

TEXAS REGISTER

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Office of the Secretary of State

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NOTES ON THE ISSUE

To make federal funds available to more cities in the state, the Criminal Justice Division of the Governor's Office is proposing an amendment to eligibility requirements for grants for local criminal justice programs. The proposed amendment will increase the number of cities eligible for mini-block participation. Formerly, the funds were limited to counties with a population of 200,000 or more. All cities in these counties will be eligible to apply for funds with the adoption of the amendment.

The Texas Education Agency has amended its rules concerning public comments on proposed policies, administrative procedures, and state plans. The rules outline five ways in which the agency may respond to requests from the public to be heard, and also define procedures for public hearings on proposed rulemaking.

To comply with the Mentally Retarded Persons Act of 1977, the Texas Department of Mental Health and Mental Retardation has made extensive revisions to its rules concerning state schools for the mentally retarded. Adoptions regarding admission, transfer, furlough, and discharge of residents of state schools appear in this issue.

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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Requests for Opinions

Summary of Request for Opinion

RQ-1971

Request from A. R. Schwartz, chairman, Senate Jurisprudence Committee, Austin.

Summary of Request: Do probation officers and district probation department personnel under Section 10 of Article 42.12, Code of Criminal Procedure, qualify for membership in the Texas County and District Retirement System?

Doc. No. 786084

Opinions

Summary of Opinion H-1242

Request from Joe Resweber, county attorney, Harris County, Houston, concerning control of the preparation of county warrants.

Summary of Opinion: The Commissioners Court of Harris County has no authority to assign the preparation of Harris County or Harris County Flood Control District warrants to any officer or department, since the county auditor has responsibility for preparation of the warrants.

Issued in Austin, Texas, on September 14, 1978.

Doc. No. 786083

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

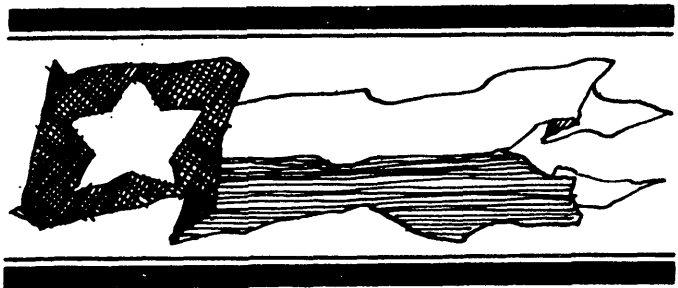
For further information, please call (512) 475-5445.

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.



Office of the Attorney General State Employees-Workers' Compensation Division Accident Prevention 003.01.07

The State Employees-Workers' Compensation Division, Attorney General's Department, is proposing to amend Rules 003.01.07.001, .010, and .032, which will establish guidelines for working conditions for employees by state agency.

The Attorney General's Office has determined that the fiscal implications for bringing the working guidelines into compliance is approximately \$150,000 for each year over the next five years.

Public comment on the proposed amendments to these rules is invited and should be addressed to Vernon T. Bartley, director, State Employees-Workers' Compensation Division, Attorney General's Office, 314 Highland Mall Boulevard, Suite 350, Austin, Texas 78752.

These rules are proposed for amendment pursuant to the authority of Article 8309g, Section 6, Vernon's Texas Civil Statutes.

.001. Authority for Accident Prevention Rules.

(a) Compliance with these rules is mandated by Article 8309g, Section 6, Vernon's Texas Civil Statutes: "The

Director shall make and enforce reasonable rules for the prevention of accidents and injuries."

(b) *Each agency under the act has the general duty to furnish each of its employees employment and places of employment, free from recognized hazards likely to cause physical harm.*

(c) Each "employer" will designate one or as many accident prevention coordinators as may be required, who will be responsible for the implementation within that department of the safety rules promulgated by the director.

(1) Employer will report to director any changes in personnel designated as an accident prevention coordinator.

(2) Within 60 days after an inspection report has been received by an agency—if it contains recommendations requiring corrective action—a reply will be made delineating items on which action has been taken, or is to be taken. Where action cannot be taken, it should be so stated and reasons listed.

.010. *Accident Prevention Rules.* The following are adopted *by reference* as accident prevention rules of the director, State Employees-Workers' Compensation Division, Attorney General's Office. *Copies of the Occupational Safety and Health Standards may be obtained by writing Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.*

(a) The Occupational Safety and Health Standards, Department of Labor, Occupational Safety and Health Administrator, being:

(1) Part 1910 of Title 29, Code of Federal Regulations, republished in its entirety as of *January 1976* [June 3, 1974] (commonly known as OSHA), and as it may be amended].

(2) Part 1926 of Title 29, Code of Federal Regulations, Occupational Safety and Health Regulations for Contractor, republished in its entirety June 24 [3], 1974, and any amendments thereto.

(b) The following Occupational Safety Standards are adopted *by reference* as supplements to Texas Occupational Safety Act (Article 5182a, Vernon's Texas Civil Statutes).: *Copies of Occupational Safety Standards may be obtained by writing Workers' Compensation Division, Attorney General's Office, 314 Highland Mall Boulevard, Suite 350, Austin, Texas 78752.*

(1) External lighting (11-112) (1970).

(2) Laundry and dry cleaning equipment (11-119) (1971).

(3) Window cleaning (11-124) (1972).

(4) Elevators, dumbwaiters, escalators, and moving walks (11-125) (1972).

.032. Hearing Procedures.

(a) Informal hearing will not require any written material other than the request for hearing which will state variance recommendation to be discussed and reason for requesting hearing.

(b) Formal hearing.

[(1)] Request for formal hearing will be by written petition setting out:

(1) subject matter;

(2) reason for request;

(3) itemization of evidence to be submitted;

(4) list of witnesses who will appear;

(5) any alternative proposed solution to accident prevention recommendation.

(2) While written formal exceptions to a ruling of the director are not required, they shall be reduced to writing by party making same and filed with director before hearing is closed or concluded.]

Issued in Austin, Texas, on September 13, 1978.

Doc. No. 786087 Vernon T. Bartley, Director
State Employees-Workers'
Compensation Division
Office of the Attorney General

Proposed Date of Adoption: October 23, 1978

For further information, please call (512) 475-6040.

Office of the Governor Criminal Justice Division

Mini-Block Participation 001.55.18

The Criminal Justice Division proposes to amend Rule 001.55.18.001. The amendment will increase the number of cities eligible for mini-block participation.

The Criminal Justice Division has determined that there will be no fiscal implications for the state or for units of local government.

Written comments are invited and may be sent to Willis Whatley, general counsel, Criminal Justice Division, 411 West 13th Street, Austin, Texas 78701, within 30 days of publication in the *Texas Register*.

This amendment is proposed under the authority of Public Law 90-351, Title I, Omnibus Crime Control and Safe Streets Act of 1968 as amended by Public Law 91-644, Omnibus Crime Control Act of 1970, Public Law 93-83, Omnibus Crime Control Act of 1973, and Public Law 94-503, Crime Control Act of 1976; and Public Law 93-415, Juvenile Justice and Delinquency Prevention Act of 1974; Public Law 95-115, Juvenile Justice Amendments of 1977; and rules and guidelines promulgated by the Law Enforcement Assistance Administration.

.001. *Eligibility.* [Cities and] Counties with a population of 200,000 or more *and all cities in these counties* are eligible under this rule and guideline.

Issued in Austin, Texas, on September 11, 1978.

Doc. No. 786092 Robert C. Flowers, Executive Director
Criminal Justice Division
Office of the Governor

Proposed Date of Adoption: October 23, 1978

For further information, please call (512) 475-6065.

Texas Department of Human Resources

Skilled Nursing Facility

(Editor's note: Proposals concerning the Skilled Nursing Facility chapter of rules are being published serially. Con-

secutive instalments have appeared in the issues of September 15 and 19 and continue in this issue and in following issues. The proposed adoption date for all the serialized rules is October 16.)

The Department of Human Resources proposes numerous amendments, repeals, and additions to its Skilled Nursing Facility rules. The Long-Term Care Division of the department has completed new standards for participation for skilled facilities, necessitating comprehensive revision of the rules concerning those facilities.

Although there is substantive material involved, much of the rule revision is reorganization of existing policies and procedures. An example of this reorganization is the expansion of the subcategory of rules involving administrative services to include facility bylaws, financial audit procedures, and transfer agreements. Several subcategories of existing rules will be incorporated in the administrative services rules.

Many of the proposed repeals are a result of the reorganization of the standards. Most of the material being repealed, because of *Texas Register* format, will appear elsewhere as rule amendments or new rules.

Examples of new material in the standards include a section of rules requiring that skilled facilities provided or arrange for social services according to the needs, interests, and capacities of their residents. A patient activities section has also become a part of the required services to be offered. One change in rule material involves reference to the Texas Department of Health's Patient Care Unit. Because of legislative action, the social services monitoring agent is no longer a department Medical Assistance Unit, but is now under the direction of the Health Department.

The department has determined that the cost of implementing the proposed rules and amendments will be approximately \$477,175 for fiscal year 1979 and \$585,669 for fiscal year 1980. Budget recommendations for the following years are \$670,591 for fiscal year 1981; \$819,355 for fiscal year 1982; and \$938,161 for fiscal year 1983. There are no fiscal implications for units of local government.

Written comments are invited and may be sent to Susan L. Johnson, assistant chief, Systems and Procedures Bureau—327, Department of Human Resources, John H. Reagan Building, Austin, Texas 78701, within 30 days of publication in this *Register*.

Nursing Services 326.32.05.001-.004

The following amendments are proposed under the authority of Articles 695c and 695j-1, Texas Revised Civil Statutes:

.001. *Policies and Procedures (Seven-Day R.N. Services).*
(a) *The skilled nursing facility shall have written policies and procedures that govern nursing care provided and that ensure the full implementation of each individual plan of care to meet the total nursing needs of each recipient-patient.* [The facility must provide 24-hour licensed nursing services, including services of a registered nurse at least during the day tour of duty seven days a week.

(1) Special waiver. The Secretary, Department of Health, Education, and Welfare, may waive such requirement for such periods as he deems appropriate if, based upon documented findings of the state agency, he determines that:

(A) such facility is located in a rural area and the supply of skilled nursing facility services in such area is not sufficient to meet the needs of individual patients therein;

(B) such facility has at least one full-time registered nurse who is regularly on duty at such facility 40 hours a week; and

(C) such facility has only patients whose attending physicians have indicated (through physicians' order or admission notes) that each such patient does not require the services of a registered nurse for a 48-hour period or has made arrangements for a registered nurse or physician to spend such time at the facility as is determined necessary by the patient's attending physician to provide necessary services on days when the regular full-time registered nurse is not on duty;

(D) such facility has made and continues to make a good faith effort to comply with the more than 40-hour registered nurse requirement, but such compliance is impeded by the unavailability of registered nurses in the area.]

(b) The administrator shall be responsible to see that sufficient numbers of qualified supervisory and supportive nursing personnel shall be assigned to each tour of duty to ensure that the total nursing needs are provided for each recipient-patient. Recipient-patient care shall be considered adequate and meeting individual needs when it is evident that each recipient-patient is receiving:

(1) care, treatments, medications, and diet as prescribed;

(2) restorative and rehabilitative nursing measures and other services required;

(3) proper care to prevent decubitus ulcers;

(4) care to stay clean, well-groomed, and comfortable;

(5) care so that each recipient-patient is protected from accident, injury, and infection by adoption of indicated safety measures;

(6) kindness and respect.

.002. Nursing Staff Requirements.

(a) *Nursing services shall be provided around the clock by licensed nurses. This includes the services of a registered nurse at least on the day tour of duty seven days per week. The director of nurses shall ensure that the ratio of licensed nurses [including director of nurses] for each 24-hour period shall be one nurse to every 15 recipient [resident]-patients in the facility. [In addition to seeing to these ratios for licensed personnel, the administrator is responsible for there being, at all times, a sufficient number of nurses aides and orderlies ready to meet the needs of the patients. It should be recognized that the primary duties of aides and orderlies have to do with direct patient care, and not with housekeeping, laundry, and dietary functions.] Nursing time devoted solely to recipient-patient care shall be the basis for [included in] computing nursing requirements. [The number of nursing personnel shall be sufficient to provide 24-hour nursing service and shall be increased whenever necessary to ensure that each patient receives treatments, medication, and diet as prescribed; that he receives the proper care to prevent decubiti and is kept comfortable, clean, and well-groomed; that he is protected from accidental injury; and that he is treated with kindness and respect.*

(b) A facility providing more than one level of care may have only one director of nurses, but she may not be counted in the nursing ratio. If the director of nurses in a

single level of care facility has administrative duties not totally related to nursing administration, she may not be counted in the nursing ratio.

(c) If the director of nurses has administrative responsibility for the facility, she must have a registered nurse assistant to provide the equivalent of a full-time director of nursing services.

(d) During the absence of the director of nurses and other licensed nurses, personnel with equal qualifications shall be employed.

(e) The director of nurses serves only one facility in this capacity (20 Code of Federal Regulations 504.1124(a)).

(f) The director of nursing services may not serve as charge nurse in a facility or distinct part with an average daily total occupancy of 60 or more patients (20 Code of Federal Regulations 405.1124(b)).]

.003. Director of Nursing Services [Nurses].

(a) *The overall planning and supervision of nursing shall be under the direction of the director of nursing services. [A registered nurse currently licensed by the Texas State Board of Nursing Examiners, employed full time and responsible for the total nursing service, shall work during the day, including the morning shift at least 40 hours each week. The director of nurses should have some specialized training or experience in nursing administration and supervision, geriatric, psychiatric, or rehabilitative nursing. The director of nurses must have one year of additional education or experience in nursing services administration (20 Code of Federal Regulations 405.1101(g)). The director of nurses:]*

(b) The director of nursing services shall serve only one facility in this capacity and may not serve as a charge nurse in a facility or distinct part with an average daily total occupancy of 60 or more recipient-patients. If the patient census exceeds 60, an RN director of nurses and a charge nurse are required. The director of nurses can be counted in the nursing ratio. A director of nursing services in a facility with 60 or fewer patients can be counted in the nursing ratio.

(c) A director of nursing services having administrative responsibility for the facility must have a registered nurse assistant to provide the equivalent of a full-time director of nursing services.

(d) A facility providing more than one level of care shall have only one director of nursing services, who cannot be counted in the nursing ratio. In facilities providing a single level of care, a director of nursing services who has any administrative duties not totally related to nursing administration cannot be counted in the nursing ratio.

(e) Responsibilities of the director of nurses:

(1) Develops, implements, and maintains nursing service philosophy, objectives, standards of nursing practice, nursing procedure manuals, [and] written job descriptions, and qualifications for each level of nursing personnel, with the advice of the medical director as appropriate.

(2) Recommends to the administrator the number and levels of nursing personnel to be employed to meet recipient-patient needs and [,] participates in their recruitment and selection, as well as [and recommends] termination of employment when necessary.

(3) Participates in budget planning [and budgeting] for nursing service [care].

(4) Participates *with the medical director of the facility* in the development and implementation of *recipient-patient care policies*.

(5) Plans and *supervises recipient-patient care* [conducts] orientation [programs] for *newly employed nursing* [new] personnel, *including the discussion of appropriate policies and instructions in disaster preparedness*.

(6) Plans, *supervises, and/or conducts an on-going educational program which includes* [continued in-service training for] all direct patient care personnel *for the development and improvement of skills related to problems and to meet the needs of all recipient-patients of the facilities. In addition to the topics listed under in-service for nursing personnel, restorative and rehabilitative nursing techniques shall be included.*

(7) Is responsible to the administrator for the selection, assignment, and direction of the activities *and special problems related to nursing care* [of nursing personnel, including charge nurses].

(8) Develops work schedules *assigning personnel and coordinating disciplines to promote* [to provide] optimum *recipient-patient care* [using available personnel].

