records.

(a) Records of the identity, diagnosis, evaluation, or treatment of any person which are maintained in connection with the performance of any program or activity relating to mental retardation shall be confidential and disclosed only for the purposes and under the circumstances expressly authorized under Subsection (b) of this section.

(b) The content of any record referred to in Subsection (a) of this section may be disclosed in accordance with the prior written consent of the person with respect to whom such record is maintained, or parent if such person is a minor, or guardian if the person has been adjudicated incompetent to manage his personal affairs, but only to such extent, under the circumstances, and for the purposes as may be allowed under the regulations prescribed pursuant to Subsection (h) of this section. The content of any record referred to in Subsection (a) of this section is to be made available upon the request of any person thought to be mentally retarded upon whose behalf the record was made unless the qualified professional responsible for supervising the client's habilitation states in a signed written statement that it would not be in the best interest of the person in question. However, the parent of a minor or guardian of the person shall have access to the contents of any record referred to in Subsection (a) of this section.

(c) Whether or not the person with respect to whom any given record referred to in Subsection (a) of this section is maintained gives his written consent, the content of such record may be disclosed as follows:

(1) to medical personnel to the extent necessary to meet a bona fide medical emergency;

(2) to qualified personnel for the purpose of management audits, financial audits, program evaluation, or research approved by the department, but such personnel may not identify, directly or indirectly, any individual receiving services in any report of such research, audit, or evaluation, or otherwise disclose identities in any manner;

(3) if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the person receiving services. On the granting of the order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure; and

(4) to personnel legally authorized to conduct investigations concerning complaints of abuse or denial of rights of mentally retarded persons.

(d) Except as authorized by a court order granted under Subsection (c)(3) of this section, no record referred to in Subsection (a) of this section may be used to initiate or substantiate any criminal charges against a person receiving services or to conduct any investigation of a person receiving services.

(e) The prohibitions of this section continue to apply to records concerning any individual who has received services irrespective of when the person received services.

(f) The prohibitions of this section apply to any interchange of records between governmental agencies or persons, except for interchanges of information necessary for delivery of services to clients or for payment for mental retardation services as defined in this act.

(g) A person who receives information deemed confidential by this section, other than the person thought to be mentally retarded on whose behalf the records are made, the parent of a minor, or guardian of the person shall not disclose the information except to the extent that disclosure is consistent with the authorized purpose for which the information was first obtained.

(h) The department shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions and may provide for such safeguards and procedures as in the judgment of the department are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(i) Nothing contained in this subchapter shall prevent a qualified professional from disclosing the current physical and mental condition of a mentally retarded person to his or her parent, guardian, relatives, or friends.

(b) The Secretary of the United States Department of Health, Education, and Welfare has promulgated extensive regulations governing disclosure of educational records of school age children. See 45 C.F.R. 99ff. Any questions concerning the disclosure of such educational records should be referred to the department's Legal Division.

.005. Requests for Client-Identifying Information.

(a) All requests for client-identifying information by persons or organizations other than employees and agents of the department or community centers who need the information for the purpose of fulfilling their official duties should be made to the superintendent or director of the department facility or community center from which the client receives or has received services. Such requests should not be made to the Clinical Systems Group of the Information System Division of the department's Central Office.

(b) The Texas Open Records Act, Article 6252-17a, Vernon's Annotated Civil Statutes, provides that all information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance in connection with the transaction of official business is public information and available to the public during normal business hours of any governmental body; however, the act does set out certain exceptions to the general rule that the public must have access to information in the hands of a governmental body. One such exception is information deemed confidential by law,

such as departmental and community center records of the identity, diagnosis, evaluation, or treatment of any person which are maintained in connection with the performance of any program or activity relating to mental retardation. A copy of Section 3 of the Texas Open Records Act, which contains the exceptions to the compulsory disclosure requirement of the act, is attached to these rules as Exhibit A. Whenever a question arises concerning the disclosure of information, the department's Legal Division should be contacted immediately for advice concerning whether the information should be disclosed.

.006. When Consent for Disclosure is Not Required.

(a) Consent for disclosure of client-identifying information is not required if consent to disclose the information has previously been given by the person authorized to give such consent and if the duration of the consent has not expired. See Rule .008 of these rules.

(b) There are certain situations in which client-identifying information can be disclosed without the consent of the client or the client's legal representative. Those situations are stated in the text of Section 57 of Article 5547-300, Vernon's Annotated Civil Statutes, which is quoted in Section (a) of Rule .004 of these rules, and is described in the following section of this rule.

(c) Client-identifying information can be disclosed without the consent of the client or the client's legal representative:

(1) to employees and agents of the department or the community centers who need the information to carry out their official duties;

(2) to medical personnel to the extent necessary to meet a *bona fide* medical emergency;

(3) to qualified personnel for the purpose of management audits, financial audits, program evaluation, or research approved by the department, but such personnel may not identify, directly or indirectly, any individual receiving services in any report of such research, audit, or evaluation, or otherwise disclose identities in any manner;

(4) if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the person receiving services. On the granting of the order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure; and

(5) to personnel legally authorized to conduct investigations concerning complaints of abuse or denial of rights of mentally retarded persons.

.007. Form of Consent.

(a) Whenever a person who has the authority to do so (see Rule .008 of these rules) gives consent to the disclosure of client-identifying information, the information can be disclosed in accordance with the consent for disclosure and without the necessity of securing consent from any other person.

(b) Whenever a consent form authorizing the disclosure of client-identifying information concerning a client is received or presented to the department or a community center, the requested disclosure shall be made if the consent form contains at least the following information:

(1) a description of the client-identifying information covered by the consent form;

(2) the person to whom the client-identifying information is to be disclosed;

(3) the purpose for which the disclosure is to be made;

(4) the specific type of information to be disclosed;

(5) a statement that the consent is subject to revocation at any time except to the extent that action has been taken in reliance thereon and the date, event, or condition upon which the consent will terminate without express revocation;

(6) the signature of a person who has the authority to consent to the disclosure of the client-identifying information;

(7) the date on which the consent form was executed.

(c) A copy of a consent form containing the above required information is attached to these rules as Exhibit B.

(d) If a question arises as to whether the requisites for consent for the disclosure of client-identifying information have been met in a particular situation, the department's Legal Division should be contacted immediately and prior to the disclosure of the information in question.

.008. Who Can Give Consent for Disclosure.

(a) If the client is a competent adult, then the client is the only person who has the power to authorize and consent to disclosure of client-identifying information.

(b) If the client is an incompetent adult, then the guardian of the person of the client is the only person who has the power to authorize and consent to disclosure of client-identifying information to any third party other than an attorney representing the client.

(c) If the client is a minor, then the client does not have the capacity to consent to disclosure of client-identifying information other than to his own attorney. Only a parent, guardian of the person, or managing conservator of the minor client has the power to authorize and consent to disclosure of client-identifying information to any third party other than an attorney representing the client.

.009. Disclosure to a Client of Information Contained in His or Her Record.

(a) Access to a client's record may not be denied to a client who has requested access; provided, however, that parts of the client's record may be withheld from the client if the qualified professional responsible for supervising the client's habilitation states in a signed written statement that access by the client to those parts of the record would not be in the best interest of the client in question. The reasons for the determination that access by the client to parts of the record would not be in his best interest must be well documented in the client's medical record.

(b) When a client has authorized an attorney to have access to the client's records, the records shall be made available to the attorney. If there are parts of the record, access to which would not be in the client's best interest as determined by the qualified professional responsible for supervising the client's habilitation, this fact should be brought to the attention of the attorney, but the attorney should be permitted to view such parts.

(c) If a parent, managing conservator, or guardian of the person of the client, as appropriate, instructs the department facility or community center to allow a minor or incompetent client access to his or her entire record which includes

portions that have been determined by the qualified professional described above, not to be in the client's best interest if viewed by him, then the department or community center should release the client's records to the parent, managing conservator, or guardian of the person, as appropriate, and indicate those portions of the client's records about which such a determination has been made. Thereafter, the decision to disclose such information to the client will rest with the parent, managing conservator, or guardian of the person, as appropriate.

.010. Deposition, Subpoenas, and Subpoenas Duces Tecum—Staff Compliance and Conduct.

(a) If consent of the client or other authorized person has been given the facility or community center staff, when asked to testify either in court or by deposition on matters relating to the client's history, or to make available records in reference to such client, shall do so. If consent has not been given by the client or other authorized person, the clerk or other person issuing the subpoena or subpoena *duces tecum* or initiating or ordering the taking of the deposition should be immediately notified of subsection (3)(c) of Section 57 of Article 5547-300, Vernon's Annotated Civil Statutes, which deals with court orders to disclose confidential information. The clerk or other person should be requested to seek a court order based upon the language of said subsection (3)(c) of Section 57 of Article 5547-300, Vernon's Annotated Civil Statutes. Every effort should be made by facility or community center staff to cooperate and work out an arrangement which is satisfactory to all concerned and which adequately protects the rights of the client.

(b) If facility or community center is unable to work out a satisfactory arrangement, then the department's Legal Division should be contacted immediately and its advice sought concerning the proper manner in which to proceed.

(c) Whenever there is doubt as to the proper procedure to be followed in such matters, the subpoenaed party should immediately contact the department's Legal Division.

.011. Distribution.

(a) These rules shall be distributed to members of the Texas Board of Mental Health and Mental Retardation; assistant commissioners, deputy commissioners, and division and section chiefs of Central Office; superintendents and directors of department facilities and executive directors of community centers.

