PART II. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

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CHAPTER 401. SYSTEM ADMINISTRATION

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SUBCHAPTER C. TDMHMR RULEMAKING.

Source: The provisions of this sub-chapter issued under Texas Civil Statutes, Article 5547-202.

§401.301. Purpose.

The purpose of this subchapter is:

(1) to describe the requirements for departmental rulemaking, including review requirements; and

(2) to provide a procedure and form for any person to use to petition the Texas Board of Mental Health and Mental Retardation to adopt, revise, or repeal a rule.

Source: The provisions of this §401.301 adopted to be effective July 23, 1986, 11 TexReg 3159.

§401.302. Definitions.

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

Board—The Texas Board of Mental Health and Mental Retardation.

Commissioner—The commissioner of the Texas Department of Mental Health and Mental Retardation.

Department—The Texas Department of Mental Health and Mental Retardation.

Rule—Any departmental statement filed with the Texas Register that implements, interprets, or prescribes law or policy, or describes procedures or practice requirements that are in the public interest. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the department (directives) or required technical operating procedures (manuals) that do not affect private rights or procedures.

Rule change—The amendment or repeal of a rule or part of a rule.

Source: The provisions of this §401.302 adopted to be effective July 23, 1986, 11 TexReg 3159.

§401.303. Coordination of the Rulemaking Process.

(a) The commissioner is responsible to coordinate the rulemaking process for the department.

(b) Coordination involves formulation of drafts for approval by the board; initiation of the review and comment process; submission of necessary paperwork to the Texas Register; response to public comments; and distribution.

Source: The provisions of this §401.303 adopted to be effective July 23, 1986, 11 TexReg 3159.

§401.304. Petitions for Rules or Changes to Rules.

(a) Any person may petition for a rule or rule change by submitting a request to the commissioner that complies with the following requirements.

(1) The petition shall be typed or legibly printed on white paper, 8½ inches wide by 11 inches long, with an inside margin of at least one inch, and shall be signed in ink by the petitioner or his authorized agent.

(2) The petition shall:

(A) state its purpose;

(B) contain a concise statement of facts in support of the object; and

(C) include the text of the proposed rule or revision and the proposed effective date.

(b) Upon receipt of the petition, the commissioner shall take the following action.

(1) If the petition does not comply with the form or content requirements of this subchapter, or if there are statutory requirements preventing the promulgation of the rule or rule change, the commissioner shall return to the petitioner by registered mail, return receipt requested, the petition, a statement describing how the petition fails to comply with the requirements of this subchapter.

(2) If the petition complies with the requirements of this subchapter, the commissioner shall prepare the document for presentation to the board.

Source: The provisions of this §401.304 adopted to be effective July 23, 1986, 11 TexReg 3159.

§401.305. Public Comment on Rules.

(a) Public comment should be expressed:

(1) prior to the initial presentation of the rule or rule change to the board as part of the review and comment process;

(2) after publication of the proposed rule or change in the Texas Register, which provides a 30-day period for written public comment; or

(3) at a hearing, as provided in the Administrative Procedure and Texas Register Act, which is requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

(b) Nothing in this subchapter shall preclude the emergency adoption of rules or rule changes necessary to protect the health, safety, or general welfare of the public, pursuant to Texas Civil Statutes, Article 6252-13a.

Source: The provisions of this §401.305 adopted to be effective July 23, 1986, 11 TexReg 3159.

§401.306. Rule Review Committee.

The Texas Board of Mental Health and Mental Retardation may appoint a Rule Review Committee to review proposed rules or rule changes.

Source: The provisions of this §401.306 adopted to be effective July 23, 1986, 11 TexReg 3159.

§401.307. Distribution.

(a) This rule shall be distributed to all members of Texas Board of Mental Health and Mental Retardation; director of operations; deputy commissioners and directors in central office; superintendents/directors of all department facilities; the Texas Register; and other staff so designated in the distribution notice.

(b) The superintendents/directors of each facility shall disseminate the information contained in this subchapter to all appropriate staff members, including quality assurance and management and program evaluation directors.

(c) A copy of this subchapter shall be maintained for public access in a central location at each facility.

Source: The provisions of this §401.307 adopted to be effective July 23, 1986, 11 TexReg 3159.

§401.308. References.

Reference is made to the following statutes:

(1) Texas Civil Statutes, Article 5547-202,

(2) Texas Civil Statutes, Article 6252-13a.

Source: The provisions of this §401.308 adopted to be effective July 23, 1986, 11 TexReg 3159.

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Authority: The provisions of this Chapter 403 issued under Acts 1965, 59th Leg., p. 165, ch. 67, §1, effective September 1, 1965 (Texas Civ. St. art. 5547-202, §2.11(b)).

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SUBCHAPTER A. COMMUNITY MENTAL HEALTH/MENTAL RETARDATION CENTERS

Authority: The provisions of this Subchapter A issued under Acts 1969, 61st Leg., p. 2010, ch. 688, §4, effective September 1, 1969, as amended (Texas Civ. St. art. 5547-204, §4.01.

Cross References: This subchapter cited in 25 TAC §405.652 (relating to Reference).

§403.1. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

Act—The Texas Mental Health and Mental Retardation Act, consisting of articles 5547-201 to 5547-204, enacted by Acts 1965, 59th Legislature, regular session, p. 165, ch. 67, effective September 1, 1965, as amended.

Area—The total geographic region covered by the local agency or organizational combination of local agencies which appoints a board of trustees to operate a community center or centers.

Board—The Texas Board of Mental Health and Retardation.

Board of Trustees—A body of not less than five nor more than nine persons selected and appointed in accordance with section 3.02 of the Act, with administrative responsibility for the program of mental health or mental retardation services or both provided by a community center or centers under its jurisdiction.

Community Center—

(A) a community mental health center;

(B) a community mental retardation center; or

(C) a community mental health and mental retardation center, administered by a board of trustees appointed pursuant to the Act, offering services which, either alone or in conjunction with other service agencies owned or operated by it, or affiliated by contract with such center, provide an effective mental health or mental retardation services program or both to persons residing in the area.

Department—The Texas Department of Mental Health and Mental Retardation.

Grant period—The period of time from September 1 of each year to and including August 31 of the ensuing year.

Local agency—A county, a city, a hospital district, a school district, or and organizational combination of two or more of these.

Local support—Documented resources contributed to boards of trustees from local agencies, other governmental agencies, nongovernmental entities, and collected fees.

Services—All services concerned with prevention and detection of mental disorders and disabilities and all services necessary to treat, care for, control, supervise, and rehabilitate mentally disordered and disabled persons, including persons mentally disordered and disabled from alcoholism and drug abuse, or all services concerned with prevention and detection of mental retardation and all services related to the education, training, rehabilitation, care, treatment, supervision, and control of mentally retarded persons, or both, if applicable.

Service agency—A local agency, qualified person, or organization with which the board of trustees contracts for a portion of its services.

State mental health authority—The commissioner of the Texas Department of Mental Health and Mental Retardation. The state mental healthauthority is also the state mental retardation authority.

Source: The provisions of this §403.1 adopted to be effective January 1, 1976.

§403.2. Procedures to Qualify for State Grant-in-Aid.

(a) Boards of trustees operating with state grant-in-aid funds prior to the effective date of this subchapter shall submit to the department the following:

(1) an annual plan delineating the proposed activities and expected accomplishments of each organizational unit for the year;

(2) an application and budget on forms to be supplied by the department.

(b) Boards of trustees established after the effective date of this subchapter shall submit to the department the following:

(1) a plan to make available to the residents of the area effective mental health and mental retardation services. This plan shall describe the following:

(A) the financial, physical, and personnel resources of the area to be served;

(B) the extent of involvement of service agencies in the area in the planning process and in the proposed delivery of services;

(C) the long-range goals of the community center which shall include:

(i) types of services to be rendered;

(ii) needs for any projected services;

(iii) quantity of services to be rendered; and

(iv) impact of these services on other MH/MR systems including state hospitals, state schools, and state centers for human development;

(D) the projected cost of the delivery of services.

(2) a copy of the contract entered into by the organizing bodies as required by the Act;

(3) a certificate from an attorney stating that such community center was established and its board of trustees appointed as required by the Act;

(4) an application and budget on forms to be supplied by the department.

Source: The provisions of this §403.2 adopted to be effective January 1, 1976.

§403.3. Awarding of Grants-in-Aid.

(a) A board of trustees may be awarded a grant-in-aid after the state mental health authority has declared a board of trustees eligible to receive a grant-in-aid on the basis of the plan, the application and budget required by this subchapter, and a site visit by personnel for the department. For community centers already receiving grants-in-aid, evaluation visits may be made at the discretion of the department instead of a site visit.

(b) No grant-in-aid shall be made without approval of the board.

(c) Grants-in-aid shall be allocated to boards of trustees on the following basis:

(1) The allocation for the first fiscal year of the biennium will be an amount established by the department based on the priority ranking of the grant-in-aid as appropriated by the legislature based on the biennium budget request of the department and the collective budget requests submitted by the cummunity MH/MR center boards of trustees for the following appropriation categories:

(A) center administration;

(B) screening and referral services;

(C) outpatient services;

(D) special education programs;

(E) alternate residential and 24-hour residential care;

(F) sheltered work training and day/evening care.

Provided, however, that the aggregate amounts established by the department for each program category shall not exceed the appropriated funds available for each category.

(2) The allocations for the second year of the biennium will be based on the amount allocated by appropriation category for the first year of the biennium, the overall percentage increase in the amount of grant-in-aid appropriated by the legislature, and the performance of the community centers under their respective performance contracts.

(d) Grants-in-aid allocated to boards of trustees shall be matched by local support in an amount determined by the department which in no case shall be less than 10% nor more than 30% of the amount of grant-in-aid. The amount and kinds of services and facilities which may be credited to local support shall be within the discretion of the state mental health authority.

(e) The department shall determine the matching ratio within the limits specified in subsection (d) of this section by using economic indices available which are generally relied upon to indicate the financial ability of a local community to support public services to its citizens.

(f) Supplemental state grants-in-aid shall be allocated to boards of trustees at the discretion of the board in accordance with the criteria contained in Exhibit "B" (revised December 1, 1978), which is available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711, and becomes a part of this section the same as if it were fully set out herein.

Source: The provisions of this §403.3 adopted to be effective January 1, 1976; amended to be effective May 12, 1976, 1 TexReg 1122; amended to be effective August 26, 1977, 2 TexReg 3026; amended to be effective February 6, 1978, 3 TexReg 323; amended to be effective March 7, 1979, 4 TexReg 600; amended to be effective August 2, 1979, 4 TexReg 2548; amended to be effective October 6, 1981, 6 TexReg 3538.

§403.4. Standards of Care.

(a) *Philosophy of care.*

(1) Community centers shall develop services reflecting leading contemporary thought in the areas of community mental health and mental retardation.

(2) Community centers shall utilize the principle of normalization and the principle of least restrictive alternative when planning and developing services.

(3) In the development and operation of services delivered directly or by contract, community centers shall not abridge the human and legal rights of their clients.

(4) Community centers shall take into account social, cultural, and economic factors of the population when planning, developing, and operating services.

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(5) Community centers shall demonstrate sustained concern for the mental health of the entire population of the area through services of education, consultation, and prevention.

(6) Community centers shall strive for effective working relationships with state hospitals, state schools, and state centers for human development.

(7) Community centers shall place high priority on the development of services which reduce the admission and recidivism to state hospitals and state schools.

(8) Community centers shall administer effectively all resources available, including volunteers, to assure the highest quality of care possible.

(9) Community centers shall make a continuing effort to insure maximum accessibility of services to residents of the area.

(10) Community centers shall make a continuing effort to insure continuity of care to persons.

(11) Community centers shall make a continuing effort to determine the need for mental health and mental retardation services and shall make such services available.

(b) *Minimum standards of care.*

(1) Community centers shall operate in minimum compliance with relevant standards published by the Joint Commission on Accreditation of Hospitals.

(2) New programs operated directly by community centers or by contract with service agencies shall be in compliance with relevant standards published by the Joint Commission on Accreditation of Hospitals one year after the beginning of services.

(3) Individuals served by community centers requiring medical-psychiatric procedures shall be the treatment responsibility of a physician. Medical responsibility includes the following:

(A) medical assessment of physical or mental symptomatology, or both, including physical examinations and the supervision or requesting of all medical procedures and laboratory testing, or both;

(B) hospitalization and discharge from hospitalization;

(C) prescribing, monitoring, and discontinuing medications;

(D) prescribing, monitoring, and discontinuing other somatic therapies;

(E) reviewing all proposed behavior modification applications of aversive stimulation or withholding of food to determine if any physical, medical or psychiatric contraindications exist.

(4) Community centers shall include within their programs a service capability of screening for medical-psychiatric problems at entry into mental healthservice problems.

(A) This screening component must be developed by experienced clinical mental health professionals and specifically must include medical-psychiatric consultation in the development of the screening procedures.

(B) A physician, preferably, a psychiatrist, must be available in an ongoing consultative capacity to the screening unit.

(C) Operational screening procedures will be established which will result in the early detection of medical-psychiatric problems.

(D) Individuals demonstrating bizarre behavior, hallucinations, disorientation as to time, place or person, or generalized confusion, must receive prompt evaluation by a physician.

(E) Instances of life-threatening behavior should be reviewed by more than one mental health professional including, if possible, a psychiatrist.

(5) Each community center shall have either a medical advisory committee or a professional advisory committee with a medical subcommittee which reports directly to its board of trustees. The medical committee or subcommittee should function to ensure quality standards of care, and should advise the board of trustees concerning any problems encountered in the area of medical responsibility as per subsections (a)(3) and (4) of this section.

(6) It is the intent of the department that in geographic areas covered by community centers, admission to state hospitals and state schools should first be screened by the community center.

(7) Community centers shall maintain confidentiality of client records.

(8) Each community center shall have a peer review process for all programs. This peer review process plan shall be submitted to the department for approval.

Source: The provisions of this §403.4 adopted to be effective January 1, 1976.

§403.5. Personnel Administration.

(a) Each board of trustees shall establish the number of persons to be employed by the community center or centers it operates and the salaries to be paid each of them, which shall be approved by the state mental health suthority prior to the beginning of each grant period. To implement this section, each board of trustees prior to the beginning of each grant period shall submit to the department on forms supplied by the department a personal services schedule. Approvel from the state mental health authority may be obtained through:

(1) the approval of the annual personal services schedule at the beginning of each fiscal year;

(2) approval of personnel action forms when the community center requests permission to increase the number of positions beyond that previously approved;

(3) the community center requests permission to increase the amount budgeted to a position in pay group 12 or above, including exempt positions; or

(4) the community center requests permission to reclassify any position to a position pay group 12 or above, including exempt positions.

(b) Community center salaries paid to employees may not exceed salaries paid in equivalent positions in departmental facilities. The community center will provide a certified copy of its payroll journal for a pay period(s) to verify compliance with this restriction as requested by the department. Grant-in-aid funds may not be expended for the salary of any employee of a community center in excess of $49,300 in fiscal year 1982 and $53,600 in fiscal year 1983.

(c) At the end of each grant period, boards of trustees shall report to the department on forms provided by the department amounts paid for professional (consultant) fees and amounts paid to service agencies by the community center. The report shall show the name of each consultant or service agency receiving such fees, profession or type of service agency, place of residence or service agency location, the basis of payment, a description of services rendered, and the amount paid to the consultant or service agency.

(d) No owner or member of a governing body of a service agency and no officer of such agency may be employed by a community center.

(e) Each board of trustees shall provide appropriate rights, privileges and benefits to its employees consistent with those available to employees of the local agency or agencies which appointed the board of trustees.

(f) No member of the governing bodies of the local agencies participating in the establishment of a community center, no member of a board of trustees of a community center, and no officer or staff member of a community center may directly or indirectly receive any pecuniary interest from a contract entered into by the community center.

(g) Each board of trustees shall establish an affirmative action plan in accordance with Executive Order 11246 signed by President Johnson, September 24, 1964, as amended (Revised Order Number 4 issued by the Office of Federal Contract Compliance, September 30, 1972), which shall be reviewed by the department prior to submission to the Department of Health, Education, and Welfare.

Source: The provisions of this §403.5 adopted to be effective January 1, 1976; amended to be effective October 6, 1981, 6 TexReg 3538.

Cross References: This section cited in 25 TAC §403.9 (relating to Contracts for Community Center Services).

§403.6. Purchasing Procedures

Community centers are encouraged to purchase their drugs and medicines through the board of control or in such a manner as to obtain these items at the lowest possible cost.

Source: The provisions of this §403.6 adopted to be effective January 1, 1976.

§403.7. Standards of Administration.

(a) Each board of trustees is accountable to the department for the effective use of all funds received and is accountable also to local state and federal agencies which may contribute funds for operating the community center.

(b) Boards of trustees shall submit quarterly financial and performance reports to the department in a format prescribed by the department no later than the last work day of the month following the end of the reporting period, except for fiscal year-end reports which will be submitted no later than the last work day of the second month following the end of the fiscal year. The submission dates shall be extended for 30-calendar-day increments in unusual circumstances when requested by the community center and approved by the department.

(c) It is expected that each community center will institute effective management procedures which will assure the maximum utilization of all funds received and will facilitate the achievement of the goal of delivering services of high quality for the lowest possible cost.

(d) State grants-in-aid, local support, and other funds included in an approved operating budget may not be used for new construction. Boards of trustees shall obtain advance written approval from the state mental health authority or his authorized designee for any building alterations, renovation and/or repair maintenance expenses exceeding $20,000 for each project per fiscal year per community center.

(e) Boards of trustees shall retain all financial records, supporting documents, statistical records, and any other documents pertinent to community center budgets, contracts, performance/workload measures, and clients served for a period of five years after the submission of the final reports. If audit findings have not been resolved at the end of five years, the records shall be retained until resolution of the audit findings.

(f) Each board of trustees shall expend annually its required local support and grant-in-aid in the same ratio as the required local support is to the grant-in-aid.

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(g) Boards of trustees may accept special gifts for long-range projects and plans. These funds must be kept separate from the operating budget of the community center and may not be used for local matching purposes if reserved for long-term projects and plans. An annual accounting of these reserve funds (center trust, endowment, or foundation resources) shall be made to the department.

(h) A board of trustees shall furnish the department with a copy of the minutes of its public meetings.

(i) Boards of trustees shall comply with the Open Meetings Law, Texas Civil Statutes article 6252-17, as amended.

(j) Boards of trustees shall require depositories of community centers funds to secure deposits which are not insured through the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. Deposits shall be secured in a manner that protects the deposited funds.

Source: The provisions of this §403.7 adopted to be effective January 1, 1976; amended to be effective February 6,1978, 3 TexReg 323; amended to be effective June 4, 1981; amended to be effective October 6, 1981, 6 TexReg 3538.

§403.8. Civil Rights.

Each community center shall provide services in compliance with the Civil Rights Act of 1964, as amended, and will require the same of service agencies and organizations with which it contracts.

Source: The provisions of this §403.8 adopted to be effective January 1, 1976.

§403.9. Contracts for Community Center Services.

(a) All contracts between a board of trustees and a service agency whereby direct client services are to be rendered to a community center client must be in writing. Executed copies of all such contracts for direct client services and amendments thereto shall be submitted to the state mental health authority or his designee prior to the expenditure of funds under such contract or amended contract.

(b) Such contracts shall specify the kinds of services and amount of service to be rendered to the community center and shall specify the basis upon which payment for the services by the board of trustees is to be made. (For example, hospital services—a daily rate plus actual cost of laboratory and drug expenses and physician fees; psychiatric consultation—amount to be paid per hour, *etc.*)

(c) Each contract shall state the maximum amount which may be expended under the contract.

(d) Each contract shall contain a provision which will require the service agency to permit the board of trustees or the department the examine and evaluate its program of services and inspect its records. This provision also will require the service agency to furnish the board of trustees or the department such information as may be requested by the board of trustees or the department. Requests of the department to exercise the rights conferred upon it by this provision shall be made through the board of trustees.

(e) Each contract shall contain the following provision: "All programs and services provided by the service agency under this contract shall be provided in accordance with the rules of the Texas Department of Mental Health and Mental Retardation, Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000(D)), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 3 *et seq.*), Age Discrimination Act (42 U.S.C. 6101 *et seq.*), and all federal rules and regulations, state laws and executive orders as applicable."

(f) At the end of each grant period, boards of trustees shall report to the department on forms supplied by it all expenditures to all service agencies that provide services to the community center or community center clients as described under §403.5(c) (302.03.01.005(c)) of this title (relating to Personnel Administration).

Source: The provisions of this §403.9 adopted to be effective January 1, 1976; amended to be effective October 6, 1981, 6 TexReg 3538.

§403.10. Fees for Services.

Each board of trustees shall develop an effective system to ascertain the ability to pay and other financial circumstances of all persons to whom it provides service. If it is determined that the person receiving the services has no property or income out of which the community center should be reimbursed and that those persons legally responsible for the support of the person receiving the services have no property or income out of which the community center should be reimbursed, it shall provide the services free of cost. Otherwise, a reasonable fee for services, not to exceed the cost thereof, will be charged to the person receiving the services and against persons legally responsible for his support based on their combined ability to pay. The community center may establish sliding scales for fees for services based upon the patient's and other responsible persons' combined ability to pay. Copies of all sliding scales established shall be provided the department for future use in making an ongoing review of these rules and regulations.

Source: The provisions of this §403.10 adopted to be effective January 1, 1976.

Cross References: This section cited in 25 TAC §405.648 (relating to Charges for Diagnostic and Evaluation Services).

§403.11. Quarterly Requests for State Grant-in-Aid.

A board of trustees, recognizing the financial needs of the individual center, may submit to the department a quarterly request for state grant-in-aid approximating 25% of the community center's annual state grant-in-aid allocation, but in no event may submit a request for more that 30% of the annual allocation for any quarter and not more than 80% of the annual allocation in the first three quarters of the grant period. Quarterly requests shall be made on a State of Texas purchase voucher in a format to be prescribed by the department.

Source: The provisions of this §403.11 adopted to be effective January 1, 1976; amended to be effective October 6, 1981, 6 TexReg 3538.

§403.12. Auditing Procedures.

(a) Each board of trustees shall submit to the department, the governor, the Legislative Budget Board, and the Legislative Audit Committee copies of an audit of its accounts made by a certified or public accountant licensed by the Texas State Board of Public Accountancy. Such audit shall follow generally accepted auditing standards and shall be in accordance with the "Guidelines for Annual Fiscal Audits of Community MH/MR Centers" (third revision—June 1981), which is available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711, and becomes a part of this section as if it were fully set out herein (Exhibit A).

(b) The annual audits will be submitted to the department no later than 120 days following the end of each grant period and shall be approved by the board of trustees. Where the board of trustees declines to approve such audit, it shall attach to each copy of the audit a statement detailing its reason for failure to approve the audit.

Source: The provisions of this §403.12 adopted to be effective January 1, 1976; amended to be effective August 26, 1977, 2 TexReg 3026; amended to be effective November 22, 1978, 3 TexReg 3955; amended to be effective August 25, 1981, 6 TexReg 2943.

§403.13. Provision of Services Outside the Region.

A board of trustees may contract with cities and counties outside its area to provide services to residents of such cities and counties upon approval by the state mental health authority prior to the provision of any services under the contract.

Source: The provisions of this §403.13 adopted to be effective January 1, 1976.

§403.14. Records to Be Kept of Persons Served by a Community Center.

(a) Community centers shall maintain clinical records of patients. In addition to these clinical records, each community center shall maintain the following:
  (1) whether services provided each patient were at no cost or whether a fee was charged for such services and the amount assessed;
  (2) the condition of the account if charges were assessed;
  (3) such other information as the board of trustees shall direct.

(b) Each board of trustees shall provide to the department, from center records maintained on persons served by it, such information as shall be required on forms provided or approved by the department.

(c) The department will maintain the confidentiality of the required patient information in accordance with appropriate laws and federal regulations.

Source: The provisions of this §403.14 adopted to be effective January 1, 1976.

§403.15. Enforcement and Compliance with Rules.

Grants-in-aid made to boards of trustees shall be contingent upon compliance with the provisions of this subchapter, and the department shall have the right to inspect, examine, investigate, audit, and evaluate the administrative practices and the program of services provided by a community center and for this purpose may require such information and statistical data as it shall deem necessary. In carrying out this function, the department shall observe and protect the confidential nature of medical records. If in the opinion of the state mental health authority, based on the results of such inspection, examination, investigation, audit, information, and statistical data, the services of the community center do not meet the requirements of this subchapter, the board of trustees shall be given written notice specifying the sections with which the community center is not in compliance. The board of trustees shall have 45 days within which to show cause why its grant-in-aid should not be discontinued and upon failure to show cause, the board of trustees shall be declared ineligible to receive further state allotments and written notice thereof shall be furnished such board of trustees immediately. Upon receipt of such notice, the board of trustees shall be entitled to no further quarterly payments from its allotment and any unobligated balances in the possession of such board of trustees from previous payments shall be held by such board of trustees as trustee for the department until they are returned to the department. The decision of the state mental health authority to make no further allotment to the board of trustees may be appealed to the board within 10 days from the date the state mental health authority makes the decision to make no further allotment. The board's decision on the appeal will be final.

Source: The provisions of this §403.15 adopted to be effective January 1, 1976.

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§403.16. Review and Amendment.

There shall be an ongoing review of these rules and regulations by the department with assistance from the boards of trustees, and they may be amended from time to time according to the rulemaking procedures set forth in the Act.

Source: The provisions of this §403.16 adopted to be effective January 1, 1976.

§403.17. Awarding of Federal Mental Health Block Grant Funds.

A board of trustees may be awarded federal mental health block grant funds in accordance with the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) based upon the availability of such federal funds. The department shall administer and distribute these funds as follows.

(1) The department shall give top priority to the maintenance and stabilization of existing community mental health services for chronic and severely mentally disabled persons in the administration of the block grant. Alcohol and Drug Abuse and Mental Health Services (ADMS) block grant funds allocated to the department for federal fiscal years 1982 and 1983 shall be distributed to those community MH/MR centers participating in mental health categorical grants in fiscal year 1981. Approved, but unfunded, grants included in the fiscal year 1981 base as determined by the Department of Health and Human Services shall receive a percentage of the total available funds.

(2) Each participating community MH/MR center shall be funded at current level of operation for one year following the categorical grant period and at a proportionate percentage of the fiscal year 1983 allocation through September 30, 1983, subject to the availability of federal mental health block grant funds to the department. Federal mental health block grant funds not expended by community MH/MR centers in a fiscal year may be carried over, with departmental approval, for the provision of mental health services in the subsequent fiscal year.

(3) Community MH/MR centers having participated less than eight years in a categorical grant program on September 30, 1982, shall be funded at a proportionate percentage of any federal mental health block grant allocation in fiscal year 1984 and subsequent years through their eighth year. Federal mental health block grant funds in addition to those needed to support this purpose and allocated to the department in fiscal year 1984 and subsequent years, shall be used to maintain existing services or to fund new programs which serve chronic and severely mentally disabled persons. Community centers that have already completed the eight years of federal assistance through either categorical grants or through the federal mental health block grant are eligible to participate in new or increased mental health block grant funds awarded to the department.

(4) The department shall authorize the disbursement of federal mental health block grant funds in quarterly payments to each recipient community center beginning the first month following expiration of the categorical grant. The department shall establish application, reporting, request for funds, audit, and accounting procedures for federal mental health block grant funds to comply with federal, state, and departmental regulations and guidelines.

(5) Each recipient community MH/MR center shall submit to the department assurances that its programs, policies, and procedures comply with federal and state regulations and that it shall be responsible for audit exceptions that result from expenditure or misuse of federal mental health block grant funds.

(6) The department shall utilize existing administrative and monitoring mechanisms for the federal mental health block grant program. The following mechanisms shall be utilized and modified to reflect and monitor the federal mental health block grant funds within the recipient community centers: performance contracts, management audits, and standards and compliance audits.

(7) The department shall utilize a minimal amount of the federal mental health block grant funds for administrative purposes and shall disburse all remaining funds received through the federal mental health block grant mechanism to the appropriate community centers. An addendum to the performance contract shall be utilized to describe the community MH/MR center's and department's responsibility for the use and expenditure of federal mental health block grant funds.

Source: The provisions of this §403.17 adopted to be effective August 20, 1982, 7 TexReg 2877.