(9) *Ensures* [Sees] that each *recipient-patient has an individual* [a] written *total* [nursing care] *plan of care* which is consonant with the medical plan of care and is responsible for coordination with other disciplines and services. The *care plan* is initiated [by assessing a patient's nursing needs] at the time of admission *from assessment of the recipient-patient's total needs. It is reviewed as necessary, but at least every 30 days, and revised as need indicates. Appropriate documentation for verification of review and revision shall be made.* [The nursing care plan must be reviewed, revised, and documented as patients' needs change or every 30 days].

(10) Participates *with the physician* in *documenting* monthly [(skilled)] medical reviews of *recipient-patients' needs*.

(11) Makes daily rounds to all *nursing* [contracted] units under her nursing direction *and accompanies physicians on rounds as appropriate.*

(12) *Participates in the establishment of procedures which will ensure that all licensed nurses have a current, valid Texas license as required* [Accompanies physicians on rounds].

(13) *Develops work schedules assigning personnel and coordinates disciplines to promote optimum recipient-patient care.*

(14) *Schedules daily rounds so that all patient-recipients are seen* [Visits patients and reviews nursing care plans].

(15) *Reviews and approves all staffing patterns prior to posting and determines the kind and amount of nursing care needed by the recipient for a 24-hour period* [operational staff assignments].

(16) *Ensures* [Sees] that *medical* [clinical] records *maintained* [are charted] under the direction of the charge nurse for each shift *are descriptive of the care provided and are pertinent to each individual.*

(17) *Ensures* [Sees] that drugs covered by Controlled Substances Act of 1970 *as amended* are verifiable by inventory, *and that proper procedures are maintained for control, administration, proper handling, and storage of all medications.*

(18) *Supervises recipient-patient nutrition; ensures that nursing personnel are aware of the nutritional needs, food, and fluid intake of recipient-patients and that they assist promptly, when necessary, with the feeding of patients; follows the facility's established procedures to inform dietetic service staff of physician's diet orders and of the recipient-patient's diet problems. Deviations from normal food and fluid intake of recipient-patients are observed, documented, and reported to the physician* [May meet with consultant dietitian regarding planning and supervision of menus and meal service].

(19) *Ensures the coordination of recipient-patient services through participation in departmental and committee meetings, such as those involving pharmacy, infection control, patient care policies, and utilization review* [May be assigned responsibility for seeing that clinical records are maintained, completed, and preserved. She will consult with a person knowledgeable in this area].

.004. Charge Nurse.

(a) [A registered nurse or a licensed vocational nurse who is a graduate of a state-approved school of vocational nursing is in charge of nursing service at all times. The same persons should be assigned regularly to fill the charge nurse positions for each of the three shifts for each 24 hours. It is desirable that the] Charge nurses *must be* [trained or] experienced *and involved in additional preparation* in areas of supervision, rehabilitative, psychiatric, or geriatric nursing. The charge nurse:

(1) Is responsible for the total nursing care of *recipient-patients on the unit to which assigned and supervises direct care personnel in the unit during the assigned tour of duty* [during her shift].

(2) Is able to recognize significant changes in the conditions of *recipient-patients* and take necessary action.

(3) *Visits all recipient-patients on the unit each tour of duty to observe and evaluate the individual's response to medication and treatment, as well as the physical and emotional status of each* [supervises direct patient care personnel in the unit].

(4) *Ensures* [Sees] that [the] *each individual patient* [nursing] care plan is followed *by the various members of the nursing facility staff.*

(5) Prepares and administers all prescribed medications *and treatments. All medications shall be given by the person preparing them on the tour of duty to which assigned. That person must ensure that each recipient-patient did, in fact, take the dose administered. Appropriate documentation must be made by the person administering the medication when the administration has been completed.*

(6) *Ensures that medications are given only by licensed persons or persons who have satisfactorily completed the state-approved course in medication administration* [Administers or supervises all prescribed treatments].

(7) *Follows written procedures to inform dietary service staff of admission diet orders, changes in a recipient-patient's diet orders, and any dietic problems* [Supervises serving of prescribed diets and fluid intake, takes note of deviations from normal, and reports persistent unresolved problems to the physician].

(8) *Ensures that the person administering medications prepares in advance only those drugs which*

are to be administered on that shift. In no instance are drugs prepared on one shift to be administered on subsequent tours of duty [Sees that all medications and treatments are charted "after the fact" for the appropriate shift].

(9) *Remains aware of and alert to the total physical plant to protect recipient-*[Protects] patients from accident and injury, *initiating necessary action for correction of conditions with hazardous potential in keeping with facility policy.*

(10) *Prepares or assists in preparation of incident/accident reports when appropriate; follows the facility's written policies and procedures relating to notification of the recipient-patient's attending physician and designated family member or sponsor in the event of an accident or incident, as well as the preparation and disposition of the report; is responsible for documentation of such reports in the individual's medical record.*

(11) Ensures supportive care to prevent decubiti, footdrop, or contractures.

(12) *Ensures* [Sees] that recipient-patients are kept clean, [and] well-groomed, *bathed, changed, and repositioned as condition indicates.*

(13) Directs charting on *assigned* [her] shift. Items to be recorded on *medical* [clinical] records may be found in Rule 326.32.13.001.

(14) *Notifies the attending physician of an automatic stop order prior to the last medication dose so that the decision may be made whether the order for the administration of the drug is to be continued or altered* [approves and signs each chart at the end of the shift].

(15) *Ensures* [Sees] that *medical* [clinical] records [or an abstract of them] are forwarded with [transfer of] *recipient-patients* at the time of transfer to another unit in the facility, or that a transfer of information accompanies a recipient-patient upon transfer to another facility.

(16) *Ensures* [Sees] that drugs covered by Controlled Substances Act of 1970 are verifiable by inventory.

(17) Participates in regular staff meetings *and in staff development as requested.*

(18) *Keeps the director of nurses informed through verbal and written communication of recipient-patient status and significant changes, staff performance, additional needs of staff development, and other matters related to direct patient care* [Consults with the director of nurses when necessary].

(19) *Is familiar with the facility's emergency policies and procedures to meet the emergency as rapidly and smoothly as possible, making contacts and notifications as the conditions or situations indicate.*

(20) *Upon the discharge of a recipient-patient, ensures that the medical record is completed and forwarded to the medical record supervisor.*

(21) *Assigns nonlicensed personnel tasks and duties consistent with their education and experience.*

Doc. No. 785941

326.32.05.005-.009

(Editor's note: The text of the following rules proposed for repeal is not being published. The rules may be examined in the office of the Texas Register Division of the Secretary of State's Office, 503E Sam Houston Building, Austin, or in the

office of the Department of Human Resources, John H. Reagan Building, Austin.)

The following repeals are proposed under the authority of Articles 695c and 695j-1, Texas Revised Civil Statutes.

- .005. *Restorative Nursing Care.*
- .006. *Specialized Rehabilitative Services.*
- .007. *Miscellaneous Instructions.*
- .008. *Unacceptable Personnel.*
- .009. *Waiver of Seven-Day R.N. Requirement.*

Doc. No. 785942

326.32.05.010

The following addition is proposed under the authority of Articles 695c and 695j-1, Texas Revised Civil Statutes:

- .010. *Total Plan of Care.*

(a) The director of nurses shall assume responsibility as the coordinator to ensure that all disciplines have contributed as need indicates to the development of a written plan of care for each recipient-patient and ensure communication of information. This plan must be implemented at the time of admission and must be kept at the appropriate nurses' station. The plan shall be consonant with the attending physician's plan of medical care and indicate the care and services to be provided, the goals to be accomplished, and which professional service is responsible for each element of care. All personnel caring for the recipient-patient shall be provided access to the total plan of care.

(b) The total plan of care shall be reviewed, evaluated, and updated as necessary, but not less than every 30 days, by personnel of disciplines involved in the care of the recipient-patient.

Doc. No. 785943

Dietary 326.32.06.001-.004, .006

The following amendments are proposed under the authority of Articles 695c and 695j-1, Texas Revised Civil Statutes:

- .001. *Professional Planning and Supervision of Menus and Meal Service.*

(a) *The skilled nursing facility shall have an organized dietary department which provides all necessary services to meet the daily nutritional needs of the recipient-patient, ensures that special dietary requirements are met, prepares palatable and attractive meals of adequate quality and quantity under sanitary conditions, and operates according to the standards listed herein. A facility that contracts with an outside food management company may be found in compliance only if the facility and the company adhere to the standards listed herein.*

(b) *There shall be written policies and procedures for all aspects and functions of the dietary service and recipient-patient nutrition activities, including requirements for written diet orders, food-handling techniques, meals service and delivery systems, menu pattern, food quality and quantity specifications, food ordering and storage, equipment and maintenance/replacement and repair, sanitation and janitorial procedures, personnel requirements, job descriptions, proficiency training, re-*

quired records, and other definitive policies and procedures.

(c) *Overall planning and supervision of the entire dietary department is under the direction of a trained full-time dietetic service supervisor and is accomplished with guidance and assistance from a professional dietary consultant and the administrator. If the supervisor is a qualified dietitian, additional dietary consultation is not required.*

[Menus must be planned and supervised by professional personnel meeting the qualifications outlined in Rule 326.32.10.002 and approved by a state agency. The person in charge of dietary service must participate in regular conferences with the administrator and other supervisors of patient services and also make recommendations and assist in developing personnel policies.]

.002. *Dietary Staffing and Personnel [Food Service Employees].*

(a) *The dietary department shall be adequately staffed with supportive, competent personnel to provide complete recipient-patient feeding services and to maintain the sanitary conditions needed for clean and safe food service.* [There shall be enough food service employees to prepare and serve properly the patients' food.]

(b) The *dietary* [food service] department shall be staffed and recipient-patient food services available for a *minimum of 12 continuous* hours [or more] each day.

(c) Food service employees shall [be trained to perform assigned duties and] participate in *job orientation and in skill and proficiency development through on-going* [selected] in-service education and *training* [programs].

(d) [If] Food service employees *shall not have* [are] assigned duties outside the dietary department *prior to assigned duties in the dietary department on the same day* [, these duties must not interfere with the sanitation, safety, or time required for dietary work assignments].

(e) *Duty* [Work] assignments *shall be included in the staffing pattern and work schedules for each position* [and duty schedules] shall be posted.

(f) *Employees responsible for food preparation and service of trays must be able to read and write English or have all materials translated in writing, be capable of following recipes, meal patterns, identification of specific diets, and be trained in the use of the approved diet manual.* [The dietary department must be supervised by a trained-experienced individual meeting one of the following criteria:

[(1) dietitian;

[(2) associate of arts graduate in nutrition and food management "dietary technician";

[(3) graduate of a dietetic technician or dietetic assistant training program, corresponding or classroom, approved by the American Dietetic Association;

[(4) one who has completed an ADA or state agency-approved 90-hour course in food service supervision;

[(5) military training and experience to qualify for any of the above. Items (2) through (5) must have frequently scheduled consultation from a qualified dietary consultant (20 Code of Federal Regulations 405.1101(e), 20 Code of Federal Regulations 405.1121(i), 20 Code of Federal Regulations 405.1125(a)).]

.003. *Hygiene-Dietary Personnel [of Dietary Staff].*

(a) Food service personnel *shall be trained in* [must be in good health] and practice hygienic food-handling techniques.

(b) Food service personnel *shall at all times* [must] wear clean, *appropriate*, washable garments, hairnets, and/or clean caps and clean aprons [and have clean hands and fingernails at all times]. *Hands must be clean and nails well-trimmed and clean.*

(c) *Dietary personnel shall comply with health requirements as stated in the facility's personnel policies and local, state, and federal codes for food handlers.* [Routine health examinations must meet local, state, or federal codes for food service personnel.]

[(d) When food handlers' permits are required, they must be current.

[(e) Persons with symptoms of communicable diseases or open infectious wounds may not work.]

.004. *Patient Nutrition and Planning [Food Services].*

(a) At least three meals or their equivalent *are* [must be] served daily at regular and *customary hours*, with [times. There may] not [be] more than a *14-hour span for any recipient-patient* [hours] between a substantial evening meal and breakfast. *Except when medically contraindicated*, nourishing [between-meal or] bedtime snacks *shall* [should] be offered *all recipient-patients*. [If the "four or five meals a day" plan is in effect, meals and snacks must provide adequate nutrition.]

(b) Menus *are* [must be] planned and *followed* [served] to meet the *individual recipient-patient* [nutritional] needs [of the patients] in accordance with [physician's orders and, to the extent medically possible, as outlined in] the recommended dietary allowances of the Food and Nutrition Board of the [National Research Council, National Academy of Science, *unless contraindicated by medical needs and accommodated for in the physician's diet description* [(20 Code of Federal Regulations 405.1125(b))].

(1) *Milk—two or more cups (16 ounces).*

(2) *Meat group—five to six ounces of eggs, beef, veal, pork, lamb, fish, or cheese. Occasionally dry beans, nuts, dry peas, or textured vegetable protein may be served as alternates.*

(3) *Fruit/vegetable group—four or more servings (one-half cup equals one serving) of a citrus fruit and/or other fruits and vegetables rich in Vitamin C daily; a dark green or deep yellow vegetable for Vitamin A at least every other day; other fruits and vegetables. Fresh fruits and vegetables are to be included unless contraindicated by diet prescription.*

(4) *Bread and cereal group—four or more servings of whole grain, enriched, or restored.*

(5) *Other foods, including fats to complete meals and snacks to meet caloric needs.*

(c) *Menus for modified, regular, and therapeutic diets shall be planned for a minimum of four weeks in advance, with the serving size indicated on the menu.* [Current week's menus must be conveniently posted in the dietary department for use by employees responsible for purchasing, preparing, and serving foods.]

(1) *Menus shall be reviewed and revised to accommodate seasonal foods; to provide variety; and to include traditional, ethnic, and geographically preferred foods.*

The menus shall be different for the same day of consecutive weeks and include customary variety.

(2) Menus shall be posted at convenient locations in the dietary department for use in preparation, serving, meal planning, and purchasing.

(3) The exact menu, as served, shall be kept on file for a minimum of 30 days. Substitutions shall be at a minimum and must be recorded. Substitutions need not be written directly on the menu. However, when they are recorded separately, the record shall reflect the date, meal, the food not used, and food used. This record must be kept on file with the corresponding menu. When menu substitutions are necessary, they must be of equal nutritional value and must be approved and initialed by the supervisor.

(4) Menus shall be accompanied by tested recipes, calculated to quantities of yield needed by the specific facility, and shall be used to ensure planned nutrient value and serving size.

(d) Nourishments, as a specific part of calculated diets, shall be prepared as ordered, dated, labeled with name/room, individually serviced at the time indicated, and documented in the medical record. [Menus must provide a variety of foods served in adequate amounts at each meal. Menus must be varied from week to week and be adjusted for seasonal changes. Substitutions need not be noted on the menu but must be recorded and kept on file.]

(e) Menu changes to accommodate food-drug reactions shall be calculated on an individual basis. [Consideration must be given to the general age group in planning the menus.]

(f) A dietary record system shall be maintained in the dietary department as a central record of all dietary orders, meal patterns, limitations, etc. A tray identification system shall be developed and followed, with each tray identified by name, room, exact diet order, food preferences, and specific meal patterns for diabetics. Trays shall be served, delivered, and food intake evaluated and documented by nursing personnel, according to the identification system. [Records of menus served shall be filed and kept in the dietary area for 30 days.]

(g) A current and dated list of all recipient-patients, room numbers, specific diet orders, and other pertinent feeding information shall be provided by nursing service as necessary, but not less than once a week. The list shall be posted in the dietary department and kept on file 60 days. [A list of patients receiving special diets and a record of their diets will be kept in the dietary area for at least 30 days.]

(h) [A file of tested recipes, adjusted to appropriate yield, should be kept in the dietary area.]

