

TEXAS REGISTER

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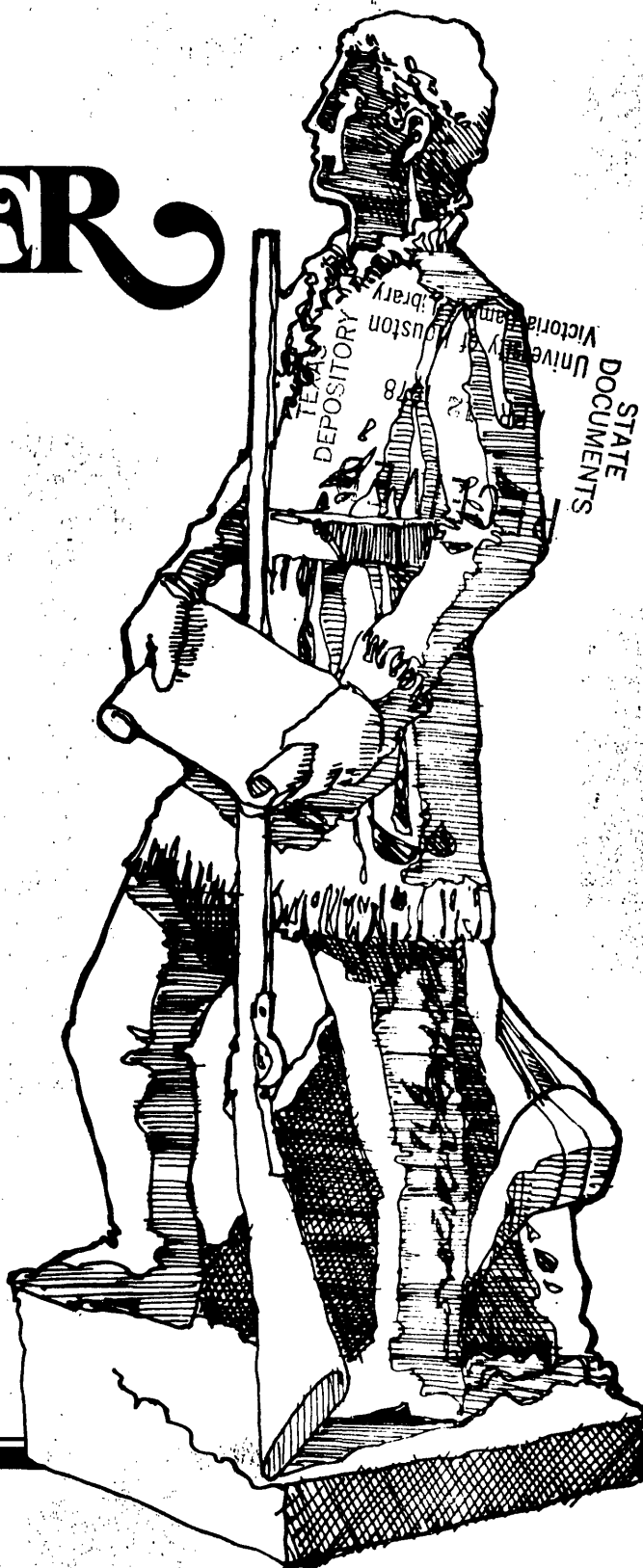
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Office of the Secretary of State

USPS Publication Number 120090

NOTES ON THE ISSUE

The State Board of Insurance proposes an amendment to its rule governing unfair competition and unfair practices. The amendment is intended to extend the compliance date from January 1, 1978, to May 1, 1978, for accident and health insurance companies to prevent dual regulation for this area. This extension is currently in effect as an emergency rule and postpones the effectiveness of the regulation until other rules no longer apply to this area. Further, the amendment seeks to clarify what types of policies will have to comply. The extension applies to an earlier adoption that is directed to the elimination of unfair discrimination based on sex or marital status in the terms and conditions of policies, in the underwriting criteria for insurers, and in rates and rating classifications.

The Department of Health proposes rules concerning the certification of persons to install, exchange, service, or repair residential drinking water treatment facilities. Until the 65th Legislature's amendment to the Texas Plumbing License Law, the law allowed only licensed plumbers to service water treatment facilities in communities of 5000 or more. The amendment directed the Health Department to establish and to oversee certification for persons who are not plumbers to perform these services.

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

Artwork: Gary Thornton

TEXAS REGISTER

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Secretary of State*

The Governor

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Appointments

Metric System Advisory Council

For a two-year term to expire August 29, 1979:

Veta L. Winick
Route 2, Box 81
Dickinson, Texas 77539

Mrs. Winick is replacing Bill Wright of Houston, Harris County, who resigned.

Texas State Board of Podiatry Examiners

For six-year terms to expire July 10, 1983:

Dr. Roger L. Buehler
1006 Green Valley Lane
Duncanville, Texas 75137

Dr. Buehler is being reappointed.

Dr. Jerry W. Patterson
212 Vista Robles
San Antonio, Texas 78232

Dr. Patterson is replacing Dr. Billy Keese of Victoria, Victoria County, who is deceased.

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

Doc. No. 782395 Dolph Briscoe
Governor of Texas

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

Requests for Opinions

Summary of Request for Opinion RQ-1859

Request for opinion sent to the Attorney General's Opinion Committee by R. A. Ramon, judge, Cameron County, Brownsville.

Summary of Request: Are the files of county judge which relate to congratulatory, birthday, and sympathy letters he sends to constituents public under the Open Records Act?

Doc. No. 782398

Summary of Request for Opinion RQ-1860

Request for opinion sent to the Attorney General's Opinion Committee by Charlie Chapman, executive director, Structural Pest Control Board of Texas, Austin.

Summary of Request: Does the Structural Pest Control Board have authority to develop a standard wood infestation report and require all pest control operators to use that report?

Doc. No. 782399

Summary of Request for Opinion RQ-1861

Request for opinion sent to the Attorney General's Opinion Committee by James Warren Smith, Jr., county attorney, Frio County, Pearsall.

Summary of Request:

- (1) Does the justice of the peace court have jurisdiction to proceed to trial without the presence of the defendant in a case punishable by fine only?
- (2) Does the justice of the peace court have jurisdiction to proceed to trial without the presence of defendant's counsel?
- (3) Would the answers vary if the cash bond posted by the defendant was not signed by the principal?

Doc. No. 782397

Opinions

Summary of Opinion H-1147

Request from John Wilson, chairman, Committee on Health and Welfare, House of Representatives, Austin, concerning forfeiture of teacher retirement benefits by county judge acting as *ex officio* superintendent.

Summary of Opinion: A county judge serving as *ex officio* school superintendent is barred by Section 3.37(d) of the Education Code from receiving teacher retirement benefits during his service. Senate Bill 1327 enacted by the 65th Legislature is unconstitutional as a local law.

Doc. No. 782320

Summary of Opinion H-1148

Request from Mike Westergren, county attorney, Nueces County, Corpus Christi, concerning the duty of county treasurer with respect to a special "flash money" fund for law enforcement purposes.

Summary of Opinion: Except for the examination and reporting duties required by Article 1714, Vernon's Texas Civil Statutes, a county treasurer's duties with respect to any particular check he signs in his official capacity are complete as soon as he has affixed his signature thereto. Where a county treasurer has affixed his signature to a check upon a valid order of a district court, he will not be liable for doing so.

Doc. No. 782400

Summary of Opinion H-1149

Request from Joseph N. Murphy, executive director, Employees Retirement System of Texas, Austin, concerning the administration of judicial retirement.

Summary of Opinion: A former district judge who is not yet retired is eligible for assignment as a special judge under the circumstances stated in Article 200a, Vernon's Texas Civil Statutes.

A judge on special assignment does not qualify for a disability benefit under Article 6228b, Section 3, if the disability occurs while he is serving on special assignment.

A judge on special assignment should pay in retirement contributions an amount equal to six percent of the salary actually paid him.

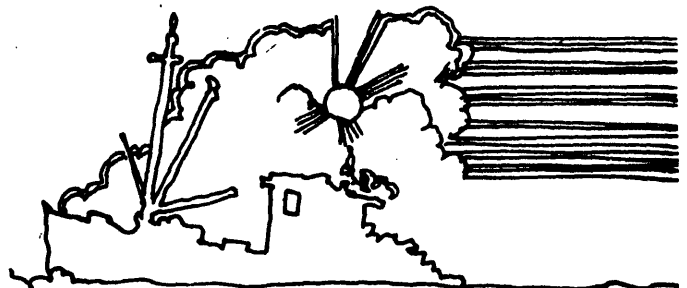
The death benefit plan in Article 6228b, Section 2(a-1), is available to a judge who serves on special assignment during the month of his death and who otherwise qualifies.

Issued in Austin, Texas, on April 4, 1978.

Doc. No. 782424

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 302.04.37

(Editor's note: Emergency Rules 302.04.37.001-.034 are being run serially. Rules .001-.014 appeared in the April 7 issue; the remainder of the rules, Rules .015-.034, follows. 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:

.015. Resident Transfer: Transfer of a Voluntarily Admitted Resident from a Residential Care Facility for the Mentally Retarded to a Residential Facility for the Mentally Ill.

(a) Requests for transfer may be a voluntarily admitted adult resident, parents of a minor resident, or guardians of a resident's person, from a residential care facility for the mentally retarded to a residential facility for the mentally ill shall follow the procedures set out in Rule .013 of these rules.

(b) Except for emergency care as provided in Rule .022 of these rules, no voluntarily admitted resident shall be transferred from a residential care facility for the mentally retarded to a residential facility for the mentally ill without legally adequate consent for the transfer from the voluntarily admitted adult resident, parents of the voluntarily admitted minor resident, or guardian of the voluntarily admitted resident's person. Where legally adequate consent has been obtained, requests for transfer shall follow the procedures set out in Rule .013 of these rules.

.016. Resident Transfers: Transfer of a Resident (Patient) from a Residential Facility for the Mentally Ill to a Residential Care Facility for the Mentally Retarded. Transfer of a resident (patient) from a Texas residential facility for the mentally ill to a Texas residential care facility for the mentally retarded must be made pursuant to the procedures specified in Rules .004-.010 of these rules; and with respect to persons who have been committed to a Texas residential facility for the mentally ill, the provisions of Article 5547-75A, Vernon's Annotated Civil Statutes (Texas Mental Health Code), apply.

.017. Resident Transfers: Interstate Transfer of a Resident between Texas and Another State. An interstate transfer of a mentally retarded resident of a residential care facility for the mentally retarded to or from another state shall be accomplished in accordance with the Rules 302.03.10, Other Agencies and the Public, Interstate Transfer.

.018. Resident Furloughs: Reasons for Furlough. A furlough of a resident from a residential care facility for the mentally retarded shall be granted only if it is in the best interest of the resident. Furloughs may be granted for the following reasons:

(a) short-term visits away from the residential care facility;

(b) temporary furloughs for emergency medical, dental, or psychiatric care;

(c) furloughs for specific programs, assistance, or both, required by the resident but not available at the current residential care facility; and

(d) furloughs for a trial alternate placement in an alternate living facility to determine the resident's ability to function in a less restrictive environment.

.019. Resident Furloughs: General Provisions.

(a) A furlough of a resident from a residential care facility for the mentally retarded shall be for a time-specific period and shall not exceed the maximum time allowed for the particular type of furloughs as required by these rules, except that the superintendent of the furloughing facility

may grant furlough extensions or renewals beyond the maximum time allowed with special approval to each request.

(b) Short-term visits away from the residential care facility of less than 72 hours shall not be considered furloughs for the purposes of these rules and shall only require authorization for such short-term visits in the resident's individual habilitation plan.

(c) The superintendent of the residential care facility for the mentally retarded in which the resident is placed shall have the authority to grant or deny any furlough, except that no furlough shall be granted unless the superintendent or his designated representative has determined that the furlough is in the best interest of the resident.

(d) Copies of all documents developed by the furloughing facility during the furlough period shall be placed in the resident's unit record or master file (whichever is appropriate) at the residential care facility from which the resident was furloughed.

(e) All contracts, agreements, or memoranda of understanding required by these rules that pertain to resident furloughs shall stipulate that the residential facility from which the resident is furloughed shall have free access to all documents developed during the furlough period and shall have the authorization to reproduce, summarize, or otherwise reflect the content of such documentation; and such reproductions, summarizations, or other reflections of the content shall be placed in the resident's unit record or master file (whichever is appropriate) at the residential care facility from which the resident was furloughed.

(f) The furlough of a voluntarily admitted resident shall be governed by the following rules:

(1) If the resident, parents of a minor resident, or guardian of a voluntarily admitted resident object to a furlough planned in accordance with these rules, such objection may operate as a withdrawal of voluntary admission.

(2) If there is an objection as described in subsection (1) of this Section (f), the superintendent shall pursue one of the following courses of action:

(A) the resident may be retained on the rolls of the facility and the furlough planning altered or terminated; or

(B) the resident may be discharged in accordance with the criteria and procedures of Rule .028 of these rules; or

(C) the superintendent may file or cause to be filed an application for judicial commitment from the county court of the county in which the residential care facility for the mentally retarded is located. If a judicial commitment is sought, the superintendent may:

(i) seek an order for protective custody, ordering the resident to remain in the existing residential care facility of placement; or

(ii) seek an order for protective custody, ordering the resident to some other suitable place that can better serve the individual needs of the resident.

(g) The superintendent of the residential care facility for the mentally retarded may, upon his own initiative, terminate any furlough and seek the return of the resident to the furloughing facility if the superintendent determines that:

(1) such action would be in the best interest of the resident, or

(2) the situation of the resident is life threatening, obviously substandard, or otherwise detrimental.

(h) If a court-committed resident is absent from the place to which he or she was furloughed, and if the absence is

without the permission from the authority stipulated in the furlough agreement, contract, or memorandum of understanding, the superintendent of the furloughing facility may immediately issue an order authorizing any peace officer to seek out and detain the absent resident and, upon locating the resident, to return or cause to be returned the resident to the furloughing facility.

(i) If a voluntarily admitted adult resident is absent without authorization from the residential care facility or from the place of furlough, superintendent shall seek assistance in locating the resident and learn his or her intentions. If the resident does not intend to return voluntarily or if the whereabouts of the resident cannot be determined after every reasonable effort, the unauthorized departure shall serve as a voluntary withdrawal; provided, however, that the superintendent shall attempt to notify the guardian, if any, of the unauthorized departure and of consequent events. Absence without authorization in this instance may constitute voluntary withdrawal if the resident is absent for a period of 30 days.

(j) If a minor resident or legally incompetent resident who is court-committed is absent without authorization from the residential care facility or from the place of furlough, the superintendent shall immediately notify, verbally and in writing, the parents of a minor or a guardian of the unauthorized departure and shall make every reasonable effort, including notification to peace officers, to locate the absent resident. Absence without authorization in this instance may constitute voluntary withdrawal if:

(1) parents of the minor, or the guardian, are aware of the whereabouts of the resident and do not return him, or

(2) the resident is absent for a period of 30 days.

.020. Resident Furloughs: Special Criteria for Alternate Living Facilities.

(a) Prior to approving the furlough of any resident for a trial alternate placement at an alternate living facility that serves or seeks to serve mentally retarded persons or others for profit or for reasons other than kinship, the superintendent or his designated representative of the residential care facility for the mentally retarded shall:

(1) Conduct an on-site inspection of the alternate living facility and determine that:

(A) the facility has required all state, county, and local licenses and that they are current;

(B) the facility's certification, if appropriate, as an intermediate care facility is in force;

(C) the facility's principal operator, provider, owner, or administrator has been advised of all appropriate department rules and of any action that may be necessary under the rules before a furlough for trial alternate placement can be granted;

(D) there are habilitative services, programs, treatment, training, and care that are appropriate to the needs of the clients that the facility serves or seeks to serve and that are being made available to the clients;

(E) there are policies and procedures that serve to protect the civil and legal rights of its clients;

(F) there are adequate professional and direct-care staff to meet the needs of its clients; and

(G) the physical and social environment represents a less restrictive environment for prospective clients from the residential care facility and the environment offers the clients a clean, safe, sanitary, and homelike atmosphere.

(2) Execute with the facility's principal operator, administrator, provider, or owner a written contract (which is attached to these rules as Exhibit G—.04.37.020 and is referred to as the alternate placement contract), which shall include but not be limited to the following provisions:

(A) a statement that the superintendent has the final authority to return a furloughed client to the residential care facility for the mentally retarded if in his or her judgment such action is in the resident's best interests;

(B) a statement that the superintendent or his designated representatives shall have the authority to inspect the premises of the alternate living facility at any time during the contract period and to inspect, reproduce, or summarize the contents of the records of residents furloughed to the alternate living facility by the residential care facility for the mentally retarded;

(C) a statement that there is a mutual understanding and acceptance of the joint responsibilities;

(D) a statement specifying the type and duration of services by the residential care facility to be extended to the alternate living facility prior to the placement of residents and during the contract period; and

(E) a statement that the contract shall be reviewed periodically, not to exceed an annual basis, by both parties.

(b) In addition to the requirements specified in Section (a) of this rule, the superintendent shall approve the furlough of residents for trial alternate placement at a licensed non-certified intermediate care facility only if:

(1) in the judgment of the superintendent, the non-certified facility is prepared for a certification survey with the one exception of having an insufficient number of clients in residence and receiving services;

(2) the alternate placement contract contains the additional provisions that:

(A) the contract shall be reviewed by the provider and the superintendent every 90 days until such time as the provider obtains certification;

(B) failure to obtain certification within one year from the date of the contract shall result in cancellation of the contract and the return of all furloughed residents to the residential care facility for the mentally retarded.

(c) The number of residents furloughed to a licensed noncertified intermediate care facility shall not exceed the minimum number of persons required to enable the facility to obtain a certification survey, and each resident furloughed to the alternate living facility shall be appropriately placed on the basis on their individual needs and level of care required.

.021. Resident Furloughs: Requirements for Trial Alternate Placements.

(a) Furloughs of a resident from a residential care facility for the mentally retarded shall be considered a furlough for trial alternate placement if the following criteria are met:

(1) return to the furloughing facility is not anticipated if the goals of the furlough are achieved;

(2) the main purpose of the furlough is to provide the resident with a trial placement in an alternate living situation to determine his or her ability to function successfully in an environment that is less restrictive than currently being provided.

(b) A furlough for trial alternate placement may be granted if the following criteria are met and procedures are followed:

(1) the appropriate interdisciplinary team has determined that:

(A) the furlough being considered is in the best interest of the resident, and

(B) adequate plans have been made for the placement to foster the retention or reestablishment of beneficial family and community relationships;

(2) the prerequisite requirements for alternate living facilities as provided in Rule .020 in these rules have been complied with;

(3) the prerequisite requirements for the development of a furlough plan has been accomplished;

(4) the resident has been accepted for admission into the alternate living situation;

(5) if appropriate, the resident has been certified or otherwise determined eligible for the alternate placement; specifically, the resident has:

(A) obtained a determination as to program eligibility and assigned level of care from the patient care services unit if the facility has been certified as an intermediate care facility, or

(B) been accepted as a client of the Texas Rehabilitation Commission, Commission for the Blind, or other appropriate agency, if required for placement;

(6) prior to furlough planning specified in subsection (3) of this section, the resident and the resident's family, guardian, or other assisting agency has been encouraged to visit the alternate living facility and to consequently participate in the development of the furlough plan;

(7) prior to or on the date of furlough, the following shall be provided on the resident's behalf:

(A) a 14-day supply of medications is available,

(B) all of the resident's personal belongings are prepared to be transported,

(C) all necessary financial arrangements and agreements have been concluded, and

(D) all appropriate special instructions for the resident or others are furnished in writing and are given orally prior to or at the time of departure,

(E) the resident shall be accompanied with the following records:

(i) a copy of birth certificate,

(ii) copies of any legal documents,

(iii) a copy of the social security card,

(iv) a recent photograph,

(v) immunization record,

(vi) a copy of the height and weight record,

(vii) a copy of the seizure record,

(viii) a copy of the treatment and diet record,

(ix) a copy of the most recent medical examination,

including dental,

(x) copies of all laboratory records conducted within the past 30 days,

(xi) copies of the physician's reports,

(xii) a copy of the transfer programs summary,

(xiii) a copy of the social history and a copy of the most recent psychological examination.

(c) Furlough for trial alternate placement shall be for a maximum period of six months and is renewable up to five times; provided, however, that each renewal shall again meet the requirements of Sections (a) and (b) of this rule.

(d) Renewal of a furlough for trial alternate placement beyond the three-year period specified in Section (c) of this rule requires that:

(1) a comprehensive diagnosis and evaluation has been performed within 90 days of the end of the three-year period, and it is thereby determined that:

(A) there are no known factors precluding eventual success or attainment of the goals of the furlough,

(B) the resident remains eligible for placement in a residential care facility for the mentally retarded, and

(C) the resident's needs are appropriately met by the alternate living situation, or if the placement is not optimal, more appropriate services are not available to the resident;

(2) the requirements of Sections (a) and (b) of this rule are again met; and

(3) the superintendent of the residential care facility for the mentally retarded has granted special approval for the furlough renewal.

.022. Resident Furloughs: Requirements for Temporary Furloughs.

(a) The furlough of a resident from a residential care facility for the mentally retarded shall be considered a temporary furlough if:

(1) the furlough period does not exceed 30 days;

(2) the resident's return to the residential care facility for the mentally retarded is anticipated at or before the end of the furlough period;

(3) the purpose of the furlough is to provide emergency medical, dental, or psychiatric services or examinations.

(b) A temporary furlough may be granted if:

(1) a physician has determined that the resident is in need of immediate medical, dental, or psychiatric services or examinations that are not available at the residential care facility;

(2) agreements or arrangements have been concluded for obtaining the necessary services elsewhere;

(3) the objectives of the furlough may be achieved within 30 consecutive days; and

(4) legally adequate consent, if required, has been obtained.

(c) The residential care facility for the mentally retarded granting the temporary furlough shall transport the resident to the destination facility in an appropriately equipped vehicle, and the following shall accompany the resident for the destination facility's and resident's use:

(1) legally adequate consent form, if required;

(2) medical history;

(3) immunization record (copy);

(4) weight and height record (copy);

(5) seizure record (copy);

(6) treatment and diet orders (copy);

(7) examination and assessment reports for medical, psychological, and social factors (copy);

(8) laboratory reports conducted within the previous 30 days (including x ray, EEG, EKG);

(9) 14-day supply of the resident's prescribed medication;

(10) an adequate supply of clean, suitable clothing and other personal items as are appropriate.

(d) If it is determined during the course of the temporary furlough that the goals of the furlough cannot be attained within the 30-consecutive-day limitation, but there is a substantial probability that the goals would be attained within a second 30-day period, the superintendent may grant one extension of the temporary furlough for another 30 consecutive

days; provided, however, that if the destination facility is a residential facility for the mentally ill, Rule .015 of these rules shall be complied with for court-committed residents.

(e) If the resident would benefit from continued furlough beyond the time periods allowed by this rule, continued furlough status shall be provided by complying with Rule .023 of these rules.

.023. Resident Furloughs: Requirements for Furlough for Specific Programs, Assistance, or Both.

(a) The furlough of a resident from a residential care facility for the mentally retarded shall be considered a furlough for specific programs, assistance, or both, if:

(1) the furlough period does not exceed six months; is renewable twice;

(2) the resident's return to the residential care facility is anticipated before or at the end of the furlough period;

(3) the purpose of the furlough is to provide the resident with specific habilitation training, care, treatment, or programs for particular needs of the resident and which are not available to the resident at the residential care facility.

(b) A furlough for a specific program, assistance, or both, may be granted if:

(1) the appropriate interdisciplinary team has determined that:

(A) the resident is in need of the programs or assistance offered, and possesses the necessary skills and abilities to benefit from the proposed furlough;

(B) the benefit to be derived from the furlough exceeds the benefit that would be derived from continuation of the resident's existing habilitation plan without interruption;

(2) there are no legal restrictions prohibiting the proposed furlough.

(c) The following shall accompany the resident to the destination facility:

(1) a 14-day supply of medications;

(2) an adequate supply of clean, suitable clothing and other personal items, as appropriate.

(3) copy of the resident's current program plan and other pertinent record information;

(4) all appropriate special instructions for the resident or others, which shall be furnished both in writing and orally prior to or at the time of departure.

.024. Resident Furloughs: Requirements for Short-Term Furloughs.

(a) The furlough of a resident from a residential care facility for the mentally-retarded shall be considered a short-term furlough if:

(1) the furlough period does not exceed 90 days;

(2) the resident is expected to return to the residential care facility before or at the end of the furlough period;

(3) the purpose of the furlough is for the resident to visit relatives, guardian, or friends.

(b) A short-term furlough may be granted if:

(1) the resident's individual program plan specifies that short-term furloughs of the type proposed are in the best interest of the resident;

(2) there are no legal restrictions serving to prohibit the type of furlough proposed;

(3) a signed, written memorandum of understanding or agreement has been developed that specifies responsibility of and for the resident during the furlough period, the length

of the furlough period, and the nature of the furlough, and that was developed with the cooperation and agreement of the resident, to the extent possible, by the individual or agency assuming responsibility for the resident and by the residential facility for the mentally retarded.

(c) The following shall accompany the resident upon departure:

- (1) a 14-day supply of prescribed medications, if appropriate;
- (2) an adequate supply of clean, suitable clothing and of personal items, as appropriate;
- (3) any special instructions for the resident or others, which shall be furnished both orally and in writing before or at the time of departure.
- (d) Requests for short-term furloughs of more than 90 days shall be discouraged unless it is determined that the benefits being derived from the furlough exceed the benefit that would be derived from corresponding participation in the resident's individual habilitation plan.

.025. Resident Discharges: General Provisions; Reasons for Discharge.

(a) A resident of a residential care facility for the mentally retarded may be discharged only in accordance with these rules.

(b) Any voluntarily admitted resident shall be released and discharged within 96 hours if the adult resident, the parents of a minor, or the guardian of the person make a request for discharge or take any action that serves as a voluntary withdrawal from services; providing, however, that Section (b) of Rule .028 of these rules shall be adhered to.

(c) No resident may be discharged from a residential care facility for the mentally retarded unless a discharge summary (attached to these rules as Exhibit H—.04.37.025) has been prepared and which contains the following:

- (1) client-identifying information;
- (2) legal status of the resident, including guardianship and legal competency;
- (3) a summary of the findings and recommendations of the most recent comprehensive diagnosis and evaluation;
- (4) a summary of progress during the placement at the residential facility and, if appropriate, during the furlough period;
- (5) a summary of the discharge plan, including provisions for follow-along and after-care services;
- (6) a statement of the reason discharge is recommended;
- (7) signatures of the interdisciplinary team members recommending discharge;
- (8) signature of the superintendent approving the discharge.

(d) The death of a resident shall be documented by a death summary, which shall include the following:

- (1) client-identifying information;
- (2) legal status of the resident, including guardianship and legal competency;
- (3) a summary of the information contained in the death certificate;
- (4) a summary of the findings of an autopsy, if performed;
- (5) a summary of the progress during the resident's placement at the residential facility and, if appropriate, during the furlough period;
- (6) signature of the superintendent.

(e) The discharge of a resident court-committed under laws prior to the Mentally Retarded Persons Act of 1977 shall also require that the appropriate interdisciplinary team determine that the discharge is in the best interest of the resident.

(f) The discharge of a resident court-committed under the provisions of the Mentally Retarded Persons Act of 1977 requires that the court that issued the commitment order be promptly notified that the resident was discharged.

(g) Reasons for discharge of a resident of a residential care facility for the mentally retarded include:

- (1) a demonstrated ability to function in and benefit from a less restrictive environment;
- (2) ineligibility for continued residential services;
- (3) voluntary withdrawal from residential services;
- (4) assumption of responsibility for the resident by another agency;
- (5) death of a resident;
- (6) no further need for residential services.

.026. Resident Discharge: Requirements for Discharge of a Resident into a Less Restrictive Environment.

(a) The following criteria define the requirements for the discharge of a resident from a residential care facility for the mentally retarded due to the resident's ability to function in and benefit from a less restrictive environment:

- (1) the resident has shown substantial and measurable progress toward accomplishing the major goals and objectives of a trial furlough period;
- (2) the resident's needs are more appropriately met in an available, less restrictive environment than the residential care facility for the mentally retarded;
- (3) there is substantial probability that the resident shall not require residential care services from the department in the future;
- (4) an interdisciplinary team has determined that discharge is in the best interest of the resident;
- (5) at least 30 days' notice was given to the resident, parent, or guardian that the discharge is proposed and that they, other than the parent of an adult resident, have the right to contest the proposal and to request an administrative hearing for that purpose; and
- (6) a discharge summary has been developed by an interdisciplinary team in accordance with Rule .025 of these rules.

(b) A discharge shall not become final except in accordance with Rule .031 of these rules.

.027. Resident Discharges: Requirements for Discharge of a Resident Due to Ineligibility for Continued Residential Care Services.

(a) The following criteria define the requirements for the discharge of a resident from a residential care facility for the mentally retarded due to the resident's ineligibility to receive residential care services:

- (1) the findings and recommendations of a comprehensive diagnosis and evaluation team have concluded that the resident is not a mentally retarded person;
- (2) a comprehensive diagnosis and evaluation was performed within six months of the discharge date;
- (3) at least 30 days' notice was given to the resident, parent, or guardian that:
 - (A) the discharge is proposed due to ineligibility;
 - (B) they have the right to contest the findings and recommendations of the comprehensive diagnosis and

evaluation team, a copy of whose report must be enclosed, and to request an administrative hearing for that purpose; and

(C) the person requesting the date shall have the right to obtain an independent comprehensive diagnosis and evaluation;

(4) a discharge summary has been developed by an interdisciplinary team in accordance with Rule .025 of these rules.

(b) A discharge shall not become final except in accordance with Rule .031 of these rules.

.028. Resident Discharges: Discharge of a Resident Because of a Voluntary Withdrawal from Mental Retardation Services.

(a) No resident voluntarily admitted to a residential care facility may be detained more than 96 hours after he, his parents if he is a minor, or his guardian has requested discharge, unless the superintendent of the residential care facility:

(1) determines that the condition of the resident or other circumstances are such that the resident cannot be discharged without endangering the safety of the resident or the general public; and

(2) files or causes to be filed an application for judicial commitment in the county court of the county in which the residential care facility is located.

If judicial commitment is sought, the superintendent of the residential care facility shall determine whether an order of protective custody should also be sought pending the outcome of the commitment application, and if so, whether the existing or some other facility is the most suitable place for the resident to be detained.

(b) If no judicial commitment is sought in accordance with Section (a) of this rule after the resident, his parents if he is a minor, or his guardian has requested discharge, then the resident shall be discharged within 96 hours of the time such request is received. Prior to such discharge, the residential care facility shall:

(1) offer discharge planning, follow-along services, and after-care; and

(2) prepare a discharge summary in accordance with Rule .025 of these rules.

.029. Resident Discharges: Requirements for the Discharge of a Resident Following Assumption of Responsibility by Another Agency.

(a) The following criteria define the requirements for the discharge of a resident from a residential care facility for the mentally retarded because another governmental agency has assumed responsibility for the resident's residential services:

(1) the resident has been taken into custody on a long-term basis by another governmental agency and is incarcerated;

(2) at least 30 days' notice was given to the resident, parent, or guardian that the discharge is proposed and that the resident, parent of a minor, or guardian have the right to contest the proposal and to request an administrative hearing for the purpose; and

(3) a discharge summary has been prepared in accordance with Rule .025 of these rules.

(b) A discharge shall not become final except in accordance with Rule .031 of these rules.