SUBCHAPTER B. [RESERVED]

SUBCHAPTER C. COLLECTION FOR SUPPORT, MAINTENANCE, AND TREATMENT OF CLIENTS

Authority: The provisions of this Subchapter C issued under Acts 1955, 54th Leg., p. 438, ch. 119, effective September 5, 1955, as amended (Texas Civ. St. art. 3871b, §21 (Repealed January 1, 1978)); Acts 1965, 59th Leg., p. 165, ch. 67, §1, effective September 1, 1965 (Texas Civ. St. art. 5547-202, §2.11(b)); and Acts 1977, 65th Leg., p. 264, ch. 125, §1, effective August 29, 1977, as amended (Texas Civ. St. art. 3196a).

Cross References: This subchapter cited in 25 TAC §405.600 (relating to Methods of Pay; Charges for Support, Maintenance, and Treatment); 25 TAC §405.606 (relating to References); 25 TAC 405.648 (relating to Charges for Diagnostic and Evaluation Services); and 25 TAC §405.652 (relating to Reference).

§403.71. Purpose.

The purpose of this subchapter is to provide basic rules and procedures to be followed by claims personnel of the department in determining rates for the support, maintenance, and treatment of department inpatient and residential clients in accordance with the applicable statutes and in a manner that is fair and equitable to the client and to the state.

Source: The provisions of this §403.71 adopted to be effective August 27, 1985, 10 TexReg 3087.

§403.72. Applicability.

The provisions of this subchapter are applicable to facilities of the Texas Department of Mental Health and Mental Retardation that provide inpatient or residential services.

Source: The provisions of this §403.72 adopted to be effective August 27, 1985, 10 TexReg 3087.

§403.73. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

Claims officer —That person designated as the person in charge of the claims office at a facility of the department.

Client—Any person who is properly admitted to a facility of the department and who is provided support, maintenance, and treatment as an inpatient or resident (*i.e.*, a person to whom a bed is assigned) by such facility including any person who is admitted to a facility of the department for the purpose of receiving a comprehensive diagnosis and evaluation pursuant to the Mentally Retarded Persons Act of 1977, Texas Civil Statutes, Article 5547-300.

Department—The Texas Department of Mental Health and Mental Retardation.

SMT—Support, maintenance, and treatment.

Authority: The provisions of this §403.73 issued under Acts 1965, 59th Leg., p. 165, ch. 67, §1, effective September 1, 1965 (Texas Civ. St. art. 5547-202, §2.11).

Source: The provisions of this §403.73 adopted to be effective August 27, 1985, 10 TexReg 3087.

§403.74. Determination of Rates.

(a) *Assessment of rates against parents of minor clients for mental retardation services.* Rates assessed against parents of minor clients for support, maintenance, and treatment provided by department mental retardation facilities will not exceed $170 per month and will be determined in accordance with the provisions of Texas Civil Statutes, Article 5547-300, §61 (referred to in §403.76 of this title (relating to Exhibits) as Exhibit A), and this subchapter.

(b) *Assessment of rates against parents of minor clients for mental health services.* Rates assessed against the parents of minor clients for support, maintenance, and treatment provided by department mental health facilities will not exceed $170 per month and will be determined in accordance with the provisions of Texas Civil Statutes, Article 3196a (referred to in §403.76 of this title (relating to Exhibits) as Exhibit B), and this subchapter.

(c) *Assessment of rates against clients and spouses of clients of mental health facilities.* Clients who possess sufficient property to reimburse the state for the cost of their support, maintenance, and treatment, and spouses of clients of mental health facilities who are able to pay the cost shall be charged the maximum rate which is currently applicable to the particular facility and to the type of care provided. Clients whose property is not sufficient to reimburse the state for the cost of their support, maintenance, and treatment, and spouses of clients of mental health facilities who are not able to pay the cost shall be charged less than the maximum rate, based upon their ability to pay as determined in accordance with the law and this subchapter.

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(d) *Exclusion of certain trusts from liability for support, maintenance, and treatment.* The following provisions apply to the determination of a rate for the support, maintenance, and treatment of a mentally retarded person who resides in a residential care facility for the mentally retarded operated by the department and who is a beneficiary of a trust or trusts.

(1) In accordance with Texas Civil Statutes, Article 5547-300, §61(g), no portion of the corpus or income of a trust or trusts, with an aggregate principal amount not to exceed $50,000, of which a mentally retarded person is a beneficiary, shall be considered to be the property of such mentally retarded person or his estate, and no portion of the corpus or income of such trust shall be liable for the support, maintenance, and treatment of such mentally retarded person, regardless of his age.

(2) A trust or trusts established prior to January 1, 1978, and which otherwise meet the requirements of the law and this section shall be deemed entitled to the benefit of this section in the same manner as if such trust or trusts had been established on or after January 1, 1978.

(3) The ascertainment of income and principal with respect to any trust or trusts subject to this section and the apportionment of the receipts and expenses of such trust or trusts shall, unless otherwise legally directed, be governed by the Texas Trust Act (Texas Civil Statutes, Article 7425b-1 *et seq.*).

(4) If a mentally retarded person is a beneficiary of a trust or trusts with an aggregate principal amount which exceeds $50,000, only that portion of the corpus of such trust or trusts which exceeds $50,000, and the income attributable to such excess corpus, shall be liable for the support, maintenance, and treatment of the mentally retarded person.

(A) If a mentally retarded person is a beneficiary of two or more trusts with an aggregate principal amount which exceeds $50,000, that portion of the corpus of the trust or trusts established first in time which equals $50,000, and the income attributable to such corpus, shall be exempt from liability for the support, maintenance, and treatment of the mentally retarded person.

(B) If a mentally retarded person is a beneficiary of a trust or trusts with an aggregate principal amount which increases from an amount which is equal to or less than $50,000, to an amount which exceeds $50,000, that portion of the corpus of such trust or trusts which exceeds $50,000, and the income attributable to that excess portion of the corpus, shall be liable for the support, maintenance, and treatment of the mentally retarded person from the date on which the aggregate principal amount of such trust or trusts exceeds $50,000 and shall continue to be liable for the support, maintenance, and treatment provided until the aggregate principal amount of such trust or trusts does not exceed $50,000.

(5) In order to qualify for the exemption granted by Texas Civil Statutes, Article 5547-300, §61(g), a trust must be created by a written instrument and a copy of the trust instrument must be provided to the department. A trustee of such a trust shall, upon request, provide the department with a current financial statement which reflects the value of the trust estate.

(6) For purposes of the exemption granted by the statute, a guardianship established pursuant to the Texas Probate Code; a trust established pursuant to Texas Civil Statutes, Article 1994, as amended; the facility custodial account established pursuant to Acts of the 52nd Legislature, Regular Session, 1951, Chapter 251 (Texas Civil Statutes, Article 3183c); the provisions of a divorce decree or other court order relating to child support obligations; an administration of a decedent's estate; or an arrangement whereby funds are held in the registry or by the clerk of a court is not a "trust" and is not entitled to the exemption.

(7) The collection of charges assessed against any portion of the corpus or income of a trust or trusts liable for the support, maintenance, and treatment of a mentally retarded person may be deferred in the discretion of the department when the deferral of such collection is deemed to be in the best interest of the State of Texas.

(e) *Rate chart (income).* The following rate computation chart will be used as a guide in establishing rates for the SMT provided clients of department mental health facilities in "ability to pay" cases. For example, gross family monthly income: less $400 per month for each income producing member of the family, $100 per month for each nonincome producing member of the family (exclude client), except when a nonincome producing member of the family is attending a college or university, $200 per month may be deducted.

If balance is between:	*The rate would be:*
$0.00-249	As agreed, not to exceed $25
250-499	25-75
500-749	75-125
750-999	125-175
1,000-1,249	175-225
1,250-1,499	225-275
1,500-1,749	275-325
1,750-1,999	325-375
2,000-2,249	375-425
2,250-2,499	425-475
2,500-2,749	475-525
2,750-2,999	525-575
3,000-3,249	575-625
3,250-3,499	625-675
3,500-3,749	675-725
3,750-3,999	725-775
4,000-4,249	775-825
4,250-4,499	825-875
4,500-4,749	875-925
4,750-4,999	925-975
5,000-5,249	975-1,025
5,250-5,499	1,025-1,075
5,500-5,749	1,075-1,125
5,750-5,999	1,125-1,175
6,000-6,249	1,175-1,225
6,250-6,499	1,225-1,275
6,500-6,749	1,275-1,325
6,750-6,999	1,325-1,375
7,000-7,249	1,375-1,425
7,250-7,499	1,425-1,475
7,500-7,750	1,475-1,500

(f) *Other factors (ability to pay cases).*

(1) In addition to income, other factors to be considered in establishing a rate are:

(A) the ownership of real and personal property;

(B) expected duration of the client's stay in the hospital;

(C) insurance coverage;

(D) benefits from governmental and nongovernmental agencies and institutions;

(E) exceptional financial hardship.

(2) A judgment in a divorce proceeding that provides for support payments is not to be considered as limiting the rate that may be set, nor does the judgment exempt either parent from liability for support, maintenance, and treatment charges of the client.

(g) *Absences from facility.* The day of admission, death, or return from an absence will be considered a full day at the facility. The day of discharge, transfer, or departure will be considered a full day away from the facility. Except when payment is prohibited by law or contract, charges will continue for the entire period of an absence when the client remains under the care, custody, and control of facility personnel; for the entire period when the client is furloughed by the state facility to an inpatient medical facility and charges for the medical services are not paid by a third-party payor; and for the first three days of any other absence from the facility from which a return is planned.

Source: The provisions of this §403.74 adopted to be effective August 27, 1985, 10 TexReg 3087.

§403.75. Administrative Appeals from Rate Determination Based Upon Ability to Pay.

(a) A client's spouse or parent against whom a rate has been established for the support, maintenance, and treatment furnished a client of a facility of this department may petition for a review of such rate. The appeal of such rate will be to the executive deputy commissioner or his designee, Texas Department of Mental Health and Mental Retardation, P. O. Box 12668, Austin, Texas 78711, and will be perfected by the following steps.

(1) The person requesting the rate review shall notify the claims officer at the facility which is providing support, maintenance, and treatment to the client of the intent to perfect the appeal. The claims officer shall immediately supply the person requesting the rate review with a copy of this rule, a property and financial statement (Form B-6, referred to in §403.76 of this subchapter (relating to Exhibits) as Exhibit C) and a request to appear/waiver of right to appear form (referred to in §403.76 of this title (relating to Exhibits), as Exhibit D).

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(2) The person requesting review of a rate determination shall complete, sign, and forward the forms by cover letter to the executive deputy commissioner or his designee, indicating therein whether it is desired to appear in person or through a representative to present the case.

(3) The executive deputy commissioner or his designee will set a definite time for the hearing if the person requesting the rate review elects to appear personally or by a representative. The date for the hearing will be set no less than 10 days nor more than 30 days following receipt of the completed forms to perfect the appeal.

(4) All hearings under this section will be held at the Texas Department of Mental Health and Mental Retardation, Central Office, 909 West 45th Street, Austin, Texas.

(5) If the person requesting a rate review waives the right to appear in person or by representative, the executive deputy commissioner or his designee shall review the rate by considering all of the facts submitted by the person requesting the rate review on the forms completed to perfect the appeal as well as all other facts which are available.

(b) The executive deputy commissioner or his designee will make a finding of facts which will be reduced to writing and will sustain, reduce, or increase the rate under review, and will notify the person requesting the rate review of this determination and the facts upon which the determination was made.

(c) If the person requesting a rate review is not satisfied with the action taken by the executive deputy commissioner or his designee, further review of his rate determination may be made by the commissioner. To obtain this additional review, the person requesting the rate review must, within 60 days after notification of the action taken by the executive deputy commissioner or his designee, address a letter to him requesting that he forward his finding of facts to the commissioner. The commissioner shall consider all facts found by the executive deputy commissioner or his designee and take such action as he deems proper. The commissioner's action thereon shall be final, shall exhaust the administrative remedy provided herein, and shall be communicated to the person who requested the rate review.

Source: The provisions of this §403.75 adopted to be effective August 27, 1985, 10 TexReg 3087.

§403.76. Exhibits.

The following exhibits referred to in this subchapter are herein adopted by reference and are available from the Texas Department of Mental Health and Mental Retardation, P. O. Box 12668, Austin, Texas 78711:

(1) *Exhibit A*—Texas Civil Statutes, Article 5547-300, §61;

(2) *Exhibit B*—Texas Civil Statutes, Article 3196a, as amended;

(3) *Exhibit C*—Property and Financial Statement—Form B-6;

(4) *Exhibit D*—Request to appear/waiver of right to appear—administrative appeal from rate determination based upon ability to pay, as revised.

Source: The provisions of this §403.76 adopted to be effective August 27, 1985, 10 TexReg 3087.

Cross References: This section cited in 25 TAC §403.74 (relating to Determination of Rates); and 25 TAC §403.75 (relating to Administrative Appeals from Rate Determination Based Upon Ability to Pay).

§403.77. Claims Office: Assignment of Accounts to Claims Representative.

(a) *Responsibility.* The assignment of an account to a claims representative is the responsibility of the claims office supervisor.

(b) *Criteria.*

(1) An assignment should be made only after the claims office supervisor has made proper and reasonable efforts to accomplish the objective.

(2) In determining whether to make an assignment, consideration should be given to such factors as:

(A) the size of the claim;

(B) whether the client is in residence, furloughed, discharged, or deceased;

(C) the need for additional information to establish a rate;

(D) the need for a personal contact to assist in collecting an account; and

(E) the necessity to qualify the client for federal or state benefits.

(3) An assignment should pertain to only one client.

(4) Assignments concerning claims against responsible persons who reside out-of-state will be made to the claims representative best located to perform the work required on the assignment.

(5) No assignment will be made of an account on which a rate appeal is pending.

(c) *Procedures.*

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(1) An assignment should be made using the assignment sheet, Form B-40 (Exhibit H), completed with documentation of all action previously taken by the claims office and all other information that will help the claims representative to complete his assignment. Exhibit H is referred to in §403.90 of this title (relating to Exhibits).

(2) A copy of the assignment form and all accompanying documents will be forwarded to the Legal and Claims Division central office. Thereafter, copies of all correspondence, or instruments which originate with or are received by the Legal and Claims Division central office, the institution claims office or the claims representative will be furnished to each of the other offices. Copies of prepaid funeral contracts, insurance policies, wills, trust instruments, and similar documents should always be furnished when available. Information concerning payments on account, furloughs, discharges, transfers, notice of eligibility for benefits, and similar information should be communicated immediately.

(3) The claims office should not send a statement or make further collection effort on an account following assignment unless such action is requested by the claims representative. The claims representative is responsible for advising the claims office when statements of account are to be sent on assigned cases and of the billing frequency of such statements.

(4) A claims office supervisor who determines that circumstances do not warrant further effort by the claims representative on an assignment, should send a memorandum to the claims representative recommending that the assignment be closed.

(5) Reference on all correspondence pertaining to assigned cases should indicate:

(A) name of client (furloughed, discharged, or deceased);

(B) institution and case number;

(C) county (primary county in which assigned action is to be performed); and

(D) nature, style, number, court, and county of any pending legal proceedings concerning this account.

(6) A new assignment sheet, Form B-40, will be prepared when an assignment is reopened, giving all the required information as though it were an initial assignment. The form should indicate however, that the case is being "REOPENED." Copies of pertinent correspondence or documents and a summary of transactions since the assignment was closed should be included.

(7) A claims representative may transfer an assignment on an account to another claims representative by letter to the other claims representative with a copy to Legal and Claims Division central office and to the institution claims office. By copy of the letter transferring the assignment, the claims representative shall request that the appropriate changes be made in the assignment code and the county code. These changes will be entered in the data processing system by the appropriate claims office administrator in the Legal and Claims Division central office.

Authority: The provisions of this §403.77 issued under Acts 1965, 59th Leg., p. 165, ch. 67, §1, effective September 1, 1965 (Texas Civ. St. art. 5547-202, §2.11).

Source: The provisions of this §403.77 adopted to be effective January 1, 1976; amended to be effective June 4, 1981, 6 TexReg 1892.

SUBCHAPTER D. FORM, SUBMISSION, CONSIDERATION, AND DISPOSITION OF PETITIONS FOR THE ADOPTION OF RULES BY THE COMMISSIONER OF MENTAL HEALTH AND MENTAL RETARDATION

§403.101. through 403.102. [RESERVED]

§403.103. through 403.104. [RESERVED]

§403.105. through 403.106. [RESERVED]

§403.107. through 403.108. [RESERVED]

SUBCHAPTER E. PRACTICE AND PROCEDURE: DENIAL, SUSPENSION, OR REVOCATION OF A LICENSE TO OPERATE A PRIVATE MENTAL HOSPITAL

Authority: The provisions of this Subchapter E issued under Acts 1957, 55th Leg., p. 505, ch. 243, §93, effective January 1, 1958 (Texas Civ. St. art. 5547-93(c)); and Acts 1965, 59th Leg., p. 165, ch. 67, §1, effective September 1, 1965 (Texas Civ. St. art. 5547-202, §2.11(b)).

§403.121. Purpose.

The purpose of this subchapter governing practice and procedure with respect to the denial, suspension, or revocation of a license to operate a private mental hospital is:

(1) to provide a simple and efficient system of procedure for the denial, suspension, or revocation of a license to operate a private mental hospital which will adequately protect the rights of all the parties involved and which will be consistent with due process requirements of the Texas and federal constitutions;

(2) to provide and insure uniform standards of practice and procedure with respect to hearings held in connection with the denial, suspension, or revocation by the department of a license to operate a private mental hospital; and

(3) to provide a system of procedure which will effect fair and expeditious determinations of causes governed by the provisions of this subchapter.

Source: The provisions of this §403.121 adopted to be effective January 1, 1976.

§403.122. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

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Applicant—A person who is seeking a license from the department, and who has complied with all statutory and department rules with respect to the execution and completion of application forms and the furnishing of required information and documents.

Commissioner—The commissioner of Mental Health and Mental Retardation.

Contested case—A proceeding such as licensing, in which the legal rights, duties, or privileges of a party are to be determined by the department after an opportunity for adjudicative hearing.

Department—The Texas Department of Mental Health and Mental Retardation. When the context of a rule requires or permits action by the department, such action means action taken by the commissioner or his duly authorized agent or representative.

Examiner—Any person licensed to practice law in Texas designated or appointed by the commissioner as his duly authorized agent or representative to conduct hearings provided for by this subchapter.

Intervenor—Any party otherwise not defined.

License—The permission to operate a private mental hospital granted to a person by the department under its statutory authority to grant such licenses.

Licensee—A person who has been granted a license by the department, and who has not had that license suspended or revoked by the department.

Licensing—The department process respecting the granting, denial, suspension, or revocation of a license.

Party—Each person or agency named or admitted as a party.

Person—Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than the department.

Pleadings—Written allegations filed by parties concerning their respective claims.

Source: The provisions of this §403.122 adopted to be effective January 1, 1976.

§403.123. Applicability and Scope of Rules.

(a) The provisions of this subchapter shall apply in the following situations:
  (1) Where a person has made application to the department for a license and the department makes a determination to deny the application.
  (2) Where the department makes a determination to suspend or revoke a license which has been previously granted by the department.

(b) The provisions of this subchapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the department or the substantive rights of any person.

Source: The provisions of this §403.123 adopted to be effective January 1, 1976.

§403.124. Filing of Documents.

All petitions, complaints, motions, protests, replies, answers, notices, and other pleadings relating to any proceeding governed by this subchapter which is pending or to be instituted before the department shall be filed with the commissioner. They shall be deemed filed only when actually received by him accompanied by the filing fee, if any, required by statute or rules of the department.

Source: The provisions of this §403.124 adopted to be effective January 1, 1976.

§403.125. Computation of Time; Extensions.

(a) In computing any period of time prescribed or allowed by this subchapter, by order of the commissioner, or by any applicable statute, the period shall begin on the day after the act, event, or default in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

(b) Unless otherwise provided by statute, or by this subchapter, the time for the doing of any act under this subchapter may be extended by order of the commissioner, upon written motion duly filed with him prior to the expiration of the applicable period of time for the doing of the same, showing that there is good cause for such extension of time and that the need therefor is not caused by the neglect, indifference, or lack of diligence of the movant. A copy of any such motion shall be served upon all other parties of record to the proceedings contemporaneously with the filing thereof.

Source: The provisions of this §403.125 adopted to be effective January 1, 1976.

§403.126. Agreements To Be in Writing.

No stipulation or agreement between the parties, their attorneys or representatives, with regard to any matter involved in any proceeding before the department shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated in an order bearing their written approval. This section does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by this subchapter, unless precluded by law.

Source: The provisions of this §403.126 adopted to be effective January 1, 1976.

§403.127. Service in Proceedings.

(a) Where personal service of notice by the department is required, the department shall mail the same, by certified or registered mail, to the last known place of address of the person entitled to receive such notice.

(b) A copy of any protest, reply, answer, motion, or other pleading filed by any party in any proceeding subsequent to the institution thereof shall be mailed or otherwise delivered by the party filing the same to every other party of record. If any party has appeared in the proceeding by attorney or other representative authorized under this subchapter to make appearances, service shall be made upon such attorney or other representative. The willful failure of any party to make such service shall be sufficient grounds for the entry of an order by the commissioner, or the presiding examiner, striking the protest, reply, answer, motion, or other pleading from the record.

(c) A certificate by the party, attorney, or representative who files a pleading, stating that it has been served on the other parties, shall be *prima facie* evidence of such service. The following form of certificate will be sufficient in this connection: I hereby certify that I have this _____ day of , 19_____ , served copies of the foregoing pleading upon all other partiesto this proceeding, by (here state the manner of service). Signature.

Source: The provisions of this §403.127 adopted to be effective January 1, 1976.

Cross References: This section cited in 25 TAC §403.133 (relating to Form and Content of Pleadings).

§403.128. Conduct and Decorum.

Every party, witness, attorney, or other representative shall comport himself in all proceedings governed by this subchapter with proper dignity, courtesy, and respect for the department, the commissioner, the examiner, and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys-at-law by the State Bar of Texas.

Source: The provisions of this §403.128 adopted to be effective January 1, 1976.

§403.129. Classification of Parties.

Parties to proceedings governed by this subchapter are applicants, licensees, respondents, and intervenors. Regardless of errors as to designations in their pleadings, the parties shall be accorded their true status in the proceedings.

Source: The provisions of this §403.129 adopted to be effective January 1, 1976.

§403.130. Parties in Interest.

Any party in interest may appear in any proceeding governed by this subchapter. All appearances shall be subject to a motion to strike upon a showing that the party has no justiciable or administratively cognizable interest in the proceeding. Any person, public official, agency, or department of the State of Texas or any of its political subdivisions, or any civic or trade organization shall be permitted to intervene in support of or in opposition to all or part of the relief sought in any contested proceeding by filing at least 10 days in advance of the hearing date. A petition in intervention showing its interest and the basis for its position in the case and at the hearing may present any relevant and proper testimony and evidence bearing upon the issues involved in the particular proceeding.

Source: The provisions of this §403.130 adopted to be effective January 1, 1976.

§403.131. Appearances Personally or by Representative.

Any party may appear and be represented by an attorney-at-law authorized to practice law before the highest court of this state. Any person or owner may appear on his own behalf, or by a *bona fide* employee. A corporation, partnership, or association may appear and be represented by any *bona fide* officer, partner, or employee.

Source: The provisions of this §403.131 adopted to be effective January 1, 1976.

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§403.132. Classification of Pleadings.

Pleadings filed with the department through the commissioner shall be applications, protests, petitions, complaints, answers, replies, motions for rehearing, and other motions. Regardless of any error in the designation of a pleading, it shall be accorded its true status in the proceeding in which it is filed.

Source: The provisions of this §403.132 adopted to be effective January 1, 1976.

§403.133. Form and Content of Pleadings.

(a) Pleadings shall be typewritten or printed upon paper 8½ inches wide and 11 inches long with an inside margin of at least one inch wide, and exhibits annexed thereto shall be folded to the same size. Reproductions are acceptable, provided all copies are clear and permanently legible.

(b) Pleadings shall state their object, and shall contain a concise statement of the facts in support of the same, and shall be signed by the applicant or his authorized agent.

(c) The original of every pleading shall be signed in ink by the party filing the paper, or by his authorized representative. Pleadings shall contain the address of the party filing the document or the name, telephone number, and business address of the representative.

(d) All pleadings for which no official form is prescribed shall contain:
  (1) the name of the party seeking to bring about or prevent action by the department;
  (2) the names of all other known parties in interest;
  (3) a concise statement of the facts relied upon by the pleader;
  (4) a prayer stating the type of relief, action, or order desired by the pleader;
  (5) any other matter required by statute; and
  (6) a certificate of service, as required by §403.127(c) of this title (relating to Service in Proceedings).

(e) Each protest, petition, complaint, or other pleading or document which is intended to institute a proceeding before the department shall be accompanied by the filing fee, if any, prescribed by law and the provisions of this subchapter.

Source: The provisions of this §403.133 adopted to be effective January 1, 1976.

Cross References: This section cited in 25 TAC §403.139 (relating to Denial, Suspension, or Revocation of License); and 25 TAC §403.154 (relating to Exhibits).

§403.134. Examination of Pleadings by the Commissioner.

Upon the filing of any pleading with the commissioner, he shall examine the same and determine its sufficiency under the provisions of this subchapter. If he shall find that the pleading does not comply in all material respects with the provisions of this subchapter, he shall return it to the person who filed it, along with his statement of the reasons for rejecting the same. The person who filed such pleading shall thereafter have the right to file a corrected pleading, provided, that the filing of such corrected pleading shall not be permitted to delay any hearing unless the commissioner shall determine that such delay is necessary in order to prevent injustice or to protect the public interest and welfare.

Source: The provisions of this §403.134 adopted to be effective January 1, 1976.

§403.135. Motions.

Any motion relating to a pending proceeding governed by this subchapter shall, unless made during a hearing, be written, and shall set forth the relief sought and the specific reasons and grounds therefor. If based upon matters which do not appear of record, it shall be supported by affidavit. Any motion not made during a hearing shall be filed with the commissioner, who shall act upon the motion at the earliest practicable time.

Source: The provisions of this §403.135 adopted to be effective January 1, 1976.

§403.136. Amendments.

Any pleading may be amended at any time upon motion, provided, that a pleading upon which notice has been issued shall not be amended so as to broaden the scope thereof.

Source: The provisions of this §403.136 adopted to be effective January 1, 1976.

Cross References: This section cited in 25 TAC §403.146 (relating to Order of Procedure).

§403.137. Incorporation by Reference of Department Records.

Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in the official files and records of the department. This section shall not relieve any party of the necessity of alleging in detail, if required, facts necessary to sustain his burden of proof imposed by law.

Source: The provisions of this §403.137 adopted to be effective January 1, 1976.

§403.138. Docketing and Numbering of Causes; Hearing Date.

(a) Upon receipt of a letter of protest, which is intended to institute a proceeding before the department and complies with the provisions of this subchapter as to form and content, the commissioner shall docket the same as a pending proceeding and serve notice thereon by personal service.

(b) Upon receipt of a letter of protest, the commissioner shall set a date on which the hearing will be held. The hearing date will be set no sooner than 15 days or later than 45 days after the letter of protest is received by the commissioner; provided that, the commissioner is not precluded from subsequently postponing or continuing the hearing date until a later time if, in his sound judgment and discretion, good cause requires the later date. Good cause includes, but is not limited to, the consideration that the later date for the hearing will result in a fairer and more just determination of the issues and that the welfare of any patients of the private mental hospital will not be substantially endangered by reason of the hearing date being postponed. The presiding examiner is not precluded by this section, or any other rule, from ordering a postponement or continuance of a hearing upon the showing of good cause.

Source: The provisions of this §403.138 adopted to be effective January 1, 1976.

§403.139. Denial, Suspension, or Revocation of License.

(a) After the department has:
  (1) received:
    (A) an application for a license; or
    (B) had facts, conduct, situations, or conditions brought to its knowledge which the department deems to be of such a nature as to provide a basis for a determination; and
  (2) made a determination that:
    (A) the application should be denied; or
    (B) a license should be suspended or revoked because there has been a substantial failure by the applicant or licensee to comply with the rules of the department or the provisions of the Mental Health Code, Texas Civil Statutes article 5547-1 *et seq.*, the department shall notify the applicant or licensee of its determination and shall advise the applicant or licensee of his right to a hearing before the department. Such notification by the department shall be sent to the applicant or licensee by certified or registered mail.