(b) The superintendent or director of each department facility and community center shall provide a copy of these rules to all appropriate personnel including, but not limited to:

- (1) clinical or medical director;
- (2) chief or coordinator of social service;
- (3) medical or client records librarian;
- (4) outreach coordinator;
- (5) staff development director.

.012. Effective Date.

(a) These rules shall be effective upon the expiration of 20 days after they have been filed as adopted rules with the Texas Register Division of the Office of the Secretary of State.

(b) Upon the effective date of these rules, all other orders and instructions, verbal or written, on this subject are rescinded.

Issued in Austin, Texas, on February 23, 1978.

Doc. No. 781435 Kenneth D. Gaver, M.D.
Commissioner
Texas Department of Mental Health and
Mental Retardation

Proposed Date of Adoption: April 3, 1978

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

Texas Parks and Wildlife Department

Parks

Park Entrance and Park User Fees

127.40.01.015-.019

The Texas Parks and Wildlife Commission proposes to amend Sections (b), (c), and (l) of Rule 127.40.01.015; Sections (a), (b), (c), (e), (g), (h), (i), (j), (k), and (l) of Rule 127.40.01.016; Sections (a), (b), (c), (d), and (e) of Rule 127.40.01.017; and to adopt Rules .018 and .019. The proposed amendments to Sections (b), (c), and (l) of Rule 127.40.01.015 will increase annual entrance permits from \$12 to \$15, restricted annual entrance permits from \$5 and \$8, and permit veterans with a 60 percent or more disability to enter state parks without paying an entrance fee in compliance with statutory authority granted by the 65th Legislature. The proposed amendments to Sections (a), (b), (c), (e), (g), (h), (i), (j), (k), and (l) of Rule 127.40.01.016 will increase the overnight fee for cabins, lodges, and camping. It will change the method of calculating the fee for a campsite from a per-vehicle to a per-site basis, the purpose being a serious problem in the conservation of the park resources. The amendment will provide areas in the park where vehicles in excess of those authorized as a campsite may be parked. It also authorizes the charge of a reasonable fee for each motor vehicle parked overnight in these areas. The proposed amendments to Sections (a), (b), (c), (d), and (e) of Rule 127.40.01.017 will permit park facilities to be reserved as far in advance as 90 days, thus eliminating the necessity for an annual drawing to assign park facilities on choice dates during any succeeding calendar year. The proposed adoption of Rule .018 will require nonresidents of Texas, when occupying an overnight facility in state parks to pay a surcharge of \$1 in addition to the regular user fee. The proposed adoption of Rule .019 will require day users to pay a \$1 user fee at state parks, where feasible, in addition to established daily, annual, or restricted annual entrance permit fees.

The fiscal implications of the proposed amendments will be an approximately \$91,510 decrease in revenue and a \$1,703,009 increase for each of the next five years. Administrative costs for the issuance of parklands passports to disabled veterans will be approximately \$2,500 per year, and the loss in revenue based on the issuance of 5,934 passports in lieu of a \$15 annual entrance permit is \$89,010. It is estimated that 2,200 Texas veterans and 3,734 veterans from other states

will take advantage of the opportunity to secure a free parklands passport. The estimates are calculated on 10 percent of eligible Texas veterans and 1 percent of eligible veterans from other states. Information concerning the total number of eligible veterans was supplied by the Veterans Administration in Waco. The increased revenue from user fees and the nonresident surcharge is based on accounting records in the Finance Division and park visitation reports maintained by the Park Operations and Maintenance Branch. The proposed amendments to Sections (a), (b), (c), (d), and (e) of Rule 127.40.01.017 will have no fiscal implications.

Public comment on the proposed amendments to Rules 127.40.01.015-.017 is invited. Comments may be submitted by telephoning (512) 475-4845, or by writing to Bill M. Collins, Park Operations and Maintenance Branch, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744. Comments must be received within 30 days of the publication of the proposal in the *Texas Register*.

The amendments to Rule 127.40.01.015-.017 are proposed under the authority of Chapters 13 and 21, Texas Parks and Wildlife Code.

.015. State Park Entrance Fees.

(b) An annual ~~\$15~~ [\$12] entrance permit will apply at all state parks where entrance fees are prescribed in lieu of a daily entrance fee. The annual permit will admit the purchaser and all occupants of his private, noncommercial vehicle to all state parks where entrance fees are charged, whether on a per car or per person basis, but will not apply to commercial, quasi-public, or public buses or other such vehicles. A duplicate permit will be available at a rate of \$2.50 each. A replacement permit will be available at a rate of \$0.25 each.

(c) An annual entrance permit of ~~\$8~~ [\$5] will be charged for entrance into any one state park as designated by the purchaser at the time of purchase. The entrance permit is prescribed in lieu of the daily entrance fee which could ordinarily be charged for entrance to the designated park. Once the holder of a permit has designated a certain state park, no transfer to a second park will be allowed under the same permit. The permit will admit the purchaser and all occupants of his private, noncommercial vehicle to the designated state park of his choice where entrance fees are charged, whether on a per-car or per-person basis, but will not apply to commercial, quasi-public, or public buses or other such vehicles. A replacement permit will be available at a rate of \$0.25 each.

(l) Persons 65 years of age or over and veterans of the armed services of the United States who, as a result of military service, have a service-oriented disability, as defined by the Veterans Administration, consisting of the loss of the use of a lower extremity or of a 60 percent disability rating and who are receiving compensation from the United States government because of the disability, will not be required to pay an entrance fee at state parks. State parklands passports will be issued to eligible persons at state parks and the Austin headquarters. A driver's license, birth certificate, military discharge papers, or any other suitable identification considered sufficient proof for establishing the age and identity of an individual must be presented at the time the passport is issued to persons 65 years of age and over. Disabled veterans must establish eligibility by presenting one of the following: (1) disabled

veteran's of Texas license plate receipt; (2) veteran's award letter (which establishes the degree of service-connected disability); or (3) tax exemption letter for Texas veterans.

.016. Facility Use Fees.

- (a) Campsite—\$3 [\$2 per motor vehicle]
- (b) Campsite with utilities:
 - (1) Campsite with electricity—\$4 [\$3 first motor vehicle; \$2 all others].
 - (2) Campsite with electricity and sewage—\$5 [\$3.50 first motor vehicle; \$2 all others].
- (c) Shelters: Screened and open.
 - (1) Screened shelter—\$6.50 [\$5 first motor vehicle; \$2 all others];
 - (2) Open shelter—\$4.50 [\$3 first motor vehicle; \$2 all others].
- (e) *Motor vehicles in excess of capacity limitations established for each campsite will be parked in an area or location at the park designated by the park manager. The executive director is authorized to prescribe a reasonable fee for each night a motor vehicle is parked in the area designated by the park manager.* [Individuals who arrive at the park in a separate motor vehicle and certify in an affidavit that they are members of the immediate family occupying a campsite will not be required to pay a camping fee.]
 - (g) Group camp: Applicable rates shown in Sections (a), (b), and (c) of this rule will be charged for use of a group camp.
 - (1) Mess hall only—\$25 [\$20];
 - (2) Bunk houses, Lake Brownwood State Recreation Area only, each \$6.25 [\$3.50] per day, capacity for each group camp will be posted at park headquarters where the facility is located.
 - (h) Group picnic site (day use only), capacity:
 - (1) 1-25 persons—\$6.25 [\$5];
 - (2) 25-75 persons—\$12.50 [\$10];
 - (i) Cabins:
 - (1) 1-2 persons—\$12 [\$10];
 - (2) Each additional adult—\$3 [\$2];
 - (3) Each additional child—6-12 years of age—\$1; children under 6—free. (Includes towels and linens.)

Capacity for each cabin will be posted in the cabin and park headquarters.

- (j) Lodge or court:
 - (1) Indian Lodge (Davis Mountains State Park):
 - (A) Single—\$16 [\$12];
 - (B) Double—\$18 [\$14];
 - (C) Double with twin beds—\$21 [\$17];
 - (D) Suite with twin beds—\$23;
 - (E) Each additional adult—\$3 [\$2];
 - (F) Each additional child—6-12 years of age—\$1; children under 6—free.

(Includes towels, linens, maid service, telephone, and television.) Room capacity will be posted in rooms and registration desk. Indian Lodge will be closed for a two-week period beginning the second Monday in January of each year.

- (2) San Solomon Springs Court (Balmorhea State Recreation Area):
 - (A) One person—\$13 [\$10];
 - (B) Each additional adult—\$3 [\$2];
 - (C) Each additional child, 6-12 years of age—\$1; children 5 and under—free;

- (D) Extra cost for kitchen unit—\$4;
- (E) Roll-away bed—\$3;

(Includes towels, linens, maid service, and television.)

(k) Individual lodges:

- (1) Lost Pines Lodge, Bastrop State Park. Daily rate \$31.25 [\$25], capacity 8 persons. (Includes towels, linens, and maid service.)
- (2) Beach Lodge, Lake Brownwood State Recreation Area. Minimum rate \$37.50 [\$30] for 16 persons or less; \$3 [\$2] for each additional person. Maximum rate \$62.50 [\$50] for 26 persons total capacity. (Includes towels and linens.)
- (3) Fisherman's Lodge, Lake Brownwood State Recreation Area. Daily rate \$37.50 [\$30], capacity 10 persons. (Includes towels and linens.)
- (4) Bass Lodge, Daingerfield State Park. Minimum rate \$32.50 [\$26] for 16 persons or less; \$3 [\$2] each additional person. Maximum rate \$62.50 [\$50] for 28 persons total capacity. (Includes towels and linens.)