.030. Resident Discharges: Requirements for the Discharge of a Resident that No Longer Needs Residential Care Services. The following criteria define the requirements for the discharge of a resident from a residential care facility for the mentally retarded because the resident no longer needs residential care services:

(a) the resident has completed the goals of the residential placement;

(b) at least 30 days' notice was given to the resident, parent, or guardian that the discharge is proposed and that the resident, parent of a minor, or guardian have the right to contest the proposal and to request an administrative hearing for that purpose;

(c) a discharge summary has been prepared in accordance with Rule .025 of these rules.

.031. Administrative Hearing. Administrative hearings to contest findings of a diagnostic and evaluation study or the transfer or discharge of a resident shall be requested, conducted, and appealed in accordance with the Rules of the Commissioner of MHMR Affecting Client (Patient) Care, Administrative Hearings of the Department in Contested Cases Arising Under the Mentally Retarded Persons Act of 1977, 302.04.36.001-.011.

.032. Exhibits. The following exhibits are attached to these rules:

(a) Exhibit A—.04.37.004—Application for Admission;
 (b) Exhibit B—.04.37.004—Form 02;
 (c) Exhibit C—.04.37.010—Emergency Admission Application;

(d) Exhibit D—.04.37.011—Respite Care Agreement;
 (e) Exhibit E—.04.37.013—Request for Transfer;
 (f) Exhibit F—.04.37.013—Transfer Data Form;
 (g) Exhibit G—.04.37.020—Alternate Placement Contract;

(h) Exhibit H—.04.37.025—Discharge Summary;
 (i) Exhibit I—.04.37.014—Section 46(d) of the Mentally Retarded Persons Act, 1977;
 (j) Exhibit J—.04.37.014—Article 5547-75A, Vernon's Texas Civil Statutes.

.033. References. Reference is made to the following statutes, department rules, and publications:

(a) Article 5547-201, Vernon's Annotated Civil Statutes;

(b) Article 3871b, Vernon's Annotated Civil Statutes;
 (c) Article 5561f, Vernon's Annotated Civil Statutes (Interstate Compact on Mental Health);

(d) Rules of the Commissioner of MHMR, Interstate Transfer Rules and Procedures, 302.03.10;

(e) *Manual on Terminology and Classification in Mental Retardation*, 1977, prepared by the American Association on Mental Deficiency (AAMD);

(f) Article 5547-300, Vernon's Texas Civil Statutes;
 (g) Article 5547-204, Vernon's Texas Civil Statutes;
 (h) Section 130A—1300, Texas Probate Code;

(i) Section 55.03 of Texas Family Code;
 (j) Article 5547-75A, Vernon's Texas Civil Statutes;

(k) Rules of the Commissioner of MHMR Affecting Client (Patient) Care, Rules Governing Comprehensive Diagnostic and Evaluation Centers, 302.04.35.001-.013;

(l) Rules of the Commissioner of MHMR Affecting Client (Patient) Care, Rules Governing Practice and Procedure With Respect to Administrative Hearings of the

Department in Contested Cases Arising Under the Mentally Retarded Persons Act of 1977, 302.04.36.001-.011;

- (m) United States Civil Rights Act of 1964;
- (n) 45 Code of Federal Regulations, Section 249.12(6)(3);
- (o) Article 5547-202, Vernon's Annotated Civil Statutes;
- (p) Article 5547-203, Vernon's Annotated Civil Statutes.

.034. Distribution.

(a) These rules will be distributed to the members of the Texas Board of Mental Health and Mental Retardation; assistant commissioners, deputy commissioners, directors, and section chiefs of central office; and superintendents and directors of all department facilities.

(b) The superintendent and director of each department facility shall be responsible for the dissemination of the information contained in these rules to:

- (1) the department facility's MHMR liaison worker;
- (2) the assistant superintendent;
- (3) unit directors if the department facility is a facility for the mentally retarded;

(4) unit directors if the department facility is a mental health facility where significant members of mentally retarded persons reside in the unit;

(5) the chief of social services or social service consultants; and

(6) the director of admissions, transfers, discharges, or those individuals designated by the superintendent to serve in that capacity.

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

1338

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 Education Agency Responsibilities Outside the Public School System

Guidelines and Minimum Standards for Operation of Texas Proprietary Schools 226.25.90

The Texas Education Agency proposes to amend Rule 226.25.90.020, which concerns general guidelines for Texas proprietary schools. The proposed amendment concerns schools with multiple locations and provides that, unless certain exceptions are met, a proprietary school must obtain a certificate of approval for each location where a course or courses of instruction will be offered.

The Texas Education Agency anticipates that the proposed amendment to Rule 226.25.90.020 will have no fiscal implications for the state or for local units of government.

Public comment on the proposed amendment to Rule 226.25.90.020 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*.

This amendment is proposed under the authority of Section 32.22, Texas Education Code.

.020. *Guidelines in General.*

(a) The Texas Education Agency will evaluate each school according to the standards of practice as set forth herein. The complete picture presented by the entire educational, promotional, and ethical structure of the school will receive consideration in its evaluation. The quality of educa-

tional programs offered by each school will be judged in terms of the announced policies as set forth in the bulletins, school literature, and application for certificate of approval.

(b) Every effort will be made to evaluate fairly and impartially each school application for approval and each representative permit to solicit students in Texas for the purpose of selling courses of instruction. The Texas Education Agency will endeavor to provide an effective and constructive application of the law and standards of practice adopted for regulating proprietary schools.

(c) *A proprietary school must obtain a certificate of approval for each location where a course or courses of instruction will be offered, unless the school meets one of the following exceptions:*

(1) *schools which offer short-term courses not to exceed 200 hours at locations other than their campuses, provided there is a 90-day interval between course offerings;*

(2) *schools which offer review courses, the purpose of which is to assist students in reviewing for required examinations for licensing or for entering academic institutions, and reading improvement schools;*

(3) *itinerant schools which do not hold classes in more than one location at a time;*

(4) *schools which acquire additional classroom facilities, within walking distance of the main campus, because of space limitations.*

(d) The Texas Education Agency will assist all schools and their directors under its jurisdiction, whenever possible, in complying with the provisions of the law and standards of practice. Inquiries or requests for information should be directed to the division of proprietary schools and veterans education, Texas Education Agency, Austin, Texas 78701.

Doc. No. 782419

Adaptations for Special Populations Adoptions by Reference: State Plans 226.35.91

The Texas Education Agency proposes to amend Rule 226.35.91.010, adopting by reference the *State of Texas Annual Program Plan for Adult Education*. The plan is being revised for fiscal year 1979. Proposed changes in the plan include a revision and restatement of the list of priority areas for adult education as well as a revision of several specific objectives (Part 3.4). The proposed amendment to the rule deletes references to guidelines published in the *Federal Register*.

The Texas Education Agency anticipates that \$4,963,583 in federal funds will be provided for adult education in fiscal year 1979. Current legislation does not extend the adult education program past 1979. New legislation for subsequent years is now being considered, but information on probable funding levels is unavailable at this time. The present federal program requires a 10 percent state or local in-kind matching contribution. This nonfederal share may be computed on a statewide basis and may come from any source other than federal funds so long as the expenditures are made in furtherance of the state plan for adult education.

The statewide 10 percent usually represents a percentage of the salaries of local education agency personnel, paid from state or local funds, who have responsibilities in the adult education program.

Public comment on the proposed amendment to Rule 226.35.91.010 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. The State Board of Education will hold a public hearing on the proposed *Texas State Plan for Adult Education for Fiscal Year 1979* on Friday, May 12, 1978, beginning at 8:30 a.m. in the board room, Riverside Square North, 150 East Riverside Drive, Austin. Persons who desire to be heard should register with Cadar Parr, associate commissioner for occupational education and technology, Texas Education Agency, prior to 8:30 a.m. on May 12, 1978.

This amendment is proposed under the authority of Public Law 91-230 as amended.

.010. *The State of Texas Annual Program Plan for Adult Education Program.* The rules for adult education are described in *The State of Texas Annual Program Plan for Adult Education Programs* as amended May, 1978 [1977], which is adopted by this reference as the Texas Education Agency's official rule. This plan was developed as a requirement under Public Law 91-230 as amended by Public Law 91-600, 92-318, 93-29, 93-380, and 94-23. [45 CFR, Chapter 1, Part 166, *Federal Register*, Volume 40, Number 79, April 23, 1975, and 45 CFR, Chapter 1, Part 166, *Federal Register*, Volume 40, Number 205, October 22, 1975.] A copy is available for examination during regular office hours, 8 a.m. to 5 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency (headquarters) Building, 201 East 11th Street, Austin, Texas.

Issued in Austin, Texas, on April 5, 1978.

Doc. No. 782441 M. L. Brockette
Commissioner of Education

Proposed Date of Adoption: May 13, 1978

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



Texas Department of Health Water Hygiene

Certification of Persons to Install, Exchange, Service, or Repair Residential Water Treatment Facilities 301.83.02

The Texas Department of Health proposes to adopt new rules for issuing certificates to qualified persons to install, exchange, service, or repair residential water treatment facilities. These rules are being proposed to fulfill requirements established by the 1977 amendments to the Texas Plumbing License Law (Senate Bill 147, 65th Legislature, amending Article 6243-101, Texas Civil Statutes) that such certificates be issued only to persons with minimum qualifications based on education, experience, and training in water hygiene. The rules cover definitions, classes of certificates, training, examinations, and procedures to apply for and renew certificates.

These proposed rules have been developed along the format established for the existing certification program for water utility operators. This should enable the present operating staff to carry out these new functions as a part of their existing work and not create any undue fiscal implications for the state and units of local governments. The source of this determination is the staff of the department's water hygiene division.

Written comments regarding these proposed rules are invited and should be sent no later than May 5, 1978, to Charles K. Foster, P.E., director, division of water hygiene, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. A public hearing will be held on these proposed rules in the first floor auditorium, Texas Department of Health Building, 1100 West 49th Street, Austin, Texas, from 9:30 a.m. to noon on Tuesday, April 18, 1978. The purpose of this hearing is to receive verbal and written testimony and other comments which interested members of the public wish to present covering these proposed rules.

These rules are being proposed under authority of Article 6243-101, Texas Civil Statutes.

.001. *Definitions.* To aid in the evaluation of definitions given in the law, these interpretations are established:

(a) *Commissioner.* The commission shall be the commissioner of health, Texas Department of Health, or his duly authorized representative.

(b) *Department.* The department shall be the Texas Department of Health or any employee thereof designated by the commissioner of health to act for the Texas Department of Health.

(c) *Certificates.*

(1) Certificates shall be issued by the department stating that an eligible person has met the requirements of qualification for the installation, exchange, servicing, and repair of residential water treatment facilities as set forth by specified classifications of the certification program for water conditioner personnel. The certificates shall have the original signature or a printed signature of the commissioner and the deputy commissioner for environmental and consumer health protection of the Texas Department of Health.

(2) The types of certificates to be issued by the department shall be as follows: Class 1—residential water treatment facility operator; Class 2—residential water treatment facility operator; Class 3—residential water treatment facility operator; Class 4—residential water treatment facility operator.

(d) Eligible person. An eligible person for a certificate shall be one who has qualified for the installation, exchange, servicing, and repair of residential treatment facilities by meeting standards set by the department based upon education, experience, and training in water hygiene.

.002. Certificate Description.

(a) Class 1. This certificate is valid for two years and is renewable. Anyone holding this certificate must work under the supervision of a person holding a higher class certificate, the local plumbing inspector, or a health official having jurisdiction where the work is done. Persons holding a Class 1 certificate are restricted to the performance of the following activities:

- (1) exchange and regeneration of portable tanks;
- (2) regeneration of nonportable tanks;
- (3) other tasks which may be assigned by the supervisor and for which direct supervision is provided.

(b) Class 2. This certificate is valid for three years and is renewable. Anyone holding this certificate has demonstrated a practical working knowledge of the mechanics and servicing principles of water conditioners and is deemed able to perform water treatment installations, exchanges, services, or repairs of equipment as set forth by state law. Holders of this class certificate are considered to be aware of the public health requirements connected with their activities. Work on reverse osmosis and deionization equipment is specifically excluded unless done under the supervision of a person holding a higher class certificate.

(c) Class 3. This certificate is valid for five years and is renewable. Anyone holding this certificate meets minimum standards of qualification established for the installation, exchange, servicing, and repair of residential water treatment facilities.

(d) Class 4. This certificate is valid for seven years and is renewable. Persons issued this certificate have demonstrated advanced knowledge in all phases of water conditioning beyond the minimum standards of qualification.

.003. Qualification Requirements.

Certificate	Minimum Working Experience	Education	Specialized Training	Validity Period
Class 1	if 0 yrs. applications must be submitted within 90 days after employment	less than high school	none	2 yrs.
Class 2	if 3 yrs.	less than high school	one basic course in water conditioning	3 yrs.
	if 2 yrs.	high school or GED	one basic course in water conditioning	3 yrs.
	if 1 yr.	1 yr. college	one basic course in water conditioning	3 yrs.
Class 3	if 3 yrs.	high school or GED	one basic and one intermediate course in water conditioning	5 yrs.
	if 2 yrs.	2 yrs. college	one basic and one intermediate course in water conditioning	5 yrs.
	if 1 yr.	college degree	one basic and one intermediate course in water conditioning	5 yrs.

Class 4	if 8 yrs.	high school or GED	one basic, intermediate, and advanced course in water conditioning	7 yrs.
	if 6 yrs.	2 yrs. college	one basic, intermediate, and advanced course in water conditioning	7 yrs.
	if 4 yrs.	college degree	one basic, intermediate, and advanced course in water conditioning	7 yrs.

Note: In addition to experience and education, each applicant must pass an examination designed and administered by this Department in order to qualify for certification.

.004. Training. Credit toward a certificate is given for completion of department-approved courses. Such courses must be relevant to public health and water hygiene. The number of training hours of credit necessary to qualify for the various class levels of certificate will be determined by the department.

.005. Examinations.

(a) The examinations offered will cover fundamental knowledge of the requirements for a residential water treatment facility; residential water supply; interpretation of bacteriological and chemical analysis; sanitary protection of residential water supply; distribution system sanitation; those procedures involved in installation, exchange, repair, and service of treatment facilities; and similar health-related matters. All applicants for certificates will be tested on standards of qualifications set by the department in order to insure the public health and to protect the public from unqualified persons engaging in activities relating to water treatment.

(b) Water treatment personnel may apply for testing into four levels, from Class 1 to Class 4, with the fourth level being the highest or most advanced. Class 1 has been established as an entry level and is intended to simplify entry of new personnel into the certification program or for those persons needing certificates at the basic level only. Class 2 level has been established to test installers, repairmen, and servicemen primarily who do not work on reverse osmosis and deionization equipment without assistance. Class 3 and Class 4 levels are usually persons in responsible charge of operation, supervision, or management.

(c) The Class 4 examinations are of difficult nature, involving design as well as water chemistry, bacteriology, and physics. The applicant will need to be prepared to perform fairly difficult computations in the science of water control.

(d) Instructions for applying for certificates. Application should be made on a standard application form furnished by the department. As much information as possible should be given, using supplementary sheets if necessary to give all the details required to show need, education, experience, and training so class level qualifications of applicant can be determined. The application should be signed, dated, and mailed to the Texas Department of Health, division of water hygiene, 1100 West 49th Street, Austin, Texas 78756.

.006. Renewal of Certificates.

(a) All certificates issued by the department may be renewed upon expiration by retaking and passing the appropriate examination, or

(b) by obtaining the following amounts of approved training credit while the certificate is valid:

Certificate Class	Training Credit
1	One basic course in water conditioning
2	One intermediate course in water conditioning
3	Two courses in water conditioning
4	Two courses in water conditioning

(c) Courses taken prior to the issuance of a certificate may not be counted toward the renewal of that certificate; however, the credit hours of all courses passed may be used in upgrading certificates.

Sample Question

A Class "1" certificate of competency is effective for:

- a. 5 years
- b. 3 years
- c. 2 years
- d. 10 years
- e. Life

Issued in Austin, Texas, on April 3, 1978.

Doc. No. 782394 Raymond T. Moore, M.D.
 Deputy Commissioner
 Texas Department of Health

Proposed Date of Adoption: May, 1978, board meeting
 For further information, please call (512) 458-7533.

State Board of Insurance

General Provisions

Unfair Competition and Unfair Practices 059.21.21

The State Board of Insurance is proposing an amendment to Rule 059.21.21.102 of its Rules to Eliminate Unfair Competition and Unfair Practices Based Upon Sex or Marital Status. Such rule was originally promulgated under Board Order No. 32447 dated June 20, 1977, and published in the *Texas Register* on July 26, 1977. The board has been advised that additional time is needed by this agency and the insurance industry to comply with said rules with respect to accident and health insurance policies, contracts, and certificates. Furthermore, it is the board's opinion that such rules should not apply to certificates issued under group policies subsequent to the effective date of the rules when the policy is in effect prior to the effective date of the rules. Accordingly, the proposed amendment reflects the foregoing intentions.

The State Board of Insurance expects some fiscal implication to units of government as a result of this amendment. There is a possibility that delaying the effect of these rules respecting accident and health insurance could constitute a savings to a governmental body which pays the accident and health insurance, or a portion thereof, of its employees. The rules require coverage which could cause increase in premiums in accident and health insurance policies, although some group accident and health insurance policies already provide the coverage mandated. A later effective date therefore delays the increase in premiums until a new contract goes into effect. The foregoing is only true for units of government which pay all or a percentage of the cost of coverage or would for some other reason pay more if premiums increase. Units of government which pay a fixed amount regardless of the amount of premium are, of course, unaffected. This is true for most state employees. The State Board of Insurance has relied on its policy and legal divisions to determine the foregoing fiscal implications.

Public comment on the proposed amendment to Rule 059.21.21.102 is invited. Persons should submit their comments in writing to Woody Pogue, manager, policy approval division, State Board of Insurance, 1110 San Jacinto, Austin, Texas 78786.

This amendment is proposed under authority of Texas Insurance Code Annotated, Article 21.21, Section 22.

102. Applicability and Scope. These rules apply to all individual, group, or blanket policies, and [.] contracts, [and certificates] *individual certificates* of insurance delivered or issued for delivery in this state on or after January 1, 1978. *They apply to all group certificates issued pursuant to group policies when the group policy is delivered or issued for delivery in this state on or after January 1, 1978. Provided, however, that to the extent these rules apply to group and individual accident and health policies,*

contracts, and certificates, the effective date is May 1, 1978.

Issued in Austin, Texas, on April 3, 1978.

Doc. No. 782405 Pat Wagner
Chief Clerk
State Board of Insurance

Proposed Date of Adoption: May 4, 1978

For further information, please call (512) 475-2551.

Texas Water Well Drillers Board

(Editor's note: Because of the length of these rules, the text will not be published. The rules may be examined in the office of the Texas Register, 503 Sam Houston Building, Austin, or in the office of the Department of Water Resources, Stephen F. Austin Building, Austin.)

The Texas Water Well Drillers Board proposes to repeal existing substantive and procedural rules. Pursuant to Article 7621e, Vernon's Annotated Civil Statutes, entitled the Texas Water Well Drillers Act, the Texas Water Well Drillers Board is directed to make any rules necessary to carry out the powers and duties under the act to establish general policy for licensing and overseeing water well drillers in the State of Texas. The board will repeal existing rules simultaneously with its filing of permanent rules at a later date. Proposed new rules have been filed simultaneously with this proposed repeal.

The Texas Water Well Drillers Board has determined that the proposed repeal will have no fiscal impact to the state or units of local government. No local units of government have been consulted in this estimate.

Public comment on the proposed repeal is invited and may be submitted in writing to Gordon W. Houser, staff attorney, Texas Department of Water Resources, P.O. Box 13087, Austin, Texas 78711, or by telephoning (512) 475-5516.

These repeals are proposed under the authority of Article 7621e, Section 7, Vernon's Annotated Civil Statutes.

Rules, Regulations, and Modes of Procedure Relating to the Texas Water Well Drillers Act

General Provisions 139.01.01

- .101. Purpose.
- .102. Use and Effect.
- .103. Suspension.
- .104. Amending.
- .105. Definition of Terms.

Texas Water Well Drillers Board 139.01.02

- .201. Purpose.
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Registration 139.01.03

- .301. Registration Required.
- .302. Application.
- .303. Examination Required.
- .304. Qualifying for Registration.
- .305. Disposition of Application.
- .306. Revocation of Certificate of Registration.
- .307. Procedure for Revocation or Suspension of Certificates of Registration.
- .308. Public Hearing.
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- .100. Definitions.
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- .102. Scope.
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- .110. Parties in Interest.
- .111. Appearances Personally or by Representative.
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- .113. Form and Content of Pleadings.
- .114. Examination by the Director.
- .115. Motions.
- .116. Amendments.
- .117. Incorporation by Reference of Agency Records.
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- .121. Contested Proceedings.
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- .126. Motions for Postponement, Continuance, Withdrawal, or Dismissal of Applications or Other Matters before the Agency.
- .127. Joint Hearings.
- .128. Place and Nature of Hearings.
- .129. Presiding Officer.
- .130. Order of Procedure.
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- .132. Formal Exceptions.
- .133. Dismissal without Hearing.
- .134. Rules of Evidence.
- .135. Documentary Evidence and Official Notice.
- .136. Prepared Testimony.
- .137. Limitations on Number of Witnesses.
- .138. Exhibits.
- .139. Offer of Proof.

- .140. Depositions.
- .141. Subpoenas.
- .142. Proposals for Decision.
- .143. Filing of Exceptions, Briefs, and Replies.
- .144. Form and Content of Briefs, Exceptions, and Replies.
- .145. Oral Argument.
- .146. Final Decisions and Orders.
- .147. Administrative Finality.
- .148. Motions for Rehearing.
- .149. Rendering of Final Decision or Order.
- .150. The Record.
- .151. Show Cause Orders and Complaints.
- .152. Ex Parte Consultations.
- .153. Suspension of Rules.
- .154. Amendments to Rules Subsequent to January 1, 1976.
- .155. Effective Date.

Doc. Nos. 782413-782417

Substantive Rules

(Editor's note: Proposed rules of the Texas Water Well Drillers Board are being run serially. Chapter .01 rules appear in this issue; the remainder of the rules (Chapter .02) will be published in the April 14 issue. The proposed date of adoption for all rules is May 12, 1978.)

The Texas Water Well Drillers Board proposes new substantive and procedural rules. Pursuant to Article 7621e, Vernon's Annotated Civil Statutes, entitled the Texas Water Well Drillers Act, the Texas Water Well Drillers Board is directed to make any rules necessary to carry out the powers and duties under the act to establish general policy for licensing and overseeing water well drillers in the State of Texas.

The Texas Water Well Drillers Board has determined that the proposed rules will have no fiscal impact to the state or units of local government. No local units of government have been consulted in this estimate. However, these rules are essentially the same as previous rules governing this area, with alterations primarily addressing organizational changes caused by Senate Bill 1139, 65th Legislature, Regular Session, 1977.

Public comment on the proposed rules is invited and may be submitted by writing to Gordon W. Houser, staff attorney, Texas Department of Water Resources, P.O. Box 13087, Austin, Texas 78711, or by telephoning (512) 475-5516, prior to April 23, 1978.

Introductory Provisions 139.01.10

This chapter prescribes introductory rules, such as definitions for all chapters, information for contacting the Texas Water Well Drillers Board, and miscellaneous powers of the board concerning these rules.

These rules are proposed under the authority of Article 7621e, Vernon's Annotated Texas Statutes.

.001. Purpose of Rules. The Texas Water Well Drillers Board, created by Article 7621e, Vernon's Annotated Texas Statutes, hereinafter referred to as the Texas Water Well Drillers Act, determines qualifications of applicants for licensure as a water well driller within the State of Texas. Admin-

istration and staff functions of the agency are performed by the Texas Department of Water Resources as the agency has no staff. The agency usually conducts its own hearings which are subject to the Administrative Procedure and Texas Register Act. Therefore, these rules are published to outline procedures of the agency in licensing and administrative hearings.

.002. Definitions.

- (a) "Agency" means the Texas Water Well Drillers Board.
- (b) "Applicant" or "petitioner" is a party seeking a license, permit, order, or rule from the agency.
- (c) "Board" means the Texas Water Development Board.
- (d) "Complainant" means any party who has filed a signed, written complaint with the agency against any party subject to the jurisdiction of the agency.
- (e) "Department" means the Texas Department of Water Resources.
- (f) "Executive director" means the executive director or acting executive director of the Texas Department of Water Resources, or any authorized individual designated by the executive director to act in his place for the department.
- (g) "Hearing examiner" means the authority convened for contested cases under the provisions of the Administrative Procedure and Texas Register Act.
- (h) "Intervenor" means any party otherwise not defined.
- (i) "License" includes the whole or part of any agency permit, certificate, approval, registration, or similar form of permission required by law.
- (j) "Licensing" includes the agency process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.
- (k) "Party" means each person named or admitted as a party by the agency.
- (l) "Person" includes any individual, partnership, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, and any other legal entity or association.
- (m) "Pleadings" are written allegations filed by parties concerning their respective claims, such as applications, protests, complaints, claims, and other similar documents.
- (n) "Pollution" shall mean an impairment of the physical, chemical, or biological properties of water by the acts or instrumentalities of man to a degree which results in a material and adverse effect upon the quality as to destroy possible consumptive or beneficial use of such waters.
- (o) "Protestant" means any party opposing, in whole or in part, an application or petition filed with the agency.
- (p) "Register" means the *Texas Register*.
- (q) "Respondent" means any party against whom any complaint has been filed.
- (r) "Water well" shall mean any artificial excavation constructed for the purpose of producing groundwater. The term, however, shall not include any test or blast holes in quarries or mines, or any well or excavation for the purpose of exploring for, or producing oil, gas, or any other minerals.
- (s) "Water well driller" shall mean any person (including owner, operator, and drilling supervisor) who engages for compensation in the drilling, boring, coring, or construction of any water well in this state. The term, however, shall not include any person who drills, bores, cores, or constructs a

water well on his own property for his own use or a person who assists in the construction of a water well under the direct supervision of a registered water well driller and is not primarily responsible for the drilling operations.

(t) "Direct supervision" shall mean the direct coordination and continual inspection of work in connection with the drilling and/or completion of a water well. Such supervision shall be performed by a currently registered water well driller who shall be present at the well site or be represented by a trusted employee who is capable of immediate communication with the registered driller at all times between his visits. The currently registered water well driller must visit the well site not less than once each day of operation to direct the manner in which the drilling or completion work shall be conducted.

(u) "Registered water well driller" shall mean any person who holds a certificate of registration issued by the State of Texas pursuant to these rules.

(v) "Well log" shall mean a log accurately kept, at the time of drilling, showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size, and character of casing installed, together with any other data or information required by the Water Well Drillers Board.

.003. Business Office and Mailing Address of the Agency.

The agency has no office; however, it does meet according to these rules primarily in the City of Austin, Texas, in the Stephen F. Austin State Office Building at 17th and Congress Avenue. The agency's mailing address is Texas Water Well Drillers Board, in care of Texas Department of Water Resources, P.O. Box 13087, Austin, Texas 78711.

.004. Minutes of the Agency. The minutes of the agency are kept by the executive director in a form and manner as the agency prescribes from time to time under existing laws.

.005. Procedures Not Otherwise Provided for. If, in connection with any hearing, the agency determines that there are not statutes or other applicable rules resolving particular procedural questions then before the agency, the agency will direct the parties to follow procedures consistent with the purpose of these rules.

.006. Effect of Invalidity of Rule. If any provision of any rule or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule which can be given effect without the invalid provision or application, and to this end the provisions of the rule are severable.

.007. Suspension of Rules. The Water Well Drillers Board may suspend or waive a rule, in part, upon the showing of good cause, or when in the discretion of the Water Well Drillers Board, the particular facts or circumstances render such waiver of the rule appropriate in a given instance.

.008. Amending of Rules. These rules and regulations may be amended from time to time and new rules and regulations may be adopted by the Water Well Drillers Board in the manner prescribed herein or by law.

Agency Meetings 139.01.20

This subchapter prescribes rules for conducting meetings of the agency and describing members who may attend.

These rules are proposed under the authority of Article 7621e, Vernon's Annotated Texas Statutes.

.001. Agency Meetings.

(a) The agency shall hold six regular meetings annually; which shall be held on the first Tuesday of the following designated months: January, March, May, July, September, and November. Notice of the meetings shall be given at least 10 days prior to said meetings.

(b) Officers of the agency shall be elected at the September meeting of each calendar year, and at such meeting the agency shall make such changes or additions in the permanent organization as it deems necessary.

(c) Special meetings of the agency may be called by the chairman at any time upon 72 hours' notice given to each member of the agency. Said notices shall be given by telegraph to the members at their official residences and also by transmitting a letter by United States Mail verifying the notice included in the telegram. The time herein specified shall be considered running from the time the telegram is filed in the telegraph office. Special meetings may also be called at any time upon written request of three agency members. The secretary shall issue notice required by law calling a special meeting of the agency within 10 days of the receipt of the written request. Said special meeting may be held at any place within the State of Texas as designated by the chairman.

(d) All notices of regular or special meetings of the agency shall be directed to the official residence of the members of the agency as they are recorded on the official records of the agency.

(e) The chairman shall preside at all meetings of the agency, and shall at any and all hearings of the agency decide all questions of evidence and procedure, unless an objection is made thereto by a majority of the members of the agency present. The chairman shall not vote except when there shall be a tie vote.

(f) In the absence of the chairman or vice chairman of the agency, the members present shall choose, from their number, one member to act as chairman for the period during which the permanent chairman is absent.

(g) The permanent or temporary chairman may appoint such members of the agency as are present to act for any other officer of the agency who is not present.

(h) In the case of the vacancy of any officer of the agency by reason of death, resignation, disqualification, or otherwise, the remaining members of the agency shall, at the next regular or special meeting, elect a successor to serve for the unexpired term.

(i) In the event of a vacancy upon the agency by reason of death, resignation, disqualification, or otherwise, the chairman, upon being advised of the circumstances, shall cause a notice of the vacancy to be directed to the Governor of the State of Texas, requesting the governor to appoint a new agency member to fill the vacancy.

(j) Any member of the agency may waive notice required to be given under these rules by filing a written waiver with the secretary of the agency.

Certificate of Registration 139.01.30

This subchapter prescribes rules for requirements to obtain certificates of registration as a water well driller, fees required, and a description of the examination to be given for registration.

These rules are proposed under the authority of Article 7621e, Vernon's Annotated Texas Statutes.

.001. *Registration Required.* It shall be unlawful for any person to act as or to offer to perform services as a water well driller without first obtaining a certificate of registration pursuant to these rules.

.002. *Application.* Each person desiring to become a registered water well driller shall first make application to the agency on forms supplied by the executive director and pay the required examination fee of \$10.

.003. *Examination Required.* Before any applicant is granted a certificate of registration, he must successfully pass an examination prepared by the agency. The agency shall design written examinations in such a manner as to disqualify any person lacking in the necessary knowledge of drilling, completion, and plugging methods and techniques, and of ground water formations to the extent that the performance by such person of services as a water well driller would create a serious risk of polluting fresh water. Each applicant shall have the right to have such examination given him orally, in lieu of writing. Any applicant who fails an examination may apply for a subsequent examination, but must pay the examination fee each time he applies. The executive director shall offer the examination pursuant to rules developed by the Texas Water Development Board.

.004. *Qualifying for Registration.* The agency shall consider all applications for registration for water well drilling in Texas. Such application must include:

- (a) four satisfactory letters of reference;
- (b) applicant's certification that he has been a resident of Texas for 90 consecutive days immediately prior to making this application;
- (c) proof of experience evidenced by work under the supervision of a registered Texas water well driller for a period of two years, or other evidence of experience satisfactory to the board;
- (d) examination fee of \$10.

Upon the agency's consideration of the completed application, the executive director shall notify the applicant of the agency's approval or disapproval and shall communicate to the applicant the alternative dates for examination.