[(i)] There shall be at all times supplies of non-perishable staple foods and dry stores for a seven-day minimum and a minimum of two to three days of perishable food. Emergency foods and supplies must be maintained in accordance with the facility's disaster plan and must be dated and rotated to ensure usage with safe shelf life. [The dietary department must stock enough non-perishable food to last a minimum of one week and enough perishable food to last a minimum of two days.]

[(j)] Food preference of patients must be considered when not in conflict with physician's orders. Food must be ground or chopped to meet individual needs. If a patient

refuses the food served, substitutions of comparable nutritional content are to be offered.

[(k)] Equipment must be available and procedures established to keep food at proper temperature during serving.

[(l)] Table service shall be provided for all who can and will eat at the table, including wheelchair patients. Patients needing help with eating must be assisted promptly upon receipt of meals.

[(m)] Trays for bedfast patients must rest on firm supports such as overbed tables. Sturdy tray stands of proper height are to be provided patients able to be out of bed for their meals. Adaptive self-help devices must be prescribed to contribute to the patients' independence in eating.]

[(i)](n) Therapeutic diets, additive or restrictive, must be prepared and served as prescribed by the attending physician.

[(1)] Therapeutic diet orders shall be planned, prepared, and served with supervision or consultation from a qualified dietitian.

[(2)] A current diet manual (five years maximum) approved [recommended] by the survey [state licensure] agency, dietary consultant, and medical staff shall [must] be made [readily] available to attending physicians, dietary department, and each nursing station [food service personnel and supervisor of nursing services.]

[(3)] Persons responsible for the therapeutic diets must have sufficient knowledge of good food values to make appropriate substitutions when necessary.]

[(j)](o) Records of actual foods purchased and invoice copies shall be maintained and available for a 90-day minimum [food purchases must be kept on file]. Food is purchased only from federal, state, or locally approved sources.

.006. Maintenance of Sanitary Conditions.

(a) Only dietary employees are allowed in the dietary and food preparation, service, and storage areas. Nursing personnel, recipient-patients, family members, and visitors shall not be allowed in the dietary area. Persons other than dietary employees who are authorized access to the dietary department must be confined to areas other than actual food preparation and serving areas, except in the case of health inspectors and other authorized state agency staff providing evaluation and consultation services. [Sanitary conditions must be maintained in the storage, preparation, and distribution of food.]

(b) Deliveries of food shall not be made through the food preparation and serving area. [Effective procedures for cleaning all equipment and work areas must be followed.]

(c) Dishwashing techniques and procedures shall be well developed, understood, and [must be] carried out to comply [in compliance] with [the] state [and local] health regulations [codes].

(1) Soiled dish and tray scraping/handling shall not be done by the same individual who is handling clean sanitized dishes unless hands are cleansed between these operations.

(2) All dishes, utensils, and equipment used for meal service shall be washed and sanitized after each use, handled as to avoid hand contact with eating surfaces, and stored to avoid contamination. Clean dishes may not be stored in the dishwashing area.

(3) Mechanical dishwashing.

(A) Mechanical dishwashing water shall be at 140 degrees Fahrenheit minimum, sanitizing water at 180 degrees Fahrenheit minimum.

(B) For chemical sanitizing machines, temperatures shall be at manufacturer's suggested level of 140 degrees Fahrenheit minimum, and sanitizing solution strength shall be maintained to meet manufacturer's suggested level.

(4) Manual dishwashing.

(A) Prior to washing, all equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil.

(B) In the first compartment sink, effective concentrations of a suitable detergent shall be used and equipment and utensils shall be thoroughly washed in a detergent solution which is kept reasonably clean.

(C) In the second compartment, all equipment and utensils shall be rinsed free of such solution.

(D) In the third compartment, all eating and drinking utensils shall be sanitized by one of the following methods:

(i) immersion for at least one-half minute in clean hot water at a temperature of at least 170 degrees Fahrenheit;

(ii) immersion for a period of at least one minute in a sanitizing solution containing: (1) at least 50 ppm of available chlorine at temperature not less than 75 degrees Fahrenheit; or (2) at least 12.5 ppm of available iodine in a solution having a pH not higher than 5.0 and a temperature of not less than 75 degrees Fahrenheit; or (3) any other chemical-sanitizing agent which has been demonstrated to the satisfaction of the health authority to be effective and nontoxic under used conditions, and for which a suitable field test is available. Such sanitizing agents, in solution, shall provide the equivalent bactericidal effect of at least 50 ppm of available chlorine at a temperature not less than 75 degrees Fahrenheit.

(d) Written reports of inspections by state and local health authorities are to |must| be *kept* on file at the facility, with notation made of|. Reports should indicate all| action taken |by the facility| to comply with *all deficiencies and* |any| recommendations.

(e) Waste not disposed of by mechanical means shall |must| be kept in *tightly covered*, leakproof, nonabsorbent containers. |with close-fitting covers. It must be disposed of daily in a manner that will prevent its being a nuisance, transmitting disease, providing a breeding place for flies or a feeding place for rodents. These containers shall be removed from the dietary areas as needed throughout the day and |Containers shall| be thoroughly cleaned inside and out each time they are emptied.

(f) All foods shall |Dry or staple food items must| be stored off the floor in *scaled containers* |a ventilated room not subject to sewage, wastewater backflow, contamination by condensation, leakage, rodents, or vermin|. When necessary to store food and unopened cleaning supplies together, all cleaning supplies must be at a level below food and eating supplies and noticeably separated. Poisonous and toxic agents may not be stored in food storage areas.

(g) Handwashing facilities *conveniently located in the food preparation and service areas are equipped with* |including| hot and cold water, soap, and *single-use disposable* |individual| towels *or blow dryers* |(preferably paper towels) must be provided in kitchen areas|.

(h) All bedside water pitchers and glasses must be taken to the dietary department for mechanical washing and sanitizing or otherwise cleaned and sanitized a minimum of every other day.

(i) Ice units shall not be accessible to recipient-patients and shall have a handled scoop stored outside the unit for use in removing the ice. Ice-dispensing units are exempt from this regulation.

(j) The entire dietary area and all kitchen and food preparation equipment shall be cleaned after each use and equipment stored in a clean and sanitary manner.

(k) Restrooms used by dietary personnel shall be maintained in a clean and sanitary manner by house-keeping staff, not dietary employees.

(l) All other food service regulations not herein listed shall comply with the Texas Department of Health manual, "Food Service Sanitation Ordinance," and/or licensing standards.

(m) Employees' personal belongings shall not be stored in food preparation, service, or storage areas.

Doc. No. 785944

326.32.06.005

(Editor's note: The text of the following rule proposed for repeal is not being published. The rule may be examined in the office of the Texas Register Division of the Secretary of State's Office, 503E Sam Houston Building, Austin, or in the office of the Department of Human Resources, John H. Reagan Building, Austin.)

The following repeal is proposed under the authority of Articles 695c and 695j-1, Texas Revised Civil Statutes:

.005. *Food Service Record Maintenance.*

Doc. No. 785945

326.32.06.007.-.009

The following additions are proposed under the authority of Articles 695c and 695j-1, Texas Revised Civil Statutes:

.007. *Dietetic Service Supervisor.*

(a) This individual shall meet the qualifications and requirements as defined in the administrative services rules and shall function in the capacity of a department head providing a minimum of 40 hours of services each week. In the supervisor's absence, a designated dietary employee shall provide the necessary supervisory functions. The supervisor shall be knowledgeable of and maintain compliance with the standards herein. The supervisor may have some minor cooking responsibilities, but sufficient time shall be allowed for supervision. Supervisory time per day shall be at least:

- (1) 100 percent—100 recipient-patients or more;
- (2) 75 percent—60 to 99 recipient patients;
- (3) 50 percent—59 or fewer recipient-patients.

(b) The duties and responsibilities of the dietetic service supervisor shall include but are not limited to:

- (1) participation in selection, orientation, periodic evaluation of, and total supervision of the dietary employees;
- (2) participation in regular staff meetings;
- (3) assistance with the planning and budgeting for dietary services;

(4) service on appropriate committees to coordinate dietary services with other recipient-patient care activities;

(5) assistance in the development of staff and operational policies and procedures relating to the dietary department, including the development of duty schedules and job descriptions;

(6) maintenance of required dietary records;

(7) writing or assisting with menu planning and the preparation of food purchase specifications and orders;

(8) responsibility for all food service supplies and equipment;

(9) provision of on-the-job training and inservice education sessions for dietary employees;

(10) direct responsibility for adequate and proper food preparation, proper food-handling techniques, and sanitary maintenance of the kitchen area;

(11) visiting recipient-patients, recording their personal food habits and preferences, incorporating these, when medically possible, into their meal service, and assisting in the formulation of the nutrition component of the total plan of care.

.008. *Dietary Consultant—Consultation.*

(a) In facilities where the dietetic service supervisor is not a dietitian, a dietary consultant shall be retained under written contract to provide dietary consultation. This individual must meet the qualifications and requirements as defined in the administrative services rules.

(b) The dietary consultant shall be scheduled on a monthly basis of eight hours per each 60 recipient-patients or portion thereof. After the first eight hours have been accomplished, the remainder may be calculated by increments of four hours per 30 recipient-patients or portion thereof. This may not be further reduced. These required hours are based on total census in the facility. The consultant's contract, reports, and documentation of services shall be maintained in accordance with required minimums as itemized in these rules.

(c) The consultant's visits shall be scheduled for a minimum of four hours per visit to allow for conference time with the administrator and director of nursing; the dietetic observation of meal service and recipient-patient eating; and other required services, including the following:

(1) providing continued liaison between dietary and medical and nursing staffs and advising the administrator on dietary and nutrition services and needs;

(2) assisting with dietary services budget planning, providing recipient-patient counseling, providing guidance to the dietetic service supervisor and staff, participating in the development or revision of all dietary policies and procedures, and planning and conducting in-service education sessions for dietary employees and other appropriate facility staff;

(3) writing or evaluating, approving, and signing all regular and therapeutic diet menus;

(4) actively participating and coordinating with other team members in the development of and periodic evaluation of the nutrition component of the total plan of care for individual recipient-patients; the nutrition care plan records must be maintained as part of the total care plan and be available to other health care personnel;

(5) evaluating and making recommendations regarding equipment maintenance, repair, and replacement, food

service layout and design for the most efficient recipient-patient feeding and meal delivery system;

(6) contributing to such committees and staff conferences as appropriate and as required for facility and recipient-patient care planning.

.009. *Food Preparation, Meal Service, and Patient Feeding.* Foods and meals shall be planned and prepared according to posted menus and served in such a manner as to meet the nutritional and feeding requirements of the recipient-patient and to provide bacteriologically safe, clean foods.

(a) Foods sufficient to meet the specific menu requirements of all recipient-patients shall be prepared for each meal with an adequate quantity included to allow for seconds for any recipient-patient, as allowed by the diet order. Food shall be prepared and/or altered to meet individual needs and preferences prior to tray service (bread spread, foods cut, chopped, ground, blended, etc.).

(1) When milk is used as a beverage, only fresh milk shall be used and shall be poured directly to the glass, just prior to serving, from the container as delivered from an approved dairy.

(2) Dry powdered milk and dry or frozen eggs may be used only if heated to 140 degrees Fahrenheit or above in preparation procedures.

(3) Persons responsible for the preparation and serving of therapeutic diets shall be trained in dietary restrictions and food patterns and to make comparative value substitutions when necessary.

(4) Food preferences of recipient-patients and special feeding information shall be considered in meal preparation and service when not in conflict with physician's orders. If a recipient-patient refuses a food served, substitutions of a comparable nutritive value shall be given and documented.

(5) Foods must be prepared by methods to conserve nutritive value, flavor, and appearance and no further in advance of meal service than is necessary.

(6) Foods shall be appropriately seasoned during preparation to satisfy normal tastes and withheld only from those foods prepared as required by the therapeutic orders. Artificial or substitute seasonings and special diet foods shall be provided as indicated by dietary restrictions.

(7) Tube feedings shall be prepared according to individual order and stored separately for each recipient-patient at 40 degrees Fahrenheit or lower in a sanitized, tightly-sealed container marked with the recipient-patient's name, room number, and date. The formula must be used within 24 hours. Tube-feeding formulas shall be specifically calculated by the dietitian and administered by licensed personnel as per physician's order to ensure the therapeutic and hydrational intent. Commercially prepared formulas may be used as ordered by the physician or approved for use by the medical staff and so indicated in operational policies and procedures.

(b) Food-handling techniques.

(1) Proper food handling techniques shall be practiced throughout food storage, preparation, and service.

(2) All foods shall be protected from contamination from any source through proper wrapping or enclosure in appropriate containers with tight-fitting lids and/or seals. Left-over prepared perishable foods shall be covered or otherwise protected, labeled, dated, and used within 24 hours.

(3) Refrigerated perishable foods portioned for service to a dish or container prior to actual meal service shall be

covered and returned to the refrigerator for holding and shall remain there until tray service.

(c) Food service.

(1) Procedures must be established and followed and equipment available and properly used to provide efficient tray and meal service and to keep foods at proper temperature during all phases of meal preparation and service.

(2) Nursing personnel shall provide dining room and ward feeding assistance and supervision, and document accurate food intake, acceptance, nutritional and/or eating problems. Recipient-patients needing assistance with eating shall have this provided immediately upon service of tray. Nursing personnel shall be trained in proper feeding techniques.

(3) All foods transported through the facility for recipient-patient feeding shall be covered and transported in such a manner to prevent contamination and spillage and to maintain proper temperature.

(4) Trays for bedfast recipient-patients shall be served on sturdy overbed tables. Sturdy, fixed-leg tray tables of proper height are to be provided to recipient-patients able to eat out of bed but who choose not to eat in the dining room. (TV trays are not acceptable.)

(5) Syringes and bulbs used for feeding shall be properly washed and sanitized after each use and stored between meals in a protected way to prevent contamination.

(6) Procedures shall be established and followed by handling all equipment and foods for isolation tray services.

(7) Recipient-patients needing adaptive, self-help devices and utensils to promote independence and ease with eating shall have these provided to them and shall be given instruction and assistance in their use. This equipment shall be cleaned and sanitized after each use.

(8) There shall be an adequate supply of food service and eating utensils available at all times so that each recipient-patient has all customary and appropriate items on his or her tray at each meal and according to food served.

Doc. No. 785946

Patient Care and Rehabilitation

326.32.07.001-.005, .007-.008

(Editor's note: The text of the following rules proposed for repeal is not being published. The rules may be examined in the office of the Texas Register Division of the Secretary of State's Office, 503E Sam Houston Building, Austin, or in the office of the Department of Human Resources, John H. Reagan Building, Austin.)

The following repeals are proposed under the authority of Articles 695c and 695j-1, Texas Revised Civil Statutes:

- .001. Patient Care Policies.
- .002. Social Services.
- .003. Patient Activities.
- .004. Personal Care Services.
- .005. Incident Report.
- .007. Specialized Rehabilitative Services.
- .008. Physical Therapy Aide.

Doc. No. 785947

326.32.07.006

The following amendments are proposed under the authority of Articles 695c and 695j-1, Texas Revised Civil Statutes:

.006. Patients' Rights.

