

TEXAS REGISTER

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Office of the Secretary of State

USPS Publication Number 120090

NOTES ON THE ISSUE

The Public Utility Commission of Texas was created by the 64th Texas Legislature to protect the public interest in regards to all public and privately owned utilities engaged in telecommunication, electric, water, and sewer operations. The commission issues certificates of convenience and necessity, regulates rates, and oversees the services of nonmunicipal utilities in unincorporated areas and in municipalities which may have transferred their regulatory powers over these utilities to the commission. The commission, after operating for two years under its original rules, proposes extensive amendments to its rules in the Proposed Rules section of this issue.

The Texas Department of Mental Health and Mental Retardation proposes rules to establish public responsibility committees for community mental health and mental retardation centers. The department also proposes rules outlining the rights of retarded residents of its facilities. These and the other proposals by the department are prompted by the Mentally Retarded Persons Act of 1977.

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



*Steven C. Oaks
Secretary of State*

The *Texas Register* is published twice weekly, at least 100 times a year by the Texas Register Division, Office of the Secretary of State, P.O. Box 12887, Capitol Station, Austin, Texas 78711, telephone (512) 475-7886.

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.

Subscriptions are \$25 for one year. Back issues, when available, are \$1 each.

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Requests for Opinions

Summary of Request for Opinion

RQ-1857

Request for opinion sent to the Attorney General's Opinion Committee by Gibson D. (Gib) Lewis, chairman, Committee on Intergovernmental Affairs, Austin.

Summary of Request: Do Article 13.57 and Article 14.10 of the Election Code prohibit the use of names such as "Harris County Democrats" and "Tarrant County Democrats" by political groups which endorse candidates who are running in primary elections?

Doc. No. 782230

Summary of Request for Opinion

RQ-1858

Request for opinion sent to the Attorney General's Opinion Committee by Edward L. Jarrett, county attorney, Caldwell County, Lockhart.

Summary of Request: Is a justice of the peace required to deposit money he collects into the county depository more often than once every month?

Doc. No. 782272

Opinions

Summary of Opinion H-1145

Request from Henry Wade, criminal district attorney, Dallas County, Dallas, concerning compensation of former district judges who are assigned to hear cases.

Summary of Opinion: A person who meets the tenure requirements for retirement but has not yet reached retirement age is a "former district judge" rather than a "retired district judge" for purposes of Article 200a, Vernon's Texas Civil Statutes. The respective contributions of the state and county to the salary of a former district judge serving on special assignment should be in the same proportion as in the case of a regular judge. A county is not required to assume the full burden of the salary of a former district judge serving on special assignment when state funds appropriated for that purpose have been depleted.

Doc. No. 782229

Summary of Opinion H-1146

Request from Senator Chet Brooks, chairman, Senate Committee on Human Resources, Austin, concerning the approval of subdivision plats by a county.

Summary of Opinion: Fort Bend County may provide requirements for the approval of subdivision plats only to the extent such requirements are authorized by Article 6626a. Requirements concerning sidewalks will probably be held valid as part of reasonable specifications for streets. Requirements for other areas of public use are not authorized by Article 6626a and are invalid.

Issued in Austin, Texas, on March 30, 1978.

Doc. No. 782271

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

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

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

Client (Patient) Care

Admissions, Transfers, Furloughs, and Discharges—State Schools for the Retarded 302.04.24

(Editor's note: Due to the length of the following emergency repeals, the text is not being published. Copies of the rules may be examined at the central office of the Texas Department of Mental Health and Mental Retardation. The effective date of the repeals is March 30, for a period of 120 days.)

he Mentally Retarded Persons Act of 1977 (the "act"), Article 5547-300, Vernon's Texas Civil Statutes, became effective on January 1, 1978. The provisions of the act require substantial and extensive changes in the rules of the Texas Department of Mental Health and Mental Retardation which govern admissions, transfers, furloughs, and discharges to and from state schools for the retarded. Because the necessary changes are so substantial and extensive, the department is of the opinion that it is necessary to repeal Rules 302.04.24.001-.030. The department will adopt new admission, transfer, furlough, and discharge rules for state schools for the retarded contemporaneously with the repeal of Rules 302.04.24.001-.030.

In order to implement the provisions of the act relating to admissions, transfers, furloughs, and discharges to and from state schools for the retarded, the department is of the opinion that the public health, safety, and welfare requires the repeal of Rules 302.04.24.001-.030, all of which relate to admissions, transfers, furloughs, and discharges to and from state schools for the retarded, on an emergency basis, with such repeal to become effective immediately upon filing with the Texas Register division of the Office of the Secretary of State.

Pursuant to the authority of Section 2.11(b) of Article 5547-202, Texas Civil Statutes, the Texas Department of Mental Health and Mental Retardation has repealed Rules 302.04.24.001-.030, Admissions, Transfers, Furloughs, and Discharges—State Schools for the Retarded:

.001. *Purpose.*

.002. *Application.*

.003. *Definitions.*

.004. *Admission to a Residential Facility for the Mentally Retarded: Requirements for Admission; Application Process.*

.005. *Admission to a Residential Facility for the Mentally Retarded: the Nature and Procedure of the Central Waiting List.*

.006. *Admission to a Residential Facility for the Mentally Retarded: General Provisions.*

.007. *Admission to a Residential Facility for the Mentally Retarded: Requirements for Regular Placement.*

.008. *Admission to a Residential Facility for the Mentally Retarded: Requirements for Temporary Placement.*

.009. *Admission to a Residential Facility for the Mentally Retarded: Requirements for Emergency Placement.*

.010. *Client Transfers: General Provisions.*

.011. *Client Transfers: Regular Transfer of a Client Between Texas Residential Facilities for the Mentally Retarded.*

.012. *Client Transfers: Regular Transfer of a Court-Committed Client from a Texas Residential Facility for the Mentally Retarded to a Texas Residential Facility for the Mentally Ill.*

.013. *Client Transfers: Regular Transfer of a Voluntarily Admitted Client from a Texas Residential Facility for the Mentally Retarded to a Texas Residential Facility for the Mentally Ill.*

.014. *Client Transfers: Regular Transfer of a Client from a Texas Residential Facility for the Mentally Ill to a Texas Residential Facility for the Mentally Retarded.*

.015. *Client Transfers: Interstate Transfer of a Client Between Texas and Another State.*

.016. *Client Furlough: Reasons for Furlough.*

.017. *Client Furlough: Requirements for a Short-Term Visit Away from a Residential Facility for the Mentally Retarded.*

.018. *Client Furlough: Requirements of a Client for Specific Programs, Assistance, or Both, or for a Trial Alternate Placement.*

.019. *Client Furlough: General Provisions.*

.020. *Client Furlough: Temporary Furlough of a Voluntarily or Involuntarily Admitted Client from a Texas Residential Facility for the Mentally Retarded to a Texas Residential Facility for the Mentally Ill.*

.021. *Client Furlough: Temporary Furlough of a Voluntarily or Involuntarily Admitted Client from a Texas Residential Facility for the Mentally Ill to a Texas Residential Facility for the Mentally Retarded.*

.022. *Client Discharges: Reasons for Discharges.*

.023. *Client Discharges: Requirements for the Discharge of a Client from a Residential Facility for the Mentally Retarded into Alternate Placement.*

.024. *Client Discharges: Requirements for the Discharge of a Client from a Residential Facility for the Mentally Retarded Because the Client No Longer Needs Residential Placement.*

.025. *Client Discharges: Requirements for the Discharge of a Client from a Residential Facility for the Mentally Retarded*

Because the Client, Parent, or Guardian No Longer Desires Residential Placement.

.026. *Client Discharges: Contact and Follow-Up Summary of Client Status and Progress to be Made Six Months After Discharge and Documented Within One Year; Re-Admission After Alternate Residential Placement in the Community.*

.027. *Exhibits.*

.028. *References.*

.029. *Distribution.*

.030. *Effective Date.*

Doc. No. 782253

Admissions, Transfers, Furloughs, and Discharges—State Schools for the Retarded 302.04.37

(Editor's note: Due to the length of the following emergency rules, the text is being run serially. Rules 302.04.37.001-.014 appear in this issue. The remainder of the rules, Rules .015-.034, will appear in the April 11 issue. The effective date for all rules is March 30, for a period of 120 days.)

The Mentally Retarded Persons Act of 1977 (the "Act"), Article 5574-300, Vernon's Texas Civil Statutes, became effective on January 1, 1978. The provisions of the act require substantial and extensive changes in the rules of the Texas Department of Mental Health and Mental Retardation which govern admissions, transfers, furloughs, and discharges to and from state schools for the retarded. Because the necessary changes are so substantial and extensive, the department is of the opinion that it is necessary to adopt a whole new subchapter of rules governing admissions, transfers, furloughs, and discharges to and from state schools for the retarded. The department's current rules governing these matters will be repealed contemporaneously with the adoption of Rules 302.04.37.001-.034.

In order to implement the provisions of the act relating to admissions, transfers, furloughs, and discharges to and from state schools for the retarded, the department is of the opinion that the public health, safety, and welfare requires the adoption of Rules 302.04.37.001-.034, Admissions, Transfers, Furloughs, and Discharges—State Schools for the Retarded, on an emergency basis, with such adoption to become effective immediately upon filing with the Texas Register division of the Office of the Secretary of State.

Pursuant to the authority of Section 2.11(b) of Article 5547-202, Texas Civil Statutes, and Section 60 of Article 5547-300, the Texas Department of Mental Health and Mental Retardation has adopted Rules 302.04.37.001-.034, Admissions, Transfers, Furloughs, and Discharges—State Schools for the Retarded, to read as follows:

.001. *Purpose.* The purpose of these rules is to establish criteria, procedures, and processes for:

(a) placement of a person in a residential facility for the mentally retarded;

(b) transfer of a resident of a residential facility for the mentally retarded in Texas to:

(1) a residential facility for the mentally retarded in Texas,

(2) a residential facility for the mentally ill in Texas, or

(3) a residential facility for the mentally retarded in another state;

(c) furlough of a resident from a residential facility for the mentally retarded;

(d) discharge of a resident from a residential facility for the mentally retarded;

(e) acting upon requests for administrative hearings to contest findings and recommendations of comprehensive diagnosis and evaluation studies or to contest proposed discharges or transfers.

.002. *Application.* These rules apply to all residential facilities for the mentally retarded of the Texas Department of Mental Health and Mental Retardation.

.003. *Definitions.* In these rules:

(a) "Adaptive behavior" means the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of the person's age and cultural group. A table of descriptions and illustrations of expected behavior has been developed by the American Association on Mental Deficiency (AAMD) to guide in determining adaptive behavior level. (See *Manual on Terminology and Classification in Mental Retardation*, 1977, AAMD.)

(b) "Alternate living facility" means any community facility that provides 24-hour supervision and habilitation services, including domiciliary services, in which the client is engaged in programs designed to improve his or her capabilities to optimally function.

(c) "Alternate placement" means any client furloughed into a community setting in anticipation of discharge.

(d) "Care" means the life support and maintenance services or other aid provided to mentally retarded persons and includes but is not limited to dental, medical, nursing, and similar services.

(e) "Centralized waiting list" means the state-wide registry of persons eligible for and seeking long-term admission to a residential facility for the mentally retarded.

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

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

(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 Texas Civil Statutes, which provides mental retardation services. It does not include outreach or outpatient programs operated by state facilities.

(i) "Comprehensive diagnosis and evaluation" means a study conducted in accordance with Rules of the Commission of MHMR, Rules Governing Comprehensive Diagnostic and Evaluation Centers, Minimum Components of a Comprehensive Diagnosis and Evaluation, 302.04.35.007.

(j) "Comprehensive diagnosis and evaluation team" means a team of personnel composed of not less than a core team as defined in Rules of the Commissioner of MHMR, Rules Governing Comprehensive Diagnostic and Evaluation

Centers, Certification of Professionally Qualified Members of a Diagnosis and Evaluation Team, 302.04.35.006, and such other personnel as may be designated by the facility to assist the team.

(k) "Coordinator of state school admissions" means the person on the staff of the mental retardation services division in the central office of the department who is responsible for monitoring and maintaining the centralized waiting list.

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

(m) "Department facility" means a state mental hospital, a state school for the mentally retarded, a state human development center, or the Rio Grande State Center.

(n) "Rules of the Commissioner of MHMR" means the rules of the Texas Department of Mental Health and Mental Retardation, which are available for public inspection at each department facility and at the central office of the department, 909 West 45th Street, Austin, Texas.

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

(p) "Destination facility" means a facility to which transfer, furlough, or discharge of a client is contemplated or proposed.

(q) "Developmental period" means the period of a person's life which begins at conception and extends to the age of 18 years. The requirements that mental retardation originate during the developmental period serves to distinguish the condition of mental retardation from other disorders of human behavior.

(r) "Discharge" means the resident physically leaves the residential facility for the mentally retarded and is no longer considered a resident of the school for program purposes. Upon the discharge of a resident, all responsibility for the care, treatment, and training of the resident by the residential care facility is dissolved.

(s) "Follow-along" means the maintenance of contact with a former department client and collection of information regarding that client.

(t) "Furlough" means the client is physically absent from the facility longer than 72 hours for program purposes.

(u) "Guardian" means the person who, under court order, is the legal guardian of the person of another individual or is a limited guardian under Sections 130A through 130O, Texas Probate Code, Vernon's Annotated Texas Statutes.

(v) "Habilitation" means the process by which an individual is assisted to acquire and maintain those life skills which enable the person to cope more effectively with the demands of his person and environment and to raise the level of his physical, mental, and social efficiency. Habilitation includes but is not limited to programs of formal, structured education and training.

(w) "Individual program plan" (IPP) means a written plan of intervention and action that is developed, and modified as appropriate, by the interdisciplinary team. Goals and objectives are specified separately and within a time frame and in behavioral terms that provide measurable indices of progress and enable the effectiveness of intervention to be evaluated. Modes of intervention for stated objectives are specified, and responsibility for service delivery is identified. The individual program plan (IPP) is sometimes referred to as an "individual habilitation plan."

(x) "Interdisciplinary team" means a group of persons professionally qualified, certified, or both, in various professions with special training and experience in the diagnosis, management, needs, and treatment of mentally retarded persons and in the delivery of mental retardation services that functions as a team. Each team member shall consider all information and recommendations so that a set of unified and integrated team conclusions and recommendations is devised.

(y) "Least restrictive alternative" means an available program, facility, treatment, or environment appropriate to the client's needs and which is the least confining or structured for the client's condition.

(z) "Legally adequate consent" means consent given by a person 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;

(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. Furthermore, in cases of unusual or hazardous treatment procedures, experimental research, organ transplantation, and nontherapeutic surgery, the person giving the consent has been informed of and comprehends the method to be used in the proposed procedure; and

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

(aa) "Licensed, ICF, or ICF-MR facility" means an alternate living facility that has been licensed and certified for one or more of the following levels of intermediate or skilled care:

- (1) ICF-MR I,
- (2) ICF-II,
- (3) ICF-III,
- (4) Skilled,
- (5) ICF-MR, or
- (6) ICF-MR VI;

provided, however, that the term shall include an ICF-MR I facility that is certified as such even though it is not required to be licensed by the state.

(bb) "Licensed noncertified facility" means an alternative living facility:

(1) to which the Texas State Department of Health has issued a custodial license, nursing home license, or both; provided, however, that the term shall include an ICF-MR I facility that meets the requirements of subparagraph (B) of this paragraph (29) even though an ICF-MR I facility is not required to be licensed by the State of Texas; and

(2) which is actively pursuing certification as an intermediate care facility or as a skilled nursing facility.

(cc) "Patient care services unit" means a unit of the Texas State Department of Health that is responsible for the independent medical review of care and services provided by participating licensed, licensed noncertified, ICF, or ICF-MR facilities.

(dd) "Mentally retarded person" means a person determined by a comprehensive diagnostic and evaluation study to have the condition defined as mental retardation.

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

(ff) "Mental retardation services" means programs and assistance for mentally retarded persons which may include but shall not be limited to diagnosis and evaluation, education, recreation, special training, supervision, care, medical treatment, habilitation, rehabilitation, residential care, and counseling for mentally retarded persons, but shall not include those services which have been explicitly delegated by law to other state agencies.

(gg) "Minor" means a person under 18 years of age who is not and has not been married or who has not had his disabilities of minority removed for general purposes.

(hh) "Moderately retarded" means that a person possesses a measured IQ of more than three but not more than four standard deviations below the mean of a standardized psychometric instrument existing concurrently with adaptive behavior level of II, III, or IV originating in the developmental period as described in the *Manual on Terminology and Classification in Mental Retardation*, 1977, prepared by AAMD.

(ii) "Outreach/outpatient program" means a program provided by a departmental facility to clients currently residing outside of the facility.

(jj) "Provider" means the individual, community center, or entity other than the department and facilities under the control of the department that maintains control of a community intermediate care facility.

(kk) "Parent" means a client's biological or adoptive mother or father whose parental rights have not been terminated or modified by court order. This term also applies to a person or agency named by a court to be the client's managing conservator.

(ll) "Resident" means a person living in and receiving services from a residential care facility.

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

(nn) "Resident of the state" means:

- (1) a person:
 - (A) who physically resides in Texas, and
 - (B) who intends to remain in Texas indefinitely or who has no present intention to leave, and
 - (C) who is able to show that residence in any other state other than Texas has been abandoned; or
- (2) a person who has established his residency in Texas, but is temporarily absent from the state;
- (3) a minor whose parent or legal guardian is a resident of Texas; or
- (4) an adult whose legal guardian is a resident of Texas;
- (5) a military dependent who is a minor and whose parents' residence of record is Texas.

(oo) "Subaverage general intellectual functioning" refers to measured intelligence on an appropriate standardized psychometric instrument of more than two standard deviations below the age-group mean for the standardized psychometric instruments used.

(pp) "Superintendent" means the person who is the administrative head of a department facility.

(qq) "Training" means the process by which a mentally retarded person is habilitated and may include teaching life skills and work skills.

(rr) "Transfer" means the transfer of a client to another residential facility for the mentally retarded or to a residential mental health facility.

(ss) "Treatment" means the process by which a service provider strives to ameliorate a mentally retarded person's condition.

(tt) "Visit" means a short-term furlough away from the residential facility for less than 72 hours.

(uu) "Qualified mental retardation professional" (QMRP) means a person meeting requirements of ICFMR standards, 45 Code of Federal Regulations, Section 249.12(6)(3).

(vv) "Voluntary withdrawal" means the resident, parent of minor, or a guardian has indicated either in writing or by unauthorized absence from the facility of the desire to no longer participate in mental retardation services.

(ww) "Regular placement" means a long-term, time-specific, voluntary placement in a residential care facility. Advisability of the placement must be reviewed at least annually and placement is renewable only as needs of the client dictate. Criteria for regular placement are set forth in Rule .008 of these rules.

(xx) "Emergency placement" means voluntary placement made for a maximum period of six months and is renewable in succession only once. Criteria for emergency placement are set forth in Rule .009 of these rules.

(yy) "Diagnosis and evaluation placement" means placement made for a maximum period of 30 days and is not renewable. Criteria for diagnosis and evaluation placement are contained in Rule .010 of these rules.

(zz) "Respite care placement" means voluntary placement for a maximum of 30 days and is renewable in succession only once. Criteria for respite care placement are contained in Rule .011 of these rules.

(aaa) "Severely retarded" means that a person possesses a measured IQ of more than four but not more than five standard deviations below the mean of a standardized psychometric instrument existing concurrently with adaptive behavior level of II, III, or IV originating in the developmental period as described in the *Manual on Terminology and Classification in Mental Retardation*, 1977, prepared by AAMD.

(bbb) "Profoundly retarded" means that a person possesses a measured IQ of more than five standard deviations below the mean of standardized psychometric instrument existing concurrently with adaptive behavior level of II, III, or IV originating in the developmental period as described in the *Manual on Terminology and Classification in Mental Retardation*, 1977, prepared by AAMD.

.004. *Admission or Commitment to a Residential Care Facility for Mentally Retarded: Application Process.* Except as provided in Rules .007, .010, and .011 of these rules, a person may be admitted or committed to a residential care facility for the mentally retarded only if the following requirements are met:

(a) Application.

(1) An application for admission (which is attached to these rules as Exhibit A-.04.37.004) must be completed and

submitted to the residential care facility to which application for admission is made. The application procedure originates in the community with the consent of a parent of a minor, guardian, a proposed resident if a competent adult or pursuant to a court order of commitment, who may secure the application form from:

(A) a community mental health and mental retardation center,

(B) a state school for the mentally retarded,

(C) a state center for human development.

(2) It shall be the responsibility of the community MHMR center or the state center for human development serving the applicant's county of residence to provide assistance in the completion of the application form and to act upon corresponding applications for comprehensive diagnoses and evaluations. In counties of residence not served by a community MHMR center or a state center for human development, it shall be the responsibility of the state school for the mentally retarded serving that county to provide these services.

(3) A completed application must include:

(A) completed application form;

(B) financial statement;

(C) recent photograph of the applicant;

(D) applicant's immunization record;

(E) duplicate or copy of applicant's social security

card;

(F) copy of the applicant's birth certificate;

(G) evidence of guardianship or right to custody of the applicant if the applicant is a minor or if the authority of the parents is unclear;

(H) evidence of the existence or nonexistence of guardianship if the applicant is an adult;

(I) a current comprehensive diagnosis and evaluation report, and

(J) any other information that is pertinent to certification of mental retardation and determination of eligibility for services;

(K) a written statement by parent of a minor, proposed resident if a competent adult, guardian, or a person acting pursuant to a court order of commitment making application specifying the reasons placement is being sought;

(L) copies of court order commitment if required.

(b) Endorsement.

(1) If the county in which the prospective resident resides is served by a community MHMR center or a state center for human development, the application for admission must be endorsed by the center staff prior to submission of the application to a state school for the mentally retarded for eligibility determination. In a county not served by a center, it shall be the responsibility of the state school outreach program serving that county to furnish this endorsement.

(2) As a part of endorsing the application, the responsible staff shall provide documentation that:

(A) the comprehensive diagnosis and evaluation, or update, concludes that the applicant is a mentally retarded person;

(B) the comprehensive diagnosis and evaluation team was properly constituted with professional staff;

(C) the applicant, and as appropriate, the parent of a minor or guardian, has been apprised of the diagnosis and evaluation team's findings and recommendations and has been informed of the right to an independent diagnosis and

evaluation and of the right to an administrative hearing for the purpose of contesting the findings and recommendations of the diagnosis and evaluation team;

(D) all appropriate community programs and resources have been explored and that admission to a residential care facility for the mentally retarded represents the resource of choice. A list of specific resources explored and the indications as to why they are unavailable or inappropriate must be included;

(E) the applicant cannot be adequately and appropriately served in a less restrictive environment, or placement in such a less restrictive environment is not available;

(F) the application is to the state school serving the county of residence of the applicant, and if not, there are compelling reasons for seeking placement elsewhere;

(G) the applicant, and as appropriate, the parent of a minor, guardian, or legal representative, has been counselled on the relative advantages, disadvantages, and temporary nature of the admission; and

(H) the primary beneficiary of the admission is the proposed resident, family, community, society, or any combination of these.

(c) Eligibility certification.

(1) Certification of eligibility for state school placement and possible placement on the centralized waiting list shall be made by the state school in whose catchment area the prospective resident resides. Prior to certification of eligibility, the state school shall certify that:

(A) the application and supporting documents are complete and current. If not complete as required by these rules, the state school shall notify the center and may return the entire package to the center or other endorsing agency promptly with an explanation. If not current as required in Rule .006 of these rules, the entire admission process shall be reviewed to determine the present need for admission;

(B) the applicant is a mentally retarded person as determined by a comprehensive diagnosis and evaluation;

(C) all available and appropriate community programs and resources have been explored;

(D) admission to the state school is the optimal available plan, or where admission is not the optimal plan but must, nevertheless, be recommended, its inappropriateness is clearly acknowledged and plans are to be initiated for the continued exploration of alternatives;

(E) the applicant is eligible for state school placement; and

(F) whether or not the applicant is eligible for regular placement, and therefore, eligible for placement on the centralized waiting list.

(2) In the event of disagreement over the applicant's primary diagnosis, the application shall be referred to the Committee on Alternate Placements in the appropriate deputy commissioner's office in the central office for an eligibility determination.

(3) Applicants that are certified eligible for mental retardation services but not eligible for regular placement and placement on the centralized waiting list are to be processed by the state school for which admission is sought. Immediately following such a determination, the state school shall:

(A) notify the community MHMR center or state center for human development or other assisting agency of the disposition of the application;

(B) notify the applicant, parent, guardian, or court of the certification of eligibility for mental retardation services but of the ineligibility for placement on the centralized waiting list;

(C) notify the applicant, parent of a minor, guardian, or court of the current space and program availability and whether a tentative admission date can be projected.

(4) Immediately following certification of eligibility for regular state school placement, the state school shall:

(A) Notify the applicant, parent of a minor, guardian, or court of the certification of eligibility for regular placement and eligibility for placement on the centralized waiting list; explain the nature of the centralized waiting list, and advise them of the current space and program availability and whether or not a date for regular admission can be projected.

(B) Notify the community MHMR center or state center for human development or other assisting agency of the disposition of the application.

(C) Complete Form 02 (which is attached to these rules as Exhibit B-.04.37.004) and forward it to the coordinator of state school admissions in the central office. If active status is requested, Form 02 is to be accompanied by the endorsed and certified application and supporting documents.

.005. Admission or Commitment to a Residential Care Facility for the Mentally Retarded: The Nature and Procedures of the Central Waiting List.

(a) Only those applicants determined by a comprehensive diagnosis and evaluation team to be moderately, severely, or profoundly retarded with concurrent deficit in Adaptive Behavior Level II, III, or IV originating in the developmental period shall be eligible for placement on the centralized waiting list. Applicants shall be placed on the waiting list in accordance with Rule .004 of these rules.

(b) All applicants on the centralized waiting list are eligible for consideration for admission to any residential care facility for the mentally retarded which serves individuals of the specific age and functional level of the applicant. However, priority consideration for admission to a residential care facility for the mentally retarded shall be governed by the following four basic factors:

(1) Previous placement in a residential care facility for the mentally retarded.

(2) Priority classification assigned to each applicant by the state school of Form 02 (Exhibit B-.04.37.004).

(3) Date on which the applicant's name was placed on the centralized waiting list.

(4) Compatibility of the applicant to the vacancy at the residential care facility for the mentally retarded. Factors which affect the applicant's compatibility to the vacancy include but are not necessarily limited to:

(A) the existence or absence of programs and services at the facility which would meet the individual needs of the applicant; and

(B) the proximity of the applicant's place of residence to the facility with the vacancy.

(c) When a residential care facility reports a vacancy, the coordinator of state school admissions shall forward to that facility the applications of individuals whose names are at the top of the waiting list designated for the specific dormitory of the facility where the vacancy exists.

(d) Upon receipt of an application from the coordinator of state school admissions, the residential care facility shall

determine if the application is for a voluntary admission or is based upon a court-commitment order.

(1) If the application is for voluntary admission, the facility shall determine whether the date of the comprehensive diagnosis and evaluation complies with Rule .006(b) of these rules, *i.e.*, whether it has been performed or updated within three months prior to admission. If it does not, the facility shall immediately forward the application to the facility which certified the applicant for admission prior to this consideration for placement who will initiate action to have the comprehensive diagnosis and evaluation report updated. If the update determines that admission is no longer appropriate for the applicant, the coordinator of state school admissions shall be notified of the update findings and whether the application is to be temporarily deferred or permanently deferred. If the update indicates continued eligibility, the application shall be returned to the state school with the vacancy for continued consideration for admission.

(2) If the application is based upon a court-commitment order, consideration for admission shall proceed without regard to the currency of the comprehensive diagnosis and evaluation report except that provisions of Rule .006(c) must be met.