The application will be null and void and the \$10 fee forfeited if the examination is not taken within 90 days after the agency's approval of the application. No applicant may take the required examination before being so certified.

.005. *Disposition of Application.* The applicant shall be notified by the executive director as to the disposition of his application immediately upon the issuance of a final decision or by the agency. If such final decision or order of the agency is favorable to applicant, upon the receipt of the required \$25 registration fee required by law, the executive director shall issue a certificate of registration.

.006. *Reciprocity.* The agency shall keep the executive director informed of states, territories, possessions, and countries that have registration standards not lower than that specified by the Texas Water Well Drillers Act. Applicant must have been a resident of the State of Texas for not less than 90 days prior to making application for registration.

.007. *Expiration upon Application for Renewal of Licenses.* When a licensee has made timely and sufficient application for the renewal of a license, the existing license does not expire until the application has been finally determined by the agency, and in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

Doc. No. 782235

Revocation of Certificate of Registration 139.01.40

This subchapter prescribes rules for grounds for and procedures to revoke or suspend water drillers certificates of registration.

These rules are proposed under the authority of Article 7621e, Vernon's Annotated Texas Statutes.

.001. *Revocation of Certificate of Registration.*

(a) The certificate of registration of any registered water well driller who violates any provision of the rules and regulations of the agency may be revoked or suspended by the agency.

(b) Grounds for revocation or suspension of a water well driller's certificate shall include:

(1) failure to keep and transmit water well logs;
(2) failure to advise a person for whom a well is being drilled that injurious water has been encountered, is a pollution hazard, and must be forthwith plugged in accordance with Section 15 of the Texas Water Well Drillers Act;

(3) being found to be an incompetent water well driller;

(4) intentional misrepresentation of material fact by an applicant in connection with any information or evidence furnished the agency in connection with official agency matters;

(5) aiding or abetting an unlicensed person to evade the provisions of the Texas Water Well Drillers Act or knowingly combining or conspiring with an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as agent or partner or associate, or otherwise, of an unlicensed person with the intent to evade the provisions of the Texas Water Well Drillers Act;

(6) failure in any material respect to comply with the provisions of the Texas Water Well Drillers Act or these regulations.

.002. *Procedure for Revocation or Suspension of Certificates of Registration.* When the agency has probable cause to believe that a ground or grounds exist for the revocation or suspension of a certificate of registration, the agency shall institute proceedings for such revocation or suspension pursuant to these rules. The person against whom the proceedings are instituted shall be accorded all rights to which he is entitled under the provisions of the Texas Water Well

Drillers Act as amended, and the Administrative Procedure and Texas Register Act as amended. No certificate of registration shall be suspended or revoked prior to the issuance of a final decision and order entered by the agency pursuant to the Administrative Procedure and Texas Register Act.

Doc. No. 782236

Marking Vehicles and Equipment 139.01.50

This subchapter prescribes rules for use of water well rig identification numbers and water well registration numbers to be used.

These rules are proposed under the authority of Article 7621e, Vernon's Annotated Texas Statutes.

.001. *Marking Vehicles and Equipment.* It is the duty of all registered water well drillers to see that all water well rigs used by them or their employees in the water well drilling business are marked with legible and plainly visible identification numbers at all times.

(a) The identification number to be used on water well rigs shall be the registration number of the water well driller responsible for the water well drilling operations.

(b) Registration numbers shall be printed upon each side of every water well rig in numerals of not less than two inches high, and such numerals shall be in a color sufficiently different from the color of the vehicle or equipment so that the registration number shall be plainly legible.

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

Doc. No. 782237 Bruce Bigelow
General Counsel
Texas Department of Water Resources

Proposed Date of Adoption: May 12, 1978

For further information, please call (512) 475-5516.



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.

Comptroller of Public Accounts

Tax Administration

Motor Vehicle Sales Tax Division 026.02.06

The following rule is promulgated under the authority of Texas Taxation—General, Article 6.02 (1969).

.037. Exemption for Orthopedically Handicapped Person.

(a) The receipts from the sale and use of a motor vehicle which:

- (1) is driven primarily by an orthopedically handicapped person, and
- (2) is a privately owned vehicle which requires modification for operation by an orthopedically handicapped person are exempt from motor vehicle sales and use tax.

This exemption does not apply to the sale and use of a vehicle owned or operated by a corporation, partnership, limited partnership, or association.

(b) An "orthopedically handicapped person" is an individual who has limited movement to his extremities and physical functions. The physical impairment must be such that the person is unable to operate a motor vehicle which has not been specially modified.

(c) "Primary use" means use of a motor vehicle for at least 80 percent of the vehicle's operating time.

(d) "Modified motor vehicle" is a vehicle which has been specifically modified by altering conventional foot brakes, accelerator pedal, or steering wheel to facilitate an orthopedically handicapped driver.

(e) A person claiming this exemption must present a restricted Texas driver's license which indicates a modification restriction on the vehicle to the county assessor and collector of taxes. The license must verify that the person claiming the exemption is so physically impaired that he is unable

to operate a motor vehicle which has not been specifically modified.

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

Doc. No. 782391 Bob Bullock
Comptroller of Public Accounts

Effective Date: April 25, 1978

For further information, please call (512) 475-6897.

Texas Health Facilities Commission

The Texas Health Facilities Commission has adopted the repeal of the following rules, as proposed in the January 20, 1978, issue of the *Texas Register*. The repeals were proposed because the commission found that substantial changes in its existing rules were necessary to provide a more efficient, effective, and orderly system of regulation of development, construction, expansion, creation, and modification of health care facilities in the State of Texas. Substantial changes in the existing rules were also necessary for the Texas Certificate of Need Program to meet the requirements of the federal rules and regulations promulgated under the National Health Planning and Resources Development Act of 1974 (Public Law 93-641). The commission has adopted new rules to replace the rules repealed.

Pursuant to the authority of Texas Civil Statutes, Article 4418(h), the Texas Health Facilities Commission has repealed the following rules:

HSA Certificate of Need Review 315.08:

- Purpose—315.08.01.001
- Health Systems Agency Rules of Review—315.08.02.001
- Application Review by Health Systems Agencies—315.08.03.001-.007
- Criteria—315.08.04.001-.002

Introduction 315.09.00.001-.003

Rules and Regulations of the Commission 315.10.00.001-.006

Definitions and Explanation of the Applicability of the Act 315.11.00.001-.002

Records 315.12.00.001-.003

Procedures 315.13.00.001-.015

General Rules 315.14:

- Computing Time and Filing Extensions—315.14.01.001-.002
- Applications and Fees—315.14.02.001-.003
- Data and Criteria for Use in Certificate of Need Reviews—315.14.03.001
- Hearings 315.14.04.001-.018
- Judicial Review—315.14.05.001-.004
- Forfeiture or Revocations of Certificates and Rulings—315.14.06.001-.002
- Violations and Enforcement—315.14.07.001-.002
- Annual Report of Commission—315.14.08.001
- Interagency Contracts and Funds—315.14.09.001-.002

Doc. Nos. 782334-782351

Description of the Commission 315.15.00

Pursuant to the authority of Article 4418(h), Texas Civil Statutes, the Texas Health Facilities Commission has adopted Rules 315.15.00.010-.050 with no changes from the text proposed in the January 20, 1978, issue of the *Texas Register* (3 TexReg 236).

.010. Origin of the Commission. The Texas Health Facilities Commission was established by the enactment of the Texas Health Planning and Development Act, Vernon's Annotated Civil Statutes, Article 4418(h), and enacted by the 64th Legislature of the State of Texas, approved May 28, 1975.

.020. Purpose of the Commission. The Texas Health Planning and Development Act, effective May 28, 1975, was enacted to meet the requirements of the National Health Planning and Resources Development Act of 1974 (Public Law 93-641, 42 United States Code 300k) and to insure that health services and facilities are made available to all citizens of the State of Texas in an orderly and economical manner.

.030. Executive Officer. The chairman is the chief executive and administrative officer of the commission. In addition to the other powers and duties prescribed by the Texas Health Planning and Development Act, the chairman as chief executive officer of the commission shall:

- (a) administer the duties and functions of the commission;
- (b) employ and remove personnel and prescribe their duties, responsibilities, and compensation; and
- (c) submit through and with the approval of the commission requests for appropriations and other funds to operate the commission.

In the absence of the chairman, for any cause, the vice chairman has the powers and duties assigned to the chairman.

.040. Offices and Divisions. The commission shall establish offices and divisions of the commission that it deems necessary to carry out the functions and duties of the commission. The commission may assign functions and duties to the various offices and divisions, provide for additional offices and divisions, and reorganize the commission if necessary to improve its efficiency or effectiveness.

.050. General Duties of the Commission. The general duties of the Texas Health Facilities Commission are to:

- (a) administer a state certificate of need program as prescribed by state and federal law;
- (b) promulgate and adopt such rules determined to be necessary for the administration and enforcement of the state certificate of need program;
- (c) issue written orders regarding certificates of need, exemption certificates, declaratory rulings, and other matters properly before the commission;
- (d) make an annual report to the governor and the legislature of the commission's operations and provide other reports that the governor or legislature may require;
- (e) administer all funds entrusted to the commission; and

(f) prescribe the personnel policies for the commission and perform other duties and functions that may be prescribed by law.

Doc. No. 782352

Rules of the Commission

Explanation of Rules 315.16.01

Pursuant to the authority of Article 4418(h), Texas Civil Statutes, the Texas Health Facilities Commission has adopted Rules 315.16.01.010-.070 with no changes from the text proposed in the January 20, 1978, issue of the *Texas Register* (3 TexReg 237).

.010. Rulemaking Authority. The Texas Health Facilities Commission is empowered by the Texas Health Planning and Development Act, Vernon's Annotated Civil Statutes, Article 4418(h), to promulgate and adopt rules and regulations to effectuate the purpose of the act and to carry out the duties of the commission.

The commission shall review applications for certificates of need, exemption certificates, and declaratory rulings according to criteria for review established by the Texas Health Planning and Development Act and commission rules and, as appropriate, shall make orders pursuant thereto.

.020. Purpose of Rules. The rules herein promulgated pursuant to the Texas Health Planning and Development Act, Article 4418(h), Vernon's Annotated Civil Statutes, are adopted by the Texas Health Facilities Commission in order to provide an efficient and orderly system for the regulation of development, construction, modification, or expansion of certain health care facilities and services in the State of Texas.

.030. Severability. Where any terms or sections of these rules are found by judicial determination to be inconsistent with the Texas Health Planning and Development Act, the act shall apply and the remaining terms and sections of these rules shall continue in effect.

.040. Use and Effect of Rules. The rules set forth herein are prescribed for the performance of statutory and regulatory functions by the commission and are not to be construed as limitations or restrictions upon the exercise of the commission's authority.

.050. Amendment of Rules. These rules may be amended as considered appropriate by the commission. In proposing the adoption of additional rules or amendments to these rules, the commission shall comply with the provisions of the Administrative Procedure and Texas Register Act, Article 6252-13a, Vernon's Annotated Civil Statutes.

.060. Petition for Rule Adoption. Any person may petition the commission to adopt a rule or amend an existing rule. To be considered by the commission, a petition must be in writing and must contain at least the following information:

- (a) the identity of the person making the request;
- (b) the text of the rule or rule amendment proposed for adoption;
- (c) the reasons for adoption of the proposed rule or rule amendment; and

(d) the fiscal implications of the proposed rule or rule amendment on state funds or costs to units of local government.

The commission shall consider the petition for rule adoption in open meeting within 60 days after submission of the request. After consideration of the petition, the commission shall either deny the petition in writing, stating the reasons for denial, or initiate rulemaking proceedings in accordance with Section 5 of the Administrative Procedure and Texas Register Act, Article 6252-13a of Vernon's Annotated Civil Statutes.

.070. Violations of Rules. A violation of the rules, regulations, or orders of the commission shall constitute a violation of the Texas Health Planning and Development Act. Enforcement of these rules and regulations will be pursuant to Section 3.14 of the act and as prescribed in these rules.

Doc. No. 782353

Definitions 315.16.02

The Texas Health Facilities Commission has adopted Rules 315.16.02.010-.350 with several changes from the text proposed in the January 20, 1978, issue of the *Texas Register* (3 TexReg 237).

A minor change was made in Rule .060 in order to more clearly relate what is meant by "category." The commission received many comments questioning its authority and motive in creating the term "category." Federal regulations, which the commission is obligated to implement, require that beds in a health facility be categorized. The definition set out in Rule .060 allows the commission to implement federal regulations dealing with the redistribution of beds among categories of beds in a health care facility.

As a result of comments from HSA's, Rule .170 was completely revised to more accurately define a health service area. The previous definition was found to be vague and somewhat inaccurate.

A number of comments were received which requested a more specific definition of a home health agency in Rule .200. Therefore, an additional provision was added to the rule. The additional provision requires that for an organization to be classified as a home health agency, it must meet the federal conditions of participation for home health agencies. An organization that fails to meet the conditions of participation is not considered a home health agency under the definition set out in Rule .200 as adopted.

After proposing Rule .250, it was determined that many health care facilities are not wholly involved in providing intermediate care. The words "or part of an institution" were inserted to provide for those facilities that provide other types of care in addition to intermediate care.

Upon proposing Rule .290, the commission determined that the definition was too limiting and possibly contrary to the provisions of Article 4418(h). Thus the word "means" in Rule .290 was changed to "includes" as set out in Article 4418(h).

These rules are adopted under the authority of Article 4418(h), Texas Civil Statutes.

.010. Act. "Act" means Article 4418(h) of Vernon's Annotated Civil Statutes or Texas Civil Statutes, the Texas Health Planning and Development Act.

.020. Administrative Order. "Administrative order" is a written order other than a certificate of need, exemption certificate, or declaratory ruling, regarding matters properly before the commission.

.030. Applicant. "Applicant" means a person who makes application to the commission pursuant to the act.

.040. Application. "Application" means a written request for consideration by the commission pursuant to the act.

.050. Bed Capacity. "Bed capacity" means the number of licensed beds in an existing health care facility.

.060. Category of Beds. "Category of beds" means inpatient beds in an existing health care facility within which health care services are provided to a defined and limited class of patients.

.070. Certificate Holder. "Certificate holder" is the person named in the certificate of need or exemption certificate and any person owning title or interest in the person named in the certificate of need or exemption certificate.

.080. Certificate of Need. "Certificate of need" means a written order of the commission setting forth the commission's affirmative finding that a proposed project sufficiently satisfies the criteria prescribed for such projects by the act and by rule of the commission.

.090. Commission. "Commission" means the Texas Health Facilities Commission.

.100. Declaratory Ruling. "Declaratory ruling" is a written order of the commission stating whether or not a proposed project requires either a certificate of need or an exemption certificate.

.110. Department. "Department" means the Texas Department of Health.

.120. Executive Officer. "Executive officer" means the commission's chairman who is the chief executive and administrative officer of the commission.

.130. Exemption Certificate. "Exemption certificate" is a written order of the commission exempting a proposed project from the certificate of need requirements.

.140. Federal Law. "Federal law" includes the National Health Planning and Resources Development Act of 1974, 42 United States Code 300k, and 42 United States Code 401 *et al.*, 42 United States Code 246, 42 United States Code 299 *et al.*, 42 United States Code 291 *et al.*, 42 United States Code 266 *et al.*, the federal rules and regulations promulgated under those acts, and other pertinent federal authority.

.150. Health Care Facility. "Health care facility," referred to as "facility," includes, regardless of ownership, but is not limited to a public or private hospital, extended care facility, skilled nursing facility, intermediate care facility, home health agency, outpatient care facility, outpatient surgical and single procedure facility, ambulatory health care facility, health center, family planning clinic, kidney disease treatment facility, radiation therapy facility, alcoholism and drug treatment facility, health maintenance

organization, institution, and other specialized facilities where inpatient or outpatient health care services for observation, diagnosis, active treatment, or overnight care for patients with obstetrical, medical, mental or psychiatric, surgical, tubercular, alcoholic, chronic, or rehabilitative conditions are provided requiring daily direct supervision by a physician or a practitioner of the healing arts, but does not include the offices of those physicians or practitioners singly or in groups in the conduct of their profession.

.160. *Health Maintenance Organization.* "Health maintenance organization," referred to as "HMO," means any person who undertakes to provide or arrange for one or more health care plans pursuant to Article 20A.01-20A.33, Vernon's Annotated Civil Statutes or Texas Civil Statutes.

.170. *Health Service Area.* "Health service area" means a geographical region in which a health systems agency has health planning and project review responsibilities as provided pursuant to federal and state law.

.180. *Health Systems Agency.* "Health systems agency" means a nonprofit private corporation or public regional planning body acting as an instrumentality of the federal government and designated in accordance with federal law and subject to approval of the governor and his periodic review and redesignation.

.190. *Hearing.* "Hearing" means a public proceeding for examination of an application or other matter properly before the commission where the applicant, the commission, and other parties may present evidence.

.200. *Home Health Agency.* "Home health agency" is a public agency or private organization or a subdivision of such an agency organization, which:

(a) is primarily engaged in providing skilled nursing services and other therapeutic services;

(b) has policies established by a group of professional personnel (associated with the agency or organization), including one or more physicians and one or more registered professional nurses, to govern the services (referred to in (a) above) which it provides, and provides for supervision of such services by a physician or registered professional nurse;

(c) maintains clinical records on all patients.

(d) meets the conditions of participation for home health agencies established by the United States Department of Health, Education, and Welfare (42 CFR 405, Subpart L).

.210. *Home Health Agency Branch Office.* "Home health agency branch office" is a location or site from which a home health agency provides services within a portion of a total geographic area serviced by the parent agency. A branch office is part of the parent home health agency and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch independently to meet the conditions of participation as a home health agency.

.220. *Home Health Agency Subunit.* "Home health agency subunit" is a semiautonomous organization which serves patients in a geographical area different from that of the parent agency. The subunit, by virtue of the distance between it and the parent agency, is judged incapable of sharing administration, supervision, and services.

.230. *Hospital.* A "hospital" is an institution primarily engaged in providing diagnostic services and therapeutic

services to patients for medical diagnosis, treatment, and care of injured, disabled, sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons, by or under the supervision of physicians.

.240. *Institutional Health Care Service.* "Institutional health care service," referred to as "services," means the health care services provided in health care facilities and includes but is not limited to inpatient or outpatient services for observation, diagnosis, treatment, or rehabilitation, and all care for patients with obstetrical, medical, surgical, tubercular, mental, alcoholic, chronic, rehabilitative, or other conditions.

.250. *Intermediate Care Facility.* An "intermediate care facility" is an institution or part of an institution which provides, on a regular basis, health care services to individuals who, because of their mental or physical condition, require health care services above the level of room and board, and who do not require the degree of care and treatment which a hospital or skilled nursing facility provides.

.260. *Interested Person.* "Interested person" means a person who presents evidence at a hearing on an application but who was not admitted by the commission as a party.

.270. *Medical Service Area.* "Medical service area" means the geographic territory from which patients come or from which patients are expected to come to existing or proposed medical care facilities, the delineation of which is based on such factors as population characteristics, natural geographic boundaries, and transportation and trade patterns, and all parts of which are reasonably accessible to existing or proposed medical care facilities.

.280. *Meeting.* "Meeting" is an open public meeting attended by the commissioners for the purpose of rendering decisions on applications and other matters brought before the commission.

.290. *Modification.* "Modification" includes the acquisition of land and the acquisition, repair, or replacement of facilities or equipment.

.300. *Parent Home Health Agency.* "Parent home health agency" is the agency that develops and maintains administrative controls of subunits and/or branch offices.

.310. *Party.* "Party" means a person who, by formal intervention or action as determined by rule of the commission, participates in the consideration of a specific application by the commission.

.320. *Person.* "Person" means an individual, sole proprietorship, charity, trust, estate, institution, group, association, firm, joint venture, partnership, joint stock company, cooperative, corporation, the state, or a political subdivision or instrumentality of the federal government, any receiver, trustee, assignee or other similar representative, or any other legal entity.

.330. *Project.* "Project" means services, facility, or HMO requiring a certificate of need or an exemption certificate under the act.

.340. *Skilled Nursing Facility.* "Skilled nursing facility" is an institution or a distinct part of an institution which is primarily engaged in providing skilled nursing care and re-

lated services to inpatient patients who require medical or nursing care, or rehabilitation services.

.350. To Offer. "To offer," when used in connection with health services, means that a health care facility or health maintenance organization holds itself out as capable of providing, and in fact has the means for the provision of, specified health services.

Doc. No. 782354

Explanation of the Act

Explanation of Terms and Phrases 315.17.01

The Texas Health Facilities Commission has adopted Rules 315.17.01.010-.220 with several changes from the text proposed in the January 20, 1978, issue of the *Texas Register*, (3 TexReg 239).

A minor change was made in Rule .010 to more clearly explain the term "service" as it relates to home health aides. The phrase "home health aide" was modified by the addition of the word "care" after the word "aide." This means that the services provided by home health aides are classified as a service under the provisions of commission rules.

In the rules proposed in the *Texas Register*, Rule .070, Creation of the Category of Beds as a New Service, was presented. In reviewing the comments and considering this rule, it was determined to be redundant and unnecessary and thus was eliminated. The provisions of the act and new rules regarding the offering of a new service include the creation of a category of beds in a health care facility. As a result of the elimination of the rule, the remaining rules were renumbered upon adoption.

Rules that were formally numbered .080 and .090, now .070 and .080, deal with the implementation of federal regulations regarding the redistribution of beds among categories. The two rules incorporate the federal category concept in the provisions of the Texas Health Planning and Development Act, Article 4418(h). The commission received a substantial number of comments questioning the authority and motive of the two rules. The comments also spoke to the problems of hospitals in dealing with such rules when patient mix and occupancy require the placing of patients in one category of beds designated for patients of another category. The two rules are essential for compliance with federal regulations. To solve problems encountered as a result of patient mix or occupancy in a health care facility, a sentence was added to each rule that exempted the redistribution of patients among categories because of patient mix or occupancy. It is the position of the commission that Rules .070 and .080 are permissible and appropriate under the state law.

Considerable comment was received concerning Rule .120. The rule as proposed limited routine maintenance and repairs to noncapital expenditures. The comments reflected upon the inappropriateness of the use of the word "noncapital." As a result of the comments, the word "noncapital" was replaced by the word "capital."

The adoption of Rule .140 also resulted from efforts of the commission to implement federal regulations. Under presently existing federal regulations, a capital expenditure by or on behalf of a health care facility falls within the purview

of the certificate of need review process. This rule is not contrary to the provisions of the state law and is consistent with past interpretations of the state law by the commission.

Rule .150 was proposed to provide explanation of the term "category" which now is identified as "category of beds." Many comments were submitted to the commission which explained that it was a common practice for hospitals to utilize beds as medical surgical beds as opposed to establishing beds for medical patients and beds for surgical patients separately. The commission found it impractical to adopt a rule that was contrary to existing practices and thus established a medical/surgical category of beds in Rule .150.

Rules .180 and .200, formerly proposed as Rules .170 and .190, were adopted deleting the words "other expenditures required during the lease term." Comments received by the commission established that such phrases were unnecessary and inappropriate in determining the cost of leased equipment or facilities.

The proposed rules in this chapter as published in the *Texas Register* contained Rules .210, Addition of Hemodialysis Machine, and .220, Acquisition of Land and Other Real Property. Based on certain comments received by the commission and because the commission determined the rules to be inappropriate, they were not adopted. The remaining rules were renumbered because of the deletion of the two rules.

Several comments were received by the commission regarding Rule .210, formerly proposed as Rule .230. The commission determined that the inclusion of equipment repairs within the purview of this rule was unnecessary and unduly burdensome on health care facilities. Therefore the word "repair" was deleted when the rule was adopted. The rule was considered by the commission to be necessary for the proper implementation of Article 4418(h) as it relates to the acquisition of equipment.

The commission in proposing new rules eliminated a provision that was present in former rules that provided for semi-annual reporting of equipment acquisition by a health care facility at a cost less than \$100,000. A considerable number of comments received by the commission requested the adoption of a similar rule for inclusion in the new rules. As a result of the comments, the commission adopted Rule .100, Acquisition, Replacement, or Repair of Equipment Not a Modification. Such a rule allows a health care facility to report annually the acquisition, replacement, or repair of equipment that it acquires within a one year period at a cost less than \$100,000.01.

These rules are adopted pursuant to Article 4418(h), Texas Civil Statutes.

.010. Services. The term "service" includes but is not limited to the following: nuclear medicine, emergency medicine, radiology (diagnosis), radiation therapy, pharmacy, surgery, psychiatry, physical medicine, outpatient services, intensive care, progressive care, coronary care, respiratory therapy, pediatrics, neonatology, gynecology, obstetrics, anesthesiology, laboratory, acute renal dialysis, chronic dialysis maintenance, general medical care, dietary services, social services, speech therapy, physical therapy, vocational or occupational therapy, pathology, custodial care, nursing care, home health aide care, intermediate care facility-mentally retarded-I (ICF-MR-I) care, intermediate

care facility-mentally retarded-V (ICF-MR-V) care, and intermediate care facility-mentally retarded-VI (ICF-MR-VI) care, alcohol rehabilitation, drug rehabilitation, neurology, orthopedics, extended care, home care, and family planning.

.020. Special Services. The phrase "special service," as that term is used in Section 3.10(b)(5) of the act, includes but is not limited to cardiac catheterization, burn care, open heart surgery, organ transplant, organ bank, blood bank, neonatal intensive care, and hemophilia care.

.030. Creation of a New Home Health Agency. The phrase "provide a service not currently offered" includes the creation of a home health agency.

.040. Addition of Subunit or Branch Office. The phrase "substantially expand a service not currently offered" includes the establishment of a subunit or branch office by an existing parent home health agency.

.050. Addition of County to Home Health Agency Service Area. The phrase "provide a service not currently offered" includes the offering of service by a home health agency in a county:

(a) where the home health agency was not offering service as of June 18, 1976, or was not recognized as offering health care services by the department as of June 18, 1976; or

(b) where the home health agency has never offered service; or

(c) where the home health agency has not offered service for any consecutive 12-month period after June 18, 1976.

.060. Change in the Number of Licensed Beds. The phrase "change the bed capacity of an existing facility" includes an increase in the number of licensed beds in an existing health care facility.

.070. Redistribution of Beds Among Categories as a Substantial Expansion of Service. The term "substantially expand a service currently offered" includes the redistribution of more than 10 beds, or 10 percent of the total number of licensed beds in an existing health care facility, whichever is less, among various existing categories of beds in a health care facility over a two-year period. The term "substantially expand a service currently offered" does not include the redistribution of patients among various existing categories of beds in a health care facility due to patient occupancy or mix.

.080. Redistribution of Beds among Categories as an Expansion of Service. The term "expand a service currently offered" includes the redistribution of not more than 10 beds or 10 percent of the total number of licensed beds in an existing health care facility, whichever is less, among various existing categories of beds in a health care facility over a two-year period. The term "expand a service currently offered" does not include the redistribution of patients among various existing categories of beds in a health care facility due to patient occupancy or mix.

.090. Service Not Offered. The phrase "service not currently offered" means:

(a) a service which has never been offered in a health care facility; or

(b) a service that a health care facility has not offered for a period of 12 months or more.

.100. Acquisition, Replacement, or Repair of Equipment Not a Modification.

(a) The term "modification" does not include the acquisition by purchase, donation or lease, replacement, or repair of equipment by a health care facility at a cost less than \$10,000.

(b) The term "modification" does not include the acquisition by purchase, donation or lease, replacement, or repair of equipment at a cost in excess of \$10,000 and less than \$100,000.01 by a health care facility which will not expand patient or client capacity or direct or institutional health care services provided that a health care facility reports such an acquisition, replacement, or repair of equipment to the commission annually. The annual report provided for in this rule must be filed with the commission between 8 a.m. on April 1 and 5 p.m. on April 15 of each calendar year. The annual report shall relate the acquisition, repair, or replacement of equipment by a health care facility that occurred during the previous 12-month period beginning April 1 and ending March 31. The annual report must include the following:

(1) a description of each item of equipment that was acquired;

(2) a description of each item of equipment that was replaced;

(3) a description of each item of equipment that was acquired as replacement equipment;

(4) a description of each item of equipment that was repaired and the nature of such repair;

(5) the cost of each item of equipment acquired;

(6) the cost of each item of equipment acquired as a replacement; and

(7) the cost of each repair of equipment.

Each report must be sworn to or affirmed before a notary public. The commission may require more frequent and extensive reporting from individual health care facilities.

The burden of correctly deciding whether an acquisition, replacement, or repair of an item of equipment at a cost in excess of \$10,000 and less than \$100,000.01 would expand patient or client capacity or direct institutional health care services rests with the person desiring to make such acquisition, replacement, or repair.

.110. Expendable Supplies Not a Modification. The term "modification" does not include the acquisition of expendable supplies by a health care facility.

.120. Routine Maintenance and Repair. Routine maintenance and repair is an action customarily undertaken which is necessary for the preservation of the capability of the real property and facility structure for safe, effective, and efficient delivery of health services by a health care facility; which does not expand the health care facility delivery capacity or provide additional direct institutional health care services, and for which there is a capital expenditure under \$100,000. Routine maintenance and repair includes but is not limited to the painting of interior and exterior wall surfaces, replacement of floor and ceiling coverings, replacement and repair of defective or deteriorating structure to include plumbing or electrical wiring; the repair or replacement of unforeseen structurally or mechanical equipment failure. Routine maintenance and repair as defined in this rule is not included in the term "modification."

.130. Remodeling. "Remodeling" includes the creation, removal, or relocation of nonloadbearing wall partitions. The remodeling of an existing health care facility that will not include a capital expenditure in excess of \$100,000 and that will not expand services is not included in the term "modification."

.140. Capital Expenditure as a Modification. The term "modification" includes any expenditure by or on behalf of a health care facility which, under generally accepted accounting principles consistently applied, is a capital expenditure. This provision does not apply to expenditures solely for the termination or reduction of beds or of a health care service.

.150. Category of Beds. The term "category of beds" includes but is not limited to the following: medical/surgical, obstetrical, pediatric, psychiatric, intensive care, extended care, coronary care, custodial care, intermediate care facility-II (ICF-II) nursing care, intermediate care facility-III (ICF-III) nursing care, skilled nursing care, intermediate care facility-mentally retarded-I (ICF-MR-I) care, intermediate care facility-mentally retarded-V (ICF-MR-V) care, and intermediate care facility-mentally retarded-VI (ICF-MR-VI) care.

.160. Conversion of a Structure into a Health Care Facility. The phrase "convert a structure into a health care facility" means the creation of a new health care facility by the conversion of an existing structure into a health care facility.

.170. Lease or Donation as a Modification. The term "modification" includes the acquisition or replacement of facilities or equipment by lease or donation by or on behalf of a health care facility.

.180. Cost of Leased or Donated Equipment. The term "cost," when applied to a modification of an existing facility by the acquisition or replacement of equipment by lease or donation means the current market value of the equipment. When the current market value of the equipment is unobtainable, the term "cost" means the total lease payments.

.190. Cost of Donated Facilities. The term "cost," when applied to the modification of an existing facility by the acquisition or replacement of facilities by donation, means the current market value of the donated facility.

.200. Cost of Leased Facilities. The term "cost," when applied to the modification of an existing facility by the acquisition or replacement of facilities by lease, means the total lease payments.

.210. Acquisition or Replacement of Related Equipment. The acquisition or replacement of two or more items of related equipment during a one-year period at a total cost in excess of \$100,000 constitutes a modification in excess of \$100,000. The term "related equipment" includes the following:

- (a) two or more items of equipment which perform normal functions only when used simultaneously;
- (b) two or more items of equipment which when connected together constitute a single piece of equipment; or
- (c) two or more items of equipment which are similar in function and are operated in the same area of service in a health care facility.