(a) *The governing body of each facility shall establish* [is responsible for the establishment of] written policies regarding the rights and responsibilities of *recipient-patients* and, through the administrator, is responsible for enforcing adherence procedures implementing such policies. These policies and procedures *shall be* [are] made available to *recipient-patients*, to any guardians, next of kin, sponsoring agency(ies), or representative payees *selected pursuant to the Social Security Act*, and to the public. *The staff of the facility shall be trained and involved in the implementation of these policies and procedures.* These *recipient-patients' rights, policies, and procedures of each participating skilled nursing facility must at least ensure* that [, at least,] each *recipient-patient* admitted to the facility:

(1) is fully informed, as evidenced by the *recipient-patient's* written acknowledgement, prior to or at the time of admission and during stay, of these rights and of all rules and regulations governing patient conduct and *responsibility* [responsibilities];

(2) is fully informed, prior to or at the time of admission and during stay, of services available in the facility, and of related charges including any charges for services not covered under *Title* [Titles] XVIII or *Title* XIX of the Social Security Act, or not covered by the *facility's basic per diem* [authorized monthly vendor] rate;

(3) is fully informed, by a physician, of his or her medical condition unless medically contraindicated (as documented[,] by a physician[,] in *the* [his] medical record), and is afforded the opportunity to participate in the planning of his or her medical treatment and to refuse to participate in experimental research;

(4) is transferred or discharged only for medical reasons, or *for his or her welfare* or that of other patients, or for non[-]payment of [for his] stay (except as prohibited by *Title* [Titles XVIII or] XIX of the Social Security Act), and is given reasonable advance notice to ensure orderly transfer or discharge, [and] such actions *being* [are] documented in *the* [his] medical records:

(5) is encouraged and assisted[,] throughout his or her period of stay[,] to exercise his or her rights as a *recipient-patient* and as a citizen, and to this end may voice grievances and recommend changes in policies and services to facility staff and/or to outside representatives of his or her choice, free from restraint, interference, coercion, discrimination, or reprisal;

(6) may manage his or her personal financial affairs, or is given at least a quarterly accounting of financial transactions made on his or her behalf should the facility accept [his] written delegation of this responsibility [to the facility] for any period of time, in conformance with state law;

(7) is free from mental and physical abuse, [and] free from chemical and (except in emergencies) physical restraint except as authorized in writing by a physician for a specified and limited period of time *and* [, or] when necessary to protect the *recipient-patient* from injury to *self* [himself] or to others;

(8) is assured confidential treatment of his *or her* personal and medical records, and may approve or refuse their release to any individual outside the facility, except in the case of [his] transfer to another health care institution, or as required by law or third-party payment contract;

(9) is treated with consideration, respect, and full recognition of his *or her* dignity and individuality, including privacy in treatment and in care of [for] his *or her* personal needs;

(10) is not required to perform services for the facility that are not included for therapeutic purposes in his *or her* plan of care (as documented by the attending physician);

(11) may associate and communicate privately with persons of his *or her* choice, and send and receive [his] personal mail unopened unless medically contraindicated (as documented by the attending [his] physician [in his medical record]);

(12) may meet with and participate in activities of social, religious, and community groups at his *or her* discretion[,] unless medically contraindicated (as documented by the attending [his] physician [in his medical records]);

(13) may retain and use his *or her* personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other recipient-patients *or* [, and] unless medically contraindicated (as documented by the attending [his] physician [in his medical record]);

(14) if married, is assured privacy for visits by his *or her* spouse; if both are inpatients in the facility, they are permitted to share a room unless medically contraindicated (as documented by the attending physician [in the medical record]).

(b) All rights and responsibilities specified in subsections (1) through (4) above as they pertain to:

(1) a recipient-patient adjudicated incompetent in accordance with state law;

(2) a recipient-patient who is found[,] by his *or her* physician[,] to be medically incapable of understanding these rights; or

(3) the [a] recipient-patient who exhibits a communication barrier, [shall] devolve to such recipient-patient's guardian, next of kin, sponsoring agency (ies), or representative payee (except when the facility itself is representative payee) selected pursuant to [Section 205(j) of the Social Security Act [and Subpart Q of 20 Code of Federal Regulations 404].

Doc. No. 785948

326.32.07.009

The following addition is proposed under the authority of Articles 695c and 695j-1, Texas Revised Civil Statutes:

.009. Restorative and Rehabilitative Services.

(a) The skilled nursing facility shall have written restorative and rehabilitative nursing care policies to govern the continuing restorative nursing care and specialized rehabilitative services provided by the institution. These policies and procedures shall be developed by the medical director or organized medical staff with the advice of appropriate therapists and representatives of the medical, administrative, and nursing staff.

(b) Nursing personnel shall be trained in restorative nursing, and the facility shall maintain an active program of restorative nursing care. This care is an integral part of nursing service and is directed toward assisting each person to achieve and maintain an optimal level of self-care and independence.

(c) Restorative nursing care services shall be performed daily for those individuals who require such services. These services include assisting and encouraging each individual to:

(1) maintain good body alignment and proper positioning;

(2) keep active and out of bed for reasonable periods of time (except when contraindicated by physician's orders);

(3) achieve independence in activities of daily living by learning self-care and ambulation activities;

(4) adjust to disabilities, use prosthetic devices, and redirect interests, if necessary;

(5) carry out prescribed therapy exercises between visits of the therapists and regularly perform routine range of motion exercises.

(d) The nursing staff shall encourage and assist bed patients to change positions at least every two hours (day and night) to stimulate circulation and to prevent decubitus ulcers, contractures, and deformities. An active bowel and bladder retraining program for incontinent individuals shall be conducted by the facility.

(e) Restorative nursing care and services shall be recorded in the medical record and the record shall indicate the response of the individual to the care received.

(f) Through the recipient-patient care plan, the goals of restorative nursing care are reinforced in the activities program, therapy services, social services, and other activities and services.

(g) In addition to restorative nursing care, the nursing facility shall provide or arrange for, under written agreement, specialized rehabilitative services by qualified personnel (i.e., physical therapy, speech pathology and audiology, and occupational therapy) as needed by recipient-patients to improve and maintain functioning. These services shall be provided only upon the written orders of the individual's attending physician.

(h) Safe and adequate space and equipment shall be available commensurate with the services offered. If the facility does not offer specialized rehabilitative services directly, it must not admit or retain individuals in need of this care unless provisions are made for such services under arrangement with qualified outside resources, under which the facility assumes professional responsibility for the services rendered.

Issued in Austin, Texas, on September 8, 1978.

Doc. No. 785949

Jerome Chapman
Commissioner
Texas Department of Human Resources

Proposed Date of Adoption: October 16, 1978

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

Texas Department of Public Safety

Organization and Administration

General 201.01.06

The Texas Department of Public Safety is proposing to amend Rule 201.01.06.001, relating to organization and administration of the department. Proposed amendment 1 would delete the statement of legal authority from the rule, as it appears immediately preceding the text of the rule. Proposed amendment 2 would create subsection (5) to Section (c) of this rule, which pertains to the organization of an Internal Affairs Unit under direct supervision of the director.

The staff of the Texas Department of Public Safety has determined there are no fiscal implications involved in the proposed amendment as it entails reassignment of certain positions in the department.

Comments on the proposed amendment of Rule 201.01.06.001 are invited. Comments may be submitted by contacting Normal V. Suarez, Texas Department of Public Safety, Box 4087, Austin, Texas 78733, telephone (512) 452-0331. Comments must be received within 30 days of the publication of this proposal in the *Register*.

The amendments are proposed pursuant to the authority of Vernon's Civil Statutes, Article 4413(1), (2), (4), and (10).

.001. *Department of Public Safety.* [The following rule is promulgated under Vernon's Civil Statutes, 4413(1), (2), (4), and (10).]

(a) The control of the Department of Public Safety is vested in the three-man Public Safety Commission appointed by the governor. The commission appoints a director, who is the chief executive officer of the department.

(b) The director is responsible to the commission for the total administration and operation of the department. An assistant director is appointed by the commission also; he advises and assists the director in the operation of the department and acts for him in his absence.

(c) Special sections and offices that serve under the direct supervision of the director are as follows:

(1) Accounting and Budget Control Section. The chief of fiscal affairs of the Accounting and Budget Control Section is responsible to the director for the preparation and supervision of the budget, for purchasing and procurement, the accounting for receipts and disbursement of all funds, the maintenance of all financial records, and for maintaining a proper inventory of all capital property.

(2) The administrative assistant and general counsel serve as legal advisor to the director, federal grant coordinator, equal employment opportunity coordinator, Administrative Procedures Act liaison officer, and assists the director in the details of administration of departmental affairs.

(3) The public information officer is responsible to the director for the collection of information regarding departmental programs and operations and activities affecting the public and about which they should be informed and for the dissemination of such information through public information channels.

(4) The chief pilot is responsible to the director for the administration and operation of the Aircraft Section and the coordinator of activities with the chief of Administration, chief of Traffic Law Enforcement, and chief of Criminal Law Enforcement.

(5) *Internal Affairs Unit.* The internal affairs commander is responsible for conducting specific investigations assigned by the director's office or the Public Safety Commission.

Issued in Austin, Texas, on September 13, 1978.

Doc. No. 786076 Wilson E. Speir
Director
Texas Department of Public Safety

Proposed Date of Adoption: October 23, 1978

For further information, please call (512) 452-0331.



TEXAS
DEPARTMENT
PUBLIC SAFETY

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.

State Board of Barber Examiners

Practice and Procedure

The Board 378.01.01.

The State Board of Barber Examiners, on September 11, 1978, adopted amended Rule 378.01.01.001 under the authority of Articles 8401-8407 and 8407a, Texas Civil Statutes, to read as follows:

.001. Regular Meetings. Regular meetings of the State Board of Barber Examiners will be held at 5555 North Lamar, Building H, Suite 111, Austin, Texas, on the first Monday of each month, except September and any legal holiday which falls on the first Monday, when it will meet on the second Monday.

Issued in Austin, Texas, on September 14, 1978.

Doc. No. 786088 Charles F. Blackburn
Executive Secretary
State Board of Barber Examiners

Effective Date: October 6, 1978

For further information, please call (512) 458-2241.

Comptroller of Public Accounts

Central Administration

Office of Manpower Services 026.01.06

The Comptroller of Public Accounts has adopted the repeal of Rules 026.01.06.001-.005, relating to personnel practices of the comptroller's office, since Section 21 of the Administrative Procedure Act says that the act does not apply to internal personnel rules of an agency. The proposed repeal was published in the August 15, 1978, issue of the *Texas Register* (3 TexReg 2848).

Pursuant to the authority of Texas Revised Civil Statutes Annotated, Article 6252-13a, the Comptroller of Public Accounts has repealed Rules 026.01.06.001-.005.

Doc. No. 786089

Tax Administration

Sales Tax Division—State Taxes 026.02.20

Under the authority of Texas Taxation—General Annotated, Article 20.11(A) (1969), the Comptroller of Public Accounts has adopted Rule 026.02.20.017 to read as follows:

.017. Carrier (20.04(G), (P), (Q), (S), (B)).

(a) Definitions. For the purpose of this rule, the following words or terms will have the following meaning:

(1) Common carrier. The term "common carrier" is hereby defined as including only those licensed and certificated carriers of persons or property which hold themselves out as ready and able to serve all persons who choose to employ the facilities of the carrier equally so long as space is available and is distinguished from a contract carrier.

(2) Vessels. The term "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

(3) Component part. The term "component part" is hereby defined to include all tangible personal property which is actually attached to and becomes a part of the device used for carrying. The term does not include furnishings of any kind which are not attached to the device used for carrying, nor does it include consumable supplies, for example, it does not include among other things, bedding, linen, table and kitchen ware, tables, chairs, ice for cooling, refrigerants for cooling systems, fuels or lubricants.

(4) Marine cargo containers. Marine cargo containers are component parts of vessels when constructed for "containerships" and when fully or partially enclosed to constitute a compartment intended for containing goods, of a permanent character and, accordingly strong enough to be suitable for repeated use, specially designed to facilitate the carriage of goods, by one or more modes of transport, without intermediate reloading; and designed for ready handling, particularly when being transferred from one mode of transport to another. The term "marine cargo container" shall include the accessories and equipment of the container, appropriate for the type concerned, provided that such accessories and equipment are carried with the container. The term "marine cargo container" shall not include chassis, vehicles, accessories, or spare parts of vehicles.

(5) Licensed and certificated. The term "licensed and certificated carrier" shall mean a carrier which holds a valid license and/or certificate issued by the Interstate Commerce Commission and/or the Railroad Commission of Texas or any other authorized carrier licensing agency of the State of Texas or the federal government; except that a mere airworthiness certificate or pilot license will not be sufficient to qualify an aircraft as a licensed and certificated carrier.

(6) Rolling stock. The term "rolling stock" means and includes any equipment which is operated on railroad rails.

(7) Aircraft. The term "aircraft" means any powered contrivance designed for navigation in the air except

a rocket or missile. It includes all parts and equipment at the time of sale but does not include new additional parts or equipment added at a later date.

(8) Licensed course of instruction. A "licensed course of instruction" is pilot training or instruction conducted by a flight training school which has been certified or granted provisional certification under Federal Aviation Administration Regulations, 14 Code of Federal Regulations, Section 141 (1974).

(9) Repair services. The term "repair services" provided in Article 20.04(Q), Texas Taxation—General Annotated, includes the repair or replacement parts furnished to restore aircraft to its original condition.

(b)-(c) (No change.)

(d) Aircraft.

(1) Receipts from the sale, use, lease, storage, or other consumption in this state of aircraft sold to a nonresident or foreign government or acquired for use as a licensed or certificated carrier of persons or property are exempted from the limited sales, excise, and use tax.

(2) Repair and replacement parts which are acquired within or outside this state and actually affixed in this state to an aircraft which is a licensed and certificated carrier of persons or property are exempt from the sales and use tax.

(3) Aircraft purchased and used for the exclusive purpose of pilot training in a licensed course of instruction are exempt. The exemption extends only to aircraft purchased by flight schools for use by persons enrolled in a licensed course of instruction to satisfy the flight time requirements of the course. Nonexempt use of the aircraft will subject the purchaser to liability for the sales tax on the original purchase price.

(e)-(g) (No change.)

Issued in Austin, Texas, on September 15, 1978.

Doc. No. 786090 Bob Bullock
Comptroller of Public Accounts

Effective Date: October 6, 1978

For further information, please call (512) 475-3825.

Texas Education Agency Policies and Procedures System Public Comments Regarding Policies, Administrative Procedures, and State Plans 226.93.04

The Texas Education Agency has amended Rules 226.93.04.010-.060, concerning public comments on proposed changes in policy, administrative procedure, or state plans. The changes address several ways for the public to make comments as well as setting out rules for a formal public hearing under the Administrative Procedure and Texas Register Act.

Public review and discussion of the proposed rules were held. The rules are adopted with two changes from the text as proposed. A first paragraph has been added to Rule .010 to make clear that the rule does not restrict the right of the board or

board committees to request testimony from groups or individuals. In Rule .050, the word "forum" has been changed to "hearing."

These rules are promulgated under the authority of Section 11.02(a), Texas Education Code, and Section 5, Article 6252-13a, Vernon's Texas Civil Statutes.

.010. Requests from the Public to be Heard on Proposed Policies, Administrative Procedures, and State Plans.

(a) Nothing in this policy shall be interpreted to prohibit a committee of the board or the board itself requesting testimony from an individual or group to provide pertinent information to the committee or to the board.

(b) All requests to be heard on a proposed change in policy, administrative procedure, or state plan shall be directed in writing to the commissioner of education. A request to be heard must be received by the commissioner not more than 15 calendar days after notice of a proposed change in policy, administrative procedure, or state plan has been published in the *Texas Register*.

.020. Response to Requests from the Public to be Heard.

(a) The Texas Education Agency shall fulfill requests from the public to be heard in one of the following ways:

(1) a public hearing held by the commissioner of education;

(2) an invitation to the requestor to speak at a committee meeting of a standing or special committee of the board;

(3) a public hearing held by a committee of the board;

(4) an invitation to the requestor to speak before the board; or

(5) a public hearing held by the board.

(b) The appropriate response to each request to be heard shall be determined by the chairman of the board in consultation with the chairmen of appropriate board committees and the commissioner of education.

.030. Request for Public Hearing under the Administrative Procedure and Texas Register Act.

(a) A public hearing shall be held on proposed policies, administrative procedures, or state plans when such a hearing is requested in writing by at least 25 persons, by a governmental subdivision or agency, or by official action of an association having at least 25 members.

(b) All requests for a public hearing under the Administrative Procedure and Texas Register Act shall be directed in writing to the commissioner of education. A request must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in policy, administrative procedure, or state plan has been published in the *Texas Register*.