(l) Group barracks—shelter and dining hall:

- (1) 1-48 persons—\$62.50 [\$50].
 - (A) Each additional person—\$.075. (Hotel tax applicable to total amount.)
 - (B) Rate includes barracks sleeping quarters and dining room; recreational hall at Fort Parker available if 25 or more persons occupy facility.
 - (C) Dining hall only—\$37.50 [\$30]. (Hotel tax not applicable.)
- (2) Groups desiring the use of barracks only, not to exceed two barracks, may occupy the facilities on a first-come, first-serve basis for a maximum of two days initially and then on a one-day basis thereafter when the total facility is not reserved, or when in the judgment of the park manager, a large group reservation is not anticipated. The rate for this type of usage will be \$.75 times the maximum sleeping capacity of each barrack. The hotel tax is applicable to the total.
- (3) Screened shelters and dining hall (McKinney Falls State Park only):
 - (A) 1-48 persons—\$62.50 [\$50] per day.
 - (B) Each additional person—\$.75.
 - (C) Dining hall only—\$37.50 [\$30]. (Hotel tax not applicable.)

(4) Individuals or groups desiring the use of screened shelters only at McKinney Falls State Park may occupy the shelters on a first-come, first-serve, basis for a maximum of two days initially and then on a one-day basis thereafter when all or part of the area is not used for group occupancy. The rate is \$12 [\$10] per day for first motor vehicle and \$2 for each additional vehicle. Occupancy is limited to eight persons. The hotel tax is applicable.

.017. Reservation of State Park Facilities. Reservations for park facilities may be accepted at parks designated by the executive director. Reservations may not be made more than 90 days in advance. A nonrefundable fee is required for confirmation of each reservation. The executive director is authorized to prescribe the reservation fee in relation to the cost of providing the service.

(a) Reservations may be made for state park facilities listed in Rule 127.40.01.016, Sections (c), (g), (h), (i), (j), (l), (n), and (o) of this rule; provided, however, that no reservations will be accepted prior to February 1 of each year in which the facility is to be reserved.

(b) Requests for advance reservations for a new calendar year beginning February 1 will be accepted in writing by the park superintendent during the period December 1 to January 10 only. A drawing will be held at the park headquarters on January 11 to determine assignment dates. Persons making requests may give four dates in their order of preference, but only one unit or facility for one consecutive period of time not to exceed 14 days will be reserved if name is drawn. The required deposit must accompany the reservation request. As soon as possible after January 11, the first-come, first-serve method of accepting reservations will be resumed.

(c) Reservation requests at other times may be made by telephone, and any such reservations will be held three days pending receipt of a deposit check or money order, provided that the reservation is requested at least five days prior to the date upon which the facility is desired.

(d) Unless reservations are cancelled at least 24 hours prior to the date for which the reservations are made, the deposit for the facility will be forfeited. As a general rule, a deposit for one day's rental will be required for the facility in question in order to secure reservations.

(e) Reservations for campsites may be accepted at parks designated by the executive director. A nonrefundable fee of \$2 is required for confirmation of each reservation. The executive director is authorized to adjust the prescribed reservation fee in relation to the cost of providing the service. A confirmed reservation will be held until 6 p.m. of the first day for which the reservation is made and if the user fee for the site is paid, the reservation will be held until 2 p.m. the following day.]

.018. Nonresident Surcharge. A nonresident who uses overnight facilities in state parks will be required to pay a \$1 surcharge for each day the facility is occupied in addition to the normal user fee charged. Nonresident means an individual who has not been a resident of the state for at least six months prior to occupying park facility.

.019. Day User Fee. A \$1 per day user fee will be collected on a per-vehicle basis at state parks where feasible, in addition to established daily, annual, or restricted annual entrance permit fees.

Issued in Austin, Texas, on February 21, 1978.

Doc. No. 781398 Maurine Ray
Administrative Assistant
Texas Parks and Wildlife Department

Proposed Date of Adoption: April 3, 1978

For further information, please call (512) 475-4845.

Texas State Board of Registration for Professional Engineers

Practice and Procedure

Registration 383.01.09

The Texas State Board of Registration for Professional Engineers is proposing to revise Rule 383.01.09.004 concern-

ing expirations, renewals, and reinstatement of certificates of registration. Section 16.1, the Texas Engineering Practice Act, authorizes the board, by rule, to adopt a system under which certificates of registration expire on various dates during the year. This revision establishes and defines that system.

The staff of the Board of Registration for Professional Engineers has determined that there are no fiscal implications for the state or any unit of local government that would result from this revision.

Public comment on the proposed revision of Rule 383.01.09.004 is invited. Comments may be submitted by telephoning the executive director, Donald C. Klein, P.E., at (512) 475-3141, or by writing to him at Room 200, Reagan Building, 1400 Congress, Austin, Texas 78701.

This revision of Rule 383.01.09.004 is proposed under the authority of Section 8, Article 3271a, Vernon's Annotated Texas Statutes.

.004. Expirations and Renewals. The certificate of registration is a license to practice engineering under the provisions of the act and must be renewed by the registrant annually; otherwise, such license shall become invalid [and remain invalid] until the date the board receives the registrant's renewal and penalty fee as established by the board [for that year]. Stipulations with reference to expirations and renewals of certificates of registration are set out in **Sections 16 and** [Section] 16.1 of the act. [The annual renewal fee is set each year and by law may vary from year to year. Therefore, no advance renewal fees will be accepted.] **The following will apply to renewals and reinstatements:**

(a) **The amount of the annual renewal fee is set by the board and by law may vary from year to year.**

(b) **Board action to change the amount of the annual renewal fee will become effective at the beginning of the calendar year following such action.**

(c) **Certificates of registration will expire according to the following schedule:**

(1) **Certificates originally approved in the first quarter of a calendar year will expire on December 31.**

(2) **Certificates originally approved in the second quarter of a calendar year will expire on March 31.**

(3) **Certificates originally approved in the third quarter of a calendar year will expire on June 30.**

(4) **Certificates originally approved in the fourth quarter of a calendar year will expire on September 30.**

(d) **The fee and penalty for reinstating a certificate of registration shall be based on the fee required for renewal at the last anniversary of the expiration date.**

Issued in Austin, Texas, on February 23, 1978.

Doc. No. 781416 Donald C. Klein, P.E.
Executive Director
Texas State Board of Registration
for Professional Engineers

Proposed Date of Adoption: April 26, 1978

For further information, please call (512) 475-3141.

ADOPTED RULES

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 Education Agency Instructional Resources

Process for State Adoption of Textbooks 226.33.34

The Texas Education Agency has amended Rules 226.33.34.051 and .052 concerning the state textbook adoption process. The amendments delete the provision that a prospectus for each learning system offered for adoption may be displayed for public review in the 20 regional education services centers. Instead, publishers offering learning systems or supplementary materials for adoption shall provide samples of these items as required in Section 12.18(b) of the Texas Education Code.

Public review and discussion of the proposed change were held. A public hearing on the proposed changes was also held. Rule .051 is adopted with no change from the text proposed. Rule .052, as originally proposed would have required that a copy of all learning systems and supplementary materials be placed in each of the 20 regional service centers. It is amended in response to the testimony of representatives of national media producers associations who note that this requirement would be extremely burdensome and expensive.

These amendments are adopted under the authority of the Texas Education Code, Sections 12.11-12.15.

.051. Deposit of Textbook Samples with the Regional Education Service Centers.

(a) Policy. All textbook publishers who filed a statement of intent to offer textbooks for adoption shall deposit with each of the 20 regional education service centers one copy of each textbook being offered. Deposits shall be made on a date designated in the adopted schedule (Rule 226.33.34.040) or any extended filing date approved by the commissioner of education. The books deposited with the centers shall be in the same format supplied to the State Textbook Committee members and advisors.

The procedures by which the centers working with the Textbook Division of the Texas Education Agency shall receive and handle the textbooks shall be established and administered by the commissioner of education. (Rule 226.21.02.070 requires each education service center to adopt policy and procedure to meet its responsibility in the textbook adoption process.)

.052. Display of Learning Systems and Supplementary Instructional Materials.

(a) Policy. All publishers who filed a statement of intent to offer learning systems and/or supplementary instructional materials for adoption shall provide samples as required in Section 12.18(b) of the Texas Education Code. Such samples offered for adoption shall be deposited in designated locations and are to be left for a period of time determined by the commissioner of education and as appearing in the proclamation. These materials must be in the same format as exhibited to the State Textbook Committee members and advisors.

One copy of each learning system and/or one copy of each of the supplementary instructional materials offered for adoption shall be placed on display at a central point in Austin, Texas.

Issued in Austin, Texas, on February 22, 1978.

Doc. No. 781397

M. L. Brockette
Commissioner of Education

Effective Date: March 15, 1978

For further information, please call (512) 475-7077.

Adaptations for Special Populations Special Programs of Special Education 226.35.74

The Texas Education Agency has amended Rule 226.35.74.080 concerning comprehensive services for the visually handicapped by adding an administrative procedure section, Section (b), to the rule.

Visually handicapped individuals are eligible for services from birth through age 22. Services shall include basic special services provided by regular or special education programs and such supplemental services as parental counseling and training and orientation and mobility training. The existing local special education program, funded under the Foundation School Program, maintains responsibility for providing the basic educational program for the visually handicapped.

These rules are adopted with no change from the text proposed.

This rule is promulgated under the authority of Sections 11.052, 11.091, 11.102, 16.104, and 16.161, Texas Education Code, and Article 4413(202), Vernon's Texas Civil Statutes.

.080. Comprehensive Services for the Visually Handicapped.

(b) Administrative procedure.

(1) Program eligibility and authority. All accredited school districts operating approved special education pro-

grams under the Foundation School Program or regional education service centers are eligible to apply for and receive state funding aid for the provision of educational and related services to visually handicapped individuals ages birth through 22.