(b) To secure his right to a hearing before the department, the applicant or licensee shall, within 30 days of the date of the notification by the department of its determination, send a letter of protest in conformity with the requirements of §403.133 of this title (relating to Form and Content of Pleadings) to the commissioner, protesting the department's determination and requesting a hearing before the department. Such letter of protest by the applicant or licensee shall be sent to the commissioner by certified or registered mail. If the department is not so notified, it shall; on any date after the expiration of the 30 days allowed for a reply by letter of protest from the applicant or licensee and on the basis of the evidence it has before it, make a formal finding as to whether the applicant or licensee has substantially failed to comply with the rules of the department or the provisions of the Mental Health Code, Texas Civil Statutes article 5547-1 *et seq.*

(c) If the applicant or licensee timely sends a letter of protest to the commissioner within 30 days after the date of notification by the department of its determination, as provided in subsection (b) of this section, the commissioner shall assign such case to the contested docket, appoint an examiner to hear the case, and issue a notice which shall include:
  (1) a statement of time, place, and nature of the hearing;
  (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
  (3) a reference to the particular sections of the statutes and rules involved; and
  (4) a short and plain statement of the matters asserted. If the department is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, on timely written application, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing.

(d) After giving the applicant or licensee an opportunity to demonstrate or achieve compliance and after notice and opportunity for hearing, the department may deny the application, or suspend or revoke the license, if it finds substantial failure by the applicant or licensee to comply with the rules of the department or the provisions of the Mental Health Code, Texas Civil Statutes article 5547-1 *et seq.*

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(e) No revocation or suspension of a license is effective unless, prior to the institution of department proceedings, the department gave notice by personal service or by registered or certified mail to the licensee of facts or conduct alleged to warrant the intended action, and the licensee was given an opportunity to show compliance with all requirements of law for the retention of the license.

(f) If, after investigation, the department finds that there is immediate threat to health or safety of patients or employees of a private mental hospital, the department may temporarily suspend a license for 10 days pending a hearing on the suspension order, and may issue orders necessary for the welfare of the patients.

(g) A license remains in effect until suspended or revoked by the department, or surrendered by the licensee. This section does not affect in any way the provision of the Mental Health Code requiring annual renewal of the license or any other substantive provision of the Mental Health Code concerning the licensing of private mental hospitals.

Source: The provisions of this §403.139 adopted to be effective January 1, 1976.

§403.140. Contents of Notices Required To Be Served by Personal Service.

All notices of which personal service is required by law shall be addressed to the person entitled thereto, and shall set forth:

(1) the names of all other parties;
(2) the nature and subject matter of the proceeding;
(3) the time and place of hearing; and
(4) any other matter required by law.

Source: The provisions of this §403.140 adopted to be effective January 1, 1976.

§403.141. *Prehearing Conference.*

(a) In any proceeding governed by this subchapter, the commissioner, on his own motion or on the motion of a party, may direct the parties, their attorneys or representatives to appear before an examiner at a specified time and place for a conference prior to the hearing for the purpose of formulating issues and considering:

(1) the simplification of issues;
(2) the possibility of making admissions of certain averments of fact or stipulations concerning the use by either or both parties of matters of public record, such as annual reports, to the end of avoiding the unnecessary introduction of proof;
(3) the procedure at a hearing;
(4) the limitation, where possible, of the number of witnesses; and
(5) such other matters as may aid in the simplification of the proceedings, and the disposition of the matters in controversy, including settlement of such issues as are in dispute.

(b) Action taken at the conference shall be recorded in an appropriate order by the examiner, unless the parties enter into a written agreement.

Source: The provisions of this §403.141 adopted to be effective January 1, 1976.

§403.142. Motions for Postponement, Continuance, Withdrawal, or Dismissal of Protests or Other Matters before the Department.

(a) Motions for postponement, continuance, withdrawal, or dismissal of protests or other matters which have been duly set for hearing, shall be:

(1) in writing;
(2) filed with the commissioner; and
(3) distributed to all interested parties, under a certificate of service, not less than five days prior to the designated date that the matter is to be heard.

(b) Such motion shall set forth, under oath, the specific grounds upon which the moving party seeks such action and shall make reference to all prior motions of the same nature filed in the same proceeding. Failure to comply with this section, except for good cause shown, may be construed as lack of diligence on the part of the moving party, and at the discretion of the commissioner, may result in the dismissal of the protest or other matter in issue, with prejudice to refiling. Once a protest has actually proceeded to a hearing, pursuant to the notice issued thereon, no postponement or continuance shall be granted by the examiner without the consent of all parties involved, unless the department shall have ordered such postponement or continuance.

Source: The provisions of this §403.142 adopted to be effective January 1, 1976.

§403.143. Joint Hearings.

A motion for consolidation of two or more protests or other proceedings shall be in writing, signed by the movant, his attorney or representative, and filed with the commissioner prior to the date set for hearing. No two or more protests or other proceedings shall be consolidated or heard jointly without the affirmative consent of all parties to all such proceedings, unless the department shall find that the two or more protests or other proceedings involve common questions of law and fact, and shall further find that separate hearings would result in unwarranted expense, delay, or substantial injustice.

Source: The provisions of this §403.143 adopted to be effective January 1, 1976.

§403.144. Place and Nature of Hearings.

All hearings conducted in any proceeding shall be open to the public. All hearings shall be held in Austin, Texas, unless for good and sufficient cause the commissioner, in his sound judgment and discretion, shall designate another place of hearing in the interest of the public.

Source: The provisions of this §403.144 adopted to be effective January 1, 1976.

§403.145. Presiding Officer.

(a) Hearings will be conducted by an employee of the department, the commissioner, or a hearing examiner, any and all of which are at times referred to in this subchapter as the examiner or the presiding examiner. The presiding examiner shall have authority to administer oaths, to examine witnesses, and to rule upon the admissibility of evidence and amendments to pleadings. He shall have the authority to recess any hearing from day to day. The presiding examiner must be licensed to practice law in Texas if he is not the commissioner.

(b) If the presiding examiner dies, becomes disabled, or withdraws, or is removed from employment or the case at any time before the final decision thereof, the department or the commissioner may appoint another presiding examiner who may perform any function remaining to be performed without the necessity of repeating any previous proceedings in the case.

(c) The commissioner shall designate one or more employees of the department who are experienced in mental health matters, and who are knowledgeable of the operations and programs of private mental hospitals, to assist the presiding examiner in the evaluation of evidence presented at the hearing.

Source: The provisions of this §403.145 adopted to be effective January 1, 1976.

§403.146. Order of Procedure.

(a) In all proceedings the applicant or licensee, as the case may be, shall be entitled to open and close. Where several proceedings are heard on a consolidated record, the presiding examiner shall designate who shall open and close. The examiner in all cases shall determine at what stage intervenors shall be permitted to offer evidence. After all parties have completed the presentation of their evidence the department may call upon any party or the staff of the department for further material or relevant evidence upon any issue, to be presented at further public hearing after notice to all parties of record.

(b) The presiding examiner shall direct all parties to enter their appearances on the record. If exceptions to the form or sufficiency of a pleading have been filed in writing at least three days prior to the date of hearing, they shall be heard; otherwise not. If exceptions are sustained, the examiner shall allow a reasonable time for amendment, subject to the provisions of §403.136 of this title (relating to Amendments).

Source: The provisions of this §403.146 adopted to be effective January 1, 1976.

§403.147. Recording of Proceedings; Corrections of the Transcript.

(a) The proceedings of the hearing shall be recorded in such form that the record can be transcribed if notice of appeal is filed. The department may pay the cost of the transcript or assess the cost to one or more of the parties. This subsection does not limit the department to a stenographic record of proceedings.

(b) The department shall notify the parties when it has compiled the transcript and shall forward a copy of the transcript to each party for his inspection. Suggested corrections to the transcript of the record may be offered within 10 days after the date the transcript and notice is sent to the parties, unless the examiner or department shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record, the official reporter and the examiner. If suggested corrections are not objected to, the examiner, if satisfied as to the accuracy of the suggested corrections in reflecting what actually occurred, will direct the corrections to be made and the manner of making them. In case the parties disagree on suggested corrections, they may be heard by the examiner, who shall then determine the manner in which the record shall be changed, if at all.

Source: The provisions of this §403.147 adopted to be effective January 1, 1976.

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§403.148. Formal Exceptions.

Formal exceptions to rulings of the presiding examiner during a hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the presiding examiner the action which he desires.

Source: The provisions of this §403.148 adopted to be effective January 1, 1976.

§403.149. Dismissal without Hearing.

The department may entertain motions for dismissal without a hearing for any of the following reasons:

(1) failure to prosecute;
(2) unnecessary duplication of proceedings or *res adjudicata*;
(3) withdrawal;
(4) moot questions or stale protest; or
(5) lack of jurisdiction.

Source: The provisions of this §403.149 adopted to be effective January 1, 1976.

§403.150. Rules of Evidence.

In all contested cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonable susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonable prudent men in the conduct of their affairs. The department shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

Source: The provisions of this §403.150 adopted to be effective January 1, 1976.

§403.151. Documentary Evidence and Official Notice.

(a) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. On request, parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the presiding examiner may limit those admitted to a number which are typical and representative, and may, in his discretion, require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; provided, however, that before making such requirement, the examiner shall require that all parties of record or their representatives be given the right to examine the documents from which such abstracts were made.

(b) Official notice may be taken of all facts judicially cognizable. In addition, notice may be taken of generally recognized facts within the area of the department's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The special skills or knowledge of the department and its staff may be utilized in evaluating the evidence.

Source: The provisions of this §403.151 adopted to be effective January 1, 1976.

§403.152. Prepared Testimony.

In all contested cases and after service of copies upon all parties of record at such time as may be designated by the commissioner or the examiner, the prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness's being sworn and identifying the same. Such witness shall be subject to cross-examination and the prepared testimony shall be subject to a motion to strike in whole or in part.

Source: The provisions of this §403.152 adopted to be effective January 1, 1976.

§403.153. Limitations on Number of Witnesses.

The commissioner or the examiner shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

Source: The provisions of this §403.153 adopted to be effective January 1, 1976.

§403.154. Exhibits.

(a) Exhibits of documentary character shall be of such size, as set forth in §403.133 of this title (relating to Form and Content of Pleadings), as not unduly to encumber the files and records of the department. There shall be a brief statement on the first sheet of the exhibit of what the exhibit purports to show. Exhibits shall be limited to facts material and relevant to the issues involved in a particular proceeding.

(b) The original of each exhibit offered shall be tendered to the reporter for identification; one copy shall be furnished to presiding examiner, and one copy to each other party of record or his attorney or representative.

(c) In the event an exhibit has been identified, objected to and excluded, the presiding examiner shall determine whether or not the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the examiner with his ruling, and shall be included in the record for the purpose only of preserving the exception.

(d) Unless specifically directed by the presiding examiner, or by the department itself, no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing. In the event the department allows an exhibit to be filed after the conclusion of the hearing, copies of the late-filed exhibit shall be served on all parties of record.

Source: The provisions of this §403.154 adopted to be effective January 1, 1976.

§403.155. Offer of Proof.

When testimony is excluded by ruling of the examiner, the party offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony, prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the department. The presiding examiner may ask such questions of the witness as he deems necessary to satisfy himself that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross-examination may be preserved without making an offer of proof.

Source: *The provisions of this §403.155 adopted to be effective January 1, 1976.*

§403.156. Depositions.

The taking and use of depositions in any proceeding shall be governed by section 14 of the Administrative Procedure and Texas Register Act, Texas Civil Statutes article 6252-13a.

Source: The provisions of this §403.156 adopted to be effective January 1, 1976.

§403.157. Subpoenas.

(a) Following written request by a party or on its or his own motion, subpoenas for the attendance of a witness from any place in the State of Texas at a hearing in a pending proceeding may be issued by the department, the commissioner, or, during the course of a hearing, by the presiding examiner.

(b) Motions for subpoenas to compel the production of books, papers, accounts, documents, or other physical things shall be addressed to the department, shall be verified and shall specify as nearly as may be the books, papers, accounts, or documents desired and the material and relevant facts to be proved by them. If the matter sought is relevant, material, and necessary and will not result in harassment, imposition, or undue inconvenience or expense to the party to be required to produce the same, the department, the commissioner, or, during the course of a hearing, the examiner, may issue a subpoena, compelling production of books, papers, accounts, documents, or other physical things as deemed necessary. Such subpoenas may also be issued by the department, commissioner, or, during the course of a hearing, the examiner, upon its or his own motion.

(c) Such subpoenas shall be issued only after a showing of good cause and deposit of sums sufficient to insure payment of expenses incident to the subpoenas. Service of subpoenas and payment of witness fees shall be made in the manner prescribed in the Administrative Procedure and Texas Register Act, Texas Civil Statutes article 6252-13a.

Source: The provisions of this §403.157 adopted to be effective January 1, 1976.

§403.158. Oral Argument.

A party or his representative is entitled to present oral argument if he has requested the opportunity to present oral argument. A request for oral argument may be incorporated in exceptions, briefs, replies to exceptions, motions for rehearing, or in separate pleadings. A request for opportunity to present oral argument must be made prior to the final determination of any proceeding. The presiding examiner has the authority to limit the time and scope of any oral argument in the proceeding he is conducting.

Source: The provisions of this §403.158 adopted to be effective January 1, 1976.

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§403.159. Final Decisions and Orders; Motions for Rehearing.

(a) A final decision or order adverse to a party in a contested case must be in writing or stated in the record.

(b) A final decision must include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with department rules, a party submitted proposed findings of fact, the decision shall include a ruling on each proposed finding. Parties shall be notified either personally or by mail of any decision or order. The department shall send a copy of the decision or order by registered mail to the applicant or licensee notifying him of the action taken by the department.

(c) A decision is final, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing, and is final and appealable on the date of rendition of the order overruling the motion for rehearing, or on the date the motion is overruled by operation of law. If the department finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

(d) The final decision or order must be rendered within 60 days after the date the hearing is finally closed.

(e) Except as provided in subsection (c) of this section, a motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed within 15 days after the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with the commissioner within 25 days after the date of rendition of the final decision or order, and department action on the motion must be taken within 45 days after the date of rendition of the final decision or order. If department action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The commissioner may by written order extend the period of time for filing the motions and replies and taking department action, except that an extension may not extend the period for department action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order.

(f) The parties may by agreement with the department provide for a modification of the times provided in this section.

Source: The provisions of this §403.159 adopted to be effective January 1, 1976.

§403.160. The Record.

(a) The record in a contested case shall include:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings on them;

(5) proposed findings and exceptions;

(6) any decision, opinion, or report by the officer presiding at the hearing; and

(7) all staff memoranda or data submitted to or considered by the hearing officer or members of the department who are involved in making the decision.

(b) Findings of fact shall be based exclusively on the evidence presented and matters officially noticed.

Source: The provisions of this §403.160 adopted to be effective January 1, 1976.

§403.161. Show Cause Orders and Complaints.

(a) The department, either on its own motion or upon receipt of sufficient written complaint, may, in its sound discretion, at any time after notice to all interested parties, including personal service upon the licensee, cite any person operating under its jurisdiction to appear before it in a public hearing and require him or it to show cause why his or its license should not be revoked or suspended, or other action available to the agency be taken, for failure to comply with the provisions of the Mental Health Code, Texas Civil Statutes article 5547-1 *et seq.*, or the rules or orders of the department, or for failure to abide by the terms and provisions of the license itself. All hearings in such proceedings shall be conducted in accordance with the provisions of this subchapter.

(b) No revocation, suspension, annulment, or withdrawal of any license is effective unless, prior to the institution of department proceedings, the department gives notice by personal service or by registered or certified mail to the licensee of facts or conduct alleged to warrant the intended action, and the licensee is given an opportunity to show compliance with all requirements of law for the retention of the license.

Source: The provisions of this §403.161 adopted to be effective January 1, 1976.

§403.162. Ex Parte Consultations.

Unless required for the disposition of *ex parte* matters authorized by law, members or employees of the department assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and opportunity for all parties to participate.

Source: The provisions of this §403.162 adopted to be effective January 1, 1976.

§403.163. Participation by Legal Staff.

The legal staff of the department may participate in hearings governed by this subchapter.

Source: The provisions of this §403.163 adopted to be effective January 1, 1976.

§403.164. Inclusion of Provision for the Protection and Preservation of the Health, Safety, and Welfare of the Patients of the Private Mental Hospital in an Order Suspending or Revoking a License.

In an order suspending or revoking the license to operate a private mental hospital, provision shall be made to protect and preserve the health, safety, and welfare of the patients of the private mental hospital. The provision may include, but is not limited to, orders directing the relocation of patients. The best interests of the patients of the private mental hospital is to be the controlling standard in determining what provision should be included in the order with regard to protecting and preserving the health, safety, and welfare of the patients of the private mental hospital.

Source: The provisions of this §403.164 adopted to be effective January 1, 1976.

§403.165. Confidentiality.

(a) In any hearing or other proceeding conducted by the department the identity of a mental health patient shall not be revealed or made a matter of public record in any way unless the person or party desiring or attempting to reveal the identity of a mental healthpatient:
  (1) has:
    (A) secured from the mental health patient, or from the person legally authorized to give consent for the mental health patient, written consent to reveal for the purposes of the hearing the identity of the mental health patient; and
    (B) filed the written consent with the commissioner; and
  (2) the identity of the mental health patient is relevant and material to an issue in the hearing.

(b) Any attempt by a party to circumvent the requirements of subsection (a) of this section will be sufficient grounds for the commissioner or presiding examiner to strike the party and any protest or pleading of the party from the hearing or to dismiss the hearing with prejudice.

Source: The provisions of this §403.165 adopted to be effective January 1, 1976.

§403.166. Judicial Review.

(a) Any applicant or licensee may appeal from the decision of the department by filing notice of appeal in the District Court of Travis County and with the department within 30 days after receiving a copy of the decision of the department.

(b) Upon receiving notice of appeal, the department shall certify and file with the court a transcript of the proceedings in the case. By stipulation the transcript may be limited.

(c) The court shall hear the case upon the record and may consider such other evidence as in its discretion may be necessary to properly determine the issues involved. The substantial evidence rule shall not apply.

(d) The court may affirm or set aside the decision of the department or may remand the case for further proceedings before the department.

(e) If the court affirms the decision of the department, the applicant or licensee shall pay the cost of the appeal; otherwise the department shall pay the cost of the appeal.

Source: The provisions of this §403.166 adopted to be effective January 1, 1976.

§403.167. Effective Date.

The provisions of this subchapter shall take effect on December 31, 1975. They govern all proceedings filed after they take effect; and they also govern all proceedings then pending, except to the extent that the commissioner shall determine that their application in a particular pending proceeding would not be feasible or would work injustice, in which event the former procedure applies.

Source: The provisions of this §403.167 adopted to be effective January 1, 1976.

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SUBCHAPTER F. RULES GOVERNING THE INSPECTION OF DEPARTMENT RECORDS

Authority: The provisions of this Subchapter F issued under Acts 1965, 59th Leg., p. 165, ch. 67, §1, effective September 1, 1965 (Texas Civ. St. art. 5547-202, §2.11(b)); and Acts 1973, 63rd Leg., p. 1112, ch. 424, effective June 14, 1973 (Texas Civ. St. art. 6252-17a, §13).

§403.181. Purpose.

The purpose of this subchapter governing the inspection of department records is to insure compliance with the Open Records Act, Texas Civil Statutes article 6252-17a.

Source: The provisions of this §403.181 adopted to be effective January 1, 1976.

§403.182. Applicability.

This subchapter governing the inspection of department records applies to all facilities and institutions of the Texas Department of Mental Health and Mental Retardation.

Source: The provisions of this §403.182 adopted to be effective January 1, 1976.

§403.183. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

Agent of the custodian of public records of the Texas Department of Mental Health and Mental Retardation—The superintendent or director of a facility or institution of the Texas Department of Mental Health and Mental Retardation.

Custodian of public records of the Texas Department of Mental Health and Mental Retardation—The commissioner of the Texas Department of Mental Health and Mental Retardation.

Source: The provisions of this §403.183 adopted to be effective January 1, 1976.

§403.184. Availability.

(a) Public records containing public information shall be made available to any person who applied in writing either to be allowed to inspect such records or to be supplied with copies of such records, unless the record is believed to be a record described in one or more of the exceptions contained in section 3(a) of the Open Records Act, Texas Civil Statutes article 6252-17a.

(b) If it appears that the record requested is one covered by one or more of the exceptions contained in section 3(a) of the Act or if there is any doubt on that issue, the written request will be promptly forwarded to the custodian of public records of the Texas Department of Mental Health and Mental Retardation for such action or advice, or both, as he may deem proper. In this case, the record or records in question may not be disclosed for inspection nor may copies be provided until disclosure has been authorized by the custodian of public records of the Texas Department of Mental Health and Mental Retardation. If the custodian of public records of the Texas Department of Mental Health and Mental Retardation determines that the record requested contains information considered to be within one or more of the exceptions stated in section 3(a) of the Open Records Act, but there has been no previous determination that it falls within one of the exceptions, the department within a reasonable time no later than 10 days after receipt of the written request, shall request a decision from the attorney general to determine whether the information is within one or more of the exceptions.

(c) The advice of the department's legal division should be requested if there is a question concerning whether information should be disclosed to a member of the public.

Authority: The provisions of this §403.184 issued under Acts 1965, 59th Leg., p. 165, ch. 67, §1, effective September 1, 1965 (Texas Civ. St. art. 5547-202, §2.11(b)).

Source: The provisions of this §403.184 adopted to be effective January 1, 1976; amended to be effective January 30, 1980, 5 TexReg 197.

Notes of Decisions: Internal reports of the Texas Department of Mental Health and Mental Retardation were excepted from disclosure under the Open Meetings Act as "information relating to litigation." Op. Atty. Gen. No. O.R.D. 282 (1981). Internal audit report and construction contract contained information which might be involved in "reasonably anticipated" litigation and were not required to be disclosed under the Open Records Act. Op. Atty. Gen. No. O.R.D. 289 (1981). Certain information contained in report regarding mental health facility was excepted from disclosure as "advise, opinion and recommendation contained in inter-agency and intra-agency memoranda," remaining matters were subject to disclosure under the Open Records Act. Op. Atty. Gen. No. O.R.D. 359 (1983).

§403.185. Charges.

(a) The maximum charge for noncertified reproductions of public records by using standard office copy machines shall be as follows:
  (1) first page of document, 8½ inches by 11 inches or 8½ inches by 14 inches—$.55;
  (2) additional pages of same document and extra copies of all pages—each $.15.

(b) Charges for the records listed below will be made as follows:
  (1) *Computer record banks.*
    (A) Computer time—$150 per hour.
    (B) Programming (when necessary)—$8.00 per hour.
    (C) System analysis—$10 per hour.
    (D) Setup charge—N/A.
    (E) Printout, per page—$.005.
    (F) Identify computer (make, model, capacity): IBM System 370/145 Model L.
    (G) Computer time used will be calculated based upon a process hour as determined by the internal job accounting system of the department.
  (2) *Microfilm records.*
    (A) First copy per roll—$8.75.
    (B) Additional copy per roll—$7.26 each.
    (C) Microfilm print—$.55 each
    (D) Additional copy of microfilm print—$.15 each.
  (3) *Photostatic records.*
    (A) 18 inch by 10 inch size—$1.00 each.
    (B) 18 inch by 12 inch size—$1.25 each.
    (C) 18 inch by 15 inch size—$1.50 each.
    (D) 18 inch by 20 inch size—$2.00 each.
    (E) 18 inch by 24 inch size—$2.50 each.

(c) To the above charges will be added the following:
  (1) Sales tax (4.0%) plus city sales tax when applicable.
  (2) If copies are mailed, the cost of postage will be included in the charge. The department is not required to mail copies to a client.

(d) Charges shall be paid by cash, certified check, or money order and will be collected in advance. Receipts will be deposited to the appropriation from which the cost of furnishing such records is paid.

Source: The provisions of this §403.185 adopted to be effective January 1, 1976.

Notes of Decisions: A governmental body may not ordinarily charge for employee time in editing records or in making records available under the Open Records Act. Op. Atty. Gen. No. JM-114 (1983).

SUBCHAPTER G. DEPARTMENTAL PROCEDURES FOR OUTREACH PROGRAMS

Authority: The provisions of this Subchapter G issued under Acts 1965, 59th Leg., p. 165, ch. 67, §1, effective September 1, 1965 (Texas Civ. St. art. 5547-202, §2.11(b)); and Acts 1969, 61st Leg., p. 2010, ch. 688, §4, effective September 1, 1969, as amended (Texas Civ. St. art. 5547-204, §4.01).

§403.201. Purpose.

The purpose of this subchapter is as follows:
  (1) to establish departmental procedures governing the operation of outreach programs and the coordination of outreach programs with those programs operated by centers when:
    (A) outreach programs expand into areas not served by either outreach or a center;
    (B) centers expand (regionalize) into counties not served by either outreach or a center;
    (C) outreach programs expand into counties served by centers;
    (D) centers expand (regionalize) into counties served by outreach; and
    (E) outreach programs and centers operate in the same county;
  (2) to establish the requirements for local support of facility outreach programs;
  (3) To establish guidelines for setting fee schedules for services in outreach programs and centers;

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(4) to eliminate, insofar as possible, any overlap and duplication in the provision of community services which may now exist.

Source: The provisions of this §403.201 adopted to be effective January 1, 1976.

§403.202. Application.

The provisions of this subchapter apply to all facilities of the Texas Department of Mental Health and Mental Retardation and to community mental health and mental retardation centers. The provisions of this subchapter do not apply to the department's internal rules governing the Genetics Screening and Counseling Program. (The rules governing the Genetic Screening and Counseling Program have not yet been promulgated.)

Source: The provisions of this §403.202 adopted to be effective May 19, 1978, 3 TexReg 1674.

§403.203. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

Appropriate deputy commissioner—The deputy commissioner with line administrative authority over a facility outreach program.

Center—A community mental health and mental retardation center administered by a board of trustees appointed pursuant to Texas Civil Statutes article 5547-203, and offering services which, either alone or in conjunction with other service agencies owned or operated by it, or affiliated by contract with such centers, provide mental health or mental retardation service programs, or both, to persons residing in its area.

Client program coordination—The designation of a person representing the center or state facility outreach/outpatient program who:

(A) assists in the development of the furlough/discharge plan;

(B) ensures that the services identified in the plan are delivered to the client when he is furloughed or discharged; and

(C) ensures that the follow-up schedule is met.

Commissioner—The commissioner of the Texas Department of Mental Health and Mental Retardation.

Department—The Texas Department of Mental Health and Mental Retardation.

Department facility—

(A) a "state hospital," which is a facility of the Texas Department of Mental Health and Mental Retardation whose major role is the diagnosis, treatment, and rehabilitation of clients, including alcoholics and drug abusers, in need of mental health services;

(B) a "state school," which is a facility of the Texas Department of Mental Health and Mental Retardation whose major role is the diagnosis, special training, education, supervision, care, and habilitation of mentally retarded individuals;

(C) a "state center for human development," which is a facility of the Texas Department of Mental Health and Mental Retardation that is community based and provides programs for the mentally ill or the mentally retarded, or both, within a prescribed geographic area;

(D) the Texas Research Institute of Mental Sciences (TRIMS); or

(E) the Rio Grande State Center for Mental Health and Mental Retardation.

Local sponsor—Those agents identified in Texas Civil Statutes article 5547-202, §2.13.

Local support—Consists of both the following:

(A) Cash-income from taxing authorities; fees; funds from local donations; gifts; grants; and contracts, whether used for rental or purchase of facilities, purchase of utilities, or payment of personnel.

(B) In-kind donated space, utilities, supplies, and equipment.

Outreach programs—Programs operated by facilities of the Texas Department of Mental Health and Mental Retardation which provide services beyond the traditional boundaries of those institutions. For outreach services to qualify as an outreach program, an outreach facility must exist. One or more employees must utilize the outreach facility as a base of operations, and services must be offered at the outreach facility at least five days per week for at least four hours per day.

Plan for service expansion—A written plan which includes but is not necessarily limited to a needs assessment, goals and objectives, budget, clients to be served, and services to be offered.

Program costs—Include the costs of personnel, supplies, equipment, travel, and utilities paid from appropriated and other funds for the operation of a specific program at any location. Only costs of local operation are considered in determining local support requirements. For the purposes of this section, in order to determine local support requirements, the expenses of traveling teams operating out of the sponsoring facility are not included in the program costs.

