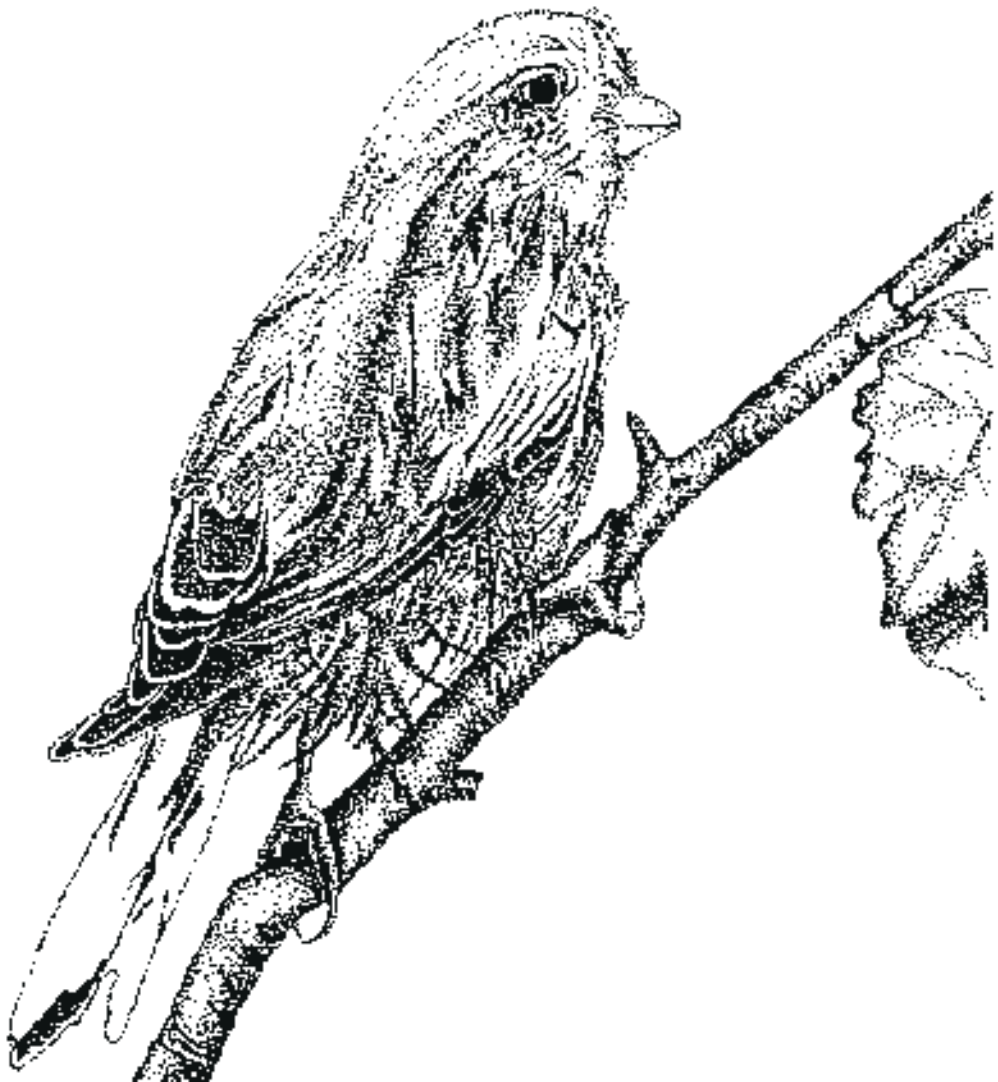
TEXAS REGISTER

Volume 21, Number 24, April 2, 1996 *Pages 2597-2854*



This month's front cover artwork:

Artist: *Dong Vo*

10th grade

Northbrook High School, SBISD, Houston

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

Starting with the February 27, 1996 issue, we will display artwork on the cover of each *Texas Register.* The artwork featured on the front cover is chosen at random.

The artwork is published on what would otherwise be blank pages in the *Texas Register.* These blank pages are caused by the production process used to print the *Texas Register.* The artwork does not add additional pages to each issue and does not increase the cost of the *Texas Register.*

For more information about the student art project, please call (800) 226-7199.

Texas Register, **ISSN 0362-4781,** is published twice weekly 100 times a year except February 23, March 15, November 8, December 3, and December 31, 1996. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year $95, six month $75. Costs for diskette and online versions vary by number of users (see back cover for rates). Single copies of most issues for the current year are available at $7 per copy in printed or electronic format.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Second class postage is paid at Austin, Texas.

POSTMASTER: Please send form 3579 changes to the ***Texas Register,*** P.O. Box 13824, Austin, TX 78711-3824.

a section of the
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Open Meetings Sections

In Additions Sections

Children's Trust Fund of Texas Council

Office of Consumer Credit Commissioner

Texas Department of Criminal Justice

Texas Education Agency

Texas Department of Health

Texas Higher Education Coordinating Board

Middle Rio Grande Development Council

Texas Natural Resource Conservation Commission

Texas Department of Protective and Regulatory Services

Public Utility Commission of Texas

State Securities Board

ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the ***Texas Register***. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

Open Records Request

ORQ-9 (ID #38989 and #39556). Request from the Honorable Judith Zaffirini, State Senator, District 21, P.O. Box 627, Laredo, Texas 78042-0627 and Delma Rios, Kleberg County Attorney, P.O. Box 1411, Kingsville, Texas 78363, concerning whether records maintained by a community Supervision and Corrections Department are subject to the provisions of Chapter 552 of the Government Code and related questions.

TRD-9604220

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EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the ***Texas Register***, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

Symbology in amended emergency sections. New language added to an existing section is indicated by the use of **bold text.** [Brackets] indicate deletion of existing material within a section.

TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners

Chapter 193. Standing Delegation Orders

- **22 TAC §§193.2-193.4, 193.8**

The Texas State Board of Medical Examiners adopts on an emergency basis amendments to §§193.2-193.4 and §193.8, concerning standing delegation orders. These amendments will comply with changes made during the 74th Legislature through Senate Bill 1302 and Senate Bill 673.

The amendments are adopted on an emergency basis under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act. In addition, this emergency rule is authorized by the Administrative Procedure Act, Texas Government Code, §2001.034.

Reason for emergency-Since the changes made through Senate Bill 1302 and Senate Bill 673 regarding the delegation of prescriptive privileges were effective in June, 1995, and because these changes will have a profound effect on healthcare in Texas, it was felt necessary that these amendments should be adopted on an emergency basis to provide guidance to physicians in this area.

Article 4495b, §3.06, is affected by these amendments.

§193.2. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise.

Advanced practice nurse–A registered nurse approved by the Texas State Board of Nurse Examiners to practice as an advanced practice nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, a nurse midwife, nurse anesthetist, and clinical nurse specialist.

Carrying out **or signing** a prescription drug order–To complete a prescription drug order presigned by the delegating physician**, or the signing of a prescription by an advanced practice nurse or physician assistant after the person has been designated with the board by the delegating physician as a person delegated to sign a prescription. The following information shall be provided on each prescription:** [by providing the following information:] the patient's name and address; the drug to be dispensed; directions to the patient for taking the drug; dosage; **the intended use of the drug, if appropriate;** the name, address, and telephone number of the physician; the name, address, telephone number, identification number, and signature of the physician assistant or **advanced practice** [registered] nurse completing **or signing** the prescription drug order; the date; and the number of refills permitted. **This also includes the ability of a physician assistant or advanced practice nurse to telephone prescriptions in to a pharmacy under their prescriptive authority.**

Health **professional** [manpower] shortage area **(HPSA)** [(HMSA)]–

(A) An area in an urban or rural area of Texas (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the secretary of health and human services determines has a health manpower shortage and which is not reasonably accessible to an adequately served area;

(B) a population group which the secretary determines to have such a shortage; or

(C) a public or nonprofit private medical facility or other facility which the secretary determines has such a shortage as delineated in 42 United States Code, §254(e)(a)(1). [An area, population group, or facility designated by the United States Department of Health and Human Services (USDHHS) as having a shortage of primary care physicians.]

Medically underserved area (MUA)–An area or population group designated by the USDHHS as an area with a shortage of personal health services. **Also includes an area defined by rule adopted by the Texas Board of Health that is based on demographics specific to this state, geographic factors that affect access to health care, and environmental health factors.**

Physician Assistant–A person who has graduated from a physician assistant or surgeon assistant training program accredited by the American Medical Association's Commission on Accreditation of Allied Health Education Programs and who, after June 16, 1995, has passed the certifying examination administered by the National Commission on Certification of Physician Assistants and who is licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners.

Physician Assistant Certified as Specializing in Obstetrics–A physician assistant licensed in the state of Texas.

Protocols–**Delegated written authorization to initiate medical aspects of patient care including** [Standing delegation orders or standing medical orders] authorizing a physician assistant or **advanced practice** [registered] nurse to carry out **or sign** prescription drug orders pursuant to the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5) **and (6)** and §193.8 of this title **(relating to the Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses).** [(relating to Delegation of the Carrying Out of Prescription Drug Orders to Physician Assistants and Registered Nurses)] **The protocols must be** agreed upon and signed by the physician, the physician assistant and/or **advanced practice** [registered] nurse**,** [which are] reviewed and signed at least annually, [are] maintained **on site** [at the site serving a medically underserved population], and **must** contain a list of **the types or categories of**

dangerous drugs available for prescription, limitations on the number of dosage units and refills permitted, and instructions to be given the patient for follow-up monitoring **or contain a list of the types or categories of dangerous drugs that may not be prescribed. Protocols shall be defined to promote the exercise of professional judgment by the advanced practice nurse and physician assistant commensurate with their education and experience. The protocols used by a reasonable and prudent physician exercising sound medical judgment need not describe the exact steps that an advanced practice nurse or a physician assistant must take with respect to each specific condition, disease, or symptom.**

§193.3. Exclusion from the Provisions of this Chapter. The provisions of this chapter shall not be applicable, nor shall they restrict the use of pre-established programs of health care, nor shall they restrict physicians from authorizing the provision of patient care by use of pre-established programs under the following circumstances:

(1)-(7) (No change.)

(8) Where care is to be delivered as authorized by the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5) **or (6)** except as provided in §193.8 of this title **(relating to the Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses)** [(relating to Delegation of the Carrying Out of Prescription Drug Orders to Physician Assistants and Registered Nurses)].

§193.4. Scope of Standing Delegation Orders. Providing the authorizing physician is satisfied as to the ability and competence of those for whom the physician is assuming responsibility, and with due regard for the safety of the patient and in keeping with sound medical practice, standing delegation orders may be authorized for the performance of acts and duties which do not require the exercise of independent medical judgment. Limitations on the physician's use of standing delegation orders which are stated in this section shall not apply to patient care delivered as authorized by the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5) **or (6),** or §193.8 of this title **(relating to Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses** [(relating to Delegated Delivery of Health Care)]. When care is delivered under other circumstances, standing delegation orders may include authority to undertake the following:

(1) (No change.)

(2) The performance of **an** appropriate physical examination and the recording of physical findings.

(3)-(8) (No change.)

*§193.8. Delegation of the Carrying Out **or Signing** of Prescription Drug Orders to Physician Assistants and **Advanced Practice** [Registered] Nurses.*

(a) **Purpose.** The purpose of this section is to provide guidelines for implementation of the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5) **and (6)**, which provide[s] for the use by physicians of standing delegation orders, standing medical orders, physician's order, or other orders or protocols in delegating authority to physician assistants or **advanced practice** [registered] nurses at sites serving medically underserved populations**, at a physician's primary practice site, or at a site described in subsection (j) of this section**. For purposes of this section, the term **"advanced practice"** [registered] nurse means a licensee of the Texas Board of Nurse Examiners who is approved to carry out **or sign** a prescription drug order by that board. **For purposes of this section, the term "physician assistant" means a licensee of the Texas State Board of Physician Assistant Examiners.** In accord with Texas Civil Statutes, Article 4495b, §3.06(d)(5) **and (6)**, this section establishes minimum standards for supervision by physicians of physician assistants and **advanced practice** [registered] nurses for provision of services at such sites. This section also provides for **the signing of a prescription by an advanced practice nurse or a physician assistant after the person has been designated by the delegating physician and for** the use of prescriptions presigned by the supervising physician which may be carried out by a physician assistant or **advanced practice** [registered] nurse according to protocols. [At sites serving medically underserved populations, such] **Such** protocols may authorize diagnosis of the patient's condition and treatment, including prescription of dangerous drugs. Proper use of protocols **allows** [requires] integration of clinical data gathered by the physician assistant or **advanced practice** [registered] nurse**.** [by means of the supervising physician's pre-existing written plan for determining a diagnosis and appropriate treatment.] Neither the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5) **or (6),** nor these rules authorize the exercise of independent medical judgment by physician assistants or **advanced practice** [registered] nurses, and the supervising physician remains responsible to the board and to his or her patients for acts performed under the physician's delegated authority. **Advanced practice nurses** [Registered nurses] **and physician assistants** remain professionally responsible for acts performed under the scope and authority of their own licenses.

(b) **Physician Supervision at Site Serving Medically Underserved Populations.** Physician supervision of a physician assistant or **advanced practice** [registered] nurse at a site serving a medically underserved population will be adequate if a delegating physician:

(1) receives a daily status report to be conveyed in person, by telephone, or by radio from the **advanced practice** [registered] nurse or physician assistant on any complications or problems encountered that are not covered by a protocol;

(2) visits the clinic in person at least once a week during regular business hours to observe and to provide medical direction and consultation to include, but not be limited to:

(A) reviewing with the physician assistant or **advanced practice** [registered] nurse case histories of patients with problems or complications **encountered** [not covered by a protocol];

(B)-(C) (No change.)

(3) is available by telephone or direct telecommunication for consultation, assistance with medical emergencies, or patient referrals [at all times the clinic is open].

(4) is responsible for the formulation of approval of such physician's orders, standing medical orders, standing delegation orders, or other orders or protocols and periodically reviews such orders and the services provided patients under such orders.

(c) **Documentation of Supervision. If the physician assistant or advanced practice nurse is located at a site other than the site where the physician spends the majority of the physician's time, physician supervision shall be documented through a log kept at the clinic where the physician assistant or advanced practice nurse is located. The log will include** [Physician supervision shall be documented through a log kept at the clinic that includes] the names or identification numbers of patients discussed during the daily status reports, the times when the physician is on site, and a summary of what the physician did while on site. Said summary shall include a description of the quality assurance activities conducted and the names of any patients seen or whose case histories were reviewed with the physician assistant or **advanced practice** [registered] nurse. The supervising physician shall sign each log at the conclusion of each site visit. **A log is not required if**

the physician assistant or advanced practice nurse is permanently located with the physician at a site where the physician spends the majority of the physician's time.

(d) **Alternate Physicians.** If a delegating physician will be unavailable to supervise the physician assistant or **advanced practice** [registered] nurse as required by this section, arrangements shall be made for another physician to provide that supervision. The physician providing that supervision shall affirm in writing that he or she is familiar with the protocols or standing delegation orders in use at the clinic and is accountable for adequately supervising care provided pursuant to those protocols or standing delegation orders **by fulfilling the requirements for registration as an alternate supervising physician as detailed in rules of the Texas State Board of Physician Assistant Examiners, 22 Texas Administrative Code §185.**

(e) **Supervision of Clinics.** A physician may not supervise more than three clinics without approval of the board. A physician may not supervise any number of clinics with combined regular business hours exceeding **150** [80] **concurrent** hours per week without approval of the board.

(f) **Exceptions to Patient Chart Review.** Exceptions to the percentage of patient chart reviews required by subsection (b)(2)(C) of this section and the provisions of subsection (e) of this section relating to the number of clinics or clinic hours supervised may be made by the board upon special request by a delegating physician. Such a request shall state the special circumstances and needs prompting the exception, the names and locations of the clinics and/or hours to be supervised, and a plan of supervision. In granting an exception, the board shall state the percentage of charts that must be reviewed and/or the number of clinics or the combined clinic hours that can be supervised.

(g) **Delegation of Prescriptive Authority at Site Serving Underserved Populations.** A physician may **designate to** [authorize] a physician assistant or **advanced practice nurse** [registered nurse to complete and issue prescriptions presigned] **the act or acts of administering, providing, or carrying out or signing a prescription drug order as authorized** by the physician **through physician's orders, standing medical orders, standing delegation orders, or other orders or protocols as defined by the board** in treating patients at a site serving a medically underserved population. The prescription form itself shall comply with applicable rules adopted by the Texas State Board of Pharmacy. **Prescriptions** [Presigned Prescriptions] issued pursuant to this section may only be written for dangerous drugs. No prescriptions for controlled substances may be authorized or issued. **An appropriate** [A physician's] signature on one of the two signature lines on the prescription shall convey [his or her] instructions to a pharmacist regarding the pharmacist's authority to dispense a generically equivalent drug, if available. If **the physician assistant or advanced practice nurse** [a physician proposes to] authorize**s** generic substitution, the protocol shall provide direction to the physician assistant or **advanced practice** [registered] nurse as to whether and under what circumstances product selection will be permitted by a pharmacist. A delegating physician is responsible for devising and enforcing a system to account for and monitor the **issuance of prescriptions under his supervision** [use of presigned prescriptions].

(h) **Violations.** Violation of this section by the supervising physician may result in **a refusal to approve supervision or** cancellation of the physician's authority to supervise a physician assistant or **advanced practice** [registered] nurse under this section. Violation of this section may also subject the physician to disciplinary action as provided by the Medical Practice Act, Texas Civil Statutes, Article 4495b, §4.12 for violation of that Act, §3.08. If **an advanced practice nurse** [a registered nurse] violates this section or the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5) **or (6)**, the board shall promptly notify the Texas Board of Nurse Examiners of the alleged violation. **If a physician assistant violates this section or the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5) or (6), the board shall promptly notify the Texas State Board of Physician Assistant Examiners.** [The board may refuse to approve or may revoke its approval for a physician to supervise a physician assistant who has violated this section.]

(i) Delegation at Primary Practice Site. At a physician's primary practice site or a location as described by subsection (j) of this section, a physician licensed by the board may delegate to a physician assistant or an advanced practice nurse acting under adequate physician supervision the act or acts of administering, providing, carrying out or signing a prescription drug order as authorized through physician's orders, standing medical orders, standing delegation orders, or other orders or protocols as defined by the board. Providing and carrying out or signing a prescription drug order under this subdivision is limited to dangerous drugs and shall comply with other applicable laws. Physician supervision of the carrying out and signing of prescription drug orders shall conform to what a reasonable, prudent physician would find consistent with sound medical judgment but may vary with the education and experience of the advanced practice nurse or physician assistant. A physician shall provide continuous supervision, but the constant physical presence of the physician is not required.

(1) A physician's authority to delegate the carrying out or signing of a prescription drug order at his primary practice site under this section is limited to:

(A) three physician assistants or advanced practice nurses or their full-time equivalents practicing at the physician's primary practice site; and

(B) the patients with whom the physician has established or will establish a physician-patient relationship, but this shall not be construed as requiring the physician to see the patient within a specific period of time.

(2) "Primary practice site" means:

(A) the practice location where the physician spends the majority of the physician's time;

(B) a licensed hospital, a licensed long-term care facility, and a licensed adult care center where both the physician and the physician assistant or advanced practice nurse are authorized to practice, or an established patient's residence; or

(C) where the physician is physically present with the physician assistant or advanced practice nurse.

(j) Delegation at Facility-Based Practice. A physician licensed by the board shall be authorized to delegate, to one or more physician assistants or advanced practice nurses acting under adequate physician supervision whose practice is facility based at a licensed hospital or licensed long-term care facility, the carrying out or signing of prescription drug orders if the physician is the medical director or chief of medical staff of the facility in which the physician assistant or advanced practice nurse practices, the chair of the facility's credentialing committee, a department chair of a facility department in which the physician assistant or advanced practice nurse practices, or a physician who consents to the request of the medical director or chief of medical staff to delegate the carrying out or signing of prescription drug orders at the facility in which the physician assistant or advanced practice nurse practices. A physician's authority to delegate under this paragraph is limited as follows:

(1) the delegation is pursuant to a physician's order, standing medical order, standing delegation order, or other order or protocol developed in accordance with policies approved by the facility's medical staff or a committee thereof as provided in facility bylaws;

(2) the delegation occurs in the facility in which the physician is the medical director, the chief of medical staff, the chair of the credentialing committee, or a department chair;

(3) the delegation does not permit the carrying out or signing of prescription drug orders for the care or treatment of the patients of any other physician without the prior consent of that physician;

(4) delegation in a long-term care facility must be by the medical director and the medical director is limited to delegating the carrying out and signing of prescription drug orders to no more than three advanced practice nurses or physician assistants or their full-time equivalents; and

(5) under this section, a physician may not delegate at more than one licensed hospital or more than two long-term care facilities unless approved by the board.

(k) Delegation to Certified Registered Nurse Anesthetists.

(1) In a licensed hospital or ambulatory surgical center a physician may delegate to a certified registered nurse anesthetist the ordering of drugs and devices necessary for a certified registered nurse anesthetist to administer an anesthetic or an anesthesia-related service ordered by the physician. The physician's order for anesthesia or anesthesia-related services does not have to be drug-specific, dose-specific, or administration-technique-specific. Pursuant to the order and in accordance with facility policies or medical staff bylaws, the nurse anesthetist may select, obtain, and administer those drugs and apply the appropriate medical devices necessary to accomplish the order and maintain the patient within a sound physiological status.

(2) This paragraph shall be liberally construed to permit the full use of safe and effective medication orders to utilize the skills and services of certified registered nurse anesthetists.

(l) Delegation Related to Obstetrical Services.

(1) A physician may delegate to a physician assistant offering obstetrical services and certified by the board as specializing in obstetrics or an advanced practice nurse recognized by the Texas State Board of Nurse Examiners as a nurse midwife the act or acts of administering or providing controlled substances to the nurse midwife's or physician assistant's clients during intra-partum and immediate post-partum care. The physician shall not delegate the use or issuance of a triplicate prescription form under the triplicate prescription program, §481.075, Health and Safety Code.

(2) The delegation of authority to administer or provide controlled substances under this paragraph must be under a physician's order, medical order, standing delegation order, or protocol which shall require adequate and documented availability for access to medical care.

(3) The physician's orders, medical orders, standing delegation orders, or protocols shall provide for reporting or monitoring of client's progress including complications of pregnancy and delivery and the administration and provision of controlled substances by the nurse midwife or physician assistant to the clients of the nurse midwife or physician assistant.

(4) The authority of a physician to delegate under this paragraph is limited to:

(A) three nurse midwives or physician assistants or their full-time equivalents; and

(B) the designated facility at which the nurse midwife or physician assistant provides care.

(5) The administering or providing of controlled substances under this paragraph shall comply with other applicable laws.

(6) In this paragraph, "provide" means to supply one or more unit doses of a controlled substance for the immediate needs of a patient not to exceed 48 hours.

(7) The controlled substance shall be supplied in a suitable container that has been labeled in compliance with the applicable drug laws and shall include the patient's name and address; the drug to be provided; the name, address, and telephone number of the physician; the name, address, and telephone number of the nurse midwife or physician assistant; and the date.

(8) This paragraph does not permit the physician or nurse midwife or physician assistant to operate a retail pharmacy as defined under the Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes).

(9) This paragraph shall be construed to provide a physician the authority to delegate the act or acts of administering or providing controlled substances to a nurse midwife or physician assistant but not as requiring physician delegation of further acts to a nurse midwife or as requiring physician delegation of the administration of medications to registered nurses or physician assistants other than as provided in this paragraph.

(m) Liability. A physician shall not be liable for the act or acts of a physician assistant or advanced practice nurse solely on the basis of having signed an order, a standing medical order, a standing delegation order, or other order or protocols authorizing a physician assistant or advanced practice nurse to perform the act or acts of administering, providing, carrying out, or signing a prescription drug order unless the physician has reason to believe the physician assistant or advanced practice nurse lacked the competency to perform the act or acts.

Issued in Austin, Texas, on March 22, 1996.

TRD-9603992 Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners

Effective date: March 22, 1996

Expiration date: July 20, 1996

For further information, please call: (512) 305-7016

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PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the ***Texas Register*** at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the use of **bold text.** [Brackets] indicate deletion of existing material within a section.

TITLE 13. CULTURAL RESOURCES
Part II. Texas Historical Commission
Chapter 11. Administrative Department

• 13 TAC §§11.1-11.4, 11.7-11.9

The Texas Historical Commission proposes amendments to §§11.1-11.4 and §§11.7-11.9 under the Administrative Department, concerning Commission meetings, election and duties of officers, vacancies, members' code of conduct, donations, and the use of the agency's buildings and grounds. Most amendments, as proposed, are administrative changes and are nonsubstantive. These general house cleaning measures include clarifying terminology, amending sections for consistency with other rules, and correcting references to sections.

Curtis Tunnell, state historic preservation officer and executive director, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Tunnell also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of amending the sections will be more clearly stated activities and duties of the Commission members, conformance with new agency statutes, and the removal of outdated information. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Curtis Tunnell, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.*

The amendments are proposed under the Texas Government Code, Chapter 442, §442.005(q), which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of Texas Government Code, Chapter 442 (Senate Bill 365, 74th Legislature, 1995.)

No other statute, article, or code will be affected by this proposal.

§11.1. Commission Meetings.

(a) The Texas Historical Commission shall hold regular quarterly meetings. The commission may hold such other meetings at such other times and places as it may schedule in formal session. The chairman may call special meetings of the commission at his **or her** discretion, provided that 10-days' notification is given to the commission. The chairman shall call special meetings of the commission at any time upon written request to the chairman signed by six or more members, provided that 10-days' notification is given to the commission.

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

§11.2. Election of Officers.

(a) (No change.)

(b) The nominating committee will nominate only one person for each **elective** office. The committee shall contact each person it wishes to nominate in order to obtain the person's acceptance of nomination. A commission member may hold only one office at a time. **The governor shall designate a member of the commission as the chairman of the commission to serve in that capacity at the pleasure of the governor.**

(c) The nominating committee will present its report of nominees at the first commission meeting of odd-numbered years. The chairman shall call for further nomination from the floor. After all nominations are made, the chairman will close the nominations and ask for a **vote by voice or show of hands** [written vote]. If there is a simple majority for one person for each **elective** office, those people are elected. If there is not a majority for any one person for each office, the commission shall hold an election runoff for each office between the two people receiving the highest number of votes for that office. [The chairman is to appoint two commission members as tellers to record the votes; the tellers will then present the outcome of the runoff election to the chairman, who reads off the name of the person with the most votes and declares that person elected.] The chairman will only vote to **make or** break ties.

§11.3. Filling Vacancies.

(a) In the event of a vacancy in any **elective** office of the commission, an election shall be held at the next commission meeting, except the first commission meeting of odd-numbered years, to fill such vacancy.

(b) The election shall be held by a **vote by voice or show of hands.** [simple written ballot on which each commission member writes the name of the person of his choice to fill the vacancy; if]**If** there is a simple majority for one person, that person is elected. If there is not a majority for any one person, an election runoff shall immediately be held between the two people receiving the highest number of votes. [The presiding officer is to appoint two commission members as tellers to count the votes, one to call off the names and the other to record the votes. The tellers present the outcome of the election to the presiding officer, who then reads off the name of the person with the most votes and declares him or her elected.] The chairman will only vote to **make or** break ties.

§11.4. Duties of Officers.

(a) The chairman shall perform such duties as are properly required of him or her by the commission. He **or she** shall preside at all meetings. He **or she** shall have general supervision of the affairs of the commission, and shall have authority to interpret and carry out all policies established by its members. He **or she** shall answer directly to the commission. The chairman appoints all committees as he **or she** deems necessary, except the nominating committee, and is

an ex officio member of all committees except the nominating committee.

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

§11.7. Code of Conduct.

(a) **If a** [No] member, agent, or employee of the Texas Historical Commission **has** [may have] a conflict of interest in any transaction involving the selection, award, or administration of historic preservation funds, state historic preservation grants, or museum grants **, he or she may not participate in a vote, discussion, or decision about the matter.**

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

§11.8. Use of Buildings and Grounds.

(a) Use requests. Requests for use of Gethsemane Church, Carrington-Covert House, **Christianson-Leberman Building,** and grounds shall be made in writing to the executive director not less than four weeks prior to the date of intended use. The executive director may, at his discretion, prohibit use of the buildings or grounds **if** [is] such use would destroy, damage, or threaten to destroy or damage the properties or would require overtime work by commission employees. Intended use may not interfere with any regular, daily use of Gethsemane Church, Carrington-Covert House, **Christianson-Leberman Building,** or grounds.

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

§11.9. Donations.

(a) (No change.)

[(b) Use of employees and properties. No employee or property of the commission may be used by organizations or individuals making donations to the commission.]

(b)[(c)] Serving as officer or director. No [officer or] employee of the commission may serve as an officer or director in any organization making donations to the commission.

(c)[(d)] Supplementation of salary. Donations to the commission will not be used for supplementation of salary of any [officer or] employee of the commission.

(d)[(e)] Contributions from grant recipients or organizations and individuals with projects under review. The commission will not accept donations from organizations or individuals administering grants from the commission or which have projects undergoing review by the commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 21, 1996.

TRD-9603974 Curtis Tunnell
Executive Director
Texas Historical Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 463-6100

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Chapter 13. State Markers

The Texas Historical Commission proposes the repeal of §§13.1-13.26, concerning the state marker program. The provisions of these sections have been transferred to Chapter 21, in order to consolidate the rules governing the activities of the Local History Programs department into one chapter. This change was necessitated by the internal restructuring of the agency and will better reflect current agency practices. The agency proposes new §§13.1-13.2, concerning the involvement of the Texas Historical Commission in reviewing the eligibility of persons for burial in the State Cemetery as a result of Senate Bill 21, 74th Texas Legislature, 1995.

Stanley O. Graves, Deputy State Historic Preservation Officer, Texas Historical Commission, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Graves also has determined that the public benefit anticipated for each year of the first five years the rules, proposed for repeal, related to the state marker program are in effect will be consolidation of the rules into one chapter necessitated by internal restructuring. Mr. Graves also has determined that the anticipated benefit concerning the proposed new sections for the State Cemetery will be to expand the pool of eligible persons for burial. There will be no effect on small business. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposed rules may be submitted to Gerron S. Hite, RA, Texas Historical Commission, Post Office Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.*

• 13 TAC §§13.1-13. 26

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Historical Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Government Code, Chapter 442, §442.005(q), which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of the Texas Government Code, Chapter 442 (Senate Bill 365, 74th Texas Legislature, 1995).

No other statute, article, or code will be affected by this proposal.

§13.1. State Marker Committee.

§13.2. Definition of Official Texas Historical Markers.

§13.3. Documentation.

§13.4. Permanent Archives.

§13.5. County Approval of Applications.

§13.6. Use of Emblems of Logos.

§13.7. Response Required of Applicant.

§13.8. Burden of Proof.

§13.9. Relative Weight of Data.

§13.10. Subject Marker Approval.

§13.11. Marking Individuals.

§13.12. Marking Events.

§13.13. Recorded Texas Historic Landmarks.

§13.14. Relocated Structures.

§13.15. Building Markers.

§13.16. Permanence of Recorded Texas Historic Landmark Designation.

§13.17. Restraints to Changes in Recorded Texas Historic Landmarks.

§13.18. Disposition of Recorded Texas Historic Landmark Marker.

§13.19. Placement of Historical Markers.

§13.20. Relocation of Historical Markers.

§13.21. Private, State-Approved Markers.

§13.22. Significance of Marker Topics.

§13.23. Marker Inscriptions.

§13.24. Restraint of Including Owners or Restorers in Marker Text.

§13.25. Replacement of Markers.

§13.26. owner's Permission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 21, 1996.

TRD-9603967 Curtis Tunnell
Executive Director
Texas Historical Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 463-6100

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Chapter 13. State Cemetery

• 13 TAC §13.1, §13.2

The new sections are proposed under the Texas Government Code, Chapter 442, §442.005, which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of the Texas Government Code, Chapter 442 (Senate Bill 365) and Senate Bill 21(74th Texas Legislature, 1995).

No other statute, article, or code will be affected by this proposal.

§13.1. Persons eligible for burial in the State Cemetery.

(a) Present and former members of the Texas Legislature are eligible for burial in the State Cemetery.

(b) Present and former elective state officials are eligible for burial in the State Cemetery.

(c) Present and former state officials who have been appointed by the governor and confirmed by the senate and who have served at least 12 years in the office to which appointed are eligible for burial in the State Cemetery.

(d) Persons specified by a governor's proclamation, subject to review and approval by the Texas Historical Commission (THC) under Subsection (b-1) of Article 4.10 State Purchasing and General Services Act are eligible for burial in the State Cemetery.

(e) Person specified in a concurrent resolution adopted by the legislature, subject to review and approval by the Texas Historical Commission under Subsection (b-1) of Article 4.10 State Purchasing and General Services Act are eligible for burial in the State Cemetery.

(f) Persons who have made a significant contribution to the history and culture of Texas as specified by order of the Texas Historical Commission under Subsection (b-1) of Article 4.10 State Purchasing and General Services Act are eligible for burial in the State Cemetery.

§13.2. Application process for burial in the State Cemetery.

(a) All persons requesting burial in the State Cemetery should complete a State Cemetery Burial Application (SCBA), available from the Texas Historical Commission, at P.O. Box 12276, Austin, Texas 78711; General Services Commission, at P.O. Box 13047, Austin, Texas 78711; the Texas governor's Office, at P.O. Box 12428, Austin, TX 78711.

(b) All persons seeking verification and approval of eligibility under §13.1(a), (b), or (c) of this title (relating to Persons Eligible for Burial in the State Cemetery) should submit their SCBA to the General Services Commission.

(c) When the Texas Legislature is in regular or special session, all persons requesting burial in the State Cemetery who are not eligible under §13.1(a), (b), or (c) should send a completed State Cemetery Burial Application to either their state senator or state representative along with a request for a concurrent resolution be sponsored by their state senator or state representative in support of their SCBA or to the Texas Governor's Office along with a request for a proclamation to be issued by the governor in support of their SCBA. For SCBAs received by a state senator or state representative the SCBA application along with a draft concurrent resolution should then be submitted to the Texas Historical Commission for review and approval or rejection prior to the concurrent resolution being acted upon by the legislature. For SCBAs received by the Texas Governor's Office, the SCBA along with a draft governor's proclamation should then be submitted to the Texas Historical Commission for review and approval or rejection prior to the governor officially issuing the proclamation.

(d) When the Texas Legislature is not in regular or special session, all persons requesting burial in the State Cemetery who are not eligible under §13.1(a), (b), or (c) should send a completed SCBA to either the Texas Governor's Office along with a request for a proclamation to be issued by the governor in support of their SCBA or to the Texas Historical Commission along with a request that an order be issued in support of their application. For SCBAs received by the Texas Governor's Office, the SCBA along with a draft governor's proclamation should then be submitted to the Texas Historical Commission for review and approval or rejection prior to the governor officially issuing the proclamation. For SCBAs received directly from the applicant by the Texas Historical Commission, the THC will review and approve or reject the SCBA prior to the issuing of the order.

(e) Upon receipt of SCBAs and draft resolutions or draft proclamations as required, the Texas Historical Commission has authorized the Executive Committee of the THC to respond within 15 days. The Executive Committee of the THC will determine if the person specified made a significant contribution to Texas history and is therefore eligible for burial in the State Cemetery.

(f) Applicants who are rejected by the Executive Committee of the THC may appeal to the full Texas Historical Commission board for a final decision at the board's next regularly scheduled business meeting.

(g) All approved SCBAs should be forwarded, along with the signed governor's proclamation, a copy of the adopted concurrent resolution or signed Texas Historical Commission order, if applicable, to the General Services Commission for burial space assignment.

(h) Under special or extreme circumstances as determined by the THC, in consultation with the Texas Governor, Texas Senate, Texas House of Representatives or General Services Commission, as applicable, SCBAs may be reviewed posthumously.

(i) The General Services Commission shall allocate burial plots for the applicant and spouse and eligible children as defined in §4.10c of Article 4. 10 State Purchasing and General Services Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 21, 1996.

TRD-9603966 Curtis Tunnell
Executive Director
Texas Historical Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 463-6100

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Chapter 15. Administration of Federal Programs

• 13 TAC §15.3, §15.6

The Texas Historical Commission proposes an amendment to §15.3, concerning membership and purpose of the State Board of Review. The changes are proposed to make the rules consistent with federal regulations and better define board composition. A proposed amendment to §15.6 updates the citation for statutory authority with regard to the Texas Open Meetings Act.

James W. Steely, Deputy State Historic Preservation Officer, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Steely also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be greater consistency between the federal and state regulations and broader participation of interested citizens. There will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to James W. Steely, Deputy State Historic Preservation Officer, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register.*

The amendments are proposed under the Texas Government Code, Chapter 442, §442.005(q), which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of Texas Government Code, Chapter 442 (Senate Bill 365, 74th Legislature, 1995.)

No other statute, article, or code will be affected by this proposal.

§15.3. State Board of Review/National Register.

(a) (No change.)

(b) Purpose. The purpose of this organization is to review and **make recommendations to the state historic preservation officer regarding** [approve] nominations from Texas to the National Register of Historic Places, and to perform other duties and responsibilities as prescribed in the *Federal Register*.

(c) Membership. The voting membership of the state board of review shall consist of 11 Texas residents. [A majority of the membership shall constitute a quorum and the chairman shall vote only to break a tie.] The board shall include [a minimum of] one professional in [each of] the [following] disciplines **of**[:] history, prehistoric archeology, **and** historic archeology, **and two professionals each in** architectural history[,] and architecture. All **professional** members shall meet the minimum standards of professional qualifications as set forth in the Federal Register (Part V: 36 Code of Federal Regulations Part 61, §61. 4(e)) and verified by the state historic preservation officer (state liaison officer). **Professionals from closely related fields are eligible to serve on the board of review in lieu of the above specified professionals subject to the approval of the National Park Service. The senior** [Two] appointed **representative** [representatives] from Texas **serving** [serve] as **advisor** [advisors] to the National Trust for Historic Preservation [and] shall serve as **an** ex-officio, voting **member** [members] of the board. **Three citizen members with a demonstrated interest, competence, and knowledge in historic preservation will be selected and shall serve as voting members.** [The coordinator of the state historical marker program and the state archeologist of the Texas Historical Commission shall serve as honorary, nonvoting members of the board.]

(d) (No change.)

(e) Election and duties of officers. A **chairperson** [chairman], vice-**chairperson** [chairman], and secretary will be elected by the review board annually by a majority vote at the first meeting of each federal fiscal year. The **chairperson** [chairman] shall perform such duties as are properly required of him or her by the board. He/she shall have general supervision of the affairs of the board, and shall have authority to interpret and carry out all policies established by its members. The vice-**chairperson** [chairman] shall perform such duties as the board or **chairperson** [chairman] directs, and shall preside in the absence of the **chairperson** [chairman]. The secretary shall certify the minutes of all meetings of the board and shall perform other duties as may be prescribed by the **chairperson** [chairman] or board. The secretary shall preside in the absence of **both** the **chairperson** [chairman] and the vice-**chairperson** [chairman]. The secretary shall complete an evaluation form for each nomination presented by staff at each board meeting. The form will become a part of the commission's permanent record of opinions and decisions by the board, and will be filed in the National Register programs office of the Texas Historical Commission.

(f) Meetings. Meetings of the state board of review shall be held as many times per year as prescribed in the *Federal Register* (Part V: 36 Code of Federal Regulations Part 61, §61.4(e)) pertaining to the National Register of Historic Places. Other meetings may be called by the **chairperson** [chairman] as needed. **The majority of the membership shall constitute a quorum and the chairperson shall vote only to break a tie.** The **chairperson** [chairman] may appoint members to committees for specific purposes and committee meetings may be required. Committee reports, if any, shall be given to the full board. If the elected secretary is absent from a board meeting, the **chairperson** [chairman] shall appoint a member of the board to serve as the secretary.

(g) Rules. The board of review shall adopt these written procedures as required by the federal guidelines for the National Register as published in the *Federal Register* (Part V: 36 Code of Federal Regulations Part 61, §61.4(e)). The adoption of, and amendments to, these rules shall be subject to approval **and adoption as rules** by the Texas Historical Commission [prior to their final adoption by the board of review].

(h) Code of conduct.

(1) No member of the state board of review may vote upon the consideration of a property for nomination to the National Register of Historic Places if the member has a conflict of interest**, real or potential,** in that vote.

(2) (No change.)

(3) A financial benefit includes, but is not limited to, grant money, contract, subcontract, royalty, commission, contingency, brokerage fee, gratuity, favor, or any other things of **real or potential** [monetary] value.

(4) A member of the state board of review who has a conflict of interest may **not** participate as a private citizen[, but not

as a member of the board,] in the deliberations concerning the property being considered for nomination to the National Register.

(5) Prior to any deliberations concerning the property in which a member of the state board of review has a conflict of interest, the member with a conflict shall announce, for the record, that such a conflict exists **and physically recuse himself/herself from the decision-making process and not vote directly, in absentia, or by proxy in that matter. Review board minutes must indicate which member recused himself/herself and the reasons for the recusal**.

(6) (No change.)

(i) Conduct of meetings. Parliamentary authority shall be according to Robert's Rules of Order, Newly Revised [(hardback)], except where specifically provided for otherwise in these rules.

§15.6. Rules and Procedures for Certified Local Governments.

(a)-(e) (No change.)

(f) Minimum requirements for certification of local governments.

(1)-(4) (No change.)

(5) The local government shall provide for public participation in the local historic preservation program, including the process of nominating properties to the National Register of Historic Places.

(A) All meetings shall be held in conformance with the Texas Open Meetings Act, Texas **Government Code, Chapter 551** [Civil Statutes, Article 6252-17].

(B) (No change.)

(6)-(8) (No change.)

(g)-(m) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 21, 1996.

TRD-9603973 Curtis Tunnell
Executive Director
Texas Historical Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 463-6100

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Chapter 17. State Architectural Programs

The Texas Historical Commission proposes the repeal of §§17.1-17.4, concerning Texas Historic Preservation Grants, the Architectural Visiting Specialist Program, Review of Work on County Courthouses, and the Texas Preservation Trust Fund; and proposes new §§17.1-17.3, concerning Preservation Trust Fund Grants, Review of Work on County Courthouses, and the Texas Preservation Trust Fund.

The repeal of §§17.1-17.4 is necessary because required amendments are sufficiently extensive to warrant repeal and replacement and are being proposed as a result of a comprehensive review of the sections to identify obsolete or ambiguous rules, and to clarify definitions, eligibility requirements, procedures, qualifications, and standards.

Stanley O. Graves, Deputy State Historic Preservation Officer, Texas Historical Commission, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Graves also has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of administering the sections will be the refinement and clarification of rules relating to the State Architectural Programs that protect Texas' significant cultural resources. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Stanley O. Graves, DSHPO, Texas Historical Commission, Post Office Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.*

• 13 TAC §§17.1-17.4

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Historical Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Government Code, Chapter 442, §442.005 (q), which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of the Texas Government Code, Chapter 442 (Senate Bill 365, 74th Texas Legislature, 1995).

No other statute, article, or code will be affected by this proposal.

§17.1. Texas Historic Preservation Grants.

§17.2. The Architectural Visiting Specialist Program.

§17.3. Review of Work on County Courthouses.

§17.4. Texas Preservation Trust Fund.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 21, 1996.

TRD-9603965 Curtis Tunnell
Executive Director
Texas Historical Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 463-6100

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• 13 TAC §§17.1-17.3

The new sections are proposed under the Texas Government Code, Chapter 442, §442.005, which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of the Texas Government Code, Chapter 442 (Senate Bill 365, 74th Texas Legislature, 1995).

No other statute, article, or code will be affected by this proposal.

§17.1. Preservation Trust Fund Grants

(a) Eligible property. To be considered eligible for grant assistance, a property must:

(1) be included in the National Register of Historic Places; or

(2) be designated as a recorded Texas historic landmark; or

(3) be determined by the commission to qualify as an eligible property under criteria for inclusion in the National Register of Historic Places or for designation as a recorded Texas historic landmark.

(b) Eligible Applicants: Any public or private entity, including those whose purposes include historic preservation, and that is either the owner, manager, lessee, maintainer, or potential purchaser of an eligible historic property is eligible for fund assistance. If applicant is not the owner of the historic property, written approval

must be submitted by the owner at time of application agreeing to follow all rules and conditions of the commission required for receipt of funds.

(c) Types of preservation grants. Preservation grants shall be awarded only for:

(1) development ("preservation," "restoration," "rehabilitation," and "reconstruction," as defined by the Secretary of the Interior's Standards for The Treatment of Historic Properties, 1992 or latest edition; the costs include professional fees to prepare an acceptable project proposal and supervise actual construction, the costs of construction, and related expenses approved by the commission; or

(2) acquisition of absolute ownership of historic or cultural resource (as defined in subsection (a) of this section of these rules) and related costs and professional fees approved by the commission; or

(3) planning costs necessary for the preparation of property specific historic structure reports, historic or cultural resource reports, preservation plans, maintenance studies, and/or feasibility studies as approved by the commission.

(d) Eligible match for grant assistance. Applicants eligible to receive grant assistance shall provide a minimum of two dollars in cash match to each state dollar for approved project costs.

(e) Application deadline is 5:00 p.m. on June 1 of each year, or 5:00 p.m. of the last regular work day of May if June 1 should fall on a weekend of holiday, or at other times as announced by the Texas Historical Commission; application forms are to be received by the commission at its offices by this deadline.