(e) All applications from the coordinator of state school admissions for admission on a court-commitment order and on a voluntary basis that have current diagnosis and evaluation reports or updates shall be evaluated by the facility for admission. The facility shall determine if the existing vacancy is appropriate for the applicant and if the program and services appropriate to the needs of the applicant are available at the facility.

(f) Applicants not selected for admission for an existing vacancy shall have their applications returned to the coordinator of state school admissions, who shall retain the applicant's active status without change in priority.

(g) It shall be the residential facility's responsibility to schedule admissions for applicants selected for existing vacancies.

(h) At least annually, staff of each residential care facility shall forward the department's centralized waiting list current description form to the appropriate community MHMR center, state center for human development, or families of each active applicant on the centralized waiting list for the purpose of determining:

(1) whether the applicant is still in need of placement in a residential care facility for the mentally retarded;

(2) whether there have been significant changes in the characteristics of the applicant; and

(3) whether home and community conditions have been altered to the extent that the priority rating of the applicant on the centralized waiting list should be changed. Each applicant, parent of a minor, guardian, court, or other assisting agency is to be contacted. Failures to reply to the questionnaire within 90 days will result in the coordinator of state school admissions inactivating the application.

(i) Persons in a department facility for the mentally ill seeking regular placement in a residential care facility for the mentally retarded shall be placed on centralized waiting list in accordance with Rule .005 of these rules. However, these rules for admission to a residential care facility for the mentally retarded may be waived or otherwise modified in these circumstances by the deputy commissioner for mental

retardation services acting within his discretion and sound judgment.

.006. Admission or Commitment to a Residential Care Facility for the Mentally Retarded: General Provisions.

(a) A person must be a *bona fide* "resident of the state" in order for an application for admission to a residential facility for the mentally retarded to be considered.

(b) No person shall be voluntarily admitted to a residential care facility for the mentally retarded unless a comprehensive diagnosis and evaluation has been performed or updated within three months prior to the date of initial admission for residential services, except as provided in Rule .010 and .011 of these rules.

(c) No persons shall be admitted to a residential care facility for the mentally retarded following court-commitment proceedings unless a comprehensive diagnosis and evaluation was performed or updated within six months prior to the date of the court hearing on the application for commitment, except as provided in Rule .007, Section (c), of these rules.

(d) No persons shall be admitted voluntarily or following court-commitment proceedings to a residential facility for the mentally retarded if the admission of the persons would cause the facility to exceed its rated bed capacity of the dormitory of placement, except as provided in Rule .007, Section (b), of these rules.

(e) Regular admissions of persons under one year of age, and persons under six years of age who are not bedfast, shall require the special review and approval of the staff of the deputy commissioner for mental retardation services.

(f) All admissions to a residential care facility for the mentally retarded shall be on a time-specific basis.

(g) Persons with a primary diagnosis of psychosis or other severe emotional disorder shall not be admitted to a residential care facility for the mentally retarded.

(h) Upon admission to a residential care facility for the mentally retarded, each client, the parent of a minor, or guardian shall be given written notice of the rights guaranteed by the Mentally Retarded Persons Act of 1977 and responsibilities and of the rules and regulations governing residents' conduct and responsibilities in simple and plain language. In addition, each resident shall be orally informed of these rights, rules, responsibilities, and regulations prior to or at the time of the admission, except that if the resident is manifestly unable to comprehend these due to a specific impairment as documented in the unit record by a physician or a qualified mental retardation professional, the written notice of these rights and responsibilities shall be sufficient. In the case of a mentally retarded person, the acknowledgment for this notification shall be witnessed by a third party.

(i) Prior to any admission, the prospective resident, parents, family, next of kin, guardians, and any assisting agency of the prospective resident shall be encouraged to visit the facility and the living unit in which the applicant is to be placed.

(j) No person shall be admitted to a residential care facility for the mentally retarded for the sole purpose of performing a comprehensive diagnosis and evaluation if it can be performed in a less restrictive setting. Applications for a comprehensive diagnosis and evaluation that are accompanied by requests for placement within the facility for that purpose shall adhere to the following general provisions:

(1) All such admissions shall be made pursuant to Rule .010 of these rules.

(2) Requests for placement that are associated with court orders for comprehensive diagnosis and evaluation services shall be processed by the residential care facility to which application has been made in accordance with Rule .010 of these rules and within the limitations posed in the provisions of that rule.

(3) A request for such placement that originates in the community with the parent of a minor, guardian, or applicant shall be processed by the residential care facility to which application has been made in accordance with Rule .010 of these rules and within the limitations posed in these provisions.

(4) Facilities that serve the applicant's county of residence shall be given preference unless there are compelling reasons to seek placement elsewhere.

(5) Persons granted placements for comprehensive diagnosis and evaluation shall be admitted to the residential care facility's programs, services, activities, and training to the same extent that other residents are offered these, unless contraindicated by the special needs of the person or by special precautions if the person poses a threat to himself or to others.

(k) At the time that a person who was voluntarily admitted to a residential care facility for the mentally retarded as a minor approaches the age of majority and is determined to be in continued need of residential placement, the superintendent shall take action to ensure that at majority one of the following is accomplished:

(1) The superintendent shall file or cause to be filed an application for court commitment with the county clerk of the county in which the residential care facility is located. The application is to be executed under oath and shall set forth the following:

(A) the name, birthdate, sex, and residence address of the person;

(B) the name and residence address of the person's parent or guardian;

(C) a short and plain statement of the facts to show that continued residential care services are necessary and appropriate; and

(D) a short and plain statement explaining the inappropriateness of admission to less-restrictive services; or

(2) The superintendent shall obtain legally adequate consent for voluntary admission to the facility from the resident or from the guardian. If an application for court commitment is filed, it shall be accompanied by a current comprehensive diagnosis and evaluation report.

(l) Neither voluntary admission nor court commitment to a residential care facility for the mentally retarded shall be considered an adjudication of mental incompetency.

(m) The department and residential care facilities shall operate in compliance with the United States Civil Rights Act of 1964 as amended.

.007. Admission or Commitment to a Residential Care Facility for the Mentally Retarded: Special Provisions for Court Orders.

(a) Admission to a residential care facility for the mentally retarded of a court-committed person shall be made from the centralized waiting list without regard to the currency of the comprehensive diagnosis and evaluation data, except that all residential care facilities for the mentally

retarded shall perform a comprehensive diagnosis and evaluation within 30 days from the date of such court-committed admissions. If it is found that the person is no longer a mentally retarded person and is ineligible for placement, the person is to be discharged in accordance with Rule .027 of these rules.

(b) On receipt of a juvenile court order committing to a residential care facility a child found to have engaged in delinquent conduct or conduct indicating a need for supervision and who is also determined by a comprehensive diagnosis and evaluation team to exhibit a significantly subaverage general intellectual functioning of 2.5 or more standard deviations below the age group mean for the test used existing concurrently with deficits in adaptive behavior of Levels I-IV, the department shall thereupon admit the person to Rusk State Hospital's special unit for mentally retarded persons in accordance with Section 55.03 of the Texas Family Code, Vernon's Texas Civil Statutes.

(c) Upon receipt of a county court order of protective custody of a person believed to be mentally retarded and likely to cause injury to himself or others if not immediately restrained, the residential care facilities for the mentally retarded shall:

(1) Admit such proposed resident in accordance with Rule .010 of these rules if the admission does not cause the facility to exceed the rated bed capacity of the dormitory of placement; or

(2) Refer the court to the staff of the deputy commissioner for mental retardation services for designation of an alternate residential care facility if the admission would cause the facility to exceed the rated bed capacity of the dormitory of placement.

(3) Discharge such persons within 20 days from the date of admission if the court has not issued further orders; provided, however, that the superintendent shall make a determination that the person is not dangerous to himself or others. If it is determined that the person is dangerous to himself or others, the superintendent shall so advise the court that issued the order for protective custody prior to discharge.

.008. Admission or Commitment to a Residential Care Facility for the Mentally Retarded: Requirements for Regular Placement.

(a) Regular placement of a person in a residential care facility for the mentally retarded requires that:

(1) the person is on the centralized waiting list; and

(2) a comprehensive diagnosis and evaluation has determined that the person is moderately or more severely retarded; and

(3) the placement would not cause the residential care facility to exceed its rated bed capacity for the dormitory of placement; and

(4) evidence is presented that because of mental retardation the person:

(A) represents a substantial risk of physical impairment or injury to himself or others, or

(B) is unable to provide for his basic physical needs; or

(5) the person cannot be adequately and appropriately served in a less restrictive environment, or placement in a program in such an environment is not available; and

(6) there is substantial probability that the person will achieve the goals of regular placement within the time period allowed; and

(7) the person, if capable, or, as appropriate, the parent of a minor applicant or the guardian of the person, and the facility develop a written statement as to the:

(A) specific skills or assistance needed;

(B) proposed goals of the placement;

(C) time period necessary to achieve the goals of the placement; and

(D) participation of the proposed resident in the development of the habilitation plan; the statement should be signed by the facility representative, resident, parent of a minor, or guardian; and

(8) the superintendent determines that the residential care facility for the mentally retarded is able to provide habilitative services, care, treatment, and training appropriate to the needs of the proposed resident.

(b) Regular placements are for time-specific periods only, are to be reviewed at least annually, and are renewable only as the needs of the resident indicate. Such renewals require that the habilitation plan be updated and that a new agreement between the resident, or as appropriate, the parent of a minor, or guardian and the facility be executed.

.009. Admission to a Residential Care Facility for the Mentally Retarded: Requirements for Emergency Placement.

(a) Emergency placement of a person in a residential care facility for the mentally retarded requires that:

(1) there is persuasive evidence that proposed resident is mentally retarded; and

(2) the placement would not cause the facility to exceed its rated bed capacity on the dormitory of placement; and

(3) the person is in need of specific short-term habilitation services, care, treatment, or training; and

(4) the appropriate services, care, treatment, and training cannot be provided in a less restrictive environment, or are not available in a less restrictive environment, or that placement in a program in such an environment is not available; and

(5) the proposed resident, if capable, or as appropriate, the parent of a minor or the guardian of the person, and the facility develop a written statement as to the:

(A) specific skills or assistance needed;

(B) proposed goals of the emergency placement;

(C) time period necessary to achieve the goals of the placement; and

(D) participation of the proposed resident in the development of the habilitation plan; the statement should be signed by the facility representative, resident, parent of a minor, or guardian; and

(6) a comprehensive diagnosis and evaluation is performed within 30 days following admission; and

(7) there is substantial probability that the person will achieve the goals and objectives of emergency placement within the time period allowed; and

(8) the superintendent determines that the residential care facility for the mentally retarded is able to provide habilitative services, care, treatment, and training that are appropriate to the proposed resident's needs.

(b) Emergency placements may be made for a maximum period of six months and are renewable in succession only once. Renewal of an emergency placement requires

again meeting the criteria and procedures in Section (a) of this rule.

.010. Admission or Commitment to a Residential Care Facility for the Mentally Retarded: Requirements for Diagnosis and Evaluation Placement.

(a) Placement of a person in a residential care facility for the mentally retarded for diagnosis and evaluation requires that:

- (1) The person is thought to be mentally retarded.
- (2) The necessary residential services are not available in a less restrictive environment provided by the department or a community MHMR center within a reasonable distance from the person's residence.
- (3) The proposed resident, if capable, or as appropriate, the parent of a minor or the guardian of the person, and the facility develop a diagnosis and evaluation admission application (which is attached to these rules as Exhibit C—.04.37.010) as to the:
 - (A) specific skills or assistance needed;
 - (B) proposed goals of the diagnosis and evaluation placement;
 - (C) time period that is necessary to achieve the goals of the placement; and
 - (D) action to be taken upon completion of diagnosis and evaluation study;
 - (E) the statement should be signed by the facility representative, resident, parent of a minor, or guardian. In the case of a court commitment, the court order shall serve as the application for the diagnosis and evaluation.
- (4) The superintendent makes the determination that the residential care facility is able to provide services requested.
- (b) Diagnosis and evaluation placements are for a maximum period of 30 days and are not renewable.

.011. Admission to a Residential Care Facility for the Mentally Retarded: Requirements for Respite Care Placement.

(a) Respite care placement of a person in a residential care facility for the mentally retarded requires that:

- (1) there is persuasive evidence that the proposed resident is a mentally retarded person;
- (2) the placement would not cause the residential care facility to exceed its rated bed capacity on the dormitory of placement;
- (3) the facility provides the services that meet the needs of the proposed resident;
- (4) the necessary respite care services are not available in a less restrictive environment provided by the department or a community MHMR center within a reasonable distance from the person's residence;
- (5) the proposed resident, if capable, or as appropriate, the parent or guardian of the person, and the facility develop a respite care agreement (attached to these rules as Exhibit D—.04.37.011) as to the:
 - (A) specific relief or assistance that is sought; and
 - (B) time period that is necessary to achieve the goals of the respite care placement; and
- (6) the superintendent makes the determination that the residential care facility is able to provide appropriate care, treatment, training, and programs for the needs of the proposed resident.
- (b) Respite care placement will be for a maximum period of 30 days and is renewable in succession only once. Renewal requires that:

(1) the superintendent determines that the relief or assistance may be provided in the extension period, and

(2) the parties to the original respite care agreement consent to the extension.

(c) If the extension is not permitted, the resident is to be immediately discharged at the end of the initial admission period, and an application for other services may be submitted.

(d) There is no limit to the number of respite care placements a client may have, except that each placement must be made in accordance with provisions of .011(a).

.012. Resident Transfers: Reasons for Transfer; General Provisions.

(a) Reasons for the transfer of a resident from a residential care facility for the mentally retarded include:

(1) availability of programs or assistance at another facility of the department that are more appropriate for the individual needs of the resident;

(2) requests for transfer made by an adult resident, a parent of a minor resident, or the guardian of a resident; or the appropriate interdisciplinary team.

(b) A transfer, which is initiated by the facility, of a resident from a residential care facility for the mentally retarded to another facility operated by the department requires that:

(1) the appropriate interdisciplinary team determine that the transfer is in the best interest of the resident; and

(2) notice of the proposed transfer be given at least 30 days in advance to the resident and to the parent or guardian; and

(3) the resident and the parent or guardian shall be informed of the right to an administrative hearing to contest the transfer. Such right may be exercised by the resident, parent of a minor or guardian; and

(4) prior approval and knowledge of the resident, parents or guardian be obtained; provided that the transfer of a court-committed client may be permitted on the decision of the hearing officer of a properly conducted administrative hearing if:

(A) 30 days have elapsed from the date of the hearing officer's opinion and the decision has not been appealed to a court; or

(B) the hearing officer's decision has been appealed and upheld by the court.

(c) Denial of a request for transfer by a resident of a residential care facility for the mentally retarded, parent of a minor resident, or guardian of the resident shall be made only after informing the resident, parent of a minor, or guardian of:

(1) the reason for the denial, and

(2) the right to an administrative hearing to contest the denial.

(d) If a request for an administrative hearing is received by a residential care facility for the mentally retarded for the purpose of contesting a proposed transfer or a denial of a request for transfer, the procedures outlined in Rule .031 of these rules shall be followed.

.013. Resident Transfers: Transfer of a Resident Between Residential Care Facilities for the Mentally Retarded.

(a) Transfer of a resident between residential care facilities for the mentally retarded requires that:

(1) a request for transfer (which is attached to these rules as Exhibit E—.04.37.013) be completed by:

(A) the adult resident, parent of a minor resident, guardian of the resident; or

(B) the superintendent of the residential facility where the resident is currently placed. In this case, the superintendent shall:

(i) give at least 30 days notice of the proposed transfer to the resident and his parents or guardian along with an invitation to participate in the interdisciplinary team meeting to consider the proposal; and

(ii) give notification of the right to an administrative hearing and of the appeal process;

(2) the appropriate interdisciplinary team of the facility where the resident is currently placed reviews the transfer request and determines whether or not that the transfer would be in the best interest of the resident;

(3) the transfer be approved by:

(A) the resident, parent of a minor, or guardian, or

(B) final decision of the administrative hearing

process.

(b) If approval to seek a transfer is given, a transfer package consisting of the following shall be prepared and forwarded to the destination facility:

(1) the request for transfer;

(2) a completed Transfer Data form (attached to these rules as Exhibit F—.04.37.013);

(3) the resident's current individual habilitation plan;

(4) a copy of comprehensive diagnosis and evaluation performed within six months of the proposed transfer date; and

(5) the most recent monthly program summary from the resident's unit record.

(c) If the request to seek transfer is not approved by the interdisciplinary team, the resident, parent of a minor or guardian, or by final decision of the administrative hearing process, efforts for transfer shall be terminated.

(d) Upon receipt of the transfer package, the destination facility shall complete the Transfer Data form and return it to the requesting facility.

(e) If the destination facility can accept the resident immediately, a transfer date shall be established and the following records shall be duplicated to accompany the resident to the destination facility:

(1) original state school application for admission form,

(2) birth certificate,

(3) legal documents,

(4) social security card or duplicate,

(5) photograph recent within one year,

(6) immunization record,

(7) weight and height record,

(8) seizure record,

(9) treatment and diet record,

(10) most recent medical examination record,

(11) all laboratory reports of exams conducted within past 30 days (including x ray, EEG, EKG)

(12) most recent clinical record forms (CRS),

(13) most recent program summary of the BCP status,

(14) physician's progress reports,

(15) complete personal belongings inventory,

(16) transfer program summary,

(17) social history summary.

(f) In addition to the above records, the following shall accompany the resident on the date of transfer:

(1) a 14-day supply of any prescribed medications, and

(2) all personal belongings of the resident.

(g) The resident's original records shall be retained by the transferring facility as a permanent record.

.014. Resident Transfers: Transfer of a Court Committed Resident from a Residential Care Facility for the Mentally Retarded to a State Mental Hospital.

(a)(1) A court-committed resident may be transferred to a state mental hospital for emergency medical, dental, or psychiatric care for a period of time not to exceed 30 consecutive days:

(A) when an examination of the resident by a licensed physician indicates symptoms to an extent that medical and dental care and treatment in a state mental hospital would be in the best interest of the resident, or

(B) when an examination of the resident by a licensed physician indicates symptoms of mental illness to the extent that care, treatment, control, and rehabilitation in a state mental hospital would be in the best interest of the resident.

(2) In all cases, the superintendent of the state mental hospital to which the resident was transferred shall immediately cause an evaluation of the resident's condition to be made. If the evaluation reveals that the resident is mentally ill and continued hospitalization is necessary for a period in excess of 30 days, the superintendent of the state mental hospital shall proceed in accordance with Section (b) of this rule; however, if the evaluation reveals that continued hospitalization of the resident for a period in excess of 30 days is not expected, then the transfer shall be considered as a temporary furlough and shall meet the requirements of Rule .022 of these rules.

(3) When the resident no longer requires treatment in a state mental hospital but requires treatment in a residential care facility, the superintendent of the residential care facility from which the resident is transferred shall be responsible for the immediate return of the resident to the residential care facility upon notification by the superintendent of the state mental hospital that hospitalization is no longer necessary or appropriate and that care in a residential care facility is required.

(b) A transfer of a court-committed resident to a state mental hospital for more than 30 consecutive days requires that:

(1) An examination of the resident by a licensed physician indicates symptoms of mental illness to the extent that care, treatment, control, and rehabilitation in a state mental hospital would be in the best interest of the resident.

(2) The superintendent of the residential care facility for the mentally retarded submit to the state mental hospital a request for transfer (attached to these rules as Exhibit E—.04.34.014) accompanied by:

(A) a completed Transfer Data form, attached to these rules as Exhibit F—.04.37.014;

(B) a copy of the current individual habilitation plan;

(C) copies of the most recent medical, psychological, and social evaluation;

(D) a copy of the most recent monthly progress summary; and

(E) certification by an interdisciplinary team, including a signed statement by a licensed physician, evidencing the diagnosis of mental illness.

(3) The superintendent of the state mental hospital, within 30 days of his or her receipt of the request for transfer and supporting documents, notify the superintendent of the requesting facility that the request is approved or denied. If the request is denied, the superintendent of the requesting facility shall resubmit the request for transfer and supporting documents to the Committee on Alternate Placements in the appropriate deputy commissioner's office for disposition. The committee's decision shall be final.

(4) Upon notification that the request for transfer is approved, the transferring facility establish a transfer date; and on that date the resident shall be transported to the state mental hospital and shall be accompanied by:

(A) the resident's record folder, prepared in accordance with Section (e) of Rule .013 of these rules;

(B) a 14-day supply of the resident's prescribed medications;

(C) all of the resident's personal belongings.

(5) All original records of the resident remain at the transferring facility as a permanent record.

(6) The superintendent of the state mental hospital to which the resident was transferred immediately cause an evaluation of the resident's condition to be made. If such an evaluation reveals that continued hospitalization is necessary for a period in excess of 30 days, the superintendent shall promptly initiate appropriate court-ordered transfer proceedings in accordance with Section 46(d) of the Mentally Retarded Persons Act of 1977, a copy of which is attached to these rules as Exhibit I—04.37.014.

(7) If the resident has been transferred by a court to the state mental hospital under the provisions of Section 46(d) of the Mentally Retarded Persons Act of 1977, the transfer back to the residential care facility be made in accordance with the following provisions. The superintendent of the state mental hospital shall forward a certificate evidencing that the resident is no longer in need of hospitalization in a state mental hospital but is still in need of care in a residential care facility due to a continuing diagnosis of mental retardation. The superintendent of the state mental hospital shall request that the resident be transferred back to a residential care facility. Such requested transfer shall be made only with the approval of the judge of the committing court by the entry of an order approving such transfer, in accordance with the provisions of Article 5547-75A of the Texas Mental Health Code, a copy of which is attached to these rules as Exhibit J—04.37.014.

Issued in Austin, Texas, on March 30, 1978.

Doc. No. 782257

John J. Kavanagh, M.D.
Acting Commissioner
Texas Department of Mental Health
and Mental Retardation

Effective Date: March 30, 1978

Expiration Date: July 28, 1978

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

PROPOSED RULES

1268

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 Department of Agriculture

Seed Division

The Texas Department of Agriculture is proposing to amend Rule 176.83.24.001 of the seed certification standards which were promulgated by the State Seed and Plant Board to effect conformity with the seed certification requirements of the Federal Seed Act. The amendments will change arrowleaf clover to include all kinds of clover and will add two crop kinds, buckwheat and sunflower.

Fiscal implications are considered to be minimal, in that the acreage inspection fees are proposed to be set at 25 cents per acre for buckwheat, \$1.25 per acre for sunflower, and the cost of inspection should be approximate to the amount of revenue generated from such fees. It is anticipated that any disparity between revenue and cost may be adjusted upon such determination. The level of activity in seed certification of these crops is dependent upon market strength, farmer interest, and other factors which are yet undetermined; however, the seed division staff does not anticipate the demand to exceed 1,000 acres applied to certified seed production for any of these crops in the 1978 crop season and additional personnel or equipment does not appear to be warranted by the proposed standards at this time. (Source: seed division staff.)

Public comment on the proposed amendments is invited. Comments may be submitted by writing to Don Ator, director, seed division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by telephoning (512) 475-2038.

Number and Time of Field Inspections

176.83.24

These rule amendments are proposed under the authority of Article 67b, Texas Civil Statutes.

.001. *Number and Time of Field Inspections.* The following Number and Time of Field Inspections chart *as amended in April, 1978*, that designates date of application and time of field inspection for various crop kinds as required for seed certification for genetic identity only are adopted by reference for the purpose of seed certification by genetic identity only. Copies may be obtained from seed division, Texas Department of Agriculture, P.O. Box 12847, Capitol Station, Austin, Texas 78711, or by telephoning (512) 475-2038.

Doc. No. 782259

Acreage Inspection Fees for Certification 176.83.25

The Texas Department of Agriculture is proposing to amend Rule 176.83.25.001 of the seed certification standards which were promulgated by the State Seed and Plant Board to effect conformity with the seed certification requirements of the Federal Seed Act.

These rule amendments are proposed under the authority of Article 67b, Texas Civil Statutes.

.001. Table I.

Kind	Foundation	Registered	Certified
Alfalfa ¹	\$.50	\$.50	\$.50
Arrowleaf clover	.50	.50	.50
<i>Buckwheat</i>	.25	.25	.25
Cantaloupe	2.50	2.50	2.00
<i>Clover (all kinds)</i>	.50	.50	.50
Corn ²	1.50	---	1.50
Cotton	.20	.15	.10
Cowpea and field bean	.75	.50	.50
Flax ³	.75	.75	.75
Forest tree seed ⁴	---	---	2.00
Forest tree seedling ⁵	---	---	35.00
Grass (seeded) ⁶	2.00	2.00	2.00
Grass (vegetatively propagated) ⁷	12.00	12.00	12.00
Guar	2.00	2.00	1.50
Millet (foxtail and pearl)	1.00	.80	.50
Millet (Gahi I and hybrids)	1.50	---	1.25
Okra	2.00	2.00	1.50
Peanut ⁸	.35	.35	.35
Small grain ⁹	.25	.25	.25
Rice	2.00	2.00	1.50
Sorghum (open pollinated)	.60	.50	.40
Sorghum (commercial hybrids) ¹⁰	---	---	1.25
Sorghum (A, B, and R lines) ¹¹	5.00	---	---
Soybean	.45	.35	.25
Sugar cane	2.50	---	2.00
<i>Sunflower (commercial hybrids)¹⁰</i>	---	---	1.25
<i>Sunflower (female seed parent and pollinator)</i>	5.00	---	---
Watermelon	3.50	3.50	3.00

¹Fifty cents per acre for the first 150 acres, 25 cents per acre for each additional acre in excess of 150 acres.

²One dollar and fifty cents for the first 100 acres, 75 cents for each additional acre in excess of 100 acres.

³Seventy-five cents for the first 100 acres, 50 cents per acre for each additional acre in excess of 100 acres.

⁴Two dollars per acre for the first 25 acres per county, \$1 per acre in excess of 25 acres per county.

⁵Thirty-five dollars for each nursery site.

⁶Two dollars per acre for the first 100 acres, \$1.75 for each additional acre in excess of 100 acres. Fee required only once a year at time of application, regardless of number of inspections or harvest made.

⁷Preplanting inspection. . . \$12 for any acreage up to and including the first three acres, \$2 per acre in excess of three acres. . . Spring inspection—\$12 for any acreage up to and including the first three acres, \$2 per acre in excess of three acres. Fee required only once a year at time of application, regardless of number of inspections or harvest made.

⁸Thirty-five cents per acre for the first 50 acres, 15 cents per acre for each additional acre in excess of 50 acres.

⁹Twenty-five cents per acre for the first 200 acres, 10 cents per acre for any additional acreage in excess of 200 acres.

¹⁰One dollar and 25 cents per acre for the first 50 acres, \$1 per acre for each additional acre up to and including 100 acres, 75 cents per acre for each additional acre in excess of 100 acres.

¹¹Five dollars per acre for the first five acres in one seed block, \$2.50 per acre for each additional acre up to and including 10 acres in one seed block, \$1.50 per acre for each additional acre in excess of 10 acres in one seed block.

Doc. No. 782260

Laboratory Analysis Chart 176.83.26

The Texas Department of Agriculture is proposing to amend Rule 176.83.26.001 of the seed certification standards which were promulgated by the State Seed and Plant Board to effect conformity with the seed certification requirements of the Federal Seed Act.

These rule amendments are proposed under the authority of Article 67b, Texas Civil Statutes.

.001. *Minimum Amount of Seed Required for Laboratory Analysis.* The Minimum Amount of Seed Required for Laboratory Analysis chart *as amended in April, 1978*, that details the minimum amount of seed required for laboratory analysis is adopted by reference for the purpose of seed certification for genetic identity only. Copies may be obtained from seed division, Texas Department of Agriculture, P.O. Box 12847, Capitol Station, Austin, Texas 78711, or by telephoning (512) 475-2038.