(c) A public hearing requested under the Administrative Procedure and Texas Register Act may be held by the commissioner of education, or his designee, a committee of the board, or the board. The appropriate forum in each instance shall be determined by the chairman of the board in consultation with the chairmen of appropriate board committees and the commissioner of education.

.040. Procedures for Public Hearing.

(a) Notice of the date, time, and place of the public hearing shall be posted in accordance with the Open Meetings Law (Article 6252-17, Vernon's Texas Civil Statutes)

and shall be published in the *Texas Register* as far in advance of the hearing date as possible.

(b) Any person desiring to appear and speak is requested to give written notice to the commissioner of education at least five calendar days before the hearing is scheduled to be held. The officer, board, or committee conducting the hearing may limit the number of persons speaking and the time allotted to each.

(c) The purpose of a public hearing is to provide the commissioner and the State Board of Education with information which will be useful to them in their deliberations. Hearings shall not be adversary or adjudicative in nature.

.050. Transcripts. Upon the initiative of any officer, board, or committee before whom a hearing is held, or upon the timely written request of any interested party, the agency may cause a verbatim transcript to be made of all or any portion of the hearing. Written requests for a verbatim transcript shall be submitted to the commissioner of education no later than three days prior to the scheduled hearing date, and as a condition to granting the request, the agency may require the requesting party to pay the actual cost of a transcript. If the transcript is made at the initiative of the officer, board, or committee, its cost shall be borne by the agency.

.060. Other Public Comments.

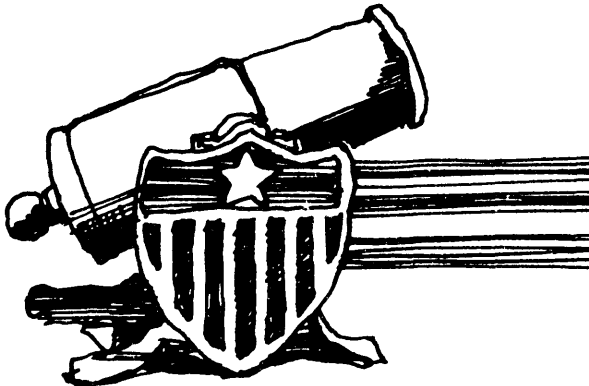
(a) The board encourages the submission of comments orally or in writing on proposed changes in policy, administrative procedures, and state plans.

(b) The commissioner shall consider fully all written and oral submissions in his deliberations on the adoption of administrative procedures and in his recommendations to the state board concerning policies and state plans. The commissioner shall provide the board with information obtained from written or oral submissions which would aid the board in actions regarding proposed policies or state plans.

Issued in Austin, Texas, on September 13, 1978.

Doc. No. 786070 M. L. Brockette
Commissioner of Education

Effective Date: October 4, 1978
For further information, please call (512) 475-7077.



Texas Judicial Council Continuing Legal Education of Municipal Court Judges 602.02.00

The Texas Judicial Council has amended Rule 602.02.00.002, entitled Application for Accreditation. The amendment provides for semiannual submission of applications for accreditation of courses for the continuing legal education of municipal court judges. The purpose of the amendment is to allow better coordination of the location of courses, so as to reduce commuting distance for judges and unnecessary duplication of courses in the same area of the state. No public comments on the proposed rule amendment were received.

This amendment is adopted under the authority of Section 3 of Article 1200f, Texas Civil Statutes.

.002. Application for Accreditation. In order to be accredited, a schedule of topics to be covered, time to be spent on each, and instructors must be submitted to the council on or before August 1 if the course, program, or seminar is scheduled to be held within the subsequent September 1-February 28 period, or on or before February 1 if the course, program, or seminar is scheduled to be held within the subsequent March 1-August 31 period, provided the time restrictions contained herein may be waived by the council.

Issued in Austin, Texas, on September 13, 1978.

Doc. No. 786091 C. Raymond Justice
Executive Director
Texas Judicial Council

Effective Date: October 6, 1978
For further information, please call (512) 475-2421.

Texas Department of Mental Health and Mental Retardation

Client (Patient) Care

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

The Texas Department of Mental Health and Mental Retardation has adopted the repeal of Rules 302.04.24.001-.031, all of which dealt with admissions, transfers, furloughs, and discharges to and from state schools for the retarded. The proposed repeal was published in the April 7, 1978, issue of the *Texas Register* (3 TexReg 1283). The repeal of Rules 302.04.24.001-.031 was proposed because the Mentally Retarded Persons Act of 1977, Article 5547-300, Vernon's Texas Civil Statutes, required substantial and extensive changes in the department's rules. The department is adopting new admission, transfer, furlough, and discharge rules for state schools for the retarded simultaneously with the repeal of Rules 302.04.24.001-.031.

Pursuant to the authority contained in Section 2.11(b) of Article 5547-202, Texas Civil Statutes, the Texas Department of Mental Health and Mental Retardation has repealed Rules 302.04.24.001-.031, Admissions, Transfers, Furloughs, and Discharges—State Schools for the Retarded.

Doc. No. 786081

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

The Texas Department of Mental Health and Mental Retardation has adopted Rules 302.04.73.001-.034, all of which relate to admissions, transfers, furloughs, and discharges to and from state schools for the retarded. As a result of comments received during a public hearing held on May 22, 1978, and as a result of re-evaluation of the proposed rules, Rules 302.04.37.001-.034 have been adopted with several changes in the text proposed. The following is a summary of the changes that have been made.

Rule 302.04.37.003 has been rearranged so that the definitions are in alphabetical order. The purpose of the change is to assist readers in more readily locating a particular definition. Also, the definition of "least restrictive alternative" has been rewritten to track the language of the Mentally Retarded Persons Act of 1977 (the "act"), Article 5547-300, Vernon's Texas Civil Statutes. In addition, the second sentence of Section (z)(2) of proposed Rule 302.04.37.007 has been deleted.

Language has been added to Rule 302.04.37.004(a)(2) to require a private diagnosis and evaluation team that has been certified by the department to forward its findings and recommendations to the community center, state center for human development, or state school to be included with the state school application material. Also in Rule 302.04.37.004(b)(2)(A), language has been added to require that the comprehensive diagnosis and evaluation be performed or updated within 90 days of the endorsement of the state school application for admission by the community center, state center for human development, or state school outreach program. Rule 302.04.37.004(b)(2)(H) has been rewritten to make clear that the proposed resident must be the primary beneficiary of a regular or emergency voluntary admission; and that the primary beneficiary of a respite admission may be the proposed resident, the resident's family, society, the community, or any combination of those persons or entities. A new Section (b)(2)(I) has been added to Rule 302.04.37.004 to require that where the admission is not endorsed as the optimal placement, the inappropriateness of the endorsement will be clearly acknowledged and documented as part of the record. Section (c)(2) of Rule 302.04.37.004 has been deleted since the Committee on Alternate Placements no longer exists. The remainder of the rule has been renumbered accordingly.

Rule 302.04.37.005(a) has been rewritten to provide that a person who possesses a measure IQ of two, but not more than three, standard deviations below the mean of a standardized psychometric instrument existing concurrently with an adaptive behavior level II, III, or IV may be admitted to a state school only when extensive documentation is presented

to the department which verifies that all appropriate community resources have been considered and determined to be inappropriate or unavailable. Language has also been added to Section (h) to require the annual request for information to be written in either English or Spanish, as the case requires. Language has been added to Section (h)(3) of Rule 302.04.37.005 to state the department's policy that every possible effort to locate the applicant, parent of a minor, or guardian of the person will be made prior to changing an applicant's status on the centralized waiting list.

Rule 302.04.37.006(k)(1) has been rewritten to make clear that a current comprehensive diagnosis and evaluation report must accompany an application for court commitment filed or caused to be filed by the superintendent of a departmental residential care facility for the mentally retarded.

Rule 302.04.37.007(b) has been rewritten to state that a child committed in accordance with Section 55.03 of the Texas Family Code will be placed in a departmental residential care facility that offers programming and training appropriate to meet the child's needs. A new Section (d) has also been added to Rule 302.04.37.007 to state that a department facility will make arrangements to perform a comprehensive diagnosis and evaluation as soon as possible when a court of competent jurisdiction orders a person to submit to and authorizes a departmental facility to perform such comprehensive diagnosis and evaluation. The findings and recommendations of the diagnosis and evaluation team must be provided to the court.

Rule 302.04.37.008(a)(6) has been rewritten to require that if a regular admission is not appropriate, the departmental facility will initiate plans for the continued and active exploration of appropriate alternate placements.

Language has been added to Rule 302.04.37.009(a)(1) to make clear that persuasive documentary evidence that the proposed resident is mentally retarded is required before he or she may be admitted on an emergency admission.

Rule 302.04.37.011(a)(3) and (4) have been rewritten to make clear that a respite care admission requires that the superintendent or director determine that the facility can and does provide services that meet the needs of the proposed resident and that there is a need for the proposed resident and/or his or her family that urgently requires assistance or relief. Section (a)(6) of proposed Rule 302.04.37.011 has been deleted. The enumeration in Rule 302.04.37.011(a) has been renumbered accordingly.

Rule 302.04.37.012(b)(2) has been rewritten to add the requirement that casework services be utilized to assure that adequate arrangements exist to meet the needs of the resident whenever a transfer of the resident to another departmental facility has been initiated. The enumeration in Rule 302.04.37.012(b) has been renumbered accordingly.

Language has been added to Rule 302.04.37.013(e) to make the enumeration of records required to accompany a transferred resident to the destination facility consistent with federal ICF-MR regulations.

Language has been added to Rule 302.04.37.014(a) to make clear that a court-committed resident may receive emergency or elective medical or dental care and treatment which is not available at the residential care facility at either com-

munity health care facilities or at the medical and surgical unit of a state hospital.

That portion of Rule 302.04.37.019(j) which provided that a court-committed resident will be discharged if he or she has been absent for 90 days and the court has been given notice of the proposed discharge or the parents of a minor or guardian of the resident is aware of the resident's whereabouts and does not return him for a period of 90 days has been deleted.

Rule 302.04.37.025(c)(5) has been rewritten to include a requirement that a statement that the resident, parent of a minor, or guardian of the resident has been counseled on the relative advantages and disadvantages of the discharge be included in the discharge summary. The enumeration in Rule 302.04.37.025(c) has been renumbered accordingly.

New Sections (c), (b), (c), and (c) have been added to Rules 302.04.37.026, .027, .028, and .029, respectively, to require that at six-month intervals, up to one year, from the date of discharge, the staff of a department facility will contact the discharged client and prepare a summary of the client's status and progress. All attempts to contact the client will be documented in the client's record.

Sections (a)(3)(B) and (a)(3)(C) of Rule 302.04.37.027 have been rewritten to make clear that the resident, parent of a minor, or guardian has the right to request an administrative hearing to contest the findings and recommendations of the comprehensive diagnosis and evaluation team, and that the person requesting the administrative hearing has the right to obtain an independent comprehensive diagnosis and evaluation.

Rule 302.04.37.028(b) has been rewritten to make clear that when a voluntary withdrawal from mental retardation services is made and no court commitment is sought, the resident and the parent of a minor or guardian of the resident will be counseled on the relative advantages and disadvantages of the discharge, and that discharge services, such as referrals to appropriate community services for additional aftercare support services, are offered.

Other minor, technical changes in wording have also been made throughout Rules 302.04.37.001-.034.

Rules 302.04.37.001-.034 have been promulgated pursuant to the authority contained in Section 2.11(b) of Article 5547-202, Texas Civil Statutes, and Section 60 of Article 5547-300, Texas Civil Statutes.

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

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

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

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

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

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

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

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

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

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

.003. Definitions. In these rules:

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

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

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

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

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

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

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

(h) "Community center" means an entity organized pursuant to Section 3.01 of the Texas Mental Health and Mental Retardation Act as amended, Article 5547-201 to 5547-204, Vernon's Texas Civil Statutes, which provides mental retardation services. It does not include outreach or outpatient programs operated by state facilities.

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

(j) "Comprehensive diagnosis and evaluation team" means a team of personnel composed of not less than a core team as defined in Rules of the Commissioner of MH/MR, Rules Governing Comprehensive Diagnostic and Evaluation Centers, Certification of Professionally Qualified Members of a Diagnosis and Evaluation Team, 302.04.35.006, and such other personnel as may be designated by the facility to assist the team.

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

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

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

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

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

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

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

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

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

(t) "Guardian" means the person who, under court order, is the legal guardian of the person of another or is a limited guardian under Sections 130A through 1300, Texas Probate Code, Vernon's Annotated Texas Statutes.

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

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

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

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

(y) "Legally adequate consent" means consent given by a person when each of the following conditions has been met:

(1) Legal capacity: the person giving the consent is of the minimum legal age and has not been adjudicated incompetent to manage his personal affairs by an appropriate court of law;

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

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

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

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

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

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

(1) to which the Texas State Department of Health has issued a custodial license, nursing home license, or both; provided, however, that the term shall include an ICF-MR I facility that meets the requirements of subsection (2) of this Section (aa) even though an ICF-MR I facility is not required to be licensed by the State of Texas; and

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

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

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

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

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

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

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

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

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

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

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

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

(mm) "Resident of the state" means:

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

(nn) "Rules of the Commissioner of MH/MR" means the rules of the Texas Department of Mental Health and Mental Retardation, which are available for public inspection at each department facility and at the Central Office of the department, 909 West 45th Street, Austin, Texas.

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

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

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

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

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

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

(uu) "Qualified mental retardation professional" (QMRP) means a person meeting requirements of ICFMR

standards, 45 Code of Federal Regulations, Section 249.12(6)(3).

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

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

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

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

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

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

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

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

(a) Application.

(1) An application for admission (which is attached to these rules as Exhibit A—.04.37.004) must be completed and submitted to the residential care facility to which application for admission is made. The application procedure originates in the community with the consent of a parent of a minor, guardian, a proposed resident if a competent adult or pursuant to a court order of commitment, who may secure the application form from:

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

(B) a state school for the mentally retarded,

(C) a state center for human development.

(2) It shall be the responsibility of the community MH/MR center or the state center for human development serving the applicant's county of residence to provide assistance in the completion of the application form and to act upon corresponding applications for comprehensive diag-

noses and evaluations. In counties of residence not served by a community MH/MR center or a state center for human development, it shall be the responsibility of the state school for the mentally retarded serving that county to provide these services. In areas where private diagnosis and evaluation teams have been certified by the department, the results of the comprehensive diagnosis and evaluation shall be forwarded to the community MH/MR center, state center of human development, or state school, as appropriate, to be included with the application material.

(3) A completed application must include:

- (A) completed application form;
- (B) financial statement;
- (C) recent photograph of the applicant;
- (D) applicant's immunization record;
- (E) duplicate or copy of applicant's social security

card;

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

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

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

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

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

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

(L) copies of court order commitment if required.

(b) Endorsement.

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

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

(A) the comprehensive diagnosis and evaluation, or update, which has been performed within 90 days of the endorsement, concludes that the applicant is a mentally retarded person;

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

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

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

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

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

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

(H) the primary beneficiary of a regular or an emergency admission is the proposed resident; the primary beneficiary of a respite admission can be the proposed resident, the resident's family, community, society, or any combination of these;

(I) where admission is not endorsed as the optimal plan, the inappropriateness of the endorsement shall be clearly acknowledged and documented as a part of the record and the application forwarded to the state school serving the area.

(c) Eligibility certification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Ordinarily, only those applicants determined by a comprehensive diagnosis and evaluation team to possess a measured IQ of more than three standard deviations below the mean of a standardized psychometric instrument existing concurrently with an adaptive behavior level of II, III, or IV shall be eligible for placement on the centralized waiting list. The placement of those individuals who possess a measured IQ of two, but not more than three, standard deviations below the mean of a standardized psychometric instrument existing concurrently with an adaptive behavior level of II, III, or IV on the centralized waiting list will be made only when extensive documentation is presented to the department verifying that all appropriate community resources have been considered and determined to be inappropriate or not available. The documentation shall consist of a signed statement from each agency or organization which specifies, based upon a review of the comprehensive diagnosis and evaluation, why its program cannot meet the needs of the client more effectively or in a less restrictive environment than a residential care facility for the mentally retarded.