(f) Initial grant allocations. Grants shall be allocated by vote of the commission at large upon the recommendation of the Trust Fund Committee at quarterly meetings or other open meetings designated as appropriate by vote of the commission. Reallocation of returned funds may be made by the executive committee of the commission upon the recommendation of the architecture and/or archeological committees of the commission. Grant allocations will generally be in the amount of $2,500 or more, but shall not exceed $100,000.

(g) Final grant approval.

(1) Submission of project proposal.

(A) To remain eligible for the grant allocation, an acceptable project proposal, consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, 1992 or most recent edition, and consisting of plans/specifications, research design, appraisal, unexecuted contract documents, and/or other material as required shall be submitted to the commission for review and approval.

(B) An acceptable project proposal must be submitted within three months of the allocation by the commission unless otherwise approved in writing by the commission.

(2) Review and approval of project proposal. Upon completion of the review of the project proposal, approved projects will be notified of the assigned project start date, as well as the project expenses eligible for grant funding (allowable expenses) and those expenses not eligible (unallowable expenses).

(3) Commencement of project work. Project work as approved shall commence within 60 days of the assigned start date unless otherwise approved in writing by the commission.

(4) Forfeiture of grant allocation. Failure to comply with the deadline for submission of an acceptable project proposal, or to meet the deadline for starting the project work, or to perform any part of the project work as approved, or to receive permission from the commission before commencing additional work, shall result in forfeiture of the full grant amount.

(h) Award of contract.

(1) Development grant projects. All project work as approved in the project proposal shall be awarded subsequent to formal advertising for bids.

(2) Planning grant projects. Contract for work described in the approved project proposal shall be awarded subsequent to interview with at least three professional firms.

(i) Grant reimbursement procedures.

(1) Commencement of project work. Approved project work may not begin before the assigned project start date, except for planning work connected with development projects.

(2) Reimbursement of allowable project expenses. The only expenditures made before a start date which are reimbursable are for planning work done on development projects performed subsequent to initial project application submittal. All payment of grant funds shall be strictly on a reimbursement basis. Reimbursement may be made after the competitive award of contract and submission of proof of incurred allowable expenses and corresponding payments totaling more than 50% but less than 75% of the total project cost, and/or at the completion of the project after an acceptable required completion report and/or planning documents have been received by the commission.

(3) Deadline for submission of requests for reimbursement. Allowable project expenses equal to three times the grant amount shall be incurred by the following July 15 unless otherwise announced by the commission. Proof of those incurred expenses and corresponding payments shall be submitted to the commission by the following August 1 unless otherwise announced by the commission.

(4) Forfeiture of grant. Failure to expend the full grant amount by the July 15 deadline or other deadline as announced by the commission or to submit to the commission all required material by the August 1 deadline or other deadline as announced by the commission shall result in forfeiture of the remaining grant amount unless otherwise approved in writing by the commission.

(j) Deed restrictions. Acquisition and development projects shall be encumbered, prior to reimbursement of any project expenses, with a deed restriction in a format acceptable to the commission requiring the owner and successors in interest, if any, to maintain the site in the state of repair as at the time of completion of grant-assisted work, to secure the approval of the commission or its duly authorized representative for any proposed changes beyond normal maintenance to the site, and, in the case of political subdivisions of the state, to meet the requirements of the Uniform Grant and Contract Management Act Texas Government Code Chapter 783. The deed restriction shall run with the land, be enforceable by the State of Texas, and its duration will be based upon the cumulative amount of grant assistance as follows:

(1) less than $10,000–10 years from start date of the deed restrictions set by the commission.

(2) $10,000–$50,000–30 years from start date of the deed restrictions set by the commission.

(3) greater than $50,000–50 years from start date of the deed restrictions set by the commission.

(k) Repayment penalty for resale of property within one year of acquisition. If a property acquired with a preservation grant is sold within one year of the purchase date, the project allocation agreement shall provide that the owner shall repay the State of Texas the amount of the grant allocation.

(l) Completion reports for acquisition and development projects. Projects assisted with acquisition or development grants will be required to submit a project completion report in triplicate,

consisting of photo documentation and project summary prepared by the supervising project professional, to the commission no later than August 1, or as otherwise announced by the commission, of the current fiscal year. Final reimbursement of the grant allocation will be retained until receipt of an acceptable completion report by the commission.

(m) Professional standards.

(1) Project personnel for development and planning grants. Project proposal documents for development and planning grants shall be prepared by, and construction work supervised by, appropriate personnel in compliance with the following criteria:

(A) History. The minimum professional qualifications in history are a graduate degree in history or closely related field; or a bachelor's degree in history or closely related field plus one of the following:

(i) at least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or

(ii) substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

(B) Archeology. The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

(i) at least one year of full-time professional experience or equivalent specialized training in archeological research, administration, or management;

(ii) at least four months of supervised field and analytic experience in general North American archeology; and

(iii) demonstrated ability to carry research to completion.

(iv) In addition to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

(C) Architectural history. The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field plus one of the following:

(i) at least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or

(ii) substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

(D) Architecture. The minimum professional qualifications in architecture are a professional degree in architecture plus at least two years of full-time professional experience in architecture; or a state license to practice architecture.

(2) Project personnel for acquisition grants. The single appraisal required for acquisition grants shall be prepared by a professional appraiser.

(n) Performance standards. All development and planning projects must be in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties, 1992 or latest edition. All archeological projects must be in conformance with the Secretary of the Interior's Standards for Preservation Planning and Standards for Archeological Documentation, 1983 or latest edition.

(o) Compliance with requirements for accessibility to facilities by persons with disabilities. All projects must be in compliance with or in receipt of appropriate variance from the regulations issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes.

(p) Compliance with Uniform Grant and Contract Management Act. All projects by political subdivisions of the state must be in compliance with the Uniform Grant and Contract Management Act Texas Government Code Chapter 783.

§17.2. Review of Work on County Courthouses. Texas Government Code, Chapter 442, §442.008, requires that the Texas Historical Commission review changes made to courthouse structures.

(1) Definitions. The following words and terms, when used in this subsection, shall have the following meaning, unless the context clearly indicates otherwise.

(A) Demolish–To remove, in whole or part. Demolition of historical or architectural integrity includes removal of historic architectural materials such as, but not limited to, materials in the following categories: site work, concrete, masonry, metals, carpentry, thermal and moisture protection, doors and windows, finishes, specialties, equipment, furnishings, special construction, conveying systems, mechanical and electrical.

(B) Sell–To give up (property) to another for money or other valuable consideration; this includes giving the property to avoid maintenance, repair, etc.

(C) Lease–To let a contract by which one conveys real estate, equipment, or facilities for a specified term and for a specified rent.

(D) Damage–To alter, in whole or part. Damage to historical or architectural integrity includes alterations of structural elements, decorative details, fixtures, and other material.

(E) Integrity–Refers to the physical condition and therefore the capacity of the resource to convey a sense of time and place or historic identity. Integrity is a quality that applies to location, design, setting, materials, and workmanship. It refers to the clarity of the historic identity possessed by a resource. In terms of architectural design, to have integrity means that a building still possesses much of its mass, scale, decoration, and so on, of either the period in which it was conceived and built, or the period in which it was adapted to a later style which has validity in its own rights as an expression of historical character or development. The question of whether or not a building possesses integrity is a question of the building's retention of sufficient fabric to be identifiable as a historic resource. For a building to possess integrity, its principal features must be sufficiently intact for its historic identity to be apparent. A building that is significant because of its historic association(s) must retain sufficient physical integrity to convey such association(s).

(F) Courthouse–The principal building(s) which houses county government offices and courts and its (their) surrounding site(s) (typically the courthouse square).

(G) Ordinary maintenance and repairs–Work performed to architectural or site materials which does not cause removal or alteration or concealment of that material.

(2) Procedure.

(A) Notice from the county to the commission. At least six months prior to the proposed work on a county courthouse, a letter from the county judge briefly describing the project should be submitted to the commission, along with construction documents which adequately describe the full scope of project work and five-inch-by-seven-inch or larger photographs of the areas to be affected by the proposed changes.

(B) Notice from the commission to the commissioners court of the county. Written notice of the commission's determination regarding the historical significance of a courthouse for which work is proposed shall include comments pursuant to a review of the proposed work by the commission. Comments shall be made based on the Secretary of the Interior's Standards for the Treatment of Historic Properties 1992 or latest edition, which are summarized in clauses (i)-(iii) of this subparagraph:

(i) Definitions for historic preservation project treatment.

(I) Preservation is defined as the act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.

(II) Rehabilitation is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

(III) Restoration is defined as the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.

(IV) Reconstruction is defined as the act or process of depicting, by means of new construction, the form features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

(ii) General standards for historic preservation projects.

(I) A property shall be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces, and spatial relationships. Where a treatment and use have not been identified, a property shall be protected and, if necessary, stabilized until additional work may be undertaken.

(II) The historic character of a property shall be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces, and spatial relationships that characterize a property shall be avoided.

(III) Each property shall be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate, and conserve existing historic materials and features shall be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.

(IV) Changes to a property that have acquired historic significance in their own right shall be retained and preserved.

(V) Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

(VI) The existing condition of historic features shall be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material shall match the old in composition, design, color, and texture.

(VII) Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.

(VIII) Archeological resources shall be protected and preserved in place to the extent possible. If such resources must be disturbed, mitigation measures shall be undertaken.

(iii) Specific standards for historic preservation projects. In conjunction with the eight general standards listed in clause (ii)(I)-(VIII) of this subparagraph, specific standards are to be used for each treatment type.

(I) Standards for rehabilitation.

(-a-) A property shall be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

(-b-) The historic character of a property shall be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property shall be avoided.

(-c-) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, shall not be undertaken.

(-d-) Changes to a property that have acquired historic significance in their own right shall be retained and preserved.

(-e-) Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

(-f-) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and where possible, materi-

als, replacement of missing features shall be substantiated by documentary and physical evidence.

(-g-) Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.

(-h-) Archeological resources shall be protected and preserved in place to the extent possible. If such resources must be disturbed, mitigation measures shall be undertaken.

(-i-) New additions, exterior alterations, or related new construction shall not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and shall be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

(-j-) New additions and adjacent or related new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(II) Standards for restoration.

(-a-) A property shall be used as it was historically or be given a new use which reflects the property's restoration period.

(-b-) Materials and features from the restoration period shall be retained and preserved. The removal of materials or alteration of features, spaces, and spatial relationships that characterize the period shall not be undertaken.

(-c-) Each property shall be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate and conserve materials and features, from the restoration shall be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.

(-d-) Materials, features, spaces, and finishes that characterize other historical periods shall be documented prior to their alteration or removal.

(-e-) Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the restoration period shall be preserved.

(-f-) Deteriorated features from the restoration period shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and, where possible, materials.

(-g-) Replacement of missing features from the restoration period shall be substantiated by documentary and physical evidence. A false sense of history shall not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.

(-h-) Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.

(-i-) Archeological resources affected by a project shall be protected and preserved in place to the extent possible. If such resources must be disturbed, mitigation measures shall be undertaken.

(-j-) Designs that were never executed historically shall not be constructed.

(III) Standards for reconstruction.

(-a-) Reconstruction shall be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture, and such reconstruction is essential to the public understanding of the property.

(-b-) Reconstruction of a landscape, building, structure, or object in its historic location shall be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts which are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures shall be undertaken.

(-c-) Reconstruction shall include measures to preserve any remaining historic materials, features, and spatial relationships.

(-d-) Reconstruction shall be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property shall re-create the appearance of the non-surviving historic property in materials, design, color, and texture.

(-e-) A reconstruction shall be clearly identified as a contemporary re-creation.

(-f-) Designs that were never executed historically shall not be constructed.

§17.3. Texas Preservation Trust Fund.

(a) Definition. The Texas preservation trust fund (hereinafter referred to as trust fund or fund) is a fund in the state treasury, created by enactment of Senate Bill 294 by the 71st Texas Legislature (1989), which amended the Texas Government Code, Chapter 442, by adding §442.015. The trust fund shall consist of transfers made to the fund, including state and federal legislative appropriations, grants, donations, proceeds of sales, loan repayments, interest income earned by the fund, and any other monies received. Funds may be received from federal, state, or local government sources, organizations, charitable trusts and foundations, private individuals, business or corporate entities, estates, or any other source.

(b) Purpose. The purpose of the Texas preservation trust fund is to serve as a source of funding for the Texas Historical Commission (THC) to provide financial assistance to qualified applicants for the acquisition, restoration, or preservation of historic properties in the State of Texas.

(c) Property eligibility. Historic properties must either be listed on the National Register of Historic Places, designated as recorded Texas historic landmark, or be determined by the commission to qualify as an eligible property under criteria for inclusion in the National Register of Historic Places, or for designation as a recorded Texas historic landmark. Priority shall be given to those properties determined by THC to be endangered by impending demolition, neglect, under use, looting, or other threat.

(d) Fund recipient eligibility. Any public or private entity, including those whose purposes include historic preservation, and that is either the owner, manager, lessee, maintainer, or potential purchaser of an eligible historic property is eligible for fund assistance. If applicant is not the owner of the historic property, written approval must be submitted by the owner at time of application agreeing to follow all rules and conditions of the commission required for receipt of funds.

(e) Types of assistance. THC shall provide financial assistance in the form of grants or loans. Grant recipients shall be required to follow the terms and conditions of the Preservation Trust Fund Grants and other terms and conditions imposed by THC at the time of the grant award. Loans shall have a term not to exceed five years at an interest rate at the prime interest rate at the time the loan is made.

(f) Preservation easements and covenant. The owner of record (and the mortgagee, if applicable) of any property benefiting from fund assistance shall encumber the title of the property with a preservation easement and covenant in a form prescribed by THC prior to disbursement of any fund monies or conservation easement (as defined in Title B, Natural Resources Code, Chapter 183).

(g) Allowable use of trust fund monies. If no specification is made, 90% of the money deposited into and earned by the fund shall be used for historic architectural projects and 10% shall be used for prehistoric and historic archeological projects. In all cases when no specification is made or the specified amount is less than $5,000 the proceeds and/or interest on such gifts or monies shall be unencumbered and shall accrue to the benefit of the entire fund. Money deposited to the fund for specific projects shall only be used for the projects specified provided that the specific project has received approval of the THC, there is or will be a dedicated account within the Trust Fund for that project, and all other requirements herein are met. Money deposited to specified projects in amounts of $5,000 or greater shall retain all proceeds or interest earned for that specified project unless the donor stipulates that all proceeds or interest earned shall be unencumbered and accrue to the benefit of the entire fund.

(h) Organization. The Texas preservation trust fund shall be administered by THC through its trust fund committee. The trust fund advisory board, trust fund guardians, and THC staff shall provide support and input as needed.

(i) Texas Historical Commission Preservation Trust Fund Committee (hereinafter referred to as trust fund committee). The trust fund committee shall be appointed by the chairman of the Texas Historical Commission. All actions of the Texas trust fund committee are subject to ratification by the full Texas Historical Commission. Duties of the trust fund committee are:

(1) to appoint the advisory board after considering the recommendations of the Texas governor, lieutenant governor, and the speaker of the house, and to make reappointments to the advisory board, as needed;

(2) to appoint the guardians and to make reappointments to the guardians, as needed;

(3) to approve all rules, regulations, policies, and guidelines for the administration of the fund or any of its associated boards and committees;

(4) to approve the acceptance of grants or other donations of money, property, and/or services from any source. Money received shall be deposited to the credit of the Texas preservation trust fund;

(5) to provide final approval of all trust fund allocations based on advisory board and THC staff recommendations.

(j) Texas Preservation Trust Fund Advisory Board (hereinafter referred to as advisory board).

(1) In accordance with Texas Government Code §442. 015, which created the Texas preservation trust fund, the advisory board shall consist of:

(A) one representative of a bank or savings and loan association;

(B) one attorney with a recognized background in historic preservation;

(C) two architects with substantial experience in historic preservation;

(D) one archeologist with substantial experience in Texas archeology;

(E) one real estate professional with experience in historic preservation;

(F) two persons with a demonstrated commitment to historic preservation; and

(G) one director of a nonprofit historic preservation organization.

(2) Members of the advisory board shall serve a two-year term expiring on February 1 of each odd-numbered year. Advisory board members may be reappointed. Advisory board members will continue to serve until a new appointment is made or until reappointed. A member of the advisory board is not entitled to compensation for his service, but is entitled to reimbursement for reasonable expenses incurred while attending advisory board meetings subject to any limit provided by the General Appropriations Act. The advisory board shall elect a chairman for a two-year term from among its membership at its first regularly scheduled meeting. Subsequent elections for chairman shall be held at the end of the existing chairman's term. The chairman shall not serve in that capacity for more than two consecutive two-year terms. The advisory board shall meet annually in conjunction with the THC quarterly meeting in the fall of each year and at other times as determined by their chairman. Duties of the advisory board are:

(A) to make recommendations to THC through the trust fund committee on all trust fund project allocations of $20,000 or more, as per the trust fund statute;

(B) to consult with and advise the THC trust fund committee and THC staff on matters relating to more efficient utilization or enhancement of the trust fund in order to further the cause of historic preservation throughout Texas; and

(C) to provide advice and guidance in their respective area of expertise.

(k) Texas preservation trust fund guardians (hereinafter referred to as guardians). The guardians shall consist of up to 25 persons appointed for two-year terms by the Texas Historical Commission. The limit of 25 members may be exceeded only in special circumstances with the unanimous vote of the commission. Guardians may be reappointed for additional terms. The Texas Historical Commission shall appoint guardian members based on their demonstrated commitment to historic preservation. The guardians shall elect a chairman for a two-year term from among its membership at its first regularly scheduled meeting. Subsequent elections for chairman shall take place at the end of the existing chairman's term. The chairman shall not serve in that capacity for more than two two-year terms. The guardians may elect additional officers or establish committees, as needed. The guardians shall meet annually in conjunction with the THC quarterly meeting and annual historic preservation conference held in the spring of each year and/or at other times as determined by their chairman. Duties of the guardians are:

(1) to assist THC in achieving the goal of preserving historic architectural and prehistoric and historic archeological properties of the state for the benefit of future generations;

(2) to serve as an organized network of persons familiar with preservation problems and potential in their respective geographical region of the state to utilize their interest, leadership, and resources to further the objectives of the trust fund;

(3) to cultivate and develop known or potential sources of direct support, both financial and otherwise, and to inform THC of individuals or organizations that are seeking assistance for preservation projects or considering the disposition of historically signifi-

cant properties or potential donors of property or other assets to the trust fund; and

(4) to serve as spokesmen and ambassadors of the trust fund to local organizations, political subdivisions of the state, and the general public.

(l) Texas preservation trust fund staff. The executive director of the Texas Historical Commission shall organize and administer the staff for the Texas preservation trust fund.

(m) General provisions.

(1) Code of conduct–The THC Code of Conduct shall apply to members of the advisory board and guardians.

(2) Gender–As used herein, the masculine pronoun shall include the feminine.

(3) Vacancies–Any vacancy on a trust fund committee or board may be filled at any time in the same manner as the incumbent member was elected or appointed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 21, 1996.

TRD-9603964 Curtis Tunnell
Executive Director
Texas Historical Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 463-6100

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Chapter 19. Texas Main Street Project

• 13 TAC §19.5

The Texas Historical Commission proposes an amendment to §19.5 under Texas Main Street Project (Chapter 19.) Due to reductions in funding for travel and an increase in the number of participating cities, staff will no longer provide two visits per year to assist with identified local needs in the self-initiated Main Street cities.

Anice Read, deputy executive director, has determined that for the first five year period the section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Read also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of amending §19.5 will be more cities applying for official designated status which would entitle them to full technical assistance benefits. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Anice Read, Deputy Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.*

The amendment is proposed under the Texas Government Code, Chapter 442, §442.005(q), which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of Texas Government Code, Chapter 442 (Senate Bill 365, 74th Legislature, 1995.)

No other statute, article, or code will be affected by this proposal.

§19.5. Assistance to be Provided Qualifying Self-initiated Main Street Cities.

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

[(c) The community will receive a minimum of two staff visits per year from the staff of the Texas Historical Commission to assist with goal setting, project evaluation, display techniques, and other identified local needs.]

(c)[(d)] The community will be recognized in all Texas Main Street publications.

(d)[(e)] The community and Main Street manager will have access to the Texas Main Street network of information.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 21, 1996.

TRD-9603972 Curtis Tunnell
Executive Director
Texas Historical Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 463-6100

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Chapter 21. Local History Programs

The Texas Historical Commission proposes the repeal of §§21.1-21.5, concerning the Local History Programs committee, grant programs for history museums, the Winedale museum seminar and museum on-site consultations. The repeals are proposed to eliminate ambiguous language and to better reflect current practices and procedures of the agency. The agency proposes new §§21. 1-21.31 that will reflect the activities of the Local History Programs department and incorporate current practices and procedures of the agency. Rules for the historic Texas cemetery program are proposed in order to implement a rider in the 1995 Appropriations Bill providing for the registration of historic cemeteries with the Texas Historical Commission.

Frances Rickard, Director of the Local History Programs department, has determined that for the first five year period the repeals as proposed is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Ms. Rickard also has determined that for each year of the first five years the repeals as proposed is in effect, the public benefit anticipated as a result of repealing Sections 21.1-21.5 will be to provide a clearer representation of agency activities and procedures. The public benefit anticipated as a result of new Sections 21.1-21.31 will be to offer the public a clearer understanding of agency practices, especially in regard to the museum and historical marker programs. Public registration of historic cemeteries with the agency will be entirely optional, but is anticipated to be welcomed enthusiastically by many family cemetery associations and will begin to provide the public with a better source of information on the location of historic cemeteries around the state. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Frances Rickard, Director of the Local History Programs department, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.*

• 13 TAC §§21.l-21.5

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Historical Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Government Code, Chapter 442, §442.005(q), which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of Texas Government Code, Chapter 442 (Senate Bill 365, 74th Legislature, 1995.)

No other statute, article, or code will be affected by this proposal.

§21.1. Local History Programs Committee.

§21.2. Grant Program for History Museums.

§21.3. Winedale Museum Seminar.

§21.4. Museum On-Site Consultations.

§21.5. Museum On-Site Consultations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 21, 1996.

TRD-9603971 Curtis Tunnell
Executive Director
Texas Historical Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 463-6100

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• 13 TAC §§21.1-21.31

The new sections are proposed under the Texas Government Code, Chapter 442, §442.005(q), which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of Texas Government Code, Chapter 442 (Senate Bill 365, 74th Legislature, 1995.) The new sections will reflect the activities of the Local History Programs department including the removal of terms related to obsolete state and federal laws regarding the grant program for history museums, clarification of eligibility of projects, and to formalize unwritten policy already in effect. Rules regarding agency awards have been transferred from Chapter 23 to better reflect current agency practices.

No other statute, article, or code will be affected by this proposal.

§21.1. Oversight for Museum Services. All policies and procedures relating to museum services, including grants, seminars, and consultations, are determined by the History Programs Committee, comprised of members of the Texas Historical Commission appointed by the chairman.

§21.2. Grant Program for History Museums. The grant program for history museums is administered by the commission's Local History Programs office.

(1) Eligibility of museums. To be considered eligible for grant assistance a museum shall:

(A) verify that it is an organized and permanent nonprofit institution, either public or private, mainly involved in education, research, or aesthetics;

(B) employ at least one person, paid or unpaid, who devotes full time to the acquisition, care, and exhibition of historical objects owned or used by the institution;

(C) own and utilize tangible historical objects, while maintaining adequate accession records on all collections;

(D) maintain exhibits which are open to the public on a regular schedule at least 20 hours per week, ten months a year; and

(E) be in compliance with the Architectural Barriers Act, Article 9102, Texas Civil Statutes, and the Americans with Disabilities Act of 1990.

(2) Eligibility of projects. Priority will be given to applications requesting funds for the conservation and preservation of collections. Projects involving construction of facilities or purchase of equipment are not eligible. Grant projects may include, but are not limited to:

(A) applying conservation methods;

(B) obtaining technical assistance;

(C) purchasing archival supplies;

(D) developing educational programs; and

(E) cataloging, care, and use of historic photographs and taped oral history interviews.

(3) Criteria for evaluation. The following criteria will be considered in awarding grants:

(A) clarity of the project's objectives;

(B) quality of the museum's operations;

(C) appropriateness of the project's size and scope;

(D) historical significance of the collection; and

(E) strength of community support as indicated by matching funds raised at the local level.

(4) Filing applications. A copy of the application form may be obtained from the Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. All information about application filing procedures will be contained therein.

(5) Determination of awards. Upon review by staff of the Local History Programs office, the History Programs Committee evaluates grant applications and recommends funding allocations for those projects deemed most worthy. Grants are awarded by vote of the Texas Historical Commission at large at the first quarterly meeting after the application deadline, or at other meetings designated as appropriate by vote of the commission. Grant project start dates become effective on the date of notification of the award by the Local History Programs office. Reallocation of returned funds shall be made by the Executive Committee of the commission upon the recommendation of the Local History Programs office.

(6) Amount of award and matching funds. Funds for up to 50% of a project's cost may be awarded by the commission, but may not exceed $1,000. Applying museums shall provide the remaining 50% either in funds or as services in kind. Services in kind, such as volunteer time and institutional services, shall be documented and shall not exceed half a museum's matching contribution to the project. The Texas Historical Commission favors projects supported by locally raised matching funds. Federal grants, however, may also be used as matching funds.

(7) Commencement of projects. Approved project work shall commence with 45 days of the award date. No expenditures of project funds shall be made prior to that date.

(8) Payment procedures. All payments of grant funds shall be on a reimbursement basis, and may be in installments. Reimbursement will be made upon submission of proof of incurred allowable expenses. The last installment payment will not be made until final reports have been submitted by the grant recipient and accepted by the Texas Historical Commission.

(9) Completion of project and final report. Grant recipients shall submit to the Texas Historical Commission a narrative report, photographic documentation, and a complete financial report of expenditures no later than 45 days following the completion of

the project. All projects shall be completed within one year of the grant's award date. Any exception to this rule is to be approved by the History Programs Committee.

(10) Forfeiture of grant allocation. Failure to comply with the deadline for starting project work or to complete the project within a year of the award date, shall result in forfeiture of the full grant amount and its reallocation to another museum project by the commission.

§21.3. Winedale Museum Seminar. The Winedale Museum Seminar is administered by the commission's Local History Programs offices to provide training in the fields of administration and interpretation for workers in the museum profession. The number of participants at each seminar will be limited to 20. Applicants must be museum/historic site professionals, museum/historic site volunteers with at least two years' experience, or graduate students in an accredited program of museum studies. Applications, available through the Texas Historical Commission, will be accepted from residents of the United States. The selection committee may admit applicants from other countries at its discretion. Each application shall be accompanied by two letters of recommendation and shall be received by the commission at its offices in Austin on or before the assigned deadline. Participants in the seminar are chosen by a special selection committee composed of two staff members of the Texas Historical Commission, a staff member of the Center for American History, and up to two museum professionals with knowledge of the seminar. Participants shall pay a registration fee, all travel expenses, and make their own travel arrangements.

§21.4. Museum On-Site Consultations. Any museum or historical organization, public or private, may request advice or consultation from the Local History Programs Office (or from its field office, the Sam Rayburn House Museum). Consultation is also available for groups planning the establishment of a public or nonprofit private museum. Requests for on-site consultations will be filled as funds and staff schedules permit.

§21.5. State Marker Review Board. All policies and procedures related to the marker process are determined by the State Marker Review Board, comprised of members of the Texas Historical Commission appointed by the chairman. The decisions of the committee about the eligibility of marker topics are final. When additional information warrants and the applicant submits a new application form and narrative history, the marker review board may reevaluate a topic that has been previously rejected. Protection of historic buildings has been a long-standing goal of the Texas Historical Commission. Likewise, historic institutions, businesses, and organizations in Texas are encouraged to preserve their historic buildings. The committee shall rule on the appropriateness of the proposed placement of any official Texas Historical Marker.

§21.6. Definition of Official Texas Historical Markers. Official Texas historic markers are those markers and plaques awarded, approved, or administered by the Texas Historical Commission. They include centennial markers awarded by the state in 1930s, Civil War centennial markers (1960s), medallions, and markers awarded by the Texas Historical Commission or its predecessor, the Texas State Historical Survey Committee.

§21.7. Documentation. The basic document governing decisions of the State Marker Review Board to grant a marker shall be a comprehensive history of the topic, with reference notes and bibliography as prescribed in the application form. Collections of miscellaneous documents or notes are not acceptable in lieu of a narrative history. At least one photograph of the proposed marker location must be included with all marker applications.

§21.8. Permanent Archives. All materials submitted by applicants for official Texas historical markers became part of the permanent archival files of the Texas Historical Commission. They may be used or cited in the commission's publications unless otherwise noted by the author.

§21.9. County Approval of Applications. The approval of the appropriate county historical commission, where one exists, shall be signified upon every application submitted to the Texas Historical Commission. In the case of counties with no active county historical commission, the approval of the county judge shall be signified upon the application. If the county historical commission rejects or fails to act on an application or proposed marker inscription within 120 days, appeal may be made by the applicant to the State Marker Review Board.

§21.10. Use of Emblems or Logos. No official Texas historical marker may be fabricated with any emblem, design, or logo signifying another organization. No other emblem, design, or marker size may be used in addition to, or instead of, those offered by the Texas Historical Commission. Medallion logos are the property of the commission and may not be used for commercial advertising or be copied for the use of any other agency, association, corporation, or individual. Products displaying medallion logos and Official Texas Historical Marker designs may be fabricated and sold only through the Texas Historical Commission.

§21.11. Response Required of Applicant. When an official Texas historical marker is proposed, whether for a structure, event, person, institution, site, or any other topic, the applicants shall comply with the regulations of the Texas Historical Commission as set forth in these policies. Failure to respond after two consecutive written requests from the commission regarding any part of the marker process can result in termination of the application. Upon termination, the commission shall return the application and accompanying history to the applicant.

§21.12. Burden of Proof. The burden of proof for all historic claims rests upon the applicant for a historical marker, who shall support such claims with documentation in the form of proper reference notes and bibliography. If the topic or subject purports to be unique (one of a kind, the largest, smallest, oldest, first, etc.), the submission is to include documentation from an unbiased and authoritative source which validates the claim. If oral histories are used in the documentation for a marker topic, the bibliography will indicate the form of the recorded data, whether tape or transcript, and whether or not the data are available to the public; will give the name of the interviewer and interviewee; will include the date, place, and subject of the interview; and will indicate the location of the tape and/or transcript.

§21.13. Relative Weight of Data. Primary source data (writing, publications, or other evidence from the time of the event) take precedence over all documentation in the evaluation of any historical topic. Legal documents take precedence over private papers. Testimony from disinterested and authoritative sources takes precedence over testimony of interested individuals.

§21.14. Subject Marker Approval. Subject markers are awarded to Texas history topics of local, state, or national significance. A topic whose history dates back at least 75 years may be approved for a subject marker. The State Marker Review Board may waive the age requirement for topics they deem exceptionally significant.

§21.15. Marking Individuals. No individual may be mentioned in a marker text until 20 years after his or her death, except in the case of a deceased person of state or national significance, in which case the

State Marker Review Board of the commission will be the final authority on eligibility. Individuals must be eligible for marking on their own merits, rather than from their association with, or relation to, a historical person. Eligibility for an official Texas historical grave marker will also be determined by this section.

§21.16. Marking Events. If an event changed the course of state or local history, that event will be eligible for historical marking 30 years after its occurrence. The event must have specific beginning and ending dates.

§21.17. Recorded Texas Historic Landmarks. Designation as a recorded Texas historic landmark is given to structures that are deemed worthy of preservation for their architectural and historical associations. Such structures are eligible for the landmark status because of architectural integrity, history, and age (50 years old or older). In no case may the landmark status be awarded unless the structure is in good repair. The landmark designation becomes effective when the application is approved by the State Marker Review Board. The landmark designation is conveyed by an Official Texas Historical Marker; designation comes only through participation in the marker process.

§21.18. Relocated Structures. Buildings that have been moved cannot be considered for designation as recorded Texas historic landmarks. Relocated structures may qualify for subject markers if their history and architectural integrity warrant, and if there is proof that the relocation was required. Proof consists of evidence that the relocated building was formally condemned by the state or a political subdivision of the state, or that it was under threat of imminent destruction. The State Marker Review Board will be the final authority on the validity of such claims.

§21.19. Artificial Siding. A structure cannot be considered for Recorded Texas Historic Landmark designation if artificial (aluminum, asbestos, vinyl, etc.) siding applied to its exterior within the preceding fifty years covers and/or alters its historic architectural materials or features.

§21.20. Permanence of Recorded Texas Historic Landmark Designation. The status of recorded Texas historic landmark is a permanent designation, and is not to be removed from the property in the event of a transfer of ownership. The landmark marker awarded to any structure shall remain with that structure and may not be removed or displayed elsewhere, unless the State Marker Review Board gives express approval for such action.

§21.21. Restraints to Changes in Recorded Texas Historic Landmarks. The exterior appearance of structures designated as recorded Texas historic landmarks may not be changed appreciably after receiving such designation. If structural changes, including the relocation of the structure, are desired, the applicant will conform to the provisions of Texas Government Code, Chapter 442, §442.006(f). If appreciable or unwarranted changes are observed to have been made on a structure designated as a landmark, the designation and the marker may be withdrawn by the State Marker Review Board.

§21.22. Disposition of a Recorded Texas Historic Landmark Marker. A recorded Texas historic landmark marker for a structure that has been destroyed or from which the State Marker Review Board has removed the designation may:

(1) be placed in an appropriate local museum for display with accompanying photos and history;

(2) be presented to the county historical commission for use in the promotion of historic preservation or education; or

(3) be placed in another location determined by the State Marker Review Board.

§21.23. Placement of Historical Markers. Official Texas Historical Markers are to be displayed in conspicuous places accessible to the public, and in dignified surroundings. Desirable sites are public highways, parks, and city streets where the reading of the marker text will be of educational value. If the site of a commemorated event, structure, or institution, or other topic is on private property or is otherwise inaccessible to the public, the marker is to be placed in an accessible location as near as possible to the historic site.

§21.24. Relocation of Historical Markers.

(a) Causes for relocation. Official Texas historical markers may be relocated:

(1) when they are the object of persistent vandalism in their original location;

(2) when a more accurate site for the marked event or structure has been determined;

(3) when an extant hazard to viewers of a marker can be reduced or eliminated by its relocation; or

(4) when better public access results.

(b) Written permission. Relocation shall be with the written consent of the Texas Historical Commission, given through the office of the executive director. Requests to relocate 1936 centennial markers will be carefully scrutinized. The original historic location of these markers should be retained if at all possible.

(c) Supplemental plate. In cases where a marker's text will be affected by reason of the relocation, a supplemental plate may be required by the commission.

§21.25. Significance of Marker Topics. No topic is to be considered for historical commemoration for its amusement value alone. There must be inherent significance over and above the matter of popular appeal, and that significance must be demonstrated in the narrative history.

§21.26. Marker Inscriptions. The State Marker Review Board is the final authority on the wording, spacing, and style of marker inscriptions.

§21.27. Restraint on Including Owners or Restorers in Marker Text. Neither restorers nor current owners of historic structures may be named in the text of an official Texas historical marker awarded to the structure.

§21.28. Replacement of Markers. When the replacement of an historical marker is necessary because it has been damaged or stolen, or because it contains factual errors, the topic or structure shall meet marker criteria and policies in effect at the time of replacement.

§21.29. Owner's Permission. Permission of the owner to place an official Texas historical marker on private property must be secured prior to the submission of the application.

§21.30. Historic Texas Cemetery.

(a) Cemeteries that are deemed worthy of recognition and preservation for their historic associations are eligible for listing as a Historic Texas Cemetery. The purpose of this listing is to alert the

present and future owners of the existence of the cemetery. Such cemeteries are eligible for this status if established at least 75 years ago. The History Programs Committee may waive the age requirement for cemeteries that are deemed to be exceptionally significant. Listing as a Historic Texas Cemetery does not limit the private owner from using the land.

(b) Any individual, organization, or agency may submit an application. The Texas Historical Commission will notify the owner of the property containing the cemetery via certified mail about the proposed listing.

(c) Applications for Historic Texas Cemetery listing are available at the Texas Historical Commission. Completed applications, along with a processing fee, should be sent directly to the Texas Historical Commission for processing and review. The Texas Historical Commission may request further documentation if necessary. The burden of proof for the existence of a cemetery is on the applicant. After the application has been accepted for listing, the applicant and landowner will be sent a Declaration of Dedication to be completed and filed with the appropriate county clerk's office. Applications rejected because of eligibility may be reviewed by the History Programs Committee upon the request of the applicant. The cemetery will be officially recognized as a Historic Texas Cemetery when the applicant forwards proof of the recording of the Declaration of Dedication from the appropriate county clerk's office.

(d) Listing as an Historic Texas Cemetery must be based on solid documentation of the cemetery's eligibility as outlined in the application form, available from the Texas Historical Commission. Examples of documentation that may be required include deed and title, plot records, archival documents, photographs, oral histories, remote sensing and archeological data.

(e) The Historic Texas Cemetery listing is permanent and cannot be removed in the event of a transfer of ownership.

(f) Historic Texas Cemeteries may be further recognized by purchasing an Official Historic Texas Cemetery Marker, available for purchase through the Texas Historical Commission. The marker should be placed in conformance with §21.23 of this chapter.

§21.31. Awards. The following preservation awards will be presented by the agency, with requirements and criteria detailed in the current Texas Preservation Handbook for County Historical Commissions, which is available from the Texas Historical Commission:

(1) governor's award for historic preservation;

(2) the Ruth Lester lifetime achievement award;

(3) Glenda Morgan award of excellence in museums;

(4) award of excellence in historic architecture;

(5) award of excellence in preserving history;

(6) award of excellence in archeology;

(7) award of merit in historic preservation;

(8) museum awards;

(9) distinguished service award;

(10) John Ben Shepperd leadership award;

(11) outstanding volunteer of the year award.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 21, 1996.

TRD-9603970 Curtis Tunnell
Executive Director
Texas Historical Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 463-6100

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Chapter 23. Publications

The Texas Historical Commission proposes the repeal of §23.3 and §23. 4, regarding awards presented by the agency, with requirements and criteria detailed in the Texas Preservation Handbook and administered by the Local History Programs department. Information on awards will be transferred to Section 21.36 of Chapter 21, Local History Programs. The agency proposes new §23.3, regarding the rules of the T.R. Fehrenbach book award. This award is presented annually to outstanding history publications and is therefore coordinated through the publications department.

Roni Morales, Publications Director, has determined that for the first five year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Morales also has determined that for each year of the first five years the rules as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is greater understanding of the criteria for the agency's numerous awards and information on the different departments that have oversight of the various awards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Roni Morales, Publications Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.*

• 13 TAC §23.3, §23.4

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Historical Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Government Code, Chapter 442, §442.005(q), which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of Texas Government Code, Chapter 442 (Senate Bill 365, 74th Legislature, 1995.)

No other statute, article, or code will be affected by this proposal.

§23.3. Awards.

§23.4. Rules of the T.R. Fehrenbach Book Award of the Texas Historical Commission: 1989-1993.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 21, 1996.

TRD-9603969 Curtis Tunnell
Executive Director
Texas Historical Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 463-6100

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• 13 TAC §23.3

The new section is proposed under the Texas Government Code, Chapter 442, §442.005(q), which provides the Texas Historical Commission the authority to promulgate rules it considers proper for the effective administration of Texas Government Code, Chapter 442 (Senate Bill 365, 74th Legislature, 1995.) The new section eliminates ambiguous wording with regard to the Fehrenbach book award, its nomination procedures, criteria, and sponsorship.

No other statute, article, or code will be affected by this proposal.

§23.3. Rules of the T.R. Fehrenbach Book Award of the Texas Historical Commission: 1989-1998. The T.R. Fehrenbach Book Award, sponsored by The Dow Chemical Company, is presented annually to outstanding history publications. Requirements and criteria are detailed in the current Texas Preservation Handbook for County Historical Commissions.

(1) The official name of this program shall be the "T.R. Fehrenbach Book Award of the Texas Historical Commission, sponsored by The Dow Chemical Company."

(2) This award program is instituted for the purpose of encouraging and recognizing interest, study, and publication in the field of Texas history.

(3) To be eligible for awards, entries must be nonfiction works in book form devoted to any aspect of Texas history or heritage. All entries should reflect serious scholarship and provide additional knowledge of some part of the Texas past and shall be judged against each other.

(4) Eligible entries must be published in not less than 200 copies during the current contest year.

(5) Nominations for this award may be submitted by any person with an interest in Texas history, together with three copies of the nominated work, to the Texas Historical Commission on the provided official form. No books shall be returned.

(6) Nominations must be received by 5:00 p.m. on the last Friday or working day in December, December 31 of the contest year.

(7) Winning entries (a maximum of three in any year) shall receive a cash prize of $1,000 together with an official recognition plaque from the Texas Historical Commission. All winning entries shall receive equal recognition.

(8) Judging of entries and selection of winners shall be done by three distinguished Texas scholars and/or authors appointed by the Texas Historical Commission. All winning entries shall receive equal recognition.

(9) All decisions by the judges shall be final and shall be ratified by the Texas Historical Commission. Neither the commission, The Dow Chemical Company, nor any other party shall have input or influence in the selection of winners or awarding of prizes.

(10) One set of nominated entries shall remain with the Texas Historical Commission; one set shall be retained by The Dow Chemical Company; and one shall be donated to an appropriate public depository.

(11) The Texas Historical Commission shall give the widest possible notice to authors, historians, and publishers, and to the public generally, to bring attention to this program and to encourage the nomination of all eligible entries.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 21, 1996.

TRD-9603968 Curtis Tunnell
Executive Director
Texas Historical Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 463-6100

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Chapter 25. Office of the State Archeologist

• 13 TAC §§25.1, 25.2, 25.4-25.7

The Office of the State Archeologist, Texas Historical Commission proposes amendments to §25.1, concerning definitions; §25.2, concerning determinations of significance; §25.4 concerning consultations; §25.5 concerning inventory of archeological sites; §25.6, concerning archeological collections; and §25.7, concerning protection of archeological sites. Most amendments, as proposed, are administrative changes for clarifying terminology and are nonsubstantive.

Curtis Tunnell, executive director, Texas Historical Commission, has determined that for the first five-year period the rules are in effect there will be no effect to state or local government as a result of enforcing the rule.

Curtis Tunnell also has determined that for each year of the first five year period the rules are in effect, the public benefit anticipated as a result of administering the rules will be refinement of the definitions used by the Office of the State Archeologist. A second public benefit will be the expansion of the criteria used to determine archeological site significance. The addition of institutions to the list of entities that may direct inquiries to the Office of the State Archeologist is a third public benefit. Clarification of the terms by which archeological collections are handled and maintained is a fourth public benefit. A fifth public benefit is clarification of the protective measures taken to preserve important archeological sites. There will be no effect on small businesses and there is no anticipated economic cost to private citizens.

Comments on the proposal may be submitted to Curtis Tunnell, executive director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276. Comments will be accepted for 30 days after publication in the *Texas Register.*

The amendments are proposed under the Government Code, Chapter 442, §442. 007, and by the Government Code, Chapter 442, §442.005(q), which provides the Texas Historical Commission with the authority to promulgate rules it considers proper for the effective administration of the Texas Government Code (Senate Bill 365, 74th Texas Legislature, 1995).

There are no other statute, article, or code will be affected by this proposal.

§25.1. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

[Council of Texas Archeologists' guidelines. The standards for archeological performance, report writing, curation, and/or other aspects of archeological investigation adopted by the Council of Texas Archeologists, a nonprofit professional organization. Information on how to obtain the guidelines is available from the Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711.]

Historic or cultural resource–Any building site, district, or structure of historical or archeological interest and its contents. Examples are Indian mounds and camping grounds, sources of stone for aboriginal tools, bison kill sites, rock art, pre-20th century shipwrecks, building foundations, early cottage and craft sites, cemeteries, dumps and trash heaps, **military sites,** and all manner of historical buildings and other structures. Only resources at least 50 years old, or which have been determined by the state archeologist to be of transcendent historic or cultural importance, are considered historical resources within the meaning of these sections.

Professional archeologist–Any archeologist certified by the Society of Professional Archeologists (SOPA) for the level of required investigation;[,] anyone determined a professional archeologist by the state archeologist according to the criteria of the SOPA; or **anyone meeting** pertinent state or federal regulations for **qualification** [certification] for the level of investigation required.

§25.2. Determinations of Significance. A determination of significance is used by the Office of the State Archeologist to help decide which sites and historical resources are most worthy of recordings, investigation, and other treatment. Considered in a determination of significance are:

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

(3) qualification, as determined by the commission, as an eligible property under the criteria for inclusion in the National

Register of Historic Places, or for designation as a **Recorded** [recorded] Texas **Historic** [historic] **Landmark** [landmark] **or a State Archeological Landmark;**

(4)-(7) (No change.)

§25.4. Consultation.

(a) Any individual, **institution**, organization, agency, or corporation may direct inquiries to the Office of the State Archeologist and request consultation relating to prehistoric and historic archeology and related matters. All inquiries will be answered or referred to another appropriate agency or organization.

(b) (No change.)

§25.5. Inventory of Archeological Sites.

(a) (No change.)

(b) Request for access. Organizations, agencies of the government, corporations, and individuals who desire access to records shall make their request to the Office of the State Archeologist, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711, and include a justification for the needed information, as well as an explanation of how the requested data will be used (for example, in publications or public education projects). **Reproduction costs will be charged at the rates established by the commission.**

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

§25.6. Collections.