Doc. No. 782261

Genetic Seed Chart 176.83.27

The Texas Department of Agriculture is proposing to amend Rule 176.83.27.001 of the seed certification standards which

were promulgated by the State Seed and Plant Board to effect conformity with the seed certification requirements of the Federal Seed Act. The proposed amendments will delete footnotes 17 and 18 under land requirements for the foundation, registered, and certified classes of rice and add footnote 42. Arrowleaf clover standard will be revised to include clover of all kinds, with footnotes 45, 46, 47, and 48. Buckwheat and sunflower standards will be added, and footnotes 17 and 18 will pertain to sunflower. Footnote 19 will be changed under number of feet from other varieties planted by drill from 100 to 20.

These rule amendments are proposed under the authority of Article 67b, Texas Civil Statutes.

.001. *Genetic Seed Certification Standards.* The following chart and footnotes *as amended April, 1978* [July, 1977], that delineate isolation distances are adopted by reference for the purpose of seed certification by genetic identity only. Copies may be obtained from seed division, Texas Department of Agriculture, P.O. Box 12847, Capitol Station, Austin, Texas 78711, or by telephoning (512) 475-2038.

Doc. No. 782262

Additional Requirements for the Certification of Certain Crops 176.83.28

The Texas Department of Agriculture is proposing to amend Rule 176.83.28.003 and add Rule 176.83.28.007 to Additional Requirements for the Certification of Certain Crops which were promulgated by the State Seed and Plant Board to effect conformity with the seed certification requirements of the Federal Seed Act. The amendment to Rule 176.83.28.003 would add Section (c), hybrid sunflower. Rule 176.83.28.007 would add requirements and standards for sunflower varietal purity grow outs.

Amendments to Rule 176.83.28.003 and the addition of Rule 176.83.28.007 are proposed under the authority of Article 67b, Texas Civil Statutes.

.003. *Definition of Terms and other Requirements.*

(c) *Hybrid sunflower.*

(1) *The class "foundation" shall be recognized for the female seed parent and male pollinating parent used for the production of commercial hybrids.*

(2) *A commercial hybrid is one to be planted for any use except seed production. Only the class "certified" is recognized in hybrid sunflower.*

(3) *A commercial hybrid to be certified must be produced from foundation seed stock approved by the certifying agency.*

(4) *A female seed parent and male pollinating parent is one to be planted for use in the production of hybrid sunflower seed.*

(5) *The name under which any seed parent, male pollinating parent, or commercial hybrid shall be certified shall be the same as the designation given by the originator or originating agency.*

(6) *The entire acreage in an isolated seed production plot or in a given seed production field must be eligible and must be inspected.*

(7) *Pollen rows must be identified by stakes at each end.*

.007. Requirements and Standards for Sunflower Varietal Purity Grow Outs.

(a) All production of female seed parents, pollinating seed parents, and commercial hybrids must be test-planted (variety purity grow out test). Such test must be conducted under the supervision of the seed division, Texas Department of Agriculture, as the enforcement agency. The required tests must consist of not less than one-tenth acre of not less than 2,000 plants in one location. It will be the responsibility of the seed producer to notify his or her area supervisor in the area where the seed is stored when the lot of seed is ready to be sampled.

The Texas Department of Agriculture must draw the samples to be test-planted. One pound of seed will be required for each one-tenth acre test. The test will be inspected during the bloom stage by approved inspectors of the Texas Department of Agriculture.

A sample considered to be on the borderline between acceptance and rejection and a sample rejected by the Texas Department of Agriculture will be inspected by an advisory committee annually appointed by the State Seed and Plant Board. The committee will consist of two approved seed certification inspectors from the Texas Department of Agriculture, two Texas certified seed growers, and one member of the Texas Agricultural Experiment Station. The committee will advise the director of the seed division, Texas Department of Agriculture, of their recommendations. The seed producer will have the privilege of having at least a two-fifths acre plot of a lot rejected in the grow out test planted for reconsideration by the Texas Department of Agriculture and the advisory committee. The same controls will apply to larger plots that are applicable to the one-tenth acre tests.

A fee of \$50 for each sample grown for reconsideration must be paid to the Texas Department of Agriculture, and the travel and per diem expenses of the Texas Department of Agriculture personnel necessary to sample, plant, and inspect the larger plot must be paid by the seed producer.

Removal of any plants from any of the aforementioned grow out tests at any time by the seed producer or by anyone else with his or her knowledge prior to the acceptance or rejection of the lot represented will immediately cancel the eligibility of the producer to certify.

Varietal Purity Grow Out Test Standard

Female Seed Parent

- Off-type plants other than female counterpart shedders and mutations 0.20%(1:500)
- Plants shedding pollen..... 0.40%(1:250)

Pollinating Seed Parent

- Off-type plants..... 0.20%(1:500)

Commercial Hybrids

- Off-type plants (single branch)..... 0.40%(1:250)
- Off-type plants (multibranch)..... 0.20%(1:500)

Issued in Austin, Texas, on March 28, 1978.

Doc. No. 782263 Reagan V. Brown
 Commissioner of Agriculture

Proposed Date of Adoption: May 8, 1978

For further information, please call (512) 475-2038.

AGRICULTURE



Texas Education Agency Foundation School Program

Average Daily Attendance 226.41.02.020-.030

The Texas Education Agency proposes to amend Rules 226.41.02.020-.030 concerning average daily attendance. Rules .040-.070 are also proposed. Proposed Rule .020 defines "eligible ADA." Proposed Rule .030 defines "resident pupil." Rules .040-.070 define "approved transfer pupil" and set out regulations and procedures for transfers.

Previously Rule .020 concerned transfer of ADA for distribution of the State Available School Fund. This subject is addressed by proposed Rule .060. Rule .030 concerned the transfer of ADA when schools are consolidated or contracted. This material is recodified as Rule .070 without change in the text.

The Texas Education Agency anticipates that the proposed amendment to Rules 226.41.02.020-.030 will have no state or local fiscal implications.

Public comment on the proposed amendment to Rules 226.41.02.020-.030 is invited. Comments may be submitted by telephoning the office of Dr. J. B. Morgan, associate commissioner for policies and services, at (512) 475-7077, or by writing to him at 201 East 11th Street, Austin, Texas 78701. All requests for a public hearing on proposed rules must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in rules has been published in the *Texas Register*.

These rules are proposed under the authority of Sections 16.005 and 21.061-3, Texas Education Code.

.020. Eligible ADA [Transfer of Average Daily Attendance for Distribution of the State Available School Fund]. A pupil may be counted as eligible ADA if he is a resident or an approved transfer student.

[Policy. Any eligible scholastic may be transferred from one district to another. His average daily attendance will be transferred from the district he attended the previous year for the appointment of the State Available School Fund and

tuition may be charged. Reference: Sections 21.061-3, Texas Education Code.

[Administrative procedure. Transfer of average daily attendance for the distribution of the State Available School Fund is in accordance with the following provisions:

(a) Eligibility. Any child who is eligible to attend the free public schools of Texas at the beginning of the scholastic year may be transferred from his district of residence to any other Texas school district.

[Both the receiving school district and the parent, guardian, or other person having lawful control of the child must agree in writing to the transfer. The acceptance of transfers is subject to the policy of the board of trustees of the receiving district.

(b) Filing. To be valid, all transfers must be made on forms approved by the Texas Education Agency.

(c) Approval. To be timely, parental transfer applications must be made by May 1. Transfer applications made between May 1 and October 1 are approved only in unusual circumstances, those requiring unnecessary extension of school bus routes, or where hardship would result. Transfer applications made after October 1 are not approved except for those pupils whose grades are not taught in the district of residence. Request for approval of transfers after May 1 must include a full explanation of the conditions on which the proposed transfer is based. The decision of the commissioner of education is final in all transfer approvals.

(d) Transfer of average daily attendance. The number of eligible days of attendance earned during the preceding school year by each pupil who is transferred by May 1 is reported by the district he last attended to the Texas Education Agency.

[In the event a pupil was in attendance in more than one school district in the year preceding his transfer, only the attendance earned in the last district he attended is transferred.

[Attendance is not transferred for pupils whose applications for transfer are made after May 1.

[Transferred attendance is subtracted from the prior year's average daily attendance of the school district which the pupil last attended and added to the prior year's average daily attendance of the school to which he transferred for the apportionment of the State Available School Fund.

(e) Reduction of grades classified by the county board to be taught. If the number of grades to be taught is reduced by the county board of school trustees, the average daily attendance earned by pupils in the grades no longer taught is subtracted from the district's prior year's average daily attendance.

[The average daily attendance of a pupil whose grade is no longer taught in his home district is individually transferred to the school to which he transfers.

(f) Tuition. The receiving district may require a tuition fee not to exceed the expenditure from local funds per pupil in average daily attendance.

[The expenditure from local funds per pupil in average daily attendance is determined by the local board of school trustees. Tuition which is greater than that charged in the previous year may not be charged unless it is specified in the transfer agreement.]

.030. Resident Pupil (Transfer of Average Daily Attendance When Schools Are Consolidated or Contracted).

(a) A resident pupil is one who lives within the boundaries of a district.

(b) After a resident pupil has been in membership in a school district and his or her legal residence has been changed because his or her parents or guardians have moved to another school district, this pupil is eligible to remain in this district for the remainder of the school year or is eligible to attend school in the district to which his or her legal residence has been moved.

[Policy. If all pupils from one district are transferred to another by consolidation or contract, the average daily attendance earned in the district of the attendance is transferred to the receiving district.

[Average daily attendance earned in districts not allocated professional units under the Foundation School Program may be counted in determining eligibility for classroom teacher units and for the apportionment of State Available School Fund for the current year only if ineligible districts consolidate with or contract to an eligible school district participating in the Foundation School Fund Program before September 1 of the current school year.

[Administrative procedure. When districts are consolidated or contracted, the average daily attendance earned in the consolidated or contracted district is automatically transferred to the new district when the Texas Education Agency is notified of the consolidation or contract.]

Doc. No. 782208

226.41.02.040-.070

The Texas Education Agency proposes to adopt Rules 226.41.02.040-.070 concerning average daily attendance. Rules .020 and .030 of this same subcategory are being amended to define "eligible ADA" and "resident pupil." Rules .040-.070 define "approved transfer pupil" and set out regulations and procedures for transfers.

Under the proposed rules, districts will be notified by July 15 by the Texas Education Agency whether or not their proposed transfers as of May 1 will cause the district to be in violation of Court Order 5281. Districts who would be in violation shall not effect any transfers without prior approval of the agency. Transfers between districts not notified of a possible violation of the court order may be effected between districts involved without agency approval.

The Texas Education Agency anticipates that proposed Rules 226.41.02.040-.070 will have no state or local fiscal implications.

Public comment on the proposed adoption of Rules 226.41.040-.070 is invited. Comments may be submitted by telephoning the office of J. B. Morgan, associate commissioner for policies and services, at (512) 475-7077, or by writing to him at 201 East 11th Street, Austin, Texas 78701. All requests for a public hearing on proposed rules must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in rules has been published in the *Texas Register*.

These rules are proposed under the authority of Sections 16.005 and 21.061-.063, Texas Education Code.

.040. Approved Transfer Pupils. An approved transfer pupil is one who lives in one Texas school district and is approved to attend a school in another school district in Texas.

Districts will be notified by July 15 by the state funding division whether or not proposed transfers as of May 1 will cause their district to be in violation of Court Order 5281. Districts who are in violation will not effect any transfers without prior approval of the Texas Education Agency.

Districts notified that their proposed transfers as of May 1 will be in violation of Court Order 5281 may submit only extreme hardship transfers to the agency for approval.

Hardship transfers (those after May 1) between districts not being notified of a possible violation of Court Order 5281 may be effected between districts involved; however, the hardship transfer forms must be on file with the receiving school district.

.050. Procedure for Transfer.

(a) **Eligibility.** Within the limits set out in this administrative procedure, any child who is eligible to attend the free public schools of Texas at the beginning of the scholastic year may be eligible for a transfer from his or her district of residence to any other Texas school district.

(b) **Requirement.** Both the receiving school district and the parent, guardian, or other person having lawful control of the child must agree in writing to the transfer. The acceptance of transfers is subject to the policies of the board of trustees of the receiving district.

(c) To be valid, all transfers must be made on forms approved by the Texas Education Agency and filed with the receiving district. A report on proposed transfers accepted by May 1 will be forwarded to the Texas Education Agency, state funding division, prior to May 15. These reports will be used by the agency to determine the resulting ethnic ratio of each campus in each district based on the proposed transfers submitted by the districts.

(d) **Tuition.** The receiving district may require a tuition fee not to exceed the expenditure from local funds per pupil in average daily attendance. The expenditure from local funds per pupil in average daily attendance is determined by the local board of school trustees. Tuition which is greater than that charged in the previous year may not be charged unless it is specified in the transfer agreement.

.060. Transfer of Average Daily Attendance for Distribution of the State Available School Fund. If the number of grades to be taught is reduced by the county board of school trustees, the average daily attendance earned by pupils in the grades no longer taught is subtracted from the district's prior year's average daily attendance. The average daily attendance of a pupil whose grade is no longer taught in his home district is individually transferred to the school to which he transfers.

.070. Transfer of Average Daily Attendance When Schools are Consolidated or Contracted. When districts are consolidated or contracted, the average daily attendance earned in the consolidated or contracted district is automatically transferred to the new district when the Texas Education Agency is notified of the consolidation or contract. (See also

Policies and Administrative Procedures 4400, Pupil Attendance Accounting.)

Issued in Austin, Texas, on March 29, 1978.

Doc. No. 782207

M. L. Brockett
Commissioner of Education

Proposed Date of Adoption: May 8, 1978

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

Texas Department of Human Resources

Civil Rights

The Department of Human Resources proposes to amend various civil rights rules which directly relate to the Food Stamp Program. The United States Department of Agriculture, Food and Nutrition Service (FNS), is the agency responsible for administering the Food Stamp Program. USDA has recently reviewed the department's rules pertaining to fraud, fair hearings, and civil rights; USDA has determined that certain parts of these rules which impact the Food Stamp Program must be further clarified in order to conform to federal regulations, policies, and procedures.

Examples of the proposed changes include expansion of the department's nondiscriminatory statement to include "religious creed, sex, and political beliefs" and a requirement that the nondiscriminatory statement appear on all public informational material published by the department.

The department has determined that the proposed amendments will have no fiscal impact for the state or units of local government. The amendments are clarification of existing policies and procedures.

Written comments are invited and may be sent to Susan L. Johnson, assistant chief, systems and procedures bureau—122, Department of Human Resources, John H. Reagan Building, Austin, Texas 78701, within 30 days of publication in this *Register*.

Legal Basis 326.74.31

The following amendments are proposed under the authority of Article 695c, Texas Revised Civil Statutes.

.002. Discriminatory Practices. In administering its programs, the department will not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(h) *select a site or location of facilities with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any of its activities or programs;*

(i) *discriminate, with respect to food stamp cases, on the basis of race, color, national origin, religious creed, sex, or political belief.*

Doc. No. 782293

Dissemination of Information and Training 326.74.33

The following amendments are proposed under the authority of Article 695c, Texas Revised Civil Statutes.

.001. Information Given Clients and Public.

(d) All public informational material published by the department [of Public Welfare] will **include the department's nondiscrimination statement** [reflect this non-discriminatory principle].

Doc. No. 782294

Complaints 326.74.34

The following amendments are proposed under the authority of Article 695c, Texas Revised Civil Statutes.

.009. Records.

(c) **Records will be retained for a period of three years from date of origin and will be made available to representatives of the Department of Health, Education and Welfare and/or the Department of Agriculture during the course of an investigation or review.**

Doc. No. 782295

Legal Services

Fair Hearings 326.79.12

Examples of the proposed changes include: clarification that any request for a food stamp fair hearing may be either written or oral; prompt action for final determination in food stamp fair hearings is 60 rather than 90 days; and correction of a policy stating that retroactive payments in food stamp cases will be made only for 12 months.

The following amendments are proposed under the authority of Article 695c, Texas Revised Civil Statutes.

.001. Definitions.

(a) Right of appeal. Right of appeal is the opportunity for a fair hearing before the state agency granted to any applicant or recipient requesting a hearing because his **or her** claim for assistance is denied, modified, or not acted upon with reasonable promptness, or because he **or she** is aggrieved by any other agency action resulting in suspension, reduction, discontinuance, or termination of assistance. **For food stamp cases, refer to Rule 326.15.12.016, Fair Hearings.** [Department of Public Welfare rules for the fair hearing process apply to all programs provided by the department except as otherwise provided by statute. This includes clients served through agencies under contract with the department.]

Doc. No. 782290

Appeals Process 326.79.13

The following amendments are proposed under the authority of Article 695c, Texas Revised Civil Statutes.

.004. **Group Hearings.** If recipients request a group hearing on a question of agency policy, it must be granted. **In all**

cases except food stamp cases, the request must be in writing, signed by each applicant, and must state the common issue(s). An appellant may also withdraw from a group hearing at any time prior to a final decision. Such request must be made in writing and be signed by the appellant. The same procedures which apply to individual hearings will be followed in group hearings.

.007. Notice Requirement—Proposed Termination or Reduction of Assistance.

(a) The department must give the recipient timely and/or adequate notice in cases of any proposed action to terminate or reduce total assistance or social services as appropriate. **The notice requirement for food stamp cases must be handled in accordance with Rules 326.15.65.001-.005, Notice of Adverse Action.**

(8) The recipient's attending physician prescribes a lower level of care or concurs with the **Health Department's patient care unit's** [medical assistant unit's (MAU)] change in level of care determination.

.008. Food Stamp Participation Prior to and Pending Fair Hearings.

(d) If an applicant requests a fair hearing **at an** [prior to] initial certification, the household will not be allowed to participate **on the basis of the appeal** until a final decision has been rendered. **The application itself must be acted upon within the time limits established in Rule 326.15.12.003, Prompt Action. The household, if eligible, may participate on the basis of the eligibility decision until the appeal is decided.** [Although] The appeal is [still] subject to the same 60-day limit applicable in other cases [, special impetus will be given in such cases to a quick and expeditious decision].

.012. Notification of Hearing Officer.

(c) All necessary eligibility documents include the following:

(2) Client-completed eligibility document and worker's eligibility **work** [clearance] sheet.

(5) If the point at issue is WIN or food stamps, include the appropriate eligibility document. Include food stamp computer input forms, client-completed applications, **food stamp work sheet, self-employment form,** and any food stamp eligibility documents which bear on the point at issue.

.013. Setting the Appeal Hearing.

(c) The hearing will be held at a reasonable place and time. This may mean the local office in the vicinity of the residence or in the home of the appellant. The physical condition of the appellant and availability of transportation are some of the factors which the hearing officer should consider in setting the place of the hearing. [It is essential that the hearing officer interview or at least see the appellant during the appeal process even if due to the physical or mental condition of the appellant the major portion of the hearing is conducted with the authorized representative or legal counsel.]

Doc. No. 782291

Hearing Procedure 326.79.14

The following amendments are proposed under the authority of Article 695c, Texas Revised Civil Statutes.

.002. Hearing Proceedings.

(a) The appellant or the appellant's representative will have the opportunity:

(1) To examine evidence to be used in the hearing prior to the hearing when a request is made in writing to the hearing officer. **The request may be oral in food stamp cases, but must be written in all other cases.**

(j) The hearing officer is responsible for authorizing any corrected payments or food stamp benefits retroactively to the effective date incorrect action was taken, or to the date action should have been taken. The hearing officer is also responsible for authorizing the food stamp certification worker to request a cash refund from USDA or to credit the refund entitlement to any unpaid overissuance. **In all cases except food stamps, retroactive corrective payment will be made only for the 12 months preceding the months in which the underpayment is discovered.**

.004. Furnishing Medical Information.

(a) When an appellant or authorized representative requests it in writing, the department will furnish the appellant or the representative a copy of all medical evidence contained in the files, including the medical reports, the social summaries, the medical review team's findings, decisions, and reassessments, subject to the following regulations. **The request may be oral in food stamp cases, but must be in writing in all other cases.** When an appellant requests medical records, the information will be furnished to the hearing officer by the medical services division or nursing home services division and is to be shared with the appellant or representative before the hearing, in the same manner as medical reassessments are furnished. If, during the hearing, the appellant or authorized representative requests in writing this medical information, the hearing will be recessed and the information will be furnished the appellant or representative before reconvening the hearing. The release of medical information will be subject to the regulations concerning confidential material.

.006. Action by Hearing Officer.

(a) Postponement. An appeal hearing may be postponed by the hearing officer [for the convenience of either the hearing officer or the appellant] if there appears to be a reasonable cause. [However, if the appellant is prevented from attending the hearing by extenuating circumstances, he or she must] **If possible, the appellant should file a written request for postponement of the hearing at least two days before it is scheduled to occur, unless extenuating circumstances exist.** The hearing officer will then reset the hearing.

[In 10-day appeals, if the recipient is unable to meet with the hearing officer at the time agreed upon and so notified the hearing officer, one additional opportunity is given the recipient for a hearing. A subsequent meeting is scheduled. The subsequent hearing should be scheduled within 10 days of either the notification of the necessity for a postponement or the date of the original hearing, whichever is earlier. Only one postponement may be granted.] The hearing officer is responsible for determining whether or not a valid reason for

postponement exists. An example of the reasons to be considered is illness of the recipient or a member of the recipient's immediate family. If reasonable doubt exists as to whether or not the recipient or a member of the immediate family is actually too ill to appear, then the hearing officer will require the recipient to furnish a statement from a physician to this effect.

(b) Dismissal. If the appellant fails to appear for the hearing without a reason, the hearing officer sends an inquiry to the appellant as to whether the appellant wishes any further action on the request for a hearing. If within 10 days after mailing of the inquiry, no reply is received, the hearing officer summarizes the pertinent facts, records them, and dismisses the appeal on the basis that the request for hearing has been abandoned by the appellant.

If the appeal is dismissed, the hearing officer records the decision as the official action. A letter will be directed to the appellant advising of the dismissal.

In 10-day appeals, **the appeal is considered abandoned if the appellant or representative [recipient] does not appear [at the scheduled hearing] and has not requested a postponement for sufficient cause** [notified the hearing officer that he or she will be unable to meet with him or her, in accordance with the above rules governing postponement, the hearing officer will dismiss the appeal]. He will notify the recipient that the worker's recommended action will become effective. If the hearing officer notes error(s) which would affect the recommended decision of the worker, the hearing officer will notify the recipient and the worker so that appropriate action may be taken to correct the error(s). The recipient retains the right to request a regular hearing without continued assistance if not more than 60 days have passed since the recipient was notified of the department action which is being appealed.

.007. Decisions by Hearing Officer.

(a) Requirements. The decision by the hearing officer, as the definitive and final administrative action by the department in relation to the appeal, is in writing and recorded on a designated department form and filed in the appeal file. The decision is made in the name of the **Texas [State] Department of Human Resources [Public Welfare]** and is recorded on the official record form furnished to the appellant within five days after the date of the hearing. A cover letter is prepared which informs the appellant that the designated form is the official record of the appeal. Although the appellant is to be allowed to examine any documentary material during the hearing, a copy of such will not be furnished either before or after the hearing unless a specific written request is made to the hearing officer.

The hearing officer will normally make the decision at the close of the hearing, but not later than five days after the completion of the hearing, and immediately prepare the official record form. If additional information is necessary prior to making the decision, then steps to obtain the additional information must be initiated within five days. The overall time may not exceed **60 [90] days** from the date of the request to the date of notification to the appellant of the decision **in food stamp cases, unless approved delays have been requested by the appellant, and 90 days in all other cases.**

(b) Reverse.

(2) If the point at issue was any aspect of need, amount, or denial of assistance, or food stamp benefits, the decision of the hearing officer will give the indicated amount of payment, basis of food stamp issuance, or cost of food coupons for which the appellant was eligible at the time of the decision. The hearing officer will also give the amount for which the appellant currently is eligible. This amount will include any changes in relation to need brought out in original or reconvened hearings which have occurred subsequent to the decision appealed. If the hearing officer determines that *overissuances* (overpayments) were made at any time *in food stamp cases or overpayments were made during the preceding 12 months in all other cases* as a result of willful withholding or willful misrepresentation of information, recoupment is to be sought. The actual months the overpayments *or overissuances* were made are to be included in the decision.

.011. Retroactive Payments or Refunds.

(b) If eligible for any retroactive assistance or reimbursement for social services, the appellant is also eligible for additional retroactive assistance for months elapsing between the date of the filing of the appeal and the final action of the hearing officer and the initiation of the appellant's assistance or adjustment in assistance. The months of entitlement must be specified by the hearing officer. Department rules about food *stamp restoration of lost benefits* (stamps) contain the procedures for authorizing retroactive benefits in that program. *Refunds may be authorized when appropriate regardless of current eligibility in accordance with procedures established in the food stamp program rules.* [For refunds in the food stamp program, the hearing officer determines the amount of the refund entitlement.]

.014. Controls and Time Limits on Appeals.

(a) Appeals must be processed promptly. [All time limits will be strictly observed except in completely unavoidable circumstances.] The decision on the appeal will not take more than 90 days (60 days for food stamps and medical level of care appeals) from the date of request *for* [to] appeal to date of notification of decision, except *under certain circumstances, such as when the hearing has been postponed at the request of the appellant in accordance with Rule 326.79.14.006* [when the action or inaction of the appellant or other extremely extenuating circumstances causes a delay in the processing of the appeal]. In such cases, the time lapse caused by the delay will be added to the *90 or 60* day maximum [60 days for food stamps] for processing the appeal.

.015. Additional Time Restrictions When Formal Hearing is Held.

(d) Total time. The time limits in the respective items do not include mailing delays, but no more than 90 days (60 days for food stamps) may elapse from the date of the request for a fair hearing by the appellant until the appellant is notified in writing of the final administrative decision by the hearing officer, unless extenuating circumstances prevent normal processing *such as when the appellant has requested a delay in the hearing in a food stamp case.* The hearing officer will maintain necessary controls to ensure that the administrative action to carry out the decision is

taken within seven *working* days after the *receipt of the decision by the worker* [is made].

Issued in Austin, Texas, on March 31, 1978.

Doc. No. 782292 Jerome Chapman
Commissioner
Texas Department of Human Resources

Proposed Date of Adoption: May 8, 1978

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

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 Texas Department of Mental Health and Mental Retardation 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 is proposing to adopt Rules 302.03.20.001-.009, which would govern the operation of public responsibility committee's at each community center. The Texas Board of Mental Health and Mental Retardation approved proposed Rules 302.03.20.001-.009 at its February 17, 1978, meeting.

Proposed Rules 302.03.20.001-.009 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 proposed Rules 302.03.20.001-.009 is a set of uniform rules and procedures governing the operation of each PRC at all community centers.

The total probable cost of administering proposed Rules 302.03.20.001-.009 is impossible to calculate with any degree of accuracy because the primary expense involved will be payment of travel expenses to members of each PRC at all 28 community mental health and mental retardation centers. The amount of travel expense will vary according to the location of meetings, distance traveled to attend meetings, length of meetings, number of members attending, the time of day of meetings, and so forth. The minimum expense which could

reasonably be expected for each year of the first five years the proposed rules are in effect is as follows: \$2,360 for fiscal year 1978; \$4,732 for fiscal year 1979; \$5,180 for fiscal year 1980; \$5,180 for fiscal year 1981; and \$5,628 for fiscal year 1982. The maximum expense which could be expected for each year of the first five years the proposed rules are in effect is as follows: \$50,414 for fiscal year 1978; \$100,828 for fiscal year 1979; \$102,172 for fiscal year 1980; \$102,172 for fiscal year 1981; and \$103,516 for fiscal year 1982. (Sources: central office staff in the offices of community services division, volunteer services, legal and claims division, and budgets and finance; and the United States Post Office, Main Office, Austin)

Public comment on proposed Rules 302.03.20.001-.009 is invited. Persons may submit their comments in writing to John J. Kavanagh, M.D., acting commissioner, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711, or by telephone at (512) 454-3761.

Rules 302.03.20.001-.009 are proposed under 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 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 the 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(8) 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 Rule .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 the 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:

(1) **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.

(2) **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.