(A) Basic special education services. The local school district is responsible for providing to visually handicapped individuals residing within their district boundaries all those basic special services routinely provided by regular or special education as specified in current policies, procedures, and guidelines. The existing local special education programs shall maintain responsibility for providing the basic educational program for the visually handicapped by allocating the necessary resources and services as are provided to other handicapped students in special education programs.

(B) Supplemental services for the visually handicapped. Additional special services required by the unique nature of individuals with visual handicaps are the ultimate responsibility of school districts using supplemental assistance. Supplemental services as provided for in law, policy, and procedures may be provided either directly by the school district or through contract or working arrangements. Program eligibility and authority for supplemental programs for the visually handicapped are as follows:

(i) Local district programs. Local districts will be eligible for supplemental state funds and have the ultimate responsibility to provide supplemental services to the visually handicapped.

(ii) Special cooperatives to provide services to the visually handicapped. If part or all of the necessary services needed by visually handicapped individuals cannot be provided by a single school district, two or more school districts may develop special cooperatives in order to provide those needed services. Subject to prior approval of the Texas Education Agency, one district may serve as the fiscal agent or the regional education service center may serve in that capacity. The fiscal agent will receive the supplemental funds and act as liaison and agent for the cooperative with the Texas Education Agency. The fiscal agents' responsibilities include applications, reports, records, and accounting for the cooperative program; coordinating and maintaining program planning and evaluation; and any other responsibilities of fiscal agents of special education cooperatives operating under Texas Education Agency policies, procedures, and guidelines.

Any modifications or changes in designation of fiscal agents must receive prior approval from the local district management and the Texas Education Agency.

Authority is granted to local districts to develop cooperatives which have as their purpose to serve the unique needs of the visually handicapped. Cooperative programs may or may not correspond to existing special education cooperative boundaries. School districts may be able to provide some services independent of other districts, and at the same time cooperate with other programs for the provision of other needed services. The most cost-effective and programmatically effective arrangement should be considered and incorporated into the program.

Cooperatives should be described in the planning document and approved by each participating school district. These cooperatives should operate under the same policies, pro-

cedures, and guidelines as other special education cooperatives.

(iii) Education service centers. Education service centers are considered essential components of an effective statewide program for the visually handicapped and are eligible for supplemental funding for services to the visually handicapped. Regional education service centers may be providing as necessary both direct and supportive services to visually handicapped students and their programs. Education service centers may employ a minimum of one qualified staff member whose major responsibility will be concerned with various components of programs and services to the visually handicapped.

Additionally, direct service personnel may be allocated to the regional education service center based on cooperative agreements and/or regional needs as determined through regional assessments and planning if such an arrangement represents the most cost-effective and programmatically effective alternative.

Salaries for education service center personnel will be in accordance with the salaries of similarly functioning personnel in each education service center.

(iv) Authority to contract for supplemental services for the visually handicapped. Local programs for the visually handicapped may contract with any qualified public or private organizations or qualified individuals for diagnostic, evaluation, instructional, and related services or other services supplemental to the education of the visually handicapped. Contracts using supplemental funds may not include services normally available through special education allocations, including contracts with approved nonpublic schools for exceptional children. Such contract services should be described in the local plan and budget which is submitted to the Texas Education Agency.

(2) Planning, budgeting, evaluation, and allocation. Programs for the visually handicapped shall be implemented and funded based on a system of continuous planning, budgeting, and evaluation. Information derived from the system shall be used for program renewal and decision making at all levels of performance.

(A) Planning, budgeting, and evaluation process. Within a reasonable period of time, a planning, budgeting, and evaluation system will be developed within each program for the visually handicapped. The process will be used for making application to the Texas Education Agency for allocating funds for programs.

(B) Management information system and reporting. With appropriate approval from the Reports Management System, Executive Planning Committee, and Commissioner's Coordinating Council of the Texas Education Agency, the Statewide Program for the Visually Handicapped will determine the information requirements for reporting to various groups to which programs for the visually handicapped are to be held accountable. Minimum information expected would include:

(i) measurement of the performance of both students and personnel; and

(ii) provision of data to determine the effectiveness and efficiency of programs serving the visually handicapped.

Data will be collected, analyzed, and reported at the local, regional, and state levels. These data included in the management information system will be ongoing with occasional

special studies conducted. Feedback for educational renewal and placement will occur at each level of information collecting, analyzing, and reporting.

(C) On-site reviews of programs for the visually handicapped. On-site reviews of programs for the visually handicapped will be conducted at least every three years or more often as necessary. The responsibility for conducting reviews will rest with the Statewide Program for the Visually Handicapped, Texas Education Agency. The purpose of the program reviews will be to determine:

(i) compliance with policies, procedures, and standards as determined by the Texas Education Agency and approved by the State Board of Education;

(ii) effectiveness and efficiency of the programs;

(iii) appropriateness of educational programs for the visually handicapped; and

(iv) adequacy of instructional support.

Evaluations performed by team members will be based on predetermined written objective criteria.

(D) Financial allocations.

(i) Basic comprehensive special education services for the visually handicapped shall be supported through the usual Foundation School Program funds and special education allocation process.

(ii) Supplemental Foundation School Program funds will support eligible programs in the provision of the comprehensive educational and related services to the visually handicapped. These funds will be in addition to other school district allocations and may not be used in lieu of special education or regular education funding otherwise available. Personnel positions, materials, transportation, staff development, and other resources necessary for the effective delivery of services to the visually handicapped will be determined and approved for funding based on substantiated program needs. Funding for programs will be negotiated through the Statewide Program for the Visually Handicapped. The negotiating process will require information as to the program's current use of resources in an effective manner, documented evidence that additional resources are required, and a sufficiently detailed plan as to how the additional resources will be used.

Eligible programs may make application for funding to the Statewide Program for the Visually Handicapped by use of Texas Education Agency Form SPE-080, available from the Texas Education Agency. Applications will be due annually at a time specified by the commissioner of education. Emergency applications may be submitted at any time during the year. The Texas Education Agency will approve supplemental funding based upon: review of the application and all supportive documentation; evidence that the application requests funding supplemental in nature and will not be used to supplant other available resources; compliance with State Board of Education policies and administrative procedures; and the availability of funds.

The approved application will constitute a contract. Approved programs must keep revenue and expenditure accounts in accordance with Bulletin 679, *Financial Accounting Manual*. Any change in the spending pattern set forth in the initial budget (beyond specified limits) will require an approved budget amendment. Besides state and local efforts for funding, programs serving visually handicapped are encouraged to seek other needed revenues and services through

federal or other sources. These funds or services, however, should be reflected in the program plan and budget.

(iii) Priorities for supplemental funding for the visually handicapped for 1977-78 include: school districts and cooperatives—support for existing programs for the visually handicapped to expand services heretofore not available with state special education funds (e.g., orientation and mobility instruction, physical therapy, occupational therapy, and other needed services); and development of direct service programs for the visually handicapped in schools or cooperative which have been unable to provide services because of various justifiable economic or logistical reasons; education service centers—support for qualified personnel and services provided by the education service center to local programs for the visually handicapped including: direct service to visually handicapped students as needed; and technical assistance to existing and new programs for the visually handicapped including, but not limited to, consultative services; vision screening; needs assessments, planning, developing, evaluating, and accounting; direction service; pupil appraisal; specialized media and materials; staff development and inservice education; and coordination of services.

Issued in Austin, Texas, on February 23, 1978.

Doc. No. 781431

M. L. Brockett
Commissioner of Education

Effective Date: March 16, 1978

For further information, please call (512) 475-7077.

Texas Department of Mental Health and Mental Retardation

Client (Patient) Care

Utilization of Medical Assistants, Physician's Assistants, and Medical Technicians 302.04.32

Under the authority of Section 2.11(b) of Article 5547-202, Texas Civil Statutes, the Texas Department of Mental Health and Mental Retardation has adopted Rules 302.04.32.001-.014, which govern the utilization of medical assistants, physician's assistants, and medical technicians, to read as follows:

.001. *Purpose.* The purpose of these rules is to establish uniform standards for the utilization of medical assistants, physician's assistants, and medical technicians in facilities of the Texas Department of Mental Health and Mental Retardation.

.002. *Application.* These rules apply to all employees and facilities of the Texas Department of Mental Health and Mental Retardation.

.003. *Definitions.* In these rules:

(a) "Medical assistants" or "M.A." means members of the health care team qualified by academic and clinical

training to assist the physician in providing appropriate medical care to selected patients. They are expected to function under the direction, supervision, and responsibility of a physician in accordance with policies established either in the medical staff bylaws of the health care institution in which they work or in accordance with the established policies of the health care agency by whom they are employed. They exercise judgment within their area of competence and participate directly in patient care activities under the supervision or direction of a physician staff member. They may not perform independent acts of diagnosis or treatment nor may they offer to diagnose or treat independently as would constitute the illegal practice of medicine.

(b) "Physician's assistant" or "P.A." means a person who is a graduate of a physician's assistant training program approved by the Council on Medical Education of the American Medical Association, or a person who has passed the examination given by the National Commission on Certification of Physician's Assistants and who is supervised by a licensed physician who has been approved by the Texas State Board of Medical Examiners as a supervising physician for physician's assistants. Physicians' assistants and their supervising physicians will conform to the rules regulating the utilization of physicians' assistants as adopted by the Texas State Board of Medical Examiners and are also subject to these rules and regulations.