(a) Maintenance. The commission will:

(1) (No change.)

(2) maintain collections on loan to this office for the period of time required for their processing, analysis, and adequate reporting; and return or place such collections according to the terms of the loan agreement entered into with the collection owner.

(3)[(2)] maintain on a temporary basis collections recovered by other organizations or people from archeological investigations in **Texas, involving this office, and that this office agrees to accept** [the state and accepted by this office for placement;] for curation; [and]

(4) refer to permanent repositories all other requests from individuals, institutions, organizations, and agencies for collections placement;

(5)[(3)] maintain on a permanent basis only those collections falling within its responsibilities and for which no permanent repository can be found, and sample collections for comparative analysis.

(b) Permanent repositories. In seeking permanent repositories for collections held in temporary custody, this office will observe the following procedures.

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

(4) Transfer of collections to permanent repositories will be made under the terms of a written agreement between the repository and the commission. The agreement will include an inventory of transferred goods, and its terms will be guided by the pertinent state or federal standards for curation. **The agreement will provide that, should a repository fail to maintain the integrity of collections provided by the commission, or to protect them adequately, such collections will revert to the commission along with all pertinent records.**

(5) **Pertinent** [All pertinent] data concerning collections, related site records, and the sites of resources from which the collections were made **may** [will] be retained in the commission's inventory of archeological resources, and no transfer agreement will be made that prohibits the commission from retaining data and information.

[(6) In the event that a repository fails to maintain the integrity of collections provided by the commission, or to protect them adequately, such collections will revert to the commission along with all pertinent records.]

(c) Human skeletal remains.

(1) (No change.)

(2) Human skeletal remains and associated artifacts will be **handled in a manner that complies with applicable state and federal laws and regulations.** [retained for permanent scientific study and curated in a manner that optimizes their preservation and study and eliminates their display as items of curiosity.]

(d) Artifact identification. This office will not assist in the identification of unprovenienced artifacts.

(e)[(d)] Appraisals. This office will not place a price on any artifacts and/or collections in its custody and it will not appraise artifacts for others.

*§25.7. **Protection** [Acquisition and Preservation] of Sites.*

(a) Purpose. **To preserve through** [These activities are undertaken to preserve perpetuity major archeological properties or by their acquisition] the implementation of applicable **preservation designations and** [antiquities] laws**, and through donations.**

(b) Selection. Selection of sites for **protection** [acquisition or preservation] is made by the Office of the State Archeologist on the basis of site significance as stated in §25.2 of this title (relating to Determination of Significance)**. Priority is** [priority being] given to major sites **that are threatened with damage or destruction.** [that are endangered by nature or man.] Selection of cultural properties for permanent preservation can be made in cooperation with individuals, **institutions**, private organizations and corporations, or state or federal agencies.

[(c) Maintenance requirements for buildings. Properties requiring extensive repair and/or long-term maintenance, such as standing historic structures, will not be considered for acquisition unless mechanisms for such maintenance can be arranged through cooperating preservation entities.]

(c)[(d)] Factors influencing selections. Major factors influencing site selection are:

(1) potential of the property to yield scientific data useful in their construction of past lifeways;

(2) importance of the site within the context of a regional culture area; and

(3) potential of the site with respect to public education through the eventual development of on-site or nearby interpretive centers, displays, or professionally guided tours.

(4) presence of buildings or structures; properties requiring extensive repair and/or long-term maintenance, such as standing historic structures, will not be considered for some preservation options, such as donation to the commission, unless mechanisms for such maintenance can be arranged through cooperating preservation societies.

(d) [(e)] **Protection** [Acquisition] procedures. The following procedures for **permanent** [acquisition/] preservation will be adhered to by the Office of the State Archeologist **for sites under the aegis of this office.**

(1) **All protective activities for sites on privately owned land will be undertaken only with the full and voluntary cooperation of the landowner.** [Having deemed a site worthy of permanent preservation, the Office of the State Archeologist or an appointed agent will negotiate with the owner of the site.]

(2) The site owner will be informed of the significance of the property **and** of the various **options available to ensure long-term preservation of the property.** [mechanisms available to ensure long-term preservation of the property, and of his rights, responsibilities, and privileges under each of the preservation programs.]

(3) The alternatives for long-term preservation include, but are not limited to, the following:

(A) donation of the property to the state or to a suitable nonprofit foundation;

(B) purchase of the property by the state or a suitable nonprofit foundation;

(C) assignment of a conservation easement (Conservation Easement Act, Title 8, Texas Natural Resources Code, Chapter 183, Conservation Easements) by site owner to the state or other qualified nonprofit organization;

(D) designation of the property as a state archeological landmark; and

(E) nomination of the property to the National Register of Historic Places.

(F) agreements for long-term site monitoring.

(4) Where a site or property is acquired for the state through donation or purchase by the Office of the State Archeologist, the following conditions shall apply.

(A) The donation will be unconditional and will reflect full ownership by the state.

(B) The donation may consist of surface rights only. Mineral rights in such instances will be retained by the landowner with the stipulation that all contained archeological deposits will be protected against any form of land-altering mineral exploration and development. In the case of donations that include mineral rights, such rights will be managed by the General Land Office of Texas.

(C) The property to be acquired will be limited to those areas containing archeological deposits; any immediately adjacent or contained natural features having direct relevance to human occupation of the site, such as springs, bedrock exposures, or flint outcrops; and to access corridors.

(D) The Office of the State Archeologist will provide for legal survey, legal description, and deed recording of the acquired property.

(E) The Office of the State Archeologist will [inform the donating landowner of his rights with respect to tax benefits for site donation, and will] supply [required] documentation to the landowner or other entity as required to facilitate **available** [such] benefits.

(e)[(f)] The Office of the State Archeologist will initiate measures, **including the following,** to provide for the permanent protection of **archeological sites under the aegis of this office:** [the scientific integrity of archeological properties acquired through donation, purchase, or other means.]

[(1) The status of the required property will be publicized through on-site placement of permanent signs or markers, except in cases where the placement of such signs or markers, except in cases where the placement of such signs or markers is determined by the state archeologist to constitute a threat of harm to the resource.]

(1)[(2)] The Office of the State Archeologist will appoint a local professional or avocational archeologist to examine the property at regular intervals and to report any acts of vandalism or other damaging activity.

(2)[(3)] Local law-enforcement officials may be notified of the property's protected status and to encourage enforcement of pertinent antiquities regulations.

(3)[(4)] **Archeological investigations** [Research activities] at **protected** [acquired] sites will be limited to investigations under the direction of professional archeologists. All **investigations** [research activities] will be required to comply with **applicable state and federal** guidelines. [of the Council of Texas Archeologists.]

(4) Permanent signs or markers may be placed on site, if the placement of such signs or markers does not constitute a threat of harm to the resource.

(5) All proposals for **archeological investigations** [research] at acquired sites will be reviewed and approved by the Office of the State Archeologist on an individual basis.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 21, 1996.

TRD-9603963 Curtis Tunnell
Executive Director
Texas Historical Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 463-6100

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TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners

Chapter 193. Standing Delegation Orders

- **22 TAC §§193.2-193.4, 193.8**

(Editor's Note: The Texas State Board of Medical Examiners proposes for permanent adoption the amended sections it adopts on an emergency basis in this issue. The text of the amended sections are in the Emergency Rules section of this issue.)

The Texas State Board of Medical Examiners proposes amendments to §§193. 2-193.4 and 193.8, concerning standing delegation orders. These amendments will comply with changes made during the 74th Legislature through Senate Bill 1302 and Senate Bill 673 related to the delegation of prescriptive authority to physician assistants and advanced practice nurses.

Tim Weitz, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Weitz also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to make better use of the training and skills of physician assistants and advanced practice nurses through

physician delegation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

Article 4495b, §3.06, is affected by these amendments.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 22, 1996.

TRD-9603993 Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 305-7016

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TITLE 34. PUBLIC FINANCE

Part XI. Fire Fighters' Pension Commission

Chapter 301. Rules and Regulations of the Texas Statewide Volunteer Fire Fighters' Retirement Fund

- **34 TAC §§301.1-301.10**

On behalf of volunteer fire fighters of the State of Texas, the Fire Fighters' Pension Commission submits new proposed rules and regulations used in administering the Texas Statewide Volunteer Fire Fighters' Retirement Fund. These rules and regulations, based on federal government rules, attorney general's rulings, state board policy and past commissioner decisions, define the conditions for participation in the pension fund.

Helen L. Campbell, Commissioner, Fire Fighters' Pension Commission, has determined that for the first five-year period the rules and regulations are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

Commissioner Campbell also has determined that for each year of the first five years the rules and regulations are in effect the public benefit anticipated as a result of enforcing these rules and regulations will be the placement of specific guidelines under which each local pension board may effectively function and participate in the pension fund. There is no anticipated economic cost to persons who are required to comply with these rules and regulations as proposed.

Comments on the proposal may be submitted to Helen L. Campbell, Commissioner, Fire Fighters' Pension Commission, 3910 South IH-35, Suite 235, Austin, Texas 78704, (512) 462-0222.

The rules and regulations, proposed under Texas Civil Statutes, Article 6243.e3, (Senate Bill 411), 65th Legislature (1977), and revised in the 72nd Legislature (1991), provide the Fire Fighters' Pension Commission with the authority to promulgate rules necessary for the administration of the pension fund.

No other code or statute will be affected by the adoption of these rules and regulations.

§301.1. Definitions. The following words and terms, when used in this part, shall have the following meanings, unless the context clearly indicates otherwise.

Active–Refers to a member so determined by the local board based on regular availability until terminated. A fire department must pay dues on individual fire fighters even if they do not attend enough fires and drills to earn time toward retirement, because the fund is responsible for his/her death and/or disability benefits even if he/she only attends one fire or drill a year. This obligation is terminated when the department notifies the agency of the fire fighter's termination from the pension system.

Dependent–

(A) Effective September 1, 1991, an unmarried child, natural or adopted, who is less than 18 years of age; is less than 19 years of age and a full-time student at an elementary or secondary school; or became disabled before the child's 22nd birthday and remains disabled.

(B) Until September 1, 1991 a dependent was defined by the U.S. Internal Revenue Code, Subtitle A, Chapter 1B Part V, Section 152, and any subsequent amendments. Any dependents who were eligible to receive benefits prior to September 1, 1991 are defined by the U.S. Internal Revenue Code. See §301.3(e)(11)(B) of this title (relating to Determination of Costs and/or Benefits) for required forms.

Disabled–Refers to a member decided disabled by the local board. The causative disability may include mental impairment. Such disability shall be deemed ceased:

(A) Upon a doctor's determination that the member can perform his/her duties as a fire fighter or the duties of any other occupation for which the person is reasonably suited by education, training, and experience. Both criteria must be met to claim a disability.

(B) In the case of a student, upon the student's return to classes.

(C) Effective September 1, 1989 there was no longer an off-duty disability. Off-duty disabilities incurred before that date were still eligible for those benefits.

Fires and Drills–

(A) Fire–A fire determined by the local board to be included on the Annual Report. The local board may substitute the duties performed by the fire fighter member for actual fires.

(B) A fire fighter who misses a drill(s) while in recognizable certified fire training or education, may count that training or education for that week's drill if the local board approves.

(C) If a department does not hold at least 24 drills, no member will receive credit toward retirement for the year.

(D) Until January 1, 1981 a fire fighter had to make 60% of the drills.

(E) A department may hold more drills than required by law, but a fire fighter only has to make 40% of the 24 required. All members of the department must attend fire drills.

Leave of absence–There is no leave of absence under Senate Bill 411. A fire fighter is either active and dues are being paid; or the fire fighter is terminated and no dues are paid. The suggested procedure is to terminate the fire fighter if the absence is for an extended period of time and reinstate when the fire fighter returns to

the pension system. The exception is absence caused by military duty which does not affect qualified service.

Monetary remuneration–Refers to payment to the member by coin, currency, check or money order, not including the furnishing of water, and not including compensation for expenses incurred for the purpose of attending drills and fires.

On-duty death–Refers to a death incurred in the course of the performance of duties as a fire fighter.

On-duty disability–Refers to a disability incurred in the course of the performance of duties as a fire fighter.

Physical Fitness–Effective September 1, 1991, Section 8, Certification of Physical Fitness, of the pension fund law, Texas Statewide Volunteer Fire Fighters' Retirement Act, was amended so that those members of the department *not* physically fit to fight fires could remain in the system and earn credit toward retirement.

(A) The physician's certification of physical fitness remains in department files unless requested by the commissioner.

(B) The local board must notify the agency if a member cannot fight fires.

(C) A fire fighter who *cannot* fight fires should be assigned to other duties to earn credit on the Annual Report.

(D) The state board *recommends* updating physicals at least every five years.

Temporary disability–

(A) A disability which, in the opinion of a physician, may be subject to improvement although in the interim rendering the fire fighter unable to perform his/her duties as a fire fighter or the duties of any other occupation for which the person is reasonably suited by education, training, and experience.

(B) If the doctor's statement says that a disability is permanent or will last more than three months, the fire fighter does not have to submit a new statement every three months. It is the responsibility of the local board to keep this office informed of the status of the disability. The governing body will continue to pay dues on a fire fighter on temporary disability. No dues are paid for a fire fighter on permanent disability since that person is considered to be on a disability-retirement.

§301.2. Scope.

(a) Applicability–This retirement fund (Senate Bill 411) applies to *any* political subdivision that contains an entire rural fire prevention district. It also applies when an entire rural fire prevention district is contained within more than one governing body, in which case the public agencies shall make equal contributions. The public agency may be a town.

(1) If a rural fire prevention district is located within a county the county is the political subdivision. If no rural fire prevention district is located within a particular county, the statute is not applicable to that county.

(2) A school district constitutes a political subdivision.

(3) If an unincorporated town is located in a county which has no rural fire prevention district, there is no political subdivision to contribute to the fund and the statute is not applicable.

(4) Where a water district is located within the unincorporated town, the water district may constitute the political subdivision, if a rural fire prevention district is located wholly within it.

(5) If both county and water district meet the definition, then both may be required to contribute.

(6) If the rural fire prevention district is situated within the town, the district is a political subdivision required to contribute.

(b) Exemption.

(1) This retirement fund need not apply to a public agency whose governing body exempted itself from its operation within 60 days of August 28, 1977. The requirement to provide for participation in the fund pertains to all other public agencies whose governing bodies did not choose to exempt themselves prior to October 28, 1977.

(2) If a governing body acts to rescind its order exempting itself from the act, its action will amount to a repeal; and the governing body will begin making its contributions at the time the recession becomes effective.

(3) If the public agency's governing body did not exempt itself, the fire department will be admitted to the pension system after they vote to enter the system as required by Section 10, Entering The Pension System; Required Election. The department's entrance date cannot pre-date the election. The governing body will be held liable for funding as though they rescinded the exemption.

(c) Eligibility of a Public Agency. A public agency, to enter into this retirement fund, must have ten active volunteer fire fighters. A subsequent drop of the number of active members will not affect eligibility.

(d) Member Departments Which Cease to Exist. The commissioner shall continue to administer benefits of the pension system for members and retirees who performed service for a former member fire department that has not withdrawn from the pension system under Section 12, Withdrawing from the Pension System, of this act and has ceased to exist. The governing body will perform the duties of the local board.

(e) Merger. The decision to merge into the Senate Bill 411 plan may be made by a vote of the qualified members who participated in the fire department for at least one year. Each qualified member is entitled to cast one vote for each full year of participation. The governing body of the merging public agency is to provide verification of service with the Fire Fighters' Pension Commission as required by the commission. If no record of prior service exists with the Fire Fighters' Pension Commission, the local board is to verify service for each prospective member. This verification is to be signed by the fire chief and the representatives of the local board, notarized and returned to the commission office.

(f) Non-TLFFRA Departments. Entities which have not been in any pension system prior to entering Senate Bill 411 follow the same procedures as entities in the Texas Local Fire Fighters' Retirement Fund (TLFFRA, formerly House Bill 258) on voting to enter this pension system and follow the same rules and regulations.

(g) Individual Eligibility.

(1) Status. Qualified volunteer members of a fire department, whether involved in prevention, suppression, investigation, maintenance, or clerical work are eligible to participate in the retirement fund provided, however, that the member's eligibility to join is dependent on the status of the public agency under whose control he/she is. The prospective member cannot override the public agency's status simply by the payment of contributions. The following are specifically barred as members of the pension system:

(A) If the person is a minor.

(B) If the person is retired under this Act (after September 1, 1989), whether or not the person continues to partici-

pate in fire related functions. For the exception see paragraph (6)(A)(ii) of this subsection.

(C) If the person is a probationary member for whom dues are not being paid.

(2) EMS. Members of the local EMS Service maybe included in the pension system if they meet all three of the following criteria:

(A) They are considered by the governing entity to be part of the fire department.

(B) They are volunteers.

(C) They attend the fire drills as specified in Section 1, paragraph (1) , of the pension fund law.

(3) Fair Labor Standards Act (FLSA).

(A) The Federal Fair Labor Standards Act of 1985 specifically defines who a volunteer fire fighter is and what this volunteer fire fighter can do. According to FLSA, when a fire department has five or more paid fire fighters, those five or more fire fighters cannot serve as volunteers in the department for which they receive compensation. In other words, if a fire fighter is a fully paid fire fighter, he/she cannot return to work in his/her time off as a volunteer in that department.

(B) Since Senate Bill 411 was designed specifically for fire fighters who serve without monetary remuneration effective July 1, 1989, those participants in the Senate Bill 411 retirement fund who are serving as paid fire fighters in fire departments which have five or more paid members, can no longer participate in the Senate Bill 411 pension system. After this date, when a department hires its fifth paid member, all of the paid members must be dropped effective that date. It is the responsibility the local board to notify this office when this occurs. If the fire fighter is vested in the Senate Bill 411 system, he/she will receive the retirement due him/he upon application at age 55.

(4) Start of Membership.

(A) During a probationary period of service before becoming a regular member of a fire department, if the governing body of the fire department is not making contributions for the probationary service, then that fire fighter is not eligible for benefits under this Act.

(B) A department may have a probationary period of up to six months during which dues are not paid for the fire fighter. Dues will be charged based on the *date entered pension system* as listed on the Personnel Form 502, as long as it is not more than six months from date entered fire department.

(C) Personnel Form 502 must be submitted for new fire fighters at the end of the probationary period. Failure to do so could mean denial of benefits.

(D) If there is a probationary period, it should be the same length of time for everyone in the department.

(E) If the date entered pension system is more than six months from date entered fire department, the commission will change date entered pension system on the Form 502 to within six months of date entered fire department and send a corrected copy to the department. Dues will be charged from the date established by the commission.

(5) Credit. Until September 1, 1993, prior to a department's entrance in Senate Bill 411, any fire fighter who was terminated from the department for one or more years loses any service earned before that period unless the local board rules that the interruption in service was through no fault of the fire fighter. The department is not charged for non-qualifying years on the cost study. Effective September 1, 1989, buy-back years had to comply with minimum drill and fire requirements to qualify. Once a member of this retirement fund, the fire fighter is not penalized for nonconsecutive periods of service.

(6) Dual Benefits.

(A) Death and Retirement.

(i) A member who performs qualified service for more than one fire department under this Act may become eligible to receive service retirement benefits for service for each department, but, if the person dies while a member, the member's beneficiary must choose between an on-duty and off-duty benefit.

(ii) In order to be eligible for retirement benefits from two or more different departments, the fire fighter's service in the other departments must start before retirement from the primary department and he/she must start as a *new* member (without transferring time from the other department). See Section 2A, Membership, paragraphs (b)(4) and (c) in the pension fund law book.

(B) Disability and Retirement. A member fire fighter must, at the time of disability, elect between retirement or disability benefits if eligible for both. When a member, while on disability, reaches the age of 55 the member may switch to retirement benefits if he/she so chooses. The member shall then be deemed permanently retired.

§301.3. Determination of Costs and/or Benefits.

(a) Prior Service.

(1) Prior service includes every active member of the department who is at least 18 years old. The department does not have to include prior service with other departments. This is a local decision.

(2) A public agency may have up to three years to pay prior service costs without incurring interest charges.

(3) In preparing a cost study, the assumed retirement age and interest rate paid for 10 or 20 year payouts will be set by the board based on the recommendations of the actuary.

(4) Prior service costs may be paid off early without penalty.

(5) Until January 1, 1984 public agencies could choose up to a 40-year payout.

(6) Departments do not have to purchase prior service for those fire fighters who reenter the department, but were not active at the time the fire department entered the pension system. If the department decides to purchase prior service on fire fighters who were not active at the time the department entered the system, the department must pay the additional service in a lump sum payment. Interest is charged back to the date of the department's entrance into the system. The rate is set by the board based on recommendations of the actuary.

(7) In preparing cost studies, anyone entering the department before age 18 will have their entry date adjusted to their 18th birthday on the study.

(b) Increase/Decrease of Dues Paid. Since a governing entity has the right to increase the dues it pays on its fire fighters, it also has the right to lower dues paid as long as it is not below the minimum set by law. In either case retirements are figured on the average paid.

(c) Transfer of Funds. Upon a public agency's merging into this retirement fund, it must transfer its local pension fund to Senate Bill 411. These funds will be applied to the public agency's prior service costs and/or the cost of TLFFRA (House Bill 258) retirees and surviving spouses, if any. After the payment of these costs, any balance remaining will be applied, until spent, to the monthly contributions for the members of the former local pension fund of that public agency. The amount applied to the public agency's account consists of cash, investments, and any interest earned as of the date of merger. Monies earned on the transfer after the date of merger, are credited to the Senate Bill 411 fund as a whole.

(d) Retirement.

(1) A fire fighter is considered to be retired on the effective date indicated on the Certificate of Retirement when the form is signed by the fire fighter and notarized. The fire fighter cannot revoke the pension and return to active duty.

(2) A member who is not vested in this pension fund, but who has a total of 20 or more good years, may retire under the TLFFRA fund amount used in the cost study for that department. Since the member was on the cost study, he/she will be carried as a Senate Bill 411 fund retiree; and the public agency will not be charged as it is for TLFFRA fund retirees. This applies mainly to public agencies that purchase accrued time only. Example: A member has time. If the member serves one more year, he/she at age 55, draws $25 per month in retirement benefits.

(3) Retirement benefits vest as outlined in Section 6, Vesting of Benefits, of the pension fund law. A fire fighter must have 15 years (180 months) in Senate Bill 411 before the Senate Bill 411 portion of the monthly retirement is affected by the 7.0% compounding factor (effective December 11, 1992).

(4) A fire fighter who was considered to be Active-Retired prior to September 1, 1989, may continue in that status. Should he/she terminate as an active fire fighter, the retiree cannot return to the Active-Retired status at a later date.

(5) Spouses of terminated-vested fire fighters, who die before age 55, are eligible to receive, on the effective date of the fire fighters' 55th birthday, a monthly pension that is two-thirds of the monthly pension which would have been due the fire fighter.

(6) The Fire Fighters' Pension Commission cannot pay benefits at a greater rate than specified in Section 3, Retirement Benefits, paragraph (b) of the pension fund law.

(7) Effective January 1, 1984, the retirement annuity was increased from three times the average monthly contribution to six times. Effective September 1, 1991, all retirements figured at three times the average contribution were increased to 4.5 times.

(8) In departments where the contribution rate has changed, the average is figured by rounding to the nearest month.

(9) Retirement forms can be backdated to the fire fighter's 55 birthday or termination date depending on which is the latest.

(10) In the event of a pensioner's death (and there are no beneficiaries), if this office is not notified and retirement checks continue to be mailed, and the over-payment is not returned to this office, then the commissioner shall charge the over-payment to the governing entity.

(e) Death.

(1) Beneficiaries. It is the responsibility of the member and the local board to update the member's record with the commission. This record should also name any beneficiaries for any lump-sum death benefits.

(2) Monthly Pension if Decedent Was on Active Status (On-Duty Death). For public agencies changing the amount of the monthly contributions after merging into the Senate Bill 411 fund, the surviving spouse's and dependent's monthly pensions, if the member died on-duty, will be based on two-thirds of the retirement due the fire fighter. The fire fighter is automatically vested with at least 15 years in the fund for on-duty deaths. The retirement is based on the average of the dues paid.

(3) Monthly Pension if Decedent Was on Active Status (Off-Duty Death). Dependents are not eligible for a monthly pension for off-duty deaths. Spouses will receive a monthly pension if the fire fighter was vested in the system and at least 55 years of age. The monthly pension will be based on two-thirds of the retirement due the fire fighter based on six times the average dues paid (effective September 1, 1989).

(4) Benefits if Decedent Was on Inactive Status. Spouses of terminated-vested fire fighters, who die before age 55, are eligible to receive, on the effective date of the fire fighter's 55th birthday, a monthly pension that is two-thirds of the monthly pension which would have been due the fire fighter.

(5) Monthly Pension if Decedent Was on Disability Status. The statute, under Section 5(d), Death Benefits, states that if a member fire fighter dies after retirement, the surviving spouse shall receive two-thirds of the monthly pension the decedent was receiving at the time of death. This includes spouses of deceased fire fighters who were on disability at the time of their death.

(6) Lump-Sum Payment for Off-Duty Death After Service of 15 or Fewer Years.

(A) For members having served 15 or fewer years in this retirement fund, the amount paid in for prior service costs will not be considered in computing off-duty lump-sum death benefits. In a governing body making contributions of $12 per member per month, the beneficiary of any off-duty death would receive $12 per month x 12 months x 15 years = $2,160 as a lump-sum payment.

(B) If a public agency should change the amount of its contributions after merger into the Senate Bill 411 fund, the off-duty lump-sum death payment will consist of all contributions to the fund made on the decedent's behalf. If the deceased member has fewer than 15 creditable years in the Senate Bill 411 fund, enough months are added at the final rate to make 15 years.

(7) Lump-Sum Payment for Off-Duty Death After Service of More Than 15 Years.

(A) For members having served more than 15 years in the retirement fund, the beneficiaries will receive an off-duty lump-sum payment consisting of the amount of the monthly contributions x 12 months x number of years in the Senate Bill 411 fund. The lump sum number of months is rounded to the nearest whole month.

(B) If the public agency should change the amount of its contributions, the number of whole rounded months served at each rate are used in figuring the lump-sum amount.

(8) Lump-Sum Death Benefits for On-Duty Deaths. Section 5(b) of the pension fund law states that the beneficiary is guaranteed a lump-sum benefit of at least $5,000 for an on-duty death. If the sum contributed by the public agency to the fund on the decedent's behalf is more than $5,000, then the beneficiary receives this greater amount.

(9) Determination of Beneficiaries.

(A) If a member on active status in the pension system should die before his/her 502 (Personnel Form) is filled out and notarized, the member's public agency's governing body should submit to the Fire Fighters' Pension Commission office, a notarized letter signed by its fire chief and local board. This letter should state the decedent's entrance date and that he/she was a member on active status at the time of death. The letter should also list the member's nearest relatives (spouse, children, parents, siblings, etc.) and if he/she had a will. The State Attorney General's office will determine the beneficiaries in such a case.

(B) After determination, the governing body of the member's public agency should send the Commission the Senate Bill 411 Survivor's Form and a death certificate. The letter would be considered as proof of the member's participation in the pension system. The commission would bill the public agency for any contributions owed on the member's time at the next billing.

(C) If the decedent has a Personnel Form 502 on file in the pension office, the beneficiaries are paid as listed on that form or the most recent Beneficiary Change Form 503 on file.

(10) Listing of Beneficiaries on Forms.

(A) Under Senate Bill 411, a fire fighter can list anyone (including his/her estate) as a beneficiary for his/her lump-sum death benefit.

(B) A person may list as many people as he/she wants as beneficiaries of this lump-sum benefit, but the benefit will be divided equally between them unless the fire fighter designates a proportional division.

(C) The spouse and/or dependents will receive any monthly pension due them even if they are not listed as beneficiaries of the lump-sum death benefit.

(11) Guardianship and Determination of Dependents.

(A) See §301.1 of this title (relating to Definitions) for determination of dependency.

(B) The following forms must be submitted:

(i) Obligations of Guardians.

(ii) Certified copies of Letter of Guardianship of the estates of all children. If no guardian is to be named, an Application for Payments Due Minor Child (form 411-G).

(iii) A copy of the Birth Certificate; or if an adopted child, a copy of the Adoption Decree.

(C) Warrants to dependents who are minor children are written: To the order of_____Trustee, for the use and benefit of_____. (guardian's name) (child's name)

(D) If the dependent was placed in the system prior to September 1, 1991, the guardian of all dependents, age 19 and older, must provide us with certified documentation of dependency yearly. This may be in the form of a copy of the 1040 or a certified statement from the IRS. The certified statement can be obtained from the IRS by the guardian and is more acceptable than a copy of the income tax return. The agency will notify the guardian when a minor dependent becomes 19 as to the proper procedure to continue pension payments. The guardian must notify us as soon as the dependent is no longer eligible to receive benefits.

(E) If the dependent was placed in the system after September 1, 1991, benefits cease at age 18 unless the agency receives a certification of school attendance, in which case benefits stop at age 19.

(F) Certification of dependency forms are mailed to all guardians yearly in April.

(12) Effective September 1, 1989, spouses, who are eligible for benefits, receive them as long as they remain alive.

(13) A pensioner with no beneficiaries, who dies prior to the 14th day of any month, will not receive a retirement check for that month.

§301.4. Revocation and Reduction of Benefits.

(a) A retired fire fighter may reduce or revoke benefits. This decision is binding on the spouse.

(b) This decision is irrevocable.

§301.5. Billings and Annual Reports.

(a) Billings.

(1) The law states that each governing body shall contribute the funds for the fire department participation in the system.

(2) Although the department and governing body may have an agreement between themselves that the fire department will pay for participation in the system, if the department is unable to pay, the governing body is held liable for the payment.

(3) The governing body may choose yearly or twice yearly billings. They may also choose to have billings based on their fiscal year instead of a calendar year.

(4) The system cannot accept new retirees or pay lump-sum death benefits to departments whose governing body is not current on their bills to the pension system.

(5) Billings cannot be altered by the department or governing body without prior approval by the commission.

(b) Annual Reports.

(1) Annual report forms are mailed by the commission in December of each year.

(2) Annual reports are based on a calendar year in all cases.

(3) The reports are due in the Fire Fighters' Pension Commission office by January 31.

(4) The guidelines accompanying the report forms should be followed by the local pension board.

(5) The commission cannot accept new pensioners, new disabilities or pay lump-sum benefits to departments whose annual reports are not up to date. Also, pensioners of fire departments which do not have their annual reports submitted by March 31 (a two-month grace period) will, effective April 1, not receive their warrants until the report is received and accepted by this agency. All pensioners of the non-reporting departments will be notified by letter on April explaining why the checks are being held.

§301.6. Local Boards of Trustees.

(a) Composition and terms of the local board are contained in Section 22, Local Board of Trustees, of the pension fund law. The governing entity "representative" is not a "trustee" as it relates to

term limitations; and the governing body has the authority to select its representative to serve on the board in a manner that the local governing body chooses.

(b) Duties of the local board are contained in Section 23, Additional Duties of the Local Board of Trustees, and throughout the pension fund law. These duties are summarized in a handout available upon request from the agency. The local board members are expected to be aware of the duties imposed on them by the law and these rules and regulations, and are legally responsible for errors and omissions resulting in non-payment of benefits.

(c) By signing and notarizing Form LPB-411 of their department's annual report, the board members are certifying that, to the best of their knowledge, the report is correct.

§301.7. Investment Objectives. Objectives are determined by the State Board of Trustees upon the advice of the fund's investment counselor.

§301.8. Requests for Rulings. Requests for rulings or clarifications of law must be in writing to the commissioner from the local board.

§301.9. General.

(a) TLFFRA (formerly House Bill 258) states that spouses of retirees will receive two-thirds of the retiree's monthly benefit. The majority of cities pay $300/year to retirees and $200/year to spouses; but since two-thirds of $25/month is $16.67, the Senate Bill 411 fund pays spouses $200. 04/year (effective January 1, 1987).

(b) Senate Bill 411 states that any benefits being paid by the current pension system (TLFFRA) at the date of merger will be paid by the Senate Bill 411 pension system following the merger. A governing entity may decide to pay its TLFFRA retirees and spouses an amount over the minimum set by TLFFRA. We will bill the city this exact cost.

(c) Effective November 1, 1987, TLFFRA payments to spouses must conform to TLFFRA law which states they receive two-thirds of the monthly amount received by the retiree.

(d) Individual departments, with the approval of governing entities, may agree to continue paying pensions to spouses of deceased TLFFRA retirees if the spouse remarries, and pay pensions to spouses regardless of when the spouse married the TLFFRA retiree.

(e) Effective January 1, 1994, Death Certificates are required for TLFFRA retirees before benefits can be paid to spouses.

(f) The fire department and/or governing entity should keep copies of all forms (502, 503, retirement, disability, survivors) on file. The originals *must* be on file in this office.

§301.10. Other Law Changes.

(a) The name of the commission was changed to Fire Fighters' Pension Commissioner, September 1, 1989.

(b) The Texas Statewide Volunteer Fire Fighters' Retirement Act was passed in 1977 and the title of the fund was changed to The Texas Statewide Volunteer Fire Fighters' Retirement Fund, September 1, 1989.

(c) The State Board of Trustees was increased to nine members effective September 1, 1991.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 22, 1996.

TRD-9604079 Helen L. Campbell
Commissioner
Fire Fighters' Pension Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 463-0222

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 91. Discipline and Control

Disciplinary Practices

- **37 TAC §§91.7, 91.9, 91.11**

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Youth Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Youth Commission (TYC) proposes the repeal of §§91.7, 91.9, and 91.11, concerning reclassification consequence, parole revocation consequence, and disciplinary transfer/assigned minimum length of stay. These sections are being repealed and new replacement sections proposed in this publication to allow changes in rules of operation which are more consistent with legislative intent and agency mission regarding committed juvenile delinquents.

John Franks, Director of Finance, has determined that for the first five-year period the repeals as proposed are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Franks also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be the replacement by new rules which encourage more efficient agency operation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The repeals are proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the accomplishment of its functions.

The proposed repeals implements the Human Resource Code, §61.034.

§91.7. Reclassification Consequence.

§91.9. Parole Revocation Consequence.

§91.11. Disciplinary Transfer/Assigned Minimum Length of Stay Consequence.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 22, 1996.

TRD-9603995 Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 483-5244

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The Texas Youth Commission (TYC) proposes new §§91.7, 91.9, and 91. 11, concerning reclassification consequence, parole revocation consequence, and disciplinary transfer/assigned minimum length of stay. New §91.7 provides for the reclassification of a youth as a disciplinary consequence for commission of a high risk offense. Section

91.9 provides for the revocation of a TYC youth's parole status as a disciplinary consequence for behavior that presents an unacceptable risk to the safety of persons and property. New §91. 11 establishes criteria for the movement of a youth to an appropriate placement and/or assignment of a minimum length of stay as disciplinary consequences for behavior that violates TYC rules.

John Franks, Director of Finance, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Franks also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased safety for the public and TYC staff and youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The new sections are proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order the child's confinement under conditions it believes best designed for the child's welfare and the interests of the public.

The proposed rule implements the Human Resource Code, §61.034.

§91.7. Reclassification Consequence.

(a) Purpose. The purpose of this rule is to provide for the reclassification of a youth as a disciplinary consequence for commission of a high risk offense. Reclassification is considered a major consequence.

(b) Applicability.

(1) The due process necessary to effect this rule is found in GOP.65.01, §91.31 of this title (relating to Level I Hearing Procedure).

(2) Additional procedures and restrictions are applied prior to any movement of a sentenced offender youth. See GOP.47.09, §85.29 of this title (relating to Program Completion and Movement). Also see GOP.47.15, §85.35 of this title (relating to Sentenced Offender Disposition).

(c) Explanation of Terms Used. A high risk offense–is any major rule violation which may result in a classification other than general offender or violator of CINS probation.

(d) Criteria and Disposition.

(1) A youth may be reclassified to the classification appropriate to the offense, regardless of the current classification (except sentenced offenders) if it is found at a level l hearing that the youth has engaged in a high risk offense.

(2) If a high risk offense is proved and no extenuating circumstances are found incident to the offense, the youth will be assigned the appropriate classification for that offense.

(3) If a high risk offense is proved and extenuating circumstances are found incident to the offense, the youth will be assigned a classification which is appropriate under the rules for waiver of classification. Extenuating circumstances are defined in GOP.47.03, §85.23 of this title (relating to Classification).

(4) If a youth on parole status is reclassified for a high risk offense, the youth's parole is revoked and youth is placed in high restriction.

(5) If a sentenced offender youth is found to have committed a high risk offense, he/she may be assigned to any appropriate placement. The appropriate placement is selected according to the totality of the circumstances, including the youth's age, sentencing offense, length of time and progress in TYC custody, and the nature of the misconduct for which the youth is being disciplined.

(e) Restrictions.

(1) A level I hearing is required in order to reclassify a youth.

(2) Unless otherwise requested in writing by local authorities, a level I hearing may be held even if TYC staff receive information that criminal or delinquent proceedings against the youth are planned or anticipated by local authorities.

§91.9. Parole Revocation Consequence.

(a) Purpose. The purpose of this rule is to provide for the revocation of parole status as a disciplinary consequence for behavior that presents an unacceptable risk to the safety of persons and property. Parole revocation is considered a major consequence.

(b) Applicability.

(1) The due process necessary to effect this rule is found in GOP.65.01, §91.31 of this title (relating to Level I Hearing Procedure).

(2) Additional procedures and restrictions are applied prior to any movement of a sentenced offender youth. See GOP.47.09, §85.29 of this title (relating to Program Completion and Movement). Also see GOP.47.15, §85.35 of this title (relating to Sentenced Offender Disposition).

(c) Explanation of Terms Used. A high risk offense is any major rule violation which may result in a classification other than general offender or violator of CINS probation.

(d) Criteria and Disposition.

(1) Parole will be revoked if it is found at a level I hearing that a youth has:

(A) committed a high risk offense;

(B) committed a felony; or

(C) committed any major rule violation and has previously been classified for a high-risk offense.

(2) Parole of a general offender is revoked if it is found at a level I hearing that the general offender:

(A) has committed a major rule violation; and

(B) is a threat to the safety of persons or property,

(3) If extenuating circumstances are found incident to a high risk offense, parole is revoked, but the high risk classification may be waived pursuant to GOP.47.03, §85.23 of this title (relating to Classification).

(4) If extenuating circumstances are found incident to any violation other than a high risk offense, parole is not revoked. See extenuating circumstances discussed in GOP.47.03, §85.23 of this title (relating to Classification).

(5) If criteria for revocation are not established at a level I hearing, the youth's parole is not revoked, but lesser disciplinary consequences may be imposed for any rule violation(s) proved at the hearing.

(e) Restrictions.

(1) A level I hearing is required in order to revoke a youth's parole status.

(2) Unless otherwise requested in writing by local authorities, a level I hearing may be held even if TYC staff receive

information that criminal or delinquent proceedings against the youth are planned or anticipated by local authorities.

(3) If a youth is on parole from another state and is being supervised by Texas Youth Commission (TYC) under agreement with the other state, a parole revocation hearing is held by TYC and the youth returned to the sending state, coordinated by the interstate compact administrator and general counsel.

(4) If a TYC parolee commits an offense in another state, the return of such youth is coordinated by the interstate compact administrator and the general counsel. A parole revocation hearing is coordinated by and held at the request of the assigned community corrections officer.

§91.11. Disciplinary Transfer/Assigned Minimum Length of Stay Consequence.

(a) Purpose. The purpose of this rule is to provide for the movement of a youth to an appropriate placement and/or assignment of a minimum length of stay as disciplinary consequences for behavior that violates rules. Disciplinary transfer and assignment of a disciplinary minimum length of stay are considered major consequences.

(b) Applicability.

(1) The due process necessary to effect this rule is found in GOP.65.03, §91.33 of this title (relating to Level II Hearing Procedure).

(2) Additional procedures and restrictions are applied prior to any movement of a sentenced offender youth. See GOP.47.09, §85.29 of this title (relating to Program Completion and Movement). Also see GOP.47.15, §85.35 of this title (relating to Sentenced Offender Disposition).

(c) Explanation of Terms Used. A High risk offense–is any major rule violation which may result in a classification other than general offender or violator of CINS probation.

(d) Criteria and Disposition.

(1) If it is found at a level II hearing that the youth has failed on two or more occasions to comply with the conditions of release under supervision and/or a written reasonable request of staff that is either present in the ICP or is validly related to previous high risk behavior, a youth may be:

(A) transferred to a placement of equal or more restriction than the youth's most recent permanent placement, or

(B) assigned a disciplinary minimum length of stay but only at the present placement.

(2) If it is found at a level II hearing that the youth has committed any major rule violation other than that set out in paragraph (1) of this subsection, the youth may be:

(A) transferred to a placement of equal or more restriction than the youth's most recent permanent placement; and/or

(B) assigned a disciplinary minimum length of stay.

(3) An assigned minimum length of stay under this policy shall only be for offenses that meet criteria and shall not exceed six months.

(4) If the hearing manager determines there are extenuating circumstances incident to the violation(s) proved at a level II hearing, the youth shall be neither transferred nor assigned a minimum length of stay, but the hearing manager shall notify the administrator responsible for the program to which the youth is assigned so appropriate disciplinary action may be taken.

(e) Restrictions.

(1) A youth on parole status shall not be moved or transferred into a placement of high restriction under this rule.

(2) Unless otherwise requested in writing by local authorities, a level II hearing may be held even if TYC staff receive information that criminal or delinquent proceedings against the youth are planned or anticipated by local authorities.

(3) A level II hearing should be held prior to a disciplinary transfer. When good cause compels a prehearing movement of the youth, the hearing shall be held within three consecutive days after the movement.

(4) A youth assigned a minimum length of stay may remain in the current program or be transferred and remain in the new placement until the assigned length of stay and other program completion criteria are completed.

(5) Disciplinary minimum length of stay may be reduced based on the youth's behavior and progress toward goals.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 22, 1996.

TRD-9603996 Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 483-5244

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Due Process Hearings Procedures

• 37 TAC §91.31

The Texas Youth Commission (TYC) proposes an amendment to §91.31, concerning Level I hearing procedures. The amendment defines the types of evidence that may be received by the hearings examiner for purposes of disposition at a TYC youth's Level I hearing.

John Franks, Director of Finance, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient hearings process. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule implements the Human Resource Code, §61.034.

§91.31. Level I Hearing Procedures.

(a) (No change.)

(b) Rules.

(1)-(39) (No change.)

(40) The hearings examiner may receive additional evidence for purposes of disposition. **The evidence received at disposition may be in the form of testimony from witnesses submitted**

during fact finding or at disposition, as well as written reports offered by youth, staff, professionals, counselors or consultants. All written reports offered shall be provided to the parties three days prior to the hearing unless otherwise waived. [or, with the consent of all parties, may make a decision concerning disposition based upon the evidence already in the record.]

(41)-(48) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 22, 1996.

TRD-9603997 Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 483-5244

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Control

• 37 TAC §91.51, §91.69

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Youth Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Youth Commission (TYC) proposes the repeal of §91.51 and §91.69, concerning facility security and detention. These sections are being repealed and new replacement sections proposed in this publication to allow changes in rules of operation which are more consistent with legislative intent and agency mission regarding committed juvenile delinquents.

John Franks, Director of Finance, has determined that for the first five-year period the repeals as proposed are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Franks also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be the replacement by new rules which encourage more efficient agency operation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The repeals are proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the accomplishment of its functions.

The proposed repeals implements the Human Resource Code, §61.034.

§91.51. Facility Security.

§91.69. Detention.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 22, 1996.

TRD-9604000 Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 483-5244

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The Texas Youth Commission (TYC) proposes new §91.51 and §91.69, concerning facility security and detention. The new sections will provide guidelines to ensure minimum safety standards at each TYC facility. Criteria concerning admission and hearing is established for TYC youth held in county detention.

John Franks, Director of Finance, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Franks also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a safer environment for TYC staff and youth and the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The new sections are proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rules implement the Human Resource Code, §61.034.

§91.51. Facility Security.

(a) Purpose. The purpose of this rule is to establish minimum safety and security requirements for TYC operated facilities where youth reside.

(b) Applicability. This rule does not specify fire prevention or facility maintenance requirements. See the agency Risk Management manual.

(c) Weapons are not permitted in any TYC facility or on any facility grounds except in when carried by a law enforcement officer who is responding to a call by TYC in an emergency situation at the facility. Weapons are permitted in the personal residence of staff who live adjacent to the campus.

(d) Chemical agents may be used only to the extent necessary to ensure the safety and welfare of youth and staff in accordance with General Operating Policy GOP.67.11, §91.61 of this title (relating to Use of Chemical Agents).

(e) Under no circumstances shall a stimulant, tranquilizer or psychotropic drug be administered for the purpose of program management and control, or for experimentation and research.

(f) Facilities shall ensure access to the necessary equipment to maintain essential light and a system of communication within the facility and between the facility and the community for use in an emergency.

§91.69. Detention.

(a) Purpose. The purpose of this rule is to establish:

(1) criteria for detaining youth; and

(2) expectations for interaction between TYC staff and county detention staff when youth in TYC custody are detained in county detention centers.

(b) Applicability. This rule applies to TYC youth admitted to county detention centers or to TYC institutions in lieu of admission to county detention centers.

(c) Explanation of Terms Used.