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

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

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

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

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

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

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

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

(d) Upon receipt of an application from the coordinator of state school admissions, the residential care facility shall determine if the application is for a voluntary admission or is based upon a court-commitment order.

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

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

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

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

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

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

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

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

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

ble effort, within legal limitations, shall be made to locate the applicant, parent of a minor, or guardian, prior to changing an applicant's status on the centralized waiting list.

(i) Persons in a department facility for the mentally ill seeking regular placement in a residential care facility for the mentally retarded shall be placed on centralized waiting list in accordance with Rule .005 of these rules.

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

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

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

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

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

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

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

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

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

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

(j) No person shall be admitted to a residential care facility for the mentally retarded for the sole purpose of performing a comprehensive diagnosis and evaluation if it can

be performed in a less restrictive setting. Applications for a comprehensive diagnosis and evaluation that are accompanied by requests for placement within the facility for that purpose shall adhere to the following general provisions:

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

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

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

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

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

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

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

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

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

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

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

(2) The superintendent shall obtain legally adequate consent for voluntary admission to the facility from the resident or from the guardian.

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

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

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

(a) Admission to a residential care facility for the mentally retarded of a court-committed person shall be made

from the centralized waiting list without regard to the currency of the comprehensive diagnosis and evaluation data, except that all residential care facilities for the mentally retarded shall perform a comprehensive diagnosis and evaluation within 30 days from the date of such court-committed admissions. If it is found that the person is no longer a mentally retarded person and is ineligible for placement, the person is to be discharged in accordance with Rule .027 of these rules.

(b) On receipt of a juvenile court order committing to a residential care facility a child found to have engaged in delinquent conduct or conduct indicating a need for supervision and who is also determined by a comprehensive diagnosis and evaluation team to exhibit a significantly subaverage general intellectual functioning of 2.5 or more standard deviations below the age group mean for the test used existing concurrently with deficits in adaptive behavior of Levels I-IV, the child shall be committed to the jurisdiction of the Texas Department of Mental Health and Mental Retardation in accordance with Section 55.03 of the Texas Family Code, Vernon's Texas Civil Statutes, for placement in a residential care facility that offers programming and training appropriate to meet the needs of the child.

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

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

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

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

(d) On receipt of an order from a court of competent jurisdiction which orders a person to submit to and which authorizes a facility of the department to perform a comprehensive diagnosis and evaluation, the facility shall make arrangements to perform the comprehensive diagnosis and evaluation as soon as possible. The facility shall provide the court with copies of the findings and recommendations of the diagnosis and evaluation team.

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

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

- (1) the person is on the centralized waiting list; and
- (2) a comprehensive diagnosis and evaluation has

determined that the person is moderately or more severely retarded; and

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

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

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

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

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

(6) if admission is not appropriate, plans will be initiated for the continued and active exploration of appropriate alternatives; and

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

(A) specific skills or assistance needed;

(B) proposed goals of the placement;

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

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

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

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

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

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

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

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

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

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

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

(A) specific skills or assistance needed;

(B) proposed goals of the emergency placement;

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

(D) participation of the proposed resident in the development of the habilitation plan; the statement should be

signed by the facility representative, resident, parent of a minor, or guardian; and

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

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

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

(b) Emergency placements may be made for a maximum period of six months and are renewable in succession only once. Renewal of an emergency placement requires again meeting the criteria and procedures in Section (a) of this rule.

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

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

(1) The person is thought to be mentally retarded.

(2) The necessary residential services are not available in a less restrictive environment provided by the department or a community MH/MR center within a reasonable distance from the person's residence.

(3) The proposed resident, if capable, or as appropriate, the parent of a minor or the guardian of the person, and the facility develop a diagnosis and evaluation admission application (which is attached to these rules as Exhibit C—.04.37.010) as to the:

(A) specific skills or assistance needed;

(B) proposed goals of the diagnosis and evaluation placement;

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

(D) action to be taken upon completion of diagnosis and evaluation study;

(E) the statement should be signed by the facility representative, proposed resident, parent of a minor, or guardian.

(4) The superintendent makes the determination that the residential care facility is able to provide services requested.

(b) Diagnosis and evaluation placements are for a maximum period of 30 days and are not renewable.

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

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

(1) there is persuasive documentary evidence that the proposed resident is a mentally retarded person;

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

(3) the superintendent or director of the facility determines that the facility can and does provide services that meet the needs of the proposed resident;

(4) there is a need for the proposed resident and/or his family that urgently requires assistance or relief;

(5) the necessary respite care services are not available in a less restrictive environment provided by the department or a community MH/MR center within a reasonable distance from the person's residence;

(6) the proposed resident, if capable, or as appropriate, the parent of a minor, or guardian of the person, and the facility develop a respite care agreement (attached to these rules as Exhibit D—.04.37.011) as to the:

(A) specific relief or assistance that is sought; and

(B) time period that is necessary to achieve the goals of the respite care placement.

(b) Respite care placement will be for a maximum period of 30 days and is renewable in succession only once. Renewal requires that:

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

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

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

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

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

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

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

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

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

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

(2) casework services or other means are utilized to assure that adequate arrangements exist for meeting the resident's other needs through other resources; and

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

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

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

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

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

(c) Denial of a request for transfer by a resident of a residential care facility for the mentally retarded, parent of a

minor resident, or guardian of the resident shall be made only after informing the resident, parent of a minor, or guardian of:

- (1) the reason for the denial, and
- (2) the right to an administrative hearing to contest the denial.

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

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

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

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

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

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

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

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

(2) the appropriate interdisciplinary team of the facility where the resident is currently placed reviews the transfer request and determines whether the transfer would be in the best interest of the resident;

(3) the transfer be approved by:

(A) the resident, parent, or guardian, or

(B) final decision of the administrative hearing process (See Rule .031 of these rules).

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

(1) the request for transfer;

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

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

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

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

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

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

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

(1) original state school application for admission form, including identifying information,

(2) birth certificate,

(3) legal documents, including legal status,

(4) social security card or duplicate,

(5) photograph recent within one year,

(6) immunization record,

(7) weight and height record,

(8) seizure record,

(9) treatment and diet record, medication and dietary history,

(10) most recent medical examination record, including vision and hearing:

(A) dental records;

(B) consultations;

(C) health care plan.

(11) all laboratory reports of exams conducted within past 30 days (including but not limited to x-ray, EEG, EKG); any laboratory results obtained during past 12 months should also be included,

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

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

(14) assessments and/or progress reports from physician, nursing service, O.T., P.T., speech, when appropriate,

(15) complete personal belongings inventory,

(16) transfer program summary, incident reports, daily notes (past 12 months),

(17) copy of the original social history and social history summary,

(18) recent psychological within three years plus update or current psychological.

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

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

(2) all personal belongings of the resident.

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

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

(a) A court-committed resident who requires emergency or elective medical or dental care and treatment which is not available at the residential care facility may utilize existing community resources or the medical/surgery units of state mental hospitals. If a resident is transferred to a state hospital, the following procedures must be followed:

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

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

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

(2) In all cases, the superintendent of the state mental hospital to which the resident was transferred shall immediately cause an evaluation of the resident's condition to be made. If the evaluation reveals that the resident is mentally ill and continued hospitalization is necessary for a

period in excess of 30 days, the superintendent of the state mental hospital shall proceed in accordance with Section (b) of this rule; however, if the evaluation reveals that continued hospitalization of the resident for a period in excess of 30 days is not expected, then the transfer shall be considered as a temporary furlough and shall meet the requirements of Rule .022 of these rules.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) The superintendent of the state mental hospital to which the resident was transferred shall immediately cause an evaluation of the resident's condition to be made. If such an evaluation reveals that continued hospitalization is necessary for a period in excess of 30 days, the superintendent

shall promptly initiate appropriate court-ordered transfer proceedings in accordance with Section 46(d) of the Mentally Retarded Persons Act of 1977, a copy of which is attached to these rules as Exhibit I—.04.37.014.

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

.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 made by a voluntarily admitted adult resident, parents of a minor resident, or guardian of a resident, 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 of the Commissioner of MH/MR Affecting Other Agencies and the Public, Interstate Transfer Rules and Procedures 302.03.10.

.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 director of the furlough facility may immediately request and authorize 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 furlough 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 and committing court of the unauthorized departure and shall make every reasonable effort, including notification to peace officers, to locate the absent resident.

.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 all required 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 and/or representatives of local community centers which serve the catchment area 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 his 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 progress 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) reports of laboratory tests 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.

(e) 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 statement that the resident and, as appropriate, the parent of a minor or guardian, has been counseled on the relative advantages and disadvantages of the discharge;

(6) a summary of the discharge plan, including provisions for follow-along and after-care services;

(7) a statement of the reason discharge is recommended;

(8) signatures of the interdisciplinary team members recommending discharge;

(9) 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.

(c) At six-month intervals, up to one year, from the date of discharge, the staff of the residential care facility will contact the discharged client and prepare a summary of the client's status and progress. All attempts to contact the client will be documented in the client's record.

.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 request an administrative hearing for the purpose of contesting the findings and recommendations of the comprehensive diagnosis and evaluation team, a copy of whose report must be enclosed with the notice; and

(C) the person requesting the administrative hearing 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) At six-month intervals, up to one year, from the date of discharge, the staff of the residential care facility will contact the discharged client and prepare a summary of the client's status and progress. All attempts to contact the client will be documented in the client's record.

.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 exist-

ing 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) counsel with the resident and, as appropriate, the parent of a minor or guardian, on the relative advantages and disadvantages of the discharge;

(2) offer discharge planning and follow-along services to include but not be limited to referrals to appropriate community resources for additional aftercare support services, if legally adequate consent is obtained from the appropriate individual;

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

(c) At six-month intervals, up to one year, from the date of discharge, the staff of the residential care facility will contact the discharged client and prepare a summary of the client's status and progress. All attempts to contact the client will be documented in the client's record.

.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.

(c) At six-month intervals, up to one year, from the date of discharge, the staff of the residential care facility will contact the discharged client and prepare a summary of the client's status and progress. All attempts to contact the client will be documented in the client's record.

.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 MH/MR 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, State School Applicant Data Collection Form;
- (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 MH/MR, 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 MH/MR Affecting Client (Patient) Care, Rules Governing Comprehensive Diagnostic and Evaluation Centers, 302.04.35.001-013;

(l) Rules of the Commissioner of MH/MR 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;

(m) United States Civil Rights Act of 1964 as amended;

(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 MH/MR 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 September 14, 1978.

Doc. No. 786082

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

Effective Date: October 5, 1978

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

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*.

3rd Court of Civil Appeals Superior Oil Company v. Railroad Commission

The Railroad Commission should deny a permit (to drill a substitute well) if it does not reasonably appear to it that the applicant has a good-faith claim in the property. The Railroad Commission may inquire into the validity of a survey by a state-licensed surveyor.

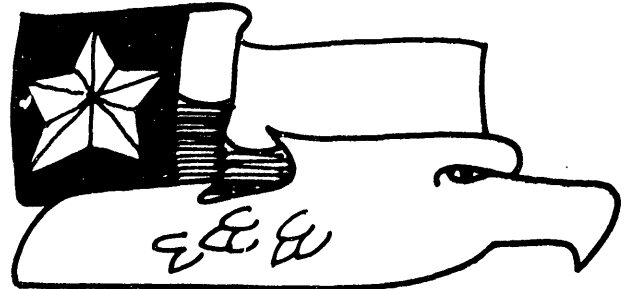
Generally, the boundaries of a tract are to be determined by lines and corners actually run and marked on the ground by the surveyor who made the survey in accordance with which the deed was made. The footsteps of the surveyor must be followed when ascertainable in determining the true boundary lines. (15 TLWD 35, at 6)

Filed: August 30, 1978, Austin
Doc. No. 3C82

11th Court of Civil Appeals City of Abilene v. Shackelford

Members of the "news media" are not interested persons within the Open Meetings Act and lack standing to challenge the validity of a closed meeting (of the city council). Plaintiffs failed to allege or prove they suffered a peculiar or special injury resulting from the closed meeting or the failure to keep and produce minutes of such meeting. (15 TLWD 35, at 2)

Filed: August 31, 1978, Eastland
Doc. No. 3C81



3374 OPEN MEETINGS

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 County and District Retirement System

Friday, September 29, 1978, 9 a.m. The Board of Trustees of the Texas County and District Retirement System will meet at the Galleria Plaza Hotel, 5060 West Alabama, Houston, to consider the following items, as summarized: determination of applications for service retirement and disability retirement; review of financial statements; reports from the actuary, director, legal counsel, and investment counsel; proposals to amend governing statute of this system; fixing of contribution rates of participating subdivisions; other business; and setting of date for December meeting.

Additional information may be obtained from the Texas County and District Retirement System, 802 Perry Brooks Building, Austin, Texas 78701, telephone (512) 476-6651.

Filed: September 18, 1978, 12:28 p.m.
Doc. No. 786117

East Texas State University

Thursday, September 21, 1978, 4:30 p.m. The Board of Regents of East Texas State University will meet in the Board of Regents Conference Room, East Texas State University, Commerce, to consider the board of regents' workshop.

Additional information may be obtained from Charles Morrow, East Texas State University, Commerce, Texas, telephone (214) 886-5026.

Filed: September 18, 1978, 12:28 p.m.
Doc. No. 786116

Friday, September 22, 1978, 9 a.m. The Board of Regents of East Texas State University will meet in the Board of Regents Conference Room, campus, Commerce, to vote on matters concerning the following, as summarized: adjustments in the 1977-1978 budget and the 1978-1979 budget; deletion of surplus equipment; adoption of Policy No. II D6, No. II N5, No. IV D32, and faculty workload policy; authorization to negotiate bank depository contracts; approval of curriculum changes; approval of small class reports; authorization to establish an Athletic Hall of Fame; the awarding of Dean Emeritus and Professor Emeritus; to secure facilities for the operation of the Metroplex Program; and goals for the university for institutional development.

Additional information may be obtained from Charles Morrow, East Texas State University, Commerce, Texas 75428, telephone (214) 886-5026.

Filed: September 15, 1978, 10:27 a.m.
Doc. No. 786086

General Land Office

Monday, September 25, 1978, 9 a.m. The Board for Lease of the Department of Corrections will meet in Room 831, 1700 North Congress, Austin, to consider three seismic permits, as summarized in the agenda.

Additional information may be obtained from Linda Fisher, Room 835, 1700 North Congress, Austin, Texas 78701, telephone (512) 475-2071.

Filed: September 15, 1978, 4 p.m.
Doc. No. 786102

Texas Historical Commission

Thursday, September 28, 1978, 10:30 a.m. The Texas Review Board of the Texas Historical Commission will meet in Gethsemane Church, 1510 Congress, Austin, to consider the following items, as summarized: review and approval of annual work program; review and approval of items for nomination to the National Register of Historic Places.

Additional information may be obtained from Joe Williams, 1511 Colorado, Austin, Texas 78701, telephone (512) 475-3094.

Filed: September 18, 1978, 11:36 a.m.
Doc. No. 786111

University of Houston

Wednesday, September 27, 1978, 3:30 p.m. The Executive Committee of the University of Houston Board of Regents will meet in Chairman Aaron J. Farfel's office, 1630 Bank of the Southwest, Houston, to consider staff and administrative increments and salaries for fiscal year 1978-1979, as summarized in the agenda.

Additional information may be obtained from Philip G. Hoffman, University of Houston, Houston, Texas 77004, telephone (713) 697-5700.