.220. Abandonment of a Health Care Facility. A health care facility that does not offer health care services for a period of 12 consecutive months is abandoned as and ceases to be a health care facility for purposes of these rules and the act.

Doc No. 782355

Explanation of Development 315.17.02

The Texas Health Facilities Commission has adopted Rules 315.17.02.010-.120 with changes from the text proposed in the January 20, 1978, issue of the *Texas Register* (3 TexReg 240).

Significant changes were made to Rule .030 upon adoption. The commission determined that the inclusion of the words "studies, surveys, attorneys fees, and consultant fees" in the rule was inappropriate. A considerable number of comments received by the commission suggested the exclusion of these.

Minor changes were also made in Rules .040 through .110 to more clearly explain and define the term "development." The word "begin" was inserted before "development" in each of these rules. It was determined by the commission that the insertion of the word "begin" would aid persons in interpreting what activities should be accomplished within the first 180 days after a certificate of need is dated, as well as determining what activities constituted a violation of the act. Some of the titles of the rules were changed to be consistent with the insertion of the word "begin" in several of the rules.

These rules are adopted under the authority of Article 4418(h), Texas Civil Statutes.

.010. Commencement of Development. Development of a project may commence only on the granting of a certificate of need or an exemption certificate.

.020. Statutory Definition of Development. "Development" means those activities, other than planning or predevelopment, which upon their completion result in the consummation of a project, or a significant financial commitment toward the consummation of a project, including the adoption of ordinances, orders, or resolutions authorizing the issuance of bonds.

.030. Expenditures in Excess of \$100,000. The term "begin development" includes but is not limited to expenditures in excess of \$100,000 for architectural designs or plans, and working drawings and specifications.

.040. Execution of Contracts for or Initiation of Construction. The term "begin development" includes but is not limited to the execution of binding contracts or contractual commitments for, or the actual initiation or commencement or construction of all or part of a facility, including but not limited to site preparation or renovation or alteration of an existing facility which will increase the bed capacity of a facility or expand the capability of a facility for the direct delivery of institutional health care services.

.050. Execution of Contracts for or Acquisition of Equipment. The term "begin development" includes but is not limited to the execution of binding contracts or contractual commitments for, or the actual initiation or commencement of acquisition by purchase, lease, or donation of substantial

equipment for the direct delivery of institutional health care services.

.060. Execution of Contracts for or Installation of Utilities. The term "begin development" includes but is not limited to the execution of binding contracts or contractual commitments for, or the actual initiation or commencement of installation of utilities for a facility.

.070. Solicitation and Receipt of Donated Funds. The term "begin development" includes but is not limited to solicitation and receipt of donated funds or grant funds which are contingent upon use for a specific and finite project and which constitute a significant financial commitment toward a project.

.080. Execution of Contracts for Financing. The term "begin development" includes but is not limited to the execution of binding contracts for interim or permanent financing which constitutes a significant financial commitment toward a project.

.090. Allocation of Hill-Burton Funds. The term "begin development" includes but is not limited to the allocation of Hill-Burton construction funds by the State Board of Health or construction funds allocated under 42 United States Code 300k (Public Law 93-641).

.100. Beginning Development of an HMO. The term "begin development," when applied to a health maintenance organization (HMO), includes but is not limited to:

(a) the activities enumerated in Rules 315.17.02.020-.090; or

(b) the acceptance of a development grant for said organization from the United States Department of Health, Education, and Welfare; or

(c) the filing of a request with the Texas Board of Insurance for a certificate of authority; or

(d) the solicitation or enrollment of clients or patients.

.110. Beginning Development of a Home Health Agency. The term "begin development," when applied to a home health agency, includes but is not limited to:

(a) the activities enumerated in Rules 315.17.02.020-.090;

(b) the commencement of operation of a branch or subunit or the hiring of staff for that purpose;

(c) the employment of administrative staff necessary to establish a parent agency; or

(d) the provision of services in counties where the provider was not delivering home health services as of June 18, 1976. (A presumption exists that the counties being served by a home health agency are those listed in the certification files of the Texas Department of Health as of June 18, 1976.)

.120. Contingent Contracts. The execution of binding contracts or contractual commitments referenced in this subchapter, including solicitation and receipt of donated funds for a specific and finite project, which are made contingent upon obtaining of a declaratory ruling, exemption certificate, or certificate of need authorizing development of said project, shall not be considered a violation of the act or the beginning of development as defined herein.

Doc. No. 782356

Services and Facilities Requiring Certificate of Need 315.17.03

The Texas Health Facilities Commission has adopted Rules 315.17.03.010-.090 with changes from the text proposed in the January 20, 1978, issue of the *Texas Register* (3 TexReg 241).

As previously discussed, the commission has determined that the act of creating a category of beds falls within the purview of the provision of a new service. As a result of this determination and as a result of a deletion of a prior rule, proposed Rule .040, Creation of a Category of Beds, in the proposal was not adopted. The remaining rules were renumbered in this subchapter.

These rules are adopted under the authority of Article 4418(h), Texas Civil Statutes.

.010. New Facility. A person must obtain a certificate of need for a project to construct a new facility.

.020. Change the Bed Capacity of an Existing Facility. A person must obtain a certificate of need for a project to increase the licensed bed capacity of an existing facility.

.030. Redistribution of Beds among Categories. A person must obtain a certificate of need for a project to redistribute more than 10 beds or more than 10 percent of the total number of licensed beds in an existing health care facility, whichever is less, among various existing categories of a health care facility over a two-year period.

.040. Conversion of a Structure into a Health Care Facility. A person must obtain a certificate of need for a project to convert a structure into a health care facility.

.050. Modification in Excess of \$100,000. A person must obtain a certificate of need for a project to modify an existing facility at a cost in excess of \$100,000.

.060. Provide a Service Not Currently Offered. A person must obtain a certificate of need for a project to provide a service not currently offered by a facility.

.070. Substantially Expand Services. A person must obtain a certificate of need for a project to substantially expand a service currently offered by a facility.

.080. Organize a Health Maintenance Organization (HMO). A person must obtain a certificate of need for a project to organize an HMO which requires a new or modified facility.

.090. Relocation of Beds. A person must obtain a certificate of need for a project to relocate licensed beds from one facility or site to another.

Doc. No. 782357

Exemption Certificate 315.17.04

The Texas Health Facilities Commission has adopted Rules 315.17.04.010-.070 with several changes from the text proposed in the January 20, 1978, issue of the *Texas Register* (3 TexReg 241).

As previously indicated, the commission in adopting its new rules has endeavored to implement the provisions of existing

federal regulations. This includes the implementation of rules regarding the redistribution of beds among categories. Considerable comments were submitted regarding the creation of rules dealing with bed categories. Rule .020 in this subchapter was slightly amended because of comments received. In adopting this rule, the commission deleted the words "(b) The redistribution of beds among various existing categories will not substantially expand services currently offered by the facility." Slight changes in the remaining text were made as a result of the deletion.

Minor changes were also made with respect to Rules .040 and .050 in this subchapter. In Rule .040, the term "square footage" was changed to "gross area." Additionally, the commission inserted in Section (b) the words "and beyond that required to meet licensing, certification, safety, or health requirements imposed under the authority of federal law, state law, or valid city ordinance;" after the words "natural disaster." The commission determined that this addition was necessary to allow facilities damaged by fire or flood or natural disaster to be reconstructed at a size consistent with legal requirements. Section (b) of Rule .050 was adopted with the words "square footage" changed to "gross area."

These rules are adopted under the authority of Article 4418(h), Texas Civil Statutes.

.010. Expansion of Service. The commission shall issue an exemption certificate for a project to expand a service currently offered when it is determined that the proposed project will not substantially expand the service currently offered.

.020. Redistribution of Beds among Categories. The commission shall issue an exemption certificate for a project to redistribute beds among various existing categories of a health care facility when it is determined that the redistribution of beds involves not more than 10 beds or 10 percent of the total number of licensed beds in a health care facility, whichever is less, over a two-year period.

.030. Modification under \$100,000. The commission shall issue an exemption certificate for a project to modify an existing facility when it is determined that the cost of the proposed modification will not exceed \$100,000.

.040. Modification Necessitated by Fire, Flood, or Natural Disaster. The commission shall issue an exemption certificate under the provisions of Section 3.02(a)(1) of the act for a project to modify a facility when it is determined that:

(a) the proposed project encompasses only the repair or replacement of a facility, or equipment damaged or destroyed by fire, flood, or natural disaster;

(b) the proposed project does not include an increase of the gross area of the facility beyond that which existed prior to the fire, flood, or natural disaster and beyond that required to meet licensing, certification, safety, or health requirements imposed under the authority of federal law, state law, or valid city ordinance; and

(c) the proposed project does not include an expansion of either patient or client capacity or an increase in direct institutional health care services beyond the level which existed prior to the fire, flood, or natural disaster.

.050. Modification to Comply with Licensing, Certification, Safety, or Health Requirements. The commission shall issue an exemption certificate under the provisions of Section 3.02(a)(4) of the act within five years after the effective date

of the act for a project to modify or replace an existing health care facility when it is determined that:

(a) the application for an exemption certificate under Section 3.02(a)(4) was submitted to the commission prior to May 28, 1980;

(b) the proposed modification or replacement was necessitated by licensing, certification, safety, or health requirements imposed under the authority of federal law, state law, or valid city ordinance, which could, if said modification or replacement were not accomplished, result in a loss of licensure or certification by a facility or subject a facility or the owner or operator of a facility to fine or criminal penalty;

(c) the proposed replacement or modification was necessary on May 28, 1975;

(d) the proposed modification or replacement does not include an increase of the gross area of the existing facility beyond that required to meet licensing, certification, safety, or health requirements imposed under the authority of federal law, state law, or valid city ordinance;

(e) the proposed modification or replacement does not include an expansion of either patient or client capacity or an increase in direct institutional health care services beyond the level existing at the facility on May 28, 1975; and

(f) the proposed modification or replacement does not include the acquisition or replacement of equipment that was not required on May 28, 1975, to meet licensing, certification, safety, or health requirements imposed under the authority of federal law, state law, or valid city ordinance.

.060. Projects Not Eligible for Exemption Certificate. When a project does not meet the exemption certificate eligibility requirements of the act and the rules in this subchapter, the commission shall not issue an exemption certificate and the project may be reviewed in a certificate of need application.

.070. The Characterization of Project. The commission shall not be bound by the applicant's characterization of a project as an expansion of services currently offered or modification of an existing facility. The commission shall make an independent determination as to whether a proposed project involves an expansion of services currently offered or the modification of an existing facility.

Doc. No. 782358

Application for Declaratory Ruling 315.17.05

Pursuant to the authority of Article 4418(h), Texas Civil Statutes, the Texas Health Facilities Commission has adopted Rules 315.17.05.010-.030 with no changes from the text proposed in the January 20, 1978, issue of the *Texas Register* (3 TexReg 243).

.010. Requirement for Certificate of Need or Exemption Certificate. The commission may, on the application of a person sufficiently describing a proposed project, issue a declaratory ruling stating whether the act requires a person to obtain a certificate of need or an exemption certificate to develop the project described.

.020. Development Prior to May 28, 1975. The commission may issue a declaratory ruling that a proposed project does not require a certificate of need or an exemption certificate when it is determined that development had begun on the

project prior to May 28, 1975, the effective date of the act. A declaratory ruling that the proposed project does not require a certificate of need or an exemption certificate due to pre-act development is subject to completion time requirements established by the commission in the declaratory ruling. The commission may find that the project has been abandoned on the failure of the holders of the declaratory ruling to comply with the completion time requirements set in the declaratory ruling or on the failure of the holder to complete the project by May 28, 1979. The commission may extend time requirements established in a declaratory ruling or this rule when good cause is shown why such an extension should be granted.

.030. Scope of a Declaratory Ruling Finding Pre-Act Development. A declaratory ruling issued under the provisions of this subchapter finding that a proposed project does not require a certificate of need or exemption certificate because development of the proposed project occurred prior to May 28, 1975, is limited in scope and purpose to the persons and project described in the declaratory ruling.

Doc. No. 782359

Application and Petitioning Procedures

Certificate of Need Application Procedures

315.18.01

The Texas Health Facilities Commission has adopted Rules 315.18.01.010-.290 with several changes from the text proposed in the January 27, 1978, issue of the *Texas Register* (3 TexReg 281).

A minor change was made in Rule .020 to limit the length of time a THFC Form 20 can remain on file with the health systems agency and still fulfill the requirements of this subchapter. The words "no more than 180 days nor less than" were substituted for the words "at least" after the word "located" and before the number "15" in the rule.

A minor change was made in Rule .060 deleting references to Supplements A, B, or C of commission forms. It was determined that such specific identification of supplements was unnecessary for the rule and limited the ability of the commission to revise its existing forms to comply with the new rules.

Rule .130 was adopted with a sentence added. It was considered necessary to state that when an application is redated and reaccepted that an additional fee is not required. A sentence was added which explained this.

The form of notice of hearing, Rule .160, was also adopted with changes. Examination of the notice set out in the proposed rules revealed that it was not in compliance with federal regulations. As previously indicated, the commission must implement federal regulations in order to comply with the provisions of Article 4418(h). The notice of hearing provision was changed to provide additional information required by federal regulation.

When Rule .180 was published in the *Register*, it contained provisions requiring an applicant or his agents to publish a notice of hearing in particular newspapers on two occasions.

Considerable comments were received by the commission which complained of the requirement of publication on two separate occasions. Upon review of this rule, the commission determined that a publication of the notice of hearing on two separate dates was unnecessary and unduly burdensome. The extra publication would require additional expense to applicants. The rule was adopted with a requirement of one publication of notice of hearing in newspapers specified by the commission. It should also be noted that in adopting this rule the commission extended the time in which a notice of hearing had to be published from 15 days to 20 days. This was done to ensure that an applicant had an adequate amount of time in which to publish the notice of hearing.

A review of Rules .210, .220, and .230 as proposed revealed inconsistencies with other provisions of the subchapter. To more clearly explain the results of the failure of an applicant to cause the notice of hearing to be published in the manner specified by the commission, and the failure of the applicant to submit evidence of publication of a notice of hearing, and to explain the effect of a withdrawal of acceptance of an application, these three rules were reworded. As adopted, the three rules are easier to understand and are consistent with remaining rules in the subchapter.

Finally, in proposing new rules, the commission omitted a provision that provided for joinder of applications that the chairman of the commission considered to be potentially competing. Comments were received by the commission requesting that a joinder rule be placed in the new rules. As a result of the comments received and as a result of a determination by the commission that a joinder rule was necessary for the effective implementation of the Texas Health Planning and Development Act, Rule .290, Joinder—Certificate of Need, was added to the rules that were adopted. This provision allows the chairman on his own motion or on the motion of any person to order certificate of need applications joined under certain conditions.

These rules are adopted under the authority of Article 4418(h), Texas Civil Statutes.

.010. A Request for Certificate of Need. A person requesting a certificate of need must submit a letter of intent (THFC Form 20) and a written application to the commission which shall be treated as a pleading. The application must be prepared in the correct form and contain the information required by the commission.

.020. Submission of Letter of Intent to HSA. A letter of intent (THFC Form 20) must be filed with the health systems agency (HSA) responsible for reviewing projects in the health service area where a proposed project is to be located no more than 180 days nor less than 15 days prior to the submission of a certificate of need application to the commission. One copy of the letter of intent must be forwarded to the HSA either by certified mail, return receipt requested, or hand delivery, with receipt being acknowledged in writing by the HSA.

.030. Submission of Letter of Intent to Commission. A copy of the letter of intent and either the return receipt or written acknowledgment of the submission of the letter of intent to the HSA must be included in the application for certificate of need submitted to the commission.

.040. Submission of Copy of Certificate of Need Application to HSA. One copy of the completed certificate of need application must be submitted to the health systems agency responsible for reviewing projects in the health service area where the proposed project is to be located prior to submission of the application to the commission. The copy of the certificate of need application must be forwarded to the HSA by certified mail, return receipt requested, or by hand delivery with receipt being acknowledged in writing by the HSA. Copies of written materials relating to the certificate of need application subsequently submitted to the commission must be forwarded to the HSA and parties to the application.

.050. Submission of Certificate of Need Application to Commission. The original and one copy of the certificate of need application must be submitted to the commission accompanied by the return receipt or written acknowledgment of the submission of a copy of the application to the HSA.

.060. Form of Letter of Intent and Certificate of Need Application. A letter of intent (THFC Form 20) and an application submitted to the commission shall be typewritten or printed. When typewritten or printed, the impression shall be on one side of the paper, and lines shall be double-spaced, on all attachments. Exhibits attached to the application shall be of a size that when folded and presented in final form will comprise a legal-sized document (8-1/2 inches by 14 inches).

An application for certificate of need shall consist of executed THFC Forms 21 and 24 or 26, and for Form 24, appropriate supplements and the filing fee. The application shall present facts and information which address the certificate of need criteria in these rules.

A person submitting an application may designate another person to serve as the agent. In this event, the commission shall direct all application matters to the designated agent, only. Should an applicant desire to change the agent, the applicant must notify the commission in writing. The commission may not require information of an applicant which is not prescribed in these rules or the act.

.070. Certificate of Need Application Fees. The following schedule of fees is established for applications for certificate of need:

- (a) the greater of:
 - (1) \$100 minimum; or
 - (2) 0.35 of one percent (.0035) of total project cost, not to exceed \$3,500, or
- (b) where cost is not calculable—\$100.

.080. Review of the Application. The commission shall review and acknowledge an application for a certificate of need within five working days after the date of its receipt. The commission will determine whether the application complies with the rules governing the preparation and submission of an application.

.090. Failure to Comply with Certificate of Need Application Rules. Failure to comply with the rules of preparation and submission of a certificate of need application in this subchapter shall constitute deficiencies and will result in a determination that the application is incomplete.

.100. Incomplete Certificate of Need Application. When it is determined that a certificate of need application is incomplete, the chairman may reject the application, notify the

applicant and the HSA in writing of the rejection of the application, and shall provide the applicant with a written list of deficiencies for correction. Failure of the applicant to submit corrections to the stated deficiencies within 120 days from the date of the letter of notification will result in the administrative withdrawal of the application and forfeiture of the application fees.

.110. Conditional Acceptance of Certificate of Need. The chairman may conditionally accept and date a certificate of need application with minor deficiencies and shall prescribe the conditions of the acceptance.

.120. Complete Certificate of Need Application. When it is determined that a certificate of need application is complete, the chairman shall accept and date the application and shall notify the applicant and the HSA in writing of the acceptance of the application. Upon dating of a certificate of need application, the chairman shall schedule a hearing on the application.

.130. Hearing Scheduling Provisions. When an application for a certificate of need is accepted and dated by the commission, the chairman shall schedule a hearing for a date not less than 61 days and no more than 70 days subsequent to the dating of the application. The chairman may, upon proper motion, postpone the hearing on an accepted and dated certificate of need application to a date not more than 100 days after the dating of the application upon a showing of good cause by the applicant, provided the applicant and parties by sworn written statement expressly waive the scheduling requirements of this rule and Section 3.06(b)(2) of the act. The chairman also may, upon proper motion, reschedule a hearing on a certificate of need application later than the 100th day after the original dating and acceptance by redating and reaccepting the original application. When an application is redated and reaccepted, the commission shall not require an additional application fee. A hearing, in this event, shall be scheduled for a date not less than 61 days nor more than 70 days following the redating and reacceptance.

.140. Notification of Acceptance or Rejection. The chairman shall provide written notice of acceptance or rejection of a certificate of need application to the applicant and the appropriate health systems agency (HSA). The chairman shall forward the notice to the applicant by certified mail, return receipt requested. The chairman shall forward notice to the HSA by first class mail.

.150. Form of Notice of Acceptance. The notice of acceptance of a certificate of need application shall include the following:

- (a) the date on which the application was accepted and dated;
- (b) the date, time, and place of the scheduled hearing on the application;
- (c) a written notice of the hearing for publication in newspapers;
- (d) the date by which the notice of hearing must be published in the newspapers;
- (e) the location of the newspapers in which the notice of hearing is to be published; and
- (f) the date by which proof of publication of the notice of hearing must be submitted to the commission.

.160. Form of Notice of Hearing. The applicant shall publish notice of hearing verbatim:

"Notice of Hearing

"(Name of applicant, *i.e.*, legal owner and name of project and name and address of agent for the applicant is scheduled to appear at a hearing at _____ m. on _____, 19____, in the offices of the Texas Health Facilities Commission, 1600 West 38th Street, Suite 305, Jefferson Building, Austin, Texas, to present evidence in support of the application for a Certificate of Need to (subject of application and location by city and/or county). The Commission proposes to render a decision on the application on _____, 19____.

"A request to become a party to the application may be made by filing a sworn affidavit with the Commission using the format prescribed by Commission Rule no later than 5:00 p.m., _____, 19____, and by forwarding a copy by certified mail, return receipt requested, to the applicant and all other parties.

"Note: If no request to become a party or petition for hearing is timely filed with the Commission, the Commission may proceed without a hearing on the application for a Certificate of Need at any time after _____, 19____."

.170. Notice of Hearing—Project Description. The commission shall compose the project description in a notice of hearing from information contained in the THFC Form 21. The applicant shall have the ultimate responsibility of insuring that the notice of hearing is published in the manner prescribed by the commission, and that the project description in the notice of hearing completely and accurately describes the project.

.180. Time of Publication of Notice of Hearing. When an application is accepted and dated, the chairman shall forward a notice of hearing to the applicant, or his agent, who shall cause same to be published once in each designated place of publication. Notice of hearing shall be published not later than the 20th day after said application has been dated.

.190. Place of Publication of Notice of Hearing. The applicant shall publish the notice of hearing in at least one newspaper of general circulation in the largest city in the health service area and in at least one newspaper of general circulation in the locality within which the proposed service or facility would be developed as specified by the commission.

.200. Copies of Published Notice. The applicant must, by 5 p.m. on the 35th day after the certificate of need application is accepted and dated, furnish by certified mail to the commission two copies of the newspaper page(s) upon which the notice is published or republished, or two copies of a publisher's affidavit regarding newspaper publication of the notice of hearing.

.210. Failure to Publish Notice of Hearing. The chairman may cancel a hearing on an accepted certificate of need application and withdraw acceptance of a certificate of need application for failure of the applicant to publish a notice of hearing within the time and in the manner specified in a notice of acceptance.

.220. Failure to Submit Evidence of Publication to the Commission. The chairman may cancel a hearing on an accepted certificate of need application and withdraw accep-

ance of a certificate of need application for failure of the applicant to submit copies of the newspaper page(s) upon which a notice of hearing is published or publisher's affidavit regarding newspaper publication of a notice of hearing by 5 p.m. on the 35th day after a certificate of need application is accepted and dated.

.230. Effect of Withdrawal of Acceptance. When acceptance of an application has been withdrawn for failure of the applicant to publish a notice of hearing within the time and in the manner specified in a notice of acceptance or for failure to submit copies of newspaper pages upon which a notice of hearing is published or publisher's affidavit regarding newspaper publication of a notice of hearing within the time specified by commission rule, the chairman shall cause the application to be redated and reaccepted.

.240. Republication—Postponed Hearing. When a hearing is postponed, the applicant shall publish notice of the postponement at the time and in the manner prescribed by the chairman.

.250. Amendment of Certificate of Need. An applicant may by written prehearing motion request amendment of an application for certificate of need. When the chairman grants a motion for amendment of an application, it shall constitute an amended certificate of need application. Upon the granting of the motion, the commission shall conduct a five-day review, and when the amended application is determined to be complete, the chairman shall redate and reaccept the application and shall schedule a hearing for a date not less than 61 days and not more than 70 days following the redating.

A withdrawal of a portion of the requested project shall not be treated as an amendment. (Reference Rule .260 in this subchapter.)

.260. Withdrawal of Certificate of Need. An application may be withdrawn in whole or in part upon the filing of a written motion at least 24 hours prior to the open meeting at which the commission is scheduled to consider the application. A withdrawal of a portion of the requested project shall not be treated as an amendment.

When the withdrawal of a portion of a project results in the change in the scope of the project, the chairman may schedule an additional hearing. Change in the scope of the project for purposes of this subchapter is defined as a deviation from the project as proposed in the original application which results in the decrease in any one of but not limited to the following:

- (a) number of beds;
- (b) major movable or fixed equipment;
- (c) staffing requirements;
- (d) array of services;
- (e) service area; or
- (f) gross area to be constructed or renovated.

An increase in any of the above (but not limited to) is considered an amendment to the application.

.270. Suspension of Certificate of Need Acceptance and Dating. The commission, by written order, may suspend certificate of need application acceptance and dating for a specified period for the orderly processing of applications. Applications received during a suspension period will be held

without action. After the suspension period ends, applications will be processed in order of receipt beginning with the next available five-working-day period.

.280. *Reclassification of Application for Certificate of Need.* When it is determined by the chairman of the commission that an application is eligible for either a declaratory ruling or an exemption certificate, the chairman may reclassify the certificate of need application as a request for an exemption certificate or a declaratory ruling.

.290. *Joinder—Certificate of Need.* The chairman, on his own motion or on the motion of any person, may order a certificate of need application joined with another previously accepted and dated certificate of need application when he determines that the applications are potentially competing. The chairman may join certificate of need applications when the subsequent applications are accepted and dated within 45 days of the acceptance and dating of the previous certificate of need application.

The chairman, in ordering the joinder, shall reschedule the hearing on the previously accepted application in order that one hearing may be conducted on all joined applications. The chairman shall require the subsequent applicant(s) to publish a notice of hearing on the joined applications. The subsequent applicant(s) shall publish the notice of hearing in the manner and in the location specified by the commission.

When the chairman determines that certificate of need applications will be joined, he shall provide written notice of the joinder to the applicants, parties, and the appropriate HSA.

Doc. No. 782360

Petitions for Reissuance of Certificate of Need 315.18.02

The Texas Health Facilities Commission has adopted Rules 315.18.02.010-.040 with changes from the text proposed in the January 27, 1978, issue of the *Texas Register* (3 TexReg 283).

A minor change was made to Rule .040, Fees for Reissuance Petitions. As a result of comment regarding the size of the fee, Rule .040 was altered and adopted providing for a fee of \$100.

These rules are adopted under the authority of Article 4418(h), Texas Civil Statutes.

.010. *Petition for Reissuance of Certificate of Need.* A former certificate holder may petition the commission for renewal of a certificate of need which has been automatically forfeited pursuant to rules of the commission and Section 3.13(b)(1) of the act not later than 30 days after forfeiture. A petition for reissuance received prior to automatic forfeiture will not be acted on until after automatic forfeiture occurs.

.020. *Commission Review of Petition.* Upon receipt of a petition for reissuance of a certificate of need, the commission shall cause notice of the receipt of the petition to be published in the *Texas Register*. The chairman or his designee, on his own motion or when a person shows good cause for a hearing on the petition within five days after publication of notice, may require a hearing on the petition.

A petition for reissuance will be reviewed by a hearing officer of the commission. The hearing officer shall make a recommendation to the commission concerning approval or disapproval of the petition. The commission must approve or disapprove the petition in writing not later than 30 days after the date of receipt of the petition.

.030. *Form of Petition.* A petition for reissuance of a certificate of need shall consist of THFC Form 21 and a petition containing at least the following:

- (a) the reason the former certificate holder did not begin development within 180 days after the order was dated;
- (b) a list of all predevelopment activities undertaken during the 180 days after the order was dated; and
- (c) a schedule of development and completion of the project should the certificate be reissued.

.040. *Fees for Reissuance Petitions.* The fee for filing a petition requesting reissuance of a certificate of need pursuant to Section 3.13(b)(1) of the act is \$100.

Doc. No. 782361

Exemption Certificate and Declaratory Ruling Application Procedures 315.18.03

The Texas Health Facilities Commission has adopted Rules 315.18.03.010-.090 with changes from the text proposed in the January 27, 1978, issue of the *Texas Register* (3 TexReg 284).

A minor change was made in Rule .080, Suspension of Exemption Certificate or Declaratory Ruling Application Processing. The words "beginning with the next available five working-day period" after the word "receipt" at the end of the rule were deleted to eliminate confusion regarding the processing of exemption certificate and declaratory ruling applications after a suspension. There is no five-day review period for exemption certificate or declaratory ruling applications.

These rules are adopted under the authority of Article 4418(h), Texas Civil Statutes.

.010. *Request for Exemption Certificate or Declaratory Ruling.* A person requesting an exemption certificate or declaratory ruling must submit a written application to the commission which shall be treated as a pleading. The application must be prepared in the correct form and contain the information required by the commission.

.020. *Exemption Certificate or Declaratory Ruling Application Forms.* A person requesting an exemption certificate or a declaratory ruling must submit executed THFC Forms 21 and 25, appropriate support documentation, and a \$50 filing fee to the commission.

.030. *Review of Exemption Certificate or Declaratory Ruling Applications.* Upon receipt of an application for an exemption certificate or declaratory ruling, the commission shall determine whether said application is complete, adequate, and in compliance with the commission rules. When the commission determines that the exemption certificate or declaratory ruling application is complete, adequate, and in compliance with commission rules, the chairman shall accept the application. When the commission determines that an

application for exemption certificate or declaratory ruling is incomplete, inadequate, and not in compliance with the commission, the chairman shall find the application deficient. The commission shall notify the applicant in writing of the acceptance or deficient status of the application.

.040. Administrative Withdrawal of Exemption Certificate or Declaratory Ruling Applications. The applicant must submit corrections of deficiencies within 120 days from the date of written notice of deficiency. The commission may administratively withdraw an application for an exemption certificate or declaratory ruling for failure of an applicant to submit corrections of deficiencies within 120 days of the date of written notice of deficiency.

.050. Publication of Notice of Receipt of Application. The commission shall publish in the *Texas Register* a notice of accepted exemption certificate and declaratory ruling applications. The notice shall state the name of the facility, city, or county in which the project is to be located, the relief sought by the applicant, and a general description of the proposed project.

.060. Amendment of Exemption Certificate or Declaratory Ruling Application. An applicant may amend an exemption certificate or declaratory ruling application prior to hearing or before a final decision has been rendered by the commission when a hearing has been waived. The commission shall require publication of notice in the *Texas Register* of amended applications for exemption certificate or declaratory ruling.

.070. Withdrawal of Exemption Certificate or Declaratory Ruling Application. An application for exemption certificate or declaratory ruling may be withdrawn in whole or in part upon the filing of a written motion at least 24 hours prior to the open meeting at which the commission is scheduled to consider the application. A withdrawal of a portion of the requested project will not be treated as an amendment.

.080. Suspension of Exemption Certificate or Declaratory Ruling Application Processing. The commission, by written order, may suspend exemption certificate or declaratory ruling application processing for a specified period for the orderly processing of applications. Applications received during a period when application processing is suspended will be held without action. After the suspension period ends, applications will be processed in order of receipt.

.090. Exemption Certificate or Declaratory Ruling Hearing. The commission shall conduct a hearing on an exemption certificate or a declaratory ruling application unless the hearing is waived pursuant to commission rules. The commission shall provide the applicant and parties with written notice of the hearing at least 10 days prior to the hearing.

Doc. No. 782362

Application for Exemption Certificate Extension 315.18.04

The Texas Health Facilities Commission has adopted Rules 315.18.04.010-.040 with no changes from the text proposed in the January 27, 1978, issue of the *Texas Register* (3 TexReg 284).

.010. Extension of Exemption Certificate on Good Cause. The commission may extend a time limit set forth in an ex-

emption certificate upon an affirmative finding of good cause.

.020. Application for Extension. The certificate holder shall request an extension by filing THFC Forms 21 and 25 and a \$50 application fee. The request must be received in the commission offices by 5 p.m. on the last working day prior to the expiration of the time limit which is to be extended. The application for extension should include appropriate documentation explaining the cause for the delay on the project and justifying additional time within which to comply with the conditions of the exemption certificate.