(1) Detention Hearing–The court hearing required and described in the Texas Family Code to determine whether conditions exist to justify a detention order.

(2) Detention Review Hearing–The TYC hearing required by this policy, held in lieu of a detention hearing for the same purpose.

(d) Youth in TYC custody who have escaped from a TYC placement or violated a condition of parole who are age 18 or older may be referred to detention in an adult jail. Youth who are younger than age 18, may be referred to juvenile community detention facilities with the consent of local authorities.

(e) TYC will utilize community detention facilities in a manner consistent with local policies. If community detention is not available, a TYC youth may be detained in the security unit of a TYC training school.

(f) Criteria for Detention.

(1) A youth may be detained when there is probable cause to believe the youth engaged in criminal behavior delinquent conduct, a major rule violation, or conduct indicating a need for supervision and one of the following criteria is met:

(A) the youth is likely to abscond and not appear at a disciplinary hearing;

(B) suitable supervision, care, or protection for the youth is not being provided by the parent or guardian to ensure protection of the public safety or prevention of youth self-injury and a less restrictive temporary shelter is not available or is inappropriate; or

(C) the youth is accused of committing a felony offense and may be dangerous to himself or others if released.

(2) Youth shall not be placed in detention for the purpose of punishment.

(g) Detention Hearings.

(1) If detention hearings are conducted by the county for TYC youth held in a county detention centers, TYC staff will participate as requested by the county and no other hearing is necessary.

(2) If detention hearings are not conducted by the county for TYC youth held in a county detention centers, TYC staff shall hold a detention review hearing on or before the tenth day of detention when a Level I or II hearing cannot be held within ten days and further detention is necessary and appropriate.

(3) TYC staff shall hold detention review hearings for TYC youth held in TYC training schools as detention centers on or before the tenth day of detention when a level I hearing cannot be held within ten days and further detention is necessary and appropriate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 22, 1996.

TRD-9604001 Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 483-5244

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Peace Officers

• 37 TAC §91.85, §91.87

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Youth Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Youth Commission (TYC) proposes the repeal of §91.85 and §91.87, concerning peace officer continuum of force and firearms management. These sections are being repealed and new replacement sections proposed in this publication to allow changes in rules of operation which are more consistent with legislative intent and agency mission regarding committed juvenile delinquents.

John Franks, Director of Finance, has determined that for the first five-year period the repeals as proposed are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Franks also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be the replacement by new rules which encourage more efficient agency operation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The repeals are proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the accomplishment of its functions.

The proposed repeals implements the Human Resource Code, §61.034.

§91.85. Peace Officer: Continuum of Force.

§91.87. Peace Officer: Firearms Management.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 22, 1996.

TRD-9603998 Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 483-5244

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The Texas Youth Commission (TYC) proposes new §91.85 and §91.87, concerning peace officers continuum of force and firearms management. The new sections provide procedures for TYC apprehension specialists who act as peace officers in performing their jobs, including carrying firearms.

John Franks, Director of Finance, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Franks also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more efficient process of apprehending TYC youth on escape. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The new sections are proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions, and §61.0931, which provides the Texas Youth Commission with authority to commission peace officers.

The proposed rules implement the Human Resource Code, §61.034.

§91.85. Peace Officer: Continuum of Force.

(a) Apprehension specialists commissioned as peace officers will use a continuum of force to effect the apprehension of youth. This continuum includes command presence, verbal direction, physi-

cal force, intermediate weapons and use of deadly force. When apprehending an escapee/absconder, the apprehension specialists should employ the appropriate amount of force necessary to control the situation and address the level of threat. The Texas Youth Commission (TYC) will ensure that apprehension specialists are trained and certified or licensed as appropriate in the use of physical force, intermediate weapons and deadly force.

(b) If physical force is required, the apprehension specialist may apply such force in compliance with GOP.67.09, §91.59 of this title (relating to Use of Force).

(c) Use of intermediate weapons such as approved chemical agents or ASP batons shall be justified only after training and only in the following situations:

(1) When the use of physical force is justified to prevent physical injury to the apprehension specialist or others.

(2) When less severe methods to gain control have been exhausted and are ineffective, untimely, or impractical.

(d) An apprehension specialist commissioned as a peace officer may employ deadly force whenever it appears to the specialist that under the following circumstances there are no other viable alternatives:

(1) The use of deadly force is immediately necessary to protect the apprehension specialist or another person from an unlawful use of force which the apprehension specialist reasonably believes poses an imminent threat of death or serious bodily injury.

(2) The use of force is otherwise justified and reasonably appears to be immediately necessary to make an arrest, or prevent an escape following an arrest, of a person whose arrest is authorized for conduct which is reasonably believed to have included the use or attempted use of deadly force or a person who presents a substantial risk of death or serious bodily injury to the apprehension specialist or another if the person's arrest is delayed.

§91.87. Peace Officer: Firearms Management. While on duty, apprehension specialists commissioned as peace officers shall carry or have readily available a firearm issued by the Texas Youth Commission (TYC). Through the assistance of the local law enforcement, TYC will ensure the investigation of any situation during which an apprehension specialist uses deadly force or intentionally or accidentally discharges a firearm. TYC will also conduct an investigation to review whether or not agency policy was complied with in the aforementioned situation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 22, 1996.

TRD-9603999 Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 483-5244

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Chapter 93. General Provisions

Records, Reports and Forms

• 37 TAC §93.61

The Texas Youth Commission (TYC) proposes new §93.61, concerning youth records disposition. The new section establishes a ten-year period for retention of records of discharged TYC youth.

John Franks, Director of Finance, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be more efficient handling of TYC youth records. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule implements the Human Resource Code, §61.034.

§93.61. Youth Records Disposition.

(a) Following discharge, a youth's records in the automated system are changed from active to discharge status and all other records are accumulated, microfilmed and the paper copy destroyed.

(b) A discharged youth's records are maintained in the TYC youth records repository located in central office for ten years after discharge.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 22, 1996.

TRD-9604002 Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 483-5244

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part II. Texas Rehabilitation Commission

Chapter 111. Medicaid Waiver Program for People with Deaf-Blindness and Multiple Disabilities

• 40 TAC §111.6

The Texas Rehabilitation Commission (TRC) proposes an amendment to §111. 6, concerning Planning for and Provision of Services in the Medicaid Waiver Program for People with Deaf-Blindness and Multiple Disabilities. The amendment is being proposed to provide for statewide announcements of the need for providers.

Charles E. Harrison, Jr., Deputy Commissioner for Financial and Planning Services, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Harrison also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that people with deaf-blindness and multiple disabilities will be able to obtain services statewide. They will also be able to obtain services from a choice of vendors who are deemed qualified through a Request for Proposals (RFP) process. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Steve Schoen, Program Specialist, Programs Administration, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 5444, Austin, Texas 78751.

The amendment is proposed under the Texas Human Resource Code Annotated, Title 7, §111.018, which provides the Texas Rehabilitation

Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resource Code Annotated, and under Texas Civil Statutes, Article 4413(502), §16, which provides the Health and Human Services Commission with the authority to administer federal medicaid assistance funds.

Title 7, Chapter 113 of the Vernon Texas Code Annotated, is affected by this proposed amendment.

§111.6. Planning for and Provision of Services.

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

(d) Enrollment into this waiver program is limited to the number of participants approved by HCFA [and allocated to the provider]. When the number of participants can be increased, TRC DB-MD waiver program will analyze need based on number of Project Link referral forms received [per Region]. At that point, a Request for Proposals (RFP) will be issued **statewide announcing the need for providers to serve particular counties or multiple counties where clients desire services** [in that Region]. A team of experts will evaluate received proposals based on approved common standards. A contract will be signed by the approved providers and Texas Rehabilitation Commission (TRC), detailing standards to be followed in provision of home and community based services. **Potential participants on the TRC centralized waiting list will be notified of qualified providers who can serve them in the location they desire. Notification of service availability to potential participants will be in order of the date TRC receives the Project Link Referral form. The providers will likewise be notified of those clients desiring services in their area. Once the providers and applicants decide to begin services the case manager employed by the providers will establish eligibility of the clients and submit plan of care forms to TRC.** [Services will then be provided to participants in the order of receipt of Project Link form.]

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 29, 1996.

TRD-9603895 Charles W. Schiesser
General Counsel, Office of the General Counsel
Texas Rehabilitation Commission

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 483-4051

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register***.

TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners

Chapter 193. Standing Delegation Orders

- **22 TAC §§193.2-193.4, 193.8**

The Texas State Board of Medical Examiners has withdrawn from consideration for permanent adoption the proposed amended §§193.2-193.4, and 193.8 which appeared in the September 19, 1995, issue of the *Texas Register* (20 TexReg 7433). The effective date of this withdrawal is March 22, 1996.

Issued in Austin, Texas, on March 22, 1996.

TRD-9603991 Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners

Effective date: March 22, 1996

For further information, please call: (512) 305-7016

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 13. CULTURAL RESOURCES
Part VII. State Preservation Board
Chapter 111. Rules and Regulations of the Board

- **13 TAC §111.15**

The State Preservation Board adopts an amendment to §111.15, concerning Use of the Capitol, Capitol Extension, Capitol Grounds, and General Land Office for Film or Video Production, with one minor change but otherwise as published in the December 26, 1995, issue of the *Texas Register* (20 TexReg 11081).

The amendment allows the State Preservation Board to modify rules regarding the approval of film or video production activities, the scheduling of film or video production activities, and the use of the Capitol Building for such activities.

Two comments were received by the General Land Office; one suggested that the reference to the "General Land Office" in the title should be changed to read "General Land Office Building." The State Preservation Board concurs with this change. The other comment received by the General Land Office suggested that the rules, as written, could also affect use of the affected areas by governmental production units and proposed changing the wording in the second sentence in §111.15(a)(1) to include activities by state government entities. The State Preservation Board takes exception to this inclusion because any filming that takes place in the buildings or on the grounds should still go through the application and approval process, in order to ensure that the impact on the buildings or their occupants is minimized and that the proposed activities are appropriate within a public building.

The amendment is adopted under Texas Government Code, Chapter 443, which provides the State Preservation Board with the authority to adopt administrative policies.

§111.15. Use of the Capitol, Capitol Extension, Capitol Grounds, and General Land Office for Film or Video Production.

(a) Definition and approval of film or video production.

(1) A film or video production is the type of production which uses a film or video medium. The rules listed in this section do not apply to news gathering by the press.

(2) All film or video production must be approved by the office of the State Preservation Board. The office of the State Preservation Board reserves the right to deny use of the Capitol for reasons involving security, preservation of the Capitol as a national historic landmark, impact on the buildings or their occupants, and the appropriateness of the proposed activities within a public building. A decision will be made after a careful review of the content, purpose, and impact on the buildings.

(3) Film or video production for commercial advertising purposes is strictly prohibited.

(b) Scheduling of film or video production.

(1) The office of the State Preservation Board will be responsible for scheduling production dates.

(2) All production companies will be required to fill out an application and submit a letter of intent to proceed with production.

(3) The office of the State Preservation Board will require production walk-throughs to discuss security, parking, electrical, and other special needs.

(4) All production companies will be required to enter into a location agreement which outlines a production schedule, shot-sheet, liability for damages and injury, proof of insurance, preparation work, and post-production clean-up.

(5) The State Preservation Board may charge a fee, in an amount set by the executive director, for use of the Capitol, Capitol Extension, or General Land Office Building. Income from fees under this paragraph shall be used for preservation of the buildings.

(6) The State Preservation Board shall be reimbursed for staff time allocated to any filming or videoing activity, including benefits and support costs.

(7) Production activities will generally be prohibited during standard business hours (8:00 a.m. to 5:30 p.m. Weekdays) and during Legislative sessions.

(c) Use of the Capitol

(1) Film or video production activities must be compatible with the preservation of the historic preservation of the Capitol.

(2) Construction in the Capitol for production purposes is strictly prohibited.

(3) Film or video production is prohibited in the Historically Significant spaces listed below: House Chamber, Senate Chamber, Original Governor's Office, Treasury, Legislative Library, Supreme Courtroom, Appeals Courtroom, Agricultural Museum Room, Secretary of State's Office, Governor's Reception Room. The Texas House of Representatives and the Texas Senate may authorize the use of video in the House Chamber or Senate Chamber for governmental purposes or special activities scheduled by the House or Senate.

(4) Attachments to or contact with furnishings, artwork, or architectural surfaces is strictly prohibited.

(5) Any film or video production aids or equipment must be freestanding with a stable base.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on March 7, 1996.

TRD-9603627 Rick Crawford
Executive Director
State Preservation Board

Effective date: April 4, 1996

Proposal publication date: December 26, 1995

For further information, please call: (512) 463-5495

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• 13 TAC §111.29

The State Preservation Board adopts new §111.29, concerning Capitol Complex Visitors Center Texas Gift Shop Product Selection Policies and Procedures, without changes to the proposed text as published in the December 26, 1995, issue of the *Texas Register* (20 TexReg 11081).

This new section establishes policies and procedures for product selection for resale in the Capitol Complex Visitors Center Texas Gift Shop.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Government Code, Chapter 443, which provides the State Preservation Board with the authority to adopt administrative policies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on March 7, 1996.

TRD-9603928 Rick Crawford
Executive Director
State Preservation Board

Effective date: April 4, 1996

Proposal publication date: December 26, 1995

For further information, please call: (512) 463-5495

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• 13 TAC §111.30

The State Preservation Board adopts new §111.30, concerning Rules and Regulations of the Board without changes to the proposed text as published in the December 26, 1995, issue of the *Texas Register* (20 TexReg 11081).

This new section establishes policies and procedures for responses to public information requests presented to the Board.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Government Code, Chapter 443, which provides the State Preservation Board with the authority to adopt administrative policies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on March 7, 1996.

TRD-9603929 Rick Crawford
Executive Director
State Preservation Board

Effective date: April 4, 1996

Proposal publication date: December 26, 1995

For further information, please call: (512) 463-5495

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TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 405. Client (Patient) Care

Subchapter C. Life-Sustaining Treatment

• 25 TAC §§405.51-405.62

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of §§405.51-405.62 of Chapter 405, Subchapter C, concerning life-sustaining treatment, without changes to the proposed text as published in the January 12, 1996, issue of the *Texas Register* (21 TexReg 296). The adoption of new §§405.51-405.63, concerning the same, is published contemporaneously in this issue of the *Texas Register.*

The repeal allows for the adoption of new sections.

No comment were received regarding adoption of the repeals.

The repeals are adopted under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 22, 1996.

TRD-9603977 Ann Utley
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation

Effective date: April 12, 1996

Proposal publication date: January 12, 1996

For further information, please call: (512) 206-4516

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• 25 TAC §§405.51-405.63

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§405.51-405.63 of Chapter 405, Subchapter C, concerning life-sustaining treatment. Sections 405.51-405.55, 405.57, 405.59, 405.60, and 405.63 are adopted with changes to the proposed text as published in the January 12, 1996, issue of the *Texas Register* (21 TexReg 297). Sections §§405.56, 405.58, 405.61, and 405.62 are adopted without changes to the proposed text and will not be republished. The repeal of existing §§405. 51-405.62, concerning the same, is published contemporaneously in this issue of the *Texas Register.*

Grammatical and punctuation corrections were made throughout the subchapter as well as the addition of minor clarifying language. Language was added to Category III of the definition of "resuscitative status" which called for the elimination of pain if possible. Clarifying language was added to §405.54(b) (4) regarding Category II designation and a new subsection was added to §405. 54 describing documentation of treatment decisions and consultations with an individual, family, and/or legal guardian. Clarifying language was added to §405.55(a) regarding when the initial determination of resuscitative status should occur. The membership of the ethics committee in §405.60 was modified to include representation from a family members' group, rather than a parents' group; deleted the specific credentials for the facility social worker; and allowed the addition of another facility registered nurse and other knowledgeable persons as appropriate. Advocacy organizations were added to §405.63.

Public comment was received from a chaplain at a general hospital, a parent of an individual served by the department, and a private citizen.

One commenter stated that making a reasonable effort to transfer an individual to another physician when the attending physician refuses to comply with a directive was insufficient. The commenter suggested *requiring* transfer to another physician or *requiring* review by the facility ethics committee. Another commenter suggested that the attending physician attempt to transfer the individual to every other physician at the facility. The department responds that it cannot guarantee that any other facility physician will agree to comply with the individual's directive; therefore, it cannot *require* transfer to another physician. The law requires that the attending physician make a reasonable effort to transfer the individual, this would mean approaching every physician at the facility. The department is unwilling to place an additional burden on its physicians when its accomplishment may be impossible. Regarding the suggested requirement for review by the facility ethics committee, the facility ethics committee has no enforcement authority. It is responsible only for providing advice and consultation and making recommendations; the physician has the option of accepting or rejecting the recommendations of the committee.

Another commenter suggested language be modified in §405.57(a)(2) so as not to imply that witnesses are responsible for documentation in

the individual's record. The department concurs and the language has been modified.

One commenter requested that language be added to the definition of "directive" stating that a guardian of an incompetent person may execute a directive on the person's behalf. The commenter stated that the policy allowed for this in §405.57(b). The department responds that a guardian of an incompetent *adult* person *may not* execute a directive on the person's behalf. The language in §405.57(b) refers to a guardian having the ability to execute a directive only for an incompetent *minor*.

The same commenter objected to the ethics committee providing advice and consultation to guardians and stated that it should only be done if the guardian wants advice and consultation. The commenter also wanted the definition of "ethics committee" to pertain to resuscitative status. The department responds that it is implied that guardians are not required to listen nor take advice from the ethics committee. Regarding the inclusion of resuscitative status, it is unnecessary to include in the definition what is outlined in §405.55(a)(3) and (5), and §405.60(c).

A commenter disagreed that a resuscitative status of an individual is an integral part of the overall evaluation of the medical care of the individual. The commenter stated that when members of the general public go to a new physician for a evaluation of medical care, that they do not receive a resuscitative status. The department responds that individuals, as defined by the rule, are those receiving 24-hour residential services from a residential facility; they cannot be compared to members of the general public. It is very appropriate to include resuscitative status as part of the evaluation of their medical care.

The same commenter disagreed that resuscitative status should be discussed before a medical emergency. The commenter also did not agree that the physician should be a part of the resuscitative status decision. The department responds that it is very appropriate to discuss resuscitative status before a medical emergency. Discussing resuscitative status before a medical emergency of an individual with a qualifying condition provides the physician with direction when treating the medical emergency. The physician's provides valuable medical information as his/her part in deciding resuscitative status; §405.55(a)(2) and (3) clearly states that the individual/spouse/guardian/family actually determine resuscitative status.

The commenter argued that §405.54(b)(1) did not allow a legal guardian the right to determine resuscitative status for an incompetent individual. The department responds that the language in §405.54(b)(1) states that the decision of resuscitative status is made with the consultation and consent of the legal guardian, this means that the legal guardian must be consulted and must consent to a resuscitative status before it is documented in the individual's record. Language has been modified for further clarification.

The same commenter argued that §405.54(b)(6) did not allow a legal guardian the right to determine resuscitative status for an incompetent individual. The commenter interpreted the paragraph to mean that in problematic cases, when the legal guardian and family disagreed, the matter would be referred to the ethics committee. The department responds that the problematic cases referenced in the paragraph describes situations in which there is no legal guardian or family.

The commenter did not agree that resuscitative status should be determined at the time of admission or even within a year of admission. The commenter stated that a determination of resuscitative status should only be made if there is a significant change in the individual's clinical condition because the family/guardian has a difficult situation to deal with without having to determined resuscitative status. The department responds that all individuals without a qualifying condition are placed in resuscitative status Category I and the individual/family/guardian is not required to participate in that decision. However, if an individual with a qualifying condition were being admitted, then it would be most appropriate to have the individual/family/guardian determine resuscitative status Category II or III.

The same commenter expressed concern that when resuscitative status is reviewed at annual staffings that the physician has the authority to change it without consent from the individual/family/guardian. The department responds that resuscitative status is initially determined and revised using the procedures described in §405.54.

The commenter argued that physicians do not have the authority to make decisions within the Natural Death Act, therefore, department physicians should not have decision-making authority either. The department responds that the Natural Death Act provides physicians with decision-making authority to determine qualifying condition, this is the same decision-making authority that department physicians have. After an individual has been determined as having a qualifying condition, then the decision regarding life-sustaining treatment is made by the individual/family/guardian.

The commenter questioned the language in §405.57(a)(3) which allows for a directive to be revoked by the individual at any time regardless of the individual's mental state or competency. The commenter stated that it was nonsense and ignored the guardian's rights. The department responds that the language comes directly from the Natural Death Act. The department also notes that a guardian may not execute a directive on behalf of an adult individual, competent or incompetent.

The commenter objected to providing information regarding executing a directive to individuals who are incompetent because it may frighten, upset, or confuse the individual. The commenter also stated that if the guardian requested that the individual not be given the information, then the individual should not be provided the information. The department responds that federal law (The Omnibus Budget Reconciliation Act of 1990 (OBRA 90)) requires that health care providers give patients information upon admission about their rights to make their own health care decision as well as to inform them of their right to execute advance directive as allowed by state law.

The same commenter requested that language be included in the title of §405.59 which acknowledges guardians who have executed a directive. The department responds that this is implied in the title of the section. The department also notes that guardians may only execute a directive on behalf of an individual who is an incompetent minor.

The commenter questioned how a physician would know if an individual's directive did not reflect the present desires of the individual if that individual were unable to communicate, as stated in §405.59(b). The department responds that it does not attempt to delve into all of the possible ways a physician would have of knowing such information, the language comes from the Natural Death Act.

The commenter suggested changing the term "parents' group" to "family members' group" in §405.60(b) to be more inclusive. The commenter also suggested not using a representative of an advocacy group until all family members of individuals residing in the facility had had an opportunity to decline to serve on the ethics committee. The department responds by changing the term to "family members' group." Regarding notifying all family members of individual's before appointing a representative of an advocacy organization, the intent is to incorporate views from an organization that represents a group of families; a single family member's opinion would not accomplish this intent.

The commenter argued that the ethics committee did not have the right to make decisions. The department responds that the language in the definition of "ethics committee" and in §405.60 states that the ethics committee's purpose is for consultation and recommendations. The committee is not responsible for making decisions.

The same commenter requested that advocacy organizations be added to §405. 63. The department agrees and has added the requested language.

The new sections are adopted under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§405.51. Purpose. The purpose of this subchapter is to provide procedures for:

(1) delineating the treatment and resuscitative status of individuals;

(2) implementing the Natural Death Act, Texas Health and Safety Code, Chapter 672, which provides statutory authority for decision-making with regard to withholding or withdrawal of life-sustaining treatment; and

(3) implementing a durable power of attorney for health care, as outlined in the Civil Practice and Remedies Code, Chapter 135, which provides for the designation of an agent with the authority to make health care decisions.

§405.52. Application. This subchapter applies to all campus-based residential facilities of the Texas Department of Mental Health and Mental Retardation.

§405.53. Definitions. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

Competent–Possessing the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to any proposed treatment decision.

Consulting–The descriptor for persons not employed by the Texas Department of Mental Health and Mental Retardation who serve on an ethics committee on a voluntary basis, i.e., without monetary or other tangible compensation.

Directive–Written or oral expression by a competent adult of his or her desires regarding life-sustaining treatment in the event of an occurrence of a terminal condition as certified by two physicians, one of whom is the attending physician, which meets the legal requirements of the Natural Death Act. Types of advance directives include the "Directive to Physicians/Living Will" and the "Durable Power of Attorney for Health Care Decisions."

Ethics committee–An advisory committee of facility staff, consulting professionals, and advocates, whose purpose is to provide advice and consultation to physicians, parents, guardians, and family members regarding treatment decisions concerning individuals who may have a qualifying condition.

Facility–Any state hospital, state school for persons with mental retardation, state center, or other institution of the Texas Department of Mental Health and Mental Retardation, and any organizational entity that hereafter may be made a part of the department.

Family–The spouse, reasonably available adult children, parent(s), sibling(s), or nearest relative of the individual, in that priority.

Incompetent–Lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to any proposed treatment decision.

Individual–A person receiving campus-based residential services from a residential facility of the Texas Department of Mental Health and Mental Retardation.

Legal guardian–The person who, under court order, is the guardian of the person of the individual.

Life-sustaining treatment–A medical procedure or intervention which utilizes mechanical or other artificial means to sustain, restore, or supplant a vital function.

Qualifying condition–A terminal condition that has been certified by the attending physician and one other physician who has personally examined the individual.

Residential facility–All state hospitals, state schools, and state centers providing 24-hour campus-based residential services to persons with mental retardation or mental illness.

Resuscitation–Act of reviving from apparent death or unconsciousness.

Resuscitative status categories–Categories of intervention for individuals, as follows:

(A) Category I: Maximum therapeutic effort–Intervention in which everything reasonably necessary will be done to reduce mortality and morbidity (illness), including transfer to a medical facility for additional services;

(B) Category II: Therapeutic effort with no heroics–Intervention in which conservative therapeutic and supportive measures will be performed to reduce mortality and morbidity, excluding initiation of endotracheal intubation and external cardiac massage. Defibrillation, surgical intervention, hyperalimentation, or implementation of other measures deemed extraordinary may be restricted or excluded. This category of intervention is designated only for individuals with a qualifying condition; and

(C) Category III: Palliative measures only–Intervention in which measures directed toward reducing or eliminating pain, if possible, and enhancing the comfort and dignity of the individual will be maintained. However, no resuscitative measures will be performed. This category of intervention is designated only for individuals with a qualifying condition.

Terminal condition–An incurable or irreversible condition caused by injury, disease, or illness that would produce death without the application of life-sustaining procedures, according to reasonable medical judgement, and in which the application of life-sustaining procedures would serve only to postpone the moment of the individual's death.

§405.54. Resuscitative Status Policy.

(a) The resuscitative status of an individual is an integral part of the overall evaluation of the medical care of the individual. An order for Category II or III is given only for individuals with a qualifying condition and should be based on a judgment that resuscitation is an ethically extraordinary and non-obligatory procedure for prolonging life.

(b) Resuscitative status should be discussed with the individual (or legal guardian) and his or her family in advance of a medical emergency. When a determination of that status is being made by the individual (or legal guardian), family, and physician, the following considerations are recommended:

(1) The competent individual must be allowed the right to determine resuscitative status. If the individual is incompetent (as defined in this subchapter), comatose, or incapable of communication, the decision is made with the consultation and consent of his or her legal guardian, if any, or family. Because the wishes of the individual, if known, are to be honored, an expression of those wishes made when he or she was competent and capable of communication, e.g., in a directive issued in accordance with the Natural Death Act or the Durable Power of Attorney for Health Care, should be respected and followed.

(2) Individuals who are comatose are living human beings whose lives are to be valued; however, this does not mean that all technologies for prolonging life are appropriate or obligatory.

(3) Age, handicaps, economic status, or incompetency should not be determinants of resuscitative status.

(4) Category II status normally reflects a decision to pursue a conservative therapeutic effort in the face of a qualifying condition. However, there may be individuals with such severe recurring complications of a chronic disabling illness that resuscitation would be contraindicated even though they are not in the final stages of a single, defined terminal condition. The physician, with the consultation and consent of the individual, or, if the individual is unable to participate in decision-making, his or her legal guardian, if any, or family, may order the further restriction of other measures. In such cases, although treating the intervening illness remains the primary goal, full resuscitation could be considered non-obligatory and a Category II order would be appropriate.

(5) A Category III order does not indicate withdrawal of palliative procedures. An individual for whom such an order has been written will receive all the usual care given to enhance comfort, dignity, safety, and a sense of well-being.

(6) In any problematic case involving a Category II or III designation or when an individual with a Category II or III designa-

tion has no legal guardian and/or family, consultation with the facility ethics committee should be sought.

(c) Documentation supporting treatment decisions and consultations with the individual, family, and/or legal guardian should be in the attending physician's progress notes.

(d) In the event an individual has executed a directive as outlined in §405.57 of this title (relating to Legal Expression through Directive under the Natural Death Act), the provisions regarding life-sustaining treatment outlined in the directive supersedes any resuscitative status category.

§405.55. Determination and Implementation of Resuscitative Status Order.

(a) All individuals will be initially evaluated on an individual basis as to resuscitative status by the attending physician. Normally this evaluation will be made on admission to services or at the initial staffing, but in all cases within 30 days of the initial staffing.

(1) If the attending physician does not categorize an individual, then the individual will automatically be considered Category I.

(2) If an individual with a qualifying condition is competent and wishes to be classified Category II or III, then the request will be honored.

(3) If an individual with a qualifying condition is incompetent, comatose, or incapable of communication, then the wishes of the legal guardian and family will be honored, provided the attending physician concurs. If there is disagreement between the legal guardian and family, within the family, or between the legal guardian or family and physician, then the individual will be designated a resuscitative status according to the wishes of the legal guardian, if available, or family member in the following priority: the patient's spouse; a majority of the patient's reasonably available adult children; the patient's parents; or the patient's nearest living relative. Consultation with the facility ethics committee may be sought.

(4) If an individual with a qualifying condition is incompetent, comatose, or incapable of communication and does not have a legal guardian, then one of the following persons, in order of priority, as available, along with the attending physician, can determine resuscitative status: the spouse, a majority of the reasonably available adult children, the parents, or the nearest living relative of the individual.

(5) If an individual with a qualifying condition is incompetent, comatose, or incapable of communication and has no legal guardian and does not have family or such family is unavailable or unwilling to participate in decision-making, then the facility should seek the appointment of a legal guardian to the extent authorized by law or the attending physician(s) should seek consultation with the facility ethics committee before designating a Category II or III resuscitative status for the individual.

(b) If the condition of an individual deteriorates subsequent to initial categorization, and this contingency has not been previously addressed, the individual may be reclassified by following the procedure described in subsection (a) of this section.

(c) The attending physician will note in the medical record that the individual or his or her legal guardian, if any, or family have been consulted and agree with the designated status (or redesignation) as outlined in subsection (a) of this section, and its corresponding treatment plan. Such consultations should be witnessed and documented.

(d) The resuscitative status category of every individual must be reviewed and documented at least annually by the attending physician, preferably at the annual staffing, and should be reevaluated when there is a significant change in the individual's clinical condition.

(e) When the physician has documented the need and written an order for a Category II or III designation, a form specified by the department will be placed as the first page of the individual's chart. This form will have appropriate spaces for documentation of the annual review.

§405.57. Legal Expression through Directive Under the Natural Death Act.

(a) When an adult individual is competent to make a decision regarding life-sustaining treatment and it is clinically appropriate to do so, the individual should be informed of the provisions of the Natural Death Act and provided with a copy of the Directive to Physicians form, referenced in §405.61 of this title (relating to Exhibits) as Exhibit B. The desires expressed by the competent individual should be observed.

(1) The Directive to Physicians may be made in writing at any time that the individual is competent to make such a decision.

(2) The Directive to Physicians may also be made by a nonwritten means of communication and documented by appropriate witnesses.

(3) The Directive to Physicians may be revoked by the individual at any time, without regard to the individual's mental state or competency.

(4) The present desire of the competent individual shall, at all times, supersede a Directive to Physicians.

(5) A competent adult individual can designate a person to make treatment decisions in the event that the individual becomes comatose, incompetent, or otherwise mentally or physically incapable of communication.

(b) A Directive to Physicians may be made on behalf of an individual with a qualifying condition who is under 18 years of age by his or her spouse, if the spouse is an adult, the parent(s), or legal guardian of the individual. However, such a directive can be overridden by the contrary desire of a competent individual, even if he or she is under 18 years of age.

(c) Although only a competent individual may execute a Directive to Physicians, all individuals shall receive information about the right to execute a Directive to Physicians upon admission.

§405.59. Decision-making under the Natural Death Act and Durable Power of Attorney for Health Care for Individuals Who Have Issued Directives.

(a) If an individual has executed an advance directive, then the directive is attached to the individual's chart and/or medical record. Directives are evidence of the individual's wishes if/when he or she develops a qualifying condition. Directives are not necessarily related to resuscitative status. Should an individual develop a qualifying condition, the directive shall be honored and the resuscitative status shall reflect the directive.

(b) If an individual is unable to communicate and has previously issued a directive without designating a person to make treatment decisions, then the attending physician shall comply with the directive unless the physician believes that the directive does not reflect the present desire of the individual.

(c) To the extent that a Durable Power of Attorney for Health Care conflicts with a Directive to Physicians under the Natural Death Act, the instrument executed later in time controls.

§405.60. Ethics Committee.

(a) An ethics committee must be established by each facility. The committee may be established multi-institutionally in cooperation with other health care providers, e.g., local hospitals, serving the same geographical area.

(b) The ethics committee must minimally consist of one facility physician; one consulting physician; one facility registered nurse from the individual's unit who has knowledge of the individual and his or her condition; a member of the clergy; an attorney not affiliated with the facility or TDMHMR; a facility social worker; and a representative of a family members' group or a representative of an advocacy group. The committee may also include the following additional members as available: additional consulting physician; additional facility registered nurse; medical support staff, such as a physical therapist, clinical pharmacist, clinical psychologist, or occupational therapist; a consulting social worker; a rights representative; additional representation by family members' and or advocacy organizations; and other knowledgeable persons as appropriate.

(c) Consultation with the ethics committee may be sought for any treatment decision, but should be sought as follows:

(1) when an individual is unable to give direction regarding the withholding or withdrawal of life-sustaining treatment, has no legal guardian, and has no person legally designated to make such a decision according to provisions of the Natural Death Act; and

(2) when a decision regarding the withholding or withdrawal of life-sustaining treatment is to be made and there is a conflict between or among the decision-makers.

(d) Decision-making concerning recommendations to be made by the ethics committee shall be by consensus. Each consultation with the ethics committee shall be documented in the individual's record.

§405.63. Distribution.

(a) This subchapter shall be distributed to the commissioner, and executive, management, and program staff of Central Office; superintendents/directors of all TDMHMR facilities; and advocacy organizations.

(b) The superintendent/director will ensure distribution of this subchapter to all appropriate staff.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 22, 1996.

TRD-9603976 Ann Utley
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation

Effective date: April 12, 1996

Proposal publication date: January 12, 1996

For further information, please call: (512) 206-4516

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 26. Small Employer Health Insurance Regulations

• 28 TAC §§26.1, 26.4-26.11, 26.13-26.22, 26.27

The Commissioner of Insurance adopts amendments to §§26.1, 26.4-26.11, 26.13, and 26.19-26.22 and new §§26.14-26.18 and 26.27, concerning small employer health benefit plans. Sections 26.4-26.7, 26.11, 26.13-26.15, 26. 18-26.20, 26.22 and 26.27 are adopted with changes to the proposed text as published in the November 24, 1995, issue of the *Texas Register* (20 TexReg 9811). Sections 26.1, 26.8, 26.10, 26.16, 26.17, and 26.21 are adopted without changes and will not be republished.

The amendments to these sections and new sections are necessary to add guaranteed issue requirements for small employer health benefit plans, to make new standard benefit plans available to small employer carriers and small employers, to address the minimum requirements for participation by eligible employees and for premium contributions by employers, to establish enrollment requirements and to implement legislation enacted by the 74th Legislature in House Bill 369 relating to the operation and funding of small employer health benefit plans. Simultaneous to the adoption of the amendments and new §§26. 14-26.18 and 26.27, the Commissioner is adopting the repeal of existing §§26. 14-26.18 and 26.27. The sections as adopted differ in some respects from the proposed sections based on further study generated by the comments received. Changes have been made to §§26.4, 26.6, 26.11, 26.18, 26.20, and 26.22 for clarification and/or grammatical purposes. The agency has added language to §26.27(b), Figure 42 so that carriers can indicate if they wish to change their status with regard to being risk assuming or reinsured carriers. The agency's response to comments, including the specific changes to the sections and reasoned justification for the changes, are addressed in the paragraphs that follow.

Section 26.1 amends the statement of purpose to delete the reference to three prototype plans required by the rules prior to these amendments. Amended §26.4 adds definitions of affiliation period and point-of-service contract and amends the definitions of eligible employee, late enrollee, small employer health benefit plan and standard benefit plan. The definition of late enrollee is intended to, among other things, implement legislation enacted by the 74th Legislature in Senate Bill 793 relating to the enforcement of certain child support and medical support obligations. Amendments to §26.5 modify the applicability and scope of the chapter, describe the plans to which these amended sections apply by date of issue or renewal, provide for early voluntary compliance with the amended sections, and require notification to certain small employers of the new standard benefit plans. Section 26.6 is amended to update references to form numbers and statutes. Amendments to §26. 7 delete the requirement for additional coverage upon employee election, extend the enrollment period by one day for new entrants and require a small employer carrier to determine small employer eligibility within a specified time. Section 26.8 has been retitled "Guaranteed Issue; Contribution and Participation Requirements" and is amended to include requirements relating to the guaranteed issue provisions of Insurance Code, Chapter 26 which became effective September 1, 1995. The section also deletes the 75% employer premium contribution requirement and allows a health carrier to require a premium contribution in accordance with its usual and customary practices, if applied uniformly to each small employer, or to use the contribution requirement established by a purchasing cooperative if the carrier is participating in the cooperative. The amended section also lowers the participation requirement from 90% of eligible employees to 75%, allows a small employer carrier to offer a lower participation level if the carrier permits the same percentage of participation as the qualifying percentage for each benefit plan offered by that carrier and allows the carrier to offer a participation level that is lower than the carrier's qualifying participation level in limited circumstances. Amended §26.9 provides that late enrollees may be excluded from coverage until the next annual enrollment period and may be subject to a 12-month pre-existing condition provision. The section also allows carriers who do not use a pre-existing condition provision to impose an affiliation period of no more than 90 days for new entrants and no more than 180 days for late enrollees during which premiums are not collected and issued coverage is not effective and it provides that imposition of an affiliation period does not preclude application of a small employer waiting period applicable to all new entrants. Amended §26.10 prohibits the establishment of a separate class of business based on participation requirements or whether coverage is provided on a guaranteed issue basis. Section 26.11 is amended to allow a health maintenance organization (HMO) participating in a purchasing cooperative that has established a separate class of business and a separate line of business to use rating methods used by other carriers in the cooperative, including rating by age and gender. Amendments to §26.13 change references to the standard benefit plans established by the Commissioner of

Insurance to the new standard plans and requires small employer carriers to give to each small employer that inquires about purchasing a health benefit plan a written summary of the standard benefit plans which includes a description of the items listed in the section. The amended section also requires a small employer carrier to offer each of the standard benefit plans to each small employer who inquires about purchasing a small employer health benefit plan and to explain the plans to the employer upon request. The section also requires a small employer carrier to give written reasons to the small employer if coverage is denied on any basis. New §26.14 contains the coverage provisions for the new standard benefit plans required to be offered by small employer carriers to small employers as a condition of transacting business in the state. New §26.15 contains requirements for renewability of coverage and cancellation. This section provides that misrepresentations of a material fact by a small employer or eligible employee or dependent shall not include misrepresentations related to health status. New §26.16 describes the circumstances under which a small employer carrier may refuse to renew coverage, prohibits a carrier that has refused to renew coverage from writing small employer health benefit plans in the state or geographic area for a period of five years and establishes a procedure for reentry into the market after five years. New §26.17 prescribes the notice to covered persons for termination of coverage. New §26.18 sets forth the procedures for filing an election or application to be a risk-assuming or reinsured carrier. Amendments to §26.19 provide references to the new standard benefit plans, change references to form numbers and sets forth additional requirements for filing forms, contracts and certificates and evidences of coverage. Section 26.20 deletes outdated requirements relating to gross premium filings and provides for an annual filing of this information. The section further requires reporting of the number of standard benefit plans issued and the number of lives covered under these plans. An amendment to §26.21 deletes a statement that HMOs are not subject to Insurance Code, Article 21.52B based upon an amendment to Article 21.52B by the 74th Legislature in Senate Bill 628. Amended §26.22 requires a purchasing cooperative to file with the Commissioner of Insurance notification of the receipt of a certificate of incorporation or authority from the Secretary of State. New §26.27 is an appendix containing the new standard benefit plans (the Basic Coverage Benefit Plan, the Catastrophic Care Benefit Plan and the Small Employer Group Health Benefit Plan for HMOs) and other forms for use by small employer carriers. Copies of these forms and complete sets of prototype plans may be obtained from the Texas Department of Insurance, Publications Department, MC 108-5A, P. O. Box 149104, Austin, Texas 78714-9104.

Most commenters expressed general support for the rules as proposed. A commenter supported the sections as proposed without changes. Other commenters offered comments or concerns with regard to specific sections. Some commenters stated that the changes to the rules resulting from the enactment of House Bill 369 will create better access and affordability of health benefit plans for an important segment of the Texas business community. Other commenters stated that the sections and the new standard benefit plans the department has developed reflect the intent of House Bill 369. The commenters stated that the new standard plans are marketable and affordable. One of these commenters urged the agency to monitor the pricing and availability of the standard benefit plans to ensure their usefulness to the small employer. Agency Response: The agency appreciates the comments it has received and the information provided at the public hearing. The agency intends for the changes to these sections to increase the affordability and availability of health benefit plans for small employers and their employees and believes that the adopted sections meet the legislative intent. The agency specifically designed the new standard benefit plans to be more affordable and marketable for the benefit of small employers and their employees. The agency will monitor the pricing and availability of the standard benefit plans as recommended by the commenter. The data which the department will use in the monitoring of the marketing of these plans is required to be reported to the department by §26. 19 and §26.20.

Section 26.4, Definition of Eligible Employee. A commenter stated that the definition of "eligible employee" which appears in this section and in §26. 27, Figures 16, 21 and 33 may allow an employer with more than 50 employees to exclude certain employees to come within the definition of a small employer or may allow an employer with a self-funded ERISA plan to exclude a group of seriously ill persons and place that group of people in a fully insured small group guaranteed issue plan. The commenter suggested amending the definition to clarify that a self-funded plan must be the plan of another unrelated employer. Agency Response: The agency disagrees. The definition of "eligible employee" is the same as that in Insurance Code, Article 26.02(8).

Section 26.5, Applicability and scope. A few commenters requested clarification of the applicability of Chapter 26 and the rules to group and individual policies under circumstances in which the employer may increase salaries to assist its employees in purchasing health insurance for the purpose of enabling its employees to purchase health insurance or remits to the carrier the premium collected through a payroll deduction. One of these commenters requested the addition of new subsection (a)(3) to track the language in Insurance Code, Article 26.06(b). Another of these commenters stated that the purpose of the amendment to Insurance Code, Article 26.06 was to allow medical savings accounts to be established by employers under circumstances in which the employer would not stipulate how the funds would be used by an employee (that is, the funds would be used by the employee to obtain an individual policy of insurance to pay medical expenses directly). Another commenter stated that the intent in amending Article 26.06 was to provide that any individual policies must be paid for by the individual insured themselves, without any reimbursement or subsidy from employers to prevent "cherry picking" and to encourage more employers to opt for group policies, thereby increasing the number of insureds in the small business "pool." Some commenters requested that the section be amended to create a "safe harbor" for carriers under circumstances when an employer may make misrepresentations to the carrier concerning the applicability of Chapter 26. One commenter suggested that §26.5(g) should be changed to require that if a small employer currently covered by a small employer health benefit plan requests a change in benefits, the summary for the standard plans must be given to the small employer because Insurance Code, Article 26.17 states that each small employer "purchasing" a small employer health benefit plan must be given the summary. Agency Response: The agency believes that Chapter 26 was intended to apply to all small employer groups with benefit plans. The chapter applies to these plans whether the small employer pays a portion of the premium or benefit directly or indirectly. Insurance Code, Article 26.06(b) contains a qualified exception to the application of Chapter 26 for an individual policy that is subject to individual underwriting. Thus, if an employer gives its employees a salary increase and leaves it up to the individual employee to decide whether to use that salary increase to purchase an individual policy or to opt not to purchase a policy, Chapter 26 would not apply. The agency agrees that a paragraph containing the language in Insurance Code, Article 26.06(b) should be added to be consistent with the statutory language and has added new subsection (b) to incorporate this language. The agency disagrees that language creating a "safe harbor" should be added to the section. A carrier may cancel or non-renew coverage under Insurance Code, Article 26.23 and §26.15 for employer misrepresentations concerning the applicability of Chapter 26. Agency enforcement is unlikely against a carrier making a good faith determination about the applicability of the chapter based upon representations by an employer which later prove to be incorrect. Section 26.13 already requires certain information to be obtained to make this determination. The agency disagrees that subsection (g) should be changed. The provisions of §26.5 were intended to facilitate the transition from one set of standard benefit plans promulgated by the department to another, rather than to prescribe marketing practices. For clarification and to emphasize the agency's intent, the word "beginning" has been deleted from the first sentence of subsection (g).

Section 26.7, Requirement to insure entire groups. A few commenters stated that the requirement in §26.7(c) for a carrier to determine small employer eligibility within five days of receipt of any requested documentation is too short because holidays can make it impossible to make a decision within that time period. These commenters recommended that the requirement should be "five business days." A commenter requested additional language to clarify the intent of §26.7(h)(1) concerning the 31-day enrollment period and waiting period. The commenter would add "at least 31 days after" between the words "or if the waiting period exceeds 31 days" and "the date the new entrant becomes eligible for coverage." Another commenter requested deletion of language from §26.7(h)(3) extending enrollment for 31 days beyond the end of the waiting period, stating that Article 26.21(j) requires the application to be received no later than the 31st day after employment begins or upon completion of the waiting period. Agency Response: The agency agrees that the requirement for making a determination of eligibility should be changed to five business days and

has made that change. The agency agrees that language should be added clarifying the intent to extend the enrollment period at least 31 days after the date the new entrant becomes eligible for coverage after the expiration of the waiting period. Section 26.7(h)(1) has been changed accordingly. The agency disagrees with the commenter who recommended a change to subsection (h) (3). The agency believes that the intent of House Bill 369 was to extend the date for enrollment 31 days beyond the date of employment or, if a waiting period extends beyond 31 days, 31 days beyond the end of the waiting period.