Regionalization—The expansion of services and authority of center from its original composition to include the jurisdictional boundaries of local agencies which may establish and operate community centers pursuant to Texas Civil Statutes article 5547-203, §3.01(a), who have asked to participate in the board of trustees at the center. This will result in the reconstitution of the board of trustees to reflect the representation of the population to be served by the center.

Source: The provisions of this §403.203 adopted to be effective May 19, 1978, 3 TexReg 1674.

§403.204. Expansion of Outreach Programs into Counties Not Served by Outreach or Centers.

If an outreach program operated by a department facility desires to expand services into a county not served by that outreach program or a center, the minimum procedures to be followed are as follows:

(1) The need for such services and the plan for service expansion shall be documented and forwarded by the facility to the appropriate deputy commissioner for review.

(2) The appropriate deputy commissioner will confer with the deputy commissioner for community services to determine if a center plans to regionalize into the county. If a center plans to regionalize into the county within the current fiscal year or within a reasonable period of time not to exceed six months, whichever is longer, the outreach program will not be established.

(3) The appropriate deputy commissioner will approve or disapprove the plan for expansion.

(4) Subsequent to approval by the deputy commissioner, such expansion will be endorsed by a local sponsor and a contract negotiated between the department facility and the local sponsor.

(5) Prior to delivering services under the terms of the contract, the department facility shall consult with the department's legal division to determine that the rules and regulations of the Texas Health Facilities Commission and the provisions of the Texas Health Planning and Development Act, Texas Civil Statutes article 4418(h), are followed.

Source: The provisions of this §403.204 adopted to be effective May 19, 1978, 3 TexReg 1674.

§403.205. Expansion of Center Programs and Responsibility into Counties Not Served by Department Facility Outreach Programs or the Center.

If a center operated by a board of trustees desires to expand services into a county not served by that center or a facility outreach program, the minimum procedures to be followed are as follows:

(1) The need for such services and the plan to expand such services shall be documented and forwarded by the board of trustees to the deputy commissioner for community services for review.

(2) The deputy commissioner for community services will confer with the deputy commissioners for mental health and mental retardation to determine if a facility is preparing to expand outreach programs into that county. If a facility plans to expand outreach programs into that county, the proposed expansion by the center will take precedence if the center agrees in writing to meet the needs of the facility in that county within a reasonable period of time not to exceed six months.

(3) The deputy commissioner for community services will approve or disapprove the board of trustees plan for expansion into the county.

(4) Subsequent to approval of the deputy commissioner, the board of trustees may regionalize pursuant to Texas Civil Statutes article 5547-203, §3.01(a).

Source: The provisions of this §403.205 adopted to be effective May 19, 1978, 3 TexReg 1674.

§403.206. Expansion of Outreach Programs into a Center's Area of Service Responsibility.

If an outreach program operated by a department facility desires to expand services into a center's area of service responsibility, the minimum procedures to be followed are as follows:

(1) The department facility will first consult with the center to ascertain whether the center can provide the services within its present capabilities. If the center can provide the services, the center will assume responsibility for providing the services. If the center cannot provide the services as requested by the department facility, but plans or proposes to establish the services within six months of the department facility's request, then further action by the department facility will be deferred during such period of time. If the center has not provided the requested services by the end of the six-month period, the department facility shall proceed in accordance with the remaining subsections of this section.

(2) The need for such services and the plan to expand services shall be documented and forwarded by the department facility to the appropriate deputy commissioner, the deputy commissioner for community services, and the board of trustees of the center for their review.

(3) The facility may expand its services into the county only after the commissioner and the board of trustees approve such expansion.

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(4) The department facility and the center shall meet the requirements of a memorandum of agreement as specified in §403.208(1) or (2) of this title (relating to Operation of Outreach Programs and Centers in the Center's Area of Service Responsibility).

(5) Prior to delivering services, the department facility shall consult with the department's legal division to ensure that the rules and regulations of the Texas Health Facilities Commission and the provisions of the Texas Health Planning and Development Act, Texas Civil Statutes article 4418(h), are followed.

Source: The provisions of this §403.206 adopted to be effective May 19, 1978, 3 TexReg 1674.

§403.207. Expansion of Center Programs into Counties Served by Outreach.

If the board of trustees of a center desires to expand services into a county served by a facility outreach program, the minimum procedures to be followed are as follows:

(1) The need for such services and the plan for service expansion shall be documented and forwarded by the board of trustees to the deputy commissioner for community services, and the deputy commissioner for mental health and/or the deputy commissioner for mental retardation.

(2) The center may regionalize its services into the county only after the commissioner and the superintendent and the board of trustees approves such expansion, and pursuant to Texas Civil Statutes article 5547-203, §3.01(a).

(3) The department facility and the center shall meet the requirements of a memorandum of agreement as specified in §403.208(1) or (2) of this title (relating to Operation of Outreach Programs and Centers in the Center's Area of Service Responsibility).

Source: The provisions of this §403.207 adopted to be effective May 19, 1978, 3 TexReg 1674.

§403.208. Operation of Outreach Programs and Centers in the Center's Area of Service Responsibility.

If a facility outreach program and a center operated by a board of trustees operate in the center's area of service responsibility, the following methods shall be followed:

(1) *State hospitals or state school outreach programs or both operating within the jurisdictional boundaries of center boards of trustees.*

(A) The center and state hospital or state school or both shall enter into a memorandum of agreement, which is signed by all parties, which will clearly delineate the programmatic and administrative responsibilities of each party, which should include but not be limited to: screening and referral of all clients to state hospitals or state schools or both; client program coordination responsibility; development of a discharge plan with state hospital or state school treatment team or both prior to any client's discharge into the service area; and follow-up services required in the discharge plan. Generally, the center will assume total responsibility for providing mental health and mental retardation services in the center's area of service responsibility. Therefore, the memorandum of agreement shall be structured with the intent that the center will assume responsibility for a particular service if it does not presently provide that service. If the center cannot provide that particular service, then the memorandum of understanding shall delineate the responsibilities of the state hospital or state school or both to provide the service.

(B) If the memorandum of agreement cannot be agreed to, then the deputy commissioner for community services and the deputy commissioner for mental health or the deputy commissioner for mental retardation or both will be appealed to for resolution.

(C) If a resolution cannot be developed, or if a resolution is developed but an appeal to the resolution is desired by the center or facility, the commissioner will provide final resolution or appeal.

(2) *State centers for human development and Rio Grande State Center outreach program operating within the jurisdictional boundaries of center boards of trustees.*

(A) The center and State Center for Human Development outreach program or Rio Grande State Center outreach programs shall enter into a memorandum of agreement, which is signed by all parties, which will clearly delineate administrative and programmatic responsibilities of each party, which should include but not be limited to: screening and referral of all clients to state hospitals or state schools or both; client program coordination responsibility; development of a discharge plan with state hospital or state school treatment team or both prior to any client's discharge into the service area; and follow-up services required in the discharge plan. Generally, the center will assume total responsibility for providing mental health and mental retardation services in the center's area of service responsibility. Therefore, the memorandum of agreement shall be structured with the intent that the center will assume responsibility for a particular service if it does not presently provide that service. If the center cannot provide that particular service, then the memorandum of understanding shall delineate the responsibilities of the State Center for Human Development or Rio Grande State Center to provide the service.

(B) If the memorandum of agreement cannot be agreed to, then the deputy commissioner for community services and the deputy commissioner for mental health or the deputy commissioner for mental retardation or both will be appealed to for resolution.

(C) If a resolution cannot be developed, or if a resolution is developed but an appeal to the resolution is desired by the center or facility, the commissioner will provide final resolution or appeal.

Source: The provisions of this §403.208 adopted to be effective May 19, 1978, 3 TexReg 1674.

Cross References: This section cited in 25 TAC §403.206 (relating to Expansion of Outreach Programs into a Center's Area of Service Responsibility); and 25 TAC §403.207 (relating to Expansion of Center Programs into Counties Served by Outreach).

§403.209. Requirements for Local Support.

After September 1, 1978, all new department facility outreach programs, and after September 2, 1979, all existing department facility outreach programs, shall meet the following requirements for local support:

(1) The local sponsoring group shall contribute not less than 10% of the program cost.

(2) The amount and kinds of services and facilities which may be credited to local support shall be within the discretion of the State Mental Health Authority.

Source: The provisions of this §403.209 adopted to be effective May 19, 1978, 3 TexReg 1674.

§403.210. Requirements for Contracts for the Operation of Outreach Programs with Local Sponsors.

Contracts for the operation of outreach programs with local sponsors shall include but shall not necessarily be limited to the following:

(1) a statement of the purpose of the contract;

(2) the minimum number of clients to be served;

(3) a statement that the program shall provide not less than existing levels of service;

(4) the location of the program for which the contract is being drawn;

(5) the maximum amount of dollars to be expended under the contract;

(6) services to be performed;

(7) a statement that the local sponsoring group shall contribute an amount not less than 10% of the program cost;

(8) a statement establishing the level of cash/in-kind support.

Source: The provisions of this §403.210 adopted to be effective May 19, 1978, 3 TexReg 1674.

§403.211. Fee Schedule for Nonresidential Programs of State Facilities and Community Centers.

When a nonresidential program of a departmental facility serves a county within the service area of a community mental health and mental retardation center and the center provides a similar service within the same county, the departmental facility and the center will coordinate to ensure that the fees charged are mututally agreed upon shall be included in the memorandum of agreement between the departmental facility and the center.

Source: The provisions of this §403.211 adopted to be effective May 19, 1978, 3 TexReg 1674; amended to be effective January 7, 1980, 4 TexReg 4716.

§403.212. References.

Reference is made to the following statutes and rules:

(1) Texas Civil Statutes article 5547-202, §§2.13 and 2.17(a);

(2) Texas Civil Statutes article 5547-203, §3.01(a);

(3) Texas Civil Statutes article 31476-4;

(4) current appropriations bill;

(5) the department's internal rules affecting client (patient) care, Basic Standards and Guidelines for Outreach Programs.

Source: The provisions of this §403.212 adopted to be effective May 19, 1978, 3 TexReg 1674.

§403.213. Distribution.

(a) The provisions of this subchapter shall be distributed to all members of the Texas Board of Mental Health and Mental Retardation; assistant commissioners, deputy commissioners, directors, and section chiefs of central office; superintendents and directors of all Texas Department of Mental Health and Mental Retardation facilities; the chairmen of the boards of trustees; and executive directors of all community mental health and mental retardation centers.

(b) The superintendents and directors of department facilities shall provide copies of this subchapter to their respective outreach coordinators and assistant superintendents, and to local sponsors of outreach programs.

Source: The provisions of this §403.213 adopted to be effective May 19, 1978; 3 TexReg 1674.

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SUBCHAPTER H. [RESERVED]

SUBCHAPTER I. CAPITAL IMPROVEMENTS BY CITIZEN GROUPS

Cross References: This subchapter cited in 25 TAC §407.94 (relating to Donations: Capital Improvements Projects; Naming of Donated Gifts, Memorials, or Items); and 25 TAC §407.101 (relating to References).

§403.251. Purpose.

Federal, state, and local laws apply to the Texas Department of Mental Health and Mental Retardation. In addition, TDMH/MR facilities must meet numerous complex standards of various accrediting and regulatory bodies concerned with the well-being of clients served by the department. These factors impose many constraints upon the department, its facilities, and those working for the department and its clients, including volunteers. The purpose of this subchapter is to assist and encourage those individuals and groups desiring to provide capital improvements to the Texas Department of Mental Health and Mental Retardation.

Source: The provisions of this §403.251 adopted to be effective August 9, 1978, 3 TexReg 2563.

§403.252. Application.

The provisions of this subchapter apply to any situation in which individuals and citizen groups wish to provide capital improvements to facilities of the Texas Department of Mental Health and Mental Retardation.

Source: The provisions of this §403.252 adopted to be effective August 9, 1978, 3 TexReg 2563.

§403.253. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

Board—The Texas Board of Mental Health and Mental Retardation.

Capital improvement—An improvement to the grounds or buildings of the facility, including landscaping, sitework, and buildings or other permanent structures.

Central office—The central office of the Texas Department of Mental Health and Mental Retardation, located at 909 West 45th Street, Austin, Texas.

Client—A person who is receiving mental health or mental retardation services from the Texas Department of Mental Health and Mental Retardation.

Commissioner—The commissioner of the Texas Department of Mental Health and Mental Retardation.

Committee—The Capital Improvement Committee sponsored by the Volunteer Services Council for the purpose of providing a capital improvement.

Contracts documents—The owner/contractor agreement, the conditions of the contract (general, supplementary, and other conditions), the contractor's proposal, the invitation and instructions to bidders, the drawings, the specifications, and all addenda issued prior to, and all modifications issued after execution of the contract. The contract documents form the contract which represents the entire and integrated agreement between the owner and the contractor and supersedes all prior negotiations, representations, or agreement, either written or oral. The contract documents are complementary and what is required by any one document is as binding as if required by all.

Coordinator, Volunteer Services—The state employee who acts as liaison between the facility and the Volunteer Services Council or the community. The coordinator is responsible to the superintendent or director of the facility and looks to the chief of volunteer services in the central office for guidance, direction, and advice. The coordinator interprets the needs of the facility to the council or the community and interprets the resources of the council and the community to the facility.

Design and Construction Section—The Design and Construction Section of the central office of the Texas Department of Mental Health and Mental Retardation.

Facility—A state school, state hospital, state human development center, the Texas Research Institute of Mental Sciences, or the Rio Grande State Center for Mental Health and Mental Retardation under the jurisdiction and control of the Texas Department of Mental Health and Mental Retardation.

Legal and Claims Division—The Legal and Claims Division of the central office of the Texas Department of Mental Health and Mental Retardation.

Policy—Requirements established by law or provided for by law.

Project manager—An architect or engineer on the staff of the Design and Construction Section at central office employed to manage construction projects, basically funded from the Capital Construction Program, at one or more TDMH/MR facilities assigned to him. The project manager acts in the capacity of the department's representative in the management of construction projects, and also as advisor to his assigned facilities in design and construction matters.

Shall—Used to denote an obligatory action.

State—The State of Texas.

Superintendent or director—The chief administrator of a department facility.

TDMH/MR—The Texas Department of Mental Health and Mental Retardation.

THFC—The Texas Health Facilities Commission.

Volunteer Services Council—The Volunteer Services Council for a facility of TDMH/MR.

Volunteer Services Section—The Volunteer Services Section of the central office of the Texas Department of Mental Health and Mental Retardation.

Will—Used in an informative sense, not an obligatory sense.

Source: The provisions of this §403.253 adopted to be effective August 9, 1978, 3 TexReg 2563; amended to be effective August 3, 1981, 6 TexReg 2590.

§403.254. Initial Contact with Persons Desiring to Provide Capital Improvements; the Nature of the Volunteer Services Council.

(a) Individuals or groups desiring to provide capital improvements will be given a copy of this subchapter and referred to the Volunteer Services Council chairman for the facility for which they desire to provide the improvements.

(b) The Volunteer Services Council is a separately chartered, private, nonprofit organization. It has no control over the state facility. However, the Volunteer Services Councils have been organized expressly for the purpose of extending to the clients of facilities services and items that can be acquired from the communities as donations which the state government as a general rule cannot supply. The Volunteer Services Council itself often initiates projects from within its own membership.

Source: The provisions of this §403.254 adopted to be effective August 9, 1978, 3 TexReg 2563.

§403.255. Appointment of Capital Improvement Committee; Ex Officio Members.

(a) The executive and nominating committee of the volunteers services council shall appoint, for the purpose of providing a chapel building, a swimming pool, activity center, or any other type of permanent, donated capital improvement, a capital improvement committee which shall be composed of responsible citizens in the community.

(b) *Ex officio* members of the established Capital Improvement Committee shall include the superintendent or director of the facility, the coordinator of volunteer services, and the project manager.

Source: The provisions of this §403.255 adopted to be effective August 9, 1978, 3 TexReg 2563; amended to be effective August 3, 1981, 6 TexReg 2590.

§403.256. Functions and Responsibilities of the Capital Improvement Committee.

(a) Initial functions and responsibilities of the Capital Improvement Committee shall include the following:
  (1) Determining the feasibility and need for the proposed capital improvement.
  (2) Selecting an honorary chairman who is knowledgeable of the ways and means of fundraising.
  (3) Selecting a working chairman who is well known in the community, a friend of the facility, and conscientious in discharge of his duties.
  (4) In the case of a proposed chapel, selecting a resource committee composed of a representative from three major faiths (Protestant, Catholic, and Jewish) to serve as consultants along with others deemed necessary. For other capital improvements, experts of recognized community standing and expertise in their particular fields should be selected as consultants.

(b) The committee must conform to the following requirements:
  (1) Work under the sponsorship of the Volunteer Services Council.
  (2) Be a policy- and procedure-setting body for raising funds and construction of the project.
  (3) Have all responsibility for letting contracts.
  (4) Report periodically on the progress of the committee to the Volunteer Services Council.
  (5) All buildings must meet the requirements of applicable federal and state laws regarding handicapped requirements and energy conservation.

(c) If for any reason the Capital Improvement Committee should fail to function, the Volunteer Services Council has the right and the responsibility to dissolve and reorganize the committee immediately.

Source: The provisons of this §403.256 adopted to be effective August 9, 1978, 3 TexReg 2563.

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§403.257. Retaining a Professional Consultant; Requirements for an Agreement with a Consultant.

(a) The Capital Improvement Committee must retain the services of a professional consultant, for example, an architect or an engineer, to prepare contract documents, such as drawings and specifications for projects that by law must be designed by these licensed professionals. The committee may, at its option, retain such services even when not legally required. Regardless of whether such professional consultants are retained voluntarily or because of statutory requirement, any consultant primarily responsible for the design of or production of contract documents, such as drawings and specifications for the project, must be paid a fee consonant with established practice.

(b) The agreement between the committee and the consultant shall include both a description of the services to be provided by the consultant throughout the project and the basis for his compensation. The nature and extent of his services will vary according to the type and complexity of the project. For larger and more complex projects, the agreement with the professional consultant may include not only his services in project design and production of contract documents, but also his administration of the project and frequent inspections during construction.

(c) The professional consultant shall be provided a copy of the provisions of this subchapter.

Source: The provisions of this §403.256 adopted to be effective August 9, 1978, 3 TexReg 2563.

§403.258. Capital Improvement Proposal Letter; Contents; Proposed Name for the Improvement; Recipients of Letter.

(a) After establishing the feasibility of and need for the proposed capital improvement, the council chairman shall prepare a letter, co-signed by the superintendent or director, proposing the erection of the improvement and requesting permission to conduct a fundraising campaign for such purpose. In the event that utilization of the improvement is contingent upon concurrent or future improvements to be provided by the facility or in the event that any part of the construction of the project is to be performed by or paid for by the facility, the letter shall include a description of the improvement or work to be performed by or paid for by the facility.

(b) The committee may propose a name for the completed capital improvement in the letter or may recommend a name at a later time. The name of the improvement must be approved by the board, or by the commissioner when authorized by the board.

(c) The letter must be addressed to the commissioner, Texas Department of Mental Health and Mental Retardation, with copies sent to:

(1) chief, Legal and Claims;

(2) director, Design and Construction;

(3) chief, Volunteer Services; and

(4) THFC coordinator, Legal and Claims.

(d) An example of the capital improvement proposal letter is reffered to as Exhibit A and is available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711.

Source: The provisions of this §403.258 adopted to be effective August 9, 1978, 3 TexReg 2563.

Cross References: This section cited in 25 TAC §403.267 (relating to Signing the Construction Contract; Requisites of the Contract).

§403.259. Approval, Recommendation, and Action by the Board.

(a) After receipt of the Volunteer Council's letter proposing the capital improvement, and at the request of the commissioner, the Legal and Claims Division shall prepare a board agenda item recommending that the board approve the requests to erect the capital improvement and to conduct a fund-raising campaign.

(b) After considering the merits of the proposal, the board acts on the request for the erection of the improvement.

Source: The provisions of this §403.259 adopted to be effective August 9, 1978, 3 TexReg 2563.

§403.260. Texas Health Facilities Commission Application; History and Functions of the THFC; Texas Health Facilities Commission Approval.

(a) The THFC coordinator, a member of the TDMH/MR Legal and Claims Division staff, shall, if necessary, make an application for THFC action on the proposed capital improvement in compliance with Texas Civil Statutes article 4418(h).

(b) The Texas Health Facilities Commission was established by Texas Civil Statutes article 4418(h), which was enacted by the 64th Legislature. It administers the state certificate of need program as required by federal law. It assists in assuring availability of health care services and facilities to all citizens of this state in an economical manner and in providing cost-effective health planning activities and health care services and facilities.

(c) If an application is necessary, the Texas Health Facilities Commission makes a determination on whether the capital improvement is eligible for a declaratory ruling, an exemption certificate, or a certificate of need under the provisions of Texas Civil Statutes article 4418(h). The Capital Improvement Committee should contact the THFC coordinator to determine the appropriate time to request THFC clearance.

(d) The Volunteer Services Council is required to pay the requisite fee to the Health Facilities Commission in order to undertake a project contemplated by Texas Civil Statutes article 4418(h). If, however, the facility can gain a benefit by contracting with the Volunteer Services Council to pay the application fee, then the facility is authorized to pay the fee if it has available funds.

Source: The provisions of this §403.260 adopted to be effective August 9, 1978, 3 TexReg 2563; amended to be effective August 3, 1981, 6 TexReg 2590.

Notes of Decisions: A volunteer council of a facility of the Texas Department of Mental Health and Mental Retardation is required to pay the appropriate fee to the Health Facilities Commission in order to undertake a project contemplated by article 4418h, V.T.C.S. The Department may agree to pay the application fee on behalf of the council, if payment of the fee results in a benefit to the Department. Op. Atty. Gen. No. MW-96 (1979).

§403.261. Responsibilities of the Capital Improvement Committee with Respect to Fundraising Activities.

The Capital Improvement Committee shall be responsible for fundraising activities after board and THFC approval is obtained. Its responsibilities in the area of fundraising shall include these actions:

(1) preparing a brochure stating the purpose and objectives of the fund-raising campaign;

(2) designating a particular post office box for receipt of contributions;

(3) designating a bonded treasurer, who shall be responsible for receiving contributions and for paying bills authorized by the Capital Improvement Committee;

(4) obtaining written pledges from contributors who are pledging particular donations, including conditions that are attached to the pledge;

(5) launching an extensive fundraising campaign after approximately ½ of the total funds have been collected or pledged from the larger contributors, foundations, and organizations;

(6) preparing and presenting appropriate publicity, such as, but not limited to, audio-visuals, feature articles, and programs for the purpose of education and fund raising;

(7) investing accumulated funds prudently.

Source: The provisions of this §403.261 adopted to be effective August 9, 1978, 3 TexReg 2563.

§403.262. Programming Stage: Establishment of the Program for the Project; Selection of the Construction Site.

(a) After professional consultants have been retained as required by the nature of the project to be undertaken, the Capital Improvement Committee, the coordinator of Volunteer Services, the superintendent or director of the facility, and the consultants shall jointly establish the program for the project, which will include the following considerations:

(1) the nature of the clients who will use the improvement;

(2) the kinds of activities to be provided by the improvement;

(3) relationships between and among the improvement and the rest of the facility;

(4) a preliminary determination of how much can be done with the available funds.

(b) Selection of the construction site will be an outcome of the programming stage. The Volunteer Services Council chairman shall write a letter to the commissioner requesting approval of the selected site, and including a drawing showing the proposed location of the project. An example of this letter is referred to as Exhibit B and is available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711.

(c) The Design and Construction Section shall, at the commissioner's request, review the proposed site location and determine its suitability with regard to the facility's master plan for future development, availability of utilities, site conditions, such as tree cover, slope, and other natural features, and vehicular or pedestrian traffic. Design and Construction Section shall then recommend to the commissioner that the site be approved or that another site be selected.

SOurce: The provisions of this §403.262 adopted to be effective August 9, 1978, 3 TexReg 2563.

§403.263. Schematic Design Stage: Preparation, Review, and Approval of Drawings and Specifications.

(a) After the commissioner approves a site for the project, the Capital Improvement Committee, the superintendent or director of the facility, and the consultants shall begin the schematic design stage. In this stage, the general size and appearance of the project are determined and the functional characteristics are defined. Drawings and written specifications in brief form are generally necessary to complete this stage.

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(b) At the completion of the schematic design stage, the Volunteer Services Council chairman must submit the drawings and specifications to the commissioner for approval. An example of the letter submitting such documents is referred to as Exhibit C and is available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711.

(c) The Design and Construction Section will review and comment upon the submitted documents. This review may facilitate further development later in the design or construction of the project.

Cross References: This section cited in 25 TAC §403.264 (relating to Design Development and Contract Documents Stage).

Source: The provisions of this §403.263 adopted to be effective August 9, 1978, 3 TexReg 2563.

§403.264. Design Development and Contract Documents Stage.

(a) For a large or complex project, the schematic design stage is usually followed by a design development stage in which the design of the project is worked out in more detail before proceeding with development of the final contract documents. For smaller or less complex projects, the contract documents stage may be entered directly after the schematic design stage.

(b) In the contract documents stage, the project is fully described in detail by drawings and by written specifications. The professional consultant continues to work with the Capital Improvement Committee and the superintendent or director of the facility. Periodic review of the drawings and specifications by the committee and the facility's staff is desirable.

(c) Upon completion of the contract documents stage, the Volunteer Services Council chairman must submit the contract documents to the commissioner for approval. An example of the letter submitting the documents is referred to as Exhibit C in §403.263 of this title (relating to Schematic Design Stage: Preparation, Review, and Approval of Drawings and Specifications). The Design and Construction Section and the plant maintenance shall review and comment upon the documents at the commissioner's request.

Source: The provisions of this §403.264 adopted to be effective August 9, 1978, 3 TexReg 2563.

§403.265. Bidding the Project; Reserving the Right to Reject Any and All Bids; Procedures Where There Are Insufficient Funds; Additional Review by Commissioner Required when Contract Documents are Modified.

(a) For smaller projects or isolated elements of larger projects, the Capital Improvements Committee may at its discretion obtain volunteers to perform the work. Otherwise, the committee may request bids for the construction of the project. The professional consultant can offer recommendations on methods of accomplishing this.

(b) The committee should insure that the specifications or the invitation to bid, or both, reserve to the committee the right to reject any and all bids. This will protect the committee in the event that the minimum cost of the project exceeds the available funds.

(c) In the event that the funds available prove insufficient to construct the project, the Capital Improvements Committee may raise additional funds, have the project redesigned, or eliminate from the contract documents any inessential elements necessary and feasible.

(d) If the contract documents are modified in any way from the condition in which they were reviewed and approved by the commissioner, they must be resubmitted to him for further review and approval before the project may be constructed in accordance with the modified contract documents.

Source: The provisions of this §403. 265 adopted to be effective August 9, 1978, 3 TexReg 2563.

§403.266. Placing Funds in Escrow.

Prior to the execution of a contract for construction of the project, the total council cost of the project must be placed in escrow. The Capital Improvement Committee's bonded treasurer should be consulted for advice on the best way of placing these funds in escrow.

Source: The provisions of this §403.266 adopted to be effective August 9, 1978, 3 TexReg 2563.

§403.267. Signing the Construction Contract; Requisites of the Contract.

(a) Unless all work is to be performed by volunteers, the Capital Improvement Committee selects a contractor for the project and executes a contract for construction, naming the Capital Improvement Committee of the Volunteer Services Council as the owner of the project. The Capital Improvement Committee shall be responsible for all costs accrued from the project, including but not limited to the costs of locating and tapping into utilities, erection of a construction fence, or repairs to roads or sodded areas damaged by construction activities, but shall not be responsible for costs accrued from concurrent projects undertaken by the facility, as described in §403.258 of this title (relating to Capital Improvement Proposal Letter: Contents; Proposed Name for the Improvement; Recipients of Letter).

(b) The contract shall be for the complete construction of the project. For projects requiring a prime contractor, construction work by volunteers or work donated by subcontractors shall not be permitted, as the prime contractor could not then be held responsible for errors or omissions in the work.

(c) The contract documents shall stipulate that the contractor's warranty of the work is to be extended to the department after the project is accepted by the department.

(d) The contract shall require the contractor to provide performance and payment bonds, liability insurance, and builder's risk insurance.