.030. Review Procedures. The commission, in reviewing an application for an extension of an exemption certificate time limit, shall follow the procedures set forth in commission rules for public notice, hearings, and review prescribed for exemption certificates and declaratory rulings in the preceding subchapter. In reviewing an application for extension of a time limit, the commission shall determine whether or not good cause exists to extend the time limit in question.

.040. Effect of Granting Extension. When the commission grants a request for an extension after the time limit has expired, the extension shall begin on the day after the expiration of the original time limit. The commission may not extend a time limit when such extension is prohibited by statute.

Doc. No. 782363

Application for Transfer of Certificate of Need or Exemption Certificate 315.18.05

Pursuant to the authority of Article 4418(h), Texas Civil Statutes, the Texas Health Facilities Commission has adopted Rules 315.18.05.010-.030 with no changes from the text proposed in the January 27, 1978, issue of the *Texas Register* (3 TexReg 285).

.010. Transfer of Ownership of Certificate of Need or Exemption Certificate. Legal ownership of more than two percent of a certificate of need or exemption certificate and legal ownership of more than two percent of a certificate holder are not transferable prior to completion of the project described within the certificate without the written consent of the commission. The commission may authorize the transfer of more than two percent legal ownership of a certificate of need or exemption certificate, or of more than two percent legal ownership of the holder of a certificate upon a showing of good cause.

.020. Application for Transfer. A certificate holder may request the commission to issue an administrative order authorizing a transfer of ownership of a certificate of need or exemption certificate or of ownership of the certificate holder. The request for transfer of ownership of certificate of need or exemption certificate or a certificate holder may be made by filing an original and one copy of executed THFC Forms 21 and 25, with supporting documentation in affidavit form, and a \$50 filing fee.

.030. Review Procedures. The commission, in reviewing an application for transfer of a certificate of need or exemption certificate or transfer of ownership of the certificate holder, shall follow the procedures set forth in commission rules for

public notice, hearings, and reviews prescribed for exemption certificates and declaratory rulings in the preceding subchapters. In reviewing an application for transfer of ownership, the commission shall determine whether or not good cause exists to grant the requested transfer of ownership.

Doc. No. 782364

Criteria

Criteria for Use in Certificate of Need Reviews 315.19.01

The Texas Health Facilities Commission has adopted Rules 315.19.01.010-.130 with several changes from the text proposed in the January 271, 1978, issue of the *Texas Register* (3 TexReg 285).

The first paragraph of Rule .010 in this subchapter was changed on adoption. As proposed, the second sentence of the paragraph specified that general criteria would be used in reviewing all projects except those types for which more specific criteria had been adopted. The commission determined that the portion of the sentence that dealt with specific criteria was unnecessary and should be deleted.

Many comments were filed with the commission regarding this subchapter. Commenters felt that the language in this subchapter made the criteria mandatory as opposed to directory. Some argued that the language proposed provided unbending standards against which certificate of need applications would be compared. Upon considering the comments, the commission has determined that the language set out in various rules in this subchapter was too strict. Therefore, much of the language in the rules in this subchapter was altered on adoption to make the criteria directory. In addition to the minor changes in language to provide for directory criteria, the second paragraph of Rule .010 was altered significantly. The next to the last sentence of the second paragraph was deleted and the following words were substituted therefor, "Failure of the applicant to address all relevant criteria may result in the denial of a certificate of need application." Other minor changes were made in the paragraph to establish the directory nature of the criteria.

Other minor changes were made on adoption. Section (f) of Rule .020 was slightly altered because of comments. Many comments expressed concern for the requirement that numerical demand for a proposed project be established in some cases where new services of facilities were involved. As a result of the comments, the word "estimated" was inserted prior to the word "numerical" in (f).

Rule .040 was changed slightly on adoption. Section (b) of the rule provided that the utilization of comparable services and facilities within the established or proposed medical service area and their utilization with and without the proposed project should be shown. Because of the comments regarding the difficulty of proof of such facts, the commission chose to strike the words "and their utilization with and without the proposed project." The commission determined that the remaining portion of Section (b) was not unreasonable and should be included in the commission's consideration of a certificate of need application when such facts are available.

As previously indicated, one of the major reasons for adoption of new rules by the commission was to ensure implementation of federal regulations that the commission is required to implement pursuant to state law. Federal regulations require the commission to utilize the certain criteria in its certificate of need review. Rule .050 included criteria from the federal regulations. In the proposed rules, the commission rephrased certain federal criteria and inserted it within the rule. Upon review of Rule .050, it was determined that Sections (a) and (b) should be modified to more correctly reflect the federal criteria. Additionally, the language as proposed in the rules was unclear and confusing.

Considerable comment was received by the commission regarding Rule .060, which dealt with manpower requirements of a proposed project and its effect on existing facilities and services in a medical service area. In the proposed rule, the language provided that a project must not have adverse effect on the staffing of existing facilities and services. Upon review and consideration of the comments, the commission determined that such language was too strict, and that the rule should be amended slightly to provide that the project should not have a material adverse effect on staffing of existing facilities and services. Therefore, the rule was slightly altered to reflect the previously mentioned change.

Comment was received regarding various portions of Rule .070. One of the sections of the rule dealt with the cost of movable equipment. Concern was expressed that Section (a)(1)(G) of the rule was extremely burdensome in that an applicant would have to establish the cost of every piece of movable equipment that was a part of a project. Since the commission is concerned to a large degree with the review of the acquisition of major items of movable equipment, the term "major" was inserted into that paragraph.

Comment was also received regarding Section (a)(2) of Rule .070. The commenters argued that the commission did not need to have specific figures relating the fees that planning consultants, architects, attorneys, and project managers were receiving for a proposed project. Therefore, the commission altered this subsection to require the applicant to provide information relating the total cost of professional services to include various professionals.

The commission, in adopting Rule .070, also eliminated the requirements that an applicant show other fund-raising activities in a particular area if the project was to be financed with contributions. Additionally, the provision that required an applicant to show the annual cash flow requirements over the first three years of the debt was not adopted. The commission determined that such information was difficult for the applicant to provide to the commission, and that it had little value to the consideration of economic feasibility. Other minor changes were made in Rule .070 to clarify certain requirements imposed under this rule.

The last paragraph of Rule .080 was changed slightly on adoption. The commission determined that the term "documents" referring to other plans was unclear and confusing. Therefore, the word "documents" was changed on adoption to the word "plans."

Rule .090 was altered slightly on adoption. Item number four of the first paragraph of the rule was altered to reflect "special services" as opposed to "unusual service." It was the

commission's position that the words "special services" were more appropriate.

Finally, the commission received a few comments regarding the adoption of criteria for applications or portions of applications that included "shell space." In response to those comments, the commission adopted Rule .130 that was not a part of the proposed rules. The rule provides criteria for the commission to utilize when evaluating a project requiring a certificate of need that includes an area which will not be utilized within one year after completion of a construction project.

These rules are adopted under the authority of Article 4418(h), Texas Civil Statutes.

.010. Commission Use of Criteria. The commission shall apply, as appropriate, the following general criteria in conducting a review for a certificate of need application. These general criteria will be used in reviewing all projects.

Criteria form the basis of review by providing measures against which various aspects of the proposed project are compared. Not all criteria may be relevant in a particular case. When a project compares favorably with all of the established criteria against which it is properly measured, the applicant shall receive a certificate of need. When a project compares unfavorably with one or more of the criteria against which it is properly measured, the application for a certificate of need may be denied. The applicant should present facts and information in the application and at the hearing which address each criteria. Failure of the applicant to address all relevant criteria may result in the denial of a certificate of need application. The burden of proof is on the applicant.

.020. Community Health Care Requirements. The project must be necessary to meet the health care requirements of the community or population to be served. The applicant shall address at least the following:

- (a) The geographical areas and population groups that will be served by the project.
- (b) The barriers (*i.e.*, cultural, physical, transportation, etc.) that could affect the project.
- (c) The inadequacies of existing health care delivery systems in the proposed medical service area as they relate to the proposed project.
- (d) How the project will meet all or part of the perceived inadequacy in the health care delivery system in the service area.
- (e) Why the applicant facility is an appropriate facility to provide the proposed project.
- (f) The estimated numerical demand for the proposed project.
- (g) What portion of the project, if any, is necessitated by licensing, certification, safety, or health requirements imposed under federal law, state law, or valid city ordinance which could result in the loss of licensure or certification by the facility or subject the facility or the owner or operator of the facility to fine or criminal penalty if the project is not implemented.
- (h) How the proposed project will correct the specific deficiencies identified in (g) above.

.030. Service Area Population. The medical service area for the project must contain sufficient current and future

population to require the additional facility or service. The applicant shall address at least the following:

- (a) the population trends and vital rates for the county, and the HSA, and the medical service area;
- (b) the accessibility of the proposed service or facility to patients in the established or proposed medical service area.

.040. Relationship to Existing Services and Existing Facilities. The proposed project should not adversely affect existing facilities, existing services, or existing elements of the health care system in the medical service area (*e.g.*, city, county, health service area). The project must not create an uneconomical or unnecessary duplication of services and facilities in the medical service area. The proposed project should integrate with the existing health care facilities and services in the medical service area. The following shall be shown as applicable:

- (a) the existing or approved facilities and services in the medical service area that are similar or comparable to the proposed project;
- (b) the utilization of comparable services and facilities within the established or proposed medical service area;
- (c) the relationship of the proposed project to necessary ancillary or supporting services;
- (d) the coordination agreements for shared services with other facilities as they relate to the project; and
- (e) how the project will accomplish appropriate and effective integration with other services, facilities, and elements of the health care system in the medical service area.

In addressing (a), (b), (c), (d), and (e) above, the applicant shall identify the specific site location of the proposed project within the medical service area to be served.

.050. Less Costly, More Effective, and More Appropriate Alternative. The project's approach to providing health care services should be less costly, or more effective or more appropriate than other methods which are available, or which have been approved to be developed. The project should integrate with the existing health care services and facilities in the medical service area. The applicant shall address at least the following:

- (a) the availability of less costly or more effective alternative methods of providing such service;
- (b) the availability of resources (including health manpower, management personnel, and funds for capital and operating need) for the provision of the services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services;
- (c) the impact of project costs on operational costs of the facility or service.

.060. Manpower. The applicant must have the capability of adequately staffing and operating the project. The project should not have a material adverse effect on the staffing of existing facilities and services in the medical service area. In areas of manpower scarcity, documentation shall be provided of recruitment outside the medical service area and the results of that recruitment. The applicant shall address at least the following:

- (a) the nursing manpower, allied health manpower, and management personnel required to insure compliance with licensing or certification requirements;
- (b) the physicians and physician specialties required to meet the physician staffing requirements of the project;

(c) the physicians available who have agreed to utilize the project;

(d) the availability of the physicians, nurses, allied health professionals, and management personnel necessary to staff the project, and the availability of alternative uses of such health manpower and management personnel for the provision of other health services;

(e) the methods to be used to obtain the physicians necessary to staff the project;

(f) will the applicant participate directly or indirectly with an educational institution to enhance the quality of education or training of health manpower in the area or contribute substantially to the overall manpower supply?

.070. Economic Feasibility. The proposed project must be economically feasible. Commission consideration includes but is not limited to the following:

(a) The total project cost, including at least the following:

(1) physical asset cost:

- (A) site acquisition and preparation,
- (B) soil tests,
- (C) construction or changes and improvements required as a result of the project,
- (D) building or structure or office space acquisition,

tion,

- (E) renovation,
- (F) fixed equipment,
- (G) major movable equipment,
- (H) contingencies, and
- (I) energy provisions and alternatives considered;

(2) total cost of professional services to include the following:

- (A) planning consultants,
- (B) architect,
- (C) cost estimation,
- (D) attorney,
- (E) project manager, and
- (F) feasibility study;

(3) costs associated with financing:

- (A) financial advisor,
- (B) fund raising expenses,
- (C) lender's or investment banker's fee, and,
- (D) interest;

(4) start-up costs:

- (A) staff recruitment, and
- (B) deficit operation until expected revenue is realized.

(b) The source and method of revenue to finance the project. In addition, if applicable, address the following:

(1) When revenue bonds are one source of funds, have past revenues been adequate for operations and debt repayment?

(2) When general obligations bonds are one source of funds, is the tax base sufficient to sustain repayment? Explain.

(3) What is the method of depreciation?

(c) The terms of the financing to include at least the following:

- (1) interest,
- (2) principal,
- (3) restrictions on additional debt,
- (4) period of indebtedness,
- (5) total annual debt service requirements,

(6) total long-term debt service requirements, and

(7) other relevant terms of the financing, as applicable.

(d) Financial information to include a current audited or notarized financial statement. The financial information must include operating revenues and expenses, nonoperating revenue and expenses, net income, assets, liabilities, long-term debts, annual debt, service costs, net worth or fund balance, and other pertinent financial information, all as determined by generally accepted accounting principles sufficient for the commission to determine at least the following:

(1) Ratio:

(A) debt ratio: net worth divided by funded debt;

(B) current ratio: current assets divided by current liabilities; and

(C) equity ratio: total net worth divided by total assets.

(2) What the projected breakeven operation of the project is?

(3) When will breakeven occur?

(e) What is the probable impact of the project on the operational costs of the facility or services?

(f) The availability of funds for capital and operating requirements.

.080. Relationship to Plans. The commission shall consider the relationship of the project to the applicable existing plans, including:

(a) the state health plan;

(b) the appropriate health systems plan and annual implementation plan; and

(c) the short-range development plan (three years) and the long-range development plan of the applicant.

In addition, the commission may consider other pertinent plans including but not limited to the state medical facilities plan.

.090. Special Requirements. The commission may consider the special requirements and circumstances of facilities that:

(1) provide substantial services to indigents;

(2) provide a substantial portion of services to persons residing outside the immediate medical service area in which the facility is located;

(3) provide services to rural or sparsely populated areas;

(4) provide unique or special services;

(5) provide biomedical and behavioral research programs designed to meet national requirements; and

(6) provide services designed to test innovative health care services.

(a) The special requirements or circumstances of the project must be identified.

(b) In addressing (1), (4), (5), and (6) above, the applicant should identify the numbers of persons presently served and to be served in the medical service area, the health service area, the contiguous health service areas, the state, and areas outside the state.

.100. Required Findings for Inpatient Facilities. In the case of a proposed project requiring a certificate of need which includes the provision of health services to inpatients, the Texas Health Facilities Commission shall not grant a certificate of need under its certificate of need program, or

otherwise make a finding that such a proposed project is needed, unless:

(a) the Texas Health Facilities Commission makes written findings as to:

(1) the efficiency and appropriateness of the use of existing inpatient facilities providing inpatient services similar to those proposed; and

(2) the capital and operating costs (and their potential impact on inpatient charges), efficiency, and appropriateness of the proposed project; and

(b) the Texas Health Facilities Commission makes each of the following findings in writing:

(1) that superior alternatives to such inpatient services in terms of cost, efficiency, and appropriateness do not exist, and that the development of such alternatives is not practicable;

(2) that in the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered and have been implemented to the maximum extent practicable;

(3) that patients will experience serious problems in terms of costs, availability or accessibility, or such other problems as may be identified by the commission, in obtaining inpatient care of the type proposed in the absence of the proposed project; and

(4) that in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care, the relationship of the addition to the plans of the other agencies of the state responsible for providing and financing long-term care (including home health service) has been considered.

.110. Special Requirements and Circumstances of a Health Maintenance Organization. Consideration shall be given to the special requirements and circumstances of an HMO. Such requirements and circumstances include the following:

(a) the needs of and cost to members and projected members of the health maintenance organization in obtaining health services; and

(b) the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services.

Consideration of a proposed project to establish an HMO shall also address the availability and cost of obtaining health services from the existing providers in the area that are not health maintenance organizations.

.120. Required Findings for HMO's. In the case of any new institutional health service proposed to be provided by or through an HMO, the commission shall not deny a certificate of need with respect to such service or otherwise make a finding that such service is not needed in those cases:

(a) when the commission has granted a certificate of need which authorized the development of the service or which authorized expenditures in preparation for such offering, or which authorized development or has otherwise made a finding that such development or expenditure is needed; and

(b) when the offering of this new institutional health service will be consistent with the basic objectives, time schedules, and plans of the previously approved application.

.130. Criteria for Space Not Utilized after Construction. When a proposed construction project requiring a certificate of need includes an area which will not be utilized within one year after the completion of the construction project, the Texas Health Facilities Commission shall not grant a certificate of need unless the commission makes a finding of fact that establishes:

(a) the specific planned use for the area;

(b) that the facility can reasonably anticipate a requirement for the use of the area within a reasonable period of time;

(c) that the construction of the unutilized area is consistent with the appropriate health systems plan, annual implementation plan, and state health plan.

The commission will consider all other relevant criteria in addition to the foregoing when reviewing an application for certificate of need which includes an area which will not be utilized within one year after completion of the construction project.

Doc. No. 782365

Criteria for Use in Reissuance of Certificate of Need Reviews 315.19.02

The Texas Health Facilities Commission has adopted Rules 315.19.02.010-.020 with changes from the text proposed in the January 27, 1978, issue of the *Texas Register* (3 TexReg 288).

Minor changes were made in Rule .020, Criteria for Reissuance. The words "the date the order became final" at the end of Section (a) was changed to "the order was dated" to more accurately explain the criteria to be utilized by the commission. A change in the rule that defines the word "dated" precipitated the change in this section. Section (b) was also modified to more clearly define the period within which a certificate holder should provide reasonable assurance that development will begin upon reissuance. The words "after the reissuance order is dated" were added to the end of that section.

These rules are adopted under the authority of Article 4418(h), Texas Revised Civil Statutes.

.010. Need Not Adjudicated. In considering a petition for reissuance, the commission will not readjudicate the question of whether need exists for the project.

.020. Criteria for Reissuance. The commission shall consider the following criteria in determining whether or not the certificate of need should be reissued:

(a) The former certificate holder shall demonstrate that good cause existed for the failure to begin development during the 180 days after the reissuance order was dated.

(b) The former certificate holder shall provide the commission reasonable assurance that development will begin on the project within 180 days after the reissuance order is dated.

(c) The former certificate holder shall provide the commission with a completion schedule for the project together with evidence that the schedule can reasonably be met.

Doc. No. 782366

Commission Review of Applications

Parties to Commission Review of Applications 315.20.01

The Texas Health Facilities Commission has adopted Rules 315.20.01.010-.120 with several changes from the text proposed in the January 27, 1978, issue of the *Texas Register* (3 TexReg 288).

Considerable comment was received regarding Rule .070, Timely Party Request—Certificate of Need, and Rule .080, Timely Party Request—Exemption Certificate or Declaratory Ruling. The comments received requested the commission to continue using the 40-day certificate of need time limit and the 12-day declaratory ruling and exemption certificate time limit for persons to file requests to become parties. The commission adopted Rule .070 as proposed because a 45-day time period in the rule was consistent with provisions of Rule .100 in this subchapter. Additionally, in a previous subchapter, the commission extended by five days the period of time that an applicant has to publish a notice of hearing on an application for a certificate of need. The expansion of time to publish a notice of hearing on a certificate of need could, if the contest time were not extended to 45 days, result in a reduction in the amount of time a person has to file a request to become a party to a certificate of need application. In adopting Rule .080, the commission did follow the comments submitted and reduced the amount of time in which a person can request to become a party from 14 days to 12 days. The commission determined that there were no reasons to extend the amount of time a person has to file a request to become a party to an exemption certificate application or declaratory ruling application.

The commission received considerable comment concerning Rule .110. It was the position of many individuals who submitted comments that the commission had no authority to participate as a party in the review of applications. Comments also suggested that the commission had sufficient role in application processing to make such a rule unwarranted. The rule as adopted allows the chairman to make the commission a party to an application by notifying all parties. It is the commission's position that in some instances, commission participation as a party would be consistent with the purpose and intent of the Texas Health Planning and Development Act.

These rules are adopted under the authority of Article 4418(h), Texas Civil Statutes.

.010. Request to Become a Party. A person may request admission as a party to the commission review of an application that has been accepted by filing a request to become a party. When the request is in the form specified by this subchapter and when the request has been timely filed pursuant to this subchapter, the commission shall admit the person filing the request as a party.

.020. Participation of Nonparty. A person who has not been admitted as a party may attend a hearing on an application and present evidence as an interested person.

.030. Rights and Responsibilities of a Party. A party to an application has the right to participate in prehearing conferences, present evidence, cross-examine witnesses at a

hearing, and appeal a ruling of the commission as provided by law.

Transcription costs and any other costs of hearings shall be apportioned among the parties to review of an application with the exception of the commission and respective HSA(s).

.040. Rights and Responsibilities of an Interested Person. An interested person may present evidence at a hearing at the close of the presentation of evidence by the applicant and party. The applicant and party may cross-examine witnesses presented by an interested person. An interested person may not cross-examine the witness of the applicant and party, object to evidence presented by the applicant or party, or appeal a decision rendered by the commission. An interested person may be represented by counsel.

.050. Form of Request to Become a Party. The form of the request to become a party to an application must meet at least the following criteria:

- (a) prepared on 8-1/2 by 11 inch or 8-1/2 by 14 inch paper;
- (b) identify the subject application;
- (c) contain the name of the person intending to become a party to the application and his representative;
- (d) the name of the facility, if any, the person represents or has some interest in;
- (e) the legal owner of the facility listed in (d) above;
- (f) the reasons why the applicant should or should not be granted the relief sought;
- (g) affirmation that a copy of the request has been mailed by certified mail, return receipt requested, to the applicant and parties, and when the application is a certificate of need, the appropriate HSA; and
- (h) an affirmation of truth and acknowledgment exactly as it appears in the following:

"I do solemnly swear or affirm that the information, dates, and representations submitted and included in this request to become a party are, in each and every respect, true, accurate, and correct to the best of my knowledge and belief, and no misrepresentations of any nature are contained herein."

Movant's Signature

Facility Name (If Any)

The State of _____

County of _____

Subscribed and sworn to before me, the undersigned authority, by _____ to certify which witness my hand and seal of office this the _____ day of _____, A.D. 19____.

Notary Public in and for _____ County, Texas
(or other official duly authorized to take acknowledgments)

.060. Copies of Request Forwarded to Other Persons. A copy of the request to become a party must be forwarded to the applicant and parties by certified mail, return receipt requested. When the request to become a party involves a certificate of need application, a copy of the request must be for-

warded to the health systems agency authorized to review the certificate of need application by certified mail, return receipt requested.

.070. *Timely Party Request—Certificate of Need.* The commission shall consider a request to become a party to a certificate of need application timely filed when the request is received at the commission's office on or before 5 p.m. on the 45th calendar day after the dating of the certificate of need application that is the subject of the request.

.080. *Timely Party Request—Exemption Certificate or Declaratory Ruling.* The commission shall consider a request to become a party to an exemption certificate or a declaratory ruling application to be timely filed when the request is received at the commission's office by 5 p.m. on the 12th day after notice of acceptance of the application is published in the *Texas Register*.

.090. *Admission of Party.* The commission shall give written notification of the admission of a person as a party to the person admitted as a party, the applicant, other parties, and the appropriate health systems agency.

.100. *HSA as a Party—Certificate of Need.* When a health systems agency (HSA) timely files written comments on a certificate of need application, the HSA shall be automatically admitted as a party. The commission shall consider the HSA comments to be timely filed when their comments are received at the commission's office on or before 5 p.m. on the 45th calendar day after the dating of the certificate of need application that is the subject of the comments. The HSA may withdraw as a party at any time prior to a hearing.

.110. *Commission as a Party.* The chairman may admit the commission as a party to an application by notifying all parties by certified mail on or before 5 p.m. on the 45th calendar day after the dating of a certificate of need application.

.120. *Applicant as a Party.* The commission shall consider the applicant a party.

Doc. No. 782367

Hearing Requirements 315.20.02

Pursuant to the authority of Article 4418(h), Texas Civil Statutes, the Texas Health Facilities Commission has adopted Rules 315.20.02.010-.130 with no changes from the text proposed in the January 27, 1978, issue of the *Texas Register* (3 TexReg 289).

.010. *Contested Case.* An application accepted by the commission shall be considered a contested case as that term is defined in the Administrative Procedure and Texas Register Act, Article 6252-13a, Vernon's Annotated Civil Statutes.

.020. *Petition for Hearing on Certificate of Need Application.* Any person may petition the commission requesting that a hearing be conducted on a certificate of need application. The petition must be in writing and must contain at least the following information:

- (a) the identity of the person making the request; and
- (b) the identity of the certificate of need application to be the subject of the requested hearing.

The petition requesting a hearing on a certificate of need application must be filed with the commission by 5 p.m. on the 45th day after the subject certificate of need application is accepted by the commission.

.030. *Contested Certificate of Need Application.* The commission shall consider an application for a certificate of need contested when a person has been admitted by the commission as a party to the certificate of need application, when a health systems agency has been automatically admitted as a party to the certificate of need application pursuant to commission rules, or a person has petitioned the commission requesting that a hearing be conducted on a certificate of need application.

.040. *Uncontested Certificate of Need Application.* The commission shall consider an application for a certificate of need uncontested when no person has been admitted as a party automatically by rule or by the commission, and when no person has petitioned the commission requesting that a hearing be conducted on the certificate of need application.

.050. *Contested Exemption Certificate or Declaratory Ruling Application.* The commission shall consider an application for exemption certificate or declaratory ruling contested when a person has been admitted by the commission as a party to the application.

.060. *Uncontested Exemption Certificate or Declaratory Ruling Application.* The commission shall consider an application for an exemption certificate or declaratory ruling uncontested when no person has been admitted as a party to the application by the commission.

.070. *Hearing on the Certificate of Need Application.* The commission shall conduct a hearing on a certificate of need application when a petition requesting that a hearing be conducted on the application is filed in accordance with commission rules or when the hearing on the application has not been waived pursuant to commission rules.

.080. *Hearings on Exemption Certificate or Declaratory Ruling Applications.* The commission shall conduct hearings on applications for exemption certificate or declaratory ruling except when the hearing is waived by the commission, applicant, and parties pursuant to rules of the commission. When an exemption certificate or declaratory ruling application is amended after a hearing, the commission may require an additional hearing on the application.

.090. *Hearing Waiver on Uncontested Certificate of Need Application.* The commission may review an uncontested application for a certificate of need without hearing when:

- (a) a written request to proceed without a hearing has been filed by the applicant; or
- (b) the hearing officer has recommended to the chairman that a hearing be waived; and
- (c) an agreement to waive hearing and a stipulation of fact have been executed by the applicant and the chairman.

.100. *Hearing Waiver on Contested Certificate of Need Application.* The commission may review a contested certificate of need application without a hearing when:

- (a) no person has requested that a hearing be conducted on the certificate of need application pursuant to this subchapter;
- (b) a written request to proceed without a hearing has been filed by the applicant or parties;

(c) the chairman has granted the request to proceed without a hearing; and

(d) an agreement to waive hearing and stipulation of fact have been executed by the applicant, parties, and the chairman.

.110. Hearing Waiver on Uncontested Exemption Certificate or Declaratory Ruling Application. The commission may review an uncontested application for exemption certificate or declaratory ruling without a hearing when:

(a) a written request to proceed without a hearing has been filed by the applicant;

(b) the hearing officer has recommended that a hearing be waived; and

(c) an agreement to waive hearing and a stipulation of fact have been executed by the applicant and the chairman.

.120. Hearing Waiver on Contested Exemption Certificate or Declaratory Ruling Application. The commission may review a contested application for exemption certificate or declaratory ruling without a hearing when:

(a) a written request to proceed without a hearing has been filed by the applicant or party;

(b) the chairman has granted the request to proceed without a hearing; and

(c) an agreement to waive hearing and a stipulation of fact have been executed by the applicant, parties, and the chairman.

.130. Place and Time of Hearings. Hearings before the commission will be held at the offices of the Texas Health Facilities Commission unless another location is specified by the commission. Hearings shall be opened to the public. The time of the hearing shall be specified by the commission.

Doc. No. 782368

Hearing Procedures 315.20.03

The Texas Health Facilities Commission has adopted Rules 315.20.03.010-.140 with several changes from the text proposed in the January 27, 1978, issue of the *Texas Register* (3 TexReg 290).

A minor change was made in Rule .130 to increase the amount of time that a party has to file proposed findings. In the rule as proposed, the parties were required to submit proposed findings to the commission at the conclusion of a hearing. Comments suggested that such a requirement was unreasonable. Under the rule as adopted, a party is allowed to submit proposed findings within 72 hours after the conclusion of a hearing on an application.

The Rules 315.20.03.010-.140 are adopted pursuant to Article 4418(h), Texas Civil Statutes.

.010. Duties of the Hearing Officer. The hearing officer assigned to an application shall conduct the hearing, shall keep a complete record of each hearing, and shall transmit the record to the commission when completed. The hearing officer shall have the authority to administer oaths, to examine witnesses, to receive evidence and testimony, to rule upon the admissibility of evidence, to issue subpoenas during the course of a hearing, to recess a hearing, and to take actions consistent with the act and commission rules to provide a fair, just, and proper hearing.

.020. Transcription of Hearing. A written transcript is required of all hearings. The commission shall be furnished a copy of the transcript without charge within four working days after the hearing. Parties, excluding the commission and the appropriate health systems agency, shall share transcription costs equally. The commission will designate the court reporter to prepare the transcript.

.030. Waiver of Transcription. The chairman, the applicant, and parties may by written agreement waive the requirement of a written transcription of the hearing on an application. The commission shall electronically record the proceedings when the transcription requirements have been waived.

.040. Prehearing Conference. The chairman of the commission or the assigned hearing officer may direct the applicant and parties to appear at a specified time and place for a conference prior to the hearing for the purpose of considering:

- (a) the simplification of issues;
- (b) the making of stipulations;
- (c) the procedures at the hearing;
- (d) the identification and limitation of the number of witnesses;
- (e) the exchange of prepared testimony and exhibits; and
- (f) other matters which may expedite the hearing.

.050. Prehearing Motions. A party prior to a hearing may present motions to the commission. A motion shall be in writing, shall be made under oath, shall set forth the relief sought, and shall state the grounds upon which it is made. The movant shall submit the motion to the commission and a copy of the motion to the parties at least five days prior to the hearing. Failure to comply with the above, except for good cause shown, may be construed as lack of diligence on the part of the moving party, and may result in a denial of the motion.

.060. Motions to Postpone Hearing—Exemption Certificate or Declaratory Ruling Hearing. An applicant or party by written motion prior to hearing may request that the chairman postpone a hearing on an exemption certificate or declaratory ruling application or other matters before the commission. The chairman or his designee may postpone a hearing on an exemption certificate or declaratory ruling on a showing of good cause.

.070. Motion to Postpone Certificate of Need Hearing. The chairman may upon written motion of an applicant or party, prior to hearing postpone a hearing on a certificate of need application to a date between 71 and 100 days after the original dating and acceptance of the certificate of need application. When a party, not the applicant, presents a motion to postpone a certificate of need hearing to a date between 71 and 100 days after the dating of the certificate of need application, the motion must include a sworn written statement of the applicant waiving the scheduling requirements of these rules and Section 3.06(b)(2) of the act. An applicant or party shall not present a motion for postponement sooner than the 36th day from dating and acceptance of the application.

.080. Motion to Reschedule a Certificate of Need Hearing. The chairman may upon written motion of an applicant or

party request that the chairman reschedule a hearing on a certificate of need application to a date later than 100 days after the original dating of the certificate of need application. The motion must include sworn written statements of the parties and applicant expressly waiving the scheduling requirements of these rules and Section 3.06(b)(2) of the act. In granting a motion to reschedule a hearing on certificate of need applications, the chairman may redate and reaccept the application and schedule a hearing for a date not less than 61 days and no more than 70 days after the redating of the application.