(c) "Medical technician." For the purposes of employment in the Texas Department of Mental Health and Mental Retardation, the title "medical technician" shall be reserved only for such persons as are licensed to practice medicine in other states or nations, but have not yet been licensed to practice medicine under the laws of the State of Texas and who have been issued an institutional permit by the Texas State Board of Medical Examiners. The most acceptable use of this term is for physicians accepted for residency training in a Texas Department of Mental Health and Mental Retardation institution for the purpose of being trained in psychiatry in an approved residency training program at this parent institution under an institutional permit granted by the Texas State Board of Medical Examiners. The use of the term "medical technician" under any other circumstance shall be discontinued.

(d) "Supervising physician" means a physician licensed by the Texas Board of Medical Examiners, either as an M.D. or D.O., who is assuming responsibility and legal liability for the services rendered by the physician's assistant, and who has been approved by the Texas Board of Medical Examiners to supervise a specific assistant.

(e) "Supervision" means the overseeing of the actions of an assistant either by being directly in the room with the assistant or immediately available for call by the assistant who is acting under the direction and guidance of the physician.

(f) "Board" means the Texas State Board of Medical Examiners.

(g) "MH/MR" means the Texas Department of Mental Health and Mental Retardation.

(h) "Client" means a person who, voluntarily or involuntarily, is seeking, receiving, or who has received mental health or mental retardation services from the Texas Department of Mental Health and Mental Retardation.

.004. *Physician's Application to the Texas State Board of Medical Examiners for Approval to Supervise Physician's Assistant.* The physician's application to the board for approval to supervise shall include:

(a) Qualifications of physician's assistants, which shall include the qualifications, including related experience, possessed by the proposed physician's assistant; information pertaining to a general educational background; education as a physician's assistant; enrollment in allied health programs; enrollment in continuing education programs subsequent to graduation as a physician's assistant; and related patient-oriented health care experience. The application should indicate, when appropriate, that the examination given by the National Commission on the Certification of Physician's Assistants has been passed by the proposed physician's assistant.

(b) Professional qualifications of supervising physician, which shall include the professional qualifications and specialty, if any, of the proposed supervising physician; information pertaining to the medical education, internship, and residency of said physician; enrollment in continuing education programs by said physician; membership or eligibility therefor in American boards in any of the recognized areas of medical specialty by said physician; hospitals where staff privileges have been granted; the number of said physician's Texas medical license, together with his current annual registration number; and such other information the board deems necessary. The application should indicate whether any other applications to supervise a physician's assistant have been filed with the board by the proposed supervising physician giving the names of other and/or former physician's assistants.

(c) Description of practice of M.D. or D.O., which shall be a description by the physician of his practice, including the nature thereof, the location, and the way in which the assistant is to be utilized.

(d) Statement regarding moral character of physician's assistant, which shall be a statement by the supervising physician that he has made adequate investigation of and is of the opinion that the proposed physician's assistant is possessed of good moral character and is both mentally and physically able to perform as a physician's assistant with competency, and that the supervising physician will exercise control and supervision of the physician's assistant in accordance with these rules and retain professional responsibility for the care and treatment of his clients.

.005. *Consent and Identification.*

(a) All clients admitted to MH/MR facilities employing medical assistants or physician's assistants shall sign an appropriately worded consent form indicating that certain services provided to them may be provided by the medical assistant or physician's assistant, and that they agree to this provision. This consent form shall be signed by the client or the client's parent or managing conservator, if the client is a minor, or guardian upon admission to the MH/MR facility. The consent shall continue in effect during the length of the current admission and shall be renewed for each admission.

(b) A notice plainly visible to all clients shall be posted in a prominent place in the supervising physician's office by the supervising physician explaining the meaning of the term "physician's assistant" and/or "medical assistant" and the functions delegated to these health care team members. Clients shall be encouraged in this notice to discuss with the

supervising physician any questions or complaints regarding the performance of the physician's assistant or medical assistant or their desire not to be seen by the P.A. or M.A.

(c) The physician's assistant or medical assistant must wear an appropriate name tag with the designation of Mr., Miss, Mrs., Ms., and the surname, plus "physician's assistant" or "medical assistant" so that he or she is not mistaken for a licensed physician. The printing on such name tag shall not be less than three-eighths inch in height.

.006. *Supervision of Performance.*

(a) The physician's assistant or medical assistant shall not supply the physician in the evaluation of medical data required for the establishment of a regimen for therapy for the client.

(b) The responsible physician's supervision will be active and continuous over all phases of the medical assistant's or physician's assistant's activities in order to insure that all of the physician's directions and advice are being implemented and carried out. This will require that the physician make a personal review of all historical and physical data on all clients and their problems.

(c) On follow-up care where the physician has already established a treatment regimen, the medical assistant or physician's assistant may record progress in the client's chart and report same to the supervising physician. When during the course of therapy a new problem arises, the physician must review his treatment protocol and establish new guidelines for the client so that they may be followed by the M.A. or P.A.

(d) The M.A. or P.A. may render emergency medical service without supervision pending the arrival of a responsible physician in cases where immediate diagnosis and treatment are imperative to avoid disability or death.

.007. *Credentials Review.* The credentials of each medical assistant or physician's assistant will be reviewed at each employing MH/MR institution by a committee consisting of the supervising physician, the clinical director, and one other physician familiar with the work of medical assistants and physician's assistants. This review will serve to verify the types of diagnostic and/or therapeutic procedures each M.A. or P.A. will be permitted to perform. Subsequent annual credentials reviews will be conducted in order to permit evaluation of performance. As appropriate, upgrading of types of procedures will be permitted in consonance with the increasing experience and expertise of the M.A. or P.A.

.008. *Promotion of Medical Assistant to Physician's Assistant.* Medical assistants presently employed in MH/MR are expected to qualify to become physician's assistants. Failure to qualify for examination for P.A. by September 1, 1980, or failure to become certified as a P.A. by September 1, 1981, will disqualify an individual from continuing to function as an M.A. in MH/MR.

.009. *Limitation of Employment.* Only one physician's assistant or medical assistant shall be allowed for each supervising physician. The P.A. or M.A. shall be the individual responsibility of the supervising physician, or in his temporary absence, the P.A. or M.A. shall be the responsibility of a designated physician. More than one physician shall be allowed to supervise the same P.A. or M.A.; however, the physician considered to be supervising the P.A. or M.A. on a given patient shall be that client's physician:

.010. *Grounds for Denial to Practice as Medical Assistant or Physician's Assistant in MH/MR.* The following are grounds for the denial to practice as a medical assistant or physician's assistant in the Texas Department of Mental Health and Mental Retardation:

(a) Conviction of a felony or any offense involving moral turpitude.

(b) Use of drugs or any alcoholic beverage to the extent and in a manner dangerous to himself, any other person, or the public, or to any extent that such use impairs his ability to perform the work of a P.A. or M.A. with safety to the public.

(c) Impersonating a physician.

(d) Allowing another person to use his certificate or letter of approval.

(e) Using fraud, deception, or misrepresentation in the application for approval.

(f) Willful, unauthorized communication of information received in personal confidence during his duties as a physician's assistant or medical assistant.

(g) Being grossly incompetent or grossly negligent in his duties as a physician's assistant or medical assistant; or, having demonstrated repeated and/or continuous negligence or irresponsibility in the performance of his duties.

(h) Working in the capacity of a physician's assistant under a physician or other person who has not received the approval of the board to supervise a P.A., except as provided in Rule .009 of these rules.

(i) Performing tasks beyond those permitted to be performed by an assistant as set forth in these rules.

.011. *Permitted Tasks.*

(a) The medical assistant or physician's assistant may perform such duties, which do not require the exercise of independent medical judgment, as assigned by the supervising physician who is responsible for the performance of such tasks and who retains direct control and supervision of the M.A. or P.A. In appropriate circumstances and with the direct consent of the supervising physician, the M.A. or P.A. may be given specific authorization to order routine laboratory and x-ray work, such as CBC, WBC, urinalysis, chest x-ray work, and KUB, as will expedite the inauguration of care of the client when the results are reviewed by the supervising physician.

(b) Since there is a variation in organization of professional activities at each MH/MR facility and since the client care requirements at each facility are different, it follows there will be some variation in medical assistant and physician's assistant utilization at each facility. Each school and hospital in MH/MR will draw up its own guidelines outlining the tasks which it permits its medical assistants and physician's assistants to perform. These permitted tasks will conform to these rules and no task will be permitted which is specifically forbidden by these rules. In every instance, the M.A. and P.A. in MH/MR institutions will be provided active supervision by a supervising physician. The independent practice of medicine as it involves the exercise of medical judgment in determining clinical diagnosis and establishing a regimen for treatment is specifically forbidden. These rules are not intended to and shall not be construed to restrict the physician from delegating administrative and technical or clinical tasks not involving the exercise of medical judgment to those specifically trained individuals instructed and directed by a licensed physician who accepts responsibility

for the acts of such allied health personnel. Likewise, nothing in these rules shall be construed as to prohibit a physician from instructing a technician, assistant, or other employee who is not a medical assistant or physician's assistant, as defined herein, to perform delegated tasks so long as the physician retains supervision and control of the technician, assistant, or employee.

.012. Limitations of Medical Assistants or Physician's Assistants. A medical assistant or physician's assistant may not:

(a) Perform any task or function without the supervising physician being either physically present or immediately available to provide further guidance, except in life-threatening emergencies.

(b) Make a final or definitive diagnosis of a disease or ailment or the absence thereof independent of the supervising physician.

(c) Independently prescribe any treatment or a regimen thereof except in emergencies.

(d) Prescribe, order, or dispense medication, or sign prescriptions on behalf of the supervising physician, or have prescription blanks available that have been presigned or stamped by the physician, or order the refilling of a prescription, except as authorized by the provisions of Section 2(g), Article 4476-14, Vernon's Annotated Civil Statutes.