Section 26.8, Guaranteed Issue; contribution and participation requirements. A commenter asked whether the language allowing a health carrier to require an employer premium contribution in accordance with the carrier's usual and customary practices "for all employer group health insurance plans in the state" means for all small employer group plans. Another commenter asked whether new employees to a group for which an employer's participation level is below 75% may be subject to medical underwriting. This commenter also asked whether, for a group that is medically underwritten, an employee who by affidavit has chosen not to be covered but later wants to enroll during a subsequent enrollment period may be subject to underwriting. The commenter also requested that the section be changed to allow an employer to contribute different levels of premium for different categories of employees as long as the differentiation between employee premium is not based on health status or other types of improper discrimination such as age or sex. The categories suggested by the commenter would be length of service and/or type of job. A commenter requested that subsection (i) be changed so that in determining whether an employer has the required percentage of participation of eligible employees if the percentage of eligible employees is not a whole number, the result of applying the percentage to the number of eligible employees would be rounded up to the nearest whole number rather than rounded down. According to the commenter, rounding down as in the example given in the subsection would result in a participation level that is lower than the 75% minimum. Agency Response: The agency believes that the premium contribution must be consistent with a carrier's usual and customary practices for all employer group health insurance plans in the state rather than just for the carrier's small employer group plans. Prior to the amendments to Chapter 26, a 75% contribution level was mandatory. House Bill 369 amended the chapter to eliminate this mandatory contribution level and allowed carriers to require a premium contribution in accordance with the carrier's usual and customary practices "on all employer group health plans in the state." Because of the prior law, a 75% contribution level would currently constitute the usual and customary practice for small groups. To comply with the amendment, "group health insurance plans in the state" must be interpreted broadly rather than meaning only small group plans. The agency believes that new employees and existing enrollees who wish to enroll during a later enrollment period cannot be medically underwritten. Pursuant to Insurance Code, Article 26.21(d)< and this section, medical underwriting of the group can occur only under certain limited circumstances if the participation level is below the carrier's qualifying participation level. Once the carrier has accepted a group, the provisions of Chapter 26 apply and new entrants cannot be medically underwritten. Other provisions of Chapter 26, as amended, for example those contained in Article 26.21, were intended to address late entrants to a plan. The sections as adopted do not allow an employer to contribute different levels of premium for different categories of employees. The agency agrees with the commenter that rules cannot allow employers to create contribution categories based on discriminatory factors or categories that would undermine the intent behind Chapter 26. The agency will consider the commenter's suggestion for different contribution levels in future rulemaking. Such a rule would be outside the scope of the present rulemaking but the agency will consider the suggestion to determine whether an additional rule incorporating it would be appropriate. The agency disagrees with the commenter's requested change to subsection (i). Under the formula recommended by the commenter, the required participation level would be significantly higher than 75% for a group of five eligible employees. This would frustrate the intent of House Bill 369 to reduce the maximum required participation level for small groups to 75%.

Section 26.9, Waiting periods. A commenter stated that waiting periods as discussed in this section and §26.14(g)(5)(B) do not clarify when the employee's coverage will be effective. The statute is silent on this matter. The commenter stated that coverage for an employee can be effective on the first premium due date following satisfaction of the waiting period or on the date after the waiting period has been satisfied. According to the commenter, the first method is easier to administer, easier to explain to employers and less costly. Agency Response: The agency agrees that after a waiting period established by the small employer coverage must be effective no later than the next premium due date following completion of the waiting period and receipt of the completed application. Carriers and small employers may provide for an earlier effective date, however. Language has been added to subsection (a)(8) for clarification of this point. No change is necessary to §26.14.

Section 26.13, Rules relating to fair marketing. A commenter stated that for clarification purposes, the second sentence of subsection (c) should have the words "if requested" added to the beginning of the sentence so that a carrier would have to offer and explain the standard benefit plans to a small employer only upon request. Agency Response: The agency disagrees. The agency believes that the intent of Insurance Code, Article 26.71 was to require a small employer carrier to offer the standard benefit plans to each small employer who inquires about purchasing such a plan and to explain the plans upon request by the small employer. The language of this subsection as proposed makes this intent clear and no change is needed. The change to subsection (b) is addressed in the response to §26.27(b), Figure 41.

Section 26.14, Coverage. A commenter stated that the Basic Coverage Benefit Plan appears to allow health carriers the opportunity to provide an additional small employer product or products, separate from the prototype. Another commenter stated that subsection (a) appears to allow a small employer carrier who elects to offer the two standard plans prior to June 1, 1996, to cease offering the three standard plans required prior to the amendments to House Bill 369. A commenter requested that the definition of "policyholder" in subsections (h)(1)(C)(vii) and (h)(2)(C)(vii) be revised to include a "cooperative." A commenter stated that §26.14(h)(3), which requires the mandated offering of certain riders may cause antiselection, is difficult to administer because of the possibility of the number of different plans (with four riders required to be offered with the Basic Coverage Benefit Plan there is a possibility of 16 different plans and with three riders required to be offered with the four required Catastrophic Care Benefit Plan benefit levels, there is a possibility of 32 different plans), and may drive up costs. Another commenter stated that the fact that the agency has reduced the number of riders down to four in the Basic Coverage Benefit Plan will help keep costs down. Agency Response: Insurance Code, Article 26.42(c) permits a small employer carrier to offer to small employers any health benefit plan which complies with the Insurance Code, Chapter 26, in addition to the mandated benefit plans. Subsections (h)(1)(A)(i) and (h)(1)B)(ii) require specified deductible, coinsurance and percentage payable amounts to be offered for the Basic Coverage Benefit Plan. In addition to the mandated offer, the rules allow a small employer carrier to make available within the standard benefit plans other deductible, coinsurance and percentage payable amounts provided the amounts do not exceed the maximums allowed by subsections (h)(1)(A)(i) and (h)(1)(B)(iii). The agency agrees with the commenter's interpretation of subsection (a). The agency has revised the definition of "policyholder" in subsections (h)(1)(C)(vii) and (h)(2)(C)(vii) and Figures 16 and 21 to include cooperatives. The agency disagrees that there should not be a mandated offering of certain riders. The riders were developed to provide the employer with alternatives to benefits that are currently available in the market. The benefits are limited and should provide a lower cost alternative to small employers. The agency does not agree that the offering of these riders will be unusually difficult to administer. Most of the carriers offering small employer coverage are also offering coverage in the general group market. In the group market there are at least five mandated offers that the carriers must administer. In addition to these mandated offers, companies offer optional riders and various coinsurance amounts and deductibles for groups to choose from. Since companies can administratively handle these mandated offers and the resulting different plans along with optional riders and varying coinsurance and deductibles, the required offerings of riders in Chapter 26 should not be overly administratively burdensome or costly.

Section 26.15, Renewability of coverage and cancellation. Some commenters stated that language in §26.15(a)(3) and (b) concerning nonrenewal based upon a fraudulent misrepresentation about health status is not appropriate in a guaranteed issue setting. The health history of individual employees is not material to acceptance of the risk but only to the rate charged and the purchase of reinsurance. One of these commenters stated that Insurance Code, Article 26.23, which

sets forth the circumstances under which carriers can nonrenew coverage, applies to circumstances in which an employer or employee may misrepresent employment status of a person, may attempt to cover an ineligible person, may refuse to cover eligible persons or refuse to pay premiums under the plan. Agency Response: The agency agrees that in a guaranteed issue market, carriers cannot nonrenew for misrepresentations based on health status. The words "unless it is a fraudulent misrepresentation made by the small employer during the initial application for coverage" have been deleted from subsection (a)(3) and a similar provision has been deleted from subsection (b). New subsection (d) has been added, however, to clarify that a carrier may have other remedies for fraudulent misrepresentations outside the operation of these sections, for example, a remedy based upon contract law which the carrier may pursue in court. The remaining subsections have been renumbered accordingly.

Section 26.19, Filing Requirements. A commenter stated that the requirement for Form Number 369 CERT ANN LIST-OTH/SEHBP to be sent to the department as soon as reasonably possible after January 1, 1994, should be changed to June 1, 1996, or an earlier date as elected by the small employer carrier. Agency Response: The agency disagrees. The passage of House Bill 369 with an effective date of June 1, 1996, required no statutory change to this rule. Changes made are the form number (that is, after the adoption of these rules, a carrier should submit form "369" CERT ANN LIST-OTHER/SEHBP instead of form "2055" CERT ANN LIST-OTHER/SEHBP) and consolidation of reporting requirements. Existing forms should be used prior to the effective date of these sections.

Section 26.27(b), Appendix. A commenter stated that as a matter of policy, all of the standard benefit plans should contain a core of basic coverages that are commonly sought after and purchased. The costs of the plans should be controlled primarily by variable deductibles, copayments and annual out-of-pocket maximums, rather than by eliminating common benefits. The commenter stated that careful consideration should be given to better coordination of the benefits of the Basic Coverage and Catastrophic Care Benefit Plans. This commenter also stated that the Small Employer Group Health Benefit Plan for HMOs should be at least as flexible as health benefit plans for HMOs that are federally qualified and which can be more cost effective. Agency Response: The agency has coordinated the benefits in the Basic Coverage and Catastrophic Care Benefit Plans to the greatest extent possible in light of the differences arising out of the different nature of these two plans. The agency has also attempted to make the HMO Plan as flexible as possible in light of federal requirements for HMOs. In fact, features are contained within the "state-approved" prescribed prototype for HMOs which provide greater flexibility with respect to plan development than would be permitted in a federally qualified plan.

Section 26.27(b), Figures 1-32. A commenter suggested several non-substantive changes to the standard benefit plans involving changes in punctuation and capitalization. Agency Response: The agency agrees and has made the non-substantive changes where necessary. In addition, the agency identified a typographical error in the form number for Figure 13 and has changed the title from Form Number 399 ACC to Form Number 369 ACC.

Section 26.27(b), Figures 11, 32 and 33. A commenter recommended that the dates for court ordered coverage for a child and court ordered coverage for a spouse should be the same: the date of the court order. Currently the figures provide for court ordered coverage of a minor child to begin automatically when the employer receives notification of the court order. For a spouse, however, coverage begins on the date on which the employer receives the court order. Agency Response: The agency disagrees. The provisions as worded comply with changes to the Family Code as enacted by the 74th Legislature in Senate Bill 793. Chapter 26 requires enrollment of a child and a spouse and also addresses exceptions for "late enrollment." The Family Code, §154.184 requires automatic coverage for children and Senate Bill 793 identifies the effective date of coverage to be from notification for dependent children. However, changes have been made to the referenced figures to further clarify the applicability of spouse and child provisions.

Section 26.27(b), Figures 12, 32, 33 and 45. A commenter requested that a two-year incontestability provision be included in the Basic Coverage Benefit Plan and the Catastrophic Care Benefit Plan stating that Insurance Code, Article 3.51-6(d)(2)(ii) requires a two-year incontestability clause in all group health policies. The commenter also stated that the incontestability clause in the Small Employer Group Health Benefit Plan for HMOs should contain the two-year time limit for contestability. This commenter further stated that the incontestability provisions in all of the standard plans should state explicitly that coverage for individual subscribers is not contestable for statements related to health status. Agency Response: The agency agrees and an incontestability provision similar to that suggested by the commenter has been added to Figures 12, 32 and 33. Figures 12 and 32 will incorporate a variable provision, however, for guaranteed issue or medically underwritten plans and §26.14 has been changed to address the variabilities. Additionally, a question for streamlining efforts and data collection has been added to Figure 45 for carriers to indicate whether small employer carriers will issue medically underwritten plans and the language in §26.19(b)(2)(E) was changed.

Section 26.27(b), Figures 16 and 21. A commenter stated that the proposed definition of "provider" expands the list of providers which must be recognized under Insurance Code, Article 21.52. The commenter requests that the definition be limited to the types of providers named in the Insurance Code provision. Another commenter proposed the addition of coverage for "health services provided through clinical trials." A commenter questioned why the definition of "employer" and "small employer" are the same and suggested that only one definition is needed. Another commenter stated that the language used in the definition of "child" in items 2 and 3 of these figures would extend coverage to an adopted child of a dependent child. Agency Response: The definition does encompass types of providers not listed in Insurance Code, Article 21.52. The definition is not intended, however, to require insurers to provide coverage for services by providers beyond those listed in Article 21. 52. The definition is intended as a cost containment measure by allowing insurers to provide coverage for services by other licensed providers. The definition is consistent with a generic definition generally appearing in policies (and included in the original prototypes). Insurers are still only required, pursuant to Article 21.52, to provide coverage for covered services performed by the types of providers listed in that article. The agency acknowledges the comment concerning coverage for clinical trials, but does not believe that this issue can be addressed in these plans. The definition of "Experimental or Investigational" remains consistent with other plans currently available in the marketplace. The agency will monitor this issue, however, and evaluate for possible changes to the sections in the future. The agency agrees that the definitions of "employer" and "small employer" are essentially the same; however, since both terms are used throughout the prototypes, the two terms have been combined into one definition entitled "Employer and/or Small Employer." The agency agrees that the definition of child needs clarification and has changed the language to only extend coverage to an adopted child of the "employee" or "employee's spouse."

Section 26.27(b), Figure 17. Some commenters suggested that the Basic Coverage Benefit Plan provide benefits for organ transplants. Another commenter suggested that an inside dollar limit be placed on this benefit to keep the cost of the plan down. One commenter stated that many people may purchase this coverage because the deductible is lower and not realize the coverage is not as comprehensive. Agency Response: The agency does not agree that the Basic Coverage Benefit Plan should include an organ transplant benefit. Insurance Code, Article 26.44A(c) states that benefits provided by the basic plan are to be limited to basic care requirements for illness and injury. Additionally, carriers can offer organ transplant coverage to employers through a rider as allowed by Insurance Code, Article 26.42(b). The agency agrees that employers should be fully aware that the Basic Coverage Benefit Plan does not cover organ transplants and has bolded the language outlining this difference in the Summary of the Standard Small Employer Health Benefit Plans (Figure 41) which is required by §26.13(b) to be given to a small employer who requests information regarding the purchase of any small employer health benefit plan. Section 26.13(b) has also been changed to require the carrier, if it does not elect to use Figure 41, to clearly identify that the basic plan does not include transplant coverage in bold print. Small employee carriers must use the bolded language in any forms they reproduce. Figure 41 does not apply to HMOs. The employer can refer to the application for information regarding covered benefits.

Section 26.27(b), Figures 17 and 22. A commenter stated that the Basic Coverage Benefit Plan should not limit home health services to 30 visits per policy year. This commenter also stated that the standard benefit plans originally promulgated under Insurance Code, Chapter 26 allowed a small employer carrier to waive the limit on home health

services if the waiver would result in less expensive treatment and that the new standard benefit plans should also include this provision. Another commenter stated that Figure 17 (369 BEN.BASC) Item 16 should be changed to cover skilled nursing care by a registered nurse or licensed vocational nurse under the supervision of a registered nurse or physician. The commenter further stated that the Medicare Conditions of Participation allow qualified therapists (physical, occupational, and speech therapists) to supervise the services provided by home health aides. A commenter found an inconsistency in the definition of "coinsurance" in Figures 17 and 22. Agency Response: The agency disagrees that the 30-visit per year limit on home health services should be changed. This benefit achieves the requirement of Insurance Code, Article 26.44A(c) by providing basic care requirements for illness and injury and also provides a cost containment measure making the coverage more economical. The agency agrees with the commenter concerning waiver of the limit; this language was inadvertently omitted. A paragraph has been added to Figures 17 and 22 allowing a carrier to waive the limit on home health services if the waiver would result in less expensive treatment. The agency disagrees that Figure 17, Item 16 should be changed. The language in the item provides a benefit for skilled nursing care by a licensed vocational nurse be under the supervision of a registered nurse and a physician. This portion of Figure 17 also provides a benefit for services of a home health aide under the supervision of a registered nurse. The language complies with Insurance Code, Article 3.70-3B relating to benefits for home health services and is consistent with benefits currently required in other health benefit plans. The agency has deleted the word "not" from the definition of "coinsurance" to make that definition in Figures 17 and 22 consistent.

Section 26.27(b), Figures 17 and 41. A commenter stated that the Basic Coverage Benefit Plan should include the benefits for oxygen and the rental of equipment for its administration that are included in the Catastrophic Care Benefit Plan. Agency Response: The agency agrees that these benefits should be added to the Basic Coverage Benefit Plan because oxygen is essential to the basic care of illness and injury and is also a cost containment benefit. Figures 17 and 41 have been revised to include these benefits.

Section 26.27(b), Figure 17, 18, 22 and 23. Some commenters requested clarification of the definition of "immediate family" that appears in the limitations and exclusions sections of the figures. Agency Response: The agency agrees and the term has been changed to include "you, your spouse, your parent, brother or sister, including the parent, brother or sister of your spouse."

Section 26.27(b) Figures 24 and 33. A commenter proposed a rider to be required for the small employer to elect a benefit for "optional coverage for smoking cessation treatments for group or individual counseling up to five or ten visits, and a pharmacological treatment under the supervision of a physician but not to exceed five or ten weeks." Agency Response: Although the agency is concerned about the effect of smoking on the population, the agency does not agree that a smoking cessation rider should be required to be offered. Also, the definition of Chemical Dependency in Insurance Code, Article 3.51-9 does not include tobacco products. Carriers can voluntarily offer a smoking cessation rider through an optional rider under Insurance Code, Article 26. 42(b).

Section 26.27(b), Figures 24, 25, 26, and 27. A commenter stated that cost of the optional riders could be reduced by adding a statement that "copayments do not apply towards the base policy Copayment Maximum." Agency Response: The agency believes no change is necessary to the four indemnity plan riders. Three of the riders for the indemnity plans include a statement that the rider is subject to the same coinsurance, deductibles and lifetime maximum as the policy. The statement is optional and may be included or omitted or modified as desired. The Prescription Drug Rider permits a variable reimbursement rate of no less than 50% which allows carriers and employers to control costs through the reimbursement percentage offered.

Section 26.27(b), Figures 25, 33 and 39. A commenter stated that the definition of Crisis Stabilization Unit in the Mental Health Benefit Rider, which refers to a 24-hour residential program, should be expanded to include mobile or non-facility based crisis stabilization units which are currently available. A commenter asked whether the variable paragraph for coinsurance, deductibles and lifetime maximum applies only to outpatient mental health visits or to both inpatient and outpatient benefits. Agency Response: The agency disagrees that the definition should be changed. The definition is consistent with the definition promulgated by Article 3.72, Insurance Code, relating to Alternative Mental Health Treatment Benefits. Since the objective under Chapter 26 is to offer a more affordable alternative to the current mandate, it is not desirable to expand or broaden any coverage addressed under an existing legislative mandate. Carriers can elect to provide such coverage via an optional rider to achieve additional cost containment if desired. A heading has been added to clarify that the variable paragraph for coinsurance, deductibles and lifetime maximum applies to both inpatient and outpatient benefits.

Section 26.27(b), Figure 33. A commenter asked whether the word "eligible employee" on page 8 of this figure has the same meaning as "eligible employee" in the definitions section of the contract. The commenter suggested including an exclusion for infertility services "unless provided by rider." This commenter also suggested including an exclusion on drug and alcohol abuse services "unless provided by rider." Agency Response: "Eligible employee" has the same meaning in this figure as in the definitions section of the contract. An exclusion for Infertility Services "Unless Provided by Rider" is already in the HMO Plan. Refer to Figure 33, under "Services Not Covered," Exclusion Number 11. The agency agrees that an exclusion for drug and alcohol abuse services "unless such coverage is provided by rider" is necessary and has revised the HMO Plan accordingly.

Section 26.27(b), Figure 34. A commenter suggested that the HMO Plan provide for a range of contract year copayments maximums because this would make the plan more cost effective. This commenter also recommended specific levels of coverage for Hospice Care and Skilled Nursing Care to be added to the HMO Plan as alternatives to hospitalization and that definitions for these benefits be included. Agency Response: The agency agrees that a range of contract year copayment maximums makes the HMO Plan more flexible and has revised the HMO Plan accordingly. The agency disagrees with requiring certain levels of coverage for Hospice Care and Skilled Nursing Care. These benefits may be added to the HMO Plan by rider pursuant to §26.14(i)(3)(D). The agency deleted a sentence from Item H in this figure relating to payment for emergency care services to make the provision consistent with §11.204(20) of this title (relating to Contents of an Application for Certificate of Authority).

Section 26.27(b), Figures 36, 37, 38 and 39. A commenter stated that a way to keep cost of the HMO Plan down is to add a clause to all four riders as follows: "Copayment(s) do not apply toward the basic policy Copayment Maximum. " Agency Response: The agency agrees and has made this change.

Section 26.27(b), Figure 36. A commenter suggested that the copayment maximum for the Prescription Drugs Rider be increased from $15 to $20. Agency Response: The agency disagrees. The agency believes that a copayment increase in the Prescription Drugs Rider would result in a proportionately larger reduction in this benefit so that the benefit realized would be less favorable.

Section 26.27(b), Figure 37. A commenter requested that the Drug and Alcohol Abuse Benefit Rider establish inpatient treatment limits ranging from five-15 days per contract year and outpatient limits ranging from five-ten visits per contract year. The commenter also suggested that the Drug and Alcohol Abuse Benefit Rider should provide for alternatives to inpatient hospital treatment consisting of care received in either an approved residential drug or alcohol abuse treatment program or in an approved drug and or alcohol day treatment program. Agency Response: The agency disagrees. Additional limits for inpatient and outpatient benefits are not needed in this rider, as this language would give rise to differential benefit levels for inpatient and outpatient services. Small employer carriers are not precluded, however, from offering coverage for such services which are more favorable than the benefits available under the HMO Plan by rider, pursuant to Insurance Code, Article 26.42(b).

Section 26.27(b), Figure 38. A commenter suggests that a contract year maximum benefit of $5,000 should be added to the Infertility Benefit Rider for the HMO Small Employer Prototype. Agency Response: The agency agrees that a maximum benefit should be added. Research suggests that the costs for diagnostic testing ranges from $3,000 to $5,000 and that costs for in vitro fertilization services range from $5,000 to $10,000 per occurrence. As such, the agency has revised the Infertility Benefit Rider to provide a maximum benefit of $10,000 per contract year.

Section 26.27(b), Figure 39. Some commenters suggested that individuals covered by the HMO Plan should not receive more restrictive mental health benefits than individuals covered by the indemnity plans and requested that the Mental Health Benefit Rider be expanded to provide the same coverage for medically necessary outpatient and inpatient treatment of mental illness that is provided by the indemnity plan rider. Agency Response: The agency agrees and has revised the Mental Health Benefit Rider to be consistent with the mental health benefits made available through the indemnity plans.

For: Individual commenter. For with changes: American National Insurance Company, Blue Cross Blue Shield of Texas, Business Insurance Consumers Association of Texas, Harris Methodist Health System, Insurance Alliance of America, Kaiser Permanente, Office of Public Insurance Counsel, Pan American Life Insurance Company, Small Business United, Texas Association for Home Health Care, Texas Association of Health Underwriters, Texas Association of Insurance Officials, and The Disability Policy Consortium.

The amendments and new sections are adopted under the Insurance Code, Chapter 26; Articles 1.03A and 3.96-3 and the Government Code, §§2001.004 et seq (Administrative Procedure Act). Insurance Code, Chapter 26, as amended by the 74th Legislature, establishes the requirements for small employer health benefit plans, including, but not limited to, guaranteed issue and renewability of such health plans; contribution and participation; rating , disclosure, filing and reporting requirements; mandated policy provisions; standard benefit plans; exclusions and limitations; waiting and affiliation periods; pre-existing conditions and fair marketing provisions. Insurance Code, Article 26.04 authorizes the Commissioner of Insurance to adopt rules to implement Chapter 26. Insurance Code, Article 26.75 authorizes the commissioner to adopt rules setting forth additional standards to provide for the fair marketing and broad availability of small employer health benefit plans. Insurance Code, Article 3.96-3, as enacted by the 74th Legislature in Senate Bill 793 establishes requirements for the enrollment of a child whose parent, eligible for dependent health coverage, is required by a court or administrative order to provide health coverage for the child. Insurance Code, Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance. The Government Code, §§2001.004 et seq authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and prescribes the procedures for adoption of rules by a state administrative agency.

§26.4. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Actuary–A qualified actuary who is a member in good standing of the American Academy of Actuaries.

Affiliated employer–A person connected by commonality of ownership with a small employer. The term includes a person that owns a small employer, shares directors with a small employer, or is eligible to file a consolidated tax return with a small employer.

Affiliation period–A period of time established by a small employer carrier not to exceed 90 days for new enrollees and not to exceed 180 days for late enrollees during which premiums are not collected and the issued coverage is not effective.

Agent–A person who may act as an agent for the sale of a health benefit plan under a license issued under the Insurance Code, Article 20A.15 or 20A.15A, or under the Insurance Code, Chapter 21, Subchapter A.

Base premium rate–For each class of business and for a specific rating period, the lowest premium rate that is charged or that could be charged under a rating system for that class of business by the small employer carrier to small employers with similar case characteristics for small employer health benefit plans with the same or similar coverage.

Case characteristics–With respect to a small employer, the geographic area in which that employer's employees reside, the age and gender of the individual employees and their dependents, the appropriate industry classification as determined by the small employer carrier, the number of employees and dependents, and other objective criteria as established by the small employer carrier that are considered by the small employer carrier in setting premium rates for that small employer. The term does not include claim experience, health status, duration of coverage since the date of issuance of a health benefit plan, or whether a covered person is or may become pregnant.

Child–An unmarried natural child of the employee, including a newborn child; adopted child, including a child whom the employee is seeking to adopt; natural child or adopted child of the employee's spouse, provided that the child resides with the employee.

Class of business–All small employers or a separate grouping of small employers established under the Insurance Code, Chapter 26.

Commissioner–The commissioner of insurance.

Department–The Texas Department of Insurance.

Dependent–A spouse; newborn child; child under the age of 19 years; child who is a full-time student under the age of 23 years and who is financially dependent on the parent; child of any age who is medically certified as disabled and dependent on the parent; and any person who must be covered under the Insurance Code, Article 3.51-6, §3D or §3E, or the Insurance Code, Article 3.70-2(L).

Eligible employee–An employee who works on a full-time basis and who usually works at least 30 hours a week. The term includes a sole proprietor, a partner, and an independent contractor, if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. The term does not include:

(A) an employee who works on a part-time, temporary, seasonal or substitute basis; or

(B) an employee who is covered under:

(i) another health benefit plan;

(ii) a self-funded or self-insured employee welfare benefit plan that provides health benefits and that is established in accordance with the Employee Retirement Income Security Act of 1974 (29 United States Code, §§1001, et seq);

(iii) the Medicaid program if the employee elects not to be covered;

(iv) another federal program, including the CHAMPUS program or Medicare program, if the employee elects not to be covered; or

(v) a benefit plan established in another country if the employee elects not to be covered.

Franchise insurance policy–An individual health benefit plan under which a number of individual policies are offered to a selected group of a small employer. The rates for such a policy may differ from the rate applicable to individually solicited policies of the same type and may differ from the rate applicable to individuals of essentially the same class.

HMO–A health maintenance organization subject to Insurance Code, Chapter 20A.

Health benefit plan–A group, blanket, or franchise insurance policy, a certificate issued under a group policy, a group hospital service contract, or a group subscriber contract or evidence of coverage issued by a health maintenance organization that provides benefits for health care services. The term does not include the plans or coverage excluded under the Insurance Code, Article 26.02(9)(A)(P), as follows:

(A) accident-only insurance coverage;

(B) credit insurance coverage;

(C) disability insurance coverage;

(D) specified disease coverage or other limited benefit policies;

(E) coverage of Medicare services under a federal contract;

(F) Medicare supplement and Medicare Select policies regulated in accordance with federal law;

(G) long-term care insurance coverage;

(H) coverage limited to dental care;

(I) coverage limited to care of vision;

(J) coverage provided by a single-service health maintenance organization;

(K) insurance coverage issued as a supplement to liability insurance;

(L) insurance coverage arising out of a workers' compensation system or similar statutory system;

(M) automobile medical payment insurance coverage;

(N) jointly managed trusts authorized under 29 United States Code, §§141 et seq that contain a plan of benefits for employees that is negotiated in a collective bargaining agreement governing wages, hours, and working conditions of the employees that is authorized under 29 United States Code, §157;

(O) hospital confinement indemnity coverage; or

(P) reinsurance contracts issued on a stop-loss, quota-share, or similar basis.

Health carrier–Any entity authorized under the Insurance Code or another insurance law of this state that provides health insurance or health benefits in this state including an insurance company, a group hospital service corporation under the Insurance Code, Chapter 20, a health maintenance organization under the Texas Health Maintenance Organization Act (the Insurance Code, Chapter 20A), and a stipulated premium company under the Insurance Code, Chapter 22.

Index rate–For each class of business as to a rating period for small employers with similar case characteristics, the arithmetic average of the applicable base premium rate and corresponding highest premium rate.

Late enrollee–An eligible employee or dependent who requests enrollment in a small employer's health benefit plan after the expiration of the initial enrollment period established under the terms of the first plan for which that employee or dependent was eligible through the small employer or after the expiration of an open enrollment period under Insurance Code, Article 26.21(h). An eligible employee or dependent is not a late enrollee if:

(A) the individual:

(i) was covered under another employer health benefit plan at the time the individual was eligible to enroll;

(ii) declines in writing, at the time of initial eligibility, stating that coverage under another employer health benefit plan was the reason for declining enrollment;

(iii) has lost coverage under another employer health benefit plan as a result of the termination of employment, the termination of the other plan's coverage, the death of a spouse, or divorce; and

(iv) requests enrollment not later than the 31st day after the date on which coverage under another employer health benefit plan terminates;

(B) the individual is employed by an employer who offers multiple health benefit plans and the individual elects a different health benefit plan during an open enrollment period; or

(C) a court has ordered coverage to be provided for a spouse or minor child under a covered employee's plan; and

(i) for coverage to be provided for a spouse, a request for enrollment is made not later than the 31st day after the date on which the court order is issued; or

(ii) for coverage to be provided for a child, a request for enrollment is made not later than the 31st day after the date the employer receives notification of the court order.

Limited benefit policy–For purposes of this chapter and the Insurance Code, Chapter 26, only, this term means a policy of accident and sickness insurance:

(A) that provides for payment of benefits only upon the occurrence of certain contingencies, such as cancer or other specified disease, in contrast to policies covering all contingencies other than those excluded, or coverage, including, but not limited to, CHAMPUS supplements or intensive care, sold to supplement other coverage in force; or

(B) that provides only the type of coverage set forth in §3.3071 of this title (relating to Minimum Standards for Basic Hospital Expense Coverage), §3.3072 of this title (relating to Minimum Standards for Basic Medical Surgical Expense Coverage), or §3.3075 of this title (relating to Minimum Standards for Disability Income Protection Coverage), where the policy fails to meet the minimum standards as provided in those sections; and

(C) a policy will not be deemed to be a limited benefit policy:

(i) solely due to a deductible in excess of the minimum standard provided in §3.3071(4) of this title (relating to Minimum Standards for Basic Hospital Expense Coverage); or

(ii) if it provides any coverage or benefit in addition to or other than the coverage and benefits set out respectively in §§3.3071, 3.3072, or 3.3075 of this title.

New entrant–An eligible employee, or the dependent of an eligible employee, who becomes part of a small employer group after the initial period for enrollment in a health benefit plan. After the initial enrollment period, this includes any employee or dependent who becomes eligible for coverage and who is not a late enrollee.

New business premium rate–For each class of business as to a rating period, the lowest premium rate that is charged or offered or that could be charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued small employer health benefit plans that provide the same or similar coverage.

Person–An individual, corporation, partnership, association, or other private legal entity.

Point-of-service contract–A benefit plan offered through a health maintenance organization that:

(A) includes corresponding indemnity benefits in addition to benefits relating to out-of-area or emergency services provided through insurers or group hospital corporations; and

(B) permits the insured to obtain coverage under either the health maintenance organization conventional plan or the indemnity plan as determined in accordance with the terms of the contract.

Policy year–For purposes of the Insurance Code, Chapter 26, and this chapter, a 365-day period that begins on the policy's effective date or a period of one full calendar-year, under a health benefit plan providing coverage to small employers and their employees, as defined in the policy. Small employer carriers must use the same definition of policy year in all small employer health benefit plans.

Pre-existing condition provision–A provision that denies, excludes, or limits coverage as to a disease or condition for a specified period after the effective date of coverage.

Premium–All amounts paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with a health benefit plan.

Rating period–A calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

Renewal date–For each small employer's health benefit plan, the earlier of the date (if any) specified in such plan (contract) for renewal; the policy anniversary date; or the date on which the small employer's plan is changed. A change in the premium rate due solely to the addition or deletion of an employee or dependent if the deletion is due to a request by the employee, death or retirement of the employee or dependent, termination of employment of the employee, or because a dependent is no longer eligible is not considered a renewal date. For association or multiple employer trusts group health benefit plans, small employer carriers may use the date specified for renewal or the policy anniversary date, of either the master contract or the contract or certificate of coverage of each small employer in the association or trust, in determining the renewal date. Small employer carriers must use the same method of determining renewal dates for all small employer health benefit plans.

Risk characteristic–The health status, claims experience, duration of coverage, or any similar characteristic related to the health status or experience of a small employer group or of any member of a small employer group.

Risk load–The percentage above the applicable base premium rate that is charged by a small employer carrier to a small employer to reflect the risk characteristics of the small employer group.

Small employer–A person that is actively engaged in business and that, on at least 50% of its working days during the preceding calendar year, employed at least three but not more than 50 eligible employees, including the employees of an affiliated employer, the majority of whom were employed in this state.

Small employer carrier–A health carrier, to the extent that health carrier is offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 26, under Article 26.06(a).

Small employer health benefit plan–A plan developed by the commissioner under the Insurance Code, Chapter 26, Subchapter E, or any other health benefit plan offered to a small employer under the Insurance Code, Article 26.42(c) or Article 26.48;

Standard benefit plans–The basic coverage benefit plan and the catastrophic care benefit plan required to be offered by health carriers, excluding HMOs, under the Insurance Code, Chapter 26, Subchapter E. For HMOs, the standard benefit plan means the prototype small employer group health benefit plan that may be offered by an HMO, as provided under the Insurance Code, Chapter 26, Subchapter E.

Waiting period–A period of time, established by a small employer, during which a new employee is not eligible for coverage and which cannot exceed 90 days from the first day of employment.

§26.5. Applicability and Scope.

(a) Except as otherwise provided in this chapter, this chapter shall apply to any health benefit plan providing health care benefits covering three or more eligible employees of a small employer, whether provided on a group or individual franchise basis, regardless of whether the policy was issued in this state, if the plan:

(1) meets one of the following conditions:

(A) a portion of the premium or benefits is paid by a small employer; or

(B) the health plan is treated by the employer or by a covered individual as part of a plan or program for the purposes of 26 United States Code, §106 or §162;

(2) is issued on or after September 1, 1993.

(b) Except as provided by Insurance Code, Article 26.06(a) or subsection (a) of this section, this chapter does not apply to an individual health insurance policy that is subject to individual underwriting, even if the premium is remitted through a payroll deduction method.

(c) Health benefit plans issued prior to September 1, 1993, to small employers and/or employees of a small employer, including franchise insurance policies, shall not be required to be amended to comply with the provisions of the Insurance Code, Chapter 26, and this chapter; except that a premium rate for a rating period may only exceed the ranges set forth in the Insurance Code, Articles 26.32 and 26.33, until September 1, 1995, and such rate shall be calculated, as provided in the Insurance Code, Article 26.34.

(d) While franchise insurance policies issued prior to September 1, 1993, to small employers and/or their employees do not have to comply with the provisions of the Insurance Code, Chapter 26, and this chapter, other than the provisions relating to rates referred to in subsection (b) of this section; policies written for individuals after that date must comply with the provisions of the Insurance Code, Chapter 26, and this chapter, even if the employer has an existing franchise policy.

(e) Health benefit plans issued to small employers and their employees on or after September 1, 1993, and prior to January 1, 1994:

(1) that are specifically offered, marketed, represented, issued, or delivered as "small employer health benefit plans" during this timeframe shall comply with all provisions of the Insurance Code, Chapter 26, when issued or renewed, and shall be amended to comply with all provisions of this chapter no later than January 1, 1994;

(2) that are not specifically offered, marketed, represented, issued or delivered as "small employer health benefit plans" during this timeframe shall be amended to comply with all provisions of the Insurance Code, Chapter 26, and this chapter, on the first renewal date occurring on or after January 1, 1994.

(f) Health benefit plans that are offered, marketed, represented, issued, or delivered for issue to small employers and their employees, on and after January 1, 1994, shall comply with all provisions of the Insurance Code, Chapter 26, and this chapter beginning January 1, 1994.

(g) Health benefit plans that are offered, marketed, represented, issued or delivered for issue to small employers and their employees on or after September 1, 1993 but before June 1, 1996, must comply with Insurance Code, Chapter 26 as amended by the 74th Legislature and with amendments to this chapter to be adopted January 1, 1996, beginning on the first renewal date of the health benefit plan following June 1, 1996. Small employer carriers may voluntarily comply with the amendments to Insurance Code, Chapter 26 and to this chapter for health benefit plans offered, marketed, represented, issued or delivered for issue or renewed after the effective date of the amendments to this chapter but before June 1, 1996. This section does not permit a small employer carrier to cancel or nonrenew a small employer health benefit plan, including a standard benefit plan, issued before June 1, 1996; however, if the small employer currently was issued a standard benefit plan, the small employer carrier shall give the small employer notice of the standard benefit plans provided for by this chapter as amended at least 30 days prior to the first renewal date. Small employer carriers may use Form Number 369 SUMM provided at Figure 41 of §26.27(b) of this title (relating to Appendix) to provide the required notice.

(h) Beginning on June 1, 1996, health benefit plans that are offered, marketed, represented, issued or delivered for issue to small employers and their employees on or after June 1, 1996, shall comply with all provisions of the Insurance Code, Chapter 26 as amended by the 74th Legislature, and with amendments to this chapter to be adopted January 1, 1996.

(i) If a health carrier continues to provide coverage to small employers and their employees under existing health benefit plans and elects not to continue to offer, deliver, or issue for delivery health benefit plans to small employers and their employees, the health carrier will only be considered a small employer carrier for purposes of renewing such existing plans. In this case, the health carrier shall notify the small employer of certain information. The notice shall be provided at least 30 days prior to the first renewal date occurring on or after January 1, 1994, except for renewal dates occurring prior to March 1, 1994, and for those renewal dates, the notice shall be given as soon as possible before the renewal date. The notice shall state that:

(1) the health carrier (the current health carrier of the small employer's employee health benefit plans) has elected not to continue to offer new health benefit plans in the small employer market; and

(2) other health benefit plans may be available to the small employer through other small employer carriers and that such other plans should be compared against existing plans to determine which plan is more beneficial.

(j) If a health carrier continues to provide coverage to small employers and their employees under existing health benefit plans and elects to continue to offer, issue, and issue for delivery health benefit plans to small employers and their employees, the health carrier shall notify the small employer of certain information. The notice shall be provided at least 30 days prior to the first renewal date occurring on or after January 1, 1994, except for renewal dates occurring prior to March 1, 1994, and for those renewal dates, the notice shall be given as soon as possible before the renewal date. The notice shall:

(1) offer the small employer the option of continuing the existing health benefit plan or plans or purchasing new small employer benefit plans in accordance with the Insurance Code, Chapter 26, and this chapter; and

(2) provide notice that such other plans should be compared against existing plans to determine which plan is more beneficial.

(k) The provisions of the Insurance Code, Chapter 26, and this chapter shall apply to a health benefit plan provided to a small employer or to the employees of a small employer without regard to whether the health benefit plan is offered under or provided through a group policy or trust arrangement of any size sponsored by an association or discretionary group.

(l) If a small employer or the employees of a small employer are issued a health benefit plan under the provisions of the Insurance Code, Chapter 26, and this chapter, and the small employer subsequently employs more than 50 eligible employees or less than three eligible employees, the provisions of the Insurance Code, Chapter 26, and this chapter shall continue to apply to that particular health plan. A health carrier providing coverage to such an employer shall, within 60 days of becoming aware that the employer has more than 50 eligible employees or less than three eligible employees, but not later than the first renewal date occurring after the small employer has ceased to be a small employer, notify the employer that the protections provided under the Insurance Code, Chapter 26, and this chapter shall cease to apply to the employer, if such employer fails to renew its current health benefit plans or elects to enroll in a different health benefit plan.

(m) If a health benefit plan is issued on or after September 1, 1993, to an employer that is not a small employer as defined in the Insurance Code, Chapter 26, but subsequently the employer becomes a small employer, the provisions of the Insurance Code, Chapter 26, and this chapter shall apply to the health benefit plan on the first renewal date on or after January 1, 1994. An employer may become a small employer due to several reasons, including, but not limited to, the loss or change of work status of one or more employees, or the employer has moved to this state from another state and has a health benefit plan that was issued in the other state. The health carrier providing a health benefit plan to such an employer:

(1) shall not be considered to have elected to offer, issue, or issue for delivery health benefit plans to small employers under the provisions of the Insurance Code, Chapter 26, and this chapter solely because the health carrier continues to provide coverage under the health benefit plan to the employer and employees of the employer; however, for purposes of such existing health benefit plans, the health carrier will be considered a small employer carrier; and

(2) shall, within 60 days of becoming aware that the employer has 50 or fewer eligible employees, notify the small employer of the options that will be available to the small employer under the Insurance Code, Chapter 26, and this chapter, including the small employer's option to purchase a small employer health benefit plan from the employer's current health carrier, if the carrier is offering such coverage, or from any small employer carrier currently offering small employer coverage in this state.

(n) If a small employer has employees in more than one state, the provisions of the Insurance Code, Chapter 26, and this chapter shall apply to a health benefit plan issued to the small employer if:

(1) the majority of eligible employees of such small employer are employed in this state on the issue date or renewal date; or

(2) the primary business location of the small employer is in this state on the issue date or renewal date and no state contains a majority of the eligible employees of the small employer.

§26.6. Status of Health Carriers as Small Employer Carriers and Geographic Service Area.

(a) No later than December 15, 1993, each health carrier providing health benefit plans in this state shall make a filing with the commissioner indicating whether the health carrier will or will

not offer, renew, issue, or issue for delivery health benefit plans to small employers in this state as defined in the Insurance Code, Chapter 26, and this chapter. The required filing shall include the certification form provided at Figure 40 of §26.27(b) of this title (relating to Appendix) (Form Number 369 CERT SEHC STATUS) completed according to the carrier's status and shall at least provide a statement to the effect of one of the following:

(1)-(4) (No change.)

(b) After December 15, 1993, if a health carrier chooses to change its election under subsection (a)(1), (2), or (4) of this section, the health carrier shall notify the commissioner of its new election at least 30 days prior to the date the health carrier intends to begin operations under the new election. This notification shall be made on Form Number 369 CERT SEHC STATUS provided at Figure 40 of §26.27(b) of this title (relating to Appendix).

(c) Upon election to become a small employer carrier, the health carrier shall establish geographic service areas within which the health carrier reasonably anticipates it will have the capacity to deliver services adequately to small employers in each established geographic service area. The geographic service areas shall be defined in terms of counties or zip codes, to the extent possible, and shall be submitted in conjunction with any filing of a small employer health benefit plan. If the service area cannot be defined by counties or zip code, a map which clearly shows the geographic service areas is required to be submitted in conjunction with the filing of the small employer health benefit plan. Service areas by zip code shall be defined in a non-discriminatory manner and in compliance with the Insurance Code, Articles 21.21-6 and 21.21-8 . If the geographic service area of the carrier is the entire state, the carrier shall define the service area as the State of Texas and no other definition is necessary.

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

§26.7. Requirement To Insure Entire Groups.

(a) A small employer carrier that offers coverage to a small employer and its employees shall offer to provide coverage to each eligible employee and to each dependent of an eligible employee. Except as provided in subsection (b) of this section, the small employer carrier shall provide the same health benefit plan to each such employee and dependent.

(b) If elected by the small employer, a small employer carrier may offer the eligible employees of a small employer the option of choosing among one or more health benefit plans, provided that each eligible employee may choose any of the plans offered. Except as provided in the Insurance Code, Article 26.21 and Article 26.49 (with respect to exclusions for pre-existing conditions), the choice among benefit plans may not be limited, restricted, or conditioned based upon the risk characteristics of the eligible employees or their dependents.

(c) A small employer carrier may require each small employer that applies for coverage, as part of the application process, to provide a complete list of eligible employees and dependents of eligible employees as defined in the Insurance Code, Article 26.02. If the small employer carrier requires such list, then the carrier may also require the small employer to provide reasonable and appropriate supporting documentation (such as a W-2 Summary Wage and Tax Form) to verify the information required under this subsection. A determination of eligibility shall be made within five business days of receipt of any requested documentation.

(d)-(f) (No change.)