.090. Motions During Hearing. An applicant or party, during the course of a hearing, may present motions to the hearing officer. A motion shall be in writing or dictated into the record, shall set forth the relief sought, and shall state the grounds upon which it is made. The hearing officer shall rule on motions presented during a hearing.

.100. Rulings on Motions. The chairman or his designee shall rule on all prehearing motions. The commission shall rule on motions for rehearing. The hearing officer shall rule on motions presented during a hearing.

.110. Conduct and Decorum. A person present at a proceeding before the commission shall exhibit proper decorum, courtesy, and respect for the commission and its staff.

.120. Agreements to Be in Writing. Agreements among applicant, the parties, and the commission must be in writing and either filed with the commission or dictated into the record at a hearing.

.130. Proposed Findings of Parties. Parties may submit proposed findings of fact for commission consideration pursuant to Section 16(b) of Article 6252-13(a), Vernon's Annotated Civil Statutes (Texas Administrative Procedure and Texas Register Act). Proposed findings shall be filed with the assigned hearing officer no later than 72 hours after the conclusion of the hearing conducted upon an application. When a hearing is waived on a certificate of need application, proposed findings shall be filed by the 70th day after the dating of an application. When a hearing is waived on an exemption certificate or declaratory ruling applications, proposed findings shall be filed within 10 days after the agreement to waive hearing application and stipulation of fact are executed by the chairman.

.140. Reopened Hearings. An applicant or a party may request that a hearing on an application be reopened after adjournment by filing with the commission a sworn written motion which states the reasons why the hearing should be reopened. The motion must be filed with the commission at least 24 hours prior to the open meeting at which the commission is scheduled to consider the application. A copy of the motion must be delivered to the parties prior to filing the motion with the commission.

The chairman may, on his motion or on the motion of a party, require that the hearing on an application be reopened. The party seeking to reopen the hearing must establish that good cause exists to reopen the hearing.

The chairman shall have the authority to limit evidence at the reopened hearing to particular matters and issues considered relevant. The chairman may require publication of notice of the reopened hearing. Notice of the reopened hearing shall be published at the time and in the manner

prescribed by the chairman. The party requesting the reopened hearing shall furnish the commission two copies of the newspaper page or a publisher's affidavit from the newspaper immediately upon publication.

Doc. No. 782369

Evidence 315.20.04

The Texas Health Facilities Commission has adopted Rules 315.20.04.010-.080 with changes from the text proposed in the January 27, 1978, issue of the *Texas Register* (3 TexReg 291).

Rule .030 as proposed required the hearing officer to swear all witnesses. It is a common practice in commission hearings for the hearing officer to have the court reporter to swear witnesses. In order to facilitate the previous practice and to simplify the process, the commission adopted this rule with a slight change. The rule as adopted only requires witnesses to be orally sworn prior to presenting testimony. The rule as adopted does not require the hearing officer to swear the witnesses.

Rule .070 was slightly altered when adopted by the commission. The rule as proposed authorized the taking of depositions by stipulated agreement of the applicant, the parties, and the commission. The commission determined that the term "stipulated agreement" was unclear and should be modified. On adoption, the word "stipulated" was stricken from the rule, and the word "written" was inserted in its place. As a result, depositions may be taken by written agreement of the applicant, the parties, and the commission.

The Rules 315.20.04.010-.080 are adopted pursuant to Article 4418(h), Texas Civil Statutes.

.010. Burden of Proof. The burden of proving entitlement to the relief requested in an application or other matter properly before the commission shall be on the applicant or moving party.

.020. Rules of Evidence. Hearings before the commission shall be conducted in accordance with the provisions outlined in the Administrative Procedure and Texas Register Act, except where such provisions are inconsistent with the Texas Health Planning and Development Act, Article 4418(h), Vernon's Annotated Civil Statutes.

.030. Sworn Testimony. A witness must be orally sworn prior to presenting testimony. A witness shall execute a written oath prior to being sworn.

.040. Limiting the Number of Witnesses. The hearing officer may limit the number of witnesses testifying at a hearing when it appears that the witnesses' testimony will be cumulative and unduly repetitious.

.050. Official Notice. Official notice may be taken at a hearing of judicially cognizable facts and generally recognized facts within the area of the commission's specialized knowledge. Before or during the hearing, the commission shall notify the parties of the material to be officially noticed, including staff memoranda or data. The commission shall afford the parties an opportunity to contest the material noticed.

.060. Prepared Testimony. Testimony of a witness may be reduced to writing and offered into evidence as an exhibit provided that:

- (a) the witness is present and has been sworn;
- (b) the witness identifies and adopts the written testimony as his own; and
- (c) all parties have received a copy of the testimony at least three days prior to the commencement of the hearing.

The written testimony shall be subject to objection and may be stricken by the hearing officer. The witness shall be subject to cross-examination.

.070. Depositions. The taking and use of depositions for a hearing shall be governed by Section 14 of the Administrative Procedure and Texas Register Act. Depositions may be taken by written agreement of the applicant, the parties, and the commission. The agreement may require that a copy of a deposition be submitted to the hearing officer at least 48 hours prior to the hearing at which the deposition will be offered into evidence.

.080. Subpoenas. The chairman of the commission, upon written motion by an applicant or party or on his own motion, may issue a subpoena for the attendance of a witness from any place in the State of Texas at a hearing on an application or other matter properly before the commission. A hearing officer during the course of a hearing may issue a subpoena to compel the attendance of a witness from any place in the State of Texas.

A motion for subpoena to compel the production of books, papers, accounts, or documents addressed to the commission shall be verified and shall specify as nearly as possible the books, papers, accounts, or documents desired and the material and relevant facts to be proved by said books, papers, accounts, or documents. The chairman or the hearing officer during the course of a hearing may issue a subpoena compelling production of books, papers, accounts, or documents, as deemed necessary, when the production will not result in harassment or undue expense to the party required to produce the same.

Subpoenas shall be issued only after a showing of good cause and the deposit of sums sufficient to insure payment of expenses incident to the subpoenas. The service of subpoenas and payment of witness fee shall be made in the manner prescribed in the Administrative Procedure and Texas Register Act.

Doc. No. 782370

Commission Action on Applications

Orders of the Commission 315.21.01

The Texas Health Facilities Commission has adopted Rules 315.21.01.010-.250 with several changes from the text proposed in the January 31, 1978, issue of the *Texas Register* (3 TexReg 361).

When proposed, Rule .130 required holders of certificates of need to submit, once every 180 days from the date the certificate of need order was issued, status reports on the projects authorized by certificates of need. A review of that rule revealed it was inconsistent with other provisions of the

Texas Health Planning and Development Act. It was determined that a periodic report should come due within 180 days after the certificate of need is dated to be consistent with the provisions of Section 3.13(b)(1) of Article 4418(h). Therefore, when adopted, the language was changed. The rule, as adopted, provides additional time for certificate holders to file a status report with the commission. The adopted rule allows certificate holders to submit a status report within 15 days after each 180-day reporting period.

Rules .150 and .160 as proposed were intended to implement federal regulations regarding requests by "affected persons" for rehearing of certificate of need applications by the reviewing agency. The rules as proposed were designed to allow persons who were not formerly admitted as parties to applications pursuant to the Administrative Procedure and Texas Register Act to request the commission to reconsider or rehear a ruling on a certificate of need application. The rules as proposed did not clearly identify the persons or parties who could make such requests. As a result, Rule .150 was adopted with a slight change. The words "not a party" were inserted after the words "any person" in the first sentence of the rule. Slight changes were also made in Rule .160. The words "not a party" were inserted at the end of the first sentence of the rule. Another change was made in Rule .160. The last sentence of the rule as proposed was difficult to understand and was unnecessary. As a result, the last sentence was deleted.

Rule .170 as proposed provided a mechanism by which an applicant or a party to an application could request a rehearing. Such a rule is necessary in light of the Administrative Procedure and Texas Register Act. In the past, some confusion has arisen as to the effect of the filing of a motion for rehearing and commission reconsideration of a decision. In order to more clearly explain the effect of a motion for rehearing, the commission, in adopting Rule .170, added the sentence "The commission shall consider a motion for rehearing to include a motion for reconsideration of an order."

The commission also adopted Rule .180, which further explains procedures of the commission in acting on motions for rehearing. The Administrative Procedure and Texas Register Act provides that an agency may extend the period of time for filing motions for rehearing and replies to motions for rehearing. In order to make this rule consistent with the provisions of the Administrative Procedure and Texas Register Act, a sentence authorizing the commission to extend the period of time for filing of motions for rehearing and replies to motions for rehearing was added.

Section (b) of Rule .190 was slightly changed when the commission adopted the rule. The word "public" was deleted and the word "hearing" was changed to "rehearing." It was determined by the commission that the changes in Section (d) of Rule .190 more clearly explained the provisions regarding good cause for a rehearing.

Rule .210 formerly identified under the title "Failure to File a Motion for Rehearing" was changed to "Order Final and Not Appealable" upon adoption. It was determined that the order as written did not correctly specify when a commission order became final and was no longer appealable. Because previous rules in the subchapter provided that the commission could modify or reverse an order within 15 days after it was issued, or the commission could order a rehearing, the rule as

proposed was incorrect. The rule as adopted has been changed to correctly reflect when an order of the commission is final and no longer appealable.

Finally, the last rule in the subchapter, Rule .250, was also changed slightly to be consistent with rules in the subchapter. The words "an order that has been issued by" following the words "a time limit imposed by" were replaced by the words "a certificate of need, exemption certificate, or declaratory ruling orders." The words "final and" were inserted prior to the last three words of the rule as proposed. The adopted rule more clearly explains when a time limit imposed by an order of the commission begins.

Rules 315.21.01.010-250 are adopted pursuant to Article 4418(h), Texas Civil Statutes.

.010. Record of Proceedings. After the hearing, the hearing officer shall prepare a complete record of the proceedings on an application. The record must include at least the following:

- (a) pleadings and motions (including application and request to become a party);
- (b) the written or recorded transcript of the hearing;
- (c) evidence received or considered;
- (d) a statement of matters officially noticed;
- (e) objections and rulings thereon;
- (f) staff memoranda or data submitted to or considered by the hearing officer or the commission in connection with the hearing;
- (g) written comments filed by a health systems agency on a certificate of need application; and
- (h) the recommendation of the hearing officer.

When the record is complete, the hearing officer shall forward the record to the commissioners for review.

.020. Consideration of Recommendations and Comments. The commissioners shall consider the recommendation of the hearing officer prior to ruling on an application. Prior to ruling on an application for a certificate of need, the commissioners shall consider the written comments of the health systems agency. When the appropriate health systems agency fails to present comments by the 45th day after the acceptance of a certificate of need application, the commission may not consider the comments without written agreement of the parties to the application.

.030. Commission Meeting. The commission shall rule by the vote of the commissioners on applications or other matters in open meeting. The commission shall rule on applications after the hearing on the application or after waiver of the hearing pursuant to these rules.

.040. Oral Argument. Any person may submit a written request for oral argument before the commission prior to the final determination on any matter properly before the commission. Oral arguments shall be allowed only in the discretion of the chairman. A person shall limit argument before the commission to evidence of record in the matter under consideration.

.050. Ruling Postponement. A person may request that the chairman postpone ruling on an application or other matter scheduled for open meeting by filing a written motion with the commission. The motion must be filed at least 24 hours prior to the open meeting at which the commission is scheduled to consider the application or other matter. The

chairman may postpone a ruling on an application upon the proper filing of a motion to postpone a ruling.

.060. Quorum. The commission shall not transact business in an open meeting with less than two commissioners present.

.070. Commission Vote. A motion of a commissioner regarding an application or other matters before the commission in an open meeting must receive the votes of two commissioners to be ordered. Failure of a commissioner to obtain the votes of two commissioners on a motion shall result in a denial of the motion.

.080. Certificate of Need Order. The commission shall either grant or deny an application for certificate of need by written order not later than 90 days following the dating of the application unless:

- (a) a later date is agreed upon in writing by the applicant, parties, and commission; or
- (b) the hearing date has been delayed pursuant to the commission rules or the act.

When granting a certificate of need, the commission shall issue a certificate of need setting forth an affirmative finding that the proposed project satisfies the criteria established by the commission. When denying a certificate of need application, the commission shall issue an administrative order.

.090. Exemption Certificate Orders. The commission shall either grant or deny an application for an exemption certificate by written order not later than 60 days following the hearing on the application or 60 days following the waiver of hearing on the application pursuant to commission rules, unless a later date is agreed upon by the applicant, parties, and commission. In granting an exemption certificate application, the commission shall issue an exemption certificate order. In denying an exemption certificate application, the commission may issue a declaratory ruling finding that the subject project requires a certificate of need.

.100. Extension and Transfer Orders. The commission shall either grant or deny an application for an extension of an exemption certificate or transfer of ownership of an exemption certificate or certificate of need by issuing a written administrative order not later than 60 days following the hearing on the application or 60 days following waiver of the hearing on the application pursuant to commission rules unless a later date is agreed upon by the applicant, parties, and commission.

.110. Declaratory Ruling Order. The commission shall issue a declaratory ruling by written order not later than 60 days following the hearing on an application for a declaratory ruling or within 60 days following the waiver of hearing on an application for declaratory ruling pursuant to commission rules unless a later date is agreed upon by the applicant, parties, and the commission.

.120. Contents of Orders. A written order of the commission on an application or other matter must include findings of fact and conclusions of law separately stated. Findings of fact, when set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. The commission may conditionally issue orders granting applications for certificate of need or exemption certificate. A written order of the commission is issued when the order is signed by the commissioners.

.130. Periodic Reports by Certificate Holder. A holder of a certificate of need must submit, once every 180 days after the certificate of need order is dated until the project authorized by the certificate of need is completed or abandoned, reports to the commission regarding the status of the project authorized by the certificate of need. The status report shall be due by 5 p.m. on the 15th day after each reporting period. This rule shall constitute a condition of certificate of need orders of the commission. Each certificate of need order will include as a condition the provisions of this rule.

.140. Persons Entitled to Copies of Orders. The commission shall forward copies of a certificate of need order, exemption certificate order, administrative order, or declaratory ruling order to the applicant and parties. The commission shall forward copies of orders relating to certificate of need applications to the appropriate health systems agency. Any person may, pursuant to these rules, request a copy of a written order to the commission. The commission shall upon proper written request forward a copy of an order to the person making the request.

.150. Requests for Reconsideration. Any person not a party may request the commission to reconsider its decision in an exemption certificate, declaratory ruling, or certificate of need order or administrative order within 15 days after it is issued. The petition must be in writing and filed by 5 p.m. on the 15th day after the order that is the subject of the petition was issued. The petition must contain at least the following information:

- (a) the name and address of the persons submitting the petition;
- (b) the identity of the order for which reconsideration is requested; and
- (c) the reasons that the order should be reconsidered.

The petition may include a request that a rehearing on the application that was the subject of the order be conducted. When a petition includes a request for a rehearing, the reasons for the rehearing must be stated in the petition.

.160. Reconsideration of Commission Orders. The commission may reconsider an exemption certificate, declaratory ruling, or certificate of need order or administrative order within 15 days after it is issued on its own motion or on the petition of any person not a party. Upon reconsideration, the commission may modify, affirm, or reverse the order that is the subject of the reconsideration. The commission on reconsideration of an order upon a finding of good cause may require a rehearing on the application that is the subject of the order being reconsidered. The failure of the commission to reconsider an order for which a petition was filed pursuant to this subchapter by the 15th day after the order was issued shall result in a denial of the petition.

.170. Motion for Rehearing. An applicant or party to an application that was the subject of an exemption certificate, declaratory ruling, or certificate of need order or administrative order may file a motion for rehearing with the commission within 15 days after the issuance of the written order by the commission. The motion must be filed by 5 p.m. on the 15th day after the order that is the subject of the motion was issued. Replies to a motion for a rehearing by an applicant or party must be filed with the commission within 25 days after the issuance of the order that is the subject of the motion.

The commission shall consider a motion for rehearing to include a motion for reconsideration of an order.

.180. Commission Action on Motions for Rehearing. The commission must take action on a motion for rehearing within 45 days after the order that is the subject of the motion was issued. When the commission fails to act on a motion for rehearing within 45 days after the order is issued, the motion is considered to be denied by operation of law. The commission may grant a motion for rehearing on an application that is the subject of an exemption certificate, declaratory ruling, or certificate of need order, or administrative order on a showing of good cause. The commission may extend the period of time for filing motions for rehearing and replies as provided in Section 16(e) of the Administrative Procedure and Texas Register Act.

.190. Good Cause for Rehearing. The commission shall consider a request or motion for rehearing to have shown good cause when the motion or request:

- (a) presents significant relevant information not previously considered by the Texas Health Facilities Commission in its review of the application that is the subject of the order;
- (b) demonstrates that there have been significant changes and factors or circumstances relied upon by the Texas Health Facilities Commission in reaching its decision on the application that is the subject of the order;
- (c) demonstrates that the Texas Health Facilities Commission has materially failed to follow its adopted procedures in reaching its decision on an application that is the subject of an order; or
- (d) provides such other bases for a rehearing as the Texas Health Facilities Commission determines constitutes good cause.

.200. Written Notice of Rehearing. When the commission determines that a rehearing should be conducted on an application that is the subject of an exemption certificate, declaratory ruling, certificate of need order, or an administrative order, the commission shall provide the parties, interested parties, and petitioners for reconsideration at least 10 days written notice of the rehearing. When the HSA was not a party in a prior hearing, the commission shall also provide written notice of the rehearing to the HSA.

.210. Order Final and Not Appealable. An order of the commission shall become final and is not appealable on the 16th day after it is issued when:

- (a) the applicant or parties fail to file a motion for rehearing within 15 days after the order is issued;
- (b) the commission does not modify or reverse the order within 15 days after the order is issued; and
- (c) the commission does not require a rehearing on the application or other matter that is the subject of the order within 15 days after the order is issued.

.220. Dated Order. A written order of the commission is dated as of the date the order is final and no longer appealable.

.230. Commencement of Development. Development of a project may commence only on a granting of a certificate of need, exemption certificate, or declaratory ruling that finds that an exemption certificate or certificate of need is not necessary for development.

.240. *Report to HSA.* When the commission issues a written order granting or denying a certificate of need application and the commission determines that the order is not consistent with the goals of the applicable health systems plan or the priorities of the applicable annual implementation plan, the commission shall submit a written report detailing the reasons for the inconsistencies of the commission order to the appropriate health systems agency.

.250. *Commencement of Time Limits.* A time limit imposed by a certificate of need, exemption certificate, or declaratory ruling order shall commence when the order is final and no longer appealable.

Doc. No. 782371

Judicial Review 315.21.02

The Texas Health Facilities Commission has adopted Rules 315.21.02.010-.030 with a change from the text proposed in the January 31, 1978, issue of the *Texas Register* (3 TexReg 363).

As proposed, this subchapter contained Rule .040, which provided an explanation of the mechanism for judicial review of exemption certificates issued under Section 6.02 of Article 4418(h). It was determined that such a rule was unnecessary and that the provisions of Article 4418(h) would be adequate. Therefore, Rule .040 in the proposed rules was not adopted.

The Rules 315.21.02.010-.030 are adopted pursuant to Article 4418(h), Texas Civil Statutes.

.010. *Certificate of Need.* As provided in Section 3.15 of the act, "an applicant or party who is aggrieved by an order of the Commission granting or denying a Certificate of Need is entitled to judicial review under the substantial evidence rule." A petition for judicial review shall be filed as provided in Section 19 of the Administrative Procedure and Texas Register Act.

.020. *Exemption Certificate Under Section 3.02 of the Act.* As provided in Section 3.02(e) of the act, "If the application for an Exemption Certificate is denied, the applicant may apply for a Certificate of Need, and if the application for a Certificate of Need is denied, the applicant may raise in proceedings for judicial review as provided by the Act any error of the Commission in denying the Exemption Certificate." A petition for judicial review shall be filed as provided in Section 19 of the Administrative Procedure and Texas Register Act.

.030. *Declaratory Ruling.* As provided in Section 3.03 of the act, "If the Commission rules that a Certificate of Need or an Exemption Certificate is required, the applicant may apply for an Exemption Certificate or a Certificate of Need and may seek judicial review of the Declaratory Ruling only in proceedings to review the denial of a Certificate of Need as provided by this Act." A petition for judicial review shall be filed as provided in Section 19 of the Administrative Procedure and Texas Register Act.

Doc. No. 782372

Forfeiture 315.21.03

The Texas Health Facilities Commission has adopted Rules 315.21.03.010-.040 with several changes from the text pro-

posed in the January 31, 1978, issue of the *Texas Register* (3 TexReg 361).

In proposing Rule .030, the commission included Section (d), which provided that the commission could find that a certificate of need order had been forfeited on the failure of the certificate holder to comply with conditions set out in an order. The commission has determined that such a provision is inappropriate in the forfeiture provisions of the rules. The portion of the rules that deals with violations of the act was considered to be a more appropriate location for a rule dealing with violation of conditions of a commission order. Section (d) to the rule as proposed was deleted on adoption.

The Rules 315.21.03.010-.040 are adopted pursuant to Article 4418(h), Texas Civil Statutes.

.010. *Automatic Forfeiture.* A certificate of need is automatically forfeited for failure of the certificate holder to begin development within 180 days after the certificate of need order is dated.

.020. *Initiation of Forfeiture Proceedings.* The commission, upon its own motion or at the request of any person, may initiate forfeiture proceedings for a certificate, order, or ruling. When it is determined that forfeiture proceedings should be initiated, the commission shall schedule a hearing and issue a written order directing the named party to appear at the hearing and show cause why the certificate, order, or ruling should not be forfeited. The commission shall publish a notice of forfeiture hearing in the *Texas Register*.

.030. *Review of Evidence Received at Forfeiture Hearing.* After review of the evidence received at the forfeiture hearing, the commission may find that the certificate, order, or ruling should be forfeited when the commission determines that:

(a) a certificate holder has failed to proceed with reasonable diligence toward development and completion of a project; or

(b) a certificate holder has attempted to transfer or convey or has transferred or conveyed more than a two percent interest in the certificate of need or exemption certificate without prior written approval from the commission; or

(c) a certificate holder has attempted to transfer or convey or has transferred or conveyed more than a two percent interest in a certificate holder without prior written approval from the commission.

.040. *Written Order on Forfeiture.* Upon a finding of forfeiture, the commission shall issue a written order setting forth its decision and the findings of fact supporting the decision.

Doc. No. 782373

Enforcement

Violation of the Act 315.22.01

The Texas Health Facilities Commission has adopted Rules 315.22.01.010-.080 with changes from the text proposed in the January 31, 1978, issue of the *Texas Register* (3 TexReg 364).

Rule .010, because of a deletion made in the prior subchapter, was changed upon adoption. The words "or who fails to meet conditions of a commission order" was inserted after the words "exemption certificate" to expand the definition of a violation.

Rules .020 and .040 were also changed slightly. The commission determined that a sworn complaint was unnecessary for the purpose of reporting a suspected violation of the act.

Many comments were submitted regarding this section alleging that such rules were unnecessary. The commission has determined that such rules were necessary to inform the public of the method of reporting alleged violations and to provide procedures for enforcement of the act.

These rules are adopted under the authority of Article 4418(h), Texas Civil Statutes.

.010. Violation Defined. A person who initiates the development of a project without having a required certificate of need or an exemption certificate or who fails to meet the conditions of a commission order is in violation of the act and commission rules.

.020. Violation Reporting. A person may report an alleged violation of Article 4418(h), Vernon's Annotated Civil Statutes, the Health Planning and Development Act, or the rules of the commission by filing a written complaint with the commission.

.030. Violation Complaint. The written complaint of an alleged violation must set forth the name and address of the person alleged to be violating the act or commission rules, as well as facts and circumstances sufficient to acquaint the commission with the alleged violation. A person is not required to submit a fee with a written complaint.

.040. Commission Action on Complaint. The commission shall, within a reasonable period of time, notify the alleged violator of the complaint. The commission may request a written sworn response to the complaint from the alleged violator.

.050. Show Cause Hearing. The commission may, on its own motion or upon review of a sworn complaint and sworn response to the complaint, if any, order a show cause hearing to receive evidence relevant to the existence or nonexistence of violation of the act or the rules of the commission. The commission shall issue a written order directing the alleged violator to appear at a specific time, date, and place, and show cause why the alleged violator should not be found in violation of the act and/or commission rules. The written order shall identify the alleged violation.

.060. Parties to Show Cause Hearings. A person filing a complaint that is the subject of the show cause hearing shall be treated as an interested person and have the right to present evidence at the show cause hearing. The complainant shall not have the rights of a party.

.070. Public Notice of Show Cause Hearing. The commission shall publish in the *Texas Register* a notice of the show cause hearing.

.080. Commission Action. The commission may find, after review of the evidence received at the show cause hearing, that a violation of the act, and/or the commission rules has occurred. (Upon a finding of a violation, the commission may

issue a cease and desist order.) Upon finding a violation of the act, the commission may request the attorney general to institute legal action to enjoin the violation.

Doc. No. 782374

Province of Enforcement 315.22.02

The Texas Health Facilities Commission has adopted Rules 315.22.02.010-.030 with a minor change from the text proposed in the January 31, 1978, issue of the *Texas Register* (3 TexReg 364).

A minor change was made in Rule .010 to more correctly reflect the provisions of Article 4418(h). The words "an alleged" were placed before the word "violation" in the rule when adopted.

These rules are adopted under the of Article 4418(h), Texas Civil Statutes.

.010. Injunctive Relief. The attorney general may upon request of the commission institute a legal action to enjoin an alleged violation of this act.

.020. Agency Assistance to Violators Prohibited. No agency of the state or any of its political subdivisions may appropriate or grant funds or assist in any way a person, applicant, facility, or certificate holder who is or whose project is in violation of this act.

.030. Licensure of Violators Prohibited. No permit to build or license to operate a facility or license to provide a service may be issued for a project or to a person in violation of this act, by the state or a political subdivision or instrumentality of the state.

Doc. No. 782375

Miscellaneous Provisions

Time Periods 315.23.01

This rule is adopted under the authority of Article 4418(h), Texas Civil Statutes.

.010. Computing Time Periods. A time period established by commission rule or commission order shall begin on the first day after the event which invokes the time period. When the last day of the period falls on a Saturday, Sunday, or state or federal holiday, the period shall be extended to the next day which is not a Saturday, Sunday, or state or federal holiday. The time period shall expire at 5 p.m. of the last day of the computed period.

Doc. No. 782376

Records of the Commission 315.23.02

Pursuant to the authority of Article 4418(h), Texas Civil Statutes, the Texas Health Facilities Commission has adopted Rules 315.23.02.010-.030 with no changes from the text proposed in the January 31, 1978, issue of the *Texas Register* (3 TexReg 365).

.010. Open Records. All information collected, assembled, or maintained by the Texas Health Facilities Commission in connection with its transaction of official business is public information and available for public inspection and disclosure during normal business hours. An application and a request to become a party are public information and subject to public inspection and disclosure.

.020. Request for Confidentiality. A person who submits an application or request to become a party may request the commission to consider a portion or portions of the document or documents submitted to be confidential and thus exempt from public inspection and disclosure under Section 3(a) of the Open Records Act, Article 6252-17a, Vernon's Annotated Civil Statutes. Such request must identify the section or sections of the document or documents that are to be considered confidential. The request must include a written brief which presents factual and legal argument in support of exemption from public disclosure. An application or request to become a party which is submitted without a request for exemption from disclosure and without a written brief shall be considered, in all parts, open to public inspection. The chairman of the commission shall determine, upon examination of the written request and written brief, what section or sections of the document or documents submitted will be considered confidential and exempt from public inspection and disclosure. When required by the provisions of the Open Records Act, Article 6252-17a, Vernon's Annotated Civil Statutes, the chairman shall request an opinion from the Texas attorney general. The chairman of the commission will notify the person who has requested confidentiality of his decision within seven days after the submission of the request.

.030. Requests for Inspection of Records. A request to view copy of commission records must be made with reasonable prior notice in writing. A person requesting to view commission records must establish proper identification. The custodian of the records, the chairman of the Texas Health Facilities Commission, will upon written request produce information for inspection or duplication. If a record requested is in storage, the custodian shall notify the requesting party in writing and shall set an hour and date when the record will be available. No person shall remove an original record from the offices of the Texas Health Facilities Commission without prior written approval of the custodian of the records.

(a) The chairman, the chief administrative officer of the Texas Health Facilities Commission, is the custodian of the records of the Texas Health Facilities Commission.

(b) Any expense incurred in the reproduction, preparation, or retrieval of records shall be paid by the person requesting the record. The charge of such reproduction, preparation, and retrieval shall be in accord with the maximum charge established by the State Board of Control. The maximum charge for the first letter-size or legal-size copy of a document is 55 cents. The maximum charge for subsequent copies of the same document or of succeeding pages of said document is 15 cents per page. The commission may charge a lesser amount when the cost of reproducing said document or documents is less than the maximum charge established by the State Board of Control. The commission may, upon request, mail reproduced records to any person who so requests. If the commission mails said records, a charge for postage may be included in the charge for reproduction. The charge for reproduction of a document must include state and local

sales taxes of five percent. Postage is not subject to state and local sales tax. (Reference: Sales Tax Bulletin No. 5—Revised, Comptroller of Public Accounts.)

Doc. No. 782377

Interagency Contracts and Funds 315.23.03

The Texas Health Facilities Commission has adopted Rules 315.23.03.010-.020 with several changes from the text proposed in the January 31, 1978, issue of the *Texas Register* (3 TexReg 365).

The commission received a comment from the Department of Health which questioned the failure of the commission to specify in the rules that the commission was administratively attached to the Texas Department of Health. The commission, finding itself in agreement with the comment, inserted a provision into Rule .010 in the subchapter which related that the commission was administratively attached to the Texas Department of Health.

These rules are adopted under the authority of Article 4418(h), Texas Civil Statutes.

.010. Interagency Cooperation. For the purpose of instituting and carrying out commission functions, pursuant to Section 1.06 of the act, the commission will from time to time request information and assistance from those state agencies having functions relevant to commission matters. Further, and in accord with Section 2.01 of the act, the Texas Department of Health and the commission shall coordinate administrative responsibilities in order to avoid unnecessary duplication of facilities and services. The commission is administratively attached to the Texas Department of Health.

.020. Contracts and Receipts of Funds for Duties and Functions. For the purpose of carrying out its duties and functions, the commission may apply for, contract for, receive, and expend any appropriations or grants from the state, the federal government, or any other public source, subject to any limitations and conditions prescribed by legislative appropriation.

Doc. No. 782378

Annual Report of Commission 315.23.04

Pursuant to the authority of Article 4418(h), Texas Civil Statutes, the Texas Health Facilities Commission has adopted Rule 315.23.04.010 with no changes from the text proposed in the January 31, 1978, issue of the *Texas Register* (3 TexReg 366).

.010. Preparation and Submission. The commission will prepare and submit an annual report to the governor and the legislature, as prescribed in Section 2.06(4) of the act. The annual report will describe the commission's purpose, duties, and previous year's activities, which will include a financial statement.

Doc. No. 782379

Commission Publications 315.23.05

The Texas Health Facilities Commission has adopted Rules 315.23.05.010-.040 with several changes from the text proposed in the January 31, 1978, issue of the *Texas Register* (3 TexReg 366).

Rules .010 and .020 were altered slightly upon adoption. The words "weekly mailout" or "mailout" in both rules were changed to "weekly newsletter." This terminology more accurately defines the weekly publication detailing commission activity for mail circulation to subscribers.

These rules are adopted under the authority of Article 4418(h), Texas Civil Statutes.

.010. Weekly Newsletter. The commission shall prepare a weekly publication detailing commission activity for mail circulation to subscribers.