Source: The provisions of this §403.267 adopted to be effective August 9, 1978, 3 TexReg 2563.

§403.268. Project Construction: Preconstruction Conference; Duties of the Professional Consultant During Construction.

(a) Before construction begins, the Volunteer Services Council chairman shall schedule a preconstruction conference to be attended by the Capital Improvement Committee, the coordinator of volunteer services, the professional consultant, the prime contractor and his job superintendent, the subcontractors, and the superintendent or director and the plant engineer of the facility and the project manager. If the work is to be performed by volunteers, those in charge of the work shall attend instead of the prime and subcontractors.

(b) During the preconstruction conference, the superintendent or director, or his designated representative, shall inform the contractors of the facility's rules and regulations. This will include a description of items prohibited on the grounds of the facility, such as alcoholic beverages and firearms. Normal working hours and arrangements necessary for overtime work will be discussed. The route to be followed by vehicles delivering construction materials will be described, as well as any other matter of importance relating to construction of the project.

(c) The professional consultant provides important services during the course of construction. All instructions to the contractor should be made through the consultant, and all contractor requests directed to the Capital Improvement Committee should be routed through the consultant. The consultant should verify performance of the work and should approve payment to the contractor when the consultant is satisfied that the contractor is entitled thereto. These payments should be disbursed by the Capital Improvement Committee.

(d) If requested to do so by the Capital Improvement Committee, the Design and Construction Section of TDMH/MR performs periodic inspection throughout the construction of the project and advises the committee of its findings and recommendations. These inspections help to insure that the projects meet the various standards the department is striving to maintain.

(e) Upon completion of the project, but before releasing the contractor or turning the project over to the state, the committee shall inform the director of the Design and Construction Section that the project is complete and ready for a final inspection. If this inspection discloses deficiencies, follow-up inspections shall be performed until the project is free of deficiencies.

Source: The provisions of this §403.268 adopted to be effective August 9, 1978, 3 TexReg 2563; amended to be effective August 3, 1981, 6 TexReg 2590.

§403.269. Completion and Acceptance of the Project.

(a) Upon completion of the project, and after all deficiencies noted in the final inspection by the Design and Construction Section have been satisfactorily corrected, the chairman of the Volunteer Services Council shall prepare a letter to the commissioner stating that the project is completed and turning the project over to the state. An example of this letter is referred to as Exhibit D and is available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711.

(b) Upon receipt of the council's letter turning the project over to the state, the commissioner acknowledges his acceptance of the project. At that time, the department and the facility at which the project is located assume responsibility for use and maintenance of the project.

Source: The provisions of this §403.269 adopted to be effective August 9, 1978, 3 TexReg 2563.

§403.270. Benefit to the Client.

After the project has been turned over to the facility, the Capital Improvements Committee disbands. But the result of their efforts, the completed project, remains as a permanent testimonial to all those responsible for its construction for caring enough to reach out a compassionate heart and hand to lift the lives of their fellow men. Through their efforts, the facility's clients may more happily grow to their fullest capacity unhampered by lack of opportunity.

Source: The provisions of this §403.270 adopted to be effective August 9, 1978, 3 TexReg 2563.

§403.271. Design and Construction Codes and Standards.

Depending upon the nature of the capital improvement, the design and construction of the improvement must comply with all applicable portions of codes and standards imposed on the department, including but not limited to the following:

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(1) *Design and general construction codes.*
   (A) Standards of the Joint Commission on Accreditation of Hospitals when applicable.
   (B) The latest edition of the American National Standards Institute's "Standard Specifications for Making Building and Facilities Accessible to, and Useable by, the Physically Handicapped."
   (C) Latest edition of the State of Texas Energy Conservation Manual, Part II, manual Number 114SBC705, and the Energy Conservation Standards for New State Buildings, Number 123SBC705.
   (D) NFPA, Life Safety Code, Number 101, as published by the National Fire Protection Association. Date of edition to be used shall be as directed by the Design and Construction Section.

(2) *Electrical codes.*
   (A) Latest edition of NFPA Number 70, National Electric Code, as published by the National Fire Protection Association.
   (B) Latest edition of the American National Standards Institute's "National Electric Safety Code."

(3) *Miscellaneous codes.*
   (A) All liquid propane gas systems must be designed in accordance to applicable codes and must be approved by the Railroad Commission of Texas.
   (B) All septic systems must be designed to applicable codes and must be approved by the Texas Department of Health.

Source: The provisions of this §403.271 adopted to be effective August 9, 1978, 3 TexReg 2563.

§403.272. Resources Available to the Volunteer and Citizen Groups.

(a) The assistance of the Design and Construction Section of TDMH/MR may be obtained at any time by contacting the director, Design and Construction Section, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711.

(b) The assistance of the Volunteer Services Section of TDMH/MR may be obtained at any time by contacting the chief, Volunteer Services Section, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711.

(c) The assistance of the Central Office Resource Development Section may be obtained at any time by contacting the chief, Resource Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711. The Resource Development Section is available for consultation and assistance in development of potential funding resources for capital improvements.

Source: The provisions of this §403.272 adopted to be effective August 9, 1978, 3 TexReg 2563.

§403.273. References.

Reference is made to the following state laws and department rules:

(1) Texas Civil Statutes article 5547-202, §2.11(b), which empowers the commissioner to make rules governing the operation of the department;

(2) Texas Civil Statutes article 5547-202, §2.14, which describes the acceptance of capital improvements;

(3) Texas Civil Statutes article 678g, which establishes principles to make buildings and facilities accessible to and usable by the physically handicapped;

(4) rules and basic and general policies of the Texas Board of Mental Health and Mental Retardation, duties, §401.42 of this title (relating to Capital Improvements by Citizen Groups), which requires that the board approve construction of chapels, swimming pools, activity centers, or any other type of permanent capital improvement to be placed on the grounds of institutions by citizen groups;

(5) rule of the commissioner of mental health and mental retardation governing the internal management of the facilities of the department, standard operating procedures, chaplaincy programs, and other citizen group projects, §407.5 of this title (relating to Chaplaincy Programs and Other Citizen Group Projects), which establishes procedures to guide citizen groups in projects to build chapels and other permanent capital improvements;

(6) the department's internal rules governing volunteer services, which are contained in the subchapter entitled "Standard Operating Procedures," which describes the relationship of the Volunteer Services Council to the state facility and to the coordinator of volunteer services, and states requirements for handling and processing donations.

Source: The provisions of this §403.273 adopted to be effective August 9, 1978, 3 TexReg 2563.

§403.274. Distribution.

(a) The provisions of this subchapter shall be distributed to the members of the Texas Board of Mental Health and Mental Retardation; assistant commissioners, deputy commissioners, directors, and section chiefs of central office; and superintendents, directors, and volunteer coordinators of all department facilities.

(b) The superintendent or director of each department facility shall be responsible for the dissemination of the information contained in this subchapter to all appropriate staff members.

(c) The department, the superintendent or director, or the volunteer coordinator of each department facility shall, upon request, provide a copy of this subchapter to individuals or citizen groups who are interested in making a capital improvement to a facility of the department.

Source: The provisions of this §403.274 adopted to be effective August 9, 1978, 3 TexReg 2563.

SUBCHAPTER J. ADOPTION BY REFERENCE OF STATE PLANS

§403.282. Interim Report on the State Mental Health Services Program—In Accordance with Public Law 94-63 and 96-368.

The Texas Department of Mental Health and Mental Retardationhereby adopts by reference the "Interim Report on the State Mental Health Services Program—In Accordance with Public Laws 94-63 and 96-368, which is referred to as Exhibit B. Said Exhibit B is available for public inspection at the central office library of the Texas Department of Mental Health and Mental Retardation, located at 909 West 45th Street, Austin, Texas; at the Texas Register Division of the Office of the Secretary of State, located in Room 503 of the Sam Houston Building, Austin, Texas; and at the Texas State Library, located at 1201 Brazos Street, Austin, Texas. Copies are also available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711.

Source: The provisions of this §403.282 adopted to be effective July 4, 1978, 3 TexReg 2100; amended to be effective December 7, 1978, 3 TexReg 4121; amended to be effective November 3, 1981, 6 TexReg 3872.

SUBCHAPTER K. DISCLOSURE OF CLIENT-IDENTIFYING INFORMATION CONTAINED IN RECORDS OF CLIENTS

Cross References: This subchapter cited in 25 TAC §403.371 (relating to Purpose); 25 TAC §405.284 (relating to Rights of All Clients Receiving Mental Health Services); 25 TAC §405.760 (relating to Disclosure of Confidential Information); 25 TAC §407.87 (relating to Constraints: Confidentiality; Taking Photographs of Clients); and 25 TAC §407.101 (relating to References).

§403.291. Purpose.

(a) The purpose of this subchapter is to protect the rights of clients with regard to the disclosure of identifying information by providing guidelines for use by:

(1) employees of the department, community mental health and mental retardation centers, and other designated providers whose duties include the release of such client-identifying information in appropriate situations; and

(2) members of the general public who request client-identifying information.

(b) The diagnostic (mental health, mental retardation, alcohol, or drug abuse) and legal (competent or incompetent, minor or adult, with or without guardian) status of the client must always be taken into consideration in any situation involving disclosure of client-identifying information.

(c) It is emphasized that any questions that arise concerning the status of a client and the law governing disclosure in a given situation should be addressed to legal counsel prior to the disclosure of client-identifying information.

Source: The provisions of this §403.291 adopted to be effective January 9, 1986, 10 TexReg 5011.

§403.292. Application.

This subchapter applies to all facilities of the Texas Department of Mental Health and Mental Retardation, to community mental health and mental retardation centers, and to other designated providers that contract with the department to provide community-based mental health and mental retardation services.

Source: The provisions of this §403.292 adopted to be effective January 9, 1986, 10 TexReg 5011.

§403.293. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

Adult—A person:

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

(B) who is under 18 but

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(i) is or has been legally married; or

(ii) whose disabilities of minority have been legally removed.

Alcohol and drug abuse clients—Individuals who have applied for or been given diagnosis or treatment for drug abuse or alcohol abuse.

Center—A commmunity mental health and mental retardation center estalished pursuant to Texas Civil Statutes, Article 5547-203.

Client—A person who, voluntarily or involuntarily, is seeking, receiving, or who has received mental health or mental retardation services from the department or center, including an alcohol or drug abuse client.

Client-identifying information—The name, address, social security number, or any information by which the identity of a client can be determined either directly or by reference to other publicly available information. The term includes, but is not limited to, a client's medical record, graphs, or charts; statements made by the client, either orally or in writing, while receiving services; photographs, videotapes, *etc.*; and any acknowledgement that a person is or has been a client of the facility, center, or other designated provider. The term does not include a client-identifying number assigned by a facility. The statutes, regulations, and rules requiring that client-identifying information be kept confidential apply regardless of the means or methods utilized for the storage and retrieval of such information.

Competent person—A person who has the ability to comprehend the effect and consequences of giving an authorization for disclosure of client-identifying information and who has not been adjudged incompetent by a court, or for whom an order of restoration has been executed and recorded subsequent to the client's having been adjudicated incompetent.

Department—The Texas Department of Mental Health and Mental Retardation.

Designated providers—An agency or organization that contracts with the Texas Department of Mental Health and Mental Retardation to provide community-based mental health and mental retardation services.

Facility—All mental hospitals, state schools for the mentally retarded, state centers, or other components of the department, and their respective outreach, day care centers, and clinics, and the central office of the Texas Department of Mental Health and Mental Retardation.

Incompetent person—A person:

(A) who has been adjudged incompetent by a court and for whom no subsequent order of restoration has been executed or recorded; or

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

Legal counsel—At a facility, staff of the department's legal services office; at a center or other designated provider, the attorney(s) in its service and, when necessary, the staff of the department's legal services office.

Minor—A person who is not an adult. Specifically, a minor is a person under 18 and:

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

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

Professional—A person authorized to practice medicine in any state or nation, or a person licensed or certified by the State of Texas in the diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, or a person reasonably believed by the client to so be.

Qualified service organization—An individual, partnership, corporation, governmental agency, or any other legal entity which:

(A) provides services for alcohol and drug abuse programs, such as date processing, bill collecting; dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, or services to prevent or treat child abuse or neglect, including training on nutrition and child care and individual and group therapy; and

(B) has entered into a written agreement with a program under which that entity:

(i) acknowledges that in receiving, storing, processing, or otherwise dealing with any client records from the programs, it is fully bound by these regulations, and

(ii) if necessary, will resist in judicial proceedings any efforts to obtain access to client records except as permitted by these regulations.

Source: The provisions of this §403.293 adopted to be effective January 9, 1986, 10 TexReg 5011.

§403.294. Statutes and Federal Regulations Governing Disclosure.

(a) The state statute which governs the disclosure of information concerning clients (other than drug and alcohol abuse clients) is Texas Civil Statutes, Article 5561h. In addition, the Mentally Retarded Persons Act has a disclosure of information provision which applies to clients who are mentally retarded. This provision is Texas Civil Statutes, Article 5547-300, §57. Both statutes should be interpreted together in reaching a determination as to whether information should be disclosed for clients receiving mental retardation services.

(b) The secretary of the United States Department of Health and Human Services has promulgated extensive regulations governing the disclosure of alcohol and drug abuse client records. See 42 Code of Federal Regulations Part 2.

(c) The secretary of the United States Department of Education has promulgated extensive regulations governing the disclosure of educational records of schoolage children. See 45 Code of Federal Regulations 99ff. Any questions concerning the disclosure of such educational records should be referred to the department's legal services office.

Source: The provisions of this §403.294 adopted to be effective January 9, 1986. 10 TexReg 5011.

§403.295. General Provision for Release of Client-Identifying Information.

(a) All requests for client-identifying information by persons or organizations, other than employees and agents of the department or employees of community centers or other designated providers who need the information for the purpose of fulfilling their duties, should be made to the head of the facility, center, or other designated provider (or designee) from which the client receives or has received services.

(b) The Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, provides that all information collected, assembled, or maintained by governmental bodies, and agencies operating in part or whole with state funds, pursuant to law or ordinance in connection with the transaction of official business is public information and available to the public during normal business hours; however, the act does set out certain exceptions. One such exception is information deemed confidential by law, such as records which directly or indirectly identify a client, former client, or proposed client. A copy of the Texas Open Records Act, §3, which contains the exceptions to the compulsory disclosure requirements of the act, is referred to in §403.306 of this title (relating to Exhibits) as Exhibit A.

(c) Any records received from another governmental or private source that become part of the client's record may be released under the guidelines established in this subchapter.

(d) Except as otherwise described in these sections, an inquiry as to whether a person is a client of a facility, community center, or other designated provider, should not be affirmed or denied, but should be answered by stating that information cannot be given without proper authorization.

(e) A client, parent, or legal guardian's verbal consent for release of client-identifying information is not adequate. In no case should identifying information be released to the news media without the prior written consent of the legally authorized representative.

(f) Identifying information regarding other clients must be expunged from records released.

Source: The provisions of this §403.295 adopted to be effective January 9, 1986. 10 TexReg 5011.

§403.296. When Consent for Disclosure is Not Required: Clients Other Than Alcohol and Drug Abuse Clients.

(a) Consent for disclosure of client-identifying information is not required if consent to disclose the information has previously been given by the person authorized to give consent for disclosure of the information and if the duration of the consent has not expired. (See §403.300 of this title (relating to Who Can Give Consent for Disclosure: Clients Other Than Alcohol and Drug Abuse Clients).)

(b) There are certain situations in which client-identifying information can be disclosed without the consent of the client or the client's legal representative. Those situations are stated in the text of Texas Civil Statutes article 5547-87, which is quoted in §403.294(a) of this title (relating to Statutes and Federal Regulations Governing Disclosure), and in the following paragraph of this section.

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

(1) to a community mental health and mental retardation center which serves the area in which the client resides if such disclosure:

(A) has been determined by the head of the department facility to be in the best interest of the client; or

(B) is necessary to carry out the provisions of the Texas Mental Health Code, Texas Civil Statutes article 5547-1, *et seq.*; and

(2) to employees and agents of the department who need the information to carry out their departmental duties.

Source: The provisions of this §403.296 adopted to be effective December 20, 1977, 2 TexReg 4681.

§403.297. When Consent For Disclosure Is Not Required: Clients Other Than Alcohol and Drug Abuse Clients.

(a) *When consent has been previously given.* Consent for disclosure of client-identifying information is not required if consent to disclose the information has previously been given by the legally authorized person and the duration of the consent has not expired, provided the information to be disclosed is identical to that for which consent was given, and disclosure is to the same person or entity for the same purpose as set out in the consent.

(b) *When required by the certain court proceedings.* In court proceedings, client-identifying information may be disclosed without the consent of the client or the person authorized to consent for the client, as follows:

(1) when the proceeding is brought by the client against a professional, as in a malpractice proceeding, and disclosure is relevant to the claim or defense of the professional;

(2) when the proceeding is brought to collect on a claim for services provided;

(3) when the facility/center has examined and treated a client pursuant to a court-ordered examination after informing the client that future communications and records are not subject to the privileges of confidentiality;

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(4) when the proceeding is a criminal prosecution in which the client is a victim, witness, or defendant; however, records which are released in response to a subpoena may only be released to the judge of the court in which the prosecution is pending.

(c) *When required by specified individuals in conduct of official business.* In other than court proceedings, client-identifying information may be disclosed without the consent of the client or the person authorized to consent for the client, as follows:

(1) to government agencies when authorized by law (for example, to the Texas Department of Human Services in cases of child abuse);

(2) to medical or law enforcement personnel when the facility determines that there is a probability of imminent physical injury by or to the client;

(3) to qualified personnel for audit or research purposes when such research is being conducted in accord with department rules;

(4) to persons involved in the collection of fees for mental or emotional health services to clients;

(5) to other professionals under the direction of the treating professional who are participating in the diagnosis, evaluation, and treatment of the client;

(6) to persons participating in an official legislative inquiry regarding state hospitals or state schools except that no client-identifying information shall be released without proper consent. This exception only applies to records created by employees of the state hospitals or state schools;

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

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

(9) to Advocacy, Inc., in the investigation of a complaint by or on behalf of a client with developmental disabilities who does not have a legal guardian or who is a ward of the state. Excepted from this disclosure without consent are records subject to attorney-client privilege, *i.e.*, records of an investigation conducted at the request of a departmental attorney in preparation for potential litigation.

(d) *When between components of the Texas Department of Mental Health and Mental Retardation (TDMHMR) service system, including department facilites, community centers, and other designated providers.* Client-identifying information can be disclosed without the consent of the client or the person legally authorized to consent for the client between components of the TDMHMR service system provided:

(1) that the client and/or legal guardian has been informed that the records may be exchanged at the time of or prior to release;

(2) that the client and/or legal guardian is informed of the purpose of the release, *i.e.*, to facilitate continuing care for the client; and

(3) that this advisement is documented in the client's record, dated, and signed by the client and/or legal guardian and staff.

(e) *When to attorney at litem.* Client records may be disclosed without the consent of the client or legal guardian to the attorney *ad litem* representing the client in legal process.

Source: The provisions of this §403.297 adopted to be effective January 9, 1986, 10 TexReg 5011.

§403.298. When Consent for Disclosure Is Not Required: Alcohol and Drug Abuse Clients.

(a) Consent for disclosure of client-identifying information is not required if proper consent has been obtained previously, if the duration of the consent has not expired, and if the specifications of the consent (what is to be released, to whom, for what purpose) are the same.

(b) Consent is not required for disclosure of client-identifying information between department facilities and personnel of the department having a need for the information in connection with their duties. This subsection does not include disclosure of information by department personnel to personnel of community mental health and mental retardation centers or to other designated providers, unless the center or provider is also a qualified service organization as defined in §403.293 of this title (relating to Definitions).

(c) Any information regarding a minor's application for alcohol services may be communicated to the parent, guardian, or other person authorized under Texas law to act on his behalf if in the judgment of the head of the facility the minor, because of a mental or physical condition, lacks the capacity to make a rational decision on whether to consent to the notification of his or her parent or guardian and the situation poses a substantial threat to the physical well being of any person which may be reduced by communicating relevant facts to the minor's parent or guardian.

(d) Consent is not required for communicatons between a facility and a qualified service organization of information needed by the organization to provide services to the facility.

(e) Consent is not required for disclosure of client-identifying information in the following specific situations described in the Health and Human Services regulations (42 Code of Federal Regulations Part 2):

(1) Information may be disclosed without consent to medical personnel to meet a medical emergency and to the United States Food and Drug Administration when it is necessary to notify a client of a dangerous drug in accordance with the requirements set forth in 42 Code of Federal Regulations §2.51.

(2) Information may be disclosed without consent for research, audit, and evaluation purposes, subject to Health and Human Service's limitations on the manner in which persons receiving information may utilize it as set forth in 42 Code of Federal Regulations §2.52.

(3) Information may be disclosed without consent to state or federal governmental agencies performing research, audit, or evaluation in accordance with the requirements set forth in 42 Code of Federal Regulations §2.53.

(4) Information may be disclosed without consent for examinations of financial records, management effectiveness, or adherence to standards of operations, provided the examiner furnishes a statement restricting his use of client-identifying information according to the requirements set forth in 42 Code of Federal Regulations §2.54(b) and (c).

(5) Information may be disclosed without consent for the supervision and regulation of a narcotic maintenance or detoxification program by state or federal regulatory agencies in accordance with the requirements set forth in 42 Code of Federal Regulations §2.55.

(f) Consent is not required for disclosure of client-identifying information pursuant to a specific court order which meets the requirements of the Health and Human Services regulations set forth in 42 Code of Federal Regulations §2.61, *et seq.* A subpoena alone is not sufficient to allow disclosure of the information without consent.

(g) Consent is not required for disclosure to Advocacy, Inc., in the investigation of a complaint by or on behalf of a client with developmental disabilities who does not have a legal guardian or who is a ward of the state. Excepted from this disclosure without consent are records subject to attorney-client privilege, *i.e.*, records of an investigation conducted at the request of a departmental attorney in preparation for potential litigation.

Source: The provisions of this §403.298 adopted to be effective January 9, 1986, 10 TexReg 5011.

§403.299. Form of Consent: Clients Other Than Alcohol and Drug Abuse Clients.

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

(b) Whenever a consent form authorizing the disclosure of client-identifying information concerning a client, other than an alcohol or drug abuse client, is received by a facility, center, or other designated provider, the requested disclosure shall be made if the consent form contains at least the following information:

(1) the name of the client;

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

(3) the person or organization to whom the client-identifying information is to be disclosed;

(4) consent for disclosure as evidenced by the signature of a person who has the authority to consent to the disclosure of the client-identifying information;

(5) the date on which the consent form was signed;

(6) a statement that the consent is subject to revocation at any time except to the extent that the program which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment or services in reliance on a valid consent to disclose information to a third-party payor; and

(7) the date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

(c) A copy of a consent form required for use in any disclosure by consent initiated within facilities, centers, or other designated providers is referred to in §403.306 of this title (relating to Exhibits) as Exhibit C.

Source: The provisions of this §403.299 adopted to be effective January 9, 1986, 10 TexReg 5011.

§403.300. Form of Consent: Alcohol and Drug Abuse Clients.

(a) A written consent to a disclosure must include:

(1) the name of the program which is to make the disclosure;

(2) the name or title of the individual or the name of the organization to which disclosure is to be made;

(3) the name of the client;

(4) the purpose of the disclosure;

(5) how much and what kind of information is to be disclosed;

(6) the signature of the client or person authorized to give consent for the client under §403.302 of this title (relating to Who Can Give Consent for Disclosure: Alcohol and Drug Abuse Clients);

(7) the date on which the consent is signed;

(8) a statement that the consent is subject to revocation at any time except to the extent that the program which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment or services in reliance on a valid consent to disclose information to a third-party payor.

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(9) the date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

(b) A copy of a consent form containing the information referred to in subsection (a) of this section and required for use in any disclosure of information by consent concerning an alcohol or drug abuse client is referred to in §403.306 of this title (relating to Exhibits) as Exhibit D.

(c) A disclosure may not be made on the basis of a consent which:

(1) has expired;

(2) does not comply with subsection (a) of this section;

(3) is known to have been revoked; or

(4) is known, or through a reasonable effort could be known, by the person holding the records to be materially false.

Source: The provisions of this §403.300 adopted to be effective Janaury 9, 1986, 10 TexReg 5011.

§403.301. Who Can Give Consent for Disclosure: Clients Other Than Alcohol and Drug Abuse Clients.

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

(b) If the client is an incompetent adult, then the guardian of the person of the client is the only person who may authorize and consent to disclosure of client-identifying information.

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

(d) If the client is a minor under 16 years of age receiving mental health services, then the client does not have the capacity to consent to disclosure of client-identifying information. A parent, guardian of the person, managing conservator or possessory conservator of the minor client may authorize and consent to disclosure of client-identifying information to a third party other than an attorney representing the client.

(e) If the client is a competent minor at least 16 years of age but under 18 years of age receiving voluntary mental health services, then the client can unilaterally authorize and consent to the disclosure of client-identifying information. The parent, managing conservator, or possessory conservator of such a minor voluntary client also may unilaterally authorize and consent to the disclosure of client-identifying information.

(f) If the client is a minor at least 16 years of age but under 18 years of age receiving court-ordered mental health services, then only a parent, guardian of the person, managing conservator, or possessory conservator may authorize and consent to disclosure of client-identifying information to a third party other than an attorney *ad litem* representing the client.

(g) If the client is deceased, consent may be given by the personal representative, usually the executor or administrator of the client's estate. For clients with mental retardation, if a personal representative has not been appointed, consent may be given by the client's spouse, or if no spouse, by any responsible member of the client's family.

(h) A possessory conservator has the right of access to medical, dental, and educational records of a minor to the same extent as the managing conservator. However, before releasing records to the possessory conservator, all references in the records to the place of residence of the managing conservator must be deleted.

Source: The provisions of this §403.301 adopted to be effective January 9, 1986, 10 TexReg 5011.

§403.302. Who Can Give Consent For Disclosure: Alcohol and Drug Abuse Clients.

(a) If the client is a competent minor or adult being treated for drug abuse, consent for disclosure must be evidenced by the signature of the client. If the client is an incompetent minor or adult being treated for drug abuse, then a guardian must give consent.

(b) If the client is a competent minor being treated for alcohol abuse, consent for disclosure must be evidenced by the signature of the minor client and his or her parent, guardian, managing conservator, or possessory conservator. If the client is an incompetent minor or adult being treated for alcohol abuse, then a guardian must give consent.

(c) If the client has been adjudged incompetent by a court and a guardian has been appointed, consent for disclosure must be evidenced by the signature of the client's court-ordered guardian.

(d) For any period for which the head of a facility, center, or other designated provider determines that a client, other than a minor or one who has been adjudicated incompetent, suffers from a medical condition that prevents knowing or effective action on his or her behalf, the head of the facility may exercise the right of the client to consent to a disclosure for the sole purpose of obtaining payment for services from a third-party payor.

(e) If the client is deceased, consent may be given by personal representative (executor or administrator of the client's estate). If a personal representative has not been appointed, consent may be given by the client's spouse, or if no spouse, by any responsible member of the client's family.

(f) Consent for disclosure of information pertaining to an alcohol or drug abuse client to said client's attorney may be made upon the written application of the client endorsed by the attorney.

(g) A possessory conservator has the right of access to medical, dental, and educational records of a minor to the same extent as the managing conservator. However, before releasing records to the possessory conservator, all references in the records to the place of residence of the managing conservator must be deleted.

Source: The provisions of this §403.302 adopted to be effective January 9, 1986, 10 TexReg 5011.

§403.303. Disclosure to a Client of Information Contained in His or Her Records.

(a) The content of a client's record is to be made available to the client upon request; however, parts of the client's record may be withheld from the client if the treating physician determines that access by the client to parts of the record would not be in the client's best interest. In the case of a person with mental retardation, a qualified professional responsible for supervising the client's habilitation may also make this determination. The reasons for the determination that access by the client to parts of the record would not be in the client's best interest must be well documented in the client's record.

(b) When a client has authorized an attorney to have access to the client's records, the records shall be made available to the attorney. If it has been determined that access by the client to parts of the record would not be in the client's best interest, this fact should be brought to the attention of the attorney, but the attorney should be permitted to view such parts.

Source: The provisions of this §403.303 adopted to be effective January 9, 1986, 10 TexReg 5011.

§403.304. Disclosure to a Minor Drug Abuse Client of Information Contained in His or Her Record.