(3) **Exhibit C—.03.20.007—Acknowledgement.** 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.

(4) **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.

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

(6) **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.

Doc. No. 782252

Client (Patient) Care

Public Responsibility Committees 302.04.09

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 facility of the Texas Department of Mental Health and Mental Retardation. A public responsibility committee is an independent entity composed of individuals not affiliated with a department facility. A public responsibility committee acts primarily as a third-party mechanism to safeguard the legal rights of clients of the department. A public responsibility committee also acts as an investigating body on behalf of clients. Because of the enactment of Subchapter J of the act, the Texas Department of Mental Health and Mental Retardation is proposing to amend Rules 302.04.09.001, .003-.008, and .010, all of which relate the public responsibility committees, so that the rules will conform to the statutory provisions. The proposed amendments to the above enumerated rules became effective as emergency rules on January 20, 1978.

The proposed amendment to Rule .001 would amend the rule to indicate that one purpose of the rules is to clarify the powers of public responsibility committees at all departmental facilities.

The proposed amendment to Rule .003 would change the language of subsection (5) so that the term "client" is used. Under the act, the term "client" includes a resident. Subsection (6) of this rule would also be amended to enlarge the definition of "affiliated" and to specify those persons who may not serve on a public responsibility committee. Subsection (7) of this rule would also be amended to change the requirement for consent so that it conforms to the act. Subsection (9) would add the definition of "advocacy system" and would delete that of "consent committee."

The proposed amendment to Rule .004 would change the functions of the public responsibility committee. Subsections (1), (2), (3), and (4) of this rule would be amended to conform to the statutory language of the act.

The proposed amendment to Rule .005 would amend membership requirements for public responsibility committees contained in Section (a) of this rule to conform to the act. Section (b) would be amended to provide that members are to be chosen without regard to age or handicap. Section (d) would be amended to provide for the selection of one of the public responsibility committee members as secretary of the committee. Section (e) would be amended to provide that no member of a public responsibility committee may serve more than 10 consecutive one-year terms. Section (f) would be amended to allow the public responsibility committee to request clerical assistance from the volunteer services office.

Section (g) would be amended to increase the amount of training which public responsibility committee members are to receive. Section (h) would be amended to include cooperation between the staff and the public responsibility committee. Section (i) would be amended to drop from the public responsibility committee a member who fails to attend two consecutive quarterly meetings. A new Section (j) would be added which provides a method for replacing members of a public responsibility committee.

The proposed amendment to Rule .006 would amend Section (a) to require the public responsibility committee to investigate an instance of abuse or denial of rights within 10 days of the receipt of the complaint. Section (c) would be amended to allow staff members to attend public responsibility committee meetings upon approval of the public responsibility committee. Also, a new Section (d) would be added to provide for reimbursement of public responsibility committee members' travel expenses.

The proposed amendment to Rule .007 would amend Section (a) to provide for publicizing of the public responsibility committee and its role. Subsections (1), (2), (3), and (4) would be added to Section (a) to set forth requirements which are to be met in publicizing a public responsibility committee. Section (b) would be amended to provide for the public responsibility committee making recommendations to the department. Section (c) of this rule would be amended due to the relettering of an exhibit. Section (e) would be amended to provide a method of sending verbal complaints to a public responsibility committee. Section (f) would be amended to provide for the interview of witnesses by a public responsibility committee. Section (g) would be amended to provide access to records of patients and clients by public responsibility committees during investigations. Section (h) would be amended to read as the former Section (g). Section (i) would be amended to refer to the role of the advocacy system in protecting the rights of the mentally retarded. Sections (j), (k), (l), (m), and (n) would be relettered accordingly. Section (o) would be deleted.

The proposed amendment to Rule .008 would amend the first subsection to read as the former subsection (2). Subsections (3), (4), and (5) would be renumbered accordingly. Subsection (6) would be amended to provide a format for informed consent. Subsection (7) would be deleted.

The proposed amendment to Rule .010 would be amended by deleting subsections 2(A), 2(B), and 2(C), which made reference to specific rules of the commissioner of MH/MR affecting client (patient) care.

The total probable cost of administering this rule is impossible to calculate with any degree of accuracy because the primary expense involved will be payment of travel expenses to members of each public responsibility committee at all 25 departmental facilities. The amount of travel expense will vary according to the location of meetings, distance traveled to attend meetings, length of meetings, frequency of meetings, number of members attending, the time of day of meetings, and so forth. The minimum expense which could reasonably be expected for each year of the first five years the rule is in effect is as follows: \$3,600 for fiscal year 1978; \$7,200 for fiscal year 1979; \$8,000 for fiscal year 1980; \$8,000 for fiscal year 1981; and \$8,800 for fiscal year 1982. The

maximum expense which could be expected for each year of the first five years the rule is in effect is as follows: \$50,100 for fiscal year 1978; \$100,200 for fiscal year 1979; \$102,600 for fiscal year 1980; \$102,600 for fiscal year 1981; and \$105,000 for fiscal year 1982. (Sources: mental retardation services, mental health services, community services, volunteer services, legal and claims, and budget and finance sections of the Central Office.)

Public comment on the proposed amendments to Rules 302.04.09.001, .003-.008, and .010 is invited. Persons may submit their comments by writing to John H. Kavanagh, M.D., acting commissioner, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711, or by telephone at (512) 454-3761.

The amendments to Rules .001, .003, .004, .005, .006, .007, .008, and .010 are proposed under the authority of Section 2.11(b) of Article 5547-202, 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* [constraints] of public responsibility committees at all facilities of the Texas Department of Mental Health and Mental Retardation.

.003. Definitions. In these rules:

(5) "Patient or *client* [resident]" means a person receiving services, in residence or through outpatient or outreach programs, from a facility of the department.

(6) "Affiliated" means any employment, *financial*, or other relationship between a person and a facility of the department, *i.e.*, full-time employee, or part-time employee, member of a governing board or panel, paid [consultant] 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.*

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

(A) *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.*

(B) *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 patient or client.*

(C) **Voluntariness: the consent has been given voluntarily and free from coercion and undue influence.** [the knowing consent of an individual or his legally authorized representative, so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion. The basic elements of information necessary to informed consent include:

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

(B) A description of any attendant discomforts and risks reasonably to be expected.

(C) A description of any benefits reasonably to be expected.

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

(E) An offer to answer any inquiries concerning the procedures.

(F) An instruction that the person is free to withdraw his consent and to discontinue participation in the project or activity at any time without prejudice to the subject (see Exhibit G—.04.09.003 which is attached to and made a part of these rules).

(9) "**Advocacy system**" ["Consent committee"] means the **system of advocacy for the developmentally disabled, created pursuant to Section 113 of Public Law 94-103** [committee of that name established under the requirements of Rules of the Commissioner of Mental Health and Mental Retardation Affecting Client (Patient) Care, Department Procedures for the Protection of the Rights of Humans Involved in Research, 302.04.21].

.004. **Functions of the PRC.** The PRC is an independent, impartial **third-party mechanism** [entity] which serves to protect, preserve, [and] promote, **and advocate for the health, safety, welfare, and legal** [the basic dignity] and human rights of **the patients and** [or] **clients** [residents] served by the department. 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 patients and clients served by the department;** [continually monitoring and reviewing those conditions and relationships essential to protect patients' or residents' dignity and human rights]

(2) **inquiring into or investigating and responding to comments, suggestions, or complaints made with regard to patients and clients of the department;** [responding objectively and constructively to comments, suggestions, or complaints made by patients or residents or on their behalf, and]

(3) **ensuring that patients and clients are informed of their rights and the means of protecting those rights;** and [advising patients or residents of their rights and the means of protecting those rights.]

(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 facility, its policies, the clients' and patients' rights handbooks,** and the Rules of the Commissioner of Mental Health and Mental Retardation Affecting Client (Patient) Care.

.005. **Membership.**

(a) **Seven** [A minimum of five] persons who are neither **affiliated with the facility, nor are** [employees, patients,] or **clients,** [residents] shall be selected by the executive committee of each facility's volunteer services council to serve voluntarily as members of the PRC. **The committee shall include representation by parents, guardians, consumer groups, and organizations which advocate for patients and clients.** In making such appointments, the executive committee **shall** [should] consult with **the** local parents' associations **and** [or] 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 facility 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 [or] national origin, **age, or handicap.**

(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 Volunteer Services, Central Office, and may be forwarded to the advocacy system.** [Terms of service should be staggered for purposes of continuity. No member shall serve more than six consecutive years. A current roster of all PRC members will be maintained by Volunteer Services, Central Office.]

(f) The coordinator of volunteer services at each facility will, at the request of the PRC, serve as staff liaison to the PRC. The volunteer services office at the facility will provide clerical assistance **at the request of the PRC** and will be responsible for ordering PRC stationery and PRC report logs as needed.

(g) Broad general knowledge of the facility is essential for all PRC members. They **shall** [should] participate in **training, including at least one general orientation to the facility and its policies** for volunteers, plus additional specialized training related to their specific assignment **as a member of a PRC.**

(h) PRC members **and staff should cooperate with each other to develop good working relationships, mutual acceptance, and cooperation** [staff members in a non-threatening atmosphere to develop good working relationships, mutual acceptance, and understanding].

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

(j) **Any member of a PRC who fails to comply with the provisions of these rules may be removed by the executive committee of the volunteer services council upon recommendation by a majority of the PRC. Replacement of the members shall be in accordance with the provisions of Rule .005 of these rules.**

.006. Meetings.

(a) The PRC shall meet as often as necessary *to fulfill its duties*, but at least quarterly. *In investigating an instance of patient or 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.* [It is advisable that meetings be held at the facility. 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.]

(c) *Staff members may ask to attend PRC meetings. Permission for such attendance shall be granted at the discretion of the PRC.* [Staff members may upon their own request attend meetings, subject to the approval 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. Such expenses shall be paid in accordance with the provisions of the current state appropriations act.*

.007. Procedures and Responsibilities.

(a) [The PRC at each] *Each* facility shall be responsible for informing patients and *clients* [residents], their families, and the general public of *the* [its] existence, [and] purpose, and *composition of* [that] the PRC [is an external body not composed of departmental employees (see Exhibit A—.04.09.007 and Exhibit B—.04.09.007)]. *Each facility 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 TDMHMR;*

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

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

(4) *include PRC information among handout materials routinely given to newly admitted clients, their families, and new employees (see Exhibit A—.04.09.007).*

(b) Each PRC shall receive, investigate, and report complaints made to it by or on behalf of patients or *clients* [residents] and *shall* [may] make appropriate recommendations to the facility superintendent or director, *to the deputy commissioner of the department with authority over the facility, and, if necessary, to the commissioner.* The PRC [also] will respond to questions [or suggestions] related to its purpose.

(c) The PRC shall record all complaints received in the PRC log, illustrated in Exhibit E[F]—.04.09.007, which is attached to and made a part of these rules.

(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 complainant to writing and present it to the PRC.* [All complaints must be written and signed. If

complainant is unable to sign or write, the complaint may be dictated and the complainant's mark confirmed by a witness. Complaints should be sent directly to the PRC.]

(f) *During an investigation, PRC members may interview the following persons, where appropriate:* [If interviews are necessary during an investigation, one or more PRC members may interview the following persons:]

(1) the complainant,

(2) the patient or *client* [resident], if other than the complainant,

(3) any other patient or *client* [resident] involved in the complaint as participants or observers,

(4) family members [if indicated],

(5) staff members [if deemed appropriate by the committee],

(6) other nonstaff members (volunteers) [if appropriate].

(g) *When investigating complaints of abuse or denial of rights of a client who has a primary or secondary diagnosis of mental retardation, the PRC shall have the authority with or without notice to inspect the facility 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. When investigating complaints of abuse or denial of rights of a patient who has a diagnosis of mental illness, the PRC shall have the authority with or without notice to inspect the facility which offers services to the mentally ill person. However, the PRC shall have access to the hospital records relating to the treatment of the mentally ill person only under the provisions of Article 5547-87, Vernon's Annotated Civil Statutes, and rule of the commissioner of MHMR, 302.04.16.008.* [PRC members should observe the facility's established schedules and procedures during the investigation of any complaint.]

(h) *PRC members should observe the facility's established schedules and procedures during the investigation of any complaint.* [The PRC shall report its findings and recommendations to the superintendent/director or designee.]

(i) *When the PRC determines that an instance of abuse or denial of rights has occurred which involves a client who is mentally retarded, the PRC shall report this instance to the advocacy system and to the appropriate authorities.* [Each PRC shall maintain confidential records of complaints received, acknowledge receipt of complaints (see Exhibit D—.04.09.007, which is attached to and made a part of these rules), and inform the patients, residents and/or complainants of any action taken (see Exhibit E—.04.09.007, which is attached to and made a part of these rules). PRC stationery may be used for correspondence and notices (see Exhibit C—.04.09.007, which is attached to and made a part of these rules).]

(j) *Each PRC shall maintain confidential records of complaints received, acknowledge receipt of complaints (see Exhibit C—.04.09.007, which is attached to and made a part of these rules), and inform the patients, clients, and/or complainants of any action taken (see Exhibit D—.04.09.007, which is attached to and made a part of these rules). PRC stationery may be used for correspondence and notices (see Exhibit B—.04.09.007, which is attached to and made a part of these rules).* [The chairperson will each month send a copy of the PRC Log to:

(1) the commissioner, TDMHMR, or his designate in Central Office,

(2) the superintendent or director of facility,

(3) other individuals designated by superintendent or director of facility.]

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

(1) *the commissioner or his designee in Central Office,*

(2) *the superintendent or director of the facility.*

The PRC shall present an annual report of its work to the commissioner and the advocacy system. 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. [To assure compliance with the legal requirements of confidentiality relating to matters concerning patients or residents, it is mandatory that PRC members make no statements regarding either a complaint or an investigation to any representative of the news media or any individual or group other than those designated by the superintendent or director. Consultation from the department's Legal Division will be available to each PRC.]

(l) *To assure compliance with the legal requirements of confidentiality relating to matters concerning patients or 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. Consultation with the department's Legal Division will be available to each PRC.* [The responsibility to provide redress to justifiable complaints shall not lie with the PRC. The superintendent or director shall take such corrective action as is appropriate. If corrective action is not taken by the superintendent or director within a reasonable time, the PRC may file a written appeal to the appropriate deputy commissioner.]

(m) *The responsibility to provide redress to justifiable complaints shall not lie with the PRC. The superintendent or director shall take such corrective action as is appropriate and report his action to the PRC. If corrective action is not taken by the superintendent or 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 deputy commissioner with responsibility for the facility, the commissioner, and the Texas Board of Mental Health and Mental Retardation.* [When appropriate, the PRC may assist a patient or resident in securing legal counsel, if requested by the patient or resident, but may not offer any legal advice.]

(n) *When appropriate, the PRC may assist a patient or client in securing legal counsel but may not offer any legal advice.* [At facilities where a consent committee is required in accordance with the Rules of the Commissioner of Mental Health and Mental Retardation Affecting Client (Patient) Care, Department Procedures for the Protection of the Rights of Humans Involved in Research, 302.04.21, the PRC or a portion of its members may serve as the consent committee. Should the PRC not assume the responsibilities of the consent committee, then individual members of the PRC may serve on the consent committee. The membership and duties of the consent committee shall be governed by those same rules.]

(o) The PRC may, upon request of the superintendent or director, assist in providing monitoring for any aspect of patient or resident work-related programs. This assignment for the PRC would provide additional assurances of the patient's or resident's rights under the Rules of the Commissioner of Mental Health and Mental Retardation Affecting Client (Patient) Care, Employment of Patients, Residents Under the Fair Labor Standards Act, 302.04.08, and that the patient or resident worker or other work-related programs such as sheltered workshops are operating in a manner consistent with the appropriate laws and policies. Typical assignments may include, but are not limited to, the following:

(1) the review of records to ascertain that the established commensurate rate is being paid patient or resident workers;

(2) monitor work placement for evidence of patient or resident worker benefit;

(3) the providing of information, orally or in writing, upon request to a patient or resident worker concerning his coverage under the act, his work assignment, and the rate of pay.]

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

(1) *Exhibit A—.04.09.007—Notice.* This document illustrates a form that may be used to inform people of the existence of the facility's public responsibility committee as well as the nature of its work, its address, and the fact that it is independent of the department. A copy of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711. [Exhibit A—.04.09.007—Suggestions for publicizing the PRC's existence, purpose, and accessibility. This document suggests various methods of informing the public of the nature, existence, purpose, and accessibility of a facility's public responsibility committee. The methods suggested include news releases, statements in facility publications, letters, printed notices posted at the facility, badges (name tags), and handout materials. A copy of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, Texas.]

(2) *Exhibit B—.04.09.007—Stationery for the public responsibility committees 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. A copy of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711. [Exhibit B—.04.09.007—Notice. This document illustrates a form that may be used to inform people of the existence of the facility's public responsibility committee as well as the nature of its work, its address, and the fact that it is independent of the department. A copy of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, Texas 78711.]

(3) *Exhibit C—.04.09.007—Acknowledgment.* This form gives a sample form which may be used by the facility's public responsibility committee in acknowledg-

ing the receipt of a complaint and assuring an investigation of the complaint. A copy of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711. [Exhibit C—.04.09.007—Stationery for the public responsibility committees 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. A copy of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, Texas 78711.]

(4) *Exhibit D—.04.09.007—Notice informing patients, clients, or complainants of any action taken. This exhibit illustrates a form that may be used by a facility's public responsibility committee to inform any person who has complained to it that the committee has completed its investigation of the complaint. The form also informs the complainant of whatever action has been taken as a result of the investigation. A copy of this exhibit may be obtained from the Central Office of Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711.* [Exhibit D—.04.09.007—Acknowledgment. This form gives a sample form which may be used by the facility's public responsibility committee in acknowledging the receipt of a complaint and assuring an investigation of the complaint. A copy of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, Texas 78711.]

(5) *Exhibit E—.04.09.007—PRC log. This exhibit illustrates the form to be used by the facility's public responsibility committee for the recording of all of the complaints reviewed by the committee. A copy of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711.* [Exhibit E—.04.09.007—Notice informing patients, residents, or complainants of any action taken. This exhibit illustrates a form that may be used by a facility's public responsibility committee to inform any person who has complained to it that the committee has completed its investigation of the complaint. The form also informs the complainant of whatever action has been taken as a result of the investigation. A copy of this exhibit may be obtained from the Central Office of Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, Texas 78711.]

(6) *Exhibit F—.04.09.003—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. A copy of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711.* [Exhibit F—.04.09.007—PRC log. This exhibit illustrates the form to be used by the facility's public responsibility committee for the recording of all of the complaints reviewed by the committee. A copy of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, Texas 78711.]

(7) *Exhibit G—.04.09.003—Format for informed consent. This exhibit provides forms for certificates with reference to the securing of informed consent for a subject's participation in a research program. The forms provided are a certificate of the person explaining the proposal, a certificate of the person giving consent, and a certificate of assent by the proposed subject. A copy of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, Texas 78711.*

.010. *References.* Reference is made to the following statute and rules of the commissioner:

- (1) Article 5547-87, Vernon's Annotated Civil Statutes.
- (2) Rules of the Commissioner of Mental Health and Mental Retardation Affecting Client (Patient) Care.
 - (A) Department Procedures for the Protection of the Rights of Humans Involved in Research, 302.04.21.;
 - (B) Restraint and Seclusion, 302.04.06.;
 - (C) Employment of Patients, Residents Under the Fair Labor Standards Act, 302.04.08.]

Doc. No. 782250

Admissions, Transfers, Furloughs, and Discharges—State Schools for the Retarded 302.04.24

The Texas Department of Mental Health and Mental Retardation is proposing for permanent adoption the repeal of the emergency rules, Rules 302.04.24.001-.030, it adopts in this issue.

The repeal of Rules 302.04.24.001-.030 will have no known fiscal implications for the state or for units of local government. (Source: legal and claims division.)

Public comment on the proposed repeal of Rules 302.04.24.001-.030 is invited. Persons may submit their comments by writing to John J. Kavanagh, M.D., acting commissioner, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711, or by telephoning (512) 454-3761.

The repeal of Rules 302.04.24.001-.030 is proposed under the authority of Section 2.11(b) of Article 5547-202, Texas Civil Statutes. The proposed date of adoption is May 8, 1978.

Doc. No. 782254

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. Therefore, the department is proposing to adopt Rules 302.04.34.001-.010, which specify the rights of mentally retarded clients. Proposed Rules 302.04.34.001-.010 were approved by the Texas Board of Mental Health and Mental Retardation at its February 17, 1978, meeting.

Proposed Rules 302.04.34.001-.010 would 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.

Proposed Rules 302.04.34.001-.010 would 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.

Proposed Rules 302.04.34.001-.010 would 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.

Proposed Rules 302.04.34.001-.010 would have fiscal implications for the state and for units of local government. The fiscal implications result from the expense incurred in publishing the rights handbook. The projected cost to the state (state schools for the retarded; state mental hospitals; and state human development centers) of implementing the proposed rules for each of the next five fiscal years is as follows: fiscal year 1978 equals \$7,394; fiscal year 1979 equals \$1,225; fiscal year 1980 equals \$1,225; fiscal year 1981 equals \$1,278; fiscal year 1982 equals \$1,278. The projected cost to units of local government (community mental health and mental retardation centers) of implementing the proposed rules for each of the next five fiscal years is as follows: fiscal year 1978 equals \$7,105; fiscal year 1979 equals \$3,850; fiscal year 1980 equals \$4,200; fiscal year 1981 equals \$4,550; fiscal year 1982 equals \$4,900. The figures are derived from estimates of clients to be served by the various facilities multiplied by the cost of publishing the rights handbook (35 cents per handbook). The sources relied upon for determining the fiscal implications of implementing the proposed rules were central office personnel of arts, graphics, and educational services; legal and claims division; program analysis and statistical research; mental retardation services; mental health services; and budget and finance.

Public comment on proposed Rules 302.04.34.001-.010 is invited. Persons may submit their comments to John J. Kavanagh, M.D., acting commissioner, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711, or by telephone at (512) 454-3761.

Rules 302.04.34.001-.010 are proposed under 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.

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

(2) Right to protection from exploitation and abuse.

(3) Right to least restrictive living environment.

(4) 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, 1980. 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.

(5) 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.

(6) Right to equal housing opportunities.

(7) Right to treatment and habilitative services.

(8) 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.

(9) Right to presumption of competence.

(10) Right to due process in guardianship proceedings and in admission to residential services under the act.

(11) Right to fair compensation for labor. Clients of the department receive such compensation in accordance with the Rules of the Commissioner of MHMR 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:

(1) 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.

(2) Right to individualized habilitation plan. The education regulations also mandate individual education plans.

(3) Right to periodic review and reevaluation. A periodic review of educational plans is also mandated by the Education of Handicapped Children Act.

(4) 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.

(5) Right to withdraw from voluntary mental retardation services.

(6) Right to be free from mistreatment, neglect, and abuse.

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

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

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

(10) 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 to 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.

(11) 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.

(12) 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.

(1) Right to prompt, adequate, and necessary medical and dental care and treatment.

(2) Right to a normalized residential environment.

(3) Right to a humane physical environment.

(4) Right to communication and visits.

(5) 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, 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 supplies 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:

- (1) Article 5547-202, Vernon's Texas Civil Statutes.
- (2) Article 5547-300, Vernon's Texas Civil Statutes, known also as the Mentally Retarded Persons Act of 1977.
- (3) Education of Handicapped Children regulations, 42 Federal Register 42474 (Tuesday, August 23, 1977), 45 CFR Part 100b, Parts 121a and 121m.
- (4) Section 504 of the Rehabilitation Act of 1973, 29 United States Code 706.
- (5) 42 Federal Register 22676 (Wednesday, May 4, 1977), 45 CFR Part 84.

(6) Rules of the Commissioner of Mental Health and Mental Retardation, Client Workers, 302.04.33.

(7) Article 5159(d), Vernon's Texas Civil Statutes.

(8) 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 commissioners, and division and section chiefs of Central Office; superintendents and directors of department facilities and chairman of boards of trustees and executive directors of community centers.

Doc. No. 782251

Admissions, Transfers, Furloughs, and Discharges—State Schools for the Retarded 302.04.37

The Texas Department of Mental Health and Mental Retardation is proposing for permanent adoption the emergency rules, Rules 302.04.37.001-.034, it adopts in this issue.

The promulgation of proposed Rules 302.04.37.001-.034 will have no known fiscal implications for the state or for units of local government (Source: legal and claims division.)

Public comment on proposed Rules 302.04.37.001-.034 is invited. Persons may submit their comments by writing to John J. Kavanagh, M.D., acting commissioner, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711, or by telephoning (512) 454-3761.

Rules 302.04.37.001-.034 are proposed under the authority of Section 2.11(b) of Article 5547-202, Texas Civil Statutes, and Section 60 of Article 5547-300, Texas Civil Statutes. The proposed date of adoption is May 8, 1978.

Issued in Austin, Texas, on March 30, 1978.

Doc. No. 782258

John J. Kavanagh, M.D.
Acting Commissioner
Texas Department of Mental Health
and Mental Retardation

Proposed Date of Adoption: May 8, 1978

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



Board of Nurse Examiners

Bylaws 388.01.00

The Board of Nurse Examiners is proposing to amend Rules 388.01.00.004 and .005. These amendments are editorial changes and deletion of obsolete material. There no longer are any exchange visitor nurse programs in Texas.

These amendments will have no fiscal implications to the state or local government. (Source: Nurse Examiner's staff.)

Public comment on the proposed amendments to Rules 388.01.00.004 and .005 is invited. Comments may be submitted by telephoning Margaret Rowland, R.N., executive secretary, Board of Nurse Examiners, at (512) 451-0201, or by writing to the office of the board at Suite 502, 7600 Chevy Chase Drive, Austin, Texas 78752.

These rule amendment are proposed under the authority of Article 4514, Vernon's Texas Civil Statutes.

.004. Treasurer.

(a) The treasurer shall be responsible for being fully informed regarding the fiscal affairs of the Board of Nurse Examiners. *The treasurer* [She] shall work cooperatively with the executive secretary and chairman of the Finance Committee in the preparation of the annual budget *to be adopted by the board*. [A tentative budget shall be presented at the February meeting and action thereon shall be taken at the next annual meeting. Prior to budget preparation, the treasurer shall review current salary schedule for state employees and make recommendations to the board concerning staff salaries.]

(b) The treasurer shall function in the absence of the president and vice-president.

.005. *Board Functions*. A member of the board shall be appointed to serve as chairman in directing the board functions in each of the following areas. The chairman of each functional area shall be appointed at each annual meeting and shall serve until the next annual meeting.

(a) Bylaws/rules and regulations. The chairman shall prepare proposed bylaws/rules and regulation changes and present same to the board prior to any meeting.

(b) Finance. The chairman shall work cooperatively with the treasurer and executive secretary in the preparation of the annual budget.

(c) Education. The chairman shall work cooperatively with the treasurer and the executive secretary on:

- (1) plans for school visits;
- (2) recommendations to the schools following survey visits or reports;
- (3) workshops or special programs for school representatives; field visits as needed;
- (4) general work of the board relating to educational activities.

(d) Nursing practice. The chairman shall:

- (1) work closely with the executive secretary in all matters relating to Article 4525 and the enforcement of mandatory licensure;
- (2) make field visits as necessary;

(3) guide board activities in exchange visitor nurse programs.]

Issued in Austin, Texas, on March 30, 1978.

Doc. No. 782285

Margaret L. Rowland, R.N.
Executive Secretary
Board of Nurse Examiners

Proposed Date of Adoption: May 8, 1978

For further information, please call (512) 451-0201.

Public Utility Commission of Texas

Practice and Procedure 052.01.00

The Public Utility Commission of Texas proposes to amend its rules of Practice and Procedure. Rule .011 has been amended to permit the commission to make exceptions to any procedural rule when good cause is shown.