.020. Subscription Fees for Weekly Newsletter. The annual subscription fee for the weekly newsletter which contains an account of commission activity will be set according to prevailing duplication and postage rates by the commission. Subscription charges shall be accrued as of the first day of the month during which the fee is received and thereafter for a period of 12 months. All payment of fees and charges are to be made by check or money order. Subscription copies will be mailed beginning with the next regular mailing.

.030. Report of Applications Review. The commission at least once annually shall prepare a report of the reviews of exemption certificate, declaratory ruling, and certificate of need applications being conducted, and a report of the reviews of exemption certificate, declaratory ruling, and certificate of need applications completed by the commission. The report shall contain a general statement of the findings and decisions made in the course of the exemption certificate, declaratory ruling, and certificate of need application review process.

.040. Fee for Report of Applications Review. Any person may request a copy of the report of application reviews from the commission. The fee for a copy of the report of application reviews will be set according to prevailing duplication rates and postage rates. Payment of fees and charges are to be made by check or money order.

Doc. No. 782380

Health Systems Agency Rules of Review

Purpose and Definitions 315.24.01

Pursuant to the authority of Article 4418(h), Texas Civil Statutes, the Texas Health Facilities Commission has adopted Rules 315.24.01.010-.020 with no changes from the text proposed in the January 31, 1978, issue of the *Texas Register* (3 TexReg 366).

.010. Purpose. Section 3.08 of the act provides that a health systems agency (HSA) review of a certificate of need application must be conducted according to the rules promulgated by the commission. These rules are set forth to enable the orderly and effective receipt and review of written

comments transmitted to the commission not later than the 45th day after a certificate of need application is dated.

.020. Definitions. The definitions set forth in commission rules will be applicable to the HSA rules of review.

Doc. No. 782381

Application Review by Health Systems Agency 315.24.02

The Texas Health Facilities Commission has adopted Rules 315.24.02.010-.020 with several changes from the text proposed in the January 31, 1978, issue of the *Texas Register* (3 TexReg 366).

Considerable comment was submitted to the commission by health systems agencies concerning Rule .020 in this subchapter. The rule, in the second paragraph, provided that at least three members of the governing body should conduct hearings on certificate of need applications. Concern was expressed by the HSA's about their ability to obtain the presence of three members of the governing body at certificate of need review hearings. As a result, the commission reduced the requirement to one member of the governing body.

In adopting Rule .020, the commission also eliminated the last portion of Section (d), set out in parenthesis in the proposed rule publication. The commission determined, upon review of the federal statute, that such a provision was unnecessary.

These rules are adopted under the authority of Article 4418(h), Texas Civil Statutes.

.010. Schedule for Review. Upon receipt from the applicant of an application for a certificate of need, the health systems agency (HSA) shall determine whether to conduct a review. The HSA shall mail written notification of its intention to conduct a certificate of need review to the applicant, the Texas Health Facilities Commission, and all other persons as provided by law.

.020. Public Hearing. A public hearing must be held by the HSA when a request is timely filed with the HSA as provided by law. Hearings must be conducted by at least one member of the governing body. A staff member or a person not a staff member may be appointed to conduct the hearing in the presence of the requisite members of the governing body. The one member of the governing body shall:

- (a) keep and maintain a complete record of the hearing;
- (b) insure that all testimony is given under oath;
- (c) afford persons present at the public hearing a reasonable opportunity to ask questions of any person, including the HSA, that presents evidence at the hearing; and
- (d) prepare proposed written comments which contain specific proposed findings of fact that shall be presented to the governing body or, if designated, the executive committee.

Doc. No. 782382

Written Comments of Health Systems Agency 315.24.03

The Texas Health Facilities Commission has adopted Rules 315.24.03.010-.020 with changes from the text proposed in the January 31, 1978, issue of the *Texas Register* (3 TexReg 367).

Rule .010 was altered on adoption to be consistent with the previous subchapter. The last portion of the rule, set out in parenthesis, was deleted upon the determination that it was unnecessary.

Rule .020 was slightly altered. Section (b)(2) of the rule was modified upon adoption. The words "or facts upon which a reasonable person would not rely in the conduct of his affairs" were determined to be improper and could lead to the use of hearsay and unreliable facts by HSA's in making recommendations to the commission.

These rules are adopted under the authority of Article 4418(h), Texas Civil Statutes.

.010. Procedure. The health systems agency (HSA) may provide written comments to the commission not later than the 45th day after the dating of the application. Such written comments shall have been adopted at a meeting of the governing body of the HSA or if designated, the executive committee.

.020. Contents. The written comments must include:

- (a) the recommendation to approve or disapprove the proposed project;
- (b) findings which are drawn from facts presented on the application and are identified as to source. A finding of fact shall not be supported by:
 - (1) unsworn facts;
 - (2) facts beyond the personal knowledge of the person testifying; and
 - (3) facts which have not been available to the applicant at the hearing;
- (c) objections and rulings thereon;
- (d) staff memorandum submitted or considered;
- (e) any written comments of the governing board members who have conducted the hearing on the proposed project.

Doc. No. 782383

Criteria 315.24.04

Pursuant to the authority of Article 4418(h), Texas Civil Statutes, the Texas Health Facilities Commission has adopted Rules 315.24.04.010-.020 with no changes from the text proposed in the January 31, 1978, issue of the *Texas Register* (3 TexReg 376).

.010. Utilization of Commission Criteria. The health systems agency (HSA) shall utilize the criteria delineated in Section 3.10 of the act and in the commission rules in the review of applications for certificate of need.

.020. HSA Criteria. The HSA may promulgate and adopt criteria in addition to that required by the act and the commission rules. The formulation and application of additional criteria shall be consistent with the criteria provided in the act and in the commission rules and shall not be adopted without prior approval of the Texas Health Facilities Commission.

Issued in Austin, Texas, on April 3, 1978.

Doc. No. 782384

Melvin Rowland
Chairman
Texas Health Facilities Commission

Effective Date: April 24, 1978

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



This section includes summarized opinions in cases on appeal from administrative decisions of local, state, and federal governments and agencies. The section contains opinions of the U.S. Supreme Court, U.S. Circuit Courts of Appeals, U.S. District Courts, the Texas Supreme Court, and Texas Courts of Civil Appeals. Selected opinions of particular importance dealing with other than administrative appeals may also be included here from time to time. State court opinions are cited in the *Texas Lawyers' Weekly Digest*. Opinions from federal courts are cited in *The United States Law Week*.

Texas Supreme Court Westheimer ISD v. Brockett

On March 21, 1972, county school trustees entered an order creating Westheimer ISD. The order was appealed to the commissioner of education, who reversed the trustees' order. The commissioner's order was appealed to the State Board of Education, which reversed the commissioner's order and affirmed the trustees' order on October 7, 1972. During July, 1976, and August, 1976, the trustees were petitioned to reverse their 1972 order. On their refusal to grant a hearing, an appeal was made to the commissioner of education, who set a November 4, 1976, hearing. Travis County district court, after a hearing on the petition filed by Westheimer ISD on October 18, 1976, entered a permanent injunction prohibiting the commissioner from holding any hearing on the validity of Westheimer ISD and prohibiting the commissioner and intervening independent school districts from interfering with the operation of Westheimer ISD except by appeal from an injunction decision and any federal court action. The court of civil appeals reformed the trial court judgment to allow a challenge of the validity of the creation of Westheimer ISD in the appropriate district court.

Held: Court of civil appeals judgment reversed and trial court judgment affirmed.

The commissioner was without jurisdiction to hold a hearing on the validity of the order, which would in effect have constituted review of the 1972 final order of the State Board of Education, rather than a hearing on a new matter. There is no "material change of conditions" intervening since the final order of the board to justify changing it, because all allegations of changed conditions (set out in the opinion) are matters that could have been discovered and presented at the time of prior hearings. The evidence shows mere pendency of the hearing before the commissioner (even to determine the commissioner's jurisdiction) would cloud the validity of Westheimer ISD, impair its financial standing, and thwart its functioning. A hearing would undermine the efficacy of the board order, and the action of the trial court barring all further administrative hearings did not constitute wrongful interference by the courts into the administrative process.

It is too late as a matter of law for the parties to appeal the October 7, 1972, order of the Board of Education. The parties had a right under Section 11.13(c), Education Code, to appeal an order to the court within a reasonable time. No such appeal has ever been taken, and the parties in fact stipulated in 1973 in federal litigation that administrative procedures were exhausted and Westheimer ISD had become established. The trial court made an implied finding that the par-

ties had delayed unreasonably in seeking review, and the same rationale indicates it is too late to appeal to the courts. The record discloses no circumstances that might justify the 1978 appeal from the 1972 order. (The opinion contains extensive review of the authorities and of the facts of the case.) (15 TLWD 13, at 1)

Filed: March 29, 1978, Austin
Doc. No. 3C23

1st Court of Civil Appeals State ex rel Grimes County Taxpayers Association v. Texas Municipal Power Agency

Article 1435a (public and private entities can join to own and operate power plants as cotenants), Section 4a (public entities that were engaged in generating electrical energy on the effective date of the act can create a municipal power agency to own and operate a power plant and can obtain financing by issuing bonds), Revised Civil Statutes, is constitutional. The statute is not a local or special law and therefore does not violate Article 3, Section 56, Texas Constitution, since the classification created by the statute is reasonably related to the purpose of the law and the law operates equally on all within the class. The statute and ordinances passed thereunder to create a power agency (TMPA) is not unconstitutional as creating a "master city" in violation of the constitution. Municipal power agencies authorized by Section 4a fit the definition of a municipal corporation, and there is no specific or implied restriction on the legislation to create a government agency and body politic (here a municipal power agency). Further, Section 4a is a general law rather than a special law, and Article 3, Section 64, Texas Constitution, has no application. The title to the amendatory bill (Section 4a) is sufficient. Broad standards to guide municipal power agencies are sufficient to guide the entity, and there is no violation of Article 3, Section 52, Texas Constitution. Finally, the statute does not violate the equal protection clause of the 14th Amendment, U.S. Constitution.

The proceeds of bonds authorized for "electrical facilities" may be expended by a municipal power agency to purchase and produce lignite.

An information in the nature of a *quo warranto* proceeding will not lie to test the validity of a public corporation's contract that is a mere incident to the execution of a power conferred on it. *Quo warranto* cannot be used to enforce or forfeit a municipal contract. Violation of such a contract must be redressed, as all other ordinary wrongs are redressed, by usual remedies.

A power-sales contract providing that cities will make payments to TMPA in certain percentages if necessary to keep the required amount of funds in the bond fund of the agency, requiring cities to pay operating and maintenance expenses of TMPA if its funds are insufficient, and compelling each city, without further consideration, to permit TMPA to use its easements and streets is constitutional. Payments made by cities under various contracts were not grants, donations, or gratuities, but instead were payments made for services ren-

dered and to be rendered. These payments do not offend Article 3, Section 52, Texas Constitution.

An intervenor can adopt the pleadings of one of the original parties to the suit. (15 TLWD 13, at 3)

Filed: March 2, 1978, Houston
Doc. No. 3C24

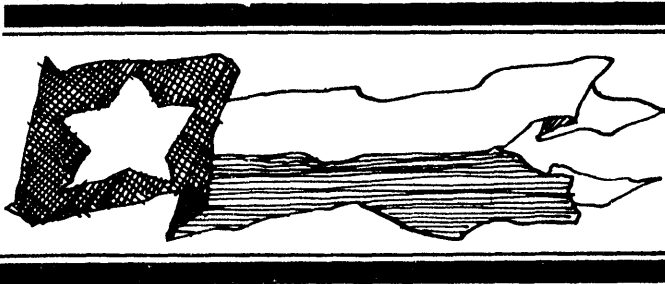
2nd Court of Civil Appeals

Cole v. Texas Employment Commission

The plaintiff filed an appeal from the denial of unemployment compensation one day early, contrary to Article 5221b—4(i), Revised Civil Statutes, which provides for a suit within 10 days after the decision of the commission became final and not before.

Held: County court at law had jurisdiction. The potential jurisdiction of the trial court in which he prematurely filed his suit became vested (distinguished from potential) on the 11th day following the commission's ruling and decision, because nothing occurred through action of the commission or the plaintiff's former employer operative to effect a delayed vestment of the court's jurisdiction or of the plaintiff's qualification to proceed. The plaintiff became qualified as a party plaintiff on the 11th day. Subsequent acquisition of jurisdiction of the parties defendant having been acquired made of the case before the court in which the suit had been filed one ripe for its final adjudication. (15 TLWD 13, at 5)

Filed: February 23, 1978, Fort Worth
Doc. No. 3C26



3rd Court of Civil Appeals

U.S. v. Hahn

An appeal bond must be filed by the United States when it takes an appeal from a judgment of a Texas court. (15 TLWD 13, at 6)

Filed: March 1, 1978, Austin
Doc. No. 3C27

4th Court of Civil Appeals

Texas Alcoholic Beverage Commission v. Lancaster

The trial court did not acquire jurisdiction of the attempted appeal of a suit for a permanent injunction prohibiting the Alcoholic Beverage Commission from enforcing an order suspending the plaintiff's mixed beverage permit for 10 days because the plaintiff failed to file a motion for rehearing before the commission. An administrative decision becomes final and not appealable in the absence of a timely motion for rehearing; *i.e.*, a motion for rehearing is a prerequisite to an appeal under the Administrative Procedure Act. (15 TLWD 13, at 6)

Filed: March 1, 1978, San Antonio
Doc. No. 3C28

10th Court of Civil Appeals

Teacher Retirement System v. Neill

The wife did not have to obtain legislative consent to sue the defendant—Teacher Retirement System for an accumulated contribution in the husband's account with the defendant. The divorce judgment between the husband and wife had awarded all monies in the account to the wife. Because of the divorce judgment, the wife was the sole owner of the money. The state is not subjected to liability, nor are the state's property rights affected. (15 TLWD 13, at 5)

Filed: March 16, 1978, Waco
Doc. No. 3C25

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 Air Control Board

Thursday, April 13, 1978, 1:15 p.m. The Texas Air Control Board will meet with the Budget and Finance Committee at 8520 Shoal Creek Boulevard, Austin, to prepare the agency's budget request.

Additional information may be obtained from John B. Turney, 8520 Shoal Creek Boulevard, Austin, Texas 78758, telephone (512) 451-5711.

Filed: April 5, 1978, 1:37 p.m.
Doc. No. 782449

Texas Board of Architectural Examiners

Wednesday, April 26, 1978, 9:30 a.m., and Thursday, April 27, 9 a.m. The Texas Board of Architectural Examiners will meet in Suite H-117, 5555 North Lamar, Austin. As summarized the agenda will include: joint meeting with board of engineers; consideration of rules and regulations; reinstatement of licenses; financial statement; budget submission; 1978 renewals; reciprocal license applications; professional examination; qualifying test; and discussion of legislation.

Additional information may be obtained from Philip D. Creer, Suite H-117, 5555 North Lamar, Austin, Texas 78751, telephone (512) 458-1363.

Filed: April 4, 1978, 2:31 p.m.
Doc. No. 782409

Texas Commission on the Arts and Humanities

Thursday, April 6, 1978, 10 a.m. The Administrative Committee of the Texas Commission on the Arts and Humanities met in emergency session at 1801 Lavaca, Austin, to discuss the following items, as summarized: actual

travel for February and March; travel plans for April, May, and June; sign-out log; activity records; financial statement for February, 1978; status of furniture; status of Main Lafrentz recommendations; Operational Statement No. 13, travel; agency work plan; and program budget adjustment.

Additional information may be obtained from Bob E. Bradley, P.O. Box 13406, Austin, Texas 78711, telephone (512) 475-6593.

Filed: April 4, 1978, 10:36 a.m.
Doc. No. 782392

Thursday, April 6, 1978, 10 a.m. The Administrative Committee of the Texas Commission on the Arts and Humanities made an emergency amendment to the agenda of a meeting held at 1801 Lavaca, Austin. The commission did not consider Operational Statement No. 13 (Travel), Item No. 9, as summarized.

Additional information may be obtained from Bob E. Bradley, P.O. Box 13406, Austin, Texas 78711, telephone (512) 475-6593.

Filed: April 4, 1978, 2:18 p.m.
Doc. No. 782407

Battleship Texas Commission

April 21, 1978, 6:30 p.m. The Battleship Texas Commission will meet at 1600 River Oaks Boulevard, Houston, to discuss the following items: new work on ship; report on progress of repairs; review of state audit report; and new business.

Additional information may be obtained from Helen Smith, 3461 West Alabama, Houston, Texas 77027, telephone (713) 965-0838.

Filed: April 5, 1978, 11 a.m.
Doc. No. 782444

Texas Commission for the Deaf

Friday, April 14, 1978, 6 p.m. The Texas Commission for the Deaf will meet in Suite 213 (conference room adjacent to the TCD offices), 3724 Jefferson, Austin, to discuss the 1980-81 biennial budget and long range commission goals (possible vote).

Additional information may be obtained from Joan Boerger Fowler, Suite 213, 3724 Jefferson, Austin, Texas 78731, telephone (512) 475-2492.

Filed: April 4, 1978, 10:27 a.m.
Doc. No. 782390

Texas Deepwater Port Authority

Friday, April 14, 1978, 9:30 a.m. The Board of Commissioners of the Texas Deepwater Port Authority will meet in the Houston Lighting and Power Building, 202 Route 332 West, Clute. The commissioners will consider adoption of a plan for preparation and submission of an application for a federal deepwater port license; consider budget and administrative matters; and consider the need for obtaining professional financial advice.

Additional information may be obtained from David E. Brown, 607 Nueces Street, Austin, Texas 78701, telephone (512) 476-4321.

Filed: April 6, 1978, 8:54 a.m.
Doc. No. 782464

Texas Education Agency

Saturday, April 8, 1978, 8:30 a.m. The State Board of Education made an emergency addition to the agenda of a meeting held in the board room, 150 East Riverside Drive, Austin. The agenda included a notice of public hearing on update for fiscal year 1979 of Texas' five-year plan for vocational education (fiscal year 1978-1982).

Additional information may be obtained from M. L. Brockette, 201 East 11th Street, Austin, Texas 78701, telephone (512) 475-3271.

Filed: April 4, 1978, 3:50 p.m.
Doc. No. 782411

Texas Energy Advisory Council

Thursday, April 6, 1978, 9:30 a.m. The Committee on the Food and Agriculture Act of 1977 of the Texas Energy Advisory Council met in emergency session in the Senate Finance Committee Room, State Capitol, Austin. The agenda included a briefing on Section 1420 of the Food and Agriculture Act of 1977, Public Law 95-113; and discussion of the potential for submitting a Texas preproposal pursuant to Section 1420 of the Food and Agriculture Act of 1977, Public Law 95-113.

Additional information may be obtained from Marla Stevens, 7703 North Lamar, Austin, Texas 78752, telephone (512) 475-5588.

Filed: April 4, 1978, 10:17 a.m.
Doc. No. 782389

Office of the Governor

Friday, April 14, 1978, 9 a.m. The Criminal Justice Division Advisory Board of the Governor's Criminal Justice Division will meet in Room 118, Stephen F. Austin Building, Austin. As summarized, the board will convene for approval

of February minutes; subcommittees will convene to consider grant applications. The board will reconvene to consider grant applications and new business.

Additional information may be obtained from Willis Whatley, 411 West 13th Street, Austin, Texas 78701, telephone (512) 475-6065.

Filed: April 4, 1978, 2:33 p.m.
Doc. No. 782408

Texas Department of Health

Tuesday, April 18, 1978, 9:30 a.m. The Water Hygiene Division of the Texas Department of Health will meet in the first floor auditorium, 1100 West 49th Street, Austin, to consider adoption of new rules for issuing certificates to qualified persons to install, exchange, service, or repair residential water treatment facilities. These rules are being proposed to fulfill requirements established by the 1977 amendments to the Texas Plumbing License Law (Senate Bill 147, 65th Legislature, amending Article 6243-101, Texas Civil Statutes) that such certificates be issued only to persons with minimum qualifications based on education, experience, and training in water hygiene. The rules (301.83.02.001-.006) cover definitions, classes of certificates, training, examinations, and procedures to apply for and renew certificates.

Additional information may be obtained from Charles K. Foster, 1100 West 49th Street, Austin, Texas 78756, telephone (512) 458-7533.

Filed: April 3, 1978, 4:19 p.m.
Doc. No. 782332

Texas Health Facilities Commission

Thursday, April 6, 1978, 10 a.m. The Texas Health Facilities Commission made an emergency addition to the agenda of a meeting held in Suite 305, Jefferson Building, 1600 West 38th Street, Austin. The commission considered an application for reissuance of certificate of need by Upton County Convalescent Center, McCamey, as summarized.

Additional information may be obtained from William D. Darling, P.O. Box 15023, Austin, Texas 78761, telephone (512) 475-6940.

Filed: April 5, 1978, 12:43 p.m.
Doc. No. 782446

Thursday, April 13, 1978, 10 a.m. The Texas Health Facilities Commission will meet in Suite 305, Jefferson Building, 1600 West 38th Street, Austin. As summarized, the commission will consider the following applications:

- Rosewood General Hospital, Houston—certificate of need
- Starr County Memorial Hospital, Rio Grande City—exemption certificate
- S.P.J.S.T. Rest Home No. 1, Taylor—exemption certificate
- Independent Living Training Residence, San Angelo—declaratory ruling

St. Joseph Hospital, Bryan—exemption certificate
 Nephrology Associates, Inc., Houston, and Bellaire General Hospital, Houston (cosponsors)—certificate of need
 Home Help Care, Inc., Lubbock—certificate of need
 Lutheran General Hospital, San Antonio—certificate of need
 Medical Plaza Hospital, Fort Worth—exemption certificate
 Valley Hemodialysis Center, Inc., McAllen—exemption certificate
 Memorial Hospital of Garland, Garland—exemption certificate
 Spring Hills Nursing Home, San Antonio—administrative order
 Valley Hemodialysis Center, Inc., Brownsville—exemption certificate

Additional information may be obtained from William D. Darling, P.O. Box 15023, Austin, Texas 78761, telephone (512) 475-6940.

Filed: April 5, 1978, 12:43 p.m.
 Doc. No. 782447

Thursday, April 20, 1978, 10 a.m. The Texas Health Facilities Commission will meet in Suite 305, Jefferson Building, 1600 West 38th Street, Austin. As summarized, the commission will consider the following applications:

Lampasas Nursing Home, Inc., Lampasas—certificate of need
 Shelby County Home Health-Home Care, Inc., Center—certificate of need
 Denton State School, Denton—certificate of need
 Wichita General Hospital, Wichita Falls—certificate of need
 Baytown Health Center, Baytown—certificate of need
 Wilson N. Jones Memorial Hospital, Sherman—certificate of need
 M. D. Anderson Hospital and Tumor Institute, Houston—certificate of need
 Heritage Manor of Beaumont, Beaumont—certificate of need
 Settegast Health Center, Houston—certificate of need
 Ben Taub General Hospital, Houston—certificate of need
 David Granberry Memorial Hospital, Naples—exemption certificate

Additional information may be obtained from William D. Darling, P.O. Box 15023, Austin, Texas 78761, telephone (512) 475-6940.

Filed: April 5, 1978, 12:43 p.m.
 Doc. No. 782448

Texas Historical Commission

Tuesday, April 18, 1978, 10 a.m. The Texas Antiquities Committee of the Texas Historical Commission will meet in Room 119, Stephen F. Austin Building, Austin. The agenda will include consideration of the following: summer field work; anomaly engines; Hueco tanks; state archeological

landmarks; U.S.S. Hatteras; brick streets in Stephenville; TAC exhibit; Little Campus; proceedings of Conference on Underwater Archaeology; Lake Bob Sandlin; status of reports; review of field work; rules of practice and procedure; and personnel matters (executive session).

Additional information may be obtained from Susan A. Osterhaus, 105 West 16th Street, Austin, Texas 78701, telephone (512) 475-6328.

Filed: April 6, 1978, 10:16 a.m.
 Doc. No. 782465

State Board of Insurance

Monday, April 17, 1978, 2 p.m. The Commissioner's Hearing Section of the State Board of Insurance will conduct a hearing in Room 343, 1110 San Jacinto, Austin, to consider disciplinary action regarding Paul Edward Jones, Hurst, for failure to remit premiums and the failure to respond to board inquiries (pursuant to Article 21.07, Section 10(a)(4), (5), (6), and (9), and Article 21.07-1, Section 12(a)(4), (5), (6), and (10), Texas Insurance Code).

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto, Austin, Texas 78786, telephone (512) 475-4353.

Filed: April 3, 1978, 12:38 p.m.
 Doc. No. 782322

Monday, April 24, 1978, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will conduct a hearing in Room 343, 1110 San Jacinto, Austin, to determine compliance of Diversified Consultants, Inc., Dallas, with Commissioner's Supervision Order No. 78-0639, dated February 21, 1978.

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto, Austin, Texas 78786, telephone (512) 475-4353.

Filed: April 3, 1978, 12:38 p.m.
 Doc. No. 782323

Tuesday, April 25, 1978, 10 a.m. The Commissioner's Hearing Section of the State Board of Insurance will conduct a hearing in Room 343, 1110 San Jacinto, Austin, to consider a charter amendment for Petroleum Casualty Company, Houston, to decrease capital stock, pursuant to Texas Insurance Code Annotated, Article 8.23.

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto, Austin, Texas 78786, telephone (512) 475-4353.

Filed: April 3, 1978, 12:38 p.m.
 Doc. No. 782324

Texas Commission on Jail Standards

Wednesday, April 5, 1978, 12:30 p.m. The Subcommittee on Variance Requests of the Texas Commission on Jail Standards met in emergency session in Room 101, Texas Law Center, 1414 Colorado, Austin. Applications for variances for the following counties were considered: Eastland, Goliad, Gray, Harris, Lubbock, Madison, Martin, Mills, Starr, Stonewall, El Paso, and Milam. Notices were originally posted for a meeting of the commission with a full agenda and a quorum (five members) was expected; however, commission member Heard could not attend the meeting. Four commissioners (Brindley, McMullen, Uhr, and Suttle) were appointed by the chairman to hear the variance requests and make recommendations to the full commission at a future meeting.

Additional information may be obtained from Steve Suttle, Suite 500, 1414 Colorado, Austin, Texas 78701, telephone (512) 475-2716.

Filed: April 5, 1978, 10:24 a.m.
Doc. No. 782443

Merit System Council

Monday, April 17, 1978, 3 p.m. The Merit System Council will meet in Room 507, Brown Building, Austin, to conduct an appeals hearing.

Additional information may be obtained from Leo F. Brockmann, P.O. Box 1389, Austin, Texas 78767, telephone (512) 477-9665.

Filed: April 5, 1978, 8:49 a.m.
Doc. No. 782421

Natural Resources Council

Wednesday, April 26, 1978, 9:30 a.m. The Advisory Committee of the Natural Resources Council has rescheduled a meeting to be held in the ground floor lecture hall, World Trade Center, 1520 Texas Avenue, Houston. This meeting was originally scheduled for April 11.

The agenda will include the following: gathering information on various coastal issues; testimony from expert witnesses and the general public on coastal natural resources issues identified in the NRC report: "Preliminary Report: Texas Coastal Natural Resource Issues", dated March 1, 1978; appointment of subcommittees and completion of other organizational matters; and tour of Port of Houston. No decisions or recommendations on coastal issues will be made at this meeting.

Additional information may be obtained from Frank Sheffield, Room 204, 106 East 9th Street, Austin, Texas 78701, telephone (512) 475-7927.

Filed: April 6, 1978, 1:15 p.m.
Doc. No. 782466

Board of Pardons and Paroles

Monday through Thursday, April 17-20, 1978, 9 a.m. daily. The Board of Pardons and Paroles will meet in Room 711, Stephen F. Austin Building, Austin. As summarized, the board will review cases of inmates for parole consideration; act on emergency reprieve requests and other acts of executive clemency; review reports regarding persons on parole and procedures affecting the day-to-day operation of support staff; review and initiate needed rule changes relating to general operation, executive clemency, parole, and all hearings conducted by the agency; and take action upon gubernatorial directives.

Additional information may be obtained from Ken Casner, Room 711, Stephen F. Austin Building, Austin, Texas 78701, telephone (512) 475-3363.

Filed: April 4, 1978, 8:59 a.m.
Doc. No. 782385

Wednesday, April 19, 1978, 9 a.m. The Board of Pardons and Paroles will meet in the Diagnostic Unit, Texas Department of Corrections, Huntsville. A parole panel, consisting of members of the Board of Pardons and Paroles and members of the Texas Parole Commission, will conduct parole violation hearings.

Additional information may be obtained from Ken Casner, Room 711, Stephen F. Austin Building, Austin, Texas 78701, telephone (512) 475-3363.

Filed: April 4, 1978, 8:59 a.m.
Doc. No. 782386

Texas Parks and Wildlife Department

Thursday, May 4, 1978, 9 a.m. The Parks Division of the Texas Parks and Wildlife Department will conduct a public hearing in Room A-100, Headquarters Building, 4200 Smith School Road, Austin, regarding a request for a seismograph permit by Mitchell Energy Corporation across Galveston State Park, as summarized.

Additional information may be obtained from John Scott, 4200 Smith School Road, Austin, Texas 78744, telephone (512) 475-4995.

Filed: April 5, 1978, 3:57 p.m.
Doc. No. 782461

Thursday, May 4, 1978, 2 p.m. The Parks Division of the Texas Parks and Wildlife Department will meet in Room A-100, Headquarters Building, 4200 Smith School Road, Austin. As summarized, the division will consider the construction of two fishing piers and approximately 600 feet of shore erosion control measures at Inks Lake State Park, Burnet County.

Filed: April 3, 1978, 4:47 p.m.
Doc. No. 782333

Texas State Board of Pharmacy

Thursday, April 6, 1978, 9 a.m.-5 p.m., and Friday, April 7, 9 a.m.-Noon. The Texas State Board of Pharmacy cancelled an emergency meeting scheduled to be held at the Shamrock Hilton, South Main at Holcombe Boulevard, Houston. As summarized, the agenda of this business meeting was to include new and old business; discussion of request for information on drafting/amending pharmacy laws; executive director's report; board committee reports; and consideration of prospective regulations, and board calendar.

Additional information may be obtained from Jim Riley, Suite 1121, Southwest Tower, 211 East 7th Street, Austin, Texas 78701, telephone (512) 478-9827.

Filed: April 3, 1978, 1:40 p.m.
Doc. No. 782329

Texas Board of Polygraph Examiners

Tuesday through Sunday, April 18-23, 1978, 9 am.-4 p.m. The Texas Board of Polygraph Examiners will meet in the Zales Building, 3000 Diamond Park, Dallas. As summarized, the agenda will include: licensing examinations; action upon applications for internship and reciprocity; discussion of investigative experience of Richard Weinert; discussion of application of Mackey and report on this matter from William Fisher; report from William Fisher on investigation by Mike Barton on truth verification; discussion of complaint on Gene Scott; discussion of John Spoonmore complaint; administrative hearing for William C. Sinclair on complaint of Thomas Brown of Stop & Go Markets; discussion of proposals by Jim McBride on internships and reciprocities; discussion of proposal by William Taylor for changing the manner in which the licensing examination is administered; consideration of proposal by Joe Gonzalez of legal aspects of interpretation of five years of consecutive investigative experience; discussion of opinion requested by Joe Gonzalez on possibility of tape underwriting certain board expenses; discussion of various proposals by Otis Campbell, including proposal passed in El Paso; and other business that may come before the board.

Additional information may be obtained from Henry L. Cauty, Suite 502, 7701 North Lamar, Austin, Texas 78752, telephone (512) 454-3593.

Filed: April 4, 1978, 4:46 p.m.
Doc No. 782418

Texas State Board of Registration for Professional Engineers

Wednesday through Friday, April 26-28, 1978, 8:30 a.m. The Texas State Board of Registration for Professional Engineers will meet in Room 200, John H. Reagan Building,

1400 Congress, Austin. The agenda will include: reports from board members and staff; review of enforcement program; discussion with Architectural Board members regarding problems common to both boards; interviews with applicants for licensure; review of applications for registration; election of board officers for 1978-79; licensing of engineers; consideration for approval of proposed Rules 383.01.07.001 (Examinations) and 383.01.09.004 (Registration); and other business which may be brought before the board.