A minor drug abuse client may not be denied access to his or her record if he or she has requested access to such record; provided, however, that parts of such minor's record may be withheld from the client if the treating physician determines that access by the minor client to those parts of the record would not be in his best interest. The reasons for the determination that access by the client to parts of the record would not be in his best interest must be well documented in the client's medical record.

Source: The provisions of this §403.304 adopted to be effective December 20, 1977, 2 TexReg 4681; amended to be effective May 3, 1978, 3 TexReg 1508.

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§403.305. Deposition, Subpoenas, and Subpoenas Duces Tecum—Staff Compliance and Conduct.

(a) If consent of the client or person legally authorized to give consent for the client has been given, then the facility/center shall testify in court or by deposition on matters relating to the client or make available records in reference to the client when asked to do so.

(b) If consent has not been given by the client or authorized person, the clerk or other person issuing the subpoena or the subpoena *duces tecum* or initiating or ordering the taking of the deposition should be immediately notified of Texas Civil Statutes, Article 5561h, which makes confidential the records and information held by the department which directly or indirectly identify a client or former client. If none of the exceptions to confidentiality specifically set out in Article 5561h are applicable, then the clerk or other person should be requested to seek a court order which references Article 5561h, but orders the facility/center to produce the information (see Exhibit E, which is referred to in §403.306 of this title (relating to Exhibits)).

(1) Every effort should be made by the facility/center to cooperate and work out an arrangement which is satisfactory to all concerned and which adequately protects the rights of the client. The facility/center should attempt to obtain the written consent of the client or person legally authorized to consent for the client if possible.

(2) If the facility/center is unable to work out a satisfactory arrangement, then legal counsel should be contacted immediately and its advice sought concerning the proper manner in which to proceed.

(c) Whenever there is doubt as to the proper procedure to be followed in such matters, the subpoenaed party should immediately contact legal counsel.

Source: The provisions of this §403.305 adopted to be effective Janaury 9, 1986, 10 TexReg 5011.

§403.306. Exhibits.

The following exhibits referred to in this subchapter are herein adopted by reference and are available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711.

(1) Exhibit A—Texas Open Records Act, §3;

(2) Exhibit B—Sample Notice: Confidentiality of Alcohol and Drug Abuse Client Records;

(3) Exhibit C—Consent to Disclosure of Client-Identifying Information form for clients other than alcohol and drug abuse clients;

(4) Exhibit D—Consent to Disclosure of Client-Identifying Information form for alcohol and drug abuse clients;

(5) Exhibit E—Example of Court Order for Disclosure under Texas Civil Statutes, Article 5561h.

Source: The provisions of this §403.306 adopted to be effective January 9, 1986, 10 TexReg 5011.

§403.307. References.

Reference is made to the following state and federal statutes and rules of the department:

(1) Texas Civil Statutes, Article 5561h.

(2) Texas Civil Statutes, Article 5547-202, §2.27.

(3) Texas Civil Statutes, Article 5547-300, §57.

(4) Texas Civil Statutes, Article 6252-17a.

(5) 42 Code of Federal Regulations Part 2.

(6) 45 Code of Federal Regulations 99ff.

(7) Family Code, Chapter 14, §14.04.

Source: The provisions of this §403.307 adopted to be effective January 9, 1986, 10 TexReg 5011.

§403.308. Distribution.

(a) This subchapter shall be distributed to members of the Texas Board of Mental Health and Mental Retardation; deputy commissioners, assistant deputy commissioners, directors and section chiefs of Central Office; and superintendents and directors of all TDMHMR facilities and centers.

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

Source: The provisions of this §403.308 adopted to be effective January 9, 1986, 10 TexReg 5011.

SUBCHAPTER L. TAX-SHELTERED ANNUITY PROGRAM FOR DEPARTMENT EMPLOYEES

§403.321. Purpose.

The purposes of this subchapter are to:

(1) govern the administration of a tax-sheltered annuity program made available to employees of the Texas Department of Mental Health and Mental Retardation; and

(2) provide information concerning the tax-sheltered annuity program to department employees and other interested persons and organizations.

Source: The provisions of this §403.321 adopted to be effective December 20, 1977, 3 TexReg 4681.

§403.322. Application.

The provisions of this subchapter apply to:

(1) all facilities and employees of the Texas Department of Mental Health and Mental Retardation;

(2) those companies and their representatives who undertake to sell tax-sheltered annuities to employees of the department; and

(3) those companies and their representatives interested in selling tax-sheltered annuities to employees of the department.

Source: The provisions of this §403.322 adopted to be effective December 20, 1977, 2 TexReg 4681; amended to be effective July 23, 1986, 11 TexReg 3159.

§403.323. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

Commissioner—The commissioner of the Texas Department of Mental Health and Mental Retardation.

Contract—The agreement between an insurance company and an employee who is participating in the department's TSA program.

Department—The Texas Department of Mental Health and Mental Retardation.

Employee—A person employed by the department whose salary payment is reported under the social security account number assigned for the Texas state government as employer.

Gross compensation—The employee's basic salary plus additional pay for physicians and dentists and board certifications plus supplemental pay, if any, plus state-paid employee social security contributions. (Night nurse differential pay, fire brigade pay, and a housing emolument are not included.)

TSA—Tax-sheltered annuity.

TSA agreement—The agreement between the department and an employee whereby the employee's salary is reduced and the amount of the reduction is applied to the purchase of annuity benefits for the employee. ("Agreement to Reduce Salary and to Purchase Tax-Sheltered Annuity," Form P-26, which is referred to as Exhibit A; see §403.334 of this title (relating to Exhibits).)

TSA application—The application for the purchase of annuity benefits submitted by an employee to an insurance company on forms supplied by the company.

Authority: The provisions of this §403.323 issued under Acts 1965, 59th Leg., p. 165, ch. 67, §1, effective September 1, 1965 (Texas Civ. St. art. 5547-202, §2.11).

Source: The provisions of this §403.323 adopted to be effective March 24, 1977, 2 TexReg 891; amended to be effective May 27, 1981, 6 TexReg 1804; amended to be effective July 23, 1986, 11 TexReg 3159.

Cross References: This section cited in 25 TAC §403.334 (relating to Exhibits).

§403.324. Appointment of a Tax-Sheltered Annuity Committee; Terms of Members; Replacement of Members Unable To Serve; Duties of the Committee; Facility Responsibility.

(a) A Tax-Sheltered Annuity Committee shall be appointed by the commissioner from among the employees of the department. The committee shall consist of five members. The commissioner shall name the chairperson of the committee.

(b) Each member shall serve a term not to exceed three years or until a successor is appointed. Each August 31 the terms of one or two members of the committee shall expire.

(c) If at any time a member of the Tax-Sheltered Annuity Committee is unable for any reason to serve as a member, the commissioner shall appoint a replacement.

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(d) The Tax-Sheltered Annuity Committee shall:
  (1) no less than annually review the rules governing the administration of the TSA program;
  (2) review the TSA program and recommend improvements in the program;

(e) The chairperson shall designate members of the committee to monitor the selection and performance of the insurance agents assigned to the program, handle inquiries from facility staff concerning the program, monitor compliance with federal requirements and department rules, prepare annual reports on participation in the program, and respond to inquiries by companies desiring to participate in the program.

(f) The personnel officer at each facility is responsible for the administration of the tax-sheltered annuity program at that facility. The personnel officer shall be the primary point of contact for company representatives.

Source: The provisions of this §403.324 adopted to be effective March 24, 1977, 2 TexReg 891; amended to be effective May 27, 1981, 6 TexReg 1804; amended to be effective December 15, 1981, 6 TexReg 4467; amended to be effective July 23, 1986, 11 TexReg 3159.

§403.325. Employee Participation: General Information Concerning the Tax-Sheltered Annuity Program of the Department.

(a) Each employee is advised to consult with his tax advisor before enrolling in the TSA program. The department cannot assume any responsibility for either the policy terms or tax status, and there is no guarantee of the tax rate that will be in effect at the time any tax-sheltered funds are received by the employee.

(b) The department will contract with any employee at his request to reduce his annual gross compensation and to apply the amount of such reduction to the purchase of annuity benefits for the employee.

(c) TSA agreements will provide that an employee's salary will be reduced in equal monthly installments. Withholding tax will be based upon the employee's gross compensation after the salary reduction. Deductions for social security and retirement contributions will be calculated on the amount of gross compensation before the salary reduction and, therefore, are not affected by the purchase of a tax-sheltered annuity. The employee must insure that sufficient monthly salary remains for other existing or anticipated payroll deductions.

(d) The Internal Revenue Code of 1954, as amended, governs the amount of an employee's monthly compensation that may be deferred in a TSA program. The maximum amount of an employee's monthly compensation that may be deferred is determined by the preparation of the exclusion allowance worksheet. Participation in the State Deferred Compensation Program reduces the monthly amount for exclusion allowance purposes under a TSA program. If an employee is participating in the department TSA program and the State Deferred Compensation Plan I, the combined maximum amount that may be deferred is 25% of gross compensation but not more than $7,500 annually.

(e) Ownership of TSA purchases is retained by the employee; however, the employee cannot offer his TSA account as security for a loan except to his TSA company, and he cannot transfer or assign the account to a third party.

(f) The TSA program governed by this subchapter is an employee benefit. Therefore, all employees will be informed on the general aspects of the program and will be provided an opportunity to participate.

Authority: The provisions of this §403.325 issued under Acts 1965, 59th Leg., p. 165, ch. 67, §1, effective September 1, 1965 (Texas Civ. St. art. 5547-202, §2.11).

Source: The provisions of this §403.325 adopted to be effective March 24, 1977, 2 TexReg 891; amended to be effective May 27, 1981, 6 TexReg 1804; amended to be effective July 23, 1986, 11 TexReg 3159.

§403.326. Employment Participation: Enrollment.

(a) An employee may enroll in the TSA program of the department at any time.

(b) Enrollment is accomplished by the following:
  (1) completion of an exclusion allowance worksheet (Form P-27), which is referred to as Exhibit B, by the company representative to show the maximum amount by which the employee's salary could be reduced for the purpose of purchasing annuities in the TSA program under IRS regulations. (See §403.334 of this title (relating to Exhibits));
  (2) presentation of a disclosure form to the employee by the representative;
  (3) completion of a TSA application on a form furnished by the company representative;
  (4) completion of a TSA agreement by the employee;
  (5) signature of the designated official of the department facility by which the employee is employed on the TSA agreement prior to the first day of the month in which the agreement is to become effective.

(c) An employee may enter into no more than one TSA agreement amount to become effective in the same calendar year, but he may also change companies.

(d) An employee may designate that his contribution be used to purchase fixed annuities, variable annuities, or company mutual funds, but an employee may not designate that such purchases will be made from more than one company at a time.

Authority: The provisions of this §403.326 issued under Acts 1965, 59th Leg., p. 165, ch. 67, §1, effective September 1, 1965 (Texas Civ. St. art. 5547-202, §2.11).

Source: The provisions of this §403.326 adopted to be effective March 24, 1977, 2 TexReg 891; amended to be effective May 27, 1981, 6 TexReg 1804; amended to be effective July 23, 1986, 11 TexReg 3159.

Cross References: This section cited in 25 TAC §403.334 (relating to Exhibits).

§403.327. Employee Participation: Exclusion Allowance.

(a) The exclusion allowance, which is the maximum amount by which an employee may reduce his income to purchase annuities under the TSA program, is established by federal law and regulations. The department assumes no responsibility for the interpretation of such law or regulations or for the proper determination of an employee's exclusion allowance. An employee is encouraged to consult with his tax advisor before enrolling in any deferred income plan.

(b) An employee's exclusion allowance must be calculated and submitted on the exclusion allowance worksheet regardless of the amount by which the employee agrees to reduce his income to purchase annuities under the TSA program.

Source: The provisions of this §403.327 adopted to be effective March 24, 1977, 2 TexReg 891.

§403.328. Employee Participation: Amendment.

A TSA agreement may be amended at any time to increase or decrease the amount of salary reduction and to make a corresponding increase or decrease in the amount of contributions to an annuity plan; provided, however, that an employee may enter into no more than one TSA agreement, whether an original agreement or an amendment to an existing agreement, to become effective in the same calendar year, notwithstanding a second TSA agreement without change in amount may be made to change companies.

Source: The provisions of this §403.328 adopted to be effective March 24, 1977, 2 TexReg 891; amended to be effective July 23, 1986, 11 TexReg 3159.

§403.329. Employee Participation: Transfer.

(a) *Intradepartment transfer.* When an employee's duty station is transferred from one department facility to another, an existing TSA agreement will remain in effect unless the agreement is amended or cancelled in accordance with the provisions of this subchapter.

(b) *Interagency transfer.* When an employee transfers his employment from the department to another state agency, the employee's TSA agreement with this department will be terminated. However, if the agency to which the employee is transferring is an employer qualified to participate in a TSA program under section 403(b) of the Internal Revenue Code, it may be possible for the employee to continue the purchase of tax-sheltered annuities with that agency.

Source: The provisions of this §403.329 adopted to be effective March 24, 1977, 2 TexReg 891.

§403.330. Employee Participation: Cancellation.

(a) An employee may at any time submit a written request on the department form cancellation of tax-sheltered annuity, (Form P-28), which is referred to as Exhibit C, to cancel the agreement, effective as of the first day of any month following the date of the request. (See §403.334 of this title (relating to Exhibits)). In the event of such cancellation, a new TSA agreement may not be made to take effect prior to the first day of the next calendar year following the effective date of the cancellation.

(b) Termination of employment with the department will cancel the TSA agreement effective upon the last date of employment for payroll purposes. Upon such termination, the employee may either withdraw the value of the employee's account, contract for annuity payments, or make such arrangements for a paid-up annuity as are permitted by the terms of the contract.

Authority: The provisions of this §403.330 issued under Acts 1965, 59th Leg., p. 165, ch. 67, §1, effective September 1, 1965 (Texas Civ. St. art. 5547-202, §2.11).

Source: The provisions of this §403.330 adopted March 24, 1977, 2 TexReg 891; amended to be effective May 27, 1981, 6 TexReg 1804; amended to be effective July 23, 1986, 11 TexReg 3159.

Cross References: This section cited in 25 TAC §403.334 (relating to Exhibits).

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§403.331. Employee Participation: Withdrawal.

(a) An employee may withdraw all or a portion of the accumulated value of his individual account at any time in accordance with the provisions of the contract.

(b) A request by an employee for such withdrawal must be made by the employee to the company to which contributions have been paid on behalf of the employee. Assistance in making a request for such withdrawal may be obtained from the local representative of that company.

(c) An employee may withdraw and rollover his TSA accoumulations to another company using TDHMHR Form P-29, annuity contract—surrender and transfer of funds. See Exhibit D, which is referred to in §403.334 of this title (relating to Exhibits).

Source: The provisions of this §403.331 adopted to be effective March 24, 1977, 2 TexReg 891; amended to be effective July 23, 1986, 11 TexReg 3159.

§403.332. Company and Company Representatives.

(a) A company which desires to participate in the tax-sheltered annuity program of the department must submit a statement containing the certifications, agreements, and information outlined in Exhibit E, which is referred to in §403.334 of this title (relating to Exhibits). Such statement must be signed by the president, general counsel, or executive vice-president of the company and presented to the commissioner of the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711.

(b) Each company shall carefully select qualified representatives to solicit in connection with the department's TSA program. The department reserves the right in its sole discretion to stop solicitation by any representative and to request the company to appoint a new representative for that facility.

(c) No life insurance or premium waiver disability feature shall be a part of the contract with the employee.

(d) The company or its representative shall deliver or mail all annuity certificates and statements directly to the employee.

(e) Each department facility will provide a designated area where company representatives may hold brief interviews with employees during working hours. Company representatives will not be allowed to visit an employee in his work area except by prior appointment with the employee and with the approval of the employee's supervisor.

(f) The company representative shall fully advise an employee on the advantages and disadvantages of a tax-sheltered annuity program.

(g) The company representative shall calculate, on an exclusion allowance worksheet furnished by the department, the annual exclusion allowance permitted under the Internal Revenue Code of 1954, as amended, for each employee who contracts for the purchase of tax-sheltered annuities. A completed exclusion allowance worksheet will be attached to each application submitted. The company representative shall also advise TSA program participants that enrollment in the state's deferred compensation program will reduce the amount of income that may be excluded and that such enrollment will require that a revised exclusion allowance worksheet be filed with the personnel office.

(h) TSA agreement forms and exclusion allowance worksheets will be furnished by the department and will be available at the personnel office of each department facility. Application forms shall be furnished by the company. Each company representative is responsible for submission of the completed forms to the personnel officer of the department facility at which the employee is employed. The personnel officer of each department facility shall verify the employee data upon which the TSA calculations are based and the accuracy of the calculation.

(i) None of the information or employee data provided to the company or its representatives shall be given to unauthorized personnel, and such information and solicitation privileges shall not be used for any purpose other than the administration of the TSA program of the department.

Authority: The provisions of this §403.332 issued under Acts 1965, 59th Leg., p. 165, ch. 67, §1, effective September 1, 1965 (Texas Civ. St. art. 5547-202, §2.11).

Source: The provisions of this §403.332 adopted March 24, 1977, 2 TexReg 891; amended to be effective May 27, 1981, 6 TexReg 1804; amended to be effective July 23, 1986, 11 TexReg 3159.

Cross References: This section cited in 25 TAC §403.324 (relating to Appointment of a Tax-Sheltered Annuity Committee; Terms of Members; Replacement of Members Unable To Serve; Duties of the Committee; Facility Responsibility).

§403.333. Distribution.

(a) The provision of this subchapter will be distributed to the members of the Texas Board of Mental Health and Mental Retardation; director of operations; deputy commissioners, directors and section chiefs of central office; and superintendents/directors of all department facilities.

(b) The superintendent/director of each facility shall provide a copy of this subchapter to each business manager or administrator and personnel office of the facility.

(c) The superintendent/director shall be responsible for the dissemination of the information contained in this subchapter to all appropriate staff members.

Source: The provisions of this §403.333 adopted to be effective March 24, 1977, 2 TexReg 891; amended to be effective July 23, 1986, 11 TexReg 3159.

§403.334. Exhibits.

(a) The following exhibits referred to in this subchapter are herein adopted by reference and are available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668. Capitol Station, Austin, Texas 78711.

(1) *Exhibit A*—Application to Reduce Salary and to Purchase Tax-Sheltered Annuity (Form P-26): see §403.323 of this title (relating to Definitions).

(2) *Exhibit B*—Exclusion Allowance Worksheet (Form P-27): see §403.326 of this title (relating to Employee Participation: Enrollment).

(3) *Exhibit C*—Cancellation of Tax-Sheltered Annuity (Form P-28): see §403.330 of this title (relating to Employee Participation: Cancellation).

(4) *Exhibit D*—Form 29. Annuity Contract—Surrender and Transfer of Funds.

(5) *Exhibit E*—Procedure for Insurance Company 403(b) IRS Code Solicitation.

(b) A copy of any of the exhibits enumerated in subsection (a) of this section may be obtained from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668. Capitol Station, Austin, Texas 78711.

Authority: The provisions of this §403.334 issued under Acts 1965, 59th Leg., p. 165, ch. 67, §1, effective September 1, 1965 (Texas Civ. St. art. 5547-202, §2.11).

Source: The provisions of this §403.334 adopted to be effective March 24, 1977, 2 TexReg 891; amended to be effective May 27, 1981, 6 TexReg 1804; amended to be effective July 23, 1986, 11 TexReg 3159.

Cross References: This section cited in 25 TAC §403.323 (relating to Definitions); 25 TAC §403.326 (relating to Employee Participation: Enrollment); 25 TAC §403.330 (relating to Employee Participation: Cancellation); and 25 TAC §403.332 (relating to Company and Company Representatives).

§403.335. References.

Reference is made to the following:

(1) Texas Civil Statutes article 6228a-5.

(2) 26 U.S.C. §403(b) (Supplement 1976).

Source: The provisions of this §403.335 adopted to be effective March 24, 1977, 2 TexReg 891.

§403.336. Effective Date.

(a) The provisions of this subchapter become effective upon the expiration of 20 days from the day they are filed as an adopted subchapter with the Texas Register Division of the Office of the Secretary of State.

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

Source: The provisions of this §403.336 adopted to be effective March 24, 1977, 2 TexReg 891.

SUBCHAPTER M. USE OF DEPARTMENTAL FACILITIES BY PUBLIC EMPLOYEE ORGANIZATIONS

Cross References: This subchapter cited in 25 §405.471 (relating to Interstate Transfers); and 25 TAC §405.477 (relating to Reference).

§403.351. Purpose.

The purpose of this subchapter is to prescribe uniform procedures to be followed in making buildings, structures, and grounds of department facilities available to public employee organizations during nonduty hours.

Source: The provisions of this §403.351 adopted to be effective April 14, 1977, 2 TexReg 1238.

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§403.352. Application.

The provisions of this subchapter apply to all facilities of the Texas Department of Mental Health and Mental Retardation.

Source: The provisions of this §403.352 adopted to be effective April 14, 1977, 2 TexReg 1238.

§403.353. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

Commissioner—The commissioner of the Texas Department of Mental Health and Mental Retardation.

Department—The Texas Department of Mental Health and Mental Retardation.

Facility—An institution or physical plant under the control and management of the department. The term includes the central office of the department.

Public employee organization—An organization of public employees acting as a representative of such employees to present grievances concerning wages, hours of work, or conditions of work, which organization does not claim the right to strike.

Source: The provisions of this §403.353, adopted to be effective April 14, 1977, 2 TexReg 1238.

§403.354. Advance Approval Required for Meetings; Information Required To Be in the Request for Permission to Use Departmental Facilities.

(a) Public employee organizations which represent employees of the department may hold meetings in departmental facilities during nonduty hours upon obtaining advance approval.

(b) A written request for permission to use the facilities for meeting purposes must be made to the superintendent or director of the facility or to the commissioner, in the case of central office. This request must contain the following information:

(1) name of public employee organization;
(2) address of principal office of the organization;
(3) number of facility or central office employees who are members of the organization;
(4) names, addresses, and titles of the organization's principal officers;
(5) schedule of proposed meetings;
(6) statement that the organization agrees to abide by all rules and regulations established by the superintendent, director, or commissioner with regard to the use of the facility and that its meetings will in no way interfere with or disrupt the delivery of services to the mentally ill and mentally retarded;
(7) statement that the organization agrees to leave the facility in the same condition as it was delivered and to assume responsibility for any damage which might occur to the facility;
(8) Copy of the organization's constitution and by-laws or those of the local chapter of such organization.

Source: The provisions of this §403.354 adopted to be effective April 14, 1977, 2 TexReg 1238.

§403.355. Duration of Permission Granted for Use of Departmental Facilities.

Permission granted pursuant to such a request will continue until revoked by the superintendent, director, or commissioner. The public employee organization will immediately notify the superintendent, director, or commissioner of any change in the information stated in its written request for permission to use the facilities for meeting purposes.

Source: The provisions of this §403.355 adopted to be effective April 14, 1977, 2 TexReg 1238.

§403.356. Equality of Treatment Among All Public Employee Organizations.

Should permission for use of departmental facilities be granted to any one public employee organization which represents employees of the Texas Department of Mental Health and Mental Retardation, then such permission cannot arbitrarily be withheld from other such organizations. The criteria used by the superintendent, director, or commissioner in granting approval for use of departmental facilities must be applied equally to all public employee organizations.

Source: The provisions of this §403.356 adopted to be effective April 14, 1977, 2 TexReg 1238.

§403.357. Statutory Reference.

Reference is made to Texas Civil Statutes article 5154c.

Source: The provisions of this §403.357 adopted to be effective April 14, 1977, 2 TexReg 1238.

§403.358. Distribution.

The provisions of this subchapter shall be distributed to members of the Texas Board of Mental Health and Mental Retardation, assistant commissioners, deputy commissioners, directors and section chiefs of central office, superintendents of hospitals and special schools, directors of human development centers, Texas Research Institute of Mental Sciences, and the Rio Grande State Center for Mental Health and Mental Retardation.

Source: The provisions of this §403.358 adopted to be effective April 14, 1977, 2 TexReg 1238.

§403.359. Effective Date.

(a) The provisions of this subchapter become effective upon the expiration of 20 days from the date on which they are filed as an adopted subchapter with the Texas Register Division of the Office of the Secretary of State.

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

Source: The provisions of this §403.359 adopted to be effective April 14, 1977, 2 TexReg 1238.

SUBCHAPTER N. [RESERVED]

SUBCHAPTER O. PRACTICE AND PROCEDURE WITH RESPECT TO ADMINISTRATIVE HEARINGS OF THE DEPARTMENT IN CONTESTED CASES

Authority: The provisions of this Subchapter O issued under Acts 1965, 59th Leg., p. 165, ch. 67, §1, effective September 1, 1965 (Texas Civ. St. art. 5547-202, §2.11(b)); and Acts 1977, 65th Leg., p. 772, ch. 294, effective January 1, 1978 (Texas Civ. St. art. 5547-300, §§26 and 60).

Cross References: This subchapter cited in 25 TAC §405.652 (relating to Reference); and 25 TAC §405.677 (relating to References).

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§403.391. Purpose.

The purpose of this subchapter governing practice and procedure with respect to all departmental administrative hearings involving contested cases is:

(1) to provide a simple, efficient, and uniform set of procedures for all departmental administrative hearings involving contested cases, as that term is hereinafter defined, which will adequately protect the rights of all parties involved and will be consistent with due process requirements of the Texas and federal constitutions;

(2) to provide and to insure uniform standards, practices, and procedures with respect to hearings held in connection with such administrative procedures; and

(3) to provide a procedure which will effect fair and expeditious determination of causes governed by this subchapter and adequately protect the procedural rights of all parties.

Source: The provisions of this §403.391 adopted to be effective April 4, 1978, 3 TexReg 1031.

§403.392. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

Commissioner—The commissioner of Mental Health and Mental Retardation.

Contested case—A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the department after an opportunity for adjudicated hearing except in departmental personnel matters.

Department—The Texas Department of Mental Health and Mental Retardation. When the context of a rule requires or permits action by the department, such action means action taken by the commissioner or his duly authorized agent or representative.

Examiner—Any person designated or appointed by the commissioner as his duly authorized agent or representative to conduct hearings provided for by rules of the department.

Party—Each person or agency named or admitted as a party, pursuant to the rules of the commissioner of MH/MR and statutes under which such hearings are requested or held.

Person—Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than the department.

Pleadings—Written statements filed by parties concerning their respective positions, claims, and rights in administrative hearings.

Source: The provisions of this §403.392 adopted to be effective April 4, 1978, 3 TexReg 1031.

Cross References: This section cited in 25 TAC §403.411 (relating to Presiding Examiner).

§403.393. Applicability and Scope of Rules.

(a) The provisions of this subchapter shall apply in all contested cases.

(b) The provisions of this subchapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the department or the substantive rights of any person.

(c) The provisions of this subchapter shall be given a liberal construction in order that a just, fair, equitable, and impartial adjudication of the rights of the parties under the established principles of substantive law, as determined by appropriate statutes or rules of this department, may be attained with expedition and dispatch at the least expense to the department and all parties.

Source: The provisions of this §403.393 adopted to be effective April 4, 1978, 2 TexReg 1031.

§403.394. Filing of Documents.

All petitions, complaints, motions, protests, replies, answers, notices, and other pleadings relating to any proceeding governed by this subchapter which is pending or to be instituted with the department shall be filed with the commissioner through the designated hearings office. They shall be deemed filed only when actually received by such office accompanied by the filing fee, if any, required by statute or rules of the department.

Source: The provisions of this §403.394 adopted to be effective April 4, 1978, 3 TexReg 1031.

§403.395. Computation of Time; Extension.

(a) In computing any period of time prescribed or allowed by this subchapter, by the order of the commissioner, or by any applicable statute or substantive rule, the period shall begin on the day after the act, event, default, or controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor legal holiday.

(b) Unless otherwise provided by statute, by this subchapter, or the substantive rules of the commissioner, the time for the doing of any act under this subchapter may be extended by order of the commissioner, upon written motion duly filed with him through his hearings office prior to the expiration of the applicable period of time for the doing of same, showing that there is good cause for such extension of time and that the need therefor is not caused by neglect, indifference, or lack of diligence of movant. A copy of such motion shall be served upon all other parties to the proceeding contemporaneously with the filing thereof.

Source: The provisions of this §403.395 adopted to be effective April 4, 1978, 3 TexReg 1031.