(e) Replace the supervising physician in making visits in the hospital, clinic, nursing home, emergency room, or home.

(f) Independently initiate or change any orders on a client's chart in hospitals, clinics, nursing homes, or other places where client charts are used.

(g) Treat any client before the physician has seen the client and order the method of treatment, except in life-threatening emergencies.

(h) Perform acupuncture in any form.

(i) Independently delegate a task assigned to him by the supervising physician.

(j) Perform endoscopic examinations and/or procedures.

(k) Perform spinal punctures.

(l) Perform any diagnostic or therapeutic procedure which involves either thoracentesis or paracentesis.

.013. Distribution.

(a) These rules shall be distributed to all members of the Texas Board of Mental Health and Mental Retardation; assistant commissioners, deputy commissioners, directors and section chiefs of Central Office; superintendents and directors of all MH/MR facilities; and chairpersons of the public responsibility committee of all MH/MR facilities.

(b) The superintendent or director shall provide a copy of these rules to each of the following staff members:

- (1) staff physicians;
- (2) clinical or medical director;
- (3) chief or director of nursing;
- (4) unit director;
- (5) each medical assistant;
- (6) each physician's assistant;
- (7) each medical technician.

.014. Effective Date.

(a) These rules become effective upon the expiration of 20 days from the date on which they are filed as adopted rules

with the Texas Register Division of the Office of the Secretary of State.

(b) On the effective date of these rules, all other instructions, verbal or written, on this subject are rescinded.

Issued in Austin, Texas, on February 23, 1978.

Doc. No. 781436

Kenneth D. Gaver, M.D.
Commissioner
Texas Department of Mental Health
and Mental Retardation

Effective Date: March 16, 1978

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

Texas Board of Private Investigators and Private Security Agencies

Handgun; Security Officer Commission 399.19.00

The Texas Board of Private Investigators and Private Security Agencies has adopted the repeal of board Rule 399.19.00.006, Issuance of 45-Day Temporary Security Officer Commission. The proposed repeal was published in the January 10, 1978, issue of the *Texas Register*. The repeal of board Rule 399.19.00.006 was proposed because the board had received criminal history data from the Texas Department of Public Safety on individuals who had been issued 45-day temporary security officer commissions by their employers which had shown that it was in the best interest of the public to repeal the rule.

The Texas Board of Private Investigators and Private Security Agencies is empowered to adopt and repeal rules under the provisions of the Texas Private Investigators and Private Security Agencies Act, Article 4413(29bb), Vernon's Annotated Civil Statutes of Texas, as amended.

Issued in Austin, Texas, on February 23, 1978.

Doc. No. 781459

Clema D. Sanders
Executive Director
Texas Board of Private Investigators
and Private Security Agencies

Effective Date: March 17, 1978

For further information, please call (512) 475-3944.



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*.

Texas Department of Agriculture

Wednesday, March 22, 1978, 10:30 a.m. The Agricultural Protection Act Division of the Texas Department of Agriculture will meet in the District Attorney Office, Nacogdoches County Court House, Nacogdoches, to review facts pertaining to unlicensed Texas produce operation of Sam Livingston Equipment Company, Nacogdoches, and to investigate alleged obligations due and owing to Tex-Sandia, Inc., Hidalgo.

Additional information may be obtained from Ed Whitesides, P.O. Box 12847, Austin, Texas 78711, telephone (512) 475-4304.

Filed: February 24, 1978, 10:53 a.m.
Doc. No. 781450

Texas Election Code Revision Commission

Friday and Saturday, March 3-4, 1978, 9 a.m. The Texas Election Code Revision Commission will meet in Room 220, Lieutenant Governor's Committee Room, State Capitol, Austin. The summarized agenda includes the following: action on suggested changes to be made in existing code provisions for inclusion in revised code, with emphasis on changes in Chapter 1 through 6, 10, and 12 of present code; and review of preliminary draft of Title 7 of revised code (absentee voting).

Additional information may be obtained from Robert L. Lemens, Room 914, Sam Houston Building, Austin, Texas 78701, telephone (512) 475-3091.

Filed: February 23, 1978, 3:45 p.m.
Doc. No. 781419

Friday, March 3, 1978, 4 p.m. or immediately following afternoon recess of commission meeting. The Texas Election Code Revision Commission Special Study Committee (definition of residence and volunteer deputy voter registrars) will meet in the Room 220, Lieutenant Governor's Committee Room, State Capitol, Austin. The committee will discuss present law on the subjects assigned to the committee and proposals for changes to be recommended to the commission, as summarized in the agenda.

Additional information may be obtained from Robert L. Lemens, Room 914, Sam Houston Building, Austin, Texas 78701, telephone (512) 475-3091.

Filed: February 23, 1978, 3:45 p.m.
Doc. No. 781420

Friday, March 3, 1978, 7 p.m. The Texas Election Code Revision Commission Special Study Committee (challenge procedures in absentee voting, voting systems, and contests and recounts) will meet in the Room 220, Lieutenant Governor's Committee Room, State Capitol, Austin. The committee will discuss present law on the subjects assigned to the committee and proposals for changes to be recommended to the commission, as summarized in the agenda.

Additional information may be obtained from Robert L. Lemens, Room 914, Sam Houston Building, Austin, Texas 78701, telephone (512) 475-3091.

Filed: February 23, 1978, 3:45 p.m.
Doc. No. 781421

Saturday, March 4, 1978, 8 a.m. The Texas Election Code Revision Commission Special Study Committee on Branch Offices for Absentee Voting will meet in the Room 220, Lieutenant Governor's Committee Room, State Capitol, Austin. The committee will discuss present law on the subjects assigned to the committee and proposals for changes to be recommended to the commission, as summarized in the agenda.

Additional information may be obtained from Robert L. Lemens, Room 914, Sam Houston Building, Austin, Texas 78701, telephone (512) 475-3091.

Filed: February 23, 1978, 3:45 p.m.
Doc. No. 781417

Saturday, March 4, 1978, 11:30 a.m. or immediately following adjournment of commission meeting. The Texas Election Code Revision Commission Special Study Committee (municipal elections and bond elections) will meet in the Room 220, Lieutenant Governor's Committee Room, State Capitol, Austin. The committee will discuss present law on the subjects assigned to the committee and proposals for changes to be recommended to the commission, as summarized in the agenda.

Additional information may be obtained from Robert L. Lemens, Room 914, Sam Houston Building, Austin, Texas 78701, telephone (512) 475-3091.

Filed: February 23, 1978, 3:45 p.m.
Doc. No. 781418

State Board of Insurance

Friday, February 24, 1978, 10 a.m. The State Board of Insurance held an emergency meeting in Room 408, 1110 San Jacinto, Austin, to consider the request of Diversified Consultants, Inc., for a stay of Commissioner's Order No. 78-0639.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto, Austin, Texas 78786, telephone (512) 475-2950.

Filed: February 23, 1978, 3:55 p.m.
Doc. No. 781427

Tuesday, March 7, 1978, 10 a.m. The State Board of Insurance will meet in Room 408, 1110 San Jacinto, Austin, to consider subscription companies endorsement filings.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto, Austin, Texas 78786, telephone (512) 475-2950.

Filed: February 27, 1978, 8:53 a.m.
Doc. No. 781467

Tuesday, March 7, 1978, 2 p.m. The State Board of Insurance will meet in Room 408, 1110 San Jacinto, Austin, to hear the commissioner's report and to discuss personnel matters in an executive session.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto, Austin, Texas 78786, telephone (512) 475-2950.

Filed: February 24, 1978, 10:53 a.m.
Doc. No. 781444

Tuesday, March 14, 1978, 2 p.m. The State Board of Insurance will meet in Room 408, 1110 San Jacinto, Austin, to hear the commissioner's report and to discuss personnel matters in an executive session.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto, Austin, Texas 78786, telephone (512) 475-2950.

Filed: February 24, 1978, 10:53 a.m.
Doc. No. 781445

Tuesday, March 21, 1978, 2 p.m. The State Board of Insurance will meet in Room 408, 1110 San Jacinto, Austin, to hear the commissioner's report and to discuss personnel matters in an executive session.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto, Austin, Texas 78786, telephone (512) 475-2950.

Filed: February 24, 1978, 10:53 a.m.
Doc. No. 781446

Tuesday, March 28, 1978, 2 p.m. The State Board of Insurance will meet in Room 408, 1110 San Jacinto, Austin, to hear the commissioner's report and to discuss personnel matters in an executive session.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto, Austin, Texas 78786, telephone (512) 475-2950.

Filed: February 24, 1978, 10:53 a.m.
Doc. No. 781447

Texas Advisory Commission on Intergovernmental Relations

Monday, February 27, 1978, 9:30 a.m. The Project Committee on Evaluation of Title I Community Service Program of the Texas Advisory Commission on Intergovernmental Relations has cancelled a meeting scheduled to be held in Room 618, Stephen F. Austin Building, 1700 North Congress, Austin. The committee had planned to review the draft of final report for the Evaluation of Title I Community Service Program.

Additional information may be obtained from Patricia Corbin, Texas ACIR, Stephen F. Austin Building, Austin, Texas 78701, telephone (512) 475-3728.

Filed: February 24, 1978, 10:53 a.m.
Doc. No. 781451

State Board of Morticians

Monday, February 27, 1978, 9 a.m. The State Board of Morticians held an emergency meeting at 1513 South Interstate Highway 35, Austin, to discuss personnel matters (executive session), as summarized in the agenda.

James W. McCammon, 1513 South Interstate Highway 35, Austin, Texas 78741, telephone (442-6721).