Rule .032 clarifies the contents of a petition requesting a certificate of convenience and necessity. The amendment states the types of maps now required by the commission as opposed to those required when the rule was originally written. It also requires that a certificate application form be filled out by the applicant. Section (e) clarifies the contents of rate-setting petitions by stating that a rate-filing package as published by the commission must be filed when applying for a rate increase.

Rule .036 permits oral motions to be made during pre-hearings as well as during hearings. The existing rule permits oral motions only during hearings.

Rule .039 has been changed to permit hand delivery of requests for information. It additionally requires that three copies of all answers to these requests must be filed with the commission instead of one. The commission's staff is also required to prefile its prepared testimony seven days in advance of any hearing, whereas now it is not required to prefile its testimony.

Rule .042 adds a requirement that a fiscal note be sent to the Texas Register division stating the probable cost to state and local governments when a rule change is proposed.

Rule .043 adds a requirement that certificate applications be published in local newspapers for four consecutive weeks. The purpose is to give local land owners and interested persons notice of the type of facility to be built in the general area. Section (c) has been amended to require delivery of notice of all rulemaking proceedings to the lieutenant governor and speaker of the house as well as publication in the *Texas Register*.

Rule .051 deletes *res adjudicata* as a reason for which the commission may dismiss a hearing.

Rule .062 has been amended to clarify that the commission will sit *en banc* when conducting hearings and that both the commission, when sitting *en banc*, and individual hearings examiners, when holding hearings pursuant to authority granted them by the commission, may issue interim orders.

Rule .063 has been amended to correctly state the order of procedure in hearings conducted by the commission. The use of clarifying questions has been dropped and the order for cross-examination, direct testimony, and swearing in of parties has been changed to reflect the procedure as it is actually conducted at the commission at the present time.

Rule .064 has been amended so that a stenographic record of proceedings will be made only when a party or the staff requests a reporter. In all other proceedings, a tape recording alone will be made. The commission now may assess costs to any party requesting that a transcript be made from a tape of a proceeding.

Rule .067 has been amended to make it clear that the presiding examiner will rule on interim orders.

Rule .610 has been amended to require that a notice of any proposed rule change shall be filed with the lieutenant governor and speaker of the house in addition to being filed with the *Texas Register*.

Rule .710 has been amended to permit requests for admissions of fact and genuineness of documents in accordance with Rule 169 of the Texas Rules of Civil Procedure.

Rule .081 has been amended to permit any party to file a reply to any exceptions or briefs filed by any other party in any proceeding before the commission. It has also been amended to permit the commission's examiners to amend a proposal for decision without having to permit exceptions, replies, or briefs to be submitted by parties.

Rule .082 changes the time limits for filing exceptions and replies to examiners' reports from 25 days to 15 days after the service of an examiner's report.

Rule .111 has been amended to show that the commission now operates through six divisions (accounting, economic research, engineering and enforcement, general counsel, hearings, and information services) rather than five divisions (administrative, hearings, accounting, enforcement, and economic research), as was previously the case. It also changes the requirement that the commission meet on the first and third Mondays of each month and permits it to meet at such times and places as may be determined by the chairman or the other two members.

Rule .121 has been amended so that the commission is not required to publish in an appendix to its procedural rules a copy of every form which it publishes. Rather, a list of each form will be kept by the commission's filing clerk for the public's use. The reason for this change is that the number of forms has risen so that publication in an appendix form is not feasible.

The commission has determined that the proposed amendments have no fiscal implications for the state or for units of local government.

Written comments are invited and may be sent to Roy J. Henderson, director of hearings and secretary, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757.

These amendments are proposed under authority of Texas Revised Civil Statutes, Article 1446c.

.011. Purpose and Scope of Rules.

(b) Scope of rules. These rules shall govern the procedure for the institution, conduct, and determination of all causes and proceedings before the Public Utility Commission of Texas. They shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person, **but the commission may make exceptions for good cause.**

.032. Form and Content of Pleadings.

(d) Contents of "certificate of convenience and necessity" petitions. In addition to the information called for in Section (c) above, applications for "certificates of convenience and necessity" shall contain the following:

(1) **Two copies of the appropriate application form prescribed by the commission, completed as instructed and properly executed.**

(2) **Territorial maps filed in support of such applications for initial or amended certificates which shall fulfill the following requirements:**

(A) **For all utilities other than water and sewer, the information shall be on a full scale state highway or commission map or a portion thereof and shall be permanently legible.**

(B) **For water and sewer, the area to be served shall be shown on a state highway county map, scale one inch equals two miles. It shall show the location of the applicant and each neighboring water or sewer utility within five miles of applicant's present location. Facilities shall be shown on a U.S.G.S. 7-1/2 minute series map.**

(C) **Two copies of each map shall be filed.**

(D) **Separate maps shall be filed for each county in which the reporting utility operates.**

(E) **If applicable, the map shall separately indicate the generating facilities, transmission facilities, and distribution facilities as located within the territory claimed:**

(i) a color code may be used to distinguish the types of facilities indicated;

(ii) the location of any such facility shall be described with such exactness that the facility can be located "on the ground" from the map.

(3) Two copies of any evidence are required by the commission to show that the applicant has received the required consent or permit of any other public authority, for example, FCC or FPC applications.

(1) All territorial maps filed in support of or as predicates for application for "certificates of convenience and necessity" shall:

(A) Be on a state highway county map size 18 inches by 25 inches or on a map drawn to scale and not less than 18 inches by 25 inches in size, and be permanently legible.

(B) A separate map or maps shall be filed for each utility subject to the filing requirement.

(C) A separate map or maps shall be filed for operations in each county in which the reporting utility operates.

(D) The map and the documents, if any, accompanying the map, shall designate in whose behalf the map is being filed and whether it is an individual, a partnership, a municipally owned utility, a cooperative corporation, a cor-

poration, a municipal corporation, or a political subdivision of the state.

[(E) The map and the documents, if any, accompanying the map, shall indicate the name of the party or official filing the map, together with his address and official position, if any.

[(F) The map and the documents, if any, accompanying the map, shall describe the territory served by natural boundaries or other limits that can be located "on the ground."

[(G) The map shall separately indicate the generating facilities, transmission facilities, and distribution facilities as located within the territory claimed.

[(i) A color code may be used to distinguish the types of facilities indicated.

[(ii) The location of any such facility shall be described with such exactness that the facility can be located "on the ground" from the map.

[(H) A separate map shall be filed for territory claimed but which is not currently being serviced. This map shall include territory on which an application was pending before the Federal Communications Commission or other governmental bodies on September 1, 1975, but on which service had not commenced, or it shall include territory in which facilities were under construction but not completed as of September 1, 1975.

[(I) The map and the documents, if any, accompanying the map, shall designate the primary office of the applicant and the person to be contacted with respect to any question regarding the filing.

[(J) The map and the documents, if any, accompanying the map, shall be sufficiently descriptive of the territory and facilities described to support an application for a "certificate of convenience and necessity" as provided for in Article VII of the Public Utility Regulatory Act.

[(2) The application shall refer to the territory in which a certificate to operate is sought, shall identify the map filing on which the request is predicated, shall state whether service was begun before or after September 1, 1975, and shall state the type of service provided, together with the exact conditions of the certificate sought.

[(3) Each applicant for a certificate shall file with the commission such evidence as is required by the commission to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority.]

(e) Contents of rate setting petitions. In addition to the information required in Section (c) above, rate setting petitions shall contain *information as specified in the rate filing packages published by the Public Utility Commission for the various classifications of utilities.* [the following:

[(1) the proposed revisions of rates and schedules;

[(2) a statement specifying in detail each proposed change;

[(3) the effect the proposed change is expected to have on the revenues of the company;

[(4) the actual financial statements for the current test year;

[(5) the classes and numbers of utility customers affected; and

[(6) any other information required by the commission.]

.036. *Written Motions.* Any motion relating to a pending proceeding shall, unless made during a *pre-hearing or hearing*, be written and shall set forth the relief sought and the specific reasons and grounds for relief. If based upon matters which do not appear of record, it shall be supported by affidavit. Any motion not made during a hearing shall be in writing and filed with the *hearings examiner* [director of hearings].

.039. *Time Limits for Filing Requests for Information and Prepared Testimony and Exhibits.*

(a) In any major rate proceeding over which the commission has original jurisdiction, all requests for information and prepared testimony and exhibits shall, unless otherwise provided by the commission, be filed as follows:

(1) All requests for information to a party shall be filed with the commission within 20 days from the date of the filing with the commission of an application, petition, or statement of intent to change rates, and copies of such request for information shall be *either hand delivered or sent by certified mail, return receipt requested*, to all parties of record and the commission's general counsel. *Three copies of all* [All] answers to requests for information must be filed within 20 days from receipt of the request for information by the party. *One copy shall be filed with the hearings division and two copies shall be filed with the commission's general counsel.*

(3) All intervenors or protestants shall file *11 copies* of their prepared testimony and exhibits, if any, within 45 days from the date of the original filing.

(4) *The commission staff shall pre-file, except for good cause, the prepared testimony and exhibits of its witnesses seven days prior to the final hearing but shall not otherwise be required to present its case prior to that time.* [The commission staff shall not be required to pre-file its prepared testimony of witnesses or exhibits and shall not otherwise be required to present its case prior to any proceeding thereon.]

.042. *Contents of Notice.*

(c) Rulemaking notice. In all proceedings involving rulemaking, the notice shall include, in addition to the requirements set out in Section (a) above, the following information:

(4) *A fiscal note stating the fiscal implication of the proposed rule to the state and to the units of local government of the state, including the total probable cost of enforcing or administering the rule and the amount of revenue that will need to be raised, or will be lost or spent, as a consequence of the rule, each year for the first five years; or stating that the proposed rule has no fiscal implications for the state or for units of local government.*

(5) [(4)] a request for comments on the proposed rule from any interested person; and

(6) [(5)] any other statement required by law.

.043. *Publication Notice.*

(b) Licensing proceedings. In licensing proceedings, notice shall be given in the following ways:

(3) *Publication by the applicant in a newspaper having general circulation in the area of the state where "a certificate of convenience and necessity" is being requested, in conspicuous form and place in that newspaper once each week for four consecutive weeks beginning with the week after the application is made with the commis-*

sion, of the applicant's intent to secure a "certificate of convenience and necessity." This notice shall identify in general terms the type of facility, if applicable, and the area for which the certificate is being requested.

(4)(3) Written notice to the parties at least 10 days in advance of the hearing date.

(5)(4) The commission may require the applicant to mail or deliver notice to other affected persons or agencies.

(c) Rulemaking proceedings. In rule making proceedings, notice shall be given in the following ways:

(1) Publication by the commission in the *Register* at least 30 days prior to the hearing date *and simultaneous delivery to the lieutenant governor and speaker of the house.*

.051. Dismissal Without Hearing.

(a) The commission may entertain its own motions or other motions for dismissal without a hearing, for any of the following reasons:

(2) unnecessary duplication of proceedings [or *res adjudicata*];

.062. Presiding Officer. Hearings will be conducted by [a member of] the commission, the director of hearings, or a hearings examiner, any and all of whom are at times referred to in these rules as the examiner or the presiding examiner. The presiding examiner shall have authority to administer oaths; to examine witnesses; to receive evidence and testimony, and to rule upon the admissibility of evidence and amendments to pleadings; to issue subpoenas to compel the attendance of witnesses and the production of papers and documents; to evidence and authorize the taking of depositions; to make proposed findings of fact and conclusions of law; to make proposed orders and judgments as shall be supported by the record and made within the limits set by law; *to issue interim orders*; to recess any hearing from day to day; and to do any and all other things necessary to provide a fair, just, and proper hearing. He shall also have the authority to set reasonable times within which a party may testify or present evidence.

.063. Order of Procedure. The presiding examiner shall open the hearing and make a concise statement of its scope and purposes. Once the hearing has begun, parties or their representatives may be off the record only when the examiner permits. If a discussion off the record is pertinent, the examiner will summarize such discussion for the record. Appearances are to be entered on the record by all parties, their attorneys or representatives, and any persons who may testify during the proceeding. [All persons who may testify will then be placed under oath.] Thereafter, parties may make motions or opening statements. *All persons who may testify will be placed under oath when it is their turn to testify.*

Following opening statements, if any, by all parties, the party with the burden shall be allowed to proceed with his direct case, after which opposing parties shall be allowed, at the examiner's discretion, to pose clarifying questions, that is, inquiries for fuller explanations or elaboration of points already stated. Questions by way of clarification should not be used as a substitute for cross-examination. *All other parties and the commission staff will then present their cases and be subject to cross-examination.*

Where the proceeding is initiated at the commission's own call, or where several proceedings are heard on a consolidated record, the presiding examiner shall designate who shall open and close and at what stage intervenors shall be permitted to offer evidence.

Following presentation of the direct case of the party with the burden [and the clarifying questions], the examiner shall either entertain motions from the parties on how best to proceed or shall determine himself how best to proceed so that the hearing will fit the particular proceeding, unless the order of procedure has already been agreed upon in a pre-hearing conference or otherwise prior to the hearing.

Opportunity for cross-examination and presentation of a direct case shall be afforded all parties of record *and the commission's general counsel.* After all parties have completed the presentation of their evidence and been afforded the opportunity [to ask clarifying questions, if clarifying questions have been permitted by the examiner, and] to cross-examine the opposition witnesses, closing statements shall be allowed. The party with the burden of proof, usually the petitioner, applicant, or complainant, shall be entitled to open and close.

.064. Reporters and Transcripts. In all proceedings *for which any party or the staff requests a reporter*, an official reporter shall make and transcribe a stenographic record of the hearing and the reporter shall provide as many copies of the transcript as may be required for the purposes of the commission. *In all other proceedings, a tape recording shall be made.* No copies of the transcript will be furnished to the parties by the commission, but copies may be purchased from the official reporter upon payment of appropriate charges. The commission shall approve rates to be charged by its reporters on transcripts that are sold. The rates shall not exceed rates authorized by law to be paid the district court reporters.

If no reporter was requested prior to a proceeding but a transcript is requested after the proceeding has closed, the commission may assess costs to any party requesting that a transcript be made from the tape of the proceeding.

.067. Interim Orders. Prior to any final order of the commission, a party may seek, through an examiner, commission approval of a written interim order, but that order shall not be considered of the same nature as a final decision. Furthermore, an interim order shall not be subject to exceptions or application for rehearing, but any party aggrieved by the interim order shall be provided an opportunity to file a written motion in opposition to it, or to set aside or to modify it. *This motion will be filed with and ruled on by the presiding examiner.*

.610. Types of Hearings.

(c) Rulemaking hearings. Prior to the adoption of any rule, the commission shall give at least 30 days' notice of its intended action. Notice of the proposed rule shall be filed with the secretary of state and published by the secretary of state in the *Texas Register*. *A copy of the notice shall also be sent to the lieutenant governor and speaker of the house.*

.710. Depositions. The taking and use of depositions in any proceeding shall be governed by *Sections 14 and 14a* [Section 14] of the Administrative Procedure and Texas

Register Act. Requests for admissions of facts and genuineness of documents shall be made in accordance with Rule 169 of the Texas Rules of Civil Procedure.

.081. Examiner's Report and Proposal for Decision. If, in a proceeding, a majority of the commissioners has not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the commission itself, may not be made until a proposal for decision is served on the parties, and an opportunity is afforded each party adversely affected to file exceptions and present briefs to the commissioners. **If any party files exceptions or presents briefs, an opportunity must be afforded to all other parties to file replies to the exceptions or briefs.** The proposal for decision must contain a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision, prepared by the person who conducted the hearing or by one who has read the record. **The proposal for decision may be amended pursuant to exceptions, replies, or briefs submitted by the parties without again being served by the parties. The parties by written stipulation may waive compliance with this section.**

.082. Filing of Exceptions and Replies. Any party of record may, within 15 [25] days of the date of service of the examiner's report and proposal for decision, unless the examiner has set a shorter or longer period of time, file exceptions to the report and proposal for decision. Replies to these exceptions shall be filed within 15 [25] days after the date of filing the exceptions unless the examiner has set a shorter or longer period of time. A request for extension or decrease of time within which to file exceptions or replies shall be filed with the examiner, and a copy of the request shall be served on all parties of record by the party making the request. The examiner shall promptly notify the parties of the commission's decision with regard to these requests. Additional time shall be allowed only when the interests of justice so require.

.111. Organization of the Commission.

(a) Divisions. *The commission shall operate through six divisions: an accounting division, an economic research division, an engineering and enforcement division, a general counsel division, a hearings division, and an information services division.*

(1) The accounting division shall be under the direction of the director of accounting and shall have primary responsibility for:

(A) Preparing and recommending to the commission the adoption of uniform rules of accounting and other reports as the commission may require public utilities subject to its regulations to file, as provided in Articles V and IX of the Public Utility Regulatory Act;

(B) Periodically making reports to the commission on facts determined by it from its review of these accounts and reports filed with the commission;

(C) Collecting and accounting for the gross receipts tax levied against all utility companies under the jurisdiction of the commission. The primary responsibility of the accounting division shall be in the area of rates to be charged by public utilities;

(D) Serving as an internal accountant for the commission and advising the commission on financial matters, preparing and submitting to the commission the budget, and approving the receipts and expenditures consistent with the budget.

(E) Directing supervision over the administrative portions of the commission; and

(F) Performing such duties as may from time to time be assigned by the commission.

(2) The economic research division, under the direction of a director of economic research, shall conduct research into economic analyses and related matters as the commission may direct. The economic research division shall develop, maintain, and improve automatic data processing systems employed by the commission, including a data base and information system built around periodic utility reports. It shall also perform such duties as may from time to time be assigned by the commission.

(3) The engineering and enforcement division shall be under the direction of the chief engineer and shall advise the commission with reference to the obligation of every public utility to furnish "such service, instrumentalities, and facilities as shall be safe, adequate, efficient, and reasonable," and with the adoption of standards, classifications, regulations, or practices to be observed and followed by a public utility with respect to service to be furnished, under the provisions of Section 35 of the Public Utility Regulatory Act. The duties of the chief engineer and his staff include:

(A) preparing and recommending to the commission the adoption of service rules and forms of reporting required of public utilities by the commission;

(B) preparing and presenting evidence before the commission or its appointed hearings examiner in proceedings;

(C) performing of investigations regarding quality of service being provided by public utilities;

(D) performing and supervising studies of special situations as required by the commission;

(E) enforcing the service rules of the commission;

(F) reviewing and resolving consumer complaints referred to the division by the information services division; and

(G) performing such duties as may from time to time be assigned by the commission.

(4) The general counsel's division shall be under the direction of the general counsel and shall be composed of attorneys and other staff as may be deemed necessary from time to time. The duties of the general counsel and his staff include:

(A) accumulating evidence and other information from public utilities and from the accounting and technical and other staffs of the commission and from other sources for the purposes specified herein;

(B) preparing and presenting such evidence before the commission or its appointed examiner in proceedings;

(C) conducting investigations of public utilities under the jurisdiction of the commission;

(D) preparing proposed changes in the rules of the commission;

(E) preparing recommendations that the commission undertake investigation of any matter within its authority;

(F) preparing recommendations and a report of such staff for inclusion in the annual report of the commission;

(G) protecting and representing the public interest before the commission;

(H) such other activities as are reasonably necessary to enable him to perform his duties; and

(I) performing such duties as may from time to time be assigned by the commission.

(5) The hearings division shall be under the direction of a director of hearings and shall be comprised of hearings examiners and other staff as may be deemed necessary from time to time. This division shall be responsible for the conduct of hearings on all proceedings and for the preparation and submission to the commission of proposed findings of fact and conclusions of law in each proceeding. It shall also perform such duties as may from time to time be assigned by the commission.

(6) The information services division shall be under the direction of a director of information services and shall have primary responsibility for:

(A) reviewing and evaluating all action on all consumer complaints in accordance with the commission's substantive rules;

(B) disseminating all information relating to commission actions; and

(C) publishing the commission Bulletin.

(a) Divisions. The commission shall operate through five divisions: an administrative division, a hearings division, an accounting division, an enforcement division, and an economic research division.

(1) The administrative division shall be under the direction of an administrator, who will be the director of public utilities and the chief executive officer of the commission, and who, among others, shall exercise the following responsibilities:

(A) to direct the activities of the administrative, accounting, enforcement, and economic research division;

(B) to have general supervision of the employment of officers, investigators, lawyers, engineers, economists, consultants, statisticians, accountants, inspectors, clerical staff, and other persons employed by the commission, subject to the approval of the commission;

(C) to execute policies of the commission with reference to the operation of the offices of the commission;

(D) to direct supervision over the administrative division, including the offices of the general counsel and his staff;

(E) to prepare and submit to the commission the budget and to approve the expenditures consistent with the budget.

(2) The hearings division shall be under the direction of a director of hearings and shall be comprised of hearings examiners and other staff as may be deemed necessary from time to time. This division shall be responsible for the conduct of hearings on all proceedings and for the preparation and submission to the commission of proposed findings of fact and conclusions of law in each proceeding.

(3) The accounting division shall be under the direction of the chief accountant and shall have primary responsibility for:

(A) Preparing and recommending to the commission the adoption of uniform rules of accounting and other reports as the commission may require public utilities subject to its regulations to file, as provided in Articles V and IX of the Public Utility Regulatory Act.

(B) To periodically make reports to the commission on facts determined by it from its review of these accounts and reports filed with the commission.

(C) To collect and account for the gross receipts tax levied against all utility companies under the jurisdiction of the commission. The primary responsibility of the accounting division shall be in the area of rates to be charged by public utilities.

(D) To serve as an internal accountant for the commission by advising the director of public utilities on financial matters and establishing the budgetary controls on the commission expenditures.

(4) The enforcement division shall be under the direction of the chief engineer and shall advise the commission with reference to the obligation of every public utility to furnish "such service, instrumentalities, and facilities as shall be safe, adequate, efficient, and reasonable," under the provisions of Section 35(a) of the Public Utility Regulatory Act and with the adoption of standards, classifications, regulations, or practices to be observed and followed by a public utility with respect to service to be furnished. The enforcement division likewise will be responsible for the testing of meters, instruments, or equipment used for the measurement of service of any public utility pursuant to Section 36 of the Public Utility Regulatory Act. The primary responsibility of the enforcement division shall be in the area of services furnished by public utilities.

(5) The economic research division, under the direction of a director of research, shall perform such economic analyses and related matters as the commission may, from time to time, direct.

(b) Commission meeting days. [The commission shall meet on the first and third Mondays of each month at its headquarters at Austin, Texas, unless, by a vote of a majority of the commissioners, this meeting shall be cancelled.] The commission shall meet at [other] times and places to be determined either by the chairman of the commission or by vote of the other two members of the commission.

121. Commission Forms. Standard forms for certain reports to the commission will be furnished by the commission [and published in an appendix to these rules]. *These forms may* [The forms in this appendix can] be amended, deleted, or added to at the commission's discretion without having a rule making proceeding. *A complete list of all commission forms will be kept by the commission filing clerk.*

Doc. No. 782165

Substantive Rules

General Rules 052.02.01

The Public Utility Commission of Texas proposes to amend its Rule 052.02.01.012, entitled "Severability Clause," by adding a phrase which would permit the commission to make exceptions to any of its substantive rules if good cause can be shown.

The Public Utility Commission of Texas also proposes to amend its Rule 052.02.01.013, entitled "Definitions," by adding a definition for economy power, purchased power adjustment factor, and purchased power.

The proposed amendments are for the purpose of permitting an electric utility which purchases power more economically than it can generate it itself or more economically than it is purchasing it from its present supplier to pass on the cost of this newly purchased and more economical power to its customers without the need for a contested rate hearing.

The commission has determined that these proposed amendments have no fiscal implications for the state or for units of local government.

Written comments are invited and may be sent to Roy J. Henderson, director of hearings and secretary, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757.

These amendments are proposed under the authority of Texas Revised Civil Statutes, Article 1446c.

.012. *Severability Clause.* The adoption of these rules will in no way preclude the Public Utility Commission from altering or amending them in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion or upon application of any utility. Furthermore, these rules will not relieve in any way a utility or customer from any of its duties under the laws of this state or the United States. If any provision of these rules is held invalid, such invalidity shall not affect other provisions or applications of these rules which can be given effect without the invalid provision or application, and to this end, the provisions of these rules are declared to be severable. These rules shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person, *but the commission may make exceptions to these rules for good cause.*

.013. *Definitions.*

(14) *Economy power: power produced and supplied from a more economical source by one utility substituted for that being produced or capable of being produced from a less economical source by another utility and scheduled on an availability basis.*

(15)(14) *Facilities: all the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by or in connection with, the business of any public utility, including any construction work in progress allowed by the commission.*

(16)(15) *Fuel adjustment factor: a computed number which, when multiplied by the number of kilowatt-hours consumed by a customer during a billing period, will produce a fuel adjustment charge to the customer. The total of these charges to all customers is the difference in the cost of fuel experienced by the utility during the calendar month that most closely corresponds to the billing period and the cost of fuel that would have been experienced if the price of fuel had been equal to that price stated in the tariff of the utility. The cost of fuel may [shall] include the cost of economy power, hydroelectric power, and the fuel cost component of purchased power [and hydroelectric power].*

(17)(16) *Fuel cost factor: a computed number which, when multiplied by the number of kilowatt-hours consumed by a customer during a billing period, will produce a fuel cost*

charge to the customer. The total of these charges to all customers is the cost of the fuel consumed in generating energy by the utility during the calendar month that most closely corresponds to the billing period. The cost of fuel may [shall] include the cost of economy power, hydroelectric power, and the fuel cost component of purchased power [and hydroelectric power].

(18) *Purchased power adjustment factor: a factor which, when multiplied by the number of kilowatt-hours consumed by a customer during a billing period, will produce a purchased power adjustment charge to the customer. The total of these charges to all customers is the difference in the cost of power purchased by the utility and the component of purchased power cost which has been included in the customers' base rates.*

(19)(17) *Hearing: any proceeding based on an application, petition, complaint, or motion.*

(20)(18) *License: the whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.*

(21)(19) *Licensing: the commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.*

(22)(20) *Municipality: a city, incorporated village, or town existing, created, or organized under the general, home rule, or special laws of the state.*

(23)(21) *Municipally owned utility: any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.*

(24)(22) *Nonrulemaking proceeding: a proceeding other than rulemaking proceeding, and other than proceedings concerning exceptions to rules. This definition includes both contested and uncontested proceedings.*

(25)(23) *Order: the whole or part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, of the commission in a matter other than rulemaking but including issuance of "certificates of convenience and necessity" and rate setting.*

(26)(24) *Party: each person or agency named or admitted as a party.*

(27)(25) *Person: any natural person, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.*

(28)(26) *Pleading: a written allegation by the parties of their respective claims. Pleadings may take the form of applications, petitions, protests, exceptions, replies, motions, and/or answers.*

(29)(27) *Premises: a tract of land or real estate, including buildings and other appurtenances thereon.*

(30)(28) *Proceeding: any hearing, investigation, inquiry, or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of a complaint. It may be rulemaking or nonrulemaking; rate setting or nonrate setting.*

(31)(29) *Public utility: the definition of public utility is that definition given in Article I, Section 3(c) of the Public Utility Regulatory Act.*

(32) *Purchased power: firm electrical power purchased from a source outside the utility's system to supply load requirements.*

(33)|30| Rate: means and includes every compensation, tariff, charge, fare, fee, deposit, toll, rental, and classification, or any of them demanded, observed, charged, or collected whether directly or indirectly by any public utility for any service, product, or commodity defined in Article I, Section 3(c) of the Public Utility Regulatory Act, and any rules, regulation, practices, or contracts affecting any such compensation, tariff, charge, fare, fee, deposit, toll, rental, or classification.

(34)|31| Register: the *Texas Register* established by Acts of the 64th Legislature, Regular Session, 1975, cited in Article 6252-13a, Vernon's Annotated Civil Statutes.

(35)|32| Regulatory authority: when used in these rules, means, in accordance with the context where it is found, either the commission or the governing body of any municipality.

(36)|33| Rule: any commission statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.