Cross References: This section cited in 25 TAC §405.674 (relating to Applicable Rules of the Department; General Administrative Procedures).

§403.396. Agreements and Stipulations To Be in Writing.

No stipulation or agreement between the parties, their attorneys or representatives, with regard to any matter involved in any proceeding before the department shall be in force unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a hearing or incorporated in an order bearing their written approval. This section does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by this subchapter, unless precluded by law.

Source: The provisions of this §403.396 adopted to be effective April 4, 1978, 3 TexReg 1031.

Cross References: This section cited in 25 TAC §405.674 (relating to Applicable Rules of the Department; General Administrative Procedures).

§403.397. Notice and Service in Proceedings.

(a) In a contested case all parties must be afforded an opportunity for hearing after reasonable notice of not less than 10 days.

(b) Notice shall include:

(1) a statement of time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) reference to the particular sections of these statutes and rules involved; and

(4) a short and plain statement of the matters asserted.

(c) If any party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter on request by a party by written application, a more detailed and definite statement must be furnished within three days prior to the date set for hearing.

(d) In any case where personal service of the notice by department is required, the department shall mail same by certified or registered mail to the last known place of address of the person entitled to receive such notice.

(e) A copy of any protest, reply, answer, motion, or other pleadings filed by any party in any proceedings subsequent to the institution thereof shall be mailed or otherwise delivered by the party filing the same to every other party of record. If any party has appeared in the proceeding by attorney or other representative authorized under this subchapter to make appearances, service shall be made upon such attorney or other representative. The willful failure of any party to make such service shall be sufficient grounds for an entry of an order by the presiding examiner, striking a protest or reply, answer, motion, or other pleadings for the record.

(f) A certificate of the party, attorney, or representative who files the pleadings stating that it has been served on the other parties shall be *prima facie* evidence of such service. The following form of certificate will be sufficient in this connection:

I hereby certify that I have this day of 19_____served copies of the foregoing upon all other parties to this proceeding by (here state the service).

(signature)

Source: The provisions of this §403.397 adopted to be effective April 4, 1978, 3 TexReg 1031.

Cross References: This section cited in 25 TAC §403.401 (relating to Form and Content of Pleadings).

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§403.398. Appearances Personally or by Representative.

Any party may appear and be represented by an attorney at law authorized to practice law before the highest court of this state or by a lay representative of his choosing. Any person may appear on his own behalf. Such lay representative shall not be an employee who has provided direct service to a client or patient who is a party in the contested case. A sole proprietor, corporation, partnership, or association may appear and be represented by any *bona fide* officer, employee, or partner of such person or entity.

Source: The provisions of this §403.398 adopted to be effective April 4, 1978, 3 TexReg 1031.

Cross References: This section cited in 25 TAC §405.674 (relating to Applicable Rules of the Department; General Administrative Procedures).

§403.399. Classification of Pleadings and Contents of Record.

(a) Pleadings filed with the hearings office shall be applications, protests, petitions, complaints, answers, replies, motions for rehearing, and other motions and grievances. Regardless of any error in the designation of a pleading, it shall be accorded its true status in the proceeding in which it is filed.

(b) The record under this subchapter includes:
- (1) all pleadings, motions, and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings on them;
- (5) proposed findings and exceptions;
- (6) any decision, opinion, or report by the officer presiding at the hearing; and
- (7) all staff memoranda or data submitted to or considered by the hearing officer or the person involved in making the decision.

Source: The provisions of this §403.399 adopted to be effective April 4, 1978, 3 TexReg 1031.

Cross References: This section cited in 25 TAC §405.674 (relating to Applicable Rules of the Department; General Administrative Procedures).

§403.400. Transcription of Proceedings Required under Certain Circumstances.

Unless precluded by law, the parties to a contested case may agree upon a statement of facts, agree to use taped transcriptions as a statement of facts, or agree to the summarization of testimony before the hearing officer. Provided, however, that proceedings or any part of them must be transcribed on written request of any party. The department may pay the cost of the transcript or assess the cost to one or more parties. Nothing provided for in this section limits the department to a stenographic record of the proceedings.

Source: The provisions of this §403.400 adopted to be effective April 4, 1978, 3 TexReg 1031.

§403.401. Form and Content of Pleadings.

(a) Pleadings shall be typewritten or printed upon paper 8½ inches wide and 11 inches long with an inside margin of at least one inch wide and exhibits next thereto shall be folded to the same size. Reproductions are acceptable, provided all copies are clear and permanently legible.

(b) Pleadings shall state their object and contain a concise statement of facts in support of same and shall be signed by the applicant or his authorized representative.

(c) The original of every pleading shall be signed in ink for the party filing the paper or by his authorized representative. Pleadings shall contain the address of the party filing the document and the name, telephone number, and business address of the representative of such party, if any.

(d) Pleadings for which no official form is prescribed shall state the following:
- (1) the name of the party bringing the hearing;
- (2) the names of any other known parties in interest;
- (3) a short, plain, and concise statement of the facts relied upon by the pleader;
- (4) the relief, action, or order sought by the pleader;
- (5) any matter required by the rules of this department or statute with respect to the subject matter before the hearing officer;
- (6) the certificate of service prescribed in §403.397(f) of this title (relating to Notice and Service in Proceedings).

Source: The provisions of this §403.401 adopted to be effective April 4, 1978, 3 TexReg 1031.

§403.402. Deficient Pleadings.

Upon the filing of any pleading with the hearings office, it shall be examined to determine its sufficiency under this subchapter. While a liberal construction is to be given to all pleadings and technical forms are not to be required, if the pleading does not comply with this subchapter, it shall be returned to the person filing same along with the statement of the hearing officer of the reason for rejecting same. A corrected pleading may then be filed if such correction will not unduly delay the hearing.

Cross References: This section cited in 25 TAC §405.674 (relating to Applicable Rules of the Department; General Administrative Procedures).

Source: The provisions of this §403.402 adopted to be effective April 4, 1978, 3 TR 1031.

§403.403. Motions.

Any motion relating to a pending proceeding governed by this subchapter shall, unless made during a hearing and dictated into the record, be written and shall set forth the relief sought, the specific reasons and grounds therefor, and shall be supported by affidavit if based upon matters which do not appear of record. Motions not made during a hearing shall be filed with the hearings office, who shall act upon it at the earliest practicable time.

Source: The provisions of this §403.403 adopted to be effective April 4, 1978, 3 TexReg 1031.

Cross References: This section cited in 25 TAC §405.674 (relating to Applicable Rules of the Department; General Administrative Procedures).

§403.404. Amendments.

Any pleading may be amended at any time upon motion, provided that a pleading upon which notice has been issued shall not be amended so as to broaden the scope thereof.

Source: The provisions of this §403.404 adopted to be effective April 4, 1978, 3 TexReg 1031.

Cross References: This section cited in 25 TAC §405.674 (relating to Applicable Rules of the Department; General Administrative Procedures).

§403.405. Incorporation by Reference of Department Records.

Any pleading may adopt and incorporate by specific reference thereto any part of any document or entry in the official files and records of the department. This section shall not relieve any party of the necessity of alleging in detail, if required, facts necessary to sustain his burden of proof imposed by law.

Source: The provisions of this §403.405 adopted to be effective April 4, 1978, 3 TexReg 1031.

Cross References: This section cited in 25 TAC §405.674 (relating to Applicable Rules of the Department; General Administrative Procedures).

§403.406. Docketing and Numbering of Causes; Hearing Date.

(a) Upon receipt of the document intended to institute a proceeding before the department under the applicable rules of the department and the statutes of the State of Texas or the United States, which complies with this subchapter as to form and content, the hearings office shall docket the same as a pending proceeding and serve notice thereon as required by this subchapter.

(b) The hearing office shall set a date on which the hearing on the proceedings will be held and shall assign a presiding examiner to preside over such hearing. Said date will be no sooner than 15 days nor later than 45 days after the initiating document is received by the hearings office, unless otherwise provided in the rules of the commissioner or statutes of the state. The presiding examiner may subsequently postpone or continue the hearing date until a later date if, in his sound judgment and discretion, good cause requires a later date. Good cause includes but is not limited to the consideration that a later date will result in a fairer and more just determination of the issues and that the welfare of any client or resident of this department or institutions licensed or regulated by the department will not be substantially endangered by reason of the postponement. The presiding examiner is not precluded by this section or any other section from ordering a postponement or continuance of the hearing upon the showing of good cause.

Source: The provisions of this §403.406 adopted to be effective April 4, 1978, 3 TexReg 1031.

§403.407. Prehearing Conference.

(a) In any proceeding governed by this subchapter, the presiding examiner to whom the proceeding has been assigned, on his own motion or on the motion of any party, may direct the parties, their attorneys, or representatives to appear before the examiner at a specified time and place for a conference prior to hearing for the purpose of formulating issues and considering:

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(1) simplification of issues;

(2) possibility of admissions of certain averments of fact or stipulations concerning the use by any party of matters of public record;

(3) procedures to be used in the hearing;

(4) limitation, where possible, of the number of witnesses;

(5) such other matters as may aid in the simplification of the proceedings and the disposition of the matters in controversy, including settlement of such issues as are in dispute; and

(6) the taking of depositions in accordance with the provisions of Texas Civil Statutes article 6252-13a, Administrative Procedure and Texas Register Act.

(b) Actions taken at the conference shall be recorded in an order by the examiner unless the parties enter into a written agreement.

Source: The provisions of this §403.407 adopted to be effective April 4, 1978, 3 TexReg 1031.

§403.408. Motions for Postponement, Continuance, Withdrawal, or Dismissal of Protest, or Other Matters before the Department.

(a) Motions for postponement, continuance, withdrawal or dismissal of protest, or other matters which have been duly set for hearing shall be:

(1) in writing;

(2) filed with the commissioner; and

(3) distributed to all interested parties under a certificate of service not less than five days prior to the designated date the matter is to be heard.

(b) Such motions shall set forth under oath the specific grounds upon which the moving parties seek such action and shall make reference to all prior motions of the same nature filed on the same proceeding. Failure to comply with the provisions of this section, except for good cause shown, may be construed as lack of diligence on the part of the moving party, and, at the discretion of the examiner, may result in the dismissal of the protest or other matter in issue with prejudice to refiling. Once a proceeding has actually gone to a hearing pursuant to the notice issued thereon, no postponement or continuance shall be granted by the examiner without the consent of all parties involved.

Source: The provisions of this §403.408 adopted to be effective April 4, 1978, 3 TexReg 1031.

Cross References: This section cited in 25 TAC §405.674 (relating to Applicable Rules of the Department; General Administrative Procedures).

§403.409. Joint Hearings.

A motion for the consolidation of two or more protests or other proceedings shall be in writing, signed by the movant, his attorney or representative, and filed with the examiner prior to the date set for hearing. No two or more protests or other proceedings shall be consolidated or heard jointly without the affirmative consent of all parties to such proceedings, unless the department shall find that the two or more proceedings involve common questions of law and fact, and shall further find that separate hearings would result in unwarranted expense, delay, or substantial injustice.

Source: The provisions of this §403.409 adopted to be effective April 4, 1978, 3 TexReg 1031.

§403.410. Place and Nature of Hearings.

(a) All hearings conducted in any proceedings shall be opened to the public, but may be ordered to be closed upon a finding of the presiding examiner of possible breach of the privacy of clients, employees, or their records. All hearings shall be held in Austin, Texas, in the case of proceedings arising out of actions, events, or omissions alleged to have occurred in the central office of the Texas Department of Mental Health and Mental Retardation; and at the location of each facility of the department, in the case of all other hearings at which the action, event, or omission complained of occurred, unless for good and sufficient cause, in which event the commissioner, in his sound judgment and discretion, shall designate another place of hearing in the interest of the public.

(b) Every party, witness, attorney, or other representative shall comport himself in all proceedings governed by this subchapter with proper dignity, courtesy, and respect for the department, the commissioner, the examiner, and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the State Bar of Texas.

Source: The provisions of this §403.10 adopted to become effective April 4, 1978 3 TexReg 1031.

Cross References: This section cited in 25 TAC §405.674 (relating to Applicable Rules of the Department; General Administrative Procedures).

§403.411. Presiding Examiner.

(a) Hearings will be conducted by an examiner as defined in §403.392 of this title (relating to Definitions) unless a different fact finder is required by statute or other rules of the commissioner. The examiner and/or such fact finder is at all times referred to in this subchapter as the examiner or the presiding examiner. The presiding examiner shall have authority to administer oaths, to examine witnesses, and to rule upon the admissibility of evidence and amendments to pleadings. He shall have the authority to recess any hearing from day to day.

(b) If the presiding examiner dies, becomes disabled, or withdraws or is removed from employment or the case at any time before the final decision thereof, the department may appoint another presiding examiner who may perform any function remaining to be performed without the necessity of repeating the previous proceedings in the case.

(c) The commissioner may designate one or more employees of the department with particular expertise and experience who are knowledgeable in the subject matter of the hearing in question to assist the presiding examiner in the evaluation of evidence presented at the hearing.

Source: The provisions of this §403.411 adopted to be effective April 4, 1978, 3 TexReg 1031.

§403.412. Rules of Evidence; Official Notice.

(a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded in all proceedings under this subchapter. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The rules of privilege recognized by the laws of the State of Texas shall be given effect. Objections to evidentiary offers shall be made and noted in the record. Subject to these requirements, if a hearing will be expedited and the interest of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.

(b) All testimony in a hearing by witnesses shall be taken under oath as prescribed in this subchapter.

(c) The department shall have the powers of subpoena granted under Texas Civil Statutes article 6252-13a, as well as the powers in such article for the issuance of commissions to take depositions. The department will, on its own motion or on the written request of any party to a contested case pending before it on a showing of good cause and on deposit of sums which will reasonably insure payment in the amounts estimated to accrue, issue a subpoena in accordance with such statute to require the attendance of witnesses and production of documents as may be necessary and proper for the purposes of the proceedings before it.

(d) Discovery.

(1) Upon motion of any party showing good cause therefor and upon notice to all other parties, the examiner may order any party to comply with the following requirements; provided, however, that the examiner shall limit such orders as justice may require to protect any party or witness from undue annoyance, embarrassment, oppression, or expense. Subject to such limitation, any party may be required:

(A) to produce and permit the inspection and copying or photographing by or on behalf of the moving party any of the following which are in his possession, custody, or control: any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain, or are reasonably calculated to lead to the discovery of, evidence material to any matter involved in the action; and

(B) to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated object or operation thereon which may be material to any matter involved in the action.

(2) The order shall specify the time, place, and manner of making the inspection, measurement, or survey and taking the copies and photographs and may prescribe such terms and conditions as are just.

(3) The identity and location of any potential party or witness may be obtained from any communication or other paper in the possession, custody, or control of a party, and any party may be required to produce and permit the inspection and copying of the reports, including factual observations and opinions of an expert who will be called as a witness, provided that the rights herein granted shall not extend to other written statements of witnesses or other written communications passing between agents or representatives or the employees of any party to the hearing or to other communications between any party and its agents, representatives, or other employees, where made subsequent to the occurrence or transaction upon which the proceeding is based, and made in connection with the prosecution, investigation, or defense of such claim or the circumstances out of which same has arisen.

(4) Any person, whether or not a party, shall be entitled to obtain, upon request, a copy of any statement he has previously made concerning the action or its subject matter and which is in the possession, custody, or control of any party. If the request is refused, the person may move for a departmental order under this paragraph. For purposes of this section, a statement previously made is:

(A) a written statement signed or otherwise adopted or approved by the person making it; or

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(B) a stenographic, mechanical, electrical, or other recording or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(e) The taking of depositions shall be in accordance with the provisions of Texas Civil Statutes article 6252-13a, §14.

(f) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties will be given an opportunity to compare the copy with the original.

(g) A party may conduct cross-examination required for a full and true disclosure of the facts.

(h) In connection with any hearing held in the provisions of this section, official notice may be taken of all facts judicially cognizable. In addition, notice may be taken of generally recognized facts within the area of the department's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and they must be afforded an opportunity to contest the material so noticed. The special skills or knowledge of the department and its staff may be utilized in evaluating the evidence.

(i) The right to assistance or counsel granted under this subchapter may be expressly waived by the parties.

(j) If a party or subpoenaed witness in a contested case is deaf, the department shall provide an interpreter whose qualifications are approved by the State Commission for the Deaf to interpret the proceedings for that person. In this subsection, "deaf person" means a person who has a hearing impairment, whether or not the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.

Authority: The provisions of this §403.412 issued under Acts 1965, 59th Leg., p. 165, ch. 67, §1, effective September 1, 1965 (Texas Civ. St. art. 5547-202, §2.11 (b)).

Source: The provisions of this §403.412 adopted April 4, 1978, 3 TR 1031 amended to be effective March 18, 1981, 6 TexReg 805.

Cross References: This section cited in 25 TAC §403.421 (relating to *Ex Parte* Consultations).

§403.413. Formal Exceptions.

Formal exceptions to rulings of the examiner during the hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the examiner the action which he desires.

Source: The provisions of this §403.413 adopted to be effective April 4, 1978, 3 TR 1031.

Cross References: This section cited in 25 TAC §405.674 (relating to Applicable Rules of the Department; General Administrative Procedures).

§403.414. Decisions and Orders.

(a) A final decision or order must be in writing or stated in the record. It must include the findings of fact and conclusions involved, separately stated. Findings of fact, as set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting such findings.

(b) Parties may submit proposed findings of fact, unless precluded by other rules or statute from so doing, and a decision shall include a ruling on each proposed finding.

(c) Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of this decision or order shall be delivered or mailed to any party and to his attorney of record.

(d) A decision is final, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing and is final and appealable on the date of rendition of the order overruling the motion for rehearing, or on the date the motion is overruled by operation of law. If the examiner finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, the finding in a decision or order shall be recited as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as prerequisite for appeal. In cases involving the formality of decisions and actions to be taken pursuant thereto, governed by the provisions of the Mentally Retarded Persons Act of 1977, the statutory provisions shall govern notwithstanding this section.

(e) Unless otherwise specifically stated by statute, the final decision or order must be rendered within 60 days after the date the hearing is finally closed. The department may prescribe a longer period of time within which the final order or decision of the examiner shall be issued, but such extension, if so prescribed, shall be announced at the completion of the hearing.

(f) The final decision or order shall be rendered by the presiding examiner unless otherwise provided in this subchapter. If other rules provide for the decision to be made by someone other than the presiding examiner, such decision maker shall either hear the case or read the record.

(g) Except as otherwise provided in subsection (d) of this section, a motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed within 15 days after the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with the hearing office within 25 days after the rendition of the final decision or order and action on the motion must be taken within 45 days after the rendition of the final decision or order. If action

is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The period of time for filing of motions and replies taking action may be extended by written order but such extension may not extend the period for action beyond 90 days after the date of rendition of the final decision or order. In the event of extension, the motion for rehearing is overruled by operation of law on the date affixed on the order, or in the absence of affixed date, 90 days after the date of the final decision or order.

(h) The parties may, by agreement with the approval of the examiner, provide for modification of the times provided in this section.

Source: The provisions of this §403.414 adopted to be effective April 4, 1978, 3 TR 1031.

§403.415. Dismissal without Hearing.

The examiner may entertain motions for dismissal without a hearing for any of the following reasons:

(1) failure to prosecute and go forward with the proceeding within a reasonable period of time;
(2) unnecessary duplication of proceedings;
(3) withdrawal;
(4) moot questions or stale protest;
(5) lack of jurisdiction.

Source: The provisions of this §403.415 adopted to be effective April 4, 1978, 3 TR 1031.

Cross References: This section cited in 25 TAC §405.674 (relating to Applicable Rules of the Department; General Administrative Procedures).

§403.416. Prepared Testimony.

In all contested cases and after service of copies upon all parties of record at such time as may be designated by the examiner, the prepared testimony of a witness upon direct examination, either in narrative or in question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witnesses being sworn and identifying same. Such witness shall be subject to cross-examination, and the prepared testimony shall be excepted from motion to strike in whole or in part.

Source: The provisions of this §403.416 adopted to be effective April 4, 1978, 3 TR 1031.

Cross References: This section cited in 25 TAC §405.674 (relating to Applicable Rules of the Department; General Administrative Procedures).

§403.417. Limitations on Number of Witnesses.

The examiner shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

Source: The provisions of this §403.417 adopted to be effective April 4, 1978, 3 TR 1031.

§403.418. Exhibits.

(a) The original of each exhibit offered shall be tendered for identification; one copy shall be furnished to the presiding examiner and one copy to each party of record or his attorney or representative.

(b) In the event an exhibit has been identified, objected to, and excluded, the examiner shall determine whether the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, endorsed by the examiner with his ruling, and included in the record for the purpose of preserving any exception.

(c) Unless specifically directed by the presiding examiner, no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing. In the event the examiner allows the exhibit to be filed after the completion of the hearing, copies of the late-filed exhibit shall be served on all parties of record.

Source: The provisions of this §403.418 adopted to be effective April 4, 1978, 3 TR 1031.

Cross References: This section cited in 25 TAC §405.674 (relating to Applicable Rules of the Department; General Administrative Procedures).

§403.419. Offer of Proof.

When testimony is excluded by ruling of the examiner, the party offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the department. The examiner may ask such

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questions of the witness as he deems necessary to satisfy himself that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross-examination may be preserved without making an offer of proof.

Source: The provisions of this §403.419 adopted to be effective April 4, 1978, 3 TR 1031.

§403.420. Oral Argument.

A party or his representative is entitled to present oral argument if he has requested the opportunity to do so. A request for oral argument may be incorporated in exceptions, briefs or replies to exceptions, motions for rehearing, or separate pleadings. A request for opportunity to present oral argument must be made prior to the final determination of any proceeding. The examiner has the authority to limit the time and scope of any oral argument in the proceeding he is conducting.

Source: The provisions of this §403.420 adopted to be effective April 4, 1978, 3 TR 1031.

Cross References: This section cited in 25 TAC §405.674 (relating to Applicable Rules of the Department; General Administrative Procedures).

§403.421. Ex Parte Consultations.

Unless required for the disposition of *ex parte* matters authorized by law, the examiner and/or other persons assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate directly or indirectly in connection with any issue of fact or law with any party or his representative, except on notice and opportunity for all parties to participate. Any department decision maker may communicate *ex parte* with other members of the department who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the department's staff in evaluating the evidence in accordance with Texas Civil Statutes article 6252-13a, §14(q), and §403.412(h) of this title (relating to Rules of Evidence; Official Notice).

Authority: The provisions of this §403.421 issued under Acts 1965, 59th Leg., p. 165, ch. 67, §1, effective September 1, 1965 (Texas Civ. St. art. 5547-202, §2.11(b)).

Source: The provisions of this §403.421 adopted April 4, 1978, 3 TexReg 1031; amended to be effective January 30, 1980, 5 TexReg 197.

Cross References: This section cited in 25 TAC §405.674 (relating to Applicable Rules of the Department; General Administrative Procedures).

§403.422. Participation by Legal Staff.

The legal staff of the department may participate in hearings governed by this subchapter.

Source: The provisions of this §403.422 adopted to be effective April 4, 1978, 3 TR 1031.

Cross References: This section cited in 25 TAC §405.674 (relating to Applicable Rules of the Department; General Administrative Procedures).

§403.423. Confidentiality.

(a) In any hearing or other proceedings conducted by the department, the identity of a mental health or mental retardation patient shall not be revealed or made a matter of public record in any way unless the party or person desiring or attempting to reveal the identity of such patient:
  (1) has secured from the mental health or mental retardation patient or the person legally authorized to give consent for such patient written consent to reveal for the purposes of the hearing the identity of such patient, and the specific information to be revealed is set forth in such written consent, and such written consent has been filed with the commissioner; and
  (2) has established to the satisfaction of the hearing examiner that the identity of the mental health or mental retardation patient is relevant and material to an issue in the hearing.

(b) Any attempt by a party to circumvent the requirements of subsection (a) of this section will be sufficient grounds for the hearing examiner to strike the party and any protest or pleading of the party from the hearing or to dismiss the hearing with prejudice.

Source: The provisions of this §403.423 adopted to be effective April 4, 1978, 3 TR 1031.

§403.424. Judicial Review.

(a) Unless otherwise specifically provided by statute, a party who has exhausted all administrative remedies available within the rules of the commissioner within this department and who is aggrieved by a final decision in a contested case is entitled to a judicial review. This section is cumulative of any other means of redress provided by statute and any statutory provision for specific judicial review shall govern notwithstanding this section.

(b) Proceedings for review are instituted by filing a petition within 30 days after the decision complained of is final and appealable. Unless otherwise provided by statute:
  (1) the petition is filed in a district court of Travis County, Texas;
  (2) a copy of the petition must be served on the department and all parties of record in the proceedings before the department; and
  (3) the filing of the petition vacates a decision for which trial *de novo* is the manner of review authorized by law but does not affect the enforcement of a decision for which another manner of review is authorized. If the manner of the review authorized by law for the decision complained of is by trial *de novo*, the reviewing court shall try all issues of fact and law in a manner applicable to other civil suits in the state and in accordance with Texas Civil Statutes article 6252-13a.

(c) If the manner of review authorized by law for the decision complained of is other than by trial *de novo*, in the absence of other specific statutory provisions, the provisions of Texas Civil Statutes article 6252-13a, §19(d)(1)-(6) shall be applicable.

Source: The provisions of this §403.424 adopted to be effective April 4, 1978, 3 TR 1031.

§403.425. Distribution.

This subchapter governing practice and procedure with respect to administrative hearings of the department in contested cases shall be distributed to:
  (1) members of the Texas Board of Mental Health and Mental Retardation;
  (2) deputy commissioners;
  (3) assistant commissioners;
  (4) section and division chiefs of the central office;
  (5) superintendents and directors of all department facilities;
  (6) persons designated as hearing examiners; and
  (7) upon request, any party to an administrative hearing conducted under this subchapter.

Source: The provisions of this §403.425 adopted to be effective April 4, 1978, 3 TR 1031.

§403.426. Effective Date.

(a) The provisions of this subchapter become effective upon the expiration of 20 days from the day on which they are filed as an adopted subchapter with the Texas Register Division of the Office of the Secretary of State.

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

Source: The provisions of this §403.426 adopted to be effective April 4, 1978, 3 TR 1031.

SUBCHAPTER P. PUBLIC RESPONSIBILITY COMMITTEES

Authority: The provisions of this Subchapter P issued under Acts 1969, 61st Leg., p. 2010, ch. 688, §4, effective September 1, 1969, as amended (Texas Civ. St. art. 5547-204, §4.01); and Acts 1977, 65th Leg., p. 772, ch. 294, effective January 1, 1978 (Texas Civ. St. art. 5547-300, §§56 and 60).

Cross References: This section cited in 25 TAC §405.130 (relating to Enforcement); 25 TAC §405.132 (relating to References); 25 TAC §405.366 (relating to Responsibilities of All TDMHMR Employees); 25 TAC §405.372 (relating to References); and 25 TAC §405.624 (relating to Rights of All Clients Receiving Mental Retardation Services).

§403.441. Purpose.

The purpose of this subchapter is to clarify the responsibilities, procedures, obligations, and powers of public responsibility committees at all facilities and centers of the Texas Department of Mental Health and Mental Retardation.

Source: The provisions of this §403.441 adopted to be effective December 26, 1983, 8 TexReg 5178.

§403.442. Application.

These sections apply to all facilities of the Texas Department of Mental Health and Mental Retardation and community mental health and mental retardation centers.

Source: The provisions of this §403.442 adopted to be effective December 26, 1983, 8 TexReg 5178; amended to be effective January 9, 1986, 10 TexReg 5011.

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§403.443. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

Advocacy system—The system of advocacy for the developmentally disabled, created pursuant to Pub. L. 94-103, §113.

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

Board—The board of trustees appointed to govern a community mental health and mental retardation center.

Center—A community center for mental health and mental retardation services established pursuant to Texas Civil Statutes, Article 5547-203.

Client—Any person who receives services from a TDMHMR facility or community MHMR center, regardless of whether or not he has been admitted (includes patients).

Commissioner—The commissioner of the Texas Department of Mental Health and Mental Retardation.

Department or TDMHMR—The Texas Department of Mental Health and Mental Retardation.

Facility—Any hospital, state school for the mentally retarded, state center, or other institution of the Texas Department of Mental Health and Mental Retardation and its respective outreach programs, or any organizational entity that may be hereafter made a part of the department.