Filed: February 23, 1978, 4:25 p.m.
Doc. No. 781428

Tuesday through Thursday, March 21-23, 1978, 9 a.m. daily. The State Board of Morticians will meet at 1513 South Interstate Highway 35, Austin. The summarized agenda follows:

March 21—9 a.m., Embalmers oral and practical examination at Stephen F. Austin Hotel; 1 p.m., meeting at 1513 South Interstate Highway 35, including two formal hearings, consideration on apprenticeships, and report on investigations and complaints received since last meeting.

March 22—Funeral directors written examination at Stephen F. Austin Hotel, beginning at 9 a.m.

March 23—Embalmers written examination at Stephen F. Austin Hotel, beginning at 9 a.m.

Additional information may be obtained from James W. McCammon, 1513 South Interstate Highway 35, Austin, Texas 78741, telephone (512) 442-6721.

Filed: February 27, 1978, 11:27 a.m.
Doc. No. 781470

Texas Parks and Wildlife Department

Tuesday, March 14, 1978, 2 p.m. The Fisheries Division/Resource Protection Branch of the Texas Parks and Wildlife Department will meet in Room A-200, 4200 Smith School Road, Austin, to consider an application of the City of Port Aransas for a nonrevenue sand permit to remove approximately 20,000 cubic yards (total) of sand by means of crane and clam bucket from Port Aransas Municipal Harbor in Nueces County. The spoil would be deposited in an adjacent lagoon area to provide parking and road area for the harbor.

Additional information may be obtained from Chester D. Harris, 4200 Smith School Road, Austin, Texas 78744, telephone (512) 475-4831.

Filed: February 23, 1978, 4:25 p.m.
Doc. No. 781430

Physical Therapy Examiners Board

Saturday, March 11, 1978, 9 a.m. The Physical Therapy Examiners Board will meet in the Pioneer Room, Austin Hilton Inn, 6000 Middle Fiskville Road, Austin, to discuss enforcement procedures, as summarized in the agenda.

Additional information may be obtained from Lois M. Smith, Suite H-135, 5555 North Lamar, Austin, Texas 78751, telephone (512) 475-7956.

Filed: February 24, 1978, 10:53 a.m.
Doc. No. 781449

Railroad Commission of Texas

Monday, February 27, 1978, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas made an emergency addition to the agenda of a meeting held in the Ernest O. Thompson Building, 10th and Colorado, Austin, to include consideration of Rule 37 cases and a motion for rehearing, as summarized in the agenda.

Additional information may be obtained from Luci Castleberry, P.O. Drawer 12967, Austin, Texas 78711, telephone (512) 475-3003.

Filed: February 24, 1978, 11:42 a.m.
Doc. No. 781456

Monday, February 27, 1978, 10:30 a.m. The Liquefied Petroleum Gas Division of the Railroad Commission of Texas made an emergency addition to the agenda of a meeting held in the 10th floor conference room, Ernest O. Thompson Building, 10th and Colorado, Austin. The commission considered a prospective procedural format for considering the settlement proposal in Gas Utilities Docket No. 500, if and when a settlement proposal is presented to the commission. This matter

was being considered on less than seven days' notice because of the short period of time before the commission must act on motions for rehearing in Gas Utilities Docket No. 500.

Additional information may be obtained from Rex H. White, Jr., P.O. Drawer 12967, Austin, Texas 78711, telephone (512) 475-4686.

Filed: February 27, 1978, 8:05 a.m.
Doc. No. 781465

Monday, March 6, 1978, 9 a.m. The Gas Utilities Division of the Railroad Commission of Texas will meet in the Ernest O. Thompson Building, 10th and Colorado, Austin, to consider the following items, as summarized in the agenda: Docket No. 704, examiner Thomas Hill, application of Texasgulf Inc., for an exception to Gas Utilities Docket No. 600, consideration of final order; and Docket No. 705, examiner Thomas Hill, application of Duval Corporation for an exception to Gas Utilities Docket No. 600, consideration of final order.

Additional information may be obtained from Joy Wood, P.O. Drawer 12967, Austin, Texas 78711, telephone (512) 475-2747.

Filed: February 24, 1978, 11:43 a.m.
Doc. No. 781454

Monday, March 6, 1978, 9 a.m. The Liquefied Petroleum Gas Division of the Railroad Commission of Texas will meet in the Ernest O. Thompson Building, 10th and Colorado, Austin, to consider the hiring of LP-Gas division safety inspector.

Additional information may be obtained from John E. White, P.O. Drawer 12967, Austin, Texas 78711, telephone (512) 475-4352.

Filed: February 24, 1978, 11:43 a.m.
Doc. No. 781453

Monday, March 6, 1978, 9 a.m. The Transportation Division of the Railroad Commission of Texas has made an addition to the agenda of a meeting to be held in the Ernest O. Thompson Building, 10th and Colorado, Austin. The commission will consider contested cases for a rate increase and new authority. As summarized, the commission will consider uncontested cases to amend authority, for motor brokers authority, to consolidate authority, to divide authority, to amend ICC authority registration, for new ICC authority, for lease authority, for a lease cancellation, for new authority, for interstate exempt authority, for reinstatement, to sell authority, for bus schedule change, for truck rate, and for voluntary suspension.

Additional information may be obtained from Susan K. Holman, P.O. Drawer 12967, Austin, Texas 78711, telephone (512) 475-5698.

Filed: February 24, 1978, 11:42 a.m.
Doc. No. 781455

Thursday, March 16, 1978, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas will meet in the Driskill Hotel, 117 East 7th Street, Austin, to conduct statewide oil and gas hearing, as summarized in the agenda.

Additional information may be obtained from Luci Castleberry, P.O. Drawer 12967, Austin, Texas 78711, telephone (512) 475-3003.

Filed: February 24, 1978, 11:41 a.m.
Doc. No. 781458

School Land Board

Tuesday, March 7, 1978, 10 a.m. The School Land Board of the General Land Office will meet in Room 831, Stephen F. Austin Building, 1700 North Congress, Austin, to consider the following items, as summarized: five pooling agreement applications; one easement application concerning coastal public lands; two permit applications; one permit alteration request; three permit transfer requests; 49 renewal permits regarding Coastal Public Lands Report; and four good faith claimants.

Additional information may be obtained from H. E. White, Room 749, Stephen F. Austin Building, 1700 North Congress, Austin, Texas 78701, telephone (512) 475-6491.

Filed: February 27, 1978, 10:40 a.m.
Doc. No. 781469

Office of the Secretary of State

Friday, March 10, 1978, 10 a.m. The Elections Division of the Office of the Secretary of State will meet in Room 510, Sam Houston Building, Austin, to examine for certification certain electronic voting systems falling within the scope of Article 7.17a of the Texas Election Code. Application for certification has been made by Computer Election Systems (CES).

Additional information may be obtained from Larry McGinnis, Room 914, Sam Houston Building, Austin, Texas 78701, telephone (512) 475-3091, or 1-800-252-9602.

Filed: February 24, 1978, 3:17 p.m.
Doc. No. 781463

Teacher Retirement System of Texas

Friday, March 10, 1978, 10 a.m. The Board of Trustees of the Teacher Retirement System of Texas will meet at 1001 Trinity, Austin, to consider the following items, as summarized: review of investments for previous quarter; consideration of recommendations for investments in next quarter; update of signature authorization for approval of benefit payments; amendments to TRS rules; reports of investment counsel, audit study committee, and member benefits division; discussion of investment policy update and recommended benefit improvements; and reports on pending federal legislation and pending litigation.

Additional information may be obtained from Shari Cooper, 1001 Trinity, Austin, Texas 78701, telephone (512) 475-9701, extension 201.

Filed: February 27, 1978, 11:27 a.m.
Doc. No. 781471

Friday, March 10, 1978, 10 a.m. The Investment Advisory Committee of the Teacher Retirement System of Texas will meet at 1001 Trinity, Austin, to consider the following items, as summarized: review of investments for previous quarter; consideration of recommendations for investments in next quarter; report of investment counsel; and discussion of investment policy update.

Additional information may be obtained from Shari Cooper, 1001 Trinity, Austin, Texas 78701, telephone (512) 475-9701, extension 201.

Filed: February 27, 1978, 11:27 a.m.
Doc. No. 781472

Texas Southern University

Thursday, March 2, 1978, 10 a.m. The Board of Regents of Texas Southern University met in Conference Room 117, Hannah Hall, 3201 Wheeler, to discuss financial, curriculum, and personnel matters, as summarized in the agenda.

Additional information may be obtained from Eyerett O. Bell, 3201 Wheeler Avenue, Houston, Texas 77004, telephone (713) 529-8911.

Filed: February 24, 1978, 10:11 a.m.
Doc. No. 781443

Advisory Council for Technical-Vocational Education in Texas

Tuesday, March 14, 1978, 10:30 a.m. The Planning and Evaluation Committee of the Advisory Council for Technical-Vocational Education in Texas will meet in the Magnolia Room, Quality Inn, 6115 Jetero Boulevard, Houston. The committee will meet to develop and suggest characteristics of a vocational education planning and evaluation system for the State of Texas; there is no structured agenda.

Additional information may be obtained from Valeria J. Bieck, P.O. Box 1886, Austin, Texas 78767, telephone (512) 475-2046.

Filed: February 27, 1978, 8:53 a.m.
Doc. No. 781468

Texas Water Commission

Monday, February 27, 1978, 10 a.m. The Texas Water Commission made an emergency addition to the agenda of a meeting held in the Stephen F. Austin Building, 1700 North Congress, Austin, concerning Application No. 2139-A of the City of Houston, as summarized in the agenda.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4514.