(37)|34| Rulemaking proceeding: a proceeding to adopt, modify, or interpret a rule as defined in Definition 36 |33| above, or to adopt, modify, or interpret a statement which has been filed as a rule by the secretary of state.

(38)|35| Separation: for communications utilities only, the division of plant, revenues, expenses, taxes, and reserves, applicable to exchange or local service where such items are used in common for providing public utility service to both local exchange service and other service, such as interstate or intrastate toll service.

(39)|36| Service: service is used in these rules in its broadest and most inclusive sense and includes any and all acts done, rendered, or performed and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities in the performance of their duties under the Public Utility Regulatory Act to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them. Service shall not include the printing, distribution, or sale of advertising in telephone directories.

(40)|37| Tariff: the schedule of a utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the utility stated separately by type or kind of service and the customer class.

(41)|38| Test year: the most recent 12 months for which operating data for a public utility are available, and shall commence with a calendar quarter.

(42)|39| Uncontested proceeding or case: all proceedings other than contested proceedings.

(43)|40| V.A.C.S.: Vernon's Annotated Civil Statutes of Texas.

Doc. No. 782166

Records and Reports 052.02.02

The Public Utility Commission of Texas proposes to amend its Rule 052.02.02.021, entitled "General Reports," to require the submission of ground water withdrawal reports by municipally owned utilities which withdraw ground water from conservation, reclamation, or subsidence districts.

The Public Utility Commission of Texas also proposes to amend its Rule .052.02.02.023, entitled "Statistical Reports," by requiring telephone utilities to submit a quarterly station data report on a form prescribed by the commission. This amendment is simply a clarification of an existing rule.

The commission has determined that these proposed amendments have no fiscal implications for the state or for units of local government.

Written comments are invited and may be sent to Roy J. Henderson, director of hearings and secretary, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757.

These amendments are proposed under authority of Texas Revised Civil Statutes, Article 1446c.

.021. General Reports.

(p) Ground water withdrawal reports. Each utility, including municipally owned utilities, which withdraws ground water from conservation, reclamation, or subsidence districts shall file with the commission a verified or certified copy of the appropriate permit issued by the conservation, reclamation, or subsidence district.

.023. Statistical Reports.

(d) Telephone utilities. Each telephone utility shall submit a quarterly *station data* report on a form prescribed by the commission, showing the following:

(1) the number of telephones in service in each exchange, with separate subtotals showing the number of extension stations;

(2) the number of main stations served by lines classified as one party lines, two party lines, four-party lines, five-party lines and other multiparty lines; and

(3) the number of main stations served by lines with more than eight customers per line.]

Doc. No. 782167

Rates 052.02.03

The Public Utility Commission of Texas is proposing to amend Rule .052.02.03.032, entitled "Cost of Service." The proposal amends Section (a) by deleting the requirement that income taxes be treated on a normalized basis in determining cost of service. It also will prohibit the expenditure of any funds used to mail any parcels or letters containing items on which no expenditures are allowed presently in cost of service.

The income tax treatment would permit the commission to either normalize taxes or flow them through. The prohibition on expenditures of funds to mail prohibited items is an attempt to ensure that no funds are charged against rate payers indirectly when the item itself is a prohibited expenditure.

The Public Utility Commission of Texas is also proposing to amend Rule .052.02.03.033, entitled "Rate Structure." This proposal amends Section (b) by permitting a public utility to recover the cost of economy power which it purchases from a second utility. The term "economy power" is defined in the amendment to Substantive Rule .052.02.01.013 above.

The Public Utility Commission of Texas is also proposing to amend Rule .052.02.03.034, entitled "Form and Filing of Tariffs." The proposal amends Sections (b) and (e) and adds Section (i).

These amendments would clarify the number of copies of each tariff revision required to be filed, add various new symbols denoting the type of change being requested, and set an effective date for the time at which the tariff change may take effect.

The commission has determined that these proposed amendments have no fiscal implications for the state or for units of local government.

Written comments are invited and may be sent to Roy J. Henderson, director of hearings and secretary, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757.

These amendments are proposed under authority of Texas Revised Statutes, Article 1446c.

.032. Cost of Service.

(a) Cost of Service.

(4) Income taxes [on a normalized basis].

(6) Advertising, contributions and donations:

(B) No expenditure shall be allowed as a cost of service for the following special items:

(v) funds expended in support of or membership in social, recreational, fraternal, or religious clubs or organizations; [and]

(vi) funds promoting increased consumption of energy; and [.]

(vii) funds expended to mail any parcel or letter containing any of the above special items.

.033. Rate Structure.

(b) Rate design.

(4) *An adjustment for recovering the cost of economy power purchased pursuant to a sale between different electric utilities may, at the commission's discretion, be allowed in the tariff of the purchasing utility.*

.034. Form and Filing of Tariffs.

(b) Requirements as to size, form, identification, and filing of tariffs.

(1) Every public utility shall file with the commission **filing clerk four copies** of its tariff containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service by **September 1 [July], 1976 or when it applies for a certificate of convenience and necessity to operate as a public utility, if it is not in existence as of September 1, 1976. It shall also file four copies of each subsequent revision. Each revision shall be accompanied by a cover page which contains a list of the pages being revised.**

(e) Symbols for changes. Each proposed tariff sheet shall contain notations in the right-hand margin indicating each change made on these sheets. Notations to be used are: (C) to denote a change in regulations; (D) to denote discontinued rate or regulations; (I) to denote a rate increase; (N) to denote a new rate or regulations; (R) to denote a rate reduction; [and] (T) to denote a change in text, but no change in rate or regulation; (M) to denote a rate, regulation, or text moved from one page to another with no change in the rate, regulation, or text; (E) to denote the correction of an

error made during a revision (the revision which resulted in the error must be one connected to some material contained in the tariff prior to the revision); and (S) to denote reissued material, that is, material currently in the tariff which is being reissued with this revision without change in rate, regulation, or text.

In addition to symbols for changes, each changed provision in the tariff shall contain a vertical line in the right-hand margin of the page which clearly shows the exact number of lines being changed.

(i) *Effective date of tariff change. No tariff change may take effect prior to 35 days after filing without commission approval. The requested date will be assumed to be 35 days after filing unless the utility requesting the change requests a different date in its application. The commission may suspend the effective date of the tariff change for 120 days after the requested effective date and extend that suspension another 30 days if it finds that a longer time will be required for final determination.*

Doc. No. 782168

Service 052.02.04

The Public Utility Commission of Texas proposes to amend its Rule 052.02.04.042, entitled "Customer Relations." Section (a) is amended by requiring a utility to notify a prospective customer of the lowest-priced service alternatives which it has available for the customer. Section (b) is amended by requiring a utility to notify a complaining customer of this commission's complaint process and by requiring the utility to respond to the commission within 30 days of receipt of notification from the commission of a complaint by a customer.

The Public Utility Commission of Texas also proposes to amend its Rule 052.02.04.044, entitled "Discontinuance of Service." This amendment clarifies the day on which a utility bill becomes delinquent by stating that a postmark, if there is any, on the envelope of the bill or an issuance date on the bill, if there is no postmark, shall constitute proof of the date of issuance of the bill. It also states that payment at a utility's authorized payment agency, such as a grocery store where payment is accepted by the utility, is considered payment to the utility itself. Sections (d) and (e) have been amended to make it clear that service may be disconnected only for a failure to pay for utility service and not for a failure to pay for a nonutility service which may also be provided by the utility.

The Public Utility Commission of Texas also proposes to amend its Rule 052.02.04.045, entitled "Applicant Deposit." Section (a) states that the credit history of one spouse may be used by the other spouse (whether presently married or not) when applying for service. Section (a) has also been amended to permit a residential applicant to obtain service by securing a guarantee to pay the required deposit rather than the actual bills for the service consumed. Section (d) has been amended to permit a more liberal deposit policy. It permits a utility to offer a deferred payment arrangement when an additional deposit is required. Section (g) has been amended to require that interest be accrued on a deposit and paid annually even when the customer has not met those criteria which permit the deposit itself to be refunded. Section (i) has

been amended to make it clear that no revenues from estimated telephone directory advertising may be used in determining the amount of any deposit required by a telephone utility.

The commission also proposes to amend its Rule 052.02.04.046, entitled "Billing," by requiring a telephone utility to make an adjustment or a refund to a customer's account when telephone service is out of order for eight normal working hours whether the disruption is due to the negligence of the company or not. The present rule requires an adjustment only if the interruption is one which was not beyond the control of the company. Section (b) has been amended to make it plain that a utility must report the results of an investigation of a dispute between the customer and the utility only if the dispute is over a bill for utility service and not for some nonutility service.

The commission also proposes to amend its Rule 052.02.04.048, entitled "New Construction," by clarifying the manner in which telephone utilities must fill applications for telephone service which do not involve line extensions or new facilities. This is a clarification of an existing rule.

The commission has determined that these proposed amendments have no fiscal implications for the state or for units of local government.

Written comments are invited and may be sent to Roy J. Henderson, director of hearings and secretary, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757.

These amendments are proposed under the authority of Texas Revised Civil Statutes, Article 1446c.

.042. Customer Relations.

(a) Information to customers. Each utility shall:

(2) Upon request of a prospective customer for service, ask if such customer wishes to be informed of the lowest-priced service alternatives available and upon an affirmative response shall inform such customer of the utility's lowest-priced alternatives available at the customer's location, giving full consideration to equipment options and installation charges, if any, incident thereto;

(2) assist the customer or applicant in selecting the most economical rate schedule;

(b) Customer complaints.

(1) Upon complaint to the utility by a customer either at its office, by letter, or by telephone, the utility shall promptly make a suitable investigation and advise the complainant of the results thereof. It shall keep a record of all complaints which shall show the name and address of the complainant, the date and nature of the complaint, and the adjustment or disposition thereof for a period of two years subsequent to the final settlement of the complaint. Complaints with reference to rates or charges which require no further action by the utility need not be recorded.

(2) In the event the complainant is dissatisfied with the utility's report, the utility must advise the complainant of the Public Utility Commission complaint process.

(3) Upon receipt of a complaint, either by letter or by telephone, from the commission on behalf of a customer, the utility shall make a suitable investigation and advise the commission of the results thereof. Initial

response to the commission must be made within 30 days. The commission encourages all customer complaints to be made in writing to assist the commission in maintaining records on the quality of service of each utility.

(4) The utility shall keep a record of all complaints which shall show the name and address of the complainant, the date and nature of the complaint, and the adjustment or disposition thereof for a period of two years subsequent to the final settlement of the complaint. Complaints with reference to rates or charges which require no further action by the utility need not be recorded.

(c) Utility response. Upon receipt of a complaint, either by letter or by telephone, from the commission on behalf of a customer, the utility shall make a suitable investigation and advise the commission of the results thereof. Initial response to the commission must be made within 30 days. The commission encourages all customer complaints to be made in writing to assist the commission in maintaining records on the quality of service of each utility.

(c)(d) Deferred payment plan.

.044. Discontinuance of Service.

(a) The due date of the bill for utility service shall not be less than 15 days after issuance. A bill for utility service is delinquent if unpaid by the due date. *The postmark, if any, on the envelope of the bill, or an issuance date on the bill, if there is no postmark on the envelope, shall constitute proof of the date of issuance. If the due date falls on a holiday or weekend, the due date for payment purposes shall be the next work day after the due date.*

(c) A customer's utility service may be disconnected if the bill has not been paid or a deferred payment agreement entered into within 20 days from the date of issuance and if proper notice has been given. Proper notice shall consist of a separate mailing or hand delivery at least five days prior to a stated date of disconnection. *If mailed, the cutoff day may not fall on a holiday or weekend but shall fall on the next work day after the fifth day. Payment at a utility's authorized payment agency is considered payment to the utility.*

(d) Utility service may be disconnected after proper notice for any of the following reasons:

(1) failure to pay a delinquent account for utility service or failure to comply with the terms of a deferred payment agreement;

(e) Utility service may not be disconnected for any of the following reasons:

(1) delinquency in payment for utility service by a previous occupant of the premises;

.045. Applicant Deposit.

(a) Establishment of credit for permanent residential applicants.

(1) Each utility may require a residential applicant for service to satisfactorily establish credit, but such establishment of credit shall not relieve the customer from complying with rules for prompt payment of bills. *Credit history shall be equally applicable to a spouse or former spouse who shared the service. Credit history maintained by one must be applied equally to the other without modification and without additional qualifications not required of the other.*

(2) Subject to these rules, a residential applicant shall not be required to pay a deposit:

(B) if the residential applicant furnishes in writing a satisfactory guarantee to secure payment of *the deposit* (bills for the service required); or

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

(1) The required deposit shall not exceed an amount equivalent to one-sixth of the estimated annual billings. If the actual use is at least twice the amount of the estimated billings, *and a customer has a late payment (or delinquent payment) record*, a new deposit requirement may be calculated and an additional deposit may be required to be made within 10 [two] days. *If a customer is unable to pay the full amount of the additional required deposit, the utility shall offer a deferred payment arrangement as outlined in Rule 052.02.04.042(d); provided, however, the customer shall be required to pay at least one-half the additional deposit immediately.* [If such additional deposit is not made, the utility may disconnect service under the standard disconnection procedure.]

(e) Deposits for temporary or seasonal service and for weekend or seasonal residences. The utility may require a deposit sufficient to reasonably protect it against the assumed risk, provided such policy is applied in a uniform and nondiscriminatory manner. *This deposit shall be returned according to the guidelines set out in Section (d)(3), above.*

(g) Refund of deposit.

(2) When the customer has paid bills for service for 12 consecutive residential billings or for 24 consecutive commercial or industrial billings without having service disconnected for nonpayment of bill and without having more than two occasions in which a bill was delinquent, and when the customer is not delinquent in the payment of the current bills, the utility shall promptly and automatically refund the deposit plus accrued interest to the customer in the form of cash or credit to a customer's bill, *or void the guarantee. If the customer does not meet these refund criteria, the deposit may be retained but interest on the deposit shall be paid annually either in the form of cash or credit to a customer's bill.*

(i) *Determining amount of deposit. In determining the amount of any deposit permitted by these rules, no revenue from estimated telephone directory advertising may be used.*

(j)(i) Complaint by applicant or customer.

.046. Billing.

(a) Rendering and form of bills.

(1) Telephone utilities.

(B) In the event a customer's service is interrupted other than [by a disaster, or] by the negligence or willful act of the customer, and it remains out of order for eight normal working hours or longer after access to the premises is made available *and* after being reported to be out of order, appropriate adjustments or refunds shall be made to the customer. [In the event the customer's service is interrupted by natural or other disaster beyond the control of the utility, adjustment or refunds shall be made to the customers affected, if service is not restored within 24 hours after access to the premises is made available.] The amount of adjustment or refund shall be determined on the basis of the known period of interruption, generally beginning from the time the service interruption is first reported. The refund to

the customer shall be the *pro rata* part of the month's *flat rate* charges for the period of days and that portion of the service facilities rendered useless or inoperative. The refund may be accomplished by a credit on a subsequent bill for telephone service.

(b) Disputed bills. In the event of a dispute between a customer and a utility regarding any bill *for utility service*, the utility shall forthwith make such investigation as shall be required by the particular case, and report the results thereof to the customer.

.048. New Construction.

(c) Response to request for service. Every telephone and electric public utility shall serve each qualified applicant for service within its certificated area as rapidly as is practical. Those applications for new [telephone and] electric service not involving line extension or new facilities should be filled within seven working days; *applications for new telephone service not involving line extension or new facilities shall be filled in accordance with Rule 052.02.05.051(e)(2)(A).* Those applications for *telephone and electric* residential service requiring line extensions should be filled as quickly as possible and shall be filled within 90 days unless unavailability of materials causes unavoidable delays. In the event that residential service is delayed in excess of 90 days after an applicant has met credit requirements and made satisfactory arrangements for payment of any required construction charges, a report shall be made to the commission listing the name, location, and cause for delay. Unless such delays are due to causes which are reasonably beyond the control of the utility, delay in excess of 90 days shall constitute refusal to serve, and consideration may be given to revoking the certificate of convenience and necessity or to granting a certificate to another utility to serve the applicant, or such refusal may be considered in arriving at a proper return on the invested capital of the utility.

Doc. No. 782169

Special Rules 052.02.05

The Public Utility Commission of Texas proposes to amend its Rule 052.02.05.051, entitled "Telephone Utilities." Section (a) has had added a definition for automatic dialing-announcing devices. Section (b) will require telephone utilities to set out sample interstate and intrastate long distance rates in their telephone directories. Section (e) permits telephone utilities to collect service order installation data on a seven calendar day basis rather than a five working day basis if it so desires. It also requires telephone utilities to keep average operator answering performance reports on an exchange basis and, in general, requires telephone utilities to provide a higher percentage of trouble-free calls than the existing rules do. It also requires newly built lines to conform to certain decibel loss levels. Section (g) sets out the traffic usage studies which must be performed for central offices with more than 300 main stations and more than 1,000 main stations. Section (h) prohibits the use of automatic dialing-announcing devices which cannot be terminated at will from the called station. The purpose of this section is to prohibit automatic dialing-announcing devices which cannot be disconnected by the person being called until the automatically dialed message has ended.

The Public Utility Commission of Texas also proposes to amend its Rule .052.02.05.056, entitled "Certification," by requiring that electric utilities report construction only when it exceeds \$250,000 per project rather than the \$100,000 set out in the existing rule, and by requiring that radio-telephone utilities file a construction report form with the commission when changes in their facility locations result in an increase in their total certificated signal coverage area of 10 percent or less rather than their having to file for an amended certificate as is presently the case. The requirement that new telephone central offices; new telephone interexchange trunks; new water purification, storage, and pumping facilities, excluding water wells; new sewage treatment, disposal, storage, and pumping facilities; and new water or sewer transmission lines be certificated has been dropped. It is now required that a construction report form be filed for these types of facilities rather than that a new certificate be obtained.

The commission has determined that the proposed amendments have no fiscal implications for the state or for units of local government.

Written comments are invited and may be sent to Roy J. Henderson, director of hearings and secretary, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757.

These amendments are proposed under authority of Texas Revised Civil Statutes, Article 1446c.

.051. Telephone Utilities.

(a) Definitions.

(30) **Automatic dialing-announcing device.** *An automatic dialing-announcing device is any automatic equipment used for solicitation which incorporates the following features: storage capability of numbers to be called or a random or sequential number generator that produces numbers to be called; and has the capability, working alone or in conjunction with other equipment, of disseminating a prerecorded message to the number called.*

(b) Directories.

(4) The directory shall contain instructions concerning placing local and long distance calls, calls to repair and directory assistance services, and locations and telephone numbers of telephone company business offices as may be appropriate to the area served by the directory. *It shall also contain a section setting out sample interstate and intrastate long distance rates applicable at the time the directory is published with a clear statement that the published rates are effective as of the publishing date.*

(c) Service objectives.

(2) Installation of service.

(A) Ninety percent of the utility's service order installations for flat rate or message rate service, extensions, bells, and gongs and one- or two-line residence and business services shall be completed within five working days. Ninety-five percent of the utility's orders for primary service shall be completed within five working days. The completion date shall be five working days from the date of application, the date on which service was requested, or the date the applicant qualifies for service, whichever is later. *If the utility elects, it may collect data on the basis of seven calendar*

days. In that case, these requirements shall pertain to seven calendar days in lieu of five working days.

(3) Operator-handled calls.

(A) Telephone utilities shall maintain adequate personnel to provide an average operator answering performance as follows *for each exchange* on a monthly basis:

(4) Local dial service. Sufficient central office capacity and equipment shall be provided to meet the following requirements during the busy season:

(B) Completion of 98 [95] percent of intraoffice calls (those calls originating and terminating within the same central office building) without encountering an equipment busy condition (blockage) or equipment failure.

(5) Local interoffice dial service. Local interoffice trunks shall be provided and maintained so that 97 [95] percent of the interoffice local calls, excluding calls between central offices in the same building, are completed without encountering equipment busy conditions or equipment failures.

(6) Direct distance dial service. Engineering and maintenance of the trunk and related switching components in the toll network shall be such as to permit 95 percent completion on properly dialed calls, without encountering *failure because of* blockages or equipment irregularities.

(8) Transmission requirements.

(A) All *voice grade* trunk facilities shall conform to accepted transmission design factors and shall be maintained to meet the following objectives when measured from line terminals of the originating central office to the line terminals of the terminating central office:

(i)(A) Interoffice local calls. Excluding calls between central offices in the same building, 95 percent of the measurements should have from two to 10 decibels loss at 1,000 *plus* 20 cycles per second and no more than 30 decibels above reference noise level ("C" message weighting).

(ii)(B) Direct distance calling. Ninety-five percent of the transmission measurements should have from three to 12 decibels loss at 1,000 *plus* 20 cycles per second and no more than 33 decibels above reference noise level ("C" message weighting).

(B) *Subscriber lines. All newly constructed and rebuilt subscriber lines shall be designed for a transmission loss of no more than eight decibels from the serving central office to the telephone set. All subscriber lines shall be maintained so that transmission loss does not exceed 10 decibels.*

Subscriber lines shall in addition be constructed and maintained so that metallic noise does not exceed 30 decibels above reference noise level ("C" message weighting) on 90 percent of the lines.

Metallic noise shall not exceed 35 decibels above reference noise level ("C" message weighting) on any subscriber line.

(C) *PBX, key, and multiline trunk circuits shall be designed and maintained so that transmission loss at the subscriber station does not exceed eight decibels. If the PBX or other terminating equipment is customer-owned and if transmission loss exceeds the above, the telephone company's responsibility shall be limited to providing a trunk circuit with no more than five decibels loss from the central office to the point of connection with customer facilities.*

(g) **Traffic usage studies.** In all central offices serving more than 300 main stations, traffic usage studies shall be performed at least once every three years unless otherwise authorized by the commission. In all central offices serving in excess of 1,000 main stations, traffic usage studies shall be performed at least annually unless otherwise authorized by the commission. Traffic usage studies shall include at least three days (within a consecutive five-day period or five days within a consecutive seven-day period) and shall include a usage record on at least an hourly basis. The usage record shall be in CCS or similar measurement (PEG counts are not acceptable for this purpose). Record of the most recent study shall be maintained and made available on request for commission review.

(h) **Automatic dialing-announcing device.** No telephone utility shall permit an automatic dialing-announcing device used for solicitation purposes to the public which cannot be terminated at will from the called station to be connected to its telephone network.

.056. **Certification.**

(c) Certificates for new service areas. Except for certificates granted under Section (b) herein, the commission may grant applications and issue certificates only after finding that the certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue the certificate as applied for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege. The commission may amend or revoke any certificate issued under this section upon a finding of fact that the public convenience and necessity requires such amendment or revocation. A certificate of convenience and necessity is not required for a contiguous extension of those facilities described in Section 51 of the Public Utility Regulatory Act, or the upgrading or construction of additional facilities within the certificated area of the utility; however, any such extension, upgrading, or construction in excess of \$250,000 for electric utilities and \$100,000 for all other utilities [\$100,000] must be reported to the commission as prescribed in Rule 052.02.02.023(b), and the commission may require additional facts or call a public hearing thereon. An amendment to a certificate of convenience and necessity shall not be required for radio-telephone utilities for changes in location of facilities if such changes result in an increase in total certificated signal coverage of 10 percent or less. A contiguous extension of the type mentioned in Section 51(a) of the act is an extension which does not cross the service area boundaries of the same type of another utility, either as set out in Section (b) of this rule, or as granted by this commission on the basis of public convenience and necessity. A certificate of convenience and necessity is required for all other extensions of distribution facilities and for any construction [extension] of new electric generating units and new electric transmission lines. [the following facilities into areas for which they have not been certificated for that purpose:

- |(1) new electric units;
- |(2) new electric transmission lines;
- |(3) new telephone central offices;
- |(4) new telephone interexchange trunks;
- |(5) new water purification, storage, and pumping facilities excluding water wells;
- |(6) new sewage treatment, disposal, storage, and pumping facilities;
- |(7) new water or sewer transmission lines.]

A certificate is not required for new telephone central offices and interexchange trunks or water purification and sewer treatment plants, or radio-telephone facility relocations which change the total certificated coverage area 10 percent or less. However, in lieu of such requirement, a preliminary construction report shall be filed with the commission as prescribed in Rule 052.02.02.023(b), and the commission may require additional facts or call a public hearing thereon.

The term extension, as used in this Section (c), shall not include the purchase or condemnation of real property for use as facility sites or right-of-way. However, prior acquisition of such sites or right-of-way shall not be deemed to entitle a utility to the grant of a certificate of convenience and necessity without a showing that the proposed extension is necessary for the service, accommodation, convenience, or safety of the public.

Issued in Austin, Texas, on March 29, 1978.

Doc. No. 782170 Roy J. Henderson
Secretary and Director of Hearings
Public Utility Commission of Texas

Proposed Date of Adoption: May 8, 1978

For further information, please call (512) 458-6111.



ADOPTED RULES

1300

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 Agricultural Experiment Station

Pullorum Disease and Fowl Typhoid Program 187.04.00

The Texas Agricultural Experiment Station has adopted Rules 187.04.00.001-.009. These rules will implement a program to control and eradicate pullorum disease and fowl typhoid in the State of Texas.

The rules are promulgated under the authority of Texas Revised Civil Statutes, Article 7014h-1.

.001. Applicability and Scope. These rules shall apply to all firms or persons producing hatching eggs, or hatching, selling, or exhibiting domesticated poultry within the State of Texas.

.002. Definitions and Terms.

(a) **Recognized laboratory** means a laboratory approved by the Texas Agricultural Experiment Station for performing approved serological testing procedures and bacteriological culture techniques.

(b) **Testing agent** means an employee, agent, or representative of the Texas Agricultural Experiment Station authorized by the station to perform approved serological testing procedures and bacteriological culture techniques.

(c) **Poultry** means chickens, turkeys, game birds, and all other domestic fowl.

(d) **Flock** means the poultry and eggs on any given premises.

(e) **Primary breeding flock** means a flock that is maintained for the purpose of establishing, continuing, or improving parent lines.

(f) **Multiplier flock** means a flock that originates from a primary breeding flock and that is intended for production of hatching eggs.

(g) **Hatchery** means equipment on one premises operated or controlled by any person or firm for the hatching of poultry eggs.

(h) **Products** means poultry or hatching eggs.

(i) **Official test** means serological testing using a Texas Agricultural Experiment Station-approved testing procedure conducted by a recognized laboratory or testing agent.

(j) **Infected flock** means a flock in which one or more birds has been diagnosed and confirmed by isolation of *Salmonella pullorum* or *Salmonella gallinarum* to be infected with pullorum disease or fowl typhoid.

(k) **Negative test result** means an approved testing procedure in which the blood or serum antigen mixture fails to clump.

(l) **Positive test result** means an approved testing procedure in which there is complete or nearly complete clumping of the blood or serum antigen mixture.

.003. Methods of Compliance. All firms or persons hatching domesticated poultry within the State of Texas must have a pullorum typhoid status at least equivalent to that specified by the National Poultry Improvement Plan. A firm or person may obtain such a status by compliance with one of the following methods.

(a) Those individuals or firms currently qualified under the National Poultry Improvement Plan are recognized as meeting the requirements of these rules.

(b) Any firm or person presently under a program of monitoring and testing breeder birds for pullorum and typhoid, which is equivalent to the required program, may have the program approved by the Texas Agricultural Experiment Station.

(c) A firm or person unable to obtain a pullorum-typhoid status at least equivalent to that specified by the National Poultry Improvement Program by compliance with one of the methods outlined in (a) and (b) must submit his flock to an official test. A flock in which all test results are negative shall be considered to have a pullorum-typhoid status equivalent to that specified by the National Poultry Improvement Plan. The following testing procedures may be used to comply with this regulation:

(1) All birds in the primary breeder flocks are tested and all birds in multiplier flocks are tested.