Additional information may be obtained from Donald C. Klein, Room 200, John H. Reagan Building, 1400 Congress, Austin, Texas 78701, telephone (512) 475-3141.

Filed: April 5, 1978, 2:20 p.m.
Doc. No. 782450

Public Utility Commission of Texas

Wednesday, April 5, 1978, 1:30 p.m. The Public Utility Commission of Texas made an emergency change in time for a hearing held in Suite 400N, 7800 Shoal Creek Boulevard, Austin, regarding an application of Gulf States Utilities for a rate increase (Docket No. 1528), as summarized. The time was changed from 9 a.m. to 1:30 p.m.

Additional information may be obtained from Roy J. Henderson, Suite 400N, 7800 Shoal Creek Boulevard, Austin, Texas 78757, telephone (512) 458-6111.

Filed: April 5, 1978, 8:54 a.m.
Doc. No. 782420

Tuesday, April 25, 1978, 9:30 a.m. The Public Utility Commission of Texas will meet in Suite 400N, 7800 Shoal Creek Boulevard, Austin, to conduct a pre-hearing conference regarding applications of H & J Water Company for certificates of convenience and necessity to provide water utility service within Harris County (Docket No. 898), 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: April 4, 1978, 3:50 p.m.
Doc. No. 782412

Tuesday, May 9, 1978, 9 a.m. The Public Utility Commission of Texas will meet in Suite 400N, 7800 Shoal Creek Boulevard, Austin, to conduct an open meeting to consider amendments to the commission's substantive and procedural rules, as summarized in the agenda.

Additional information may be obtained from Roy J. Henderson, Suite 400N, 7800 Shoal Creek Boulevard, Austin, Texas 78757, telephone (512) 458-6111.

Filed: April 4, 1978, 2:18 p.m.
Doc. No. 782406

Texas Rehabilitation Commission

Friday, April 7, 1978, 10 a.m. The Texas Rehabilitation Commission met in emergency session at 118 East Riverside Drive, Austin. The commission considered the appointment of a new commissioner in executive session.

Additional information may be obtained from Herbert A. Underwood, 118 East Riverside Drive, Austin, Texas 78704, telephone (512) 447-0236.

Filed: April 3, 1978, 12:38 p.m.
Doc. No. 782325

State Securities Board

Monday, April 17, 1978, 9 a.m. The Securities Commissioner of the State Securities Board will conduct a hearing in Room 709, Lyndon B. Johnson Building, Austin, for the purpose of determining whether the registration of Marshall Ramsey-Horton, Jr., as a securities salesman for David Norwood Snider (doing business as Arlington Interurban Securities) should be revoked or suspended.

Additional information may be obtained from Patrick Lanier, Room 709, LBJ Building, Austin, Texas 78701, telephone (512) 475-4561.

Filed: April 5, 1978, 3:03 p.m.
Doc. No. 782451

Texas State Board of Examiners in Social Psychotherapy

Saturday, April 15, 1978, 1:30 p.m. The Texas State Board of Examiners in Social Psychotherapy will meet in the sixth floor conference room, Texas Department of Health, 1100 West 49th Street, Austin. As summarized, the agenda will include: consideration of applications for examination; application screening committee reports; requests for reciprocity; consideration of cancellation of certain licenses; matters pertaining to the licensure and regulation of social psychotherapists; consideration of 1978-79 expenditures and proposed budget for 1980-81; and report from Examination-Development Committee.

Additional information may be obtained from Daniel Boone, 1100 West 49th Street, Austin, Texas 78756, telephone (512) 458-7511.

Filed: April 5, 1978, 3:54 p.m.
Doc. No. 782460

Texas State Soil and Water Conservation Board

Thursday, April 20, 1978, 8 a.m. The Texas State Soil and Water Conservation Board will meet in Room 1006, First National Building, Temple, to consider the following items: district director appointments; personnel matters; review of

items for the development of the 1980 and 1981 fiscal years budget; 208 activities; Public Law 566 watershed activities; discussion of meetings pertaining to Resource Conservation Act; and other related activities.

Additional information may be obtained from A. C. Spencer, 1002 First National Building, Temple, Texas 76501, telephone (817) 773-2250.

Filed: April 5, 1978, 9:32 a.m.
Doc. No. 782423

State Board of Examiners for Teacher Education

Friday, April 14, 1978, 8:30 a.m. The State Board of Examiners for Teacher Education will meet in the sixth floor conference room, Southwest Towers Building, 211 East 7th Street, Austin. The agenda will include: report on Texas teacher supply and demand; operating procedure for approval of teacher education institutions; report of College/University Liaison Committee; attitudes of institutions approved for teacher education toward placing certification information on student transcripts; discussion of circumstances relating to Wiley College; proposal for bilingual education endorsement; consideration of date for summer 1978 meeting; college/university approvals; and other business.

Additional information may be obtained from Tom Walker, 201 East 11th Street, Austin, Texas 78701, telephone (512) 475-3236.

Filed: April 4, 1978, 3:50 p.m.
Doc. No. 782410

Advisory Council for Technical-Vocational Education in Texas

Thursday, April 27, 1978, 1:30 p.m., and Friday, April 28, 8:30 a.m. The Advisory Council for Technical-Vocational Education in Texas will meet in the Travis Room, Ramada Inn North, 9220 North Interregional Highway, Austin. As summarized, the agenda for April 27 includes: presentation by student representative of the Texas Association of Future Farmers of America; report on activities of the Legislative Commission on Financing Public Education and Vocational Education Financing in Texas; and review of annual state plan for vocational education. On April 28, the council will receive an overview of vocational homemaking education in Texas and hear reports from the council committees on their program of work and activities.

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

Filed: April 4, 1978, 10:09 a.m.
Doc. No. 782387

Texas Eastern University

Wednesday, April 12, 1978, 2:30 p.m. (committee meetings at 1:30 p.m.) The Board of Regents of Texas Eastern University will meet at 3900 University Boulevard, Tyler, to consider the following items: election of officers and reports from standing committees to include appointment of directors and ratification of officers of TEU Educational Foundation, Inc.; appointment of the TEU president and reappointment of vice presidents for academic affairs and for fiscal affairs; personnel; construction progress; schematic design of library; contract changes; architectural statements; president's report and recommendations including small class, faculty workload, and student enrollment for spring semester 1978; utilization of Roberts School facilities; approval of 1978-79 university catalog; Texas community/junior college scholarships; approval of graduates for 1978 commencement; requests to educational foundation for fine arts scholarships, graduate assistantships, and short term student loan fund; social security referendum; and any other business that may properly come before the board concerning the affairs of the university.

Additional information may be obtained from James H. Stewart, Jr., Texas Eastern University, 3900 University Boulevard, Tyler, Texas 75701, telephone (214) 566-1471.

Filed: April 3, 1978, 1:28 p.m.
Doc. No. 782327

Texas Tech University

Friday, April 7, 1978, 8:30 and 11 a.m. The Board of Regents of Texas Tech University met in the Board of Regents' Suite, Administration Building, Texas Tech University campus, Lubbock, to hear reports and take action on the following items, as summarized: items for ratification; public affairs; development and university relations; finance; academic and student affairs; and campus and building.

Additional information may be obtained from Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, telephone (806) 742-2161.

Filed: April 3, 1978, 2:46 p.m.
Doc. No. 782330

Friday, April 7, 1978, 9:15 a.m. The Board of Regents of the Texas Tech University School of Medicine met in the Board of Regents' Suite, Administration Building, Texas Tech University campus, Lubbock, to hear reports and take action on the following items, as summarized: items for ratification; academic and student affairs; finance; and building.

Additional information may be obtained from Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, telephone (806) 742-2161.

Filed: April 3, 1978, 2:46 p.m.
Doc. No. 782331

Texas Water Commission

Friday, April 14, 1978, 10 a.m. The Texas Water Commission will conduct a hearing in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. As summarized, the commission will receive evidence to determine whether an order should be issued by the commission (pursuant to Section 26.019 of the Texas Water Code) to Browning-Ferris Industries Chemical Services, Inc., Nederland, concerning the operation of its Class I, Class II, and Class III solid waste disposal site in Jefferson County.

Additional information may be obtained from Patricia Finn-Walker, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-7845.

Filed: April 4, 1978, 11:57 a.m.
Doc. No. 782401

Regional Agencies

Meetings Filed April 3, 1978

The Ark-Tex Council of Governments, TAPAC Technical Subcommittee, will meet in the conference room, 401 State First National Bank Building, Texarkana, Arkansas, on April 11, 1978, at 1:30 p.m. The Texarkana Areawide Planning Advisory Committee will meet in the council chambers, Arkansas City Hall, Texarkana, Arkansas, on April 13 at 7 p.m. The Ark-Tex Council of Governments will meet in the Texarkana Room, Texarkana National Bank, Texarkana, Texas, on April 14 at 2 p.m. Further information may be obtained from Laura Jacobus, P.O. Box 5307, Texarkana, Texas 75501, telephone (501) 774-3481.

The Canadian River Municipal Water Authority, Board of Directors, will meet at K-Bob's Restaurant, 3400-C Olton Road, Plainview, on April 12, 1978, at 10:30 a.m. Further information may be obtained from John C. Williams, P.O. Box 99, Stanford, Texas 79078, telephone (806) 865-3326.

The Copano Bay Soil Conservation, District No. 329, will meet in the Club Room, Refugio City Hall, Refugio, on April 13, 1978, at 8 a.m. Further information may be obtained from Jim Wales, Drawer 340, Refugio, Texas 78377, telephone (512) 526-2334.

The East Texas Council of Governments, Board of Directors, met in the Blue Room, Allied Citizens Bank Building, Kilgore, on April 6, 1978, at 7 p.m. Further information may be obtained from Don R. Edmonds, fifth floor, Allied Citizens Bank Building, Kilgore, Texas, telephone (214) 984-8641.

The San Antonio River Authority, Employees Retirement Trust, Board of Trustees, will meet in the conference room, 100 East Guenther, San Antonio, on April 12, 1978, at 2 p.m. Further information may be obtained from Fred N. Pfeiffer, P.O. Box 9284, Guilbeau Station, San Antonio, Texas 78204, telephone (214) 227-1373.

The Trinity River Authority of Texas, Legal Committee, will meet in the Executive Conference Room, 2723 Avenue E

East, Arlington, on April 11, 1978, at 10 a.m. Further information may be obtained from Geri Elliott, P.O. Box 5768, Arlington, Texas 76011, telephone (817) 461-3151.

The Tri-Region Health Systems Agency, Plan Development Committee, will meet in Room 209, Abilene Civic Center, North 6th and Pine Streets, Abilene, on April 13, 1978, at 11:30 a.m. The Project Review Committee will meet in Room 210 at 11:30 a.m. The Executive Committee will meet in Room 205 at noon. The Board of Directors will meet in Room 207 at 1:30 p.m. Further information may be obtained from Michal Hubbard, Ken Cooley, or Vic Rhoads, 2642 Post Oak Road, Suite B, Abilene, Texas 79605, telephone (915) 698-9481.

Doc. No. 782326

Meetings Filed April 4, 1978

The Brazos Valley MH/MR Center, Executive Committee, Board of Trustees, met in the board room, second floor, 202 East 27th Street, Bryan, on April 4, 1978, at 4 p.m. Further information may be obtained from Linda S. Davis, Ph.D., 202 East 27th Street, Bryan, Texas 77801, telephone (713) 779-2000.

The Gulf Coast Regional MH/MR Center, Board of Trustees, will meet in the board room, First Hutchings-Sealy National Bank, Galveston, on April 12, 1978, at 7:30 p.m. Further information may be obtained from D. S. Tramonte, Jr., P.O. Box 2490, Galveston, Texas 77553, telephone (713) 763-2373.

The San Antonio River Authority, Board of Directors, will meet in the conference room, 100 East Guenther, San Antonio, on April 12, 1978, at 2 p.m. Further information may be obtained from Fred N. Pfeiffer, P.O. Box 9284, Guilbeau Station, San Antonio, Texas 78204, telephone (512) 227-1373.

Doc. No. 782393

Meetings Filed April 5, 1978

The Austin-Travis County MH/MR, Personnel Committee, met at 1430 Collier, Austin, on April 5, 1978, at noon. Further information may be obtained from Dr. Larry J. Miller, 1430 Collier, Austin, Texas 78704, telephone (512) 447-4141.

The Capital Area Planning Council, Executive Committee, will meet at No. 1 Woodcreek, Woodcreek Resort, Wimberley, on April 14, 1978, at 9:45 a.m. Further information may be obtained from Richard G. Bean, Suite 400, 611 South Congress, Austin, Texas 78704.

The Central Texas Health Systems Agency, Public Hearing/Meeting Division will meet at the Ponderosa Motor Inn, 2625 South 31st, Temple, on April 19, 1978, at 7 p.m. Further information may be obtained from Irwin R. Salmanson, Suite 140 East, 1106 Clayton Lane, Austin, Texas 78723, telephone (512) 458-9161.

The Education Service Center, Region XII, Administrative Division, will meet at 3730 Franklin, Waco, on April 20, 1978, at 7 p.m. Further information may be obtained from Mack W. Mullins, 401 Franklin Avenue, Waco, Texas 76703, telephone (817) 756-7497.

The Golden Crescent Subarea Advisory Council, Nominating Committee, will meet in Room 106, Allied Health Building, Victoria College, Victoria, on April 12, 1978, at 7:30 p.m. Further information may be obtained from Paul G. Vallaret, Texas A&I University, Station 1, Box 2378, Kingsville, Texas 78363, telephone (512) 595-5545.

The Houston-Galveston Area Council, Environmental Planning Division, will meet at 3701 West Alabama, Houston, on April 12, 1978, at 2 p.m. The Areawide Planning Advisory Committee, will meet at 3701 West Alabama, Houston, on April 14, at 1:30 p.m. Further information may be obtained from Nick Aschliman, P.O. Box 22777, Houston, Texas 77027, telephone (713) 627-3200.

Doc. No. 782422

Meetings Filed April 6, 1978

The Education Service Center, Region VII, Board of Directors, met at Johnny Casey's Restaurant, Highway 80, Longview, on April 6, 1978, at noon. Further information may be obtained from Von Rhea Beane, 818 East Main, Kilgore, Texas 75662, telephone (214)984-3071.

The Middle Rio Grande Development Council, A-95 Project Review Committee, will meet at Zavala County Courthouse, Crystal City, on April 12, 1978, at 2:30 p.m. Further information may be obtained from Elia G. Santos, P.O. Box 1461, Del Rio, Texas 78840, telephone (512) 775-1581.

The Nueces River Authority, Board of Directors, will meet at the Civic Center Reading Room, 300 East Main Street, Uvalde, on April 20, 1978, at 11 a.m. Further information may be obtained from John W. White, P.O. Box 349, Uvalde, Texas 78801, telephone (512) 278-6810.

The Panhandle Regional Planning Commission, Panhandle Health Systems Agency, will meet at Texas Tech University Regional Academic Health Center, 1400 Wallace Boulevard, Amarillo, on April 13, 1978, at 7:30 p.m. Further information may be obtained from E. L. Melin, 730 Amarillo Building, Amarillo, Texas 79105, telephone (806) 372-3381.

The Permian Basin Regional Planning Commission, Board of Directors, will meet in the conference room, Air Terminal Office Building, Midland, on April 12, 1978, at 1:30 p.m. Further information may be obtained from Pam Hammit, P.O. Box 6391, Midland, Texas, telephone (915) 563-1061.

The South Plains Association of Governments, Board of Directors, General Assembly, will meet in Room N101, Banquet Hall, Lubbock Memorial Civic Center, Lubbock, on April 11, 1978, at 9:30 a.m. Further information may be obtained from Truett Mayes, 1611 Avenue M, Lubbock, Texas 78401.

The South Texas Health Systems Agency, Plan Development Committee, will meet in Room 219A, Student Union Building, Texas A&I University, Kingsville, on May 9, 16, and 23, 1978, at 10 a.m. Further information may be obtained from Don Dietz, Texas A&I University, Station 1, Box 2378, Kingsville, Texas 78363, telephone (512) 595-5545.

Doc. No. 782462

Coastal Bend Council of Governments

Human Resources Development Council

Public Hearing

The Human Resources Development Council of the Coastal Bend Council of Governments sponsored a public hearing on the needs, problems, and services of health; transportation; social services; Medicare and Medicaid; food stamps; social security; public assistance; services for children; youth; housing problems; and education for children, youth, and adults, etc. The hearing was held on April 10, 1978, at 6:30 p.m. at the Boys Club of Corpus Christi, 3902 Greenwood.

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

Doc. No. 782328 Fred Stansell
Coastal Bend Council of Governments

Filed: April 3, 1978, 1:31 p.m.

For further information, please call (512) 854-3081.

Comptroller of Public Accounts

Administrative Decisions

Summary of Administrative Decision 8906

Summary of Decision: Insurance proceeds received as a result of the destruction of an aircraft represents indemnity for a loss and not receipts from the sale of tangible personal property under Texas Taxation—General Annotated, Article 20.01 *et seq.*

For copies of recent opinions selected and summarized by the legal services division, contact Harriet Burke, legal services division, P.O. Box 13528, Austin, Texas 78711. Copies will be edited to comply with confidentiality statutes.

Issued in Austin, Texas, on April 5, 1978.

Doc. No. 782445 Harriet D. Burke
Hearings Section
Comptroller of Public Accounts

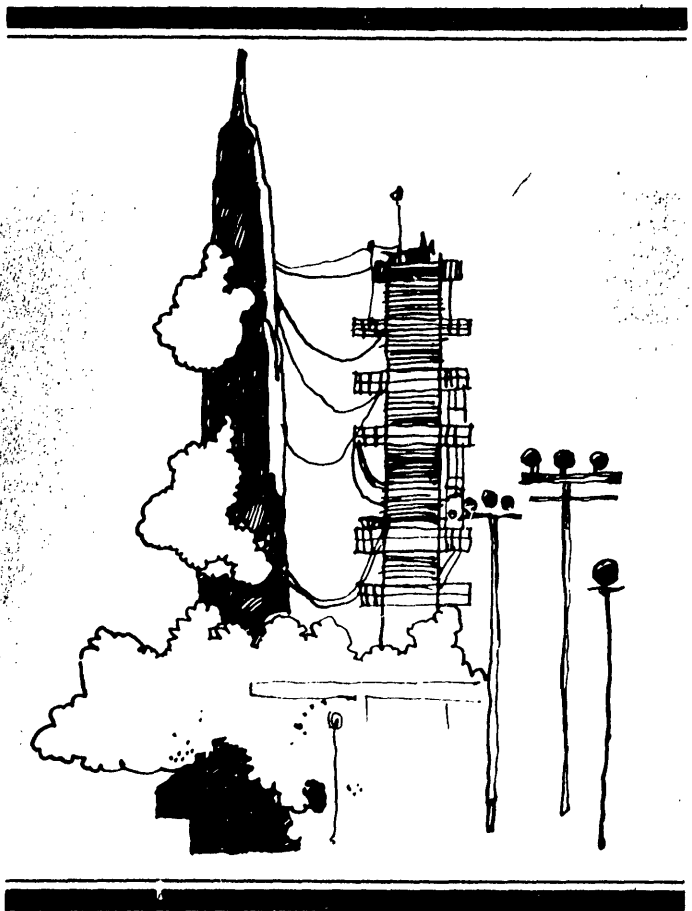
Filed: April 5, 1978, 11:04 a.m.

For further information, please call (512) 475-2148.

Texas Education Agency

Effective Date Correction

Rules 226.32.95.010-.100 of the *Texas Education Agency*, which appeared in the Adopted Rules section of the April 4, 1978, issue of the *Texas Register* (3 TexReg 1227-1230), were published with an incorrect effective date. These rules will become effective September 1, 1978.



Texas Energy Advisory Council

Energy Development Projects Authorized March 29, 1978

The following describes the authorized energy development projects and identifies funding level, contract periods, and project managers.

LIGNITE

File No.	EDF	Match	No. Months	Project Manager	Project
L-1-1	\$ 46,111	\$ 15,111	18	UT-BEG	Lignite reserve estimation
L-2-3	40,000	97,678	17	TAMU	Minimizing hydrologic impacts of lignite mining
L-3-1	21,433	11,836	12	UH	Analysis of market for lignite derived liquid via new Fisher-Tropsch Catalytic Reaction
L-3-5	30,000	52,361	18	UT	Sulfur removal by lignite ash in fluidized bed combustion
L-3-7	30,000	31,438	12	UH	Fluidized bed pyrolysis of lignite to produce liquids, gas and char
L-4-7	40,000	160,000	8	Radian or SwRI	Environmental assessment and research plan for Texas lignite development
Totals	\$207,544	\$ 368,424			

GEOHERMAL

File No.	EDF	Match	No. Months	Project Manager	Project
G-1-2	\$ 50,000	\$ 150,000	12	UT	Development plan for geopressed resources
G-2-3	75,000	185,000	18	UTEP	West Texas geothermal resource assessment
G-3-1	50,000	538,834	30	T-H-S Hospital	Geothermal demonstration in hospital
Totals	\$175,000	\$ 873,834			

CONSERVATION

File No.	EDF	Match	No. Months	Project Manager	Project
C-1-2	\$ 18,200	\$ 16,527	12	TAMU	Desiccant dehumidification with plate heat exchanger
C-1-3	11,000	-----	12	TT	Characterization of super-absorbent polymers for dehumidification
C-2-4	15,406	2,450	12	TT	Demonstrate low-cost indirect evaporative cooling
C-3-1	5,289	5,288	21	Gulf States & Lamar U.	Demonstrate ice storage with waste heat recovery
C-4-2	20,427	30,573	12	SMU and DP&L	Heat pumps augmented with thermal storage for heating and cooling simulation
C-5-2	56,352	319,310	17	TAES	Efficiency testing of low pressure mobile trickle irrigation system and provision of test well for this and future energy related RD&D
Totals	\$126,674	\$ 374,148			

SPECIAL PROJECTS

File No.	EDF	Match	No. Months	Project Manager	Project
SP-1-3	\$ 28,952	\$ 37,337	12	UT(LBJ)	Regional development bank analysis
SP-1-2	17,450	-----	3	Southwest Econometrics, Inc.	Development of methodology for selecting energy investment categories
SP-2-6	18,849	-----	6	TT	Economic feasibility of solar heating and cooling
SP-2-10	17,800	4,648	6	UH	Economics of lignite, coal, coal gas and coal liquids utilization in Texas
SP-3-6	23,819	10,000	10	UT	Energy development impact study
Totals	\$106,870	\$ 51,985			

SOLAR

File No.	EDF	Match	No. Months	Project Manager	Project
S-0-13	\$ 27,982	\$ 4,540	12	TAMU	Modular solar house retrofit demonstration for builders, architects and installers
S-1-1	25,000	17,428	14	Lamar U.	Investigation of passive wall and movable roof on test building
S-1-5	28,205	16,500	14	UT	Passive solar components demonstration
S-2-7	19,923	26,672	17	UT	Monitor solar heating and cooling
S-4-3	39,945	10,774	15	TAMU	Design and develop solar cooling with freon jet pumps
S-5-3	25,500	41,500	12	Solar Dynamics Ltd.	Storage system for small scale solar-thermal electric technologies
S-5-4	3,470	3,200	5	TRM	Construction and performance testing of low-cost concentrating cylindrical collector
S-5-5	35,000	105,304	12	Northrup Inc.	Design and construct heliostat to be used by UH-SEL
Totals	\$205,025	\$ 225,918			

WIND

File No.	EDF	Match	No. Months	Project Manager	Project
W-1-5	\$ 15,000	\$ 14,300	11	WTSU	Wind power mapping
W-3-5	7,573	5,425	6	Sunway Corp.	Convert excess wind power into usable, storable energy
W-4-1	51,783	35,500	12	WTSU	Wind assisted irrigation pumping and power
Totals	\$ 74,356	\$ 55,225			

BIOMASS

File No.	EDF	Match	No. Months	Project Manager	Project
B-0-2	\$ 47,177	\$ 48,508	12	Dow Chemical Co.	Algae collection and conversion to alcohol, application to other agricultural products and road-testing fuel produced
B-0-6	25,000	60,000	10	LCRA	Use of rangeland biomass as a fuel for power generation
Totals	\$ 72,177	\$ 108,508			
Grand Totals	\$967,646	\$2,058,042			

Issued in Austin, Texas, on April 4, 1978.

Doc. No. 782442

Milton L. Holloway
Executive Director
Texas Energy Advisory Council

Filed: April 5, 1978, 10:11 a.m.

For further information, please call (512) 475-5588.

State Department of Highways and Public Transportation

Consultant Proposal Request

Description of the Project: The office of traffic safety, State Department of Highways and Public Transportation, will enter into a contract with a market research organization to obtain data and information necessary to develop and plan a long-term public information and education program to gain voluntary compliance with the 55 miles-per-hour national maximum speed limit.

The contractor selected shall conduct clinical interviews and focus group interviews to gain an in-depth understanding of the beliefs, attitudes, motives, and opinions that underlie drivers' behavior. A survey instrument (questionnaire) will be developed to identify target audiences, determine counter-arguments, and campaign messages for gathering baseline data. A statewide survey will be conducted on a sampling basis that will insure a representative sample of Texas drivers. The data will be analyzed and a report prepared that will be used to develop a comprehensive public information and education program.

Contract: The contract will be awarded on a cost-plus-a-fixed fee basis to the successful bidder. Approximately five months will be allowed for the contract period. Preliminary notice letters have been mailed to some 45 market research firms in Texas. This is to serve as notice that invitation for offers is open.

Contact Person: Request for proposals may be obtained by contacting Bob Williams, assistant administrator, office of traffic safety, State Department of Highways and Public Transportation, Austin, Texas 78701, telephone (512) 928-1170.

Date of Reports: Closing date for receipt of offers is 5 p.m. Thursday, April 20, 1978. All proposals will be evaluated and the top proposers will be invited to make a formal presentation in Austin, and a final contractor selection will be made.

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

Doc. No. 782313 Ken Nevil
 Administrator
 Department of Highways and Public
 Transportation

Filed: April 3, 1978, 9:02 a.m.

For further information, please call (512) 928-1170.

North Central Texas Council of Governments

Consultant Proposal Request

Description: A request for proposal was offered on April 27, 1978, to interested firms for the provision of technical services to conduct a regional housing profile survey. The services requested include but are not limited to the selection of

sample housing units, the evaluation of housing conditions by exterior examination, the interview of cooperating occupant households, and the compilation of completed survey instruments. The consultant will be responsible for the training and quality control associated with the survey. These services will be provided to benefit all local governments in the North Central Texas intensive study area in the development of housing plans, policies, and programs, and will be coordinated and administered by the North Central Texas Council of Governments. Funds for this project will be provided by the Department of Housing and Urban Development, and any expenditures must comply with guidelines published by the Department of Housing and Urban Development.

Contact Person: William D. Chipman, senior planner, North Central Texas Council of Governments, P.O. Drawer COG, Arlington, Texas 76011, telephone (817) 640-3300.

Closing Date for Receipt of Offers: May 10, 1977, 9 a.m.

Contract Award Procedures: The contract award procedures which follow are not totally inclusive or mutually exclusive of other procedures which, in the opinion of the North Central Texas Council of Governments' executive board, require inclusion in order to achieve the best results possible within the scope of services requested. It is within this framework that the contract will be awarded to the firm or agency which, in the opinion of the executive board, can best perform the elements of the contract.

(a) Evaluation criteria. Objective measurement of the criteria will be conducted and the methodology for measurement will be determined depending on its suitability and relationship to the scope of services requested:

- (1) record of performance in past surveys;
- (2) proof of financial capability;
- (3) staff size and experience;
- (4) ability to meet specific deadlines;
- (5) demonstrated knowledge of present system;
- (6) written proposal; and
- (7) cost.

(b) Evaluation methodology. Written proposal evaluated by Regional Housing Information System Project Committee.

(c) Contract award.

(1) Review of Regional Housing Information System Project Committee recommendation by NCTCOG executive board to contract with consultant.

(2) Award of contract by NCTCOG executive board.

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

Doc. No. 782396 John Carlson
 Director of Research and Planning
 Coordination
 North Central Texas Council of
 Governments

Filed: April 4, 1978, 11:29 a.m.

For further information, please call (817) 640-3300.

Texas Register Correction of Error

Proposed Rule 302.04.19.007 of the *Texas Department of Mental Health and Mental Retardation*, published in the April 4, 1978, issue of the *Texas Register* (3 TexReg 1217) contained an error. Section (a)(1) of that proposed rule should have read:

(1) All new employees shall receive the above instruction on the content of these rules during their orientation training. Acknowledgment of this instruction shall be certified by the employee and filed in his or her personnel file. (See Exhibit A—302.04.19.007.)

Publication of Index; Notice of Schedule Variation

The April 28, 1978, issue of the *Texas Register* will be the first quarterly index for 1978. No other documents will be included in that issue. Publication of regular rules and meeting notices will resume with the May 2, 1978, *Register*.

The deadlines for submission of documents for the May 2 issue (Volume 3, Number 32) will be noon Wednesday, April 26, for all copy except notices of open meetings; the deadline for open meetings is noon Thursday, April 27.

Texas Department of Water Resources

Texas Water Commission

Notice of the Adjudication of All Claims of Water Rights

Notice is given pursuant to Section 11.306, Texas Water Code, and commission Rule 155.08.02.005, that all claims of water rights in the Frio-Atascosa Rivers Watershed of the Nueces River Basin will be adjudicated pursuant to the Water Rights Adjudication Act of 1967, Sections 11.301, *et seq.*, Texas Water Code, and commission order of April 26, 1976.

The Frio-Atascosa Rivers Watershed consists of the Frio River and its tributaries (including the Atascosa River Watershed) from its headwaters to its confluence with the Nueces River in Live Oak County, and includes all or portions of Atascosa, Bandera, Bexar, Dimmit, Frio, Karnes, Kerr, LaSalle, Live Oak, McMullen, Medina, Real, Uvalde, Wilson, and Zavala Counties.

On or before July 14, 1978, all persons claiming any right to divert state water except for domestic and livestock purposes in the Frio-Atascosa Rivers Watershed shall file with the Texas Department of Water Resources a sworn claim in accordance with Section 11.307, Texas Water Code, setting forth the following: the name and post-office address of the claimant; the location and nature of the right claimed including a description of any permit or certified filing under which the claim is made; the purpose of use; a description of works and irrigated land; and all other information necessary to show the nature and extent of the claim.

Instructions and forms for the filing of claims of water rights under Section 11.307, Texas Water Code, may be obtained without cost from the Texas Department of Water Resources, P.O. Box 13087, Austin, Texas 78711. Use of department forms is not mandatory.

Copies of the investigation report for the Frio-Atascosa Rivers Watershed, together with aerial photographs in the appendix to the investigation report, are available for inspection in the offices of the Texas Department of Water Resources in the Stephen F. Austin Building, 1700 North Congress, Austin, and in the offices of the county clerks of Atascosa, Bandera, Frio, Medina, McMullen, Real, and Uvalde Counties.

Issued in Austin, Texas, on March 27, 1978.

Doc. No. 782204 Mary Ann Hefner
 Chief Clerk
 Texas Water Commission

Filed: March 29, 1978, 3:56 p.m.

For further information, please call (512) 475-1317.

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The Office of the Secretary of State has available the *Revised Filing Guide for Secured Transactions* which contains filing procedures, rules, and the statutes of the State of Texas through the regular session of the 65th Legislature, 1977, governing Chapter 9 of the Texas Business and Commerce Code.

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