Filed: February 23, 1978, 4:01 p.m.

Doc. No. 781425

Monday, February 27, 1978, 10 a.m. The Texas Water Commission made an emergency addition to the agenda of a meeting held in the Stephen F. Austin Building, 1700 North Congress, Austin, concerning an application to amend Permit No. 1970 of the City of Houston, as summarized in the agenda.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4514.

Filed: February 24, 1978, 3:29 p.m.

Doc. No. 781464

Monday, March 6, 1978, 10 a.m. The Texas Water Commission will meet in the Stephen F. Austin Building, 1700 North Congress, Austin, to consider the following items, as summarized: bond issues for districts; approval of use surplus funds; approval of change in plans; application for release of escrow; petition for creation of district; complaint by John Standley v. Harris County WCID No. 110; examiner's proposal for decision on enforcement order; consideration of amendment to water quality permits, voluntary suspension, and cancellation of water quality permits; cancellation of water right permit; contractual permit application; and applications for permits.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4514.

Filed: February 23, 1978, 4:01 p.m.

Doc. No. 781426

Monday, March 6, 1978, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas will meet in the Ernest O. Thompson Building, 10th and Colorado, Austin, to consider the following items, as summarized: Rule 37 and Rule 38 cases; proper pluggings; net gas-oil ratio rules; gas field rules; temporary field rules and field rules; administrative new oil and gas field discoveries; suspend allocation formula; temporary gas allowable; exception to SWR 14(B)(2); exception to SWR 11; exception to SWR 8(C); notice to operators of forms QB-78 and QB-78A; implementation of administrative handling for commission action requiring all gas wells to be operated pursuant to special field rules by January 1, 1979.

Additional information may be obtained from Luci Castleberry, P.O. Drawer 12967, Austin, Texas 78711, telephone (512) 475-3003.

Filed: February 24, 1978, 11:41 a.m.

Doc. No. 781457

Regional Agencies

Meetings Filed February 24, 1978

The Austin-Travis County MH/MR, Personnel Committee, will meet at 1430 Collier, Austin, on March 3, 1978, at 3 p.m. Further information may be obtained from Dr. Larry J. Miller, 1430 Collier, Austin, Texas 78704, telephone (512) 447-4141.

The Panhandle Regional Planning Commission, Panhandle Emergency Medical Services System, met in the Community Hall, Medical Center basement, Phillips, on March 2, 1978, at 7 p.m. Further information may be obtained from Betty O'Rourke, P.O. Box 9257, Amarillo, Texas 79105, telephone (806) 372-3381.

The South Texas Development Council, Review Committee, met at the Zapata Community Center, Zapata, on February 27, 1978, at 2 p.m. Further information may be obtained from Julie Saldana, P.O. Box 2187, Laredo, Texas 78041, telephone (512) 722-3995.

The Tri-Region Health Systems Agency, Plan Development Committee, will meet in the conference room, second floor, Old Courthouse Building, Abilene, on March 10, 1978, at 8:30 a.m. Further information may be obtained from Michal Hubbard, 2642 Post Oak Road, Suite B, Abilene, Texas 79605, telephone (915) 698-9481.

Doc. No. 781437

Meetings Filed February 27, 1978

The Alamo Area Council of Governments, Executive Committee, will meet at 532 Three Americas Building, San Antonio, on March 8, 1978, at 1:30 p.m. Further information may be obtained from Al J. Notzon III, 400 Three Americas Building, San Antonio, Texas 78205, telephone (512) 225-5201.

The East Texas Council of Governments, Executive Committee, met in the Blue Room, Allied Citizens Bank Building, Kilgore, on March 2, 1978, at 7 p.m. Further information may be obtained from Don R. Edmonds, 5th floor, Allied Citizens Bank Building, Kilgore, Texas, telephone (214) 984-8641.

The Education Service Center, Region XIV, Board of Directors, will meet at 3001 North 3rd Street, Abilene, on March 9, 1978, at 3 p.m. Further information may be obtained from Dr. Thomas Lawrence, P.O. Box 3258, Abilene, Texas 79604, telephone (915) 677-2911.

The Gulf Coast Regional MH/MR Center, Board of Trustees, will meet in the board room, First Hutchings-Sealy National Bank, Galveston, on March 8, 1978, at 7:30 p.m. Further information may be obtained from D. S. Tramonte, Jr., P.O. Box 2490, Galveston, Texas 77553, telephone (713) 763-2373.

The Permian Basin Regional Planning Commission, Board of Directors, will meet in the conference room, Air Terminal Office Building, Midland, on March 8, 1978, at 1:30 p.m. Further information may be obtained from Pam Hammit, P.O. Box 6391, Midland, Texas 79701, telephone (915) 563-1061.

Doc. No. 781473

Texas Department of Community Affairs Department of Energy-Funded Weatherization Program Plan for Fiscal Year 1978

Notice of Public Hearing

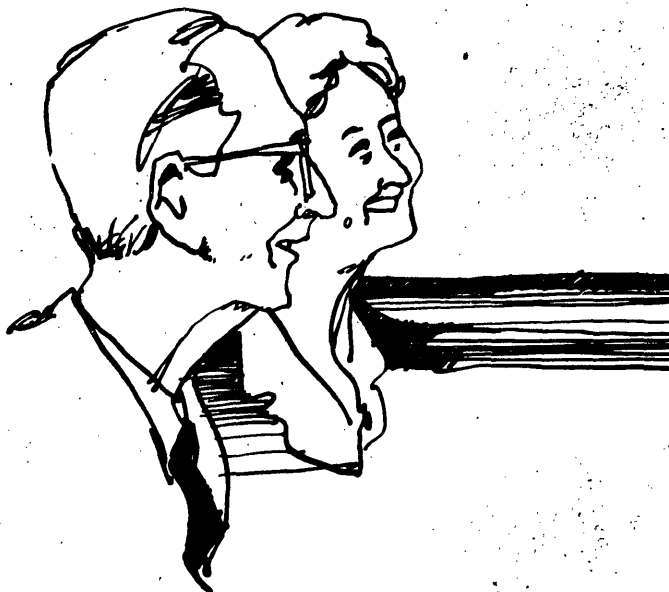
Notice is given by the Economic Opportunity Division of the Texas Department of Community Affairs of a public hearing on the Department of Energy-Funded Weatherization Program Plan for fiscal year 1978. The hearing will be held at 9 a.m. March 9, 1978, in the first floor conference room, TDCA, 210 Barton Springs Road, Austin, Texas. The agenda will include an explanation of the fiscal year 1978 plan and public comments and testimony.

Issued in Austin, Texas, on February 23, 1978.

Doc. No. 781475 Tom A. Laramey
 General Counsel
 Texas Department of Community
 Affairs

Filed: February 27, 1978, 1:55 p.m.

For further information, please call (512) 475-6601.



Texas Health Facilities Commission

Notice of Applications

Notice is given by the Texas Health Facilities Commission of applications (including a general project description) for

declaratory rulings or exemption certificates accepted February 14-20, 1978.

Should any person wish to contest the application for a declaratory ruling or an exemption certificate, that person must file a notice of intent to contest the application with the chairman of the commission within 12 days after the enclosed listing is published. The first day for calculating this 12-day period is the first calendar day following the dating of the publishing. The 12th day will expire at 5 p.m. on the 12th consecutive day after said publishing if the 12th day is a working day. If the 12th 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 notice of intent to contest 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 notice of intent to contest.

The contents and form of a notice of intent to become a party to an application for a declaratory ruling or exemption certificate must meet the minimum criteria set out in Rule 506. Failure of a party to supply the minimum necessary information in the correct form by the 12th day will result in a defective notice of intent 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, 3.03, or 6.02 of Article 4418(h), Vernon's Annotated Texas Statutes, and Rules 302, 502, and 515.

In the following notice, the applicant is listed first, the file number second, and the relief sought and project description third. EC indicates exemption certificate and DR indicates declaratory ruling.

Memorial Hospital of Garland, Garland
AH78-0215-002
EC—Replacement of Coulter Counter Model "S" SR.

St. Luke's Episcopal and Texas Children's Hospital, Houston
AH78-0216-001
EC—Acquire one megabyte of additional memory to be added to existing computer hardware.

Issued in Austin, Texas, on February 24, 1978.

Doc. No. 781452 William D. Darling
 General Counsel
 Texas Health Facilities Commission

Filed: February 24, 1978, 11:35 a.m.

For further information, please call (512) 475-6940.

Texas Department of Human Resources

Notice of Public Hearing on Health Care for the Elderly and the Handicapped

A public hearing on health care for the elderly and the handicapped will be held on Wednesday, March 8, 1978, from 1:30

p.m. until 5 p.m., in the Seville Room, Contessa Inn, 717 U.S. Highway 2595, Longview, Texas. Registration will begin at 1 p.m.

The purpose of the hearing is to obtain information from providers, recipients, and other interested parties regarding alternate care, the need for home care services, gaps in service availability, problems and issues in service delivery, means of cooperation between agencies, and funding issues.

The hearing is sponsored by the Texas Department of Human Resources in a joint effort with the Texas Legislature. Senator Chet Brooks will chair the hearing.

In conjunction with this hearing, a series of three other hearings will be conducted across the state through July, 1978. Announcements will be made for these hearings as dates and sites are confirmed.

For additional information, please contact Dr. Suzette Ashworth in Austin at (512) 459-4291.

Issued in Austin, Texas, on February 22, 1978.

Doc. No. 781415 Jerome Chapman
 Commissioner
 Texas Department of Human
 Resources

Filed: February 23, 1978, 2:38 p.m.

For further information, please call (512) 475-4601.

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