(2) All birds in the primary breeder flocks are tested, and birds in the multiplier flocks are tested according to the following:

Year	Size of Flock	Number Tested
1st	More than 2000	25% of flock
	500-2000	500
	Less than 500	All in flock
2nd	More than 2000	20% of flock
	400-2000	400
	Less than 400	All in flock
3rd	More than 2000	15% of flock
	300-2000	300
	Less than 300	All in flock
4th	More than 2000	10% of flock
	200-2000	200
	Less than 200	All in flock
5th	More than 2000	5% of flock
	100-2000	100
	Less than 100	All in flock

The amount of testing in multiplier flocks will be based on origin of the flock, the present testing program, and the number of years of continuous operation without evidence of pullorum or typhoid in a hatchery supply flock or in progeny from the hatchery. In no instance will the testing required the first year be less than five percent or 100 birds, whichever is greater.

(3) All birds in the primary breeder flocks are tested. Multiplier flocks may not be required to test provided certain conditions are met for the entire state. This method will not be used during the first year of the program but may become available in subsequent years depending on the incidence of infection in Texas.

(4) At least 300 birds from the primary breeder flocks are tested. No test is required in multiplier flocks. This method will not be available until the entire state has a pullorum-typhoid clean designation.

(5) Under the methods described in (2), (3), and (4) above, in lieu of blood testing, the Texas Agricultural Experiment Station may determine that a primary breeding flock, a multiplier breeding flock, game birds, and water fowl may comply with this regulation if progeny have been subjected to an approved 10-day baby poultry mortality bacteriological monitoring program and a bacteriological examination has been made of samples of down or fluff shed by baby poultry in the hatchery. In making such a determination, the Experiment Station shall consider the origin of the flock and any history of pullorum disease or fowl typhoid in the flock or on the premises on which the flock has been housed, incubated, brooded, or ranged. The Experiment Station may require blood testing of flocks when there is any cause to suspect infection with pullorum disease or fowl typhoid. Before compliance by this method can be approved by the Experiment Station, the firm or person owning the flock must agree to submit specimens to an approved laboratory when excessive mortality in birds under four weeks of age has occurred.

.004. Submission of Positives to a Recognized Laboratory.

(a) Each flockowner of poultry indicating a positive test result shall submit such birds from the flock to a recognized laboratory for confirmation. If laboratory examination fails to reveal *Salmonella pullorum* or *Salmonella gallinarum* organisms, the flock shall be considered to have a pullorum-typhoid status at least equivalent to that specified by the National Poultry Improvement Program. If the laboratory examination reveals *Salmonella pullorum* or *Salmonella gallinarum* organisms, the flock shall be designated an infected flock.

(b) The number of poultry to be submitted for laboratory confirmation of serologic tests shall be all reactor birds up to five or as otherwise determined by the Texas Agricultural Experiment Station or its representative.

.005. Procedures for Handling Infected Flocks and Their Products.

(a) Any infected flock shall be reported to the Texas Animal Health Commission, who, upon verifying the infection, will impose a quarantine or otherwise restrict the movement of birds or eggs to prevent further spread of the infection. An infected flock may be disposed of in one of the following manners:

(1) Birds reacting to the pullorum typhoid test may be removed from the flock and all remaining birds in the flock serologically tested. If, as a result of two consecutive negative flock tests, the first not less than 21 days later, the

flock shall be considered to have a pullorum-typhoid status at least equivalent to that specified by the National Poultry Plan. The flock must not be treated with antibiotics or other drugs that may mask the presence of the disease.

(2) The flock may be moved to a state or federally inspected poultry processing establishment accompanied by a written certificate issued by the Texas Animal Health Commission or its representative.

(3) The flock may be depopulated under supervision of the Texas Animal Health Commission and/or the Texas Agricultural Experiment Station.

(b) All incubating eggs from infected flocks shall be removed from the incubator and destroyed under Texas Animal Health Commission and Texas Agricultural Experiment Station supervision prior to hatching, except that by special permission eggs may be hatched under quarantine of the eggs and the progeny.

.006. Cleaning and Disinfecting. Premises found to have housed, incubated, brooded, or ranged an infected flock shall be cleansed and disinfected under the supervision of the Texas Agricultural Experiment Station within 15 days following depopulation, unless an extension of time is granted. No infected premises shall be restocked with poultry or eggs for hatching purposes until the above cleaning and disinfecting requirement is certified complete by the Experiment Station.

.007. Texas Pullorum-Typhoid Certified Individual Flock and Hatchery Classification. A flock and hatchery classification of "Texas Pullorum-Typhoid Certified" is established to recognize and identify those flocks and hatcheries that are free of pullorum disease and fowl typhoid.

(a) A flock of poultry may attain this status by meeting the requirements of one of three alternatives. The alternatives are:

(1) A flock may attain this status when each chicken or turkey breeder flock 16 weeks of age or older and other poultry approaching sexual maturity, and before eggs are hatching, has been tested by an approved serological testing procedure, conducted by an authorized agent, with no positive reactors.

(2) A flock may attain this status when it is a flock originating from Texas pullorum-typhoid certified flocks, U.S. pullorum-typhoid cleans, or the equivalent to that specified by the National Poultry Improvement Plan by one of the methods described in .003.

(3) A flock found to be infected with pullorum disease or fowl typhoid may attain this status by two consecutive negative tests not less than 21 days apart provided that all eligible poultry on the premises have been included in such tests. These flocks must be retested one year from the date of their last negative test.

(b) A flock of poultry which has been certified may be re-certified each year under this system if there is no serological or other evidence of pullorum disease or fowl typhoid and all birds added to the flock are U.S. pullorum-typhoid clean, Texas pullorum-typhoid certified, or the equivalent.

(c) A hatchery may be certified as a Texas pullorum-typhoid certified hatchery. Hatcheries desiring certification must be inspected and approved by a representative of the Texas Agricultural Experiment Station. Factors which will be considered by the station in the certification process in-

clude hatchery sanitary condition, the source and identification of all hatching eggs, and the cleaning, disinfecting, and fumigation practices of the hatchery. Only eggs or products from flocks which meet the United States pullorum-typhoid clean status, according to the National Poultry Improvement Plan or a Texas pullorum-typhoid certified flock or hatchery or equivalent, may be used by the certified hatchery.

(d) Certified hatcheries shall be subject to periodic inspections. Failure to meet the requirements of these regulations is cause for withdrawal of the certified status of the hatchery.

.008. *Exhibition of Poultry.* All poultry going to public exhibition shall originate from pullorum-typhoid clean flocks or hatcheries or have negative pullorum-typhoid test within 90 days prior to exhibition. Poultry entered for exhibition purposes which are from pullorum-typhoid clean sources must be accompanied by a certificate of source or purchase.

.009. *Registration.*

(a) All existing hatcheries must register and submit the following information to the Texas Agricultural Experiment Station, College Station, Texas 77843:

(1) hatchery name, address, capacity, and type of poultry hatched;

(2) name and address of each supplier of hatching eggs and location of breeder flocks.

(b) All new hatcheries must register the same information with the Texas Agricultural Experiment Station before any sale of poultry may be made from the hatchery.

(c) All independent breeding flocks not associated with a registered hatchery must register, giving flock size, breed, where eggs are hatched, and location of flock.

Issued in College Station, Texas, on March 28, 1978.

Doc. No. 782275 Neville P. Clarke
Director
Texas Agricultural Experiment Station

Effective Date: April 21, 1978

For further information, please call (713) 845-3511.

Texas Department of Human Resources

Intermediate Care II Facility

Medical Review and Reevaluation 326.30.10

The Department of Human Resources adopts the repeal of Rules 326.30.10.020 and .027 about the requirements of the review process for continued stay reviews and vendor assistance in the Intermediate Care II Facility Program as published in the February 10, 1978, issue of the *Texas Register* (3 TexReg 520). The policy in these rules is covered more appropriately in Rules 326.44.06.001 and .003, and, therefore, the department proposes these repeals to avoid duplication. No comments were received on the proposed repeals.

The repeal of Rules 326.30.10.020 and .027 is adopted under the authority of Articles 695c and 695j-1, Texas Revised Civil Statutes, with the approval of the Texas Board of Human Resources.

Doc. No. 782211

Intermediate Care III Facility

Medical Review and Reevaluation 326.31.10

The Department of Human Resources adopts the repeal of Rules 326.31.10.020 and .027 about the requirements of the review process for continued stay reviews in the Intermediate Care III Facility Program as published in the February 10, 1978, issue of the *Texas Register* (3 TexReg 520). The policy in these rules is covered more appropriately in Rules 326.44.06.001 and .003, and therefore the department proposed these repeals to avoid duplication. No comments were received on the proposed repeals.

The repeal of Rules 326.31.10.020 and .027 is adopted under the authority of Articles 695c and 695j-1, Texas Revised Civil Statutes, with the approval of the Texas Board of Human Resources.

Doc. No. 782210

Skilled Nursing Facility

Utilization and Medical Review of Care and Services 326.32.11

The Department of Human Resources adopts the repeal of Rules 326.32.11.010 and .017 about the requirements of the review process for continued stay reviews by a utilization review committee and by a medical assistance unit in the Skilled Nursing Facility Program. The repeal of these rules was proposed in the February 10, 1978, issue of the *Texas Register*. The policy in these rules is covered more appropriately in Rules 326.44.05.001 and .003, and therefore the department proposed these repeals to avoid duplication. No comments were received on the proposed repeals.

The repeal of Rules 326.32.11.010 and .017 is adopted under the authority of Articles 695c and 695j-1, Texas Revised Civil Statutes, with the approval of the Texas Board of Human Resources.

Doc. No. 782209

Purchased Health Services

Medicaid Family Planning Program 326.36.03

The Texas Department of Human Resources adopts the amendment to Rule 326.36.03.003 in the Medicaid Family Planning Program as proposed in the February 7, 1978, issue of the *Texas Register* (3 TexReg 473). The amendment to Section (e) of the rule requires that an approved sterilization consent form accompany all claims for reimbursement for voluntary sterilization. For nontherapeutic sterilization, the

time of surgery must be documented to ensure that a period of at least three days (72 hours) has elapsed between time of consent and time of surgery. No comments were received on the amendment; therefore, no changes have been made to the proposed text.

This amendment is adopted under the authority of Articles 695c and 695j-1, Texas Revised Statutes, with the approval of the Texas Board of Human Resources.

.003. *Additional Claim Information Requirements.* In addition to the general requirements in Rule 326.36.01.002, the following information is required on claims from family planning services:

(e) For sterilization, date of consent and a valid consent form as defined in Rule 326.36.03.004. For nontherapeutic sterilization surgery, the exact time the surgery is performed must be documented on the appropriate claim form.

Doc. No. 782212

Medicaid Chiropractic Program 326.36.05

The Department of Human Resources adopts the amendment to Rule 326.36.05.004 about authorized chiropractic services in the Medicaid Chiropractic Program as proposed in the February 7, 1978, issue of the *Texas Register* (3 TexReg 473). The amendment defines the benefit period in the Chiropractic Program as a 12-consecutive month period beginning with the month of the initial treatment. No comments were received; therefore, the amendment is adopted without changes to the proposed text.

The following amendment is adopted under the authority of Articles 695c and 695j-1, Texas Civil Statutes, with the approval of the Texas Board of Human Resources.

.004. *Authorized Chiropractic Services.*

(a) Chiropractic services include those services provided by a doctor of chiropractic and which are within the scope of practice of his profession as defined by state law. Benefits are limited to services which consist of necessary treatment or correction by means of manual manipulation of the spine, by use of hands only, to correct a subluxation demonstrated by x-ray to exist to the same extent that such benefits are provided under Part B of Medicare. Benefits are available under this rule only for services which are provided during the first 24 visits to any one eligible recipient by a doctor of chiropractic during any one benefit period. Benefit period for purposes of this rule means a 12-consecutive-month period which begins with the month of the first treatment.

Issued in March 29, 1978.

Doc. No. 782255 Jerome Chapman
Commissioner
Texas Department of Human Resources

Effective Date: April 19, 1978

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

Early and Periodic Screening, Diagnosis, and Treatment

Operating Policies 326.39.17

The Department of Human Resources adopts the following amendment to Rule 326.39.17.001 in the the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program, as proposed in the January 27, 1978, issue of the *Texas Register* (3 TexReg 301). The amendment explains the EPSDT recipient's right to freedom of choice in the selection of participating providers of diagnosis and treatment and dental services. This amendment ensures that the recipients' right to free choice of providers is observed.

No comments were received on the proposed amendment; therefore, no changes have been made to the proposed text.

This amendment is adopted under the authority of Articles 695c and 695j-1, Texas Revised Civil Statutes, with the approval of the Texas Board of Human Resources.

.001. *Recipient Rights*

(a) Acceptance of all Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services must be voluntary and is not a prerequisite or impediment of eligibility for the receipt of any other service or aid. A recipient who refuses these services may, at a later time, request and be provided such services if still eligible.

(b) All EPSDT eligible recipients are entitled to the right of freedom of choice in the selection of participating providers for medical referrals initiated as a result of medical screening and routine or emergency dental services. In exercising this freedom of choice, the recipient would normally consider:

- (1) family doctor or dentist;
- (2) selection of a doctor or dentist from those lists available to the responsible DHR worker or contract agency employee;
- (3) a doctor or dentist the recipient has learned about from some other source.

Doc. No. 782288

Definitions 326.39.20

The Department of Human Resources adopts the amendment to Rule 326.39.20.004 in the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program as proposed in the January 27, 1978, issue of the *Texas Register*. The amendment explains when an exception to dental periodicity may be authorized and was proposed in order to improve dental services to the recipients. No comments were received on the proposed amendment; therefore, it is adopted without changes to the proposed text.

This amendment is adopted under the authority of Articles 695c and 695j-1, Texas Revised Civil Statutes, with the approval of the Texas Board of Human Resources.

.004. *Dental Examination and Treatment.*

(d) An exception to dental periodicity may be authorized during medical screening when a recipient is

found to have an obvious need for dental care. (Procedures justifying and facilitating an exception to dental periodicity are outlined in Rule 326.39.44.009.)

Doc. No. 782289

Dental Utilization Review 326.39.62

The Department of Human Resources adopts Rule 326.39.62.007, concerning procedures for handling interrupted/incomplete dental treatment plans in the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program. The proposed rule was published in the January 27, 1978, issue of the *Texas Register* (3 TexReg 302-303). The rule defines interrupted/incomplete treatment and states the conditions under which a recipient remains eligible for subsequent treatment.

No comments were received; therefore, the rule is adopted without changes to the proposed text.

Rule 326.39.62.007 is adopted under the authority of Articles 695c and 695j-1, Texas Revised Civil Statutes, with the approval of the Texas Board of Human Resources.

.007. Special Cases.

(a) An interrupted/incomplete treatment plan is treatment that was not completed as reflected on an approved initial treatment plan which was submitted by the initial provider. Treatment was interrupted because of various reasons on the part of the recipient or provider. Payment of claim covered a portion of services rendered. Procedures for handling interrupted/incomplete treatment plans and absences found during utilization reviews are outlined below.

(1) To be eligible for subsequent treatment, the recipient in all cases must be holding a current Medical Care Identification Card.

(2) If the recipient returns to the initial provider, a Request for Dental Services form is not required. The initial provider may be authorized to complete treatment if the recipient is still eligible. The provider must submit a Dentist's Statement form for prior approval.

(3) If the recipient goes to a different provider, the DHR worker initiates a separate Request for Dental Services form for the recipient. A special notice must be printed or typed on the left edge of the bottom third of the form, "treatment incomplete" or "treatment interrupted." The Texas Department of Health gives this card special handling and, if the recipient is still eligible, may give special approval. A notice is printed at the bottom of each card: "Approved. Due to prior service, please attach this card to invoice when submitting for payment."

(b) The director, Title XIX Dental Programs, has the authority to permit the initial provider to complete service involving the absence if the review dentist indicates that it appears the procedure in question is really required and if the results of the review were acceptable or questionable. After the initial provider makes an overpayment settlement covering discrepancies, he or she can submit a new supplemental treatment plan for authorization to complete needed treatment.

(c) If the recipient does not want to return or is unable to return to the initial provider, he or she is permitted to go to another provider if the review dentist indicates that it ap-

pears the procedure in question is really required. In this case, the DHR worker must submit a Request for Dental Services form noting the reason for referral.

(d) If a utilization review dentist finds obvious needs for dental care although no absence of service was found, he or she refers the recipient to a DHR worker. If the recipient has received dental services within the last 12 months, the DHR worker follows procedures outlined in Rule 326.39.44.009.

(e) Limitations on procedures which can be authorized in cases with interrupted/incomplete treatment plans and absences found during utilization reviews are detailed in Title XIX EPSDT Dental Program Manual for Providers of Services.

Issued in Austin, Texas, on March 31, 1978.

Doc. No. 782287 Jerome Chapman
Commissioner
Texas Department of Human Resources

Effective Date: April 21, 1978

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

Adult Denture Program

Program Benefits 326.41.03

The Department of Human Resources adopts the following amendments to Rules 326.41.03.001 and .003 in the Adult Denture Program as proposed in the February 7, 1978, issue of the *Texas Register* (3 TexReg 473-474). The amendments add mouth preparation for dentures to the benefits provided in the Texas Medical Assistance Program. No comments were received; therefore, the amendments are adopted without changes to the proposed text.

The following amendments are adopted under the authority of Articles 695c and 695j-1, Texas Revised Civil Statutes, with the approval of the Texas Board of Human Resources.

.001. Scope of Services.

(c) Certain examination and mouth preparation procedures necessary to prepare the mouth to accept dentures.

.003. Exclusions

(b) No additional payment is allowable for recalls or office visits for denture adjustments.

Issued in Austin, Texas on March 29, 1978.

Doc. No. 782256 Jerome Chapman
Commissioner
Texas Department of Human Resources

Effective Date: April 19, 1978

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

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

Friday, July 21, 1978, 10:30 a.m. The Agricultural Protective Act Division of the Texas Department of Agriculture will meet at the Texas Department of Agriculture, Expressway 83 (two blocks west of Morningside Road), San Juan, to review allegations against Valley Central Sales, Inc., Santa Rosa, in account with Julio Castilleja, San Juan.

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

Filed: March 31, 1978, 10:10 a.m.
Doc. No. 782265

Coordinating Board, Texas College and University System

Thursday, April 13, 1978, 10 a.m. The Research Group of the Advisory Committee of the Coordinating Board, Texas College and University System, will meet in the conference room, Systems Building, Texas A&M University, College Station. The committee will consider the addition of other coverages beyond life, health, and disability in the basic insured benefits plan for employees of higher education; and review the addition of dental and optometry insurance to the basic plan.

Additional information may be obtained from Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, telephone (512) 475-4361.

Filed: April 3, 1978, 11:12 a.m.
Doc. No. 782318

Texas Education Agency

Wednesday, April 12, 1978, 3 p.m., and Thursday, April 13, 8:30 a.m. The Apprenticeship and Training Advisory Committee of the Texas Education Agency will meet in the board room, 150 East Riverside Drive, Austin. The agenda will include the following, as summarized: appointment of subcommittees; subcommittee meetings; subcommittee progress reports; report by chief consultant; reports of committees; recommendations to State board of Education; and new business.

Additional information may be obtained from Daniel C. Lowe, 201 East 11th Street, Austin, Texas 78701, telephone (512) 475-6205.

Filed: April 3, 1978, 9:50 a.m.
Doc. No. 782314

Commission on Fire Protection Personnel Standards and Education

Monday, April 17, 1978, 9 a.m. The Subcommittee on Fire Suppression of the Commission on Fire Protection Personnel Standards and Education will meet in the commission conference room, 8330 Burnet Road, Austin. As summarized, the subcommittee will continue the study and work on proposed marine firemen standards as per House Bill 322, 65th Legislature, and further study on requirements for approval of fire service academies and training facilities.

Additional information may be obtained from Garland Fulbright, Suite 122, 8330 Burnet Road, Austin, Texas 78758, telephone (512) 459-8701.

Filed: March 30, 1978, 4:06 p.m.
Doc. No. 782246

Monday, April 17, 1978, 10:30 a.m. The Subcommittee on Higher Education of the Commission on Fire Protection Personnel Standards and Education will meet in the commission conference room, 8330 Burnet Road, Austin. As summarized, the subcommittee will consider the possibility of approving a B.S.O.E. degree plan of Wayland Baptist College, and other such college proposals for a four-year degree plan.

Additional information may be obtained from Garland Fulbright, Suite 122, 8330 Burnet Road, Austin, Texas 78758, telephone (512) 459-8701.

Filed: March 30, 1978, 4:06 p.m.
Doc. No. 782247

Monday, April 17, 1978, 1:30 p.m. The Subcommittee on Recruitment and Selection of the Commission on Fire Protection Personnel Standards and Education will meet in the commission conference room, 8330 Burnet Road, Austin. As summarized, the subcommittee will discuss and study proposed standards for recruitment and selection of applicants for the fire service and explore possibilities of validated testing procedures.

Additional information may be obtained from Garland Fulbright, Suite 122, 8330 Burnet Road, Austin, Texas 78758, telephone (512) 459-8701.

Filed March 30, 1978, 4:06 p.m.
Doc. No. 782248

Monday, April 17, 1978, 3 p.m. The Subcommittee on Fire Protection (Prevention) of the Commission on Fire Protection Personnel Standards and Education will meet in the commission conference room, 8330 Burnet Road, Austin. As summarized, the subcommittee will continue study of current standards in areas within the realm of responsibility of the subcommittee and consider recommendations for updating as necessary.

Additional information may be obtained from Garland Fulbright, Suite 122, 8330 Burnet Road, Austin, Texas 78758, telephone (512) 459-8701.

Filed March 30, 1978, 4:06 p.m.
Doc. No. 782249

Tuesday, April 18, 1978, 9 a.m. The Commission on Fire Protection Personnel Standards and Education will meet in the commission conference room, Suite 131, 8330 Burnet Road, Austin. As summarized, the commission will conduct the regular quarterly meeting order of business; receive reports and recommendations from all subcommittees with available reports, including Fire Suppression, Higher Education, Recruitment and Selection, Fire Protection, and Budget Subcommittees, and take necessary action in the event any one of the committees has sufficient data gathered to warrant a public hearing on any recommended standard to be adopted in the near future.

Additional information may be obtained from Garland Fulbright, Suite 122, 8330 Burnet Road, Austin, Texas 78758, telephone (512) 459-8701.

Filed March 30, 1978, 4:06 p.m.
Doc No 782245

Grain Sorghum Producers Board

Tuesday, April 11, 1978, 10 a.m. The Grain Sorghum Producers Board will meet at the Levelland State Bank, 8th Avenue, Levelland, to discuss the financial report, County Advisory Farmer Committee, and setting up Elevator Advisory Committee.

Additional information may be obtained from Elbert Harp, 1708-A 15th Street, Lubbock, Texas 79401, telephone (806) 763-4425.

Filed March 31, 1978, 10:05 a.m.
Doc No 782264

Texas Department of Health

Saturday, April 8, 1978, 1 p.m. The Texas Board of Health will meet at the Harlingen State Chest Hospital, 500 South Rangerville Road, Harlingen. As summarized, the agenda will include: commissioner's report history, patient, and fiscal data on Harlingen State Chest Hospital; Public Health Region 19 activities; venereal disease control; rules on state approved medication aide courses, nursing homes; proposed rules on in-service education, nursing homes; proposed rules on medical examinations of patients, nursing homes; and proposed rules on inspection of public records, nursing homes.

Additional information may be obtained from Jimmy Helm, 1100 West 49th Street, Austin, Texas 78756, telephone (512) 458-7488.

Filed March 31, 1978, 4:29 p.m.
Doc No. 782297

Wednesday, April 19, 1978, 10 a.m. The Advisory Committee on Nursing Home Affairs of the Texas Department of Health will meet in Room T-507, 1100 West 49th Street, Austin. As summarized, the agenda will include: reports on departmental activities and programs; subcommittee reports and recommendations on in-service education of nursing home employees and grading nursing homes; rule on medical examination of nursing home residents; rule on state-approved medication administration course; rule on inspection of public records; reports on Bureau of Long Term Care and Divisional Activities, open hearings in facilities, MR-V and MR-VI programs (programs for the mentally retarded), volunteer program; and items of interest from committee members.

Additional information may be obtained from Robert Bernstein, M.D., 1100 West 49th Street, Austin, Texas 78756, telephone (512) 458-7706.

Filed March 31, 1978, 4 29 p.m.
Doc No 782298

Texas Department of Human Resources

Monday, April 17, 1978, 9:30 a.m., and Tuesday, April 18, 9 a.m. The Advisory Committee on Child Care Facilities of the Texas Department of Human Resources will meet at the Joe C. Thompson Conference Center, 26th and Red River Streets, Austin. The summarized agenda includes: assessment of standards for part day facilities; status report on character references project, foster family home and foster group home standards for mentally retarded and emotionally disturbed children; comments on day care and 24-hour care standards rationale; comments on EPSDT screening; and discussion of proposal to notify parents as well as managing conservators when child is being placed.

Additional information may be obtained from Mike Rollins, 510 South Congress, Austin, Texas 78704, telephone (512) 475-7041.

Filed April 3, 1978, 11:12 a.m.
Doc No 782319

State Board of Insurance

Wednesday, April 5, 1978, 10 a.m. The State Board of Insurance met in emergency session in Room 408, 1110 San Jacinto, Austin, to consider increased limits and excess limits rates regarding the Texas Medical Liability Joint Underwriting Association.

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

Filed: April 3, 1978, 11:06 a.m.
Doc. No. 782317

Board of Examiners of Licensed State Land Surveyors

Friday, April 14, 1978, 9 a.m. The Board of Examiners of Licensed State Land Surveyors will meet in the 8th floor conference room 831, Stephen F. Austin Building, 1700 North Congress, Austin, to hold written examination and discuss miscellaneous items.

Additional information may be obtained from Herman Forbes, Room 812, Stephen F. Austin Building, Austin, Texas 78701, telephone (512) 475-3145.

Filed: March 31, 1978, 2:56 p.m.
Doc. No. 782312

Natural Resources Council

Tuesday, April 11, 1978, 10 a.m. The Advisory Committee of the Natural Resources Council will meet in the ground floor lecture hall, World Trade Center, 1520 Texas Avenue, Houston. The committee will meet to gather information on various coastal issues; to hear testimony from expert witnesses and the general public on coastal natural resource issues identified in the NRC report: "Preliminary Report: Texas Coastal Natural Resource Issues", dated March 1, 1978; to appoint subcommittees and complete other organizational matters; and to tour the Port of Houston. No decisions or recommendations on coastal issues will be made at this meeting.

Additional information may be obtained from Frank Sheffield, 411 West 13th Street, Austin, Texas 78701, telephone (512) 475-6283.

Filed: April 3, 1978, 11:59 a.m.
Doc. No. 782321

Public Utility Commission of Texas

Thursday, April 27, 1978, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 400N, 7800 Shoal Creek Boulevard, Austin, to conduct a hearing concerning a complaint of L. D. Cook, *et al.*, against City of Denison and Oak Ridge, South Gale Water Supply Corporation within Grayson County (Docket No. 1681), as summarized.

Additional information may be obtained from Roy J. Henderson, Suite 400N, 7800 Shoal Creek Boulevard, Austin, Texas 78757, telephone (512) 458-6111.

Filed: March 31, 1978, 10:16 a.m.
Doc. No. 782267

Railroad Commission of Texas

Monday, April 3, 1978, 9 a.m. The Gas Utilities 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 Streets, Austin. The agenda included a director's report on the purchase of first aid equipment for the commission; and an executive session to consider personnel matters. Action was necessary on those items prior to the time they could be placed on the regular conference agenda for consideration.

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

Filed: March 31, 1978, 11:28 a.m.
Doc. No. 782280

Monday, April 3, 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 Streets, Austin. The agenda included consideration of an exception to SWR 8(C), as summarized.

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

Filed: March 31, 1978, 11:26 a.m.
Doc. No. 782276

Monday, April 3, 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 Streets, Austin. The agenda included consideration of a request for gas field rules to be adopted for various fields in the State of Texas, all of which are operating under Statewide Rules 28 and 29, as summarized.