Filed: September 18, 1978, 12:28 p.m.
Doc No 786115

Texas Department of Human Resources

Wednesday, October 4, 1978, 9 a.m. until 4:30 p.m. The Research Review Committee of the Texas Department of Human Resources will meet in Room 411, John H. Reagan Building, Austin, to consider the following items, as summarized: Rural Medicaid Access Project; Texas Optimum Method Project; Child Abuse and Neglect Project; Texas Foster Care Project; Sexual Abuse Treatment Project; Maltreatment of the Elderly Project; Medicaid Research and Demonstration Project; and system for efficient eligibility determination.

Additional information may be obtained from Kent Gummerman, Americana Building, 1301 South Interstate Highway 35, Austin, Texas, telephone (512) 475-5701.

Filed: September 18, 1978, 10:53 a.m.
Doc. No. 786110

State Board of Insurance

Monday, September 25, 1978, 10 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 343, 1110 San Jacinto, Austin, to consider the purchase of treasury stock, regarding Christian Fidelity Life Insurance Company, Waxahachie, pursuant to Texas Insurance Code Annotated, Article 3.05(b).

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto, Austin, Texas 78786, telephone (512) 475-4353.

Filed: September 15, 1978, 4:47 p.m.
Doc. No. 786106

Texas State Board of Landscape Architects

Monday, September 25, 1978, 2 p.m. The Texas State Board of Landscape Architects will meet in emergency session in Suite H-106, 5555 North Lamar, Austin, to consider the following items, as summarized: discussion on budget; adoption of proposed rule changes 377.01 - 377.07.00.703; discussion of June L. A. exam licensees; review of reciprocity applications; discussion on October L. I. exam; discussion of renewals and non-renewals; and other business, old, unfinished, and new business.

Additional information may be obtained from J. Susanne Silber, Suite H-106, 5555 North Lamar, Austin, Texas 78751, telephone (512) 458-4126.

Filed: September 18, 1978, 11:50 a.m.
Doc. No. 786112

Texas State Board of Library Examiners

Thursday, September 28, 1978, 10 a.m. The Texas State Board of Library Examiners will meet in Room 202, Lorenzo de Zavala State Archives and Library Building, Austin, to hear testimony and consider the proposed amendments to Rules 385.10.001-.005.

Additional information may be obtained from Jimmy Hausenfluke, P.O. Box 12927, Austin, Texas 78711.

Filed: September 18, 1978, 9:06 a.m.
Doc. No. 786107

State Board of Morticians

Monday through Thursday, September 18-21, 1978, 9 a.m. daily. The State Board of Morticians made an emergency addition to the agenda of a meeting held at 1513 South Interstate Highway 35 (business meetings) and at 2200 South Interstate Highway 35 (examinations). As summarized, the agenda included the following: apprentice request for extension; approval of budget; consideration of branch establishments; Sunset information to all licensees for board approval; and complaints for board's attention.

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

Filed: September 15, 1978, 11:16 a.m.
Doc. No. 786093

Public Utility Commission of Texas

Friday, October 13, 1978, 10 a.m. The Public Utility Commission of Texas will conduct a hearing in Suite 400N, 7800 Shoal Creek Boulevard, Austin, regarding appeals of Community Public Service Company from the denials of requested rate changes by the Cities of League City, Texas City, Angleton, and Sweeney (Docket Nos. 2101, 2102, 2041, and 2042), as summarized.

Additional information may be obtained from Philip F. Ricketts, Suite 400N, 7800 Shoal Creek Boulevard, Austin, Texas 78757, telephone (512) 458-0100.

Filed September 18, 1978, 11:52 a.m.
Doc. No. 786113

Railroad Commission of Texas

Monday, September 18, 1978, 9 a.m. The Gas Utilities Division of the Railroad Commission of Texas made an emergency addition to the agenda of a meeting held in the Ernest O. Thompson Building, 10th and Colorado, Austin, regarding Gas Utilities Docket No. 1472 (Brazos River Gas Company, tariff filings), consideration of motion for rehearing, as summarized. This matter was postponed one week by the commission on September 11, making regular posting impossible; the importance to the public interest of the matter justifies expedited action.

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

Filed: September 15, 1978, 11:29 a.m.
Doc. No. 786098

Monday, September 18, 1978, 9 a.m. The Surface Mining Division of the Railroad Commission of Texas met in emergency session on the 10th floor, Ernest O. Thompson Building, 10th and Colorado, Austin. The division considered a grant agreement proposed by the Office of Surfacing Mining, U.S. Department of Interior, which would reimburse the state for costs of implementing and enforcing the federal interim regulations, and an interagency cooperation contract with the General Land Office whereby the Railroad Commission could reimburse it for implementing and enforcing the regulations on the state lands. Consideration of those items was an urgent public necessity since approval of the federal grant was contingent on delivery of the grant agreement and supporting documentation to the Office of Surfacing Mining in Washington, D.C. by September 20.

Additional information may be obtained from Chesley N. Blevins, P.O. Box 12967, Austin, Texas 78711, telephone (512) 475-6520.

Filed: September 11, 1978, 11:29 a.m.
Doc. No. 786097

Monday, September 25, 1978, 9 a.m. The Gas Utilities Division of the Railroad Commission of Texas will meet in the Ernest O. Thompson Building, 10th and Colorado, Austin, to consider the following items, as summarized: Gas Utilities Dockets 1712, 1713, and 1575; director's report; and litigation and personnel matters (executive session).

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

Filed: September 15, 1978, 11:29 a.m.
Doc. No. 786095

Monday, September 25, 1978, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas will meet in the Ernest O. Thompson Building, 10th and Colorado, Austin, to consider the following items, as summarized: application of use for WIW as exception to permit, show cause on salt water haulers permit, extension of balancing permit, special allowable, exception to SWR 8(c), SWR 10, amendment and modification by reclamation permit, Rule 37 cases, request for oral arguments, Rule 37, motion for rehearing, proper pluggings, adoption of net gas-oil ratio rule, gas field rules, adoption of temporary field rules; suspension allocation formulas, new oil and gas discoveries, 90-day temporary gas classification, exceptions to SWR 14, 11, commission called consideration of special field rules; and director's report. An executive session will also be conducted.

Additional information may be obtained from Jan Burris, P.O. Box 12967, Austin, Texas 78711, telephone (512) 475-2747.

Filed: September 15, 1978, 11:30 a.m.
Doc. No. 786094

Monday, September 25, 1978, 9 a.m. The Transportation Division of the Railroad Commission of Texas will meet in the 10th floor conference room, Ernest O. Thompson Building, 10th and Colorado, Austin, to consider applications as summarized: to amend authority; for new authority; for show cause proceeding; for truck rate; to consolidate authority; to divide authority; for lease cancellation; to change name; for rail rate; for reinstatement; to sell authority; for bus schedule change; for voluntary suspension; to transfer authority; for proposed rulemaking; and for agency discontinuance.

Additional information may be obtained from John G. Soule, P.O. Box 12967, Austin, Texas 78711, telephone (512) 475-3207.

Filed: September 15, 1978, 11:29 a.m.
Doc. No. 786096

School Land Board

Tuesday, September 19, 1978, 10 a.m. The School Land Board of the General Land Office made an emergency addition to the agenda of a meeting held in Room 831, 1700 North Congress, Austin, to include consideration of a pooling agreement application, as summarized in the agenda. This item was considered on an emergency basis because its lease will expire in October.

Additional information may be obtained from Linda Fisher, Room 749, 1700 North Congress, Austin, Texas 78701, telephone (512) 475-6491.

Filed: September 14, 1978, 3 p.m.
Doc. No. 786079

Texas Water Commission

Monday, September 25, 1978, 10 a.m. The Texas Water Commission will conduct a hearing in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin, to determine whether a temporary order should be issued to Gulf Coast Waste Disposal Authority, Houston, as summarized.

Additional information may be obtained from Paul A. Seals, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-7841.

Filed: September 14, 1978, 3:56 p.m.
Doc. No. 786080

Monday, September 25, 1978, 10 a.m. The Texas Water Commission will conduct a hearing in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin, to consider the following items, as summarized: district bond issues; approval of use of surplus funds; change orders; amendment to commission bond order; application for release of developer's funds; petition for appointment of directors; conversion of district; examiner's proposals for decisions on water quality matters; cancellation and reactivation of water quality permits; complaints; applications for water rights permits, amendments, and certificate of adjudication; adjudication of water rights in the Lower Nueces River Segment; cancellation of claim; approval of final plans; temporary permit docket; extension of time; and motion for rehearing.

Additional information may be obtained from Larry Soward, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-1311.

Filed: September 15, 1978, 2:40 p.m.
Doc. No. 786100

Regional Agencies

Meetings Filed September 15, 1978

The Deep East Texas Regional MH/MR Services, Board of Trustees, will meet in the conference room, Day Treatment/Administration Facility, 4101 South Medford, Lufkin, on September 26, 1978, at 5 p.m. Further information may be obtained from Wayne Lawrence, 4101 South Medford, Lufkin, Texas 75901, telephone (713) 639-1141.

The Education Service Center, Region XIV, Board of Directors, will meet at 3001 North Third Street, Abilene, on September 26, 1978, at 5 p.m. Further information may be obtained from Dr. Thomas Lawrence, P.O. Box 3258, Abilene, Texas 79604, telephone (915) 677-2911.

The Education Service Center, Region XVIII, Joint Committee, will meet at LaForce Boulevard, Air Terminal, Midland, on October 4, 1978, at 10:30 a.m. Further information may be obtained from Dr. J. W. Donaldson, P.O. Box 6020, Midland, Texas, telephone (915) 563-2380.

The North Texas Municipal Water District, Board of Directors, will meet in the administrative offices, Central Plant, Highway 78 East, Wylie, on October 5, 1978, at 4 p.m. Further information may be obtained from Carl W. Riehn, P.O. Drawer C, Wylie, Texas 75098, telephone (214) 442-2217, extension 26.

The Red River Authority of Texas, Board of Directors, will meet in Conference Room 252, Gateway Inn, 1211 Red River Expressway, Wichita Falls, on September 25, 1978, at 10 a.m. Further information may be obtained from Fred Parkey, 302 Hamilton Building, Wichita Falls, Texas, telephone (817) 723-8697.

The South Texas Health Systems Agency, CBSHAC Nominating Committee, met at All Saints' Episcopal Church, 3026 South Staples, Corpus Christi, on September 20, 1978, at 1 p.m. Further information may be obtained from Douglas Wilkey, Texas A&I University, Station 1, Box 2378, Kingsville, Texas 78363, telephone (512) 595-5545.

The South Texas Health Systems Agency, Nominating Committee, met at Laredo-Webb County Health Department, 2600 Cedar, Laredo, on September 21, 1978, at 4 p.m. The South Texas Subarea Advisory Council will meet at the same location on September 26, at 7 p.m. Further information may be obtained from Jorge Elizondo, Texas A&I University, Station 1, Box 2378, Kingsville, Texas 78363, telephone (512) 595-5545.

Doc. No. 786085

Meetings Filed September 18, 1978

The Alamo Area Council of Governments, Executive Committee, will meet at 532 Three Americas Building, San Antonio, on September 27, 1978, at 11:30 p.m. Further information may be obtained from Al J. Notzon III, 400 Three Americas Building, San Antonio, Texas 78205, telephone (512) 225-5201.

The Deep East Texas Council of Governments, Board of Directors, will meet in the district courtroom, Tyler County Courthouse, Woodville, on September 28, 1978, at 2:30 p.m. Further information may be obtained from Billy D. Langford, P.O. Drawer 1170, Jasper, Texas 75951, telephone (713) 384-5704.

The District No. 329, Copano Bay Soil Conservation, will meet in the Council Room, Refugio City Hall, Refugio, on September 25, 1978, at 8 p.m. Further information may be obtained from Jim Wales, Drawer 340, Refugio, Texas 78377, telephone (512) 526-2334.

The East Texas CETA Consortium, Board of Directors, met in the Boue Room, Citizens Bank Building, Kilgore, on September 21, 1978, at 2 p.m. Further information may be obtained from Don R. Edmonds, fifth floor, Citizens Bank Building, Kilgore, Texas, telephone (214) 984-8641.

The Education Service Center, Region VII, Board of Directors, will meet in the Kilgore Room, Community Inn, Highway 259, Kilgore, on September 26, 1978, at 7 p.m. Further information may be obtained from Don J. Peters, 818 East Main, Kilgore, Texas 75662, telephone (214) 984-3071.

The Education Service Center, Region VIII, Board of Directors, will meet at K-Bob's Steak House, Highway 271 South, Mount Pleasant, on September 27, 1978, at 6:30 p.m. Further information may be obtained from Thomas Carney, 100 North Riddle, Mount Pleasant, Texas 75455, telephone (214) 572-6676.

The Lower Rio Grande Valley Development Council, Board of Directors, will meet at Harlingen City Hall, 118 East Tyler, Harlingen, on September 28, 1978, at 2 p.m. Further information may be obtained from Robert A. Chandler, First National Bank Building, Suite 207, McAllen, Texas 78501, telephone (512) 682-3481.

The Mental Health/Mental Retardation Regional Center of East Texas met in the 10th floor conference room, 305 South Broadway, Bryant Building, Tyler, on September 21, 1978, at 4 p.m. Further information may be obtained from Richard J. DeSanto, 305 South Broadway, 10th floor, Tyler, Texas 75702, telephone (214) 597-1351, extension 70.

The Metropolitan Transit Authority, Board of Directors, met in the conference room, Houston-Galveston Area Council, 3701 West Alabama, Houston, on September 20, 1978, at 9 a.m. Further information may be obtained from Marilee M. Wood, P.O. Box 1562, Houston, Texas, telephone (713) 225-1151.

The Panhandle Regional Planning Commission, Panhandle Rural Health Initiative Commission, will meet at the Armstrong County Courthouse, Claude, on October 26, 1978, at 7:30 p.m. Further information may be obtained from Kenneth Rascoe, P.O. Box 9257, Amarillo, Texas 79105, telephone (806) 372-3381, extension 20.



Texas Health Facilities Commission

Notice of Applications

Notice is given by the Texas Health Facilities Commission of applications (including a general project description) for declaratory rulings or exemption certificates accepted September 5-11, 1978.

Should any person wish to contest the application for a declaratory ruling or an exemption certificate, that person must file a notice of intent to contest the application with the chairman of the commission within 12 days after the enclosed listing is published. The first day for calculating this 12-day period is the first calendar day following the dating of the publishing. The 12th day will expire at 5 p.m. on the 12th consecutive day after said publishing if the 12th day is a working day. If the 12th day is a Saturday, Sunday, or state holiday, the last day shall be extended to 5 p.m. of the next day that is not a Saturday, Sunday, or state holiday. When notice of intent to contest is mailed to the chairman of the commission, P.O. Box 15023, Austin, Texas 78761, it must be postmarked no later than the day prior to the last day allowed for filing notice of intent to contest.

The contents and form of a notice of intent to become a party to an application for a declaratory ruling or exemption certificate must meet the minimum criteria set out in Rule 506. Failure of a party to supply the minimum necessary information in the correct form by the 12th day will result in a defective notice of intent to become a party and such application will be considered uncontested.

The fact that an application is uncontested will not mean that it will be approved. The application will be approved only if the commission determines that it qualifies under the criteria of Sections 3.02, 3.03, or 6.02 of Article 4418(h), Vernon's Annotated Texas Statutes, and Rules 302, 502, and 515.