(g) New entrants in a health benefit plan issued to a small employer group on or after September 1, 1993, shall be offered an opportunity to enroll in the health benefit plan currently held by such employer group or shall be offered an opportunity to enroll in the health benefit plan if the plan is provided through an individual franchise policy or more than one plan is available. If a small employer carrier has offered more than one health benefit plan to eligible employees of a small employer group pursuant to subsection (b) of this section, the new entrant shall be offered the same choice of health benefit plans as the other employees (members) in the group. A new entrant that does not exercise the opportunity to enroll in the health benefit plan within the period provided by the small employer carrier may be treated as a late enrollee by the health carrier, provided that the period provided to enroll in the health benefit plan complies with subsection (h) of this section.

(h) Periods provided for enrollment in and application for any health benefit plan provided to a small employer group shall comply with the following:

(1) the enrollment period extends at least 31 days after the date the new entrant begins employment or if the waiting period exceeds 31 days, at least 31 days after the date the new entrant becomes eligible for coverage;

(2) the new entrant is notified of his or her opportunity to enroll at least 31 days in advance of the last date enrollment is permitted;

(3) a period of at least 31 days following the date of employment, or following the date the new entrant is eligible for coverage, is provided during which the new entrant's application for coverage may be submitted and;

(4) an open enrollment period of at least 31 days is provided on an annual basis.

(i) A small employer carrier shall not apply a waiting period, affiliation period, elimination period, or other similar limitation of coverage (other than an exclusion for pre-existing medical conditions consistent with the Insurance Code, Article 26.21 and Article 26.49), with respect to a new entrant, that is longer than 90 days. Any waiting period applied to a new entrant shall be based on the waiting period established by the small employer.

(j)-(m) (No change.)

(n) The opportunity to enroll shall meet the following requirements.

(1) (No change.)

(2) Eligible employees and dependents of eligible employees who are provided an opportunity to enroll pursuant to this section shall be treated as new entrants. Premium rates related to such individuals shall be set in accordance with subsection (k) of this section.

(3)-(4) ((No change.)

§26.9. Exclusions, Limitations, Waiting Periods, Affiliation Periods and Pre-existing Conditions and Restrictive Riders.

(a) All health benefit plans that provide coverage for small employers and their employees as defined in the Insurance Code, Article 26.02(21), and §26.4 of this title (relating to Definitions) shall comply with the following requirements:

(1) A small employer carrier shall not exclude any eligible employee or dependent (including a late enrollee, who would otherwise be covered under a small employer's health benefit plan), except to the extent permitted under the Insurance Code, Article 26.21(k).

(2) ((No change.)

(3) A small employer health benefit plan may not limit or exclude initial coverage of a newborn child of a covered employee. Any coverage of a newborn child of an employee under this subsection terminates on the 32nd day after the date of the birth of the child unless:

(A) dependent children are eligible for coverage; and

(B) notification of the birth and any required additional premium are received by the small employer carrier not later than the 31st day after the date of birth. A small employer carrier shall not terminate coverage of a newborn child if such carrier's billing cycle does not coincide with this 31-day premium payment requirement, until the next billing cycle has occurred and there has been nonpayment of the additional required premium, within 30 days of the due date of such premium.

(4) A late enrollee may be excluded from coverage until the next annual open enrollment period and may be subject to a 12-month pre-existing condition provision as described by the Insurance Code, Article 26.49.

(5) A pre-existing condition provision in a small employer health benefit plan may not apply to coverage for a disease or condition other than a disease or condition for which medical advice, diagnosis, care, or treatment was recommended or received during the six months before the effective date of coverage.

(6) A pre-existing condition provision in a small employer health benefit plan shall not apply to an individual who was continuously covered for a minimum period of 12 months by a health benefit plan that was in effect up to a date not more than 60 days before the effective date of coverage under the small employer health benefit plan, excluding any waiting period.

(7) (No change.)

(8) A small employer may establish a waiting period that cannot exceed 90 days from the first day of employment during which a new employee is not eligible for coverage. Upon completion of the waiting period and enrollment within the time frame allowed by §26.7(h) of this title (relating to Requirement to Insure Entire Groups), coverage must be effective no later than the next premium due date following enrollment. Coverage may be effective at an earlier date as agreed upon by the small employer and the small employer carrier.

(9) A carrier that does not use a pre-existing condition provision in any of its health benefit plans may impose an affiliation period in a small employer health benefit plan not to exceed 90 days for new entrants and not to exceed 180 days for late enrollees during which premiums are not collected and the issued coverage is not effective.

(10) The imposition by a carrier of an affiliation period does not preclude application of any waiting period applicable to all new entrants under a health benefit plan; however, any affiliation period may not exceed 90 days and must be used in lieu of a pre-existing condition provision.

(11) An affiliation period provision in a small employer health benefit plan shall not apply to an individual who would not be subject to a pre-existing condition limitation in accordance with paragraphs (6) and (7) of this section.

(b) In order to determine if pre-existing conditions as defined in the Insurance Code, Article 26.02(16), exist, a small employer carrier shall ascertain the source of previous or existing coverage of each eligible employee and each dependent of an eligible employee at the time such employee or dependent initially enrolls into the health benefit plan provided by the small employer carrier. The small employer carrier shall have the responsibility to contact the source of such previous or existing coverage to resolve any questions about the benefits or limitations related to such previous or existing coverage.

§26.11. Restrictions Relating to Premium Rates.

(a)-(g) (No change.)

(h) An HMO participating in a purchasing cooperative that provides employees of small employers a choice of benefit plans, that has established a separate class of business as provided by the Insurance Code, Article 26.31 and that has established a separate line of business as provided under the Insurance Code, Article 26.48 (a) and 42 United States Code, §§300e et seq may use rating methods in accordance with this subchapter that are used by other small employer carriers participating in the same purchasing cooperative, including rating by age and gender. This subsection applies to all employer health benefit plans offered, issued or delivered for issue to small employers and their employees on or after September 1, 1995.

§26.13. Rules Related to Fair Marketing.

(a) (No change.)

(b) Each small employer that has expressed an interest in purchasing a small employer health benefit plan shall be given a written summary of the standard benefit plans. The summary shall be in a readable and understandable format and shall include a clear, complete and accurate description of these items in the following order: lifetime maximums; deductibles, coinsurance maximums and percentages payable; benefits provided; limitations and exclusions and riders that must be offered. To assure that small employers are fully aware that the Basic Coverage Benefit Plan does not cover organ transplants, small employer carriers, other than HMOs, electing not to utilize Figure 41, shall reference this difference in the summary which is prepared and shall appear in bold print. Small employer carriers other than HMOs may use Form Number 369 SUMM at Figure 41 of §26.27(b) of this title (relating to Appendix) to meet the requirements of this subsection. HMOs shall use the disclosure format required by §11.1600 of this title (relating to Information to Prospective Group Contract Holders and Enrollees) to meet the requirements of this subsection.

(c) A small employer carrier shall offer the standard benefit plans to each small employer who inquires about purchasing a small employer health benefit plan and shall, upon request, explain each of the plans to the small employer. A small employer carrier, other than an HMO, shall offer and explain the basic coverage benefit plan and the catastrophic care benefit plan. An HMO shall offer and explain the small employer health benefit plans that the HMO has filed for use in the small employer market. The offer may be provided directly to the small employer or delivered through an agent. The offer shall be in writing and shall include at least the following information:

(1) information describing how the small employer may enroll in the plans; and

(2) information set out in the Insurance Code, Article 26.40 and §26.12 of this chapter.

(d) A small employer carrier shall provide a price quote to a small employer (directly or through an authorized agent) within ten working days of receiving a request for a quote and such information as is necessary to provide the quote. A small employer carrier shall notify a small employer (directly or through an authorized agent) within five working days of receiving a request for a price quote of any additional information needed by the small employer carrier to provide the quote.

(e) A small employer carrier, other than an HMO, shall not apply more stringent or detailed requirements related to the application process for the standard benefit plans, including the basic coverage benefit plan and the catastrophic coverage benefit plan than are applied for other health benefit plans offered by the health carrier to small employers. An HMO shall not apply more stringent or detailed requirements related to the application process for the

prototype small employer group health benefit plan than are applied for other health benefit plans offered by the HMO to small employers.

(f) If a small employer carrier denies coverage under a health benefit plan to a small employer on any basis, the denial shall be in writing and shall state with specificity the reasons for the denial (subject to any restrictions related to confidentiality of medical information.

(g) A small employer carrier shall establish and maintain a means to provide information to small employers who request information on the availability of small employer health benefit plans in this state. The information provided to small employers shall at least include information about how to apply for coverage from the health carrier and may include the names and phone numbers of agents located geographically proximate to the caller or such other information that is reasonably designed to assist the caller to locate an authorized agent or to otherwise apply for coverage.

(h) The small employer carrier shall not require a small employer to join or contribute to any association or group as a condition of being accepted for coverage by the small employer carrier, except that, if membership in an association or other group is a requirement for accepting a small employer into a particular health benefit plan, a small employer carrier may apply such requirement, subject to the requirements of the Insurance Code, Chapter 26.

(i) A small employer carrier may not require, as a condition to the offer or sale of a health benefit plan to a small employer, that the small employer purchase or qualify for any other insurance product or service.

(j) Health carriers offering individual and group health benefit plans in this state shall be responsible for determining whether the plans are subject to the requirements of the Insurance Code, Chapter 26, and this chapter. Health carriers shall elicit the following information from applicants for such plans at the time of application:

(1) whether or not any portion of the premium will be paid by a small employer; and

(2) whether or not the prospective policyholder, certificate holder, or any prospective insured individual intends to treat the health benefit plan as part of a plan or program under §162 or §106 of the United States Internal Revenue Code of 1986 (26 United States Code, §106 or §162).

(k) If a health carrier fails to comply with subsection (j) of this section, the health carrier shall be deemed to be on notice of any information that could reasonably have been attained if the health carrier had complied with subsection (i) of this section.

§26.14. Coverage.

(a) Until June 1, 1996, every small employer carrier, except HMOs, shall, as a condition of transacting business in this state with small employers, offer to small employers at least three standard benefit plans, including the preventive and primary care benefit plan, the in-hospital benefit plan, and the standard health benefit plan, as provided under the Insurance Code, Articles 26.42-26.49, unless a small employer carrier elects to offer the two standard benefit plans prescribed by this chapter as amended. After June 1, 1996, every small employer carrier, except HMOs, shall, as a condition of transacting business in this state with small employers, offer to small employers two standard benefit plans, the basic coverage benefit plan and the catastrophic care benefit plan, as provided under the Insurance Code, Articles 26.42, 26.43, 26.44, 26.44A, 26. 44B, 26.48, and 26.49.

(b) In addition to the standard benefit plans required to be offered to small employers as provided in the Insurance Code, Chapter 26, small employer carriers may, subject to the provisions of the Insurance Code, Article 26.42(c), and this chapter, offer other health benefit plans to small employers, as provided in the Insurance Code, Article 26.42(c). Such other health benefit plans shall comply with all provisions of the Insurance Code, Chapter 26, and this chapter, except that provisions defining the specific benefits required under the required standard benefit plans are not applicable. The Insurance Code, Article 26.06(c), does not apply to a health benefit plan offered to a small employer as provided under the Insurance Code, Article 26.42(c).

(c) Instead of the standard benefit plans described by this chapter, a health maintenance organization may offer a state-approved health benefit plan that complies with the requirements of Title XIII, Public Health Service Act (42 United States Code, §§300e, et seq) and rules adopted under that Act. An HMO may also offer the prototype small employer group health benefit plan.

(d) All small employer health benefit plans provided by a small employer carrier other than an HMO shall provide an option for conversion/continuation which complies with all provisions of Chapter 3, Subchapter F of this title (relating to Group Health Insurance Mandatory Conversion Privilege). An HMO shall provide coverage for conversion or continuation of any small employer health benefit plan which complies with the requirements of §11.506(7) or (8) of this title (relating to Mandatory Provisions: Group and Non-group Agreement and Group Certificate).

(e) Each health benefit plan, certificate, policy, rider, or application used by health carriers to provide coverage to small employers and their employees shall comply with the Insurance Code, Article 26.43; be written in plain language; and meet the requirements of Chapter 3, Subchapter G of this title (relating to Plain Language Requirements). Requirements for use of plain language are not applicable to a health benefit plan group master policy or a policy application or enrollment form for a health benefit plan group master policy.

(f) Every small employer carrier providing health benefit plans to small employers is required to offer dependent coverage to each employee. Dependent coverage may be paid for by the employer, the employee, or both.

(g) This section contains requirements for optional prototype policy forms. The policy forms described in this subsection are adopted by reference to complete a prototype policy and/or certificate when combined with the required prescribed benefit prototype policy forms outlined in this section. The prototype policy forms have been developed to facilitate implementation of the Insurance Code, Chapter 26, and to streamline the policy approval process. Small employer carriers are encouraged to use all of the prototype policy forms as described in this subsection to expedite the approval process. The forms referenced in this section can be found in §26. 27(b) of this title (relating to Appendix). Each form has a unique form number appearing in the lower left-hand corner and small employer carriers may use one or any number of the prototype forms. Alternate language, except for variables indicated by brackets, must be filed for review and approval under a different form number using 369 as part of the form number. Additional filing requirements are outlined in §26.19 of this title (relating to Filing Requirements).

(1) This paragraph describes group policy face pages. These prototype policies provide for the entire contract to include any applications, the certificate of insurance, and any attached riders. If the small employer carrier elects to use policies other than the prototype forms, this shell format shall be used with any small employer health benefit plan. Each policy face page, whether or not the prototype form is used, shall include the small employer carrier name and address; policyholder name (and industry, if used on a multiple employer trustee basis); policy number; policy effective date; provision for the entire contract to include applications, the certificate of insurance, and any attached riders; workers' compensa-

tion disclaimer notice; description of the policy in bold type as a small employer benefit plan; and the form number in the lower left hand corner. The policy face page for the prototype form shall contain the description of the plan in bold type as the Group Small Employer Basic Coverage Benefit Plan or the Group Small Employer Catastrophic Care Benefit Plan. The small employer carrier may include or omit the variable provision addressing the free look period. The group policy face pages for the prototype policies include the following:

(A) Group Small Employer Basic Coverage Benefit Plan (Form Number 369 SE.BASC) for a single employer policy;

(B) Group Small Employer Catastrophic Care Benefit Plan (Form Number 369 SE.CAT) for a single employer policy;

(C) Group Small Employer Basic Coverage Benefit Plan (Form Number 369 ASSN.BASC) for an association policy;

(D) Group Small Employer Catastrophic Care Benefit Plan (Form Number 369 ASSN.CAT) for an association policy;

(E) Group Small Employer Basic Coverage Benefit Plan (Form Number 369 MET.BASC) for a multiple employer trustee policy;

(F) Group Small Employer Catastrophic Care Benefit Plan (Form Number 369 MET.CAT) for a multiple employer trustee policy.

(2) The Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures Form (Form Number TOLLFREE) for group policies is described in this paragraph. This prototype form contains the language prescribed in §1.601 of this title (relating to Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures) and shall be attached as the second or third page of the policy and the certificate of insurance. The variable provisions are optional only to the extent outlined in §1.601 of this title.

(3) The group certificate of insurance face page is described in this paragraph. Each certificate of insurance face page, whether or not the prototype form is used, shall include the small employer carrier name and address; the certification provision; a provision that the certificate face page, all attached provisions, and any riders shall constitute the entire certificate of insurance; the workers' compensation disclaimer notice; a description of the plan in bold type as a small employer benefit plan; and the form number in the lower left hand corner. The certificate face page for the prototype form shall contain the description of the plan in bold type as the Group Small Employer Basic Coverage Benefit Plan or the Group Small Employer Catastrophic Care Benefit Plan. The identification information (Employee name, ID Number, Certificate Effective Date, Policyholder Name, Policy Number, Policy Effective Date, Dependent Coverage) is variable to the extent that small employer carriers may include all of the information in the certificate of insurance by any appropriate method, such as an insert or as a sticker on the face page or schedule of benefits or printed on the face page as provided in the prototype form. The dependent coverage information is variable for small employer carriers to insert a dependent coverage election. The variable replacement provision is an optional provision which carriers may include as provided in the prototype form or carriers may alter the language in any appropriate manner or may elect to omit the provision in its entirety. The group certificate of insurance face pages include the following:

(A) Certificate of Insurance Face Page for the Group Small Employer Basic Coverage Benefit Plan (Form Number 369 CERT.BASC);

(B) Certificate of Insurance Face Page for the Group Small Employer Catastrophic Care Benefit Plan (Form Number 369 CERT.CAT).

(4) The table of contents for group policies (Form Number 369 TCG) is described in this paragraph. The variable items shall be included or omitted as appropriate for the policy or certificate and page numbers shall be numbered accordingly. If the prototype table of contents is not used, the format and order shall be the same as provided in the prototype.

(5) The General Provisions Form for Group Policies (Form Number 369 GGP) may be used with all group small employer health benefit plans. If the prototype general provisions form is not used, each general provision with same or similar language shall be included in each policy/certificate. Variable language for the general provisions form are described as follows:

(A) The definition of an Eligible Employee under the Eligibility for Coverage (Employee Coverage) provision shall add that an "Eligible Employee also includes an Employee of an Employer member of an association" when the policy is to be issued to an association.

(B) The Initial Enrollment for New Eligible Employees provision under Effective Dates allows a variable for receipt of the application or enrollment form within 31 days of the:

(i) date of employment; or

(ii) completion of any waiting period established by the small employer. The length of time for the waiting period is also variable to allow flexibility for small employers to elect a period of time not to exceed 90 days. The reference to Affiliation Period is variable to the extent that it shall be omitted if the small employer carrier uses a pre-existing condition limitation in any of its health benefit plans or if the small employer carrier does not require an affiliation period.

(C) The Newborn Children provision under Effective Dates allows a variable to be included if the small employer carrier requires a premium to be charged for the 31-day period of coverage if the insured person elects not be continue coverage for the newborn child. If no premium will be charged, this provision shall be omitted.

(D) The Late Enrollees provision under Effective Dates shall include one of the two variable provisions to reflect the small employer carrier's election of either a pre-existing condition limitation or an affiliation period. The time periods are variable to allow a shorter period of time, if elected by the small employer carrier.

(E) The Pre-existing Conditions provision is variable only to the extent that it shall be omitted in its entirety if the small employer carrier elects not to impose a limitation for pre-existing conditions. If a pre-existing condition limitation applies, this provision shall be included in its entirety. The time period is variable to allow a shorter period of time if elected by the small employer carrier.

(F) The Affiliation Period provision is variable only to the extent that it shall be omitted in its entirety if the small employer carrier uses a pre-existing condition limitation in any of its health benefit plans or if the small employer carrier does not require an affiliation period. The time period is variable to allow a shorter period of time if elected by the small employer carrier.

(G) The Eligible Employees provision under Termination of Insurance allows variables for continued coverage for an employee who is on an approved leave of absence for a specified period of time to be inserted if the provision remains. This provision shall be included or omitted as appropriate.

(H) The Eligible Employees and Dependents provisions under Termination of Insurance allow a variable to be included if the policy contains a grace period.

(I) The Eligible Employees and Dependents provisions under Termination of Insurance allow variables for coverage to end on either "the date the Employer terminates participation in the Trust" which may be included when the policy is to be issued to a multiple employer trust; or "the date the Employer member terminates membership in the Association" which may be included when the policy is to be issued to an association.

(J) The Policyholder and Company provision under Termination of Insurance provides alternate provisions for termination by the Employer as Policyholder; termination by the Association as Policyholder; termination of participation by an Employer (member) under an Association policy, or termination of participation by an Employer under a Multiple Employer Trust policy. Provisions shall be included appropriately for a single employer policy, an association policy or a multiple employer trust policy.

(K) The Policyholder and Company provision under Termination of Insurance allows a variable to be included for the exception to nonpayment of premiums if a grace period is provided. If a grace period is not provided, the variable "Coverage will end at the end of the last period for which premium payment has been made to Us" shall be included. The policy shall contain a provision allowing for termination by the small employer carrier due to fraud or misrepresentation of a material fact by the "Policyholder or" Employer. The phrase "Policyholder or" shall be used when policies are issued to an association or to a multiple employer trust. A variable is allowed to be included if the small employer carrier will terminate the employer's plan for failure to maintain the required minimum participation requirements. A variable is allowed to be included if the small employer carrier will terminate the employer's plan due to failure of the employer to maintain status as a small employer as described in §26.5 of this title (relating to Applicability and Scope).

(6) The Group Provisions Form (Form Number 369 GRP) may be used with all group small employer health benefit plans. If the prototype Group Provisions form is not used, each provision with the same or similar language shall be included in each policy/certificate. Variable provisions for the Group Provisions form include the following:

(A) A variable is provided in the Payment of Premiums provision for the mode of premium to be inserted.

(B) The Time Limit on Certain Defenses provision allows a variable for Pre-existing Conditions only to the extent that it may be omitted in its entirety if the small employer carrier elects not to impose a limitation for pre-existing conditions. If a pre-existing condition limitation applies, this provision shall be included in its entirety. The time period is variable to allow a shorter period of time if elected by the small employer carrier.

(C) The alternate Time Limit on Certain Defenses provision is allowed to be used in policies that are underwritten as permitted by and in accordance with the Insurance Code, Article 26.21(d).

(D) The Payment to Assignee provision under Payment of Claims is variable only to the extent that Chapter 20 companies may substitute this provision for the alternate Assignment provision.

(E) The Grace Period provision is a variable to be included when a grace period is provided for the specified number of days as determined by the small employer carrier.

(F) Dividends, Right to Recovery/Clerical Error, and Subrogation provisions may be included, omitted, or modified by the small employer carrier. Right to Recovery/Clerical Error provisions shall be considered one provision for purposes of variability and both provisions shall be either included or omitted.

(7) Alternate Cost Containment Provisions for Large Case Management and Second Opinion Requirements (Form Number 369 ACC) are provided as optional provisions for all plans. Small employer carriers may use these provisions or modifications of these provisions. The reduction in Percentage Payable is variable but cannot be more than 50%. Other alternate cost containment provisions, including precertification, pre-authorization, case management and utilization review may be used. Penalties for noncompliance with cost containment provisions shall not reduce benefits more than 50% in the aggregate.

(h) Prescribed benefits are discussed in this subsection. No policy, subscriber contract or certificate shall be issued or delivered for issue in this state to a small employer by a small employer carrier as a Basic Coverage Benefit Plan or a Catastrophic Care Benefit Plan unless such policy, subscriber contract, or certificate contains the prescribed benefit provisions outlined in paragraphs (1)-(4) of this subsection.

(1) The Basic Coverage Benefit Plan is discussed in this paragraph. The forms which follow shall be included in this plan as prescribed. Variable language in the prescribed forms is indicated by brackets. These forms can be found in §26.27(b) of this title (relating to Appendix). A small employer carrier shall provide the benefits as described in the following subparagraphs (A) and/or (B):

(A) The Schedule of Benefits (Non-PPO Plan) for the Basic Coverage Benefit Plan (Form Number 369 SCH.BASC) shall be in the language and format prescribed. This Schedule of Benefits shall be used when the plan does not include preferred provider (PPO) benefits.

(i) A small employer carrier shall offer and make available to the small employer the Basic Coverage Benefit Plan with a Policy Year Deductible of $500 per Insured Person, a Policy Year Coinsurance Maximum of $3, 000 per Insured Person and a Percentage Payable of 80%. The amounts are variable to allow the small employer carrier to offer other deductible, coinsurance maximum and percentage payable amounts but the Policy Year Deductible shall not exceed $1,000 per Insured Person, the Policy Year Coinsurance Maximum shall not exceed $5,000 per Insured Person and the Percentage Payable shall not be less than 70%.

(ii) The Schedule of Benefits shall reflect any benefits added by riders and any penalties for failing to comply with any precertification or cost containment provisions. Any such penalties shall not reduce benefits more than 50% in the aggregate.

(B) The Schedule of Benefits (PPO Plan) for the Basic Coverage Benefit Plan (Form Number 369 SCHPPO.BASC) shall be in the language and format prescribed. This Schedule of

Benefits shall be used when the plan includes preferred provider benefits.

(i) The terms "Policy Year Deductible", "Non-Preferred Provider Policy Year Deductible" and "Preferred Provider Policy Year Deductible" are variable to allow the same policy year deductible to apply to both preferred and non-preferred provider options or to allow a "Non-Preferred Provider Policy Year Deductible" and a "Preferred Provider Policy Year Deductible" if different deductibles will apply. A "Per Office Visit Copayment" may be used in lieu of a Preferred Provider Policy Year Deductible. The deductible may be waived for either option.

(ii) If the small employer carrier elects to include preferred provider benefits, the carrier shall offer and make available to the small employer a Basic Coverage Benefit Plan with a Policy Year Deductible or Non-Preferred Provider Policy Year Deductible of $500 per Insured Person with a Preferred Provider Policy Year Deductible of $250 per Insured Person if a preferred provider deductible is chosen, a Policy Year Coinsurance Maximum of $3,000 per Insured Person and Percentages Payable of 90% for preferred providers and 70% for non-preferred providers. A Per Office Visit Copayment of $10 or $15 can be used in lieu of the Preferred Provider Policy Year Deductible.

(iii) Variability is permitted to allow the small employer carrier to offer other deductible, coinsurance maximum, and percentage payable amounts within the limits set out in the following subclauses:

(I) A variable amount not to exceed $1,000 for the Policy Year Deductible or the Non-Preferred Provider Policy Year Deductible may be elected by the small employer carrier or offered as an option to the small employer. The Preferred Provider Policy Year Deductible amount shall not be less than one half of the Non-Preferred Provider Policy Year Deductible.

(II) In lieu of the Preferred Provider Policy Year Deductible, A Per Office Visit Copayment of $10 or $15 may be included for the preferred provider option for office visits. A carrier may use an office copayment in combination with a preferred provider policy year deductible which is applicable to other services.

(III) A variable amount not to exceed $5,000 for the Policy Year Coinsurance Maximum may be elected by the small employer carrier or offered as an option to the small employer. The preferred provider and non-preferred provider amounts shall be combined for the Policy Year Coinsurance Maximum. Office visit copayments are not required to be included in the calculation of coinsurance maximums.

(IV) A variable Percentage Payable of not less than 60% when non-preferred providers are utilized may be elected by the small employer carrier or offered as an option to the small employer. A variable Percentage Payable when preferred providers are utilized may not be more than 30% greater than the Percentage Payable for non-preferred providers as required by §3. 3704(1) of this title (relating to Preferred Provider Plans).

(iv) The Schedule of Benefits shall reflect any benefits added by riders and any penalties for failing to comply with any precertification or cost containment provisions. Any such penalties shall not reduce benefits more than 50% in the aggregate.

(C) The Policy Definitions for the Basic Coverage Benefit Plan (Form Number 369 DEF.BASC) shall be in the language and format prescribed.

(i) The term and definition "Affiliation Period" is variable to be included or omitted as appropriate. An Affiliation Period shall be omitted if the small employer carrier uses a pre-existing condition limitation in any of its health benefit plans or if the small employer carrier does not require an Affiliation Period.

(ii) The terms and definitions for "Contracting Facility" and "Noncontracting Facility" are variables to be included by Chapter 20 companies only and neither provision shall be used by other than Chapter 20 companies.

(iii) The term and definition of "Employer" provides a variable to include an Employer member of an association when a policy is to be issued to an association.

(iv) The term and definition of "Hospital" is variable only to allow for additional criteria for purposes of clarification or to accommodate carriers with unique operations and special statutory rights, such as Chapter 20 companies.

(v) The alternate language in the definition of "Initial Enrollment Period" is included for use in a policy that contains a waiting period.

(vi) The alternate definitions for the term "Policy Year" are included to allow the small employer carrier to select the definition that is consistent with the carrier's and employer's practices. The definition as selected shall be included in the policy/certificate.

(vii) The term and definition of "Policyholder" shall be included in the Policy Definitions as appropriate to define the Policyholder as the Employer, the Association, the Trustee of a Multiple Employer Trust or the Cooperative.

(viii) The term and definition of "Pre-existing Condition" is variable only to the extent that it may be omitted in its entirety if the small employer carrier elects not to impose a limitation for pre-existing conditions. If a pre-existing condition limitation applies, the provision shall be included in its entirety. The time period is variable to allow a shorter period of time to be elected by the small employer carrier or offered as an option to the small employer.

(ix) The term and definition of "Waiting Period" is variable only to the extent that it may be omitted in its entirety if the small employer elects not to impose a waiting period.

(D) The Benefits Provided for the Basic Coverage Benefit Plan (Form Number 369 BEN.BASC) shall be in the language and format prescribed. The Policy Year Coinsurance Maximum amount elected shall be inserted in this provision. Services provided by first assistant at surgery may be included as a covered service if elected by the small employer carrier or offered as an option to the small employer.

(E) The Exclusions and Limitations for the Basic Coverage Benefit Plan (Form Number 369 EXC.BASC) shall be in the language and format prescribed. Exclusions of elective abortions, if any, are to be determined by an agreement between the employer and the small employer carrier and shall be included in the exclusions and limitations of the policy and the certificate. Other variable exclusions may be included by Chapter 20 companies for their Non-PPO products only.

(2) The Catastrophic Care Benefit Plan is discussed in this paragraph. The forms which follow shall be included in this plan as prescribed. These forms can be found in §26.27(b) of this title (relating to Appendix). Variable language in the prescribed forms is indicated by brackets. A small employer carrier shall provide the benefits as described in the following subparagraphs (A) and/or (B):

(A) The Schedule of Benefits (Non-PPO Plan) for the Catastrophic Care Benefit Plan (Form Number 369 SCH.CAT) shall be in the language and format prescribed. This Schedule of

Benefits shall be used when the plan does not include preferred provider (PPO) benefits.

(i) A small employer carrier shall offer and make available to the small employer Catastrophic Care Benefit Plans with each of the coverage options described in subclauses (I)-(IV) as follows:

(I) A Policy Year Deductible in the amount of $2,500 per Insured Person with a Policy Year Coinsurance Maximum of $5,000 per Insured Person and a Percentage Payable of 80%.

(II) A Policy Year Deductible in the amount of $2,500 per Insured Person with a Policy Year Coinsurance Maximum of $5,000 per Insured Person and a Percentage Payable of 90%.

(III) A Policy Year Deductible in the amount of $5,000 per Insured Person with a Policy Year Coinsurance Maximum of $10,000 and a Percentage Payable of 80%.

(IV) A Policy Year Deductible in the amount of $5,000 per Insured Person with a Policy Year Coinsurance Maximum of $10,000 and a Percentage Payable of 90%.

(ii) Variability is permitted to allow the small employer carrier to offer additional deductible, coinsurance maximum and percentage payable amounts; but the Policy Year Deductible shall not exceed $5,000 per Insured Person, the Policy Year Coinsurance Maximum shall not exceed $10,000 per Insured Person and the Percentage Payable shall not be less than 70%.

(iii) The Schedule of Benefits shall reflect any benefits added by riders and any penalties for failing to comply with any precertification or cost containment provisions. Any such penalties shall not reduce benefits more than 50% in the aggregate.

(B) The Schedule of Benefits (PPO Plan) for the Catastrophic Care Benefit Plan (Form Number 369 SCHPPO.CAT) shall be in the language and format prescribed. This Schedule of Benefits shall be used when the plan includes preferred provider benefits.

(i) The terms "Policy Year Deductible", "Non-Preferred Provider Policy Year Deductible" and "Preferred Provider Policy Year Deductible" are variable to allow the same policy year deductible to apply to both preferred and non-preferred provider options or to allow a "Non-Preferred Provider Policy Year Deductible" and a "Preferred Provider Policy Year Deductible" if different deductibles will apply.

(ii) If the small employer carrier elects to include preferred provider benefits, the carrier shall offer and make available to the small employer the Catastrophic Care Benefit Plan with all of the coverage options described in subclauses (I) and (II) as follows:

(I) A Policy Year Deductible or a Non-Preferred Provider Policy Year Deductible of $2,500 per Insured Person with a Preferred Provider Policy Year Deductible of $1,250 per Insured Person if a preferred provider deductible is chosen and a Policy Year Coinsurance Maximum of $5,000 per Insured Person. Percentages Payable shall be offered at each of the following levels: 80% for preferred providers with 60% for non-preferred providers, and 90% for preferred providers and 70% for non-preferred providers.

(II) A Policy Year Deductible or a Non-Preferred Provider Policy Year Deductible of $5,000 per Insured Person, a Preferred Provider Policy Year Deductible of $2,500 per Insured Person if a preferred provider deductible is chosen, and a Policy Year Coinsurance Maximum of $10,000 per Insured Person. Percentages Payable shall be offered at each of the following levels: 80% for preferred providers with 60% for non-preferred providers, and 90% for preferred providers and 70% for non-preferred providers.

(iii) Variability is permitted to allow the small employer carrier to offer other deductible, coinsurance maximum and percentage payable amounts within the limits set out in the following paragraphs.

(iv) A variable amount not to exceed $10,000 for the Policy Year Deductible or the Non-Preferred Provider Policy Year Deductible may be elected by the small employer carrier or offered as an option to the small employer. The Preferred Provider Policy Year Deductible shall not be less than one half of the Non-Preferred Provider Policy Year Deductible.

(v) A variable amount not to exceed $15,000 for the Policy Year Coinsurance Maximum may be elected by the small employer carrier or offered as an option to the small employer. The preferred provider and non-preferred provider amounts shall be combined for the Policy Year Coinsurance Maximum.

(vi) A variable Percentage Payable of not less than 60% when non-preferred providers are utilized may be elected by the small employer carrier or offered as an option to the small employer. A variable Percentage Payable when preferred providers are utilized may not be more than 30% greater than the Percentage Payable for non-preferred providers as required by §3.3704(1) of this title (relating to Preferred Provider Plans).

(vii) The Schedule of Benefits shall reflect any benefits added by riders and any penalties for failing to comply with any precertification or cost containment provisions. Any such penalties shall not reduce benefits more than 50% in the aggregate.

(C) The Policy Definitions for the Catastrophic Care Benefit Plan (Form Number 369 DEF. CAT) shall be in the language and format prescribed.

(i) The term and definition "Affiliation Period" is variable to be included or omitted as appropriate. An Affiliation Period shall be omitted if the small employer carrier uses a preexisting condition limitation in any of its health benefit plans or if the small employer carrier does not require an Affiliation Period.

(ii) The terms and definitions for "Contracting Facility" and "Noncontracting Facility" are variables to be included by Chapter 20 companies only and neither provision shall be used by other than Chapter 20 companies.

(iii) The term and definition of "Employer" provides a variable to include an Employer member of an association when a policy is to be issued to an association.

(iv) The term and definition of "Hospital" is variable only to allow for additional criteria for purposes of clarification or to accommodate carriers with unique operations and special statutory rights, such as Chapter 20 companies.

(v) The alternate language in the definition of "Initial Enrollment Period" is included for use in a policy that contains a waiting period.

(vi) The alternate definitions for the term "Policy Year" are included to allow the small employer carrier to select the definition that is consistent with the carrier's and employer's practices. The definition as selected shall be included in the policy/certificate.

(vii) The term and definition of "Policyholder" shall be included in the Policy Definitions as appropriate to define

the Policyholder as the Employer, the Association, the Trustee of a Multiple Employer Trust or the Cooperative.

(viii) The term and definition of "Pre-existing Condition" is variable only to the extent that it may be omitted in its entirety if the small employer carrier elects not to impose a limitation for pre-existing conditions. If a pre-existing condition limitation applies, the provision shall be included in its entirety. The time period is variable to allow a shorter period of time to be elected by the small employer carrier or offered as an option to the small employer.

(ix) The term and definition of "Waiting Period" is variable only to the extent that it shall be omitted in its entirety if the small employer elects not to impose a waiting period.

(D) The Benefits Provided for the Catastrophic Care Benefit Plan (Form Number 369 BEN.CAT) shall be in the language and format prescribed. The Policy Year Coinsurance Maximum amount shall be inserted in this provision. Services provided by first assistant at surgery may be included as a covered service if elected by the small employer carrier or offered as an option to the small employer.

(E) The Exclusions and Limitations for the Catastrophic Care Benefit Plan (Form Number 369 EXC.CAT) shall be in the language and format prescribed. Exclusions of elective abortions, if any, are to be determined by an agreement between the employer and the small employer carrier and shall be included in the exclusions and limitations of the policy and the certificate. Other variable exclusions may be included by Chapter 20 companies for their Non-PPO products only.

(3) Riders are discussed in this paragraph. The small employer carrier shall offer and make available to the small employer the riders described in (A)-(D). Any benefits added by riders shall be reflected on the Schedule of Benefits.

(A) The Alcohol and Drug Abuse Benefit Rider (Form Number 369 ADB) is required to be offered with the Basic Coverage Benefit Plan and the Catastrophic Care Benefit Plan. Variable amounts of five or ten days of care per Insured Person per Policy Year are allowed to be elected by the small employer carrier or offered as an option to the small employer. The coinsurance and deductible amounts are variable.

(B) The Mental Health Benefit Rider (Form Number 369 MHB) is required to be offered with the Basic Coverage Benefit Plan and the Catastrophic Care Benefit Plan. The 30 days of inpatient benefits and the 20 outpatient treatments per Insured Person per Policy Year are variable to allow longer periods of time to be elected by the small employer carrier or offered as an option to the small employer. The coinsurance and deductible amounts are variable.

(C) The Prescription Drug Benefit Rider (Form Number 369 RX) is required to be offered with the Basic Coverage Benefit Plan and the Catastrophic Care Benefit Plan. Benefits shall be provided at a Percentage Payable of at least 50% but may be provided at a greater Percentage Payable to be elected by the small employer carrier or offered as an option to the small employer. In the alternative the small employer carrier may elect to provide the prescription drug benefit through a prescription drug card program with a copayment not to exceed $8.00 per prescription or refill for a generic drug, or name brand drug if less than the generic drug, and $12 per prescription or refill for a name brand drug. Exclusions of a prescription drug card program shall not be more restrictive than the exclusions contained in Form Number 369 RX.

(D) The Preventive Care Benefit Rider (Form Number 369 PCR) is required to be offered with the Basic Coverage Benefit Plan. The coinsurance and deductible amounts are variable.

(E) Additional riders may be offered as elected by the small employer carrier. Any such riders must be filed in accordance with Subchapter A of Chapter 3 of this title (relating to Requirements for Filing of Policy Forms, Riders, Amendments, and Endorsements for Life, Accident and Health Insurance and Annuities).

(4) Forms common to more than one health benefit plan are described in subparagraphs (A) -(C) and shall be included with the benefit provisions of each plan as specified.

(A) The Continuation/Conversion Provisions (Form Number 369 CONV) shall be included with all group plans. This form shall be in the language and format prescribed in accordance with Subchapter F of Chapter 3 of this title (relating to Group Health Insurance Mandatory Conversion Privilege). The small employer carrier shall include one of the variable provisions for continuation upon policy termination.

(B) The Coordination of Benefits (Form Number 369 COB) shall be included with all plans. This form shall be in the language and format prescribed. The variable insert language "This provision will only apply for the duration of your employment with the Employer" is required to be included in the individual policies.

(C) The Preferred Provider Provisions (PPO) (Form Number 369 PPO) shall be included with all plans when preferred provider options are included. This form shall be in the language and format prescribed. Additional provisions may be added as necessary to disclose preferred provider information.

(i) Variable provisions are allowed for the definition of service area to be in terms of counties, zip codes, in terms of a 50 mile radius from the employee's principal place of employment unless there are no providers located within the 50 mile radius, or the service area may be described in a specific document to be referenced in the policy/certificate provision. Service areas by zip codes shall be defined in a non-discriminatory manner and in compliance with the Insurance Code, Articles 21.21, §4 and 21.21-6. Service area definitions and descriptions shall be filed with the form filings. The small employer carrier shall obtain approval for any definition of the service area by counties or zip codes where the grouping of counties or zip codes exceed a 50 mile radius from the principal place of employment or for a different definition of a service area.

(ii) Except as provided in §26.21 of this title (relating to Cost Containment) preferred provider arrangements shall comply with Subchapter X of Chapter 3 of this title (relating to Preferred Provider Plans).

(5) Applications are discussed in this paragraph. The Texas Small Employer Group Health Benefit Plan Master Application (Form Number 369 APP) may be used by small employer carriers. Small employer carriers may use any appropriate application, enrollment or participation agreement forms in lieu of this form.

(6) The Compliance Rider for House Bill 369 (Form Number 369 END) may be used as a guide for carriers to bring existing policies into compliance with the requirements of these regulations. Because of the differences in small employer health benefit plans, the compliance rider provisions may not be all encompassing and carriers should amend the rider as needed to achieve compliance with these rules and with the provisions of Chapter 26,

Texas Insurance Code. Any variability that was previously discussed in these rules regarding the prototype policies shall be addressed accordingly in this rider.

(7) Individual small employer benefit plans are discussed in this paragraph. Although individual prototype policies were not developed, carriers must develop their own individual small employer policies using the rules for the group small employer prototype forms, amended as necessary to comply with the statutes and regulations pertaining to individual accident and sickness insurance. Prescribed components include the Benefits, Definitions, and Exclusions and Limitations provisions as set out in §26.14(h)(1-4) of this title (relating to prescribed benefit provisions). All forms must be filed with the department in accordance with Subchapter A of Chapter 3 of this title (relating to Requirements for Filing of Policy Forms, Riders, Amendments, and Endorsements for Life, Accident and Health Insurance and Annuities).

(i) The HMO forms are as follows:

(1) Prototype contract/certificate of coverage and benefit plans have been developed to facilitate implementation of the Insurance Code, Chapter 26, and to streamline the contract approval process. The required benefit language is provided in the prototype Texas Small Employer Group Health Benefit Plan (Form Numbers 369 HMO-GRP CONT, Contract and Certificate of Coverage; 369 HMO-APP, Group Application; 369 HMO-SCHB, Schedule of Benefits; 369 HMO-RX, Prescription Drugs Benefit Rider; 369 HMO-DAA, Drug and Alcohol Abuse Benefit Rider; 369 HMO-INF, Infertility Benefit Rider; 369 HMO-MHMR, Mental Health Benefit Rider). These forms can be found at §26.27(b) of this title (relating to Appendix). Variable provisions in these forms are denoted in brackets. HMOs may use various options in accordance with the bracketed provisions. Exclusions of elective abortions, if any, are to be determined by an agreement between the employer and the small employer carrier and must be in the contract/certificate of coverage in the Exclusions contract provision.

(2) The prototype contracts/certificates of coverage provide for the entire contract to include an application, schedule of benefits, and any attached riders.

(3) If the HMO elects to be a small employer carrier and offers a health benefit plan other than the prototype benefit plan, that plan must be a state approved health benefit plan that complies with the requirements of Title XIII, Public Health Service Act (42 United States Code, §§300, et seq) and the rules adopted under the Act.

(4) The following content format shall be used:

(A) CONTRACT FACE PAGE This page shall contain the name, address and telephone numbers (800 number, if applicable) of the health maintenance organization. This prototype contract shall be entitled:
Texas Small Employer
Group Health Benefit Plan Contract/
Certificate of coverage The attached benefit plan shall be entitled:
Texas Small Employer Group Health Benefit Plan

(B) TOLL-FREE NUMBER PAGE. This form must contain the language prescribed in §1.601 of Chapter 1 of this title (relating to Notice of Toll-free Telephone Numbers and Information and Complaint Procedures) and shall be attached as the first, second or third page of the contact.

(C) CONTRACT PROVISIONS. At a minimum, the contract must contain the following provisions:

(i) Face Page

(ii) Benefits

(iii) Cancellation

(iv) Claim filing procedure

(v) Complaint procedure

(vi) Conformity with state law

(vii) Continuation of coverage for certain dependents

(viii) Conversion privilege

(ix) Coordination of Benefits

(x) Definitions

(xi) Effective date

(xii) Eligibility

(xiii) Emergency services

(xiv) Entire contract provisions

(xv) Exclusions and limitations

(xvi) Grace period

(xvii) Incontestability

(xviii) Schedule of charges

(xix) Service area

(xx) Subrogation

(xxi) Termination

(D) RIDERS. Riders allowing for additional benefits may be attached to the state approved health benefit plan and to the Texas Small Employer Group Health Benefit Plan.

§26.15. Renewability of Coverage and Cancellation.

(a) Except as provided by the Insurance Code, Article 26.24, a small employer carrier shall renew any small employer health benefit plan for any covered small employer at the option of the small employer, except for:

(1) nonpayment of a premium as required by the terms of the plan;

(2) fraud or misrepresentation of a material fact by the small employer; or

(3) noncompliance with small employer health benefit plan provisions. Small employer benefit plan provisions may address requirements such as the level of contribution and participation and failure of an employer to maintain status as a small employer subject to requirements of this chapter. Noncompliance with a small employer health benefit plan with respect to an HMO also includes those items set forth in §11.506(4)(A) of this title (relating to Mandatory Provisions: Group and Non-group Agreement and Group Certificate). On or after September 1, 1995, a misrepresentation of a material fact shall not include any misrepresentation related to health status.

(b) A small employer carrier may refuse to renew the coverage of an eligible employee or dependent for fraud or misrepresentation of a material fact by that individual. The coverage is also subject to any policy or contractual provisions relating to incontestability or time limits on certain defenses. On or after September 1, 1995, a misrepresentation of a material fact shall not include any misrepresentation related to health status.

(c) A small employer carrier may not cancel a small employer health benefit plan except for the reasons specified for refusal to renew under the Insurance Code, Article 26.23(a), and subsections (a) and (b) of this section. A small employer carrier may not

cancel the coverage of an eligible employee or dependent except for the reasons specified for refusal to renew under the Insurance Code, Article 26.23(b), and subsections (a) and (b) of this section.