Additional information may be obtained from Sandy Mott, P.O. Box 12967, Austin, Texas 78711, telephone (512) 475-6155.

Filed: March 31, 1978, 11:27 a.m.
Doc. No. 782279

Monday, April 3, 1978, 9 a.m. The Oil and Gas Division and Special Counsel 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 Streets, Austin. The agenda included consideration of an inter-agency contract with the Texas Department of Water Resources, Contract No. 03-8041. The necessity to immediately begin the work covered by the contract required that this matter be considered on less than seven days' notice.

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

Filed: March 31, 1978, 11:27 a.m.
Doc. No. 782278

Monday, April 3, 1978, 9 a.m. The Transportation 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 Streets, Austin. The agenda included consideration of an application of Malone Trucking Company for reinstatement of a specialized motor carrier certificate, as summarized.

Additional information may be obtained from John G. Soule, P.O. Box 12967, Austin, Texas 78711, telephone (512) 475-3207.

Filed: March 31, 1978, 11:27 a.m.
Doc. No. 782277

Monday, April 10, 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 Streets, Austin. In addition to conducting an executive session and hearing the director's report, the agenda, as summarized, will also include consideration of the following dockets: 1093, 758, 766, 827, 1094, 1153, 1168, 1089, 1500, 1501, 1502, 1504, 1128, and 1230.

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

Filed: March 31, 1978, 11:29 a.m.
Doc. No. 782283

Monday, April 10, 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 Streets, Austin, to consider preparation of a grant request for a surface impoundment assessment study under the Safe Drinking Water Act.

Additional information may be obtained from James P. Grove IV, P.O. Box 12967, Austin, Texas 78711, telephone (512) 475-4686.

Filed: March 31, 1978, 11:28 a.m.
Doc. No. 782281

Monday, April 10, 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 Streets, Austin. As summarized, the agenda will include consideration of the following items: various exceptions to Statewide Rule 69, water injection, SWH Permit, gas storage project, reclamation plant permit, exception to SWR 38, Rule 37 exceptions, proper pluggings, SWR 10, field rules, temporary field rules; and administrative new oil and gas field discoveries, proposed forced reconditioning of oil and gas activity, approved list of directional surveyors, exception to SWR 14(B)(2), exception to SWR 11, and exception to SWR 8(C); director's report; and executive session.

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

Filed: March 31, 1978, 11:28 a.m.
Doc. No. 782282

Monday, April 10, 1978, 9 a.m. The Transportation Division of the Railroad Commission of Texas will meet in the 10th floor conference room, Ernest O. Thompson Building, 10th and Colorado Streets, Austin. As summarized, the commission will consider the following applications: contested—for rail rate; uncontested—to amend authority, for bus rate, to consolidate authority, to divide authority, to amend ICC authority registration, for ICC authority registration, for lease cancellation, for new authority, to change name, for interstate exempt authority, for reinstatement, to sell authority, for bus schedule change, for truck rate, to transfer authority, and for voluntary suspension.

Additional information may be obtained from John G. Soule, P.O. Box 12967, Austin, Texas 78711, telephone (512) 475-3207.

Filed: March 31, 1978, 11:29 a.m.
Doc. No. 782284

University of Texas System

Thursday, April 6, 1978, 10:30 a.m., and Friday, April 7, 9 a.m. The Board of Regents of the University of Texas System will meet in the Caduceus Room, 6th floor, Administration Building, Galveston Medical Branch, 301 University Boulevard, Galveston.

The agenda will include the following items, as summarized: amendments to 1977-78 budget; docket; requests for reorganization and degree programs, U.T. Arlington, U.T. Austin, and Galveston Medical Branch; student union fee, U.T. Arlington; increase in late registration fee, certain student services fee (required and optional), housing rates, U.T. Austin; appointments to named professorships; amendment to Students' Association constitution, U.T. Austin; cooperative agreement for Marine Science Institute; buildings and grounds matters; affiliation agreements; increased housing rates, Galveston Medical Branch; land and investment matters; amendment to regents' rules and regulations; designation of special depository banks; exceptions to regents' rules

and regulations (past retirement age, nepotism, outside employment); extension of patent agreement; replacement of lost bond; issuance of PUF bonds; issuance of U.T. Arlington state ad valorem tax bonds; report and recommendation of committee to renegotiate real estate note with Punta Gorda Isles, Inc.; termination cases at U.T. Austin and Houston Health Science Center; selection of a president of Houston Health Science Center; and report of special committee on Brackenridge Tract relating to exchange of leases.

Additional information may be obtained from Betty Anne Thedford, Box N, U.T. Station, Austin, Texas 78712, telephone (512) 471-1265.

Filed: March 31, 1978, 2:06 p.m.
Doc. No. 782296

Thursday, April 6, 1978, 10:30 a.m., and Friday, April 7, 9 a.m. The Board of Regents of the University of Texas System have made an emergency addition to the agenda of a meeting to be held in the Caduceus Room, 6th floor, Administration Building, Galveston Medical Branch, 301 University Boulevard, Galveston. As summarized, the board will consider the following: San Antonio Health Science Center, proposed affiliation agreement with Morningside Manor, Inc., San Antonio; and U.T. San Antonio, proposed affiliation agreement with San Antonio State Chest Hospital, San Antonio.

Additional information may be obtained from Betty Anne Thedford, Box N, U.T. Station, Austin, Texas 78712, telephone (512) 471-1265.

Filed: April 3, 1978, 9:47 a.m.
Doc. No. 782316

Texas Water Commission

Monday, April 10, 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: applications for bond issues; petition for creation of district; adoption of final order on show cause hearing; district conversion; examiner's proposals for decision on water quality matters; voluntary cancellation of water quality permits; adjudication matters; final decision on permit applications; extension of time applications; cancellation of claims; contractual applications; amendment to certificate of adjudication; approval of plans; voluntary cancellation of claims; setting hearing date for temporary permit applications; and setting hearing date for regular applications.

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

Filed: March 30, 1978, 2:15 p.m.
Doc. No. 782231

Tuesday, April 11, 1978, 10 a.m. The Texas Water Commission will meet in the Stephen F. Austin Building, 1700 North Congress, Austin, to consider examiner's proposal for decision on proposed Enforcement Order No. 78-94 for the City of Pleasanton and consideration of Temporary Order No. 78-5E issued to Steele and Associates, 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: March 31, 1978, 4:30 p.m.
Doc. No. 782299

Tuesday, April 18, 1978, 10 a.m. The Texas Water Commission will meet in the Stephen F. Austin Building, 1700 North Congress, Austin, to conduct a hearing regarding a resolution requesting conversion of Blue Ridge West Municipal Utility District into a municipal utility district, 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: March 30, 1978, 2:15 p.m.
Doc. No. 782232

Wednesday, April 19, 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: examiner's proposal for decision on application by Austin Equity Investments Corporation for a discharge permit; examiner's proposal for decision on proposed Enforcement Order No. 78-05 for the City of Laredo; examiner's proposal for decision on an application by the City of Frisco to amend Permit No. 10172-01; and examiner's proposal for decision on an application by the City of Frisco to amend Permit No. 10172-02.

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

Filed: March 31, 1978, 4:30 p.m.
Doc. No. 782300

Thursday, April 27, 1978, 10 a.m. The Texas Water Commission will meet in the Civic Center, 2401 San Bernardo, Laredo, to conduct a hearing regarding the following applications to the Texas Department of Water Resources for permits to operate *in situ* mining processing plants and industrial waste disposal wells in Duval County, as summarized: Mobil Oil Corporation (Holiday—El Mesquite Plant); Mobil Oil Corporation (El Mesquite); Mobile Oil Corporation (Holiday); Mobil Oil Corporation (Holiday—El Mesquite Plant Well No. 1); and Mobil Oil Corporation (Holiday—El Mesquite Plant Well No. 2).

Additional information may be obtained from Larry R. Soward, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-1311.

Filed: March 31, 1978, 4:32 p.m.
Doc. No. 782307

Thursday, May 4, 1978, 9 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin, to conduct a hearing regarding an application of Chaparral Disposal Company, Odessa. The applicant, as summarized, seeks a permit to construct and operate a commercial waste disposal well.

Additional information may be obtained from John Sutton, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-1468.

Filed March 31, 1978, 4:32 p.m.
Doc. No 782308

Thursday, May 4, 1978, 9 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin, to conduct a hearing regarding an application of Atchison, Topeka, and Santa Fe Railway Company (Gainesville Roundhouse), Amarillo. The applicant seeks an amendment to Permit No. 00741 to modify the permit to provide for a discharge of low volume nonprocess wastes in addition to the existing discharge of rainfall runoff as summarized.

Additional information may be obtained from John Sutton, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-1468.

Filed March 31, 1978, 4:33 p.m.
Doc No. 782309

Thursday, May 4, 1978, 9 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin, to conduct a hearing regarding an application of the City of Eldorado, holder of Permit No. 10165 issued by the Texas Department of Water Resources who proposes to involuntarily amend the permit to incorporate the department limitations in regard to no discharge wastewater disposal operations, as summarized.

Additional information may be obtained from John Sutton, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-1468.

Filed March 31, 1978, 4:33 p.m.
Doc. No 782310

Thursday, May 4, 1978, 9 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin, to conduct a hearing regarding application of Georgia-Pacific Corporation (Acme Plant), Quanah, seeking an amendment to Permit No. 01610 to accommodate a change in location of the discharge point, as summarized in the agenda.

Additional information may be obtained from John Sutton, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-1468.

Filed March 31, 1978, 4:33 p.m.
Doc No 782311

Friday, May 5, 1978, 9 a.m. The Texas Water Commission will meet in the auditorium, City of Houston Health Department, 1115 North MacGregor, Houston, to conduct a hearing regarding an application of Harris County Water Control and Improvement District-Fondren Road, Missouri City. As summarized, the applicant seeks a permit to allow for a discharge of domestic sewage effluent from a sewage treatment plant to serve a population equivalent of 1,500 people.

Additional information may be obtained from Lee Mathews, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-1311

Filed March 31, 1978, 4:31 p.m.
Doc No 782301

Friday, May 5, 1978, 9 a.m. The Texas Water Commission will meet in the auditorium, City of Houston Health Department, 1115 North MacGregor, Houston, to conduct a hearing regarding an application of Charterwood Municipal Utility District, Houston. As summarized, the applicant seeks an amendment to Permit No. 11410 to accommodate the construction of additional treatment units.

Additional information may be obtained from Lee Mathews, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-1311.

Filed March 31, 1978, 4:31 p.m.
Doc. No. 782302

Friday, May 5, 1978, 9 a.m. The Texas Water Commission will meet in the auditorium, City of Houston Health Department, 1115 North MacGregor, Houston, to conduct a hearing regarding an application of Harris County Municipal Utility District No. 44, Houston. As summarized, the applicant seeks a permit to allow for a discharge of domestic sewage effluent from a sewage treatment plant to serve a population of 3,500 people.

Additional information may be obtained from Lee Mathews, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-1311

Filed March 31, 1978, 4:31 p.m.
Doc. No 782303

Friday, May 5, 1978, 9 a.m. The Texas Water Commission will meet in the auditorium, City of Houston Health Department, 1115 North MacGregor, Houston, to conduct a hearing regarding an application of Curtis Hankamer, Houston. As summarized, the applicant seeks a permit to allow for a discharge of domestic sewage effluent from a sewage treatment plant to serve a population equivalent of 500 people.

Additional information may be obtained from Lee Mathews, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-1311.

Filed March 31, 1978, 4:31 p.m.
Doc. No. 782304

Friday, May 5, 1978, 9 a.m. The Texas Water Commission will meet in the auditorium, City of Houston Health Department, 1115 North MacGregor, Houston, to conduct a hearing regarding an application by Alloy's, Inc., Baytown. As summarized, the applicant seeks a permit to allow for a discharge of domestic sewage effluent from a sewage treatment plant to serve a population equivalent of 15 people.

Additional information may be obtained from Lee Mathews, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-1311.

Filed: March 31, 1978, 4:32 p.m.
Doc. No. 782305

Friday, May 5, 1978, 9 a.m. The Texas Water Commission will meet in the auditorium, City of Houston Health Department, 1115 North MacGregor, Houston, to conduct a hearing regarding an application of Harris County Municipal Utility District No. 102, Houston. As summarized, the applicant seeks an amendment to Permit No 11523 to accommodate the construction of additional treatment units.

Additional information may be obtained from Lee Mathews, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-1311.

Filed: March 31, 1978, 4:32 p.m.
Doc. No. 782306

West Texas State University

Tuesday, April 11, 1978, 10 a.m. The Board of Regents of West Texas State University will meet in Room 125, Activities Center, West Texas State University, Canyon. As summarized, the agenda will include consideration of the following items: designation of employees to approve vouchers; approval of incidental fees; confirmation of room rent rates, meal charges, budget changes, contract change orders, land exchange; approval of land exchange; approval of land trade; approval of acquisition of former national guard armory; routine faculty and staff and curriculum items, including proposal for Doctorate in Agriculture-Business Degree; combining departments of mathematics and physics into Department of Mathematics and Physics; combining departments of geology and anthropology and geography into Department of Geosciences; combining departments of elementary education and secondary and higher education into Department of Curriculum and Instruction; last class day report; 12th class day report; and executive session.

Additional information may be obtained from Texas Smith, Box 997, West Texas State University, Canyon, Texas 79016, telephone (806) 3976.

Filed: March 31, 1978, 10:13 a.m.
Doc. No. 782266

Regional Agencies

Meetings Filed March 31, 1978

The Alamo Area Council of Governments, Housing Advisory Committee, will meet at 532 Three Americas Building, San Antonio, on April 10, 1978, at 1:30 p.m. The following committees will also meet at 532 Three Americas Building, San Antonio: Regional Drug Abuse Advisory Committee, April 13, at 3 p.m.; Bexar Senior Advisory Committee, April 14, at 10 a.m.; Human Resources Advisory Committee, April 20, at 2 p.m.; and Alamo Senior Advisory Committee, April 14, at 2 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 Austin-Travis County MHMR Center, Board of Trustees, met at 1430 Collier, Austin, on April 3, 1978, at 7 p.m. Further information may be obtained from Dr. Larry J. Miller, 1430 Collier, Austin, Texas 78704, telephone (512) 447-4141.

The Houston-Galveston Area Council, Project Review Committee, met at 3701 West Alabama, Houston, on April 4, 1978, at 9:30 a.m. Further information may be obtained from Stevie Walters, 3701 West Alabama, Houston, Texas 77027, telephone (713) 627-3200.

Doc. No. 782268

Meetings Filed April 3, 1978

The Heart of Texas Region MHMR Center, Board of Trustees, met at the Day Treatment Center, 1611 West Avenue, Waco, on April 3, 1978, at 6 p.m. Further information may be obtained from Dean Maberry, 1401 North 18th Street, Waco, Texas 78703.

Doc. No. 782315



State Bar of Texas

Antitrust Damages Institute

The antitrust and trade regulation section of the **State Bar of Texas** is sponsoring a one day institute to acquaint attorneys with the relevant legal principles and practical considerations of proving and disproving damages before a judge or jury. Antitrust legislation will be emphasized. This institute is being held at the Whitehall Hotel in Houston, on April 28, 1978.

Times and events of the program are listed below. Charles T. Newton, Jr., Vinson and Elkins, Houston, is the moderator.

- 9 a.m. Registration
- 9:30 a.m. Introductory remarks
- 9:45 a.m. Overview of Antitrust Damage Principles
- 11 a.m. The Plaintiff's Approach to Proving Damages
- noon Leon Jaworski's luncheon speech for Law Day
- 2 p.m. The Defendant's Approach to Disproving Antitrust Damages
- 3 p.m. A Judge's View of the Damage Phase of an Antitrust Case
- 4 p.m. Panel discussion

Nonlawyers, such as legal secretaries, paralegals, and clients, are welcome to attend this institute on the same basis as lawyers.

Extensive articles will be prepared and compiled in booklet form to be included as part of the registration fee and handed out the day of the institute.

An income tax deduction may be allowed for expenses of education (including travel, meals, and lodging) undertaken to maintain and improve professional skills. (See Treasury Regulation 1.162-5; *Coughlin v. Commissioner*, 203 F.2d 307.)

Pre-registration is \$30 and door registration is \$35. No refunds of registration fee can be granted after 5 p.m. of the day preceding this institute. Registration may be made by sending a check payable to the State Bar of Texas, Antitrust Damages Institute, P.O. Box 12487, Austin, Texas 78711.

Doc. No 782273

Issued in Austin, Texas, on March 30, 1978.

Doc. No. 782273 Judy Bolton
State Bar of Texas

Filed: March 31, 1978, 10:47 a.m.

For further information, please call (512) 475-6842.

Institute Schedule

San Antonio Young Lawyers—15th Annual
San Antonio, April 7, 1978, National Bank of Commerce

San Antonio Criminal Lawyers
San Antonio, April 14-15, 1978, El Tropicano Hotel

Military Law
San Antonio, April 20-21, 1978, Fort Sam Houston

Antitrust Damages
Houston, April 28, 1978, Whitehall Hotel

General Practice (Bell-Lampasas-Mills County Bar Association)

Laredo, May 13, 1978, La Pasada

Salvation for the Solo Practitioner
San Antonio, April 29, 1978, La Villita

Basic Estate Planning for the General Practitioner
Lubbock, May 4, 1978, Civic Center

El Paso, May 5, 1978, Sheraton Inn

San Antonio, May 11, 1978, El Tropicano

Houston, May 12, 1978, South Texas College of Law

Fort Worth, May 18, 1978, Ramada Inn

Dallas, May 19, 1978, Adolphus Hotel

Austin, May 26, 1978, Texas Law Center

Dallas Young Lawyers Seminar
Dallas, May 12, 1978

Labor Law
San Antonio, May 26-27, 1978, St. Anthony Hotel

Advanced Estate Planning and Probate Course
Dallas, June 5-9, 1978, LeBaron Hotel

Advanced Family Law Course
Houston, July 24-28, 1978, University of Houston

Advanced Criminal Law Course
San Antonio, August 7-11, 1978, St. Anthony Hotel

A Full-Life Seminar for Single Attorneys
Salado, August 18-19, 1978, Stage Coach Inn

Legal Malpractice
Lubbock, September 21, 1978, Hilton Inn
El Paso, September 22, 1978, Holiday Inn Downtown
Dallas, September 28, 1978, Adolphus Hotel
Fort Worth, September 29, 1978, Sheraton Inn
San Antonio, October 5, 1978, El Tropicano
Houston, October 6, 1978, South Texas College of Law
Austin, October 20, 1978, Texas Law Center

International Law
Dallas, October 6, 1978

Marriage Dissolution
Dallas, November 9-10, 1978, LeBaron Hotel

Issued in Austin, Texas, on March 30, 1978.

Doc. No. 782217 Judy Bolton
State Bar of Texas

Filed: March 30, 1978, 9:24 a.m.

For further information, please call (512) 475-2097.

Salvation for the Solo Practitioner and the Small Law Firm, 1978, Institute

The Peer Committee of the State Bar of Texas and the San Antonio Bar Association are co-sponsoring the Salvation for the Solo Practitioner and the Small Law Firm, 1978, Institute at La Villita Assembly Hall, 401 Villita Street, San Antonio, on April 29, 1978. Exhibits will be on display on the lower level from 5 p.m. to 8 p.m. Friday, April 28, and 8:30 a.m. to 8 p.m. Saturday, April 29, 1978. Exhibitors will be showing and demonstrating the latest in automatic and standard typing equipment, dictating equipment, copying equipment, communications equipment, office supplies, office furnishings, legal publication, etc. Appreciation is expressed to Oliver Heard, Jr., and Jimmy Allison for their work in arranging for and coordinating the exhibits.

William Boyd, partner in Boyd, Viegel, and Gay, Inc., Kinney, is program chairman and will be presiding over the one-day institute. The times and topics are shown below:

8:30 a.m. Registration

9 a.m. Welcoming remarks

9:15 a.m. Motivation as the Key to Effective Law Practice Management—The Caring Law Firm is the Productive Law Firm

10:45 a.m. Upgrading through Delegation—Growing with What You've Got

1:45 p.m. Time Management for Lawyers—How to Beat the Relentless Demon

3 p.m. A Workable Approach to Fee Setting—The Client as a Partner in Encouraging Efficiency

4 p.m. Office Layout and Design—New Concepts for Greater Efficiency and Effectiveness

Advanced registration for lawyers is \$35 and door registration is \$40. The institute will be most helpful and instructive for support staff personnel as well and they are entitled to attend for special rates: advanced \$20 and door registration \$25. The registration fee includes luncheon and written materials. Advanced registration may be made by sending a check payable to the State Bar of Texas, "Solo Practitioner," P.O. Box 12487, Austin, Texas 78711.

Issued in Austin, Texas, on March 30, 1978.

Doc. No. 782274 Judy Bolton
State Bar of Texas

Filed: March 31, 1978, 10:47 a.m.

For further information, please call (512) 475-6842.

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 March 21-27, 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.

Land Manor, Inc., Beaumont

AO78-0321-005

DR—That neither an EC nor a CN is required to establish a residential facility for mildly mentally retarded individuals

Schlesinger Home Health Service Agency, Beaumont

AS78-0322-001

DR—Request for commission to define "hospice" services

Arlington Memorial Hospital Foundation, Inc., Arlington

AH78-0322-010

DR—That neither an EC nor a CN is required to add long-term ambulatory ECG testing to existing cardiac diagnostic testing procedures

Doctors Hospital, Corpus Christi

AH76-0312-009T

CN/AO—Transfer of CN, AH76-0312-009, and AO, AH76-0312-009T, from American Medicorp, Inc., to Humana, Inc.

Heights Hospital, Houston

AH78-0323-007

EC—Acquire echocardiography equipment for electrocardiography department

La Clinica Amistad, San Antonio

AO78-0323-019

DR—That neither an EC nor a CN is required to establish a neighborhood group family doctor practice

Navarro County Memorial Hospital, Corsicana
AH78-0313-011

EC—Acquire ultrasound scanning system

Texas Children's Hospital, Houston
AH78-0324-001

EC—Acquire monitoring equipment for pediatric recovery room and add a nurse's central station

Waller County Hospital Foundation, Clifton
AH78-0324-004

DR—That neither an EC nor a CN is required for physician occupants to assume management and control of county-owned physician clinic

Goodall-Witcher Hospital Foundation, Clifton
AH78-0324-007

EC—Construct an addition to existing clinic-professional building for two doctors' office suites with exam room and waiting area and remodel existing office area

La Mancha II, Irving
AA78-0309-022

DR—That neither an EC nor a CN is required to establish an ICF-MR-I facility for eight mentally retarded children, ages 9 to 18

Health Sciences Center Hospital, Lubbock
AH78-0327-015

DR—For the establishment of a renal dialysis center at the Health Sciences Center Hospital in Lubbock

Issued in Austin, Texas, on March 31, 1978.

Doc. No 782286 William D. Darling
General Counsel
Texas Health Facilities
Commission

Filed: March 31, 1978, 11:53 a.m.

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

Texas Judicial Council Continuing Legal Education for Municipal Judges

The Texas Judicial Council announces the accreditation of two additional courses of instruction for the continuing legal education of municipal court judges under the provisions of Senate Bill 387 of the 65th Legislature. Courses which were accredited and persons to contact for further information and reservations are:

Texas Tech University School of Law
(Seminar for Municipal Court Judges—24 hour)

Wichita Falls, Texas
April 26-28, 1978
Charles P. Bubany, Professor of Law
P.O. Box 4030
Lubbock, Texas 79409
(806) 742-3785

Temple Junior College
(Continuing Legal Education of Municipal Court Judges—
24 hour)

Temple, Texas
(Tuesday evening sessions)
Douglas Ferrill
Dean, Continuing Education
2600 South First
Temple, Texas 76501
(817) 773-9961

Senate Bill 387, effective August 29, 1977, permits non-lawyer municipal judges to complete a 24-hour course in the performance of his duties within one year of assuming office and at least eight hours per year thereafter and permits lawyer municipal judges to complete eight hours the first year and eight hours per year thereafter. All courses, programs, and seminars must be approved by the Texas Judicial Council, which has general supervisory authority over the administration of the act.

Issued in Austin, Texas, on March 30, 1978.

Doc. No. 782216 Jim Hutcheson
Chief Counsel
Texas Judicial Council

Filed: March 30, 1978, 9:24 a.m.

For further information, please call (512) 475-2421.

School Tax Assessment Practices Board

Consultant Proposal Requests

Sales-Ratio and Appraisal-Ratio Tests

Description of Services Requested: The School Tax Assessment Practices Board invites individuals to offer their services on a consulting basis to conduct sales-ratio and appraisal-ratio tests of property assessments by various school district tax offices. Persons serving in such capacity shall be called upon to complete a highly detailed work program designed to develop a reasonably accurate estimate of the taxable value of various categories of property in each school district which they are assigned.

Contact: Persons wishing to offer their services in such a capacity should contact Russell R. Graham, associate director, Suite 500, 3301 Northland Drive, Austin, Texas 78731, telephone (512) 454-5781.

Closing Date for Offers: The closing date for such offers is 40 days after the date of this publication.

Evaluation Criteria for Awarding Contract: The School Tax Assessment Practices Board will award contracts based on the expertise in the field of property valuation and tax office administration exhibited by those who offer their services. Individuals who have received a Certified Texas Assessor designation from the Texas Association of Assessing Officers will be given priority consideration for such contract.

Doc. No. 782269

Review of Commercial-Industrial, Mineral, and Utility Properties

Description of Services Requested: The School Tax Assessment Practices Board invites individuals or firms to offer their services on a consulting basis to conduct on-site review of assessments by various school districts of commercial-industrial properties (both real and personal), mineral properties (both real and and personal), and utility properties (both real and personal). Persons or firms serving in such capacity shall be called upon to complete a work program designed to develop a reasonably accurate estimate of the taxable value of the categories of property listed above in each school district which they are assigned.

Contact: Persons or firms wishing to offer their services in such a capacity should contact Kenneth E. Graeber, associate director, Suite 500, 3301 Northland Drive, Austin, Texas 78731, telephone (512) 454-5781.

Closing Date for Offers: The closing date for such offers is 40 days after the date of this publication.

Evaluation Criteria for Awarding Contract: The School Tax Assessment Practices Board will award contracts on the basis of the expertise exhibited by those who offer their services in the area of valuation of commercial industrial, mineral, and utility properties. Priority consideration will be given to those individuals or firms whose primary place of business is in the State of Texas. Priority consideration will also be given to those individuals or firms who have worked in a similar capacity with various taxing jurisdictions of the state.

Issued in Austin, Texas, on March 29, 1978.

Doc. No. 782270 Walt Parker
 Executive Director
 School Tax Assessment Practices
 Board

Filed: March 31, 1978, 10:37 a.m.

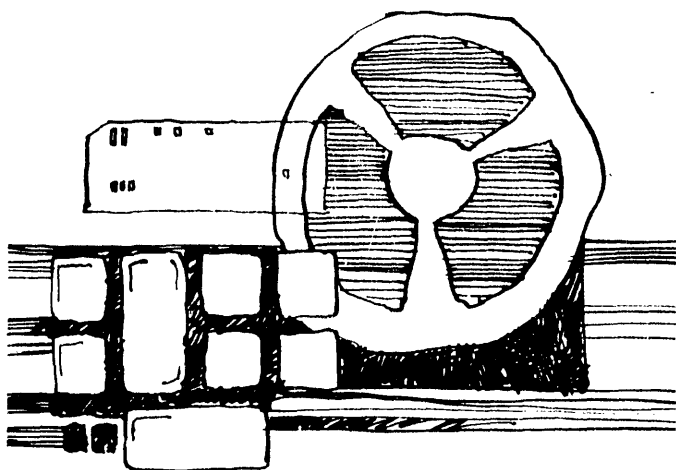
For further information, please call (512) 454-5781

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