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

Jewish Home for the Aged, Inc. (Seven Acres), Houston
AN78-0905-025

DR—That neither an exemption certificate nor a certificate of need is required to design and implement a community-wide adult day care program to provide health care, recreational, therapeutic, and psychosocial services to homebound elderly persons

Matagorda General Hospital, Bay City
AH78-0906-001

EC—Rent office building to provide offices and conference room, use county-owned building for offices and storage, and rent five mini-warehouses for equipment storage

El Paso State Center, El Paso
AA78-0906-020

DR—That neither an exemption certificate nor a certificate of need is required to obtain ICF-MR certification for 32 beds involving no change in existing services

Angleton-Danbury General Hospital, Angleton
AH78-0908-015

EC—Acquire ultrasound scanning system

Titus County Memorial Hospital, Mt. Pleasant
AH75-0804-002E (090878)

EC—Request 90-day extension of completion deadline in 6.02 exemption certificate to construct a 97-bed general hospital to replace existing Titus County Memorial Hospital and Mt. Pleasant Hospital and Clinic

Willacy County Hospital, Raymondville
AH78-0911-005

EC—Relocate laboratory and insurance office to existing mobile home and modify mobile home to accommodate laboratory

Citizens General Hospital of Houston, Inc., Houston
AH78-0911-010

EC—Acquire GP-37 Pho/Gamma Camera for radiology department to replace existing Single Probe Rectilinear Pho/Gamma Scanner

Doc. No. 786078

Notice of Petition for Certificate of Need Reissuance

Notice is given by the Texas Health Facilities Commission of application (including a general project description) for petition of reissuance of certificate of need which has been filed with the commission.

The commission may require a hearing on a petition for reissuance of certificate of need when it is determined that good cause exists for such a hearing. A request for a hearing on a petition for reissuance of certificate of need must be submitted to the commission within five days after publication of notice and show reason why a hearing should be held. Requests for a hearing are to be mailed to the chairman of the commission, P.O. Box 15023, Austin, Texas 78761, and must be postmarked no later than the day prior to the last day allowed for filing requests for hearing.

The petition will be approved only if the commission determines that it qualifies under the criteria of Section 3.13 of Article 4418(h), Vernon's Annotated Civil Statutes, and Rules 315.18.02.010-.140 and 315.19.02.012-.020.

In the following list, the applicant is listed first, the file number second, and the relief sought and description of the project third.

Kerrville State Hospital, Kerrville
AA77-1005-014R (091278)

CN—Petition for reissuance of Certificate of Need AA77-1005-014 to construct an alcohol and drug abuse ward building on the campus of the Kerrville State Hospital

Issued in Austin, Texas, on September 14, 1978.

Doc. No. 786077 Dan R. McNery
General Counsel
Texas Health Facilities Commission

Filed: September 14, 1978, 2:07 p.m.

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

Texas Legislature House of Representatives

Hearings/Meetings Filed September 7, 1978

Subcommittee on Agents, (Labor), Friday, September 29, 1978, 10 a.m., in Room D, John H. Reagan Building, Austin, to hear public testimony on labor agents.

Committee on Judicial Affairs, Friday, September 22, 1978, 10:30 a.m., in the Members' Lounge, State Capitol, Austin, to consider approval of committee reports.

Committee on Judiciary, Saturday, September 23, 1978, 10 a.m., in the Old Supreme Court Room, State Capitol, Austin, to consider interim reports on Child Support and Texas Probate Code.

Subcommittee on Merit System Council, (Labor), Friday, September 22, 1978, 1 p.m., in Room D, John H. Reagan Building, Austin, to hear testimony on the merit system council.

Committee on Regions, Compacts, and Districts, Friday, September 22, 1978, 2 p.m., in Room C, John H. Reagan Building, Austin, to consider approval of interim studies report.

Hearings/Meetings Filed September 8, 1978

Subcommittee on Indian Affairs, (State Affairs), Friday, September 22, 1978, 1:30 p.m., in Room B, John H. Reagan Building, Austin, to consider proposed adoption of final report.

Joint Committee on Products Liability, Tuesday, September 19, 1978, 10 a.m., in Room E, John H. Reagan Building, Austin, to hear final testimony.

Joint Committee on Self Insurance for Workers' Compensation, Thursday, September 21, 1978, 2:30 p.m., in Room C, John H. Reagan Building, Austin, to consider proposed adoption of final report.

Committee on State Affairs, Friday, September 22, 1978, 2:30 p.m., in Room B, John H. Reagan Building, Austin, to consider proposed adoption of final reports.

Hearings Filed September 12, 1978

Committee on Financial Institutions, Subcommittee on Cash Management, Monday, September 18, 1978, 1 p.m., on the ninth floor, 1001 Preston, Houston, to consider investment practices of the University of Houston.

Committee on Appropriations, Subcommittee on Federal Funds, Thursday, September 14, 1978, 2 p.m., in Room 309, State Capitol, Austin, to review states' allotment of federal funds.

Hearings/Meetings Filed September 13, 1978

Committee on Agriculture and Livestock, Friday, September 22, 1978, 1:30 p.m., in the Speaker's Committee Room, State Capitol, Austin, to discuss interim reports.

Subcommittee on Alternate Sources of Energy, (Agriculture and Livestock), Friday, September 22, 1978, 10 a.m., in the Speaker's Committee Room, State Capitol, Austin, to discuss interim report.

Subcommittee on Appropriative Matters I, (State Affairs), Friday, September 22, 1978, 2 p.m., in Room B, John H. Reagan Building, Austin, to discuss interim committee report.

Subcommittee on Eminent Domain, (Agriculture and Livestock), Friday, September 22, 1978, 10:30 a.m., in the Speaker's Committee Room, State Capitol, Austin, to discuss interim report.

Subcommittee on Mariculture, (Agriculture and Livestock), Friday, September 22, 1978, 2 p.m., in the Speaker's Committee Room, State Capitol, Austin, to discuss interim report.

Joint Committee on Migrant Farm Workers, Friday, September 22, 1978, 2:30 p.m., in the Speaker's Committee Room, State Capitol, Austin, to discuss interim reports.

Subcommittee on Municipal Courts, (Judicial Affairs), Friday, September 22, 1978, 10:15 a.m., in the Members' Lounge, State Capitol, Austin, to discuss interim committee report.

Subcommittee on Oversight, (Agriculture and Livestock), Friday, September 22, 1978, 11 a.m., in the Speaker's Committee Room, State Capitol, Austin, to discuss interim report.

Committee on Social Services, Saturday, September 23, 1978, 9:30 a.m., in the Speaker's Committee Room, to discuss interim committee reports.

Committee on Transportation, Thursday, September 21, 1978, 1:30 a.m., in the Old Supreme Court Room, to discuss interim committee report.

Hearings/Meetings Filed September 14, 1978

Subcommittee on Automobile Insurance, (Insurance Committee), Thursday, September 21, 1978, 2 p.m., in Room G-A, John H. Reagan Building, Austin, to consider interim committee report.

Joint Committee on Child Abuse, Thursday, September 21, 1978, 3 p.m., in Room D, John H. Reagan Building, Austin, to formulate recommendations for the interim report.

Committee on Criminal Jurisprudence, Thursday, September 28, 1978, 10 a.m., in the Speaker's Committee Room, State Capitol, Austin, to hear public testimony on the statutes relative to appointed counsels for indigents in Texas.

Committee on Criminal Jurisprudence, Thursday, September 28, 1978, 10:45 a.m., in the Speaker's Committee Room, State Capitol, Austin, to discuss recommendations pertinent to committee charges.

Committee on Elections, Thursday, September 21, 1978, 2:30 p.m., in Room E, John H. Reagan Building, Austin, to consider recommendations for interim committee reports.

Subcommittee on Electronic Funds Transfer System, (Financial Institutions), Thursday, September 28, 1978, 9:30 a.m., at the Turtle Creek Country Club Inn, 3838 Parkdale, San Antonio, to consider electronic funds transfer systems.

Subcommittee on Existing Laws and Regulations, (Liquor Regulation), Thursday, September 28, 1978, 1:30 p.m., in Room C, John H. Reagan Building, Austin, to consider interim report.

Subcommittee on Fire Prevention and Fire Control, (Business and Industry), Friday, September 22, 1978, 10 a.m., in Room G-A, John H. Reagan Building, Austin, to hear testimony on fire prevention and control.

Subcommittee on Funding and Voting Systems, (Elections), Thursday, September 21, 1978, 10 a.m., in Room E, John H. Reagan Building, Austin, to consider types of voting systems and primary financing.

Joint Committee on the Grand Jury System, Thursday, September 28, 1978, 2:30 p.m., in the Speaker's Committee Room, to discuss the Grand Jury System in Texas.

Committee on Liquor Regulation, Thursday, September 28, 1978, 2 p.m., in Room C, John H. Reagan Building, Austin, to discuss interim committee reports.

Select Committee on Minority Business Enterprises, Monday, September 25, 1978, 9 a.m., Speaker's Committee Room, State Capitol, Austin, to discuss interim committee report.

Subcommittee on Non-Returnable Bottles, (Liquor Regulation), Thursday, September 28, 1978, 1:45 p.m., in Room C, John H. Reagan Building, Austin, to consider interim committee report.

Subcommittee on Oversight, (Elections), Thursday, September 21, 1978, 9 a.m., in Room E, John H. Reagan Building, Austin, to consider the budget of the office of secretary of state.

Subcommittee on Oversight, (Liquor Regulation), Thursday, September 28, 1978, 1 p.m., in Room C, John H. Reagan Building, Austin, to discuss interim charges.

Subcommittee on Presidential and General Primaries, (Elections), Thursday, September 21, 1978, 1 p.m., in Room E, John H. Reagan Building, Austin, to discuss aspects of presidential primary and moving the dates for the general primaries.

Subcommittee on Professional Licensing and the Board of Registration, (Business and Industry), Friday, September 22, 1978, 1:30 p.m., in Room G-A, John H. Reagan Building, Austin, to hear testimony on professional licensing and the Board of Registration.

Subcommittee on Rural Loan Development, (Business and Industry), Thursday, September 21, 1978, 3:30 p.m., in the Speaker's Committee Room, State Capitol, Austin, to discuss interim committee report.

Subcommittee on Wine and Grape Industry, (Liquor Regulation), Thursday, September 28, 1978, 1:15 p.m., in Room C, John H. Reagan Building, Austin, to discuss interim report.

Meeting Filed September 15, 1978

Joint Committee on Public Pension Plans, Thursday, September 21, 1978, 1 p.m., in Room F, John H. Reagan Building, Austin, to consider interim report.

Senate

Meeting Filed September 8, 1978

Governor's Steering Committee on Agriculture, Monday, September 11, 1978, 10 a.m., in the Lieutenant Governor's Committee Room, State Capitol, Austin, to consider general business.

Hearing Filed September 12, 1978

Executive and Legislative Budget Offices, Tuesday, September 19, 1978, 9:30 a.m., in the Senate Finance Committee Room, to conduct joint budget hearings on appropriations requests for the 1980-1981 biennium, regarding the Department of Highways and Public Transportation.

Meetings Filed September 18, 1978

Senate Administration Committee, Friday, September 22, 1978, 9:30 a.m., in the Lieutenant Governor's Committee Room, State Capitol, Austin, to consider general business.

Senate Interim Committee to Study Texas Beaches, Wednesday, September 20, 1978, 9:30 a.m., at the Port Aransas Community Center, 500 North Alister, Port Aransas, to consider general business.

Legislative Budget Board, Friday and Saturday, September 22-23, 1978, 8:30 a.m., in the Senate Finance Committee Room, to consider appropriation requirements for the 1980-1981 biennium.

Advisory Group on the Nurse Practices Act, Thursday, September 21, 1978, 9:30 a.m., in Room 510, Sam Houston Building, Austin, to consider general business.

Railroad Commission of Texas

Rail Safety Hearings

Transportation Division

The Railroad Commission of Texas will hold a series of hearings throughout Texas to take testimony from the public on local rail safety hazards. The commission is holding these hearings with a view toward the possibility of issuing proposed safety regulations based upon the findings of its hearing examiners.

The hearings have been scheduled for September 26 in the Community Room of the First Security National Bank in Beaumont; September 27 in the Corpus Christi Museum in Corpus Christi; September 28 in the ABC Room of the Old Ben Milam Hotel in Houston; October 3 in the Music Room of the Arlington Community Center in Arlington; October 6 in the Texas Power and Light Building in Nacogdoches; October 16 in the El Paso Room of the Civic Center in El Paso; October 17 in Room 101 of the Lubbock Memorial Civic Center in Lubbock; and October 20 in Room 812 of the Ernest O. Thompson Building in Austin. All hearings are scheduled to begin at 9 a.m.

The Federal Railroad Safety Act of 1970 has taken responsibility for rail safety away from the states except at it pertains to essentially local safety standards, and the scope of the commission's hearings necessarily will be limited. However, the commission is confident that the hearings will be useful in that they may point out many rail problems which might not otherwise come to its attention.

Issued in Austin, Texas, on September 15, 1978.

Doc. No. 786099 John G. Soule, Director
Transportation Division
Railroad Commission of Texas

Filed: September 15, 1978, 11:30 a.m.

For further information, please call (512) 475-4738.



the Guadalupe and Lavaca Basins have been developed to satisfy the requirements of Section 26.036, Texas Water Code as amended, and Section 208 of the Federal Water Pollution Control Act, and pursuant to Title 40, Code of Federal Regulations, Parts 130 and 131, and the State of Texas Continuing Planning Process. The public hearing shall be conducted in compliance with Section 26.037, Texas Water Code as amended.

Copies of the *Volume II, Plan Summary Report*, are available for public inspection. Review of *Volume II, Plan Summary Report*, at one of the following locations is encouraged due to the limited number of agencies available for distribution. Copies of *Volume II* for the Guadalupe Basin are available for public inspection at the following locations: Texas Department of Water Resources Offices, Stephen F. Austin State Office Building, 1700 North Congress Avenue, Austin; Texas Department of Water Resources District 8 Office, Dellcrest Plaza, No. 2 Building, 4713 Rigsby Avenue, San Antonio 78222; Texas Department of Water Resources District 12 Office, Klee Square Building, Suite 515, 505 South Water Street, Corpus Christi 78401; and the Guadalupe-Blanco River Authority, Seguin.

Copies of *Volume II* for the Lavaca Basin are available for public inspection at the following locations: Texas Department of Water Resources Offices, Stephen F. Austin Building, 1700 North Congress Avenue, Austin; Texas Department of Water Resources District 8 Office, Dellcrest Plaza No. 2 Building, 4713 Rigsby Avenue, San Antonio 78222; Texas Department of Water Resources District 12 Office, Klee Square Building, Suite 515, 505 South Water Street, Corpus Christi 78401; and the Golden Crescent Council of Governments Office, Victoria.

The public is encouraged to attend the hearing and to present evidence or opinions concerning *Volume II, Plan Summary Report*. The department would appreciate receiving a copy of all written testimony at least five days before the hearing. Requests for individual copies of the *Volume II, Plan Summary*, questions about the report or the public hearing, and copies of written testimony should be addressed to Jackson H. Kramer, Texas Department of Water Resources, P.O. Box 13087, Capitol Station, Austin, Texas 78711, or call (512) 475-3454. When requesting a copy or sending a query by mail, please include your complete return address and telephone number.

The date selected for this hearing is intended to comply with deadlines set by statute and regulation. Any publication or receipt of this notice less than 30 calendar days prior to the hearing date is due to the necessity of scheduling the hearing on the date selected. This public hearing may be continued in order to fully develop the evidence.

Issued in Austin, Texas, on September 6, 1978.

Doc. No. 786072 Bruce Bigelow
General Counsel
Texas Water Development Board

Filed: September 14, 1978, 10:09 a.m.

For further information, please call (512) 475-3454.

Texas Water Development Board

Water Quality Management Plan

Guadalupe Basin and Lavaca Basin

The Texas Department of Water Resources will conduct a public hearing beginning at

1:30 p.m. October 12, 1978

Stephen F. Austin Room
Victoria Bank and Trust
120 South Main
Victoria, Texas

in order to receive testimony concerning *Volume II, Plan Summary Report*, of the water quality management plan for the Guadalupe Basin and Lavaca Basin. These documents are the second of two volumes which comprise the water quality management plan for the Guadalupe Basin and Lavaca Basin. *Volume II, Plan Summary Report*, presents the recommended plans for water quality management and the legal, financial, and institutional requirements of each plan. Also included in *Volume II* are descriptions of feasible alternatives, an environmental assessment, and a summary of the public participation activities conducted during the development of the plan. The water quality management plans for

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