(d) A carrier is not precluded from seeking any legal remedies against a person who fraudulently misrepresents health status during the initial application for coverage. Legal remedies available to a carrier do not include cancellation or nonrenewal.

(e) Standard benefit plans, provided through an individual policy, shall be guaranteed renewable for life or until maximum benefits have been paid. Other small employer health benefit plans, provided through individual policies, shall be guaranteed renewable for life or until maximum benefits have been paid, or may be guaranteed renewable with the only reasons for termination being those set out in the Insurance Code, Articles 26.23 and 26.24, and this chapter, provided that such plans shall include a conversion provision which provides comparable benefits to those required under Chapter 3, Subchapter F of this title (relating to Group Health Insurance Mandatory Conversion Privilege). All other health benefit plans issued to small employers shall be renewed at the option of the small employer, but may provide for termination in accordance with the Insurance Code, Chapter 26, and this chapter.

§26.18. Election and Application to be Risk-Assuming or Reinsured Carrier.

(a) Each small employer carrier shall file with the commissioner notification of whether the carrier elects to operate as a risk-assuming or a reinsured carrier. The required filing shall use the form provided at Figure 42 of §26.27(b) of this title (relating to Appendix) (Form Number 369 RISK) for this purpose.

(b) A small employer carrier seeking to change its status as a risk-assuming or reinsured carrier shall file an application with the commissioner. The required filing shall include a completed certification form provided at Figure 42 of §26.27(b) of this title (relating to Appendix) (Form Number 369 RISK) and shall provide information demonstrating good cause why the carrier should be allowed to change its status.

(c) A small employer carrier applying to become a risk-assuming carrier shall file an application with the commissioner. A completed certification form provided at Figure 42 of §26.27(b) of this title (relating to Appendix) (Form Number 369 RISK) shall accompany each application.

§26.19. Filing Requirements.

(a) Each health carrier shall file each form, including, but not limited to, each policy, contract, certificate, agreement, evidence of coverage, endorsement, amendment, enrollment form, and application that will be used to provide a health benefit plan in the small employer market, with the department in accordance with the Insurance Code, Article 3.42, and Chapter 3, Subchapter A of this title (relating to Requirements for Filing of Policy Forms, Riders, Amendments, and Endorsements for Life, Accident and Health Insurance and Annuities), or the Insurance Code, Article 20A.09, and §11.301(4) of this title (relating to Filing Requirements) or §11.302(6) of this title (relating to Service Area Expansion Requests), as applicable, except as provided in subsection (b) of this section. A health carrier desiring to use existing forms to provide a health benefit plan in the small employer market shall file a certification stating which previously approved forms the health carrier intends to use in that market. The form provided at Figure 43 of §26.27(b) of this title (relating to Appendix) (Form Number 369 CERT ANN LIST-OTHER/SEHBP) may be used for this purpose. The previously approved forms should be listed in Provision E of that form. The certification shall be forwarded to the department as soon as reasonably possible after January 1, 1994.

(b) The following certification forms providing information relating to prototype policy forms, marketing in the small employer market and/or other markets, and geographic service areas shall accompany each health benefit plan form filing submitted for use in the small employer market.

(1) A geographic service area certification provided at Figure 44 of §26.27(b) of this title (relating to Appendix) (Form Number 369 CERT GEOG) shall be submitted by each health carrier providing health benefit plans to small employers and shall define the geographic service areas within which the small employer carrier will operate as a small employer carrier.

(A)-(B) (No change.)

(2) A prototype certification form provided at Figure 45 of §26.27(b) of this title (relating to Appendix) (Form Number 369 CERT PROTOTYPES/MRKT) shall accompany each policy form filing and/or certification filing. A small employer carrier other than an HMO shall complete the certification form indicating:

(A) which of the prototype policy forms will be used ;

(B) alternate forms which will be used, where permitted, and their Flesch score. If a small employer health carrier, other than an HMO, utilizes the prototype forms and only uses variations permitted in the prescribed and/or adopted forms, the certification with the description of the variations will suffice and policy forms will not be required to be submitted for review and approval. Approval of the use of the prototype forms based on the certification and the description of the variations will be communicated via an approval letter;

(C) define the market in which the form will be used, such as, for use only in the small employer market or in all employer markets or other markets;

(D) the type of group filing, if applicable;

(E) the small employer carrier's required participation amount; the required employer contribution amount; election or non-election of a grace period and the number of days; termination for failure of employer to maintain participation requirements and status as a small employer (for group); election of Policy Year definition, Prescription Drug Benefit Rider or Prescription Drug Card Program, election to issue or not issue medically underwritten plans, Affiliation period or preexisting condition Limitation provision including the time period for the affiliation period or the preexisting limitation; description of PPO service area, if applicable; election or non-election of reduction in benefits for failure to pre-certify and the reduction amount; form numbers, approval dates and description of any riders that will be offered with the standard benefit plans; and description of additional percentages payable, deductibles and coinsurance amounts the small employer carrier will offer.

(3) A prototype certification form provided at Figure 46 of §26.27(b) of this title (relating to Appendix) (Form Number 369 HMO-CERT) with elections for HMO small employer plans shall accompany the contract form filing for HMOs. The HMO small employer carrier shall complete the certification form for variable provisions of the prototype form.

(c) Each health carrier, other than an HMO, shall use a policy shell format for any group or individual health benefit plan form used to provide a health benefit plan in the small employer market. To expedite the review and approval process, all group and individual health benefit plan form filings (excluding HMO filings

which are covered in subsection (d) of this section) shall be submitted as follows:

(1)-(6) (No change.)

(7) for the standard benefit forms, which include the Basic Coverage Benefit Plan and the Catastrophic Care Benefit Plan, an insert of the required benefits section that includes the schedule of benefits, definitions, benefits provided, alternate cost containment and preferred provider provisions, if any, exclusions and limitations, continuation/conversion provisions, coordination of benefits, and riders;

(8)-(13) (No change.)

(14) the rate schedule applicable to any individual health benefit plan, as required by Subchapter A of Chapter 3 of this title (relating to Requirements for Filing of Policy Forms Riders, Amendments, and Endorsements for Life, Accident, and Health Insurance and Annuities).

(d) (No change.)

§26.20. Reporting Requirements.

(a) Small employer health carriers offering a small employer health benefit plan shall file annually, not later than March 1 of each year, an actuarial certification provided at Figure 47 of §26.27(b) of this title (relating to Appendix) 369 CERT ACTUARIAL stating that the underwriting and rating methods of the small employer carrier:

(1) comply with accepted actuarial practices;

(2) are uniformly applied to each small employer health benefit plan covering a small employer; and

(3) comply with the provisions of the Insurance Code, Chapter 26, and this chapter.

(b) Not later than March 1 of each calendar year, each health carrier shall file a certification provided at figure 43 of §26.27(b) of this title (relating to Appendix) 369 CERT ANN LIST-OTHER/SEHBP with the commissioner, stating whether the health carrier is offering any health benefit plan to small employers that is subject to the Insurance Code, Article 26.06(a). The certification shall:

(1) list each other health insurance coverage (including the form number, approval date, and a very brief description of the type of coverage) that the health carrier is offering, delivering, issuing for delivery, or renewing to or through small employers in this state; and is not subject to this chapter because it is listed as excluded from the definition of a health benefit plan under the Insurance Code, Article 26.02, and §26.4 of this title (relating to Definitions);

(2) include a statement that the health carrier is not offering or marketing to small employers as a health benefit plan the coverage listed under the Insurance Code, Article 26.07(b) and paragraph (1) of this subsection, and the health carrier is complying with the provisions of the Insurance Code, Chapter 26, and this chapter to the extent it is applicable to the health carrier;

(3) list each health benefit plan along with riders (including the form number and approval date) previously filed with the department (or filed through the certification process) which the health carrier is no longer marketing to small employers in the state. If the health carrier no longer wishes to offer the plan, a formal withdrawal of the plan shall be filed and can be accomplished by marking the appropriate blank on the certification provided at Figure 43 of §26.27(b) of this title (relating to Appendix) (Form Number 369 CERT ANN LIST-OTHER/SEHBP); and

(4) list each health benefit plan and rider (including the form number and approval date) previously filed with the department which the health carrier plans to continue marketing to small employers in the state.

(c) Not later than March 1 of each calendar year, a small employer carrier shall file with the commissioner Form Number 369 CERT DATA provided at Figure 48 of §26.27(b) of this title (relating to Appendix), the following information related to health benefit plans issued by the small employer carrier to small employers in this state:

(1) the number of small employers that were issued and the number of lives that were covered under health benefit plans in the previous calendar year (separated as to newly issued plans and renewals);

(2) the number of small employers that were issued and the number of lives that were covered under the preventive and primary care benefit plan, the in-hospital benefit plan, the standard health benefit plan, basic coverage benefit plan, catastrophic care benefit plan, HMO preventive and primary care benefit plan, HMO group standard benefit plan and HMO small employer group health benefit plan in the previous calendar year (separated as to newly issued plans and renewals and to class of business);

(3) the number of small employers that were issued and the number of lives that were covered under a prescription drug rider with the preventive and primary care benefit plan, a preventive and primary care benefit rider with the in-hospital benefit plan, an alcohol and drug abuse rider with the basic coverage and catastrophic benefit plans, a mental health benefit rider with the basic coverage and catastrophic care benefit plans, a prescription drug rider with the basic coverage and catastrophic care benefit plans, and a preventive care rider with the basic coverage benefit plan (separately listed as to newly issued plans and renewals, type of rider and type of benefit plan);

(4) the number of small employer health benefit plans in force and the number of lives covered under those plans. This information should be broken down by the zip code of the small employers' principal place of business in the State of Texas;

(5) the number of small employer health benefit plans that were voluntarily not renewed by small employers in the previous calendar year;

(6) the number of small employer health benefit plans that were terminated or nonrenewed (for reasons other than nonpayment of premium) by the health carrier in the previous calendar year;

(7) the number of small employer health benefit plans that were issued to small employers that were uninsured for at least the two months prior to issue; and

(8) the health carrier's gross premiums derived from health benefit plans delivered, issued for delivery, or renewed to small employers in the previous calendar year. For purposes of this subsection, gross premiums shall be the total amount of monies collected by the health carrier for health benefit plans during the applicable calendar year or the applicable calendar quarter. Gross premiums shall include premiums collected for individual and group health benefit plans issued to small employers or their employees. Gross premiums shall also include premiums collected under certificates issued or delivered to employees (in this state) of small employers, regardless of where the policy is issued or delivered.

§26.22. Private Purchasing Cooperatives.

(a) Two or more small employers may form a cooperative for the purchase of small employer health benefit plans. A cooperative must be organized as a nonprofit corporation and has the rights and duties provided by the Texas Non-profit Corporation Act, Texas Civil Statutes, Articles 1396-1.01, et seq.

(b) On receipt of a certificate of incorporation or certificate of authority from the secretary of state, the purchasing cooperative shall file notification of the receipt of the certificate and a copy of the cooperative's organizational documents with the commissioner by filing the required notification and documents with the Life/Health Group, Mail Code 106-1D, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

(c) The board of directors shall file annually with the commissioner a statement of all amounts collected and expenses incurred for each of the preceding years. The annual filing shall be made on Form Number 369 CERT COOP provided at Figure 49 of §26.27(b) of this title (relating to Appendix) and shall be mailed to the Life/Health Group, Mail Code 106-1D, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

§26.27. Appendix.

(a) The forms adopted and incorporated in §26.2 of this title (relating to Forms Adopted and Incorporated by Reference) are included in the appendix to these sections. The following index refers to the form number, its description, and the figure number in the appendix.
Figure No. 1: 28 TAC §26.27(a)

(b) Figures No. 1-49: 28 TAC §26.27(b)
FIGURE NO. 1: 28 TAC §26.27(b)
FIGURE NO. 2: 28 TAC §26.27(b)
FIGURE NO. 3: 28 TAC §26.27(b)
FIGURE NO. 4: 28 TAC §26.27(b)
FIGURE NO. 5: 28 TAC §26.27(b)
FIGURE NO. 6: 28 TAC §26.27(b)
FIGURE NO. 7: 28 TAC §26.27(b)
FIGURE NO. 8: 28 TAC §26.27(b)
FIGURE NO. 9: 28 TAC §26.27(b)
FIGURE NO. 10: 28 TAC §26.27(b)
FIGURE NO. 11: 28 TAC §26.27(b)
FIGURE NO. 12: 28 TAC §26.27(b)
FIGURE NO. 13: 28 TAC §26.27(b)
FIGURE NO. 14: 28 TAC §26.27(b)
FIGURE NO. 15: 28 TAC §26.27(b)
FIGURE NO. 16: 28 TAC §26.27(b)
FIGURE NO. 17: 28 TAC §26.27(b)
FIGURE NO. 18: 28 TAC §26.27(b)
FIGURE NO. 19: 28 TAC §26.27(b)
FIGURE NO. 20: 28 TAC §26.27(b)
FIGURE NO. 21: 28 TAC §26.27(b)
FIGURE NO. 22: 28 TAC §26.27(b)
FIGURE NO. 23: 28 TAC §26.27(b)
FIGURE NO. 24: 28 TAC §26.27(b)
FIGURE NO. 25: 28 TAC §26.27(b)
FIGURE NO. 26: 28 TAC §26.27(b)
FIGURE NO. 27: 28 TAC §26.27(b)
FIGURE NO. 28: 28 TAC §26.27(b)
FIGURE NO. 29: 28 TAC §26.27(b)
FIGURE NO. 30: 28 TAC §26.27(b)
FIGURE NO. 31: 28 TAC §26.27(b)
FIGURE NO. 32: 28 TAC §26.27(b)
FIGURE NO. 33: 28 TAC §26.27(b)
FIGURE NO. 34: 28 TAC §26.27(b)
FIGURE NO. 35: 28 TAC §26.27(b)
FIGURE NO. 36: 28 TAC §26.27(b)
FIGURE NO. 37: 28 TAC §26.27(b)
FIGURE NO. 38: 28 TAC §26.27(b)
FIGURE NO. 39: 28 TAC §26.27(b)
FIGURE NO. 40: 28 TAC §26.27(b)
FIGURE NO. 41: 28 TAC §26.27(b)
FIGURE NO. 42: 28 TAC §26.27(b)
FIGURE NO. 43: 28 TAC §26.27(b)
FIGURE NO. 44: 28 TAC §26.27(b)
FIGURE NO. 45: 28 TAC §26.27(b)
FIGURE NO. 46: 28 TAC §26.27(b)
FIGURE NO. 47: 28 TAC §26.27(b)
FIGURE NO. 48: 28 TAC §26.27(b)
FIGURE NO. 49: 28 TAC §26.27(b)

This agency certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 19,1996.

TRD-9603870 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Effective date: April 9, 1996

Proposal publication date: November 24, 1995

For further information, please call: (512) 463-6327

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Subchapter A. Small Employer Health Insurance Availability Act Regulation

• 28 TAC §§26.14-26.18, 26.27

The Commissioner of Insurance adopts the repeal of §§26.14-26.18 and §26.27, concerning small employer health benefit plans, without changes to the proposed text as published in the November 24, 1995, issue of the *Texas Register* (20 TexReg 9827).

Section 26.14 and §26.27 concern the coverage for standard benefit plans and the prototype standard benefit plans required to be offered by small employer carriers to small employers as a condition of transacting business in the state. Repeal of the sections is necessary because new §26.14 establishes coverage requirements for the standard benefit plans and new §26. 27 is an appendix which contains the prototype standard benefits plans and other forms to be used by small employer carriers. Section 26.15 allows employees eligible for coverage under a small employer health benefit plan to obtain additional optional coverage if certain requirements are met. The repeal of this section is necessary to implement provisions of House Bill 369 which deleted the optional coverage provisions from the Insurance Code, Article 26.21. Sections 26.16, 26.17, and 26.18 concern renewability of coverage and cancellation, refusal to renew coverage and application to reenter the small employer market after refusal to renew coverage and notice to covered persons of cancellation or refusal to renew coverage. The repeal of these sections is necessary because new §26.15 sets forth requirements concerning renewability of coverage and cancellation; new §26.16 contains provisions concerning refusal to renew coverage and application to reenter the small employer market; new §26.17 establishes requirements concerning notice of termination which must be given to covered persons and new §26.18 sets forth procedures for filing an election or application to be a risk-assuming or reinsured carrier.

The repeal of these sections will enable the Commissioner to adopt new provisions which revise, replace and/or supersede existing sections and implement legislation amending the Insurance Code, Chapter 26 enacted by the 74th Legislature in House Bill 369 relating to the operation and funding of small employer health benefit plans. Simultaneous to the adoption of this repeal, adoption of new §§26.14-26.18 and §26.27 is published elsewhere in this issue of the *Texas Register*.

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to the Insurance Code, Chapter 26 and Insurance Code, Article 1.03A, and the Government Code, §§2001.004, et seq (Administrative Procedures Act). The Insurance Code, Chapter 26, establishes the requirements for small employer health plans including, but not limited to, standard benefit plans as adopted by the commissioner and required to be offered by small employer carriers to small employers. Insurance Code, Article 26.04, authorizes the commissioner to adopt rules to implement Chapter 26. Article 1.03A authorizes the commissioner of insurance to promulgate and adopt rules and regulations for the conduct and execution of the duties and functions by the department. The Government Code, §§2001.004, et seq, authorizes and requires each state agency to adopt rules of practice stating the nature and requirements of all

available formal and informal procedures and prescribes the procedures for adoption of rules by a state administrative agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 19, 1996.

TRD-9603944 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Effective date: April 9, 1996

Proposal publication date: November 24, 1995

For further information, please call (512) 463-6327

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TITLE 34. PUBLIC FINANCE

Part V. Texas County and District Retirement System

Chapter 109. Domestic Relations Orders

- **34 TAC §109.12**

The Texas County and District Retirement System adopts an amendment to §109.12, concerning the authority of the system to make a lump-sum payment to an alternate payee at the time when an annuity would otherwise be payable, if the reserves upon which the alternate payee's annuity would be calculated are $5,000 or less. The amendment is adopted without changes to the proposed text as published in the February 20, 1996, issue of the *Texas Register* (21 TexReg 1374).

In most instances, reserves of less than $5,000 will provide an alternate payee with a monthly annuity of less than $50 as calculated on the basis of the actuarial tables used by the system to determine benefits. However, the continuing administration of each benefit payable in the form of an annuity, as well as the preparation of each monthly retirement check, generate fixed administrative costs unrelated to the amount of the annuity. To avoid this disproportional expense of administering very small annuities that are payable to alternate payees, the board adopts this amendment authorizing the system to pay the reserves as a single sum rather than in the form of a lifetime annuity, if those reserves available to provide the alternate payee's benefit are $5, 000 or less. A payment in accordance with this amendment will not be made to an alternate payee prior to the time that the system begins paying an annuity to the participant or the participant's designated beneficiary, surviving spouse or estate. While preserving the present value of the alternate payee's benefit, the effect of this amendment will be a reduction in the costs to the system of administering small annuities and issuing monthly checks of small amounts to alternate payees.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Government Code, §845.102 which provides the board of trustees of the Texas County And District Retirement System with the authority to adopt rules necessary or desirable for the effective administration of the System.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 25, 1996.

TRD-9604062 Terry Horton
Director
Texas County and District Retirement System

Effective date: April 15, 1996

Proposal publication date: February 20, 1996

For further information, please call (512) 476-6651

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 91. Discipline and Control

Control

- **37 TAC §§91.55, 91.56, 91.59, 91.61, 91.63, 91.65, 91.75**

The Texas Youth Commission (TYC) adopts the repeal of §§91.55, 91.56, 91.59, 91.61, 91.63, 91.65, and 91.75, concerning escape and apprehension, custody and supervision rating, use of force, use of chemical agents, mechanical restraint equipment, security unit, and riot control, without changes to the proposed text as published in the February 16, 1996, issue of the *Texas Register* (21 TexReg 1250).

The justification for the repeal of the sections is the replacement of the repealed rules by new rules which encourage more efficient agency operation.

The repeals will be replaced by new sections to allow changes in rules of operation which are more consistent with legislative intent and agency mission regarding committed juvenile delinquents.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the accomplishment of its functions.

The proposed rules implement the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 21, 1996.

TRD-9603953 Steve Robinson
Executive Director
Texas Youth Commission

Effective date: April 11, 1996

Proposal publication date: February 16, 1996

For further information, please call: (512) 483-5244

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The Texas Youth Commission (TYC) adopts new §§91.55, 91.56, 91.59, 91.61, 91.63, 91.65, and 91.75, concerning escape and apprehension, custody and supervision rating, use of force, use of chemical agents, mechanical restraint equipment, and security unit. Sections 91.55, 91.56, 91.59, 91.61, 91.63, and 91.65 are adopted with changes to the proposed text as published in the February 16, 1996, issue of the *Texas Register* (21 TexReg 1252). Section 91.75 is adopted without changes and will not be republished.

Changes in formatting have been made to most of the rules to add subsections for "purpose" and "applicability." These changes do not alter the substance of the rule in any way. Section 91.63 and §91.65 contain these format changes. Other changes are: to §91.55 a definition for absconding has been added; to §91.56 specific management procedures not affecting the rule have been deleted; to §91.59 moves references to use of chemical agents to §91.61 which is more appropriate for rules affecting chemical agent usage, and deletes specific management information; to §91.61 rules from §91.59 regarding use of chemical agents have been moved into this section.

The justification for the new sections is increased safety for youth, staff, and the public.

New §91.55 provides guidelines for apprehending TYC youth who have escaped or absconded and differentiates between escape and abscond. Section 91. 56 outlines the use of the custody and supervision rating system to assess the level of supervision required to protect the youth and others when a youth must leave the institution for any reason. New §91.59 provides criteria for the use of physical force and outlines when the use of physical force is restricted. Section 91.61 and §91.63 list mechanical restraints and chemical agents and when they

can be used to control violent youth. New §91.65 defines the use of TYC security units to segregate youth when necessary from the general population. Provisions in §91.75 allow use of plastic cuffs and other non-routine action to assist TYC staff to regain control and terminate a riot occurring on a TYC facility campus.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to permit the child liberty under supervision and on conditions it believes conducive to acceptable behavior, and order the child's confinement under conditions it believes best designed for the child's welfare and the interests of the public; and §612.093, which provides the Texas Youth Commission with the authority to take the child into the custody of the commission if the child has escaped or has been released under supervision and broken the conditions of release.

The proposed new sections implement the Human Resource Code, §61.034.

§91.55. Escape and Apprehension.

(a) Purpose. The purpose of this rule is to acknowledge a relationship with TYC, law enforcement, and Texas/National Crime Information Center (TCIC/NCIC) with regard to reporting and apprehending youth in TYC custody who escape or abscond from their assignments.

(b) Definition of terms used.

(1) Abscond occurs when a youth assigned to a minimum or home level of restriction leaves the location without permission of staff and his/her whereabouts are unknown. (A youth who fails to report to the assigned community corrections officers but whose whereabouts are known is not an absconder.)

(2) Escape occurs when a youth assigned to a medium or high level restriction facility:

(A) leaves the property of a TYC facility or contract program without permission of staff; or

(B) fails to return at the designated time unless excused by the facility administrator.

(3) Attempted Escape occurs when a youth is seen attempting to escape, but is apprehended before he or she can leave the property of a TYC facility or contract program.

(c) When a youth escapes or absconds, Texas Youth Commission (TYC) staff will make concerted efforts to apprehend the youth with assistance of law enforcement officials, staff and other affected parties.

(d) Directives to Apprehend shall be issued by an agency staff according to Texas/National Crime Information Center (TCIC/NCIC) policy and procedures and DPS/FBI guidelines.

§91.56. Custody and Supervision Rating.

(a) Purpose. The purpose of this rule is to enhance the protection of the public by limiting exposure to potential harm caused by a TYC youth by establishing specific minimum staff per youth supervision requirements for certain youth in a TYC operated high restriction facility, both on and off the grounds. Higher risk ratings require increased staff supervision, restriction of youth movement, and restriction of access to unauthorized program areas and potentially harmful materials.

(b) Explanation of Terms Used.

(1) Custody and Supervision Rating–Is a system for assessing risk and assigning a rating which determines the level of custody and supervision necessary to minimize a TYC youth's opportunity to harm self of others. The rating of a youth's risk affects a youth's movement and activities.

(2) Risk level–Is the high, medium, or low risk assessed by evaluating each youth's past history, current behavior, and length of time in residential placement since commitment. Based on the risk an equivalent rating is assigned each youth.

(3) Staff supervision–Refers to supervision provided by a TYC employee or an adult serving in a capacity related to a TYC activity (e.g., an employer of TYC youth or a volunteer for a TYC sponsored activity). The supervision requirements vary.

(c) Ratings.

(1) A youth with a high risk rating shall not leave the grounds except for necessary medical services or emergencies. Constant supervision by staff shall be provided.

(2) A youth with a medium risk rating may leave the grounds for routine activities under specific conditions recommended by the treatment team. Supervision by staff is required. Activities shall not include overnight outings.

(3) A youth with a low risk rating may leave the grounds with or without direct staff supervision under specific conditions recommended by the treatment team. Activities may include overnight outings.

(d) The facility administrator may allow certain activity normally restricted by the CSR rating on the basis of clinical review and recommendation, major improvement in behavior, preplacement visits, or may request from the central office, waiver for other reasons.

§91.59. Use of Force.

(a) Purpose. The purpose of this rule is to provide:

(1) criteria for using physical or mechanical force when necessary to control a volatile situation; and

(2) restrictions and guidelines to promote safety of youth and staff. Force is used as a last resort and only when necessary. When use of physical force is necessary, it should be measured and progressive in nature, however, when impractical, the amount and type of force necessary to control violence should be used. Measured and progressive force may be impractical when it would likely result in injury to youth and staff.

(b) Applicability. This rule does not apply to the use of chemical agents. See GOP.67.11, §91.61 of this title (relating to Use of Chemical Agents).

(c) Explanation of Terms Used.

(1) Force–Any physical contact exerted upon a person to compel or arrest bodily movement.

(2) Physical Restraint–Use of a person's physical exertion to completely or partially constrain another person's bodily movement.

(3) Escort–The physical force used to cause the movement of a person from one location to another.

(4) Mechanical Restraint–Use of a mechanical device(s) to aid in the restriction of a person's bodily movement.

(5) Full Body Restraint–The use of cloth or leather mechanical restraint devices to secure a person on a bed in the security unit, face upward (Permitted only in the TYC institutions and in contract facilities approved by the executive director or designee.)

(d) Criteria for Use. Force may be used only as a last resort and only as a control measure to ensure the safety and welfare of youth and staff. The use of force (to restrain or compel movement) shall be limited to instances of:

(1) protection of the youth from imminent self-harm; (Including the administration of medical treatment in a situation that is life threatening and/or youth is engaging in imminently serious self-injurious behavior).

(2) self-protection from imminent harm.

(3) protection of third parties from imminent harm; (including resistance to search for contraband in compliance with GOP.67.03, §91.53 of this title (relating to Search).

(4) prevention of imminent property damage.

(5) prevention of escapes or attempted escapes; (including transportation, when circumstances create a risk of escape or harm).

(6) movement of a referred youth to the security/detention unit or alternative education classroom. A youth may also be moved within the security or detention unit when the youth's behavior is substantially disruptive and the youth refuses to follow a reasonable order of the security/detention staff.

(e) Restrictions.

(1) Force shall not be used as punishment, discipline, or as a convenience for staff.

(2) Staff, not youth, shall be solely responsible for the exercise of force and restraint.

(3) Staff shall use the amount and type of force necessary to control the situation except when a staff member is acting alone in which case he/she shall not be expected to use force or restraint when the risk of harm presented by the youth's conduct does not outweigh the possible risk of harm to youth or staff which would likely result if the staff acted alone.

(4) When physical or mechanical restraint is employed, staff shall ensure the youth's safety by ensuring adequate respiration and circulation, providing continuous visual supervision, and providing assistance as appropriate until the restraint is terminated.

(5) Physical force should be used as a last resort and only when necessary. When use of physical force is necessary, it should be measured and progressive in nature, however, when measured and progressive use is impractical, the amount and type of force necessary to control violence should be used. Physical restraint may be impractical when to do so would likely result in injury to staff.

(6) A physical or mechanical restraint, other than during transportation or a riot shall be terminated within a short period of time unless the youth is exhibiting or threatening to continue behaviors which justify the use of restraint. If continued restraint is justified, restraint must be terminated when the youth's behavior ceases to pose a threat or if used during transportation, when the destination is reached.

(f) Use of Restraints During Transportation.

(1) Transportation by the transportation unit. Mechanical wrist and ankle restraints shall be used routinely during transportation by the transportation unit to prevent escape or violent behavior and to ensure the safety of the youth and the community.

(2) Transportation by other than the transportation unit.

(A) Mechanical ankle restraints shall be used during transportation when a youth is being transported to a high restriction program.

(B) Mechanical wrist restraints may also be used when a youth's behavior prior to or during transportation leads staff to believe the youth is likely to attempt to escape, engage in violent behavior, or harm himself if not restrained.

§91.61. Use of Chemical Agents.

(a) Purpose: The purpose of this rule is to establish criteria and rules for the use of chemical agents by TYC staff to prevent or control an incident.

(b) Applicability:

(1) This rule applies to authorized institutions.

(2) This rule does not apply to the use of chemical agents by TYC apprehension specialists. See GOP.68.05, §91.85 of this title (relating to Use of Chemical Agents).

(c) Criteria For Use.

(1) Chemical agents may be used only when:

(A) the use of physical restraint is justified in accordance with GOP. 67.09, §91.59 of this title (relating to Use of Force): and

(B) the use of physical restraint under the circumstances, would likely result in injury to the staff or others; and

(C) verbal commands to stop are ineffective or impractical.

(2) Chemical agents may not by used when the youth:

(A) is physically restrained or otherwise under control; or

(B) has been identified as having respiratory problems, diseases, or conditions which would make use of chemical agents dangerous, unless necessary to prevent loss of life or serious bodily injury; or

(C) has been assigned to a mental health treatment program or has been identified by mental health professional as having a psychiatric condition or mental health diagnosis that would contraindicate the use of chemical agents until the mental health professional has been given the opportunity to establish control unless it is necessary to prevent loss of life, serious bodily injury.

(d) Restrictions.

(1) Chemical agents shall not be used as a form of punishment. Employees in violation will be subject to disciplinary action.

(2) Chemical agents may be used in TYC operated facilities and only in those facilities individually authorized for use by the executive director.

(3) Only TYC staff who have received appropriate training in the use of chemical agents and who have been approved by the facility administrator may use chemical agents.

(4) Use of a chemical agent must be approved by the facility administrator or designee prior to application except in an emergency. In an emergency, where prior authorization is not possible, the staff member employing a chemical agent shall justify such use following the action.

(5) Immediately following the incident, the medical staff will examine and if necessary, treat youth and staff exposed to the agent.

§91.63. Mechanical Restraint Equipment

(a) Texas Youth Commission (TYC) staff may use only agency approved equipment or chemical agent for the purpose of restraint and may use such equipment or agent only in a manner consistent with its intended purpose. Mechanical restraint may be employed only in compliance with GOP.67.09, §91. 59 of this title (relating to Use of Force). Chemical agent may be employed only in compliance with GOP.67.11, §91.61 of this title (relating to Use of Chemical Agents).

(b) Restrictions.

(1) Devices must be applied properly. A device must not be secured so tightly as to interfere with circulation nor so loosely as to permit chafing of the skin.

(2) Restraint devices may not be secured to any stationary object except as provided in using full body restraint. Prohibitions include:

(A) restraining in a standing position to a fixed object.

(B) attaching any approved restraint equipment to any part of a vehicle during transportation.

(3) Youth in restraints may not be secured to another youth.

(c) Approved Equipment. The following restraint devices and chemical agents are approved for use by TYC staff. All other devices are specifically disapproved.

(1) Handcuffs–Metal (not plastic) devices fastened around the wrist to restrain free movement of the hands and arms.

(2) Wristlets–A cloth or leather band fastened around the wrist or arm and which may be secured to a waist belt.

(3) Anklets–A cloth or leather band fastened around the ankle or leg.

(4) Ankle Cuffs–Metal, cloth or leather band or device fastened around the ankle to restrain free movement of the legs. Handcuffs may not be used to cuff the ankles.

(5) Plastic Cuffs–Plastic devices fastened around the wrist or legs to restrain free movement of hands, arms or legs. Use is authorized only in case of riot. See GOP.67.25, §91.75 of this title (relating to Riot Control).

(6) Locked Waist Band–A cloth, leather, or metal band fastened around the waist. The belt is used to secure the arms to the sides or front of the body.

(7) Padlocks or Key Locks–Locks used to secure handcuffs, wristlets, anklets and ankle cuffs.

(8) Mittens–A cloth, plastic, foam rubber, or leather hand covering fastened around the wrist or lower arm. Acceptable fasteners include elastic, Velcro, ties, paper tape, pull strings .

(9) Helmets–A plastic, foam rubber, or leather head covering. If appropriate, a face guard may be attached to the helmet. The device must be proper size for the youth, and the chin strap should not be so tight as to interfere with circulation.

(10) Shield–A plastic shield normally identified as riot shields equipped with handles or holding straps.

(11) Chemical Agents–Chlorobenzalmalononitrile (CS); Oleoresin Capsicum (OC), also known as pepper spray, as authorized.

§91.65. Security Unit.

(a) Purpose. The purpose of this rule is to:

(1) establish criteria for segregating youth from the general population who are out of control or who request the placement. Such youth are placed into a secure setting which is controlled exclusively by staff Each TYC operated high restriction facility provides for a security unit. Placement in the security unit is a serious and extreme measure which may be imposed only in specific situations for short periods of time; and

(2) establish minimum program requirements for the security unit.

(b) Applicability. This rule does not apply to:

(1) the use of the same or adjacent space for a longer term program for the management of assaultive behavior. See GOP.60.01, §88.1 of this title (relating to Special Management and Treatment Program for Assaultive Youth).

(2) the use of the same or adjacent space when used specifically as a detention facility. See GOP.67.19, §91.69 of this title (relating to Detention).

(c) Criteria for admission to the security unit. A youth may be confined in the security unit:

(1) when there are reasonable grounds to believe, based upon overt acts, that the youth is a serious and continuing escape risk; or

(2) when the youth is a serious and immediate physical danger to himself or herself or others and staff cannot protect the youth or others except by referring the youth to security; or

(3) when the confinement is necessary to prevent imminent and substantial destruction of property; or

(4) to restrain behavior that creates substantial disruption of the routine of the facility; or

(5) upon the youth's own request.

(d) Restrictions.

(1) The security unit shall not be used for retribution at any time.

(2) A youth shall not remain in security more than 24 hours solely on the basis of the behavior for which he was admitted to the security unit.

(3) No minimum length of time in security shall be imposed.

(4) Doors of individual security rooms will be locked following a youth's admission to the security unit and placement in an individual room.

(e) Extended Stay.

(1) A youth's stay in security may be extended beyond the 24 hours if there are reasonable grounds to believe that one of the admission criteria is occurring or will occur if the youth is released.

(2) Extended security confinement due process protections will be provided to youth who remain in the security unit longer than 24 hours.

(f) Program Requirements.

(1) Youth in security shall be provided psychological, medical, and educational services as well as supervised large muscle activity.

(2) Youth shall be provided the same food including snacks prepared in the same manner as for other youth except as

special diets may be prescribed on an individual basis by medical personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on March 21, 1996.

TRD-9603954 Steve Robinson
Executive Director
Texas Youth Commission

Effective date: April 11, 1996

Proposal publication date: February 16, 1996

For further information, please call: (512) 483-5244

TABLES AND GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and grphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation,

Graphic Material will not be reproduced in the Acrobat version of this issue of the Texas Register due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

State Office of Administrative Hearings

Wednesday, May 15, 1996, 9:00 a.m. (Rescheduled from: May 6, 1996)

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A hearing on the merits will be held at the above date and time in SOAH Docket Numbers 473-96-0069 and 473-96-0070-complaint of Plexnet, Inc. and DFW-direct against GTE Southwest, Inc., and complaint of Virtual Communications, Inc. against GTE Southwest, Inc. (PUC Docket Numbers 15101 and 15116).

Contact: J. Kay Trostle, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, (512) 936-0728.

Filed: March 6, 1996, 8:24 a.m.

TRD-9604192

Tuesday, June 4, 1996, 10:00 a.m. (Rescheduled from: April 17, 1996, 10:00 a.m.)

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A hearing on the merits is rescheduled for the above date and time in the following docket: SOAH Docket Number 473-95-1712; PUC Docket Number 14652-application of Magic Valley Electric Cooperative, Inc. for a certificate of convenience and necessity to construct a transmission line within Hidalgo County.

Contact: J. Kay Trostle, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, (512) 936-0728.

Filed: March 26, 1996, 10:58 a.m.

TRD-9604199

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State Board of Dental Examiners

Friday, April 5, 1996, 1:00 p.m.

SBDE Offices, 333 Guadalupe, Tower 3, Suite 800, William Hobby Building

Austin

Board

AGENDA:

I. Call to order

II. Roll call

III. Executive session to discuss pending litigation pursuant to Texas Government Code 551.074(1)(A), Vernon Supplement, 1995. Dorsey vs TSBDE #93-036406, 152 District Court Harris County Texas

IV. Announcements

Next settlement conference is April 26, 27.

Next board meeting is May 24, 25.

V. Adjourn

Contact: Mei Ling Clendennen, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 787701, (512) 463-6400.

Filed: March 27, 1996, 11:09 a.m.

TRD-9604292

Saturday, April 13, 1996, 10:00 a.m.

333 Guadalupe, SBDE Offices, William Hobby Building, Eighth Floor, Suite 800, Tower 3

Austin

Dental Laboratory Certification Council

AGENDA:

I. Call to order

II. Roll call

III. Approval of past minutes

IV. rules

A. Discuss and consider proposing amendments to Rule 116.2, dental technician

B. Discuss and consider proposing amendments to Rule 116.3, requirements

C. Discuss and consider proposing new Rule 116.20, definitions

D. Discuss and consider proposing new rule 116.31, permitted services

E. Discuss and consider proposing amendments to Rule 116.4, continuing education

F. Discuss and consider proposing amendments to Rule 116.5, exemption

G. Discuss and consider criteria to determine the timeline for the re-registration of canceled laboratories and penalties to be assessed to re-register.

H. Discuss and consider criteria to develop provisions for foreign laboratories doing business in Texas to obtain a registration permit

I. Discuss and consider criteria to farm-out dental laboratory work

J. Discuss and consider criteria for notifying the SBDE of a status change of a designated CDT

V. Discuss, consider and certify the list of registered commercial dental laboratories for submission to the SBDE for final approval/denial.

VI. Election of officers

VII. Announcements

VIII. Adjourn

Contact: Mei Ling Clendennen, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400.

Filed: March 26, 1996, 9:49 a.m.

TRD-9604194

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General Land Office

Tuesday, April 2, 1996, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Rooms 118, 119 and 831

Austin

School Land Board

AGENDA:

Approval of previous board meeting minutes; opening and consideration of bids received for the April 2, 1996 oil, gas and other minerals lease sale; pooling applications, poker draw (Devonian) field, Yoakum County; Andrews (Wofcamp/Penn.) field, Andrews County; Cecil Noble Field, Colorado County; royalty incentive program applications, Matagorda Bay, NE Miocene 2100, Block 173, NE Miocene 1400, and NE Miocene 2570, Matagorda County; good faith claimant application, Blanco County; consideration of sidewalk easement to the city of Austin related to the development of the Central Park PUD, (TDMHMR lands); coastal public lands, commercial easement applications, amendments and renewals, Aransas Bay, Aransas County; Neches River, Jefferson County; Galveston Bay, Galveston County; and West Bay, Galveston County; structure (cabin) permit renewals, amendments and rebuilding requests, Laguna Madre, Cameron County, Kenedy County, Kleberg County and Willacy County; easement applications and terminations, Nueces Bay, Nueces County; and Clear Lake, Harris County; memorandum of agreement between the School Land Board and the Coastal Coordination Council on certification of rules; executive session-pending or contemplated litigation; executive session and open session-consideration of land acquisition, Comal and Guadalupe Counties; executive session and open session-consideration of land acquisition/leases, Brewster County.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: March 25, 1996, 4:26 p.m.

TRD-9604183

Wednesday, April 3, 1996, 3:00 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

Veterans Land Board

AGENDA:

Approval of previous board meeting minutes; consideration of forfeiture action on delinquent Veterans Land Program accounts; consideration of forfeiture action on Veterans Land Program accounts involved in property tax suits.

Contact: Linda Fisher, Stephen F. Austin Building, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: March 25, 1996, 4:27 p.m.

TRD-9604184

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Texas Growth Fund

Tuesday, April 2, 1996, 11:30 a.m.

1000 Red River

Austin

Board of Trustees

AGENDA:

1. Review and approve minutes of the December 13, 1995, special meeting.

2. Review and approve valuation of investments as of December 31, 1995.

3. Review and approve treasurer's report, including review of audit report for period ended December 31, 1995.

4. Review and approve invoice from Ernst and Young for performing audit of 1995 financial statements.

5. Review and approve invoices from Vinson and Elkins L.L.P.

6. Review and approve reimbursement expense reports from the current and former trustees.

7. Review and approve reimbursement to TGF Management Corporation for 1995 trust expenses.

8. Receive a report from Vinson and Elkins L.L.P. regarding payment of routine expenses.

9. Review and approve resolution authorizing the establishment of an interest-bearing checking account.

10. Receive an activity report from TGF Management Corporation.

11. Review and approve to TGF Management Corporation's second quarter 1996 budget request.

12. Review and approve proposed investment(s).

13. Such other matters as may come before the board of trustees.

Contact: Janet Waldeier, 100 Congress Avenue, Suite 980, Austin, Texas 78701, (512) 322-3100.

Filed: March 25, 1996, 3:59 p.m.

TRD-9604178

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Texas Natural Resources Conservation Commission

Wednesday, April 3, 1996, 9:30 a.m.

12118 North Interstate 35, Room 201S, Building East

Austin

Revised Agenda

AGENDA:

The Commission will consider approving the following matters; district matter; temporary authorization; contracts; public water supply enforcement; petroleum storage tank enforcement; industrial hazardous waste enforcement; municipal solid waste enforcement; motion for rehearing; rule; report; administrative law judge's proposal for decision; executive session; the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time. (Registration for 9:30 agenda starts at 8:45 until 9:25 a.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: March 25, 1996, 4:34 p.m.

TRD-9604186

Wednesday, April 3, 1996, 9:30 a.m.

12118 North Interstate 35, Room 201S, Building East

Austin

Revised Agenda

AGENDA:

The commission will consider addendum to agenda of April 3. The item to be considered will be a closed session to receive legal advice on agency operations relating to delegation of the National Pollutant Discharge Elimination system. (No public testimony or comment will be accepted except by invitation of the Commission.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: March 26, 1996, 3:38 p.m.

TRD-9604217

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Texas Council on Offenders with Mental Impairments

Monday, April 8, 1996, 9:30 a.m.

8610 Shoal Creek Boulevard

Austin

Executive Committee

AGENDA:

I. Introductions

II. Public comments

III. Approval of minutes (Attachment A)

IV. Committee assignments/reports

* Planning/legislative committee

* Program/research committee

* Finance committee

V. Executive committee retreat discussion

VI. Council meeting schedule/agenda

VII. Executive director's report

Each item above includes discussion and action as necessary.

Contact: Dee Kifowit, 8610 Shoal Creek Boulevard, Austin, Texas, (512) 406-5406.

Filed: March 26, 1996, 4:09 p.m.

TRD-9604223

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Texas State Board of Examiners of Psychologists

Wednesday, April 24, 1996, 10:00 a.m.

333 Guadalupe, Tower 2, Suite 2-400A

Austin

AGENDA:

The board will meet to consider the employment of the executive director, to consider the strategic plan for the agency, to determine dates for meetings for the calendar year 1997, and to consider applications for licensure/certification.

Contact: Rebecca E. Forkner, 9101 Burnet Road, Suite 212, Austin, Texas 78758, (512) 835-2036.

Filed: March 26, 1996, 3:41 p.m.

TRD-9604218

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Public Utility Commission of Texas

Friday, April 12, 1996, 9:00 a.m.

7800 shoal Creek Boulevard

Austin

AGENDA:

A hearing on the merits will be held by the State Office of Administrative Hearings in Docket Number 15554-application of U.S. Communications, Inc. for a service provider certificate of operating authority. This application was filed on March 25, 1996. Applicant plans to resell local exchange services and any related service offerings as provided through an agreement with Southwestern Bell Telephone. The proposed service area is all local exchanges serviced by Southwestern Bell in the State of Texas. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by April 5, 1996.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 26, 1996, 10:58 a.m.

TRD-9604200

Friday, April 12, 1996, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

A hearing on the merits will be held by the State Office of Administrative Hearings in Docket Number 15555-application of Winstar Wireless of Texas, Inc. for a Service Provider Certificate of Operating Authority. this application was filed on March 25, 1996. Applicant plans to provide local exchange services which will provide one or more voice grade equivalent local exchange telephone lines to the customer's premises from the applicant's end office switch for access to the public switched network; local exchange usage which will provide users of the applicant's local exchange lines with direct dial calling, operator assisted calling, directory assistance service, access to Telecommunications Relay Service and Emergency 911 service and switched access services providing trunk-side access. The geographic area to be served by WinStar is identical to the entire area of the existing Southwestern Bell Telephone Company Dallas and Houston exchanges along with several adjoining exchanges. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by April 5, 1996.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 26, 1996, 10:58 a.m.

TRD-9604201

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Railroad Commission of Texas

Wednesday, April 10, 1996, 10:00 a.m.

1701 North Congress Avenue, 12th Floor Conference Room 12-126

Austin

AGENDA:

To hear the oral argument regarding Docket Number 09-0209058, Sentry Environmental, L. P.'s application for a qualified subdivision for a 358.9 acre tract, Newark East (Barnett Shale), Hunter Creek (Congiomerate) and M and V (Conglomerate) Fields, Denton County, Texas.

Contact: Mary Ross McDonald, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7008.

Filed: March 25, 1996, 4:14 p.m.

TRD-9604179

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Rio Grande Compact Commission

Tuesday, April 16, 1996, 9:00 a.m.

New Mexico State Capitol Building, Room 307

Santa Fe, New Mexico

AGENDA:

1. Call to order by the chairman
2. Announcements
3. Report of the secretary
4. Report of the engineer advisors
5. Reports of the commissioners
6. Report of federal agencies
7. Presentation of costs of operation for FY 1995
8. Presentation of the budget for FY 1997
9. Cooperative agreement with U.S. Geological Survey for secretarial services
10. Approval of the minutes of the 56th Annual meeting and the 76th special meeting
11. Presentation "Ecosystems Flow" by Mr. Steve Harris of Rio Grande restoration
12. Other business
13. Approval of the letter to Governor of the signatory states
14. Adjournment

Contact: Herman Settemeyer, 12100 Park 35 Circle, Austin, Texas 78711-3087, (512) 239-4707.

Filed: March 26, 1996, 5:38 p.m.

TRD-9604261

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Boards for Lease of State-owned Lands

Tuesday, April 2, 1996, 2:30 p.m.

General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 833

Austin

Board for Lease of Texas Department of Criminal Justice

AGENDA:

Approval of previous board meeting minutes; pooling application, Clemens State Tract 8 Gas Unit, Wildcat Field, Brazoria County; consideration and approval of bids received for the April 2, 1996 oil, gas and other minerals lease sale; executive session-pending or contemplated litigation.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: March 25, 1996, 4:27 p.m.

TRD-9604185

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Texas Tech University and Texas Tech University Health Sciences Center

Wednesday, April 3, 1996, 1:00 p.m.

Board Suite, Administration Building, Campus

Lubbock

Executive Session

AGENDA:

V.T.C.A. Government Code 551.071-Consultation with attorney regarding pending and contemplated litigation.

V.T.C.A. Government Code 551.072-Consideration of the value and method of marketing approximately 60,570 acres of real property located in Hartley and Oldham Counties, Texas.

V.T.C.A. Government Code 551.074-To consider the employment of an individual to the position of Chief Executive Office of Texas Tech University and Texas Tech University Health Sciences Center.

V.T.C.A. Government Code 551.075-To receive information from University employees.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 26, 1996, 9:56 a.m.

TRD-9604196

Wednesday, April 3, 1996, 1:00 p.m.

Board Suite, Administration Building, Campus

Lubbock

Board of Regents

AGENDA:

Ratification of administrative actions relating to finance: delegation of officers and administrators to approve travel; delegation of officers and/or employees to approve official travel reimbursements from appropriated funds; delegation of officers and/or employees to authorize and approve expenditures from appropriated funds; specification of officers and/or employees to sign checks; specification of officers and/or employees to sign cashier's checks only; specification of officers and/or employees to authorize wire transfers; and delegation of officers and/or employees to approve and sign documents for the sale purchase and transfer of securities owned or controlled by the University.

Contact: Donna Davidson, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 26, 1996, 9:58 a.m.

TRD-9604195

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Texas Department of Transportation

Thursday, April 11, 1996, 9:00 a.m.

410 East Fifth Street, Second Floor

Austin

Motor Vehicle Board

AGENDA:

Call to order: roll call. Approval of minutes of Motor Vehicle Board meeting on January 18, 1996. Argument on proposals for decision. Consideration of proposals for decision. Consideration of agreed final order. Public hearing and consideration of proposed rule 101.63 amendments. Agreed orders. Orders of dismissal. Other: a. employee recognition; b. Report on Rule 103.13; c. discussion of whether rules should be promulgated relating to "license brokers"; d. Litigation status report; e. Review of consumer complaint recap report including decisions made by examiners, division director and board members; f. Lemon laundering video; g. Discussion of whether home addresses of board should be released to public; h. Division budget status. Adjournment.

Contact: Brett Bray, 410 East Fifth Street, First Floor, Austin, Texas 78701, (512) 505-5100.

Filed: March 26, 1996, 2:43 p.m.

TRD-9604209

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University Interscholastic League

Monday, April 1, 1996, 9:00 a.m.

Thompson Conference Center, 26th Street and Red River

Austin

Waiver Review Board

AGENDA:

AA. Request for waiver of parent residence rule by Chris Rowland, representing Flatonia High School in Flatonia, Texas.

Contact: Sam Harper, 23001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

Filed: March 26, 1996, 3:20 p.m.

TRD-9604212

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The University of Texas System

Tuesday, March 26, 1996, 10:30 a.m.

Ninth Floor, Ashbel Smith Hall, 201 West Seventh Street

Austin

Board of Regents

Emergency Meeting

AGENDA:

The board of regents of the University of Texas System will meet in emergency session via telephone conference call to confer with general counsel regarding the Fifth United States Circuit Court of Appeals' decision in Hopwood vs. State of Texas et al. and to consider any appeal of that decision which may be appropriate.

Reason for Emergency: The substantive nature of the Court's decision on March 18, 1996, regarding the admission process requires a timely decision by the Board on the appropriateness of an appeal.

Contact: Arthur H. Dilly, 201 West Seventh Street, Austin, Texas 78701-2981, (512) 499-4402.

Filed: March 25, 1996, 2:20 p.m.

TRD-9604141

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Texas Workforce Commission

Tuesday, April 2, 1996, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

AGENDA:

Prior meeting notes; staff reports; consideration and possible final adoption of rule regarding administration of the Skills Development Fund; Discussion of Texas Council on Workforce and Economic Competitiveness agenda for April 18, 1996 meeting in Austin; Discussion, consideration and possible action with regard to transfer of programs pursuant to House Bill 1863; Discussion, consideration and possible action with regard to submitted applications for certification of various local workforce development boards, including: (a) Cameron County; Discussion, consideration and possible action on proposed rule to establish procedures for local TWC offices to participate in competitive bidding process for service provision and establishing an independent evaluation of results and outcomes of performance; Consideration and possible action on staff recommendation for publication of proposed amendments to the state JTPA rules; Internal procedures of Commission Appeals; Consideration and action on higher level appeals in unemployment compensation cases listed on Texas Employment Commission Docket 14; Set date and discuss agenda for next meeting; and Video taping for employee orientation in Media Services, Room 208.

Contact: C. Kingsbery Otto, 101 East 15th Street, Austin, Texas 78778, (512) 475-1119.

Filed: March 25, 1996, 4:06 p.m.

TRD-9604180

Wednesday April 3, 1996, 10:00 a.m.

Room E1.004, Capitol Extension Auditorium, Underground Complex Just North of Texas Capitol, 15th and Congress Avenue

Austin

AGENDA:

Meeting and briefing for chief elected officials (CEOs) involved in the formation of Local Workforce Development Boards pursuant to House Bill 1863. Discussion of workforce agreements, planning guidelines, CEO role, accountability.

Contact: C. Kingsbery Otto, 101 East 15th Street, Austin, Texas 78778, (512) 475-1119.

Filed: March 25, 1996, 4:06 p.m.

TRD-9604180

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Regional Meetings

Meetings Filed March 25, 1996

The Ark-Tex Council of Governments (ATCOG) met at I-30 West, Texarkana, March 28, 1996, at 5:30 p.m. Information may be obtained from Sandie Brown, P.O. Box 5307, Texarkana, Texas 75505, (903) 832-8636. TRD-9604162.

The Austin-Travis County MHMR Center Board of Trustees met at 1430 Collier Street-Board Room, Austin, March 28, 1996, at 5:00 p.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141. TRD-9604182.

The Community Action Committee of Victoria, Texas Board of Directors and Finance Committee met at 1501 North DeLeon, Suite A, Victoria, March 28, 1996, at 7:30 p.m. Information may be obtained from Lisa Wiest, 1501 North DeLeon, Suite A, Victoria, Texas 77902-2142, (512) 578-2989. TRD-9604140.

The Coryell City Water Supply District Board of Directors met at 510 South Main, McGregor, March 28, 1996, at 7:00 p.m. Information may be obtained from Helen Swift, Route 2, Box 93, Gatesville, Texas 76528, (817) 865-6089. TRD-9604159.

The Education Service Center, Region VI Executive Committee will meet at the Waterwood Resort, Huntsville, April 10, 1996, at 6:00 p.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161. TRD-9604142.

The Houston-Galveston Area Council Transportation Department will meet at 2121 Austin Parkway, Sugarland, April 2, 1996, at 7:00 p.m. Information may be obtained from Kathy H. Lang, 3555 Timmons Lane, Suite 500, Houston, Texas 77227, (713) 993-4501. TRD-9604161.

The Houston-Galveston Area Council Transportation Department will meet at 3555 Timmons Lane, Houston, April 9, 1996, at 5:30 p.m. Information may be obtained from Kathy H. Lang, 3555 Timmons Lane, Suite 500, Houston, Texas 77227, (713) 993-4501. TRD-9604158.

The Lavaca County Central Appraisal District Board of Directors will meet at 113 North Main Street, Halletsville, April 8, 1996, at 4:00 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Halletsville, Texas 77964, (512) 798-4396. TRD-9604189.

The Liberty County Central Appraisal District (Revised Agenda.) Board of Directors met at 315 Main Street, Liberty, March 27, 1996, at 9:30 a. m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722. TRD-9604190.

The West Central Texas Council of Governments Private Industry Council will meet at the Career Stop, 809 North Judge Ely Boulevard, Abilene, April 4, 1996, at 10:00 a.m. Information may be obtained from Mary Ross, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9604177.

The West Central Texas Council of Governments School to Work Partnership Partnership Committee will meet at 809 North Judge Ely Boulevard, Abilene, April 2, 1996, at 2:30 p.m. Information may be obtained from Mary Ross, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9604090.

The West Central Texas Council of Governments School to Work Partnership (Revised Agenda.) Partnership Committee will meet at 809 North Judge Ely Boulevard, Abilene, April 2, 1996, at 2:30 p.m. Information may be obtained from Mary Ross, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9604160.

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Meetings Filed March 26, 1996

The Brazos Valley Development Council Criminal Justice Advisory Committee will meet at 1706 East 29th Street, Bryan, April 3, 1996, at 9:30 a. m. Information may be obtained from Linda McGuill, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9604221.

The Education Service Center, Region XVIII Board of Directors met at 2811 LaForce Boulevard, Midland, March 31-April 1, 1996, at 5:30 p.m. and 8:30 a.m., respectively. Information may be obtained from Dr. Vernon Stokes, P.O. Box 60580, Midland, Texas 79711, (915) 563-2380. TRD-9604203.

The Lower Rio Grande Valley Development Council (Emergency Revised Meeting.) Hidalgo County Metropolitan Planning Organization met at the TXDOT District Office, 600 West Expressway US 83, Pharr, March 28, 1996, at 7: 00 p.m. (Reason for emergency: Item #7 on the agenda-because of consideration of field changes and overrun procedures.) Information may be obtained from Edward L. Molitor, 311 North 15th Street, McAllen, Texas, (210) 682-3481. TRD-9604197.

The Middle Rio Grande Development Council (Emergency Meeting.) 9-1-1 Advisory Committee met at the MRGDC Planning Office, 209 North Getty Street, Uvalde, March 28, 1996, at 10:00 a.m. (Reason for emergency: Need to obtain prior approval from committee in order to comply with required deadline.) Information may be obtained from M. Forrest Anderson, 209 North Getty Street, Uvalde, Texas 78801, (210) 876-3533. TRD-9604198.

The Middle Rio Grande Development Council (Emergency Meeting.) 9-1-1 Advisory Committee met at the MRGDC Planning Office, 209 North Getty Street, Uvalde, March 28, 1996, at 10:00 a.m. (Reason for emergency: Need to obtain prior approval from committee in order to comply with required deadline.) Information may be obtained from M. Forrest Anderson, 209 North Getty Street, Uvalde, Texas 78801, (210) 876-3533. TRD-9604193.

The Nolan County Central Appraisal District Board of Directors will meet at Betty's Breakfast, Oak Street, Sweetwater, April 9, 1996, at 7:00 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9604208.

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Meetings Filed March 27, 1996

The Bosque Higher Education Authority, Inc. Board of Directors will meet at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, April 3, 1996, at 12:45 p.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9604285.

The Brazos Educational Assistance, Inc. Board of Directors will meet at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, April 3, 1996, at 11:30 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9604280.

The Brazos Higher Education Authority, Inc. Board of Directors will meet at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, April 3, 1996, at 11:00 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9604278.

The Brazos Higher Education Service Corporation, Inc. Board of Directors will meet at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, April 3, 1996, at 12:00 p.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9604282.

The Brazos Student Finance Corporation Board of Directors will meet at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, April 3, 1996, at 11:15 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9604279.

The Brazos Valley Development Council Brazos Valley Regional Advisory Committee on Aging will meet at 1706 East 29th Street, Bryan, April 2, 1996, at 2:30 p.m. Information may be obtained from Roberta Lindquist, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9604277.

The Central Plains MHMR/SA Center Board of Trustees met at 208 South Columbia, Plainview, March 29, 1996, at 6:00 p.m. Information may be obtained from Ron Trusler, 2700 Yonkers, Plainview, Texas 79072, (806) 292-2636. TRD-9604266.

The Pecos Higher Education Authority, Inc. Board of Directors will meet at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, April 3, 1996, at 12:30 p.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9604284.

The Pecos Student Finance Corporation Board of Directors will meet at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, April 3, 1996, at 11:45 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9604281.

The Trinity Higher Education Authority, Inc. Board of Directors will meet at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, April 3, 1996, at 12:15 p.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9604283.

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IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Childlren's Trust Fund of Texas Council

Request for Proposals

The Children's Trust Fund of Texas Council (CTF) announces the availability of funds to establish programs to prevent child abuse and neglect under the CTF Family PRIDE initiative. The Family PRIDE (Principles, Responsibility, Integrity Discipline and Education) initiative seeks to promote an understanding of child abuse and neglect prevention through community involvement and decision-making.

CTF's goal is to add 15 Family PRIDE sites each year to implement the project. Family PRIDE sites are chosen based on service needs indicators including but not limited to: child population, child poverty, teenage pregnancy, juvenile crime, school drop-out and incidence of child abuse and neglect. Geographic location and current availability of services are also considered.

Proposals are being solicited for the following counties: Bell, Brooks, Cameron, Cass, Cherokee, Coleman, Crosby, Deaf Smith, Gregg, Gonzales, Jim Wells, Lampasas, Lubbock, Marion, Nueces, Red River, Travis, Trinity, Ward and Willacy.

Deadline: Deadline for the submission of proposals is May 31, 1996 at 5:00 p.m.

Contract Period: The contract period for funding awarded in response to the Family PRIDE Request for Proposal (RFP) is September 1, 1996-August 31, 1997. Contracts may be renewed twice for a total contract period of three years, as authorized by the CTF Council. Renewal is not automatic and renewal applications will be requested.

Eligibility Criteria: To be eligible to apply for funding, an applicant must:

1. use the funds for primary or secondary child abuse and neglect prevention and not for treatment. The two funding categories are parent education and children's education.

2. be an organization in operation (i.e., registered with the Secretary of State) for a minimum of two years

3. **not** be a state agency-"State Agency " is defined as a board, commission, department, office or other state agency that:

4. is in the executive branch of state government,

5. was created by the constitution or a statute of this state, and

6. has statewide jurisdiction.

7. provide a cash or in-kind match equal to at least 10% of the contract funding amount for year one, 20% of the contract amount for year two and 50% of the contract amount for year three.

8. applicant agencies/organizations must be located in the 20 communities listed previously.

Approved Curricula: Descriptions of approved curricula and resource persons appear in the RFP. It is required that applicants complete a form verifying contact with the curriculum owner.

Alternate Curricula: If an applicant chooses to use a curriculum that is not included in the RFP, the applicant must meet requirements specified in the RFP in order to provide sufficient background information to convince a panel of experts that it has been tried and tested in appropriate settings. Information must also be provided to demonstrate that it is a model that has been proven effective. Alternate curricula must be submitted to the CTF office **no later than May 3, 1996** for review. A curriculum review panel will meet to review the curricula and respond to the potential applicants no later than May 10, 1996. The curriculum will either be denied and the applicant must select from a curricula in the RFP, or the curriculum will be accepted for use and the applicant may submit a proposal.

Amount of Contract Awards: Contracts will be awarded up to $50,000 per program for the first year.

Evaluation and Selection: A CTF Family PRIDE Council in each site will review and select proposals to recommend to Children's Trust Fund of Texas Council for funding. The emphasis of this Request for Proposal (RFP) is on coordination and collaboration of agencies and organizations to address supporting and strengthening families together in their community. Applicants will be notified in August of the status of their request.

The RFP application packet includes complete instructions, application requirements, deadline details and hours that resource staff at the Children's Trust Fund office will be available to answer questions.

To Request an RFP Application Packet: If potential applicants meet the eligibility criteria as outlined previously, they may request an RFP packet by telephone, mail, or in person: 512/370-9566 (automated 24 hour line for requesting RFP packets only); Children's Trust Fund of Texas, 8929 Shoal Creek Boulevard, Suite 200, Austin, Texas 78757-6854 (Monday-Friday, 8:00 a.m. to 5:00 p.m.).

Issued in Austin, Texas, on March 26, 1996.

TRD-9604263 Janie D. Fields, MPA
Executive Director
Children's Trust Fund of Texas Council

Filed: March 27, 1996

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The Children's Trust Fund of Texas Council announces the availability of funds to implement a public awareness campaign on Shaken Baby Syndrome. Shaken Baby Syndrome is a serious condition caused by shaking, jerking, or jolting a baby. Often, frustrated parents or other person's responsible for a child's care think that shaking a baby is a harmless way to make the child stop crying. Shaken Baby Syndrome can result in brain damage, blindness, spinal chord injury, learning disabilities, seizures and death.

Deadline: Proposals must be received no later than 5:00 p.m. on May 10, 1996.

Contract Period: The contract period for funding awarded in response to the Request For Proposal is for one year beginning no earlier that June 3, 1996 and no later than September 1, 1996.

Eligibility Criteria:

1. Any legally constituted entity, other than a state agency, may apply for the grant. As mandated by law, a state agency may not apply for a CTF grant.

A **State Agency** is defined as a board, commission, department, office, or other state agency that:

(a) is in the executive branch of state government

(b) was created by the constitution of this state, and

(c) has statewide jurisdiction

Special consideration will be given to youth organizations who will comprise 50% of the grant awards.

A **Youth Organization** is defined as a formal or informal group of youth who meet regularly under the supervision of one or more adults and within the construct of a larger organization (school, church, club, etc.)

2. The grantee must provide a cash or in-kind match equal to at least 10% of the grant amount.

Amount of Contract Awards: Grants are available in the amounts of $5,000, $10,000, and $15,000 for the implementation of this campaign.

Evaluation and Selection: Applicants are initially screened by CTF for eligibility and completeness using the minimum requirements stated in the RFP. Applicants are then scored by the CTF review team and funding recommendations are made to the CTF Council who make final selections. The emphasis of this Request For Proposal is on youth organizations who design creative approaches for reaching their peers and collaborating with other organizations in the community.

The RFP application packet includes complete instructions, application requirements, deadline details and hours that resource staff at the Children's Trust Fund office will be available to answer questions.

To Request an RFP Application Packet: Potential applicants may request an RFP packet by telephone, mail, or in person: 512/473-7151 (automated 24 hour line for requesting RFP packets only); Children's Trust Fund of Texas, 8929 Shoal Creek Boulevard, Suite 200, Austin, Texas 78757-6854 (Monday-Friday, 8:00 a.m. to 5:00 p.m.).

TRD-9604263 Janie D. Fields MPA
Executive Director
Children's Trust Fund of Texas Council

Filed: March 26, 1996

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Title 79, Texas Civil Statutes, Article 1.04, as amended (Texas Civil Statutes, Article 5069-1. 04).

[graphic]

Issued in Austin, Texas on March 26, 1996.

TRD-9604205 Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner

Filed: March 26, 1996

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Texas Department of Criminal Justice

Request For Qualifications

The Texas Correctional Facilities Financing Corporation (TFFC) is seeking qualifications from underwriters of municipal bonds. TFFC is contemplating the advanced refunding of certain debt of the Texas Correctional Facilities Financing Corporation, including but not limited to, series 1988 (Hayes and Wise Counties pre-release projects) and series 1991 (Liberty and Johnson Counties pre-release projects). The Texas Department of Criminal Justice (TDCJ) is acquiring the projects based on a lease/pur-

chase agreement with TFFC and will recommend the selection of underwriter(s) to TFFC.

To receive the RFQ, please fax a written request to: Merriweather and Company, Timothy Merriweather, 11605 Broad Oaks Drive, Austin, Texas 78759, (512) 335-6257, Fax (512) 335-6267.

Underwriters will be selected based on the responses to the RFQ. Written response are due by 5:00 p.m., CST, April 16, 1996. Late responses will not be accepted. It is not expected that candidates will be interviewed and an underwriting group will be announced on April 23, 1996. The transaction will be undertaken as soon thereafter as market conditions permit.

Issued in Austin, Texas, on March 27, 1996.

TRD-9604264 Carl Reynolds
General Counsel
Texas Department of Criminal Justice

Filed: March 27, 1996

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Texas Education Agency

Request for Applications Concerning Optional Extended Year Program, 1995-1996.

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-95-041 is authorized under the Texas Education Code, §42.152(p) (relating to Compensatory Education Allotment), and §29.082 (relating to Optional Extended Year Program).

Eligible Applicants. The Texas Education Agency (TEA) is accepting applications from public school districts in Texas identified as having a high concentration of educationally disadvantaged students to implement innovative strategies for students who are likely to be retained. School districts are eligible to apply individually or through a shared services arrangement. In addition, districts that participated in the 1994-1995 Retention Reduction Pilot Program projects are eligible to apply. This is a non-competitive RFA. All eligible districts will receive a copy of this RFA and an entitlement card. An education service center may serve as a fiscal agent of a shared services arrangement.

Description. The purpose of the Optional Extended Year Program is to reduce and ultimately eliminate retention. School districts receiving grant funds under this RFA must implement an extended year program for a period not to exceed 30 instructional days. Students in kindergarten through Grade 8 who are identified as likely not to be promoted to the next grade level for the succeeding school year are eligible to participate.

Dates of Project. Applicants should plan for a starting date of no earlier than May 13, 1996, and an ending date of no later than August 29, 1997.

Project Amount. A total of $49 million will be awarded. Contingent on approval of the commissioner's rules for the Optional Extended Year Program, criteria for funding and selection of eligible school districts to participate in the Optional Extended Year Program as outlined in this RFA is subject to change. The tentative entitlement is based on 10% of the school district's at-risk population in kindergarten through Grade 8 as reported to the Public Education Information Management System (PEIMS). School districts will receive a per-student allocation of $670. The entitlement shall be adjusted to reflect the actual number of students participating in the program as indicated by the school district on Schedule #4A of the funding application (SAS-206). Eligible school districts shall receive a minimum entitlement of $5,500. However, the maximum entitlement will not exceed an amount that is in excess of 10% of the school district's at-risk student population for kindergarten through Grade 8. The Retention Reduction Pilot Program projects will be funded using the same formula that will be used to fund all eligible school districts participating in the Optional Extended Year Program.

Selection Criteria. This is a non-competitive RFA. Only school districts that are identified as eligible to apply will receive a complete copy of RFA #701-95-041 and an entitlement card.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-95-041 will be mailed to eligible schools districts. All other interested individuals may obtain a copy by writing the: Texas Education Agency, Division of Accelerated Instruction, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9374. Please refer to the RFA number in your request.

Further Information. For clarifying information about the RFA, contact Hellen Bedgood, Division of Accelerated Instruction, Texas Education Agency, (512) 463-9374.

Deadline for Receipt of Applications. Applications must be received in the Division of Accelerated Instruction, Texas Education Agency, by 5:00 p.m. (Central Standard Time), Monday, May 13, 1996, to be considered. Districts not forwarding the application in time to be received by TEA on May 13, 1996, will automatically relinquish their funds for reallocation.

Issued in Austin, Texas, on March 27, 1996.

TRD-9604286 Criss Cloudt
Associate Commissioner for Policy Planning and Research
Texas Education Agency

Filed: March 27, 1996

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Texas Department of Health

Notice of Intent to Revoke Certificates of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code, §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: R. A. Moran Professional Association, Winnie, R03205; Chiro-Med Management, Houston, R20699; O'Quinn Veterinary Hospital, Pinehurst, R15429; Manuel A. Martinez, Jr., M.D.,

P.A., Del Rio, R15432; Maples Chiropractic, Fort Worth, R16256; Care Clinic One, El Paso, R18706; Noel A. Bryan, D.V.M., Weatherford, R19939; Ballard R. Boren, D.C., Sulphur Springs, R21414; Larry B. Fowler, D.D.S., Conroe, R20694; H. R. Yeary, Laredo, R05601; America West Airlines, Phoenix, Arizona, R16254; Valley X-Ray System Incorporated, Weslaco, R19789; Vargos Dental and Biomedical Services, Las Cruces, New Mexico, R19129.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on March 26, 1996.

TRD-9604214 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: March 26, 1996

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Texas Higher Education Coordinating Board

Award of Consultant Contract

Under the provisions of Texas Government Code, Chapter 2254, Subchapter B, the Texas Higher Education Coordinating Board announces the award of a contract to provide consulting services as described in the Request for Proposals (RFP) that was published in the January 2, 1996, issue of the *Texas Register* (21 TexReg 161). The consultant will perform a comprehensive evaluation of the effectiveness of the Texas Academic Skills Program (TASP) to determine the effects that the TASP Test's advising and placement policies and institutional remediation practices are having on the educational attainment of college students in Texas.

The consultant is Appalachian State University, Graduate Studies and Research Office, Boone, North Carolina, 28608. The total amount of this contract shall not exceed $75,000. The contract is to begin on or about March 21, 1996 and terminate upon the Coordinating Board's acceptance of the final report on or about October 18, 1996.

Issued in Austin, Texas, on March 25, 1996.

TRD-9604210 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Filed: March 26, 1996

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Middle Rio Grande Development Council

Requests for Proposals

The Middle Rio Grande Development Council is requesting proposals from qualified audit firms for an annual financial audit of all program funds administered by the agency from July 1, 1995-June 30, 1996. The audit to be performed shall be that of general purpose financial and compliance audit guided by: the Single Audit Act of 1984 (Public Law 98-502); Generally Accepted Government Auditing Standards (GAGAS); the American Institute of Certified Public Accountants (AICPA) Industry Audit Guide, Audits of State and Local Governmental Units; (AICPA) Industry Audit Guide, Audits of Certain Non-Profit Organizations; Financial Accounting Standards Board (FASB) Statement of Positions 80-2, Accounting and Financial Reporting by Government Units; OMB Circulars A-21, A-50, A-87, A-102, A-122, A-128, and A-133; OMB's Compliance Supplement for Single Audits of State and Local Governments; Texas Department of Commerce JTPA Financial Management Manual; and all other applicable MRGDC fund source, Financial Management Manuals.

A contract to perform the audit will be awarded on the basis of the audit firm's experience, competence, knowledge and qualifications in auditing agencies receiving state and federal funds, and on the reasonableness of the proposed fee for the audit services, consistent with the scope of services and evaluation criteria contained in the Request for Proposal packet. The Middle Rio Grande Development Council shall reserve the option to renegotiate with the selected firm for future audits services for Fiscal Year 1996-1997 and Fiscal Year 1997-1998.

Audit firms interested in submitting a proposal may contact Ramon S. Johnston, Deputy Director of Administration at (210) 876-3533 for a copy of the RFP Packet. All proposals must be received by 10:00 a.m., Monday, April 8, 1996, at the MRGDC Central Office, 1904 North First Street-P.O. Box 1199, Carrizo Springs, Texas 78834.

The Middle Rio Grande Development Council is an equal opportunity employer and auxiliary aids and services may be made available upon request to individuals with disabilities. For information please contact our VOICE or TDD telephone (210) 876-3533. Historically Underutilized Businesses (HUBs) are encouraged to submit bid quotations. The Middle Rio Grande Development Council reserves the right to accept and/or reject any or all proposals received and/or negotiate with all responsive firms.

Issued in Austin, Texas, on March 20, 1996.

TRD-9604078 Ramon S. Johnston
Deputy Director of Administration
Middle Rio Grande Development Council

Filed: March 25, 1996

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Texas Natural Resource Conservation Commission

Extension of Comment Period

In the March 19, 1996, issue of the *Texas Register* (21 TexReg 2323), the Texas Natural Resource Conservation Commission (TNRCC) published a Notice of Availability and Request for Comments on a Proposed Natural Resource Damages Consent Decree and Restoration Plan. The deadline for receipt of written comments was published as April 8, 1996, but should have been April 19, 1996, to allow commenters 30 days to compile and submit comments.

Comments should be submitted in writing to Richard Seiler, of the TNRCC, MC 142, P.O. Box 13087, Austin, Texas 78711-3087. For further information please contact Richard Seiler at (512) 239-2523.

Issued in Austin, Texas, on March 26, 1996.

TRD-9604262 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Filed: March 26, 1996

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Request for Nominations to Consider An Appointment to the Municipal Solid Waste Management and Resource Recovery Advisory Council

The Texas Natural Resource Conservation Commission (TNRCC), is soliciting nominations for an individual from a solid waste management organization, composed primarily of commercial landfill operators, to serve on the Municipal Solid Waste Management and Resource Recovery Advisory Council. The term will expire August 31, 2001. The appointment will be made by the TNRCC Commissioners.

The Municipal Solid Waste Management and Resource Recovery Advisory Council was mandated by the 69th Legislature (1983) and is composed of 17 members representing various segments of the regulated community; i.e., city and county solid waste agencies, commercial solid waste landfill operator, solid waste districts/authorities, environmental groups, city and county officials, tire processors, financial community, and the general public. The Council reviews and evaluates the effect of state policies and programs on municipal solid waste management; makes recommendations to the TNRCC Commissioners on matters relating to municipal solid waste management; recommends legislation to the Commissioners to encourage the efficient management of municipal solid waste; recommends policies to the Commissioners for the use, allocation, or distribution of the planning fund; and recommends to the Commissioners special studies and projects to further the effectiveness of municipal solid waste management and recovery for the state of Texas.

Council meetings are held a minimum of four times per year and committee meetings as needed. The meetings usually last two full days and are held in Austin, Texas. Members are not reimbursed for expenses incurred to attend meetings and do not receive financial compensation.

The TNRCC Commissioners invite nominations for this position. Before nominating an individual, please confirm that the person meets the qualifications. Each nomination should include a biographical summary which includes the individual's education, experience, and qualifications. A letter from each nominee should be included stating his/her agreement to serve if appointed.

Written nominations are to be received in the TNRCC Municipal Solid Waste Division by 5:00 p.m., April 30, 1996. Nominations should be directed to: Gary W. Trim, Special Programs Director, Municipal Solid Waste Division, TNRCC, P.O. Box 13087, MC 124, Austin, Texas 78711-3087. Questions regarding the Municipal Solid Waste Management and Resource Recovery Advisory Council can be directed to Mr. Trim at (512) 239-6708.

Issued in Austin, Texas, on March 27, 1996.

TRD-9604265 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: March 27, 1996

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Request for Proposal

This Request for Proposals (RFP) is filed pursuant to the Government Code, Chapter 2254, Subchapter B, that delineates the statutory requirements governing the use of private consultants by state agencies.

Overview. The Texas Natural Resource Conservation Commission (TNRCC) is requesting proposals from qualified companies/organizations to provide consulting services relating to business process reengineering/improvement and evaluation and selection of emissions inventory information management systems. In accord with the recommendations made in a document titled, "Information Systems Strategic Plan for the TNRCC Office of Air Quality", EDS/Radian, April 1995 (copies are available both in the TNRCC and Texas State libraries) the Emissions Inventory (EI) Section of the TNRCC is exploring available options for information management systems to support its operating functions of emissions inventory data collection and management. Paired with this evaluation of alternatives is the review of current operating processes and practices with the goals of improving those processes and relating them to a contractor recommended information management system.

Scope of Work. The objective of this request for proposals is to obtain the services of a contractor qualified to render services in two fields. The potential contractor shall be capable of rendering a specific type of management service variously called business process reengineering, business improvement, or business re-tooling. The potential contractor should have a developed methodology and experience in guiding other similar operating entities through the steps of assessing and redesigning work processes and organizational structure. Additionally, the potential contractor shall be capable of assessing information technology needs, developing user requirements specifica-

tions, and evaluating and assisting in the selection of emissions inventory information management systems software packages. The purpose of this initiative is to obtain the assistance of qualified professionals to evaluate and make recommendations about the emissions inventory information management system options available to the Emissions Inventory (EI) Section of the TNRCC. Further, proposals of services are being solicited to gain the assistance of a qualified professional to guide the EI Section in the development of work flow processes and organizational structure that will optimize the section's productivity, efficiency, and effectiveness in concert with the recommended emissions inventory information management system.

Any contract or contracts arising from the circulation of this request for proposals will be funded from the operating budget of the Air Quality Planning Division, the ultimate source of which is the Air Fund.

Procedure for Selecting Consultant. Proposal requirements will be set forth more fully in a *"Request for Proposals: Business Process Retooling and Other Services Related to the Selection of a Vendor of Emissions Inventory Information Management Systems."* ormation Proposals will be evaluated on the basis of the following criteria: technical strategy and approach including schedule for deliverables–30%; demonstrated ability and experience to perform the study–25%; demonstrated understanding of requirements and goals of this study–15%; qualifications and references of assigned personnel–10%; itemized budget–10%; and reasonableness of the fee (cost-effectiveness of the proposal)–10%.

Proposal Closing. Responses must be received no later than 3:00 p. m., May 3, 1996. Responses received after this date and time will not be considered. We anticipate entering into the contract within two weeks of the proposal closing date. The successful proposer will be notified by telephone and/or fax.

Disclosure by Former Employees of a State Agency. Any individual who responds to this RFP and offers consulting services to the TNRCC by submitting a proposal, and who has been employed by the TNRCC, or by another agency of the state at any time during the two years preceding the making of the offer shall disclose such facts in the proposal: the agency name, the date of termination of the employment, and the annual rate of compensation for the employment at the time of resignation.

The TNRCC reserves the right to accept or reject any, or all, proposals submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any offer received. TNRCC is under no legal obligation to enter into a contract with any proposer on the basis of this request and intends any material provided herein only as a means of identifying the scope of services requested.

The TNRCC assumes no responsibility for expenses incurred in preparing a proposal response to this solicitation.

Obtaining Request for Proposal. Copies of the RFP may be obtained in any of the following manners: by sending a regular or certified letter, telefax, express/overnight letter (including a self-addressed, prepaid return envelope) requesting a copy to: Mike Fishburn, Emissions Inventory (MC-164), Re: BPR/Information Management Project, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, telefax: (512) 239-1515.

Please address all responses to the RFP to this same address.

Issued in Austin, Texas, on March 27, 1996.

TRD-9604299 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: March 27, 1996

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Texas Department of Protective and Regulatory Services

Request for Proposals-Statewide Guardianship Services

The Texas Department of Protective and Regulatory Services (PRS), Adult Protective Services (APS) is seeking to contract for guardianship services statewide, excluding Bexar, Tarrant, El Paso, Dallas, and Travis Counties. **Service Description:** Serve as guardian for Adult Protective Services (APS) clients, who are incapacitated as defined by Probate Code, §601, and for whom no one is willing or able to serve as guardian. These clients include elderly persons and adults with disabilities who are in a state of abuse, neglect, or exploitation that would be remedied by guardianship and children in need of guardians who are aging out of Child Protective Services (CPS) conservatorship on their 18th birthdays. Services purchased include application for guardianship and provision for the care, control, and protection of the ward and/or his estate, assessment, service plan development, accessing services, monitoring the status of wards, ensuring that wards' needs for food, shelter, clothing, medical and psychiatric care, if needed, are met using the funds of the estate, and managing the estate. Vendor must conduct a criminal background check and check with PRS regarding validated perpetrator status of any prospective or existing employees and volunteers who will have access to the wards referred by PRS; meet Probate Code requirements; comply with state and federal licensing and certification requirements, health and safety standards, and PRS APS requirements; and obtain and furnish proof of bonding and insurance coverage. Clients may have a number of diagnoses and problems including physical disabilities, dementia, mental illness, mental retardation, related conditions, and severe behavior problems. **Background:** The contractor must ensure that the ward has access to a safe, clean environment, has access to assistance in performing basic life functions, including bathing, grooming, feeding, exercising, dressing, toileting, transfer/ambulating and medication administration as needed, has access to regular nutritious meals, has access to any needed medical, psychiatric, habilitative and other services, has access to appropriate social and recreational activities, has well-managed finances, has appropriate supervision as needed, is involved in decisions concerning his welfare to the extent possible depending on the ward's condition, and is maintained in the least restrictive manner, using estate funds and accessing available public funds on behalf of the ward. **Funding and Term:** PRS expenditures for procuring guardianship services will not exceed $410,000 annually. Funding will be dependent upon available appropriations that PRS has allocated to these services. The effective dates of any contract awarded will be September 1, 1996 through August 31, 1998.

Guardianship services will be provided to approximately 200 clients/wards statewide. The Department prefers a contract for services throughout the state excluding Bexar, Tarrant, El Paso, Dallas, and Travis Counties; however, bidders may submit a bid for services for less than the entire state so long as the following counties are included: Midland, Ector, Howard, Pecos, Reeves, Ward, Dawson, Andrews, Fisher, Jones, Shackelford, Stephens, Mitchell, Nolan, Taylor, Callahan, Eastland, Coke, Runnels, Coleman, Brown, Tom Green, Comanche, Upton, Gaines, McCulloch, Terrell, Martin, Carne, Denton, Collin, Hunt, Grayson, Ellis, Navarro, Bowie, Gregg, Hopkins, Smith, Upshur, Harrison, Titus, Jefferson, Cherokee, Anderson, Lamar, Red River, Rusk, Wood, Orange, Harrison, Polk, Liberty, Cherokee, Anderson, Lamar, Red River, Rusk, Wood, Orange, Hardin, Polk, Liberty, Montgomery, Chambers, Lampasas, Williamson, Hays, Blanco, Caldwell, Fayette, Bastrop, Lee, Washington, Bell, Milam, Comal, Guadalupe, Kerr, Starr, Hidalgo, Cameron, Willacy, Nueces, Webb, and Jim Wells. **Eligible Applicants:** Entities having a minimum of one year experience serving aged and/or disabled individuals. Historically underutilized businesses, public or private profit, or nonprofit agencies with demonstrated knowledge, competence, and qualifications in performing these services are encouraged to apply. **Process:** Offerors must submit their proposals to the Department prior to 4:00 p.m., May 17, 1996. It is expected that a contract will be issued by September 1, 1996. Responsive proposals will be reviewed and ranked by a group of Department employees and other individuals with knowledge of guardianship services. The Department may reject all bids at its discretion. Negotiations may be entered into with a number of the qualified bidders. **Contact Person:** The complete Request for Proposal instructions can be obtained by contacting Robert Morris, Contract System Administrator, Mail Code, E-672, Texas Department of Protective and Regulatory Services, P.O. Box 149030, Austin, Texas 78714-9030.

Issued in Austin, Texas, on March 26, 1996.

TRD-9604219 Deborah L. Churchill
Supervising Attorney
Texas Department of Protective and Regulatory Services

Filed: March 26, 1996

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Public Utility Commission of Texas

Notices of Application for Waiver of Public Utility Commission Substantive Rule 23.45(b)

Notice is given to the public of filing with the Public Utility Commission of Texas an application on March 15, 1996, for approval of a waiver of the requirements of Public Utility Commission Substantive Rule 23.45(b) pursuant to the Public Utility Regulatory Act (PURA), Texas Civil Statutes, Article 1446c-0, §1.101, and §3.051(b) (Vernon Supp. 96). The following is a summary of the application.

Docket Title and Number: Application of EagleNet, Inc. for Waiver of the Requirements of Public Utility Commission Substantive Rule 23.45(b) Regarding Due Date of Monthly Bill for Utility Service. Docket Number 15524.

The Application: EagleNet, Inc. serves approximately 5553 member subscribers in the State of Oklahoma and approximately 43 subscribers located in the State of Texas. EagleNet, Inc. seeks a waiver of the requirements of Rule 23.45(b) which requires that the due date of a bill for utility service shall be not less than 16 days after issuance. Their current billing procedure requires that bills are due 15 days after mailing and past due 16 days after mailing.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas, 78757, or call the Public Utility Commission Consumer Affairs Section at (512) 458-0223, or (512) 458-0221 for teletypewriter for the deaf on or before April 22, 1996.

Issued in Austin, Texas, on March 26, 1996.

TRD-9604211 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: March 26, 1996

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Notice is given to the public of filing with the Public Utility Commission of Texas an application on March 15, 1996, for approval of a waiver of the requirements of Public Utility Commission Substantive Rule 23.45(b) pursuant to the Public Utility Regulatory Act (PURA), Texas Civil Statutes, Article 1446c-0, §1.101, and §3.051(b) (Vernon Supp. 96). The following is a summary of the application.

Docket Title and Number: Application of Panhandle Telephone Cooperative, Inc. for Waiver of the Requirements of Public Utility Commission Substantive Rule 23.45(b) Regarding Due Date of Monthly Bill for Utility Service. Docket Number 15525.

The Application: Panhandle Telephone Cooperative, Inc. serves approximately 8,887 member subscribers in the State of Oklahoma and approximately 199 subscribers located in the State of Texas. Panhandle seeks a waiver of the requirements of Rule 23.45(b) which requires that the due date of a bill for utility service shall be not less than 16 days after issuance. Their current billing procedure requires that bills are due 15 days after mailing and past due 16 days after mailing.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas, 78757, or call the Public Utility Commission Consumer Affairs Section at (512) 458-0223, or (512) 458-0221 for teletypewriter for the deaf on or before April 10, 1996.

Issued in Austin, Texas, on March 27, 1996.

TRD-9604303 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: March 27, 1996

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Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Harris County in Houston, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Harris County in Houston, Texas. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15533.

The Application. Southwestern Bell Telephone Company is requesting approval of a new PLEXAR-Custom service for Harris County. The geographic service market for this specific service is the Houston, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas on March 25, 1996.

TRD-9604088 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: March 25, 1996

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application on March 29, 1996, pursuant to Public Utility Commission Substantive Rule 23.27 for approval of a customer- specific contract to provide AdProof Service to GTE Directories.

Tariff Title and Number: Application of GTE Southwest Incorporated for Approval of a Customer-Specific Contract to Provide AdProof Service to GTE Directories Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15535.

The Application: GTE Southwest Incorporated seeks approval of a customer-specific contract to provide AdProof Service to GTE Directories. This service provides the customer "proof of value" of advertising dollars spent. GTE proposes to offer these services to the business operations of GTE Directories at the Dallas/Fort Worth Airport.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas, 78757, or call the Public Utility Commission Consumer Affairs Section at (512) 458-0223, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on March 27, 1996.

TRD-9604305 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: March 27, 1996

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application on March 29, 1996, pursuant to Public Utility Commission Substantive Rule 23.27 for approval of a customer-specific contract for billing and collection services for certain GTE Operating Companies.

Tariff Title and Number: Application of Southwestern Bell Telephone Company for Approval of a Customer-Specific Contract for Billing and Collection Services with GTE Operating Companies Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15534.

The Application: Southwestern Bell Telephone Company seeks approval of a customer-specific billing and collection services contract with the GTE Operating Companies listed in Schedule A, Exhibit 1. The services pursuant to the customer-specific contract will be offered anywhere within the state of Texas where the GTE Operating Companies provide services to Southwestern Bell end user customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas, 78757, or call the Public Utility Commission Consumer Affairs Section at (512) 458-0223, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on March 27, 1996.

TRD-9604304 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: March 27, 1996

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State Securities Board

Correction of Error

The State Securities Board proposed new 7 TAC §§129.1-129.9, concerning administrative guidelines for registration of asset-backed securities. The proposal appeared in the March 19, 1996, *Texas Register* (21 TexReg 2087-2095).

Due to errors by the *Texas Register* a superfluous space was left in §129.5(e)(6) as follows: "...§129.4(d) (1)(C)...". This should read "... §129.4(d)(1)(C)...".

In §129.8(a)(2) the reference to paragraph (1) should not be indented nor printed on a separate line. The entire paragraph should be printed together as follows: "(2) Notwithstanding the requirements of paragraph (1) of this subsection, the sponsor or servicer may...."

The Board adopted new 7 TAC §139.17, concerning offers disseminated through the Internet. The adoption appeared in the March 19, 1996, *Texas Register* (21 TexReg 2226).

Due to an error by the *Texas Register* the certification statement was misprinted. It should read as follows: "This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority."

Due to an error by the *Texas Register* the name of the agency's certifying official was misspelled. The correct spelling is Denise Voigt Crawford.

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