Fiscal year—The period of time between the first day of September and the last day of the next August, inclusive.

Interdisciplinary team—A group of professionals and paraprofessionals who assess the client's treatment, training, and habilitation needs and make recommendations for services.

Legally adequate consent—Consent given by a person or his legally authorized representative when each of the following conditions has been met:

(A) *Legal capacity.* The person giving the consent is 18 years of age or older and has not been adjudicated incompetent to manage his personal affairs by an appropriate court of law; is at least 16 years of age but under 18 years of age receiving voluntary mental health services and has not been adjudicated incompetent to manage his personal affairs by an appropriate court of law; is the parent of a client under 18 years of age who is not and has not been married or has not had his disabilities of minority removed for general purposes; or is the guardian who, under court order, has been appointed guardian of the person of the client.

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

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

Local establishing agencies—Those agencies which have established community mental health and mental retardation centers as defined in Texas Civil Statutes article 5547-203.

PRC—Public responsibility committee.

Source: The provisions of this §403.443 adopted to be effective December 26, 1983, 8 TexReg 5178; amended to be effective January 9, 1986, 10 TexReg 5011.

Cross References: This section cited in 25 TAC §403.445 (relating to Membership).

§403.444. Functions of the PRC.

(a) The Public Responsibility Committee (PRC) is an independent, impartial, third-party mechanism whose functions shall include, but are not limited to, the following:

(1) Protecting, preserving, promoting, and advocating for the health, safety, welfare, and legal and human rights of clients served by the department or center;

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

(3) Ensuring that clients and, when appropriate, their families, are informed of their rights and the means of protecting those rights;

(4) Submitting instances of abuse or denial of rights to the appropriate authorities for action; and

(5) Participating in the client's interdisciplinary team as the PRC deems appropriate.

(b) Members of the PRC should be especially familiar with the facility or center, its policies, the clients' rights handbooks, and Chapter 405 of this title (relating to Client (Patient) Care).

Source: The provisions of this §403.444 adopted to be effective December 26, 1983, 8 TexReg 5178; amended to be effective January 9, 1986, 10 TexReg 5011.

§403.445. Membership.

(a) *Composition of committee.* At least seven but not more that 12 persons shall be selected.
  (1) The PRC shall include, but not be limited to, representation by parents, guardians, consumer groups, and organizations that advocate for clients.
  (2) At facilities, each PRC shall designate a representative to serve as a member of the client abuse committee.
  (3) At the beginning of each fiscal year, the PRC shall elect one of its members as chairperson and another member as secretary.
  (4) At no time shall a majority of any PRC membership be composed of relatives of clients.

(b) *Eligibility criteria.* To qualify for membership on a PRC, the candidate must:
  (1) reside in the area served by the facility or center;
  (2) be capable of mature, objective judgment of medical, legal, social, and ethical considerations pertaining to the committee's work;
  (3) not be affiliated with the facility or center as defined in §403.443 of this subchapter (relating to Definitions); and
  (4) not be a client.

(c) *Selection.* Members shall be selected in accordance with the following provisions:
  (1) Consultation with the community shall be done and shall include:
    (A) informing local parents' associations and interest groups of the selection process and time and place of meeting;
    (B) inviting such groups to submit nominations for membership;
    (C) giving public notice of the members selected.
  (2) Members shall be chosen without regard to sex, race, color, creed, national origin, age, or handicap.
  (3) The executive committee of each facility's volunteer services council shall ensure representation and consultation and select persons to serve voluntarily as members of the PRC. Members of the council's executive committee shall not be eligible to be members of the PRC.
  (4) Each center's local establishing agencies shall ensure representation and consultation and select persons to serve voluntarily as PRC members.

(d) *Term of appointment.* Members shall be appointed to serve a two-year term. No member shall serve more than three consecutive terms.
  (1) Membership terms shall be staggered.
  (2) A roster of all current PRC members will be maintained by the Office of Volunteer Services, central office, and may be forwarded to the advocacy system.

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

(f) *Training requirements.* To obtain essential general knowledge of the facility or center, members shall participate in training as soon as possible after appointment, including:
  (1) at least one general orientation to the facility or center and its policies for volunteers; and
  (2) additional specialized training related to their specific assignment as a member of the PRC.

(g) *Relationship to facility and center staff.* The purpose of the PRC shall be furthered in the following ways:
  (1) PRC members and staff should cooperate with each other to develop good working relationships, mutual acceptance, and cooperation.
  (2) A staff liaison shall provide clerical assistance at the request of the PRC and shall be responsible for ordering PRC stationery and report logs, which may be used for PRC correspondence and notices (see Exhibit B, attached to and made a part of this subchapter).
    (A) At facilities, the coordinator of volunteer services shall serve as liaison at the request of the PRC.
    (B) At centers, a liaison shall be appointed.
  (3) The staff liaison shall maintain confidentiality in all matters relating to receipt, investigation, and reporting of complaints by the PRC.

(h) *Removal from PRC.* A member shall be dropped from membership who in the absence of an acceptable reason, fails to attend two consecutive meetings of the PRC, or who fails to comply with the provisions of this subchapter.
  (1) Such member may be removed by the executive committee of the facility's volunteer services council or the center's local establishing agencies upon recommendation by a majority of the PRC.
  (2) Replacement of the member shall be in accordance with this section.

Source: The provisions of this §403.445 adopted to be effective December 26, 1983, 8 TexReg 5178.

§403.446. Meetings.

(a) The PRC shall meet as often as necessary to fulfill its duties, but not less than quarterly.

(b) The PRC shall determine the times and locations of its meetings.

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(c) A quorum of the committee (the majority of its total membership) must be present to conduct business.
(d) Votes shall be decided by a simple majority of members present.
(e) Facility or center staff may attend a PRC meeting with the permission of the PRC.
(f) The PRC may invite other appropriate individuals to attend a meeting.
(g) The minutes of each PRC meeting shall be maintained by the chairperson in a permanent file.

Source: The provisions of this §403.446 adopted to be effective December 26, 1983, 8 TexReg 5178.

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§403.447. Information Responsibilities.

(a) Each facility and center shall be responsible for informing clients, their families, and the general public of the existence, purpose, and composition of the PRC. Each facility and center shall:
  (1) at least annually distribute news releases to news media, stressing the fact that the PRC is an independent, impartial body and that none of its members are affiliated with TDMHMR or the center, as applicable;
  (2) publish brief statements of PRC purpose and accessibility in periodic publications;
  (3) post printed notices conspicuously in all appropriate buildings; and
  (4) include PRC information in handout materials routinely given to newly admitted clients, their families, and new employees (see Exhibit A).

(b) Each PRC may publish and distribute information related to its purpose and accessibility.

(c) Each PRC will respond to questions, comments, and suggestions related to its purpose.

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

Source: The provisions of this §403.447 adopted to be effective December 26, 1983, 8 TexReg 5178.

§403.448. Investigatory Responsibilities.

Each facility or center Public Responsibility Committee (PRC) shall receive, investigate, and report complaints made to it by, or on behalf of, clients and shall make recommendations to appropriate line authorities.

(1) *Receipt of complaints.* To facilitate the receipt of complaints, the PRC must have its own post office box. Rental fees must be paid by the facility or center if volunteer donations are not available.
  (A) Complaints must be reduced to writing and should be signed.
    (i) If a complainant is unable to sign or write, the complaint may be dictated and the complainant's mark confirmed by a witness.
    (ii) A PRC member must reduce an oral complaint to writing and present it to the PRC.
    (iii) A PRC member may reduce an anonymous complaint to writing and bring it to the PRC's attention.
  (B) Complaints must be sent directly to the PRC.
  (C) Complaints must be opened by a member of the PRC.
  (D) Each PRC shall maintain confidential records of complaints received, acknowledge receipt of complaints (see Exhibit C, attached to and made a part of this subchapter), and inform the clients and/or complainants of any action taken (see Exhibit D, attached to and made a part of this subchapter).
  (E) The PRC shall record all complaints received in the PRC log, illustrated in Exhibit E, which is attached to and made a part of this subchapter.

(2) *Investigation of complaints.* In investigating an instance of denial of client rights, the PRC shall initiate an investigation or inquiry within 10 calendar days of receipt of a complaint. In investigating a report of alleged client abuse or neglect, the PRC shall immediately contact the head of the facility or center, whose responsibility it is to ensure that the client abuse investigating authority initiates an investigation. At facilities, the superintendent or director is responsible for reporting results of client abuse investigations to the PRC in accordance with Chapter 405, Subchapter O of this title (relating to Client Abuse and Neglect in TDMHMR Facilities).
  (A) *Authority to interview.* During an investigation, PRC members may interview the following persons, when appropriate:
    (i) the complainant;
    (ii) the client, if other than the complainant;
    (iii) any other client involved in the complaint as participant or observer;
    (iv) family members, guardians, and/or other representatives of the client;
    (v) staff members;
    (vi) nonstaff members (volunteers).
  (B) *Authority to inspect site.* When investigating complaints of abuse or denial of rights, the PRC shall have the authority with or without notice to inspect the facility or center which offers services to the client.
  (C) *Authority to inspect records.* When investigating complaints of abuse or denial of rights, the PRC shall have the authority to inspect records contingent upon:
    (i) whether the client has a primary or secondary diagnosis of mental retardation. In such cases the PRC shall have the authority with or without notice to inspect records relating to the diagnosis, evaluation, or treatment of the client, as those records relate to the complaint of abuse or denial of rights;
    (ii) whether the client has a diagnosis of mental illness. The PRC shall have access to the facility or center records relating to the treatment of the mentally ill person only under the provision of Texas Civil Statutes, Articles 5547-87 and 5561(h), and §403.297 of this title (relating to When

Consent for Disclosure Is Not Required: Clients Other than Alcohol and Drug Abuse Clients), and §403.298 of this title (relating to When Consent for Disclosure Is Not Required: Alcohol and Drug Abuse Clients). Investigations by the PRC are considered *bona fide* evaluations of the client rights protection component of facility and center programs.

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

(3) *Reporting of complaints to the advocacy system.* The PRC shall report all complaints of client abuse or denial of right of a mentally retarded person to the advocacy system.

Source: The provisions of this §403.448 adopted to be effective December 26, 1983, 8 TexReg 5178; amended to be effective January 9, 1986, 10 TexReg 5011.

Cross Reference: This section cited in 25 TAC §403.450 (relating to Confidentiality).

§403.449. Routine Reporting Responsibilities.

(a) *PRC log.* The chairperson of the PRC shall send a copy of the PRC log to line authorities.

(1) At facilities, the log shall be sent monthly to the commissioner or his designee in central office and the superintendent or director of the facility.

(2) At centers, the log shall be sent quarterly (or monthly when complaints are received) to the board and the director.

(3) For any authorized recipient of the log, other than qualified auditing personnel within the TDMHMR and the parties named in paragraphs (1) and (2) of this subsection, client and employee names shall be obliterated.

(b) *Annual report.* The PRC shall make an annual report of its work, including a description of all comments, suggestions, and complaints processed and action taken in response to the contact, if any. The names of all individuals involved shall be kept confidential.

(1) At facilities, the report shall be presented to the superintendent/director, commissioner, and the advocacy system.

(2) At centers, the report shall be presented to the executive director, the board, the advocacy system, and the Office of Volunteer Services, central office, TDMHMR.

Source: The provisions of this §403.449 adopted to be effective December 26, 1983, 8 TexReg 5178.

§403.450. Confidentiality.

(a) To assure compliance with the legal requirements of confidentiality relating to matters concerning clients, no individual member of the PRC or the PRC as a whole shall make statements regarding either a complaint or an investigation except as provided in §403.448(3) of this title (relating to Investigatory Responsibilities), unless legally adequate consent is obtained for the release of the information held by the PRC.

(b) Written records may be reviewed by qualified auditing personnel within TDMHMR (*e.g.*, quality assurance staff, internal audit staff).

Source: The provisions of this §403.450 adopted to be effective December 26, 1983, 8 TexReg 5178.

§403.451. Redress to Complaints.

The responsibility to provide redress to justifiable complaints shall not lie with the PRC.

(1) The superintendent or director shall take such corrective action as is appropriate and report the action to the PRC.

(2) If corrective action is not taken by the superintendent or director within a reasonable time, or if the action is deemed insufficient or inappropriate by the PRC, the PRC shall appeal as follows:

(A) At facilities, the PRC may file a written appeal to the appropriate deputy commissioner, the commissioner, and the Texas Board of Mental Health and Mental Retardation.

(B) At centers, the PRC may file a written appeal to the board, with a copy of the appeal sent to the Office of Client Services and Rights Protection, Central Office, TDMHMR.

Source: The provisions of this §403.451 adopted to be effective December 26, 1983, 8 TexReg 5178.

§403.452. Exhibits.

The following exhibits are referred to in this subchapter:

(1) *Exhibit A*—Notice. This document illustrates a form that may be used to inform people of the existence of the Public Responsibility Committee as well as the nature of its works, its address, and the fact that it is independent of the department.

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

(3) *Exhibit C*—Acknowledgment. This form gives a sample form which may be used by the Public Responsibility Committee in acknowledging the receipt of a complaint and assuring an investigation of the complaint.

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(4) *Exhibit D*—Notice informing clients or patients or complainants of any action taken. This exhibit illustrates a form that may be used by a Public Responsibility Committee to inform any person who has complained to it that the committee has completed its investigation of the complaint. The form also informs the complainant of whatever action has been taken as a result of the investigation.

(5) *Exhibit E*—PRC log. This exhibit illustrates the form to be used by the Public Responsibility Committee for the recording of all of the comments, suggestions, and complaints reviewed by the committee. Copies of this exhibit may be obtained from the central office Reproduction Section of the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

(6) *Exhibit F*—Format for informed consent. This exhibit provides forms for certificates with reference to securing legally adequate consent for the disclosure of client-identifying information. Copies of this exhibit may be obtained from the Central Office of the Texas Department of Mental Healthg and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

Source: The provisions of this §403.452 adopted to be effective December 26, 1983, 8 TexReg 5178.

§403.453. References.

Reference is made to the following statutes and rules of the department.

(1) Chapter 405 of this title (relating to Client (Patient) Care). (See especially Subchapter O, relating to Client Abuse and Neglect in TDMHMR Facilities.)

(2) Texas Civil Statutes, Article 5547-87.

(3) Texas Civil Statutes, Article 5561(h).

(4) Texas Civil Statutes, Article 5547-202.

(5) Texas Civil Statutes, Article 5547-203.

(6) Texas Civil Statutes, Article 5547-204, §4.01.

(7) Texas Civil Statutes, Article 5547-300, §§50 and 60.

Source: The provisions of this §403.453 adopted to be effective December 26, 1983, 8 TexReg 5178; amended to be effective January 9, 1986, 10 TexReg 5011.

§403.454. Distribution.

(a) The provisions of this subchapter shall be distributed to members of the Texas Board of Mental Health and Mental Retardation; deputy commissioners and directors of central office; superintendents and directors of all TDMHMR facilities and centers; coordinators of volunteer services; and chairpersons of all facility and center public responsibility committees.

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

Source: The provisions of this §403.454 adopted to be effective December 26, 1983, 8 TexReg 5178.

SUBCHAPTER Q. LICENSING OF PRIVATE MENTAL HOSPITALS

Authority: The provisions of this Subchapter Q issued under Acts 1957, 55th Leg., p. 505, ch. 243, §95, effective January 1, 1958 (Texas Civ. St. art. 5547-95); and Acts 1965, 59th Leg., p. 165, ch. 67, §1, effective September 1, 1965 (Texas Civ. St. art. 5547-202, §2.11(b)).

§403.461. Purpose.

The purpose of this subchapter governing licensing of private mental hospitals is to insure proper care and treatment of patients in private mental hospitals.

Source: The provisions of this §403.461 adopted to be effective December 24, 1979, 4 TexReg 4496.

Notes of Decisions: The Department of Mental Health and Mental Retardationhas authority to license as a private mental hospital a residential treatment program which does not operate in a traditional hospital building if it complies with departmental standards for suitable premises and for the proper care and treatment of mental patients. Op. Atty. Gen. No. MW-35 (1979).

§403.462. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

Applicant—A person who is seeking a license from the department, and who has complied with all statutory and department rules with respect to the execution and completion of application forms and the furnishing of required information and documents.

Category A license—The permission to operate a private mental hospital granted to a person by the department which substantially conforms to all of the standards contained in this subchapter.

Category B license—The permission to operate a private mental hospital granted to a person by the department which does not operate in a traditional hospital building but substantially complies:

(A) with departmental standards other than physical plant standards contained in this subchapter for the proper care and treatment of mental patients; and

(B) with JCAH standards for psychiatric programs and continues to be accredited by JCAH and provides the department with evidence of accreditation.

Category C license—The permission to operate a private mental hospital granted to a person by the department which does not operate in a traditional hospital building but substantially complies:

(A) with departmental standards other than physical plant standards contained in this subchapter for the proper care and treatment of mental patients; and

(B) with JCAH standards for psychiatric programs within 15 months from initial licensure by the department and provides the department with evidence of a one-year or two-year accreditation by the JCAH.

Commissioner—The commissioner of the Texas Department of Mental Health and Mental Retardation.

Department—The Texas Department of Mental Health and Mental Retardation.

JCAH—The Joint Commission on the Accreditation of Hospitals.

Licensee—A person who has been granted a license by the department and who has not had that license suspended or revoked by the department.

Mental hospital—A hospital operated for the primary purpose of providing inpatient care and treatment for the mentally ill.

Person—Includes firm, partnership, joint stock company, joint venture, association, and corporation.

Political subdivision—Includes a county, city, town, village, or hospital district in this state but does not include the department or any other department, board, or agency of the state having statewide authority and responsibility.

Private mental hospital—A mental hospital operated by any person or political subdivision.

Source: The provisions of this §403.462 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.463. Applicability.

The provisions of this subchapter apply to:

(1) persons operating a private mental hospital in Texas; and

(2) applicants for licensure as a private mental hospital in Texas.

Source: The provisions of this §403.463 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.464. Basic Principles.

(a) The primary function of a private mental hospital shall be to:

(1) provide, for compensation, from its patients on an inpatient basis, diagnostic, and therapeutic services for the treatment of mental disorders. Though not required, outpatient services may be provided;

(2) have provisions for all medical services that would be required for the treatment of any other disease or any injury manifested during confinement;

(3) prepare and maintain a written individual treatment plan for each patient based on a diagnostic assessment of the patient's needs with documentation that the plan is under the supervision of any physician licensed to practice medicine in Texas;

(4) have a staff of physicians specializing in psychiatry directly involved in the treatment program, at least one of whom must be present at the facility or on call at all times;

(5) provide medical and psychiatric care and treatment in accordance with the highest standards accepted in medical practice;

(6) safeguard the dignity and civil rights of the patient;

(7) provide personnel qualified for the type of work they perform. Members of the professional staff must be competent and subscribe to professional and ethical standards. Also, the treatment of psychiatric disorders involves the contribution of parapsychiatric professionals. The ultimate responsibility for patient care rests with the psychiatrist; and

(8) not deny any person because of race, creed, sex, or national origin services, membership of the governing board, medical staff, or participation in the affairs of the facility.

(b) When community mental health centers contract with another facility to provide inpatient services to patients court-committed under the Mental Health Code to the center for inpatient psychiatric services, the facility that the center contracts with must be licensed as a private mental hospital.

(c) If a facility or a portion of a facility is going to accept court-committed patients under the Mental Health Code, the facility or that portion of the facility must be licensed as a private mental hospital.

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(d) In those cases where a facility is licensed as a hospital, and that facility has a portion of the facility that is designated for psychiatric services, that special section of the hospital may be licensed as a private mental hospital.

(e) Each private mental hospital shall comply with all the provisions of the Texas Mental Health Code.

Source: The provisions of this §403.464 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.465. Governing Board: Responsibility, Disclosure of Ownership and Control; Required Actions.

(a) Each hospital shall have a governing board of at least three persons to whom the head of the hospital shall report. The governing board has legal and moral responsibility for the conduct of the hospital in meeting the needs of both the patient and the community. Minutes shall be kept of the board meetings.

(b) Full disclosure of facility ownership and control is required. Licensure is not transferable on change of ownership and control and/or relocation. The facility shall advise the deputy commissioner for Mental Health Services of the department within 60 days prior to the change of ownership, control, and/or relocation of the facility. When such a change is made, a new license will be issued upon the day of the changeover if the facility continues to meet these licensing standards.

(c) The governing board shall:

(1) adopt bylaws and have written policies, procedures, and organizational plans;

(2) appoint, to be in charge of medical treatment, a physician who is certified by the American Board of Psychiatry and Neurology; a physician who is certified by the American Osteopathic Board of Psychiatry and Neurology; or a physician who has at least three years of experience as a physician in psychiatry in a mental hospital. The board may appoint, as chief administrative officer of the hospital, anyone meeting the criteria in this paragraph, or anyone who is eligible for certification in administration by the American Psychiatric Association, or who has a masters degree in hospital administration or its equivalent, or has demonstrated competency in hospital administration;

(3) insure that all federal, state, and local laws including licensure, fire inspection, and other safety measures are met;

(4) appoint members of the medical staff and make them responsible for making recommendations concerning medical staff appointments, reappointments, and delineations of privileges. It shall require that the medical staff maintain high standards of professional ethical practice. The diagnosis and treatment of psychiatric disorders are the ultimate responsibility of psychiatrists;

(5) provide a physical plant equipped and staffed to maintain the needed facilities and services for patients;

(6) provide for the election or appointment of its officers and the appointment of committees necessary to effect the discharge of its responsibilities; and

(7) establish a formal means of liaison with the medical staff, preferably by a joint conference committee.

Source: The provisions of this §403.465 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.466. Physical Plant Standards for Private Mental Hospitals.

(a) Each private mental hospital shall be constructed in compliance with Chapter 10, Institutional Occupancies, of the National Fire Protection Association Number 101, Life Safety Code, 1973.

(b) Each private mental hospital seeking licensure on or after the effective date of these standards shall be required to comply with section 10-1, New Hospitals, Nursing Homes, and Residential/Custodial Care Occupancies, Life Safety Code, 1973.

(c) Any additions to an existing licensed private mental hospital shall be constructed in compliance with section 10-1, New Hospitals, Nursing Homes, and Resident/Custodial Care Occupancies, Life Safety Code, 1973.

(d) Each private mental hospital licensed on the effective date of these standards shall comply with section 10-2, Existing Hsopitals, Nursing Homes, and Residential/Custodial Care Occupancies, Life Safety Code, 1973.

(e) Buildings or sections of buildings which house or in which care is rendered to mental patients who are capable of average judgment in taking action for their preservation under emergency conditions, in the opinion of the commissioner the Texas Department of Mental Health and Mental Retardation, may come under other sections of the Life Safety Code instead of section 10-1.

(f) The commissioner may require buildings or sections of buildings of a private mental hospital in which care is rendered to mental patients who are capable of average judgment in taking action for their preservation under emergency conditions to comply with sections of the 1973 Life Safety Code other than section 10-1 of that code.

(g) Each private mental hospital is required to have an approved fire safety inspection from a local fire marshall. Inspections will be performed at least on a semiannual basis. Documentation must be provided if local fire marshall will not perform these inspections.

Source: The provisions of this §403.466 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.467. Dietetic Department: Facilities; Personnel; Records; Conferences.

(a) Each private mental hospital must have an organized dietetic department directed by qualified personnel and integrated with other departments of the hospital.

(b) Facilities must be provided for the general dietary needs of the hospital. These should include facilities for the preparation of special diets. Sanitary conditions must be maintained in the storage, preparation, and distribution of food.

(c) There must be a qualified dietitian available to clinical staff and patients.

(d) There should be adequate administrative and technical personnel competent in their respective duties.

(e) There must be a systematic record of menus for review by a dietitian for nutritional adequacy.

(f) Documentation of special diets must be recorded in the patient's clinical record including regular progress notes by the dietitian.

(g) Departmental and interdepartmental conferences should be held periodically to assure that the food service is an integral part of the treatment program.

(h) Food should be served in an attractive and relaxed atmosphere at hours which are realistic to the needs of patients.

Source: The provisions of this §403.467 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.468. Clinical Records: Administrative Procedures; Medical Staff Responsibilities; Contents of the Clinical Record.

(a) With respect to the administrative procedures of a private mental hospital, the following provisions are applicable:
  (1) There must be a clinical record maintained on each patient admitted for care.
  (2) Clinical records must be kept inviolate or a microphotographic reproduction thereof and preserved for a period of time not less than 10 years after discharge of the patient.
  (3) The clinical records department shall be the responsibility of an individual who has demonstrated competence and experience or training in clinical record administration.
  (4) An identification and filing system to insure the rapid location of the patient's clinical record must be maintained.
  (5) All clinical information pertaining to a patient must be included in the patient's record.
  (6) All patient record information must be kept confidential except as indicated in §403.490 of this title (relating to License Application Process).
  (7) Clinical records for all discharged patients must be completed within 15 days.
  (8) All verbal orders shall be signed within 24 hours by the presiding physician.
  (9) All entries must be authenticated by signature and title.

(b) The physician of each patient is responsible for insuring that the clinical record contains sufficient information to justify the diagnosis and course of treatment.

(c) The clinical record should contain sufficient information to clearly identify the individual patient, to justify the diagnosis and treatment, and to accurately document the results. The records should contain:
  (1) identification data;
  (2) basic descriptive data concerning the patient, including present illness and social history;
  (3) a summary of the evaluation process, including diagnosis, treatment recommendations, prognosis, and outcome;
  (4) initial and periodic physical and psychiatric examinations;
  (5) a record of all psychological testing;
  (6) a plan for treatment based on initial medical and psychiatric examinations within seven days after admission and indicating the date that the next review is planned;
  (7) a nursing assessment and care plan;
  (8) signed, dated, and timed orders for medical/psychiatric treatment, medications, mechanical restraint and seclusion which must be time limited, and incident/accident reports;
  (9) a record of the medication including dosage, duration and route of the administration, and results of the treatment;
  (10) a copy of all consultation reports, including clinical laboratory reports and X-ray reports;
  (11) progress notes by all clinical staff actively involved in the patient's treatment;
  (12) all communications including clinical history or clinical progress;
  (13) a discharge summary including at least a recapitulation of the patient's hospitalization, course of treatment, recommendations concerning follow-up or after-care, and the patient's condition at discharge; and
  (14) autopsy findings.

Source: The provisions of this §403.468 adopted to be effective December 24, 1979, 4 TexReg 4496.

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§403.469. Pharmaceutical Services.

(a) Each private mental hospital shall maintain or contract with a pharmacy directed by a registered pharmacist.

(b) Pharmaceutical services provided or contracted for by a private mental hospital shall:

(1) be appropriately staffed to meet the needs of the patients;

(2) provide for safe procedures, facilities and equipment for storing, preparing, and dispensing of drugs;

(3) inspect all drug storage areas and medication stations on a monthly basis. These inspections shall be clearly documented;

(4) participate in staff development programs for professional and supporting staff;

(5) be responsible for admixture of parenteral products; and

(6) maintain and provide for adequate drug information and reference materials.

(c) Each private mental hospital shall formulate written policies and procedures with regard to pharmaceutical services that are reviewed and revised at least annually and include the following:

(1) Arrangement for obtaining drugs when the pharmacy is closed.

(2) Medication administered shall be prescribed for the patient by a licensed physician.

(3) Legend medications shall be kept in containers bearing the prescription label which shows the patient's name, date filled, name of medication, strength, number of tablets or capsules, directions for use, name of physician prescriber, prescription number, expiration of time dated drugs, and special precautions or properly labeled unit dose.

(4) Medications shall be administered by licensed nursing personnel and shall be directly supervised by a registered nurse. A registered nurse shall be accountable for all medications given.

(5) An annual refresher course for licensed nursing personnel shall be required so that such personnel may remain familiar with new medications and refresh information on currently utilized medications.

(6) Self-administration of medications shall be permitted only when there is a specific written order signed by the attending physician and there is supervision by an appropriate clinical staff member.

(7) Medication errors and drug reaction shall be promptly reported to the attending physician and director of nursing services or their on-duty representative and the pharmacist.

(8) Emergency medical kits shall have their contents approved by the medical staff, readily available, properly sealed, and inspected monthly.

(9) Security and accountability requirements for scheduled drugs shall be maintained and documented in accordance with pertinent laws and safe pharmacy practices.

Source: The provisions of this §403.469 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.470. Pathology Services.

(a) Each private mental hospital shall provide for and have a written plan describing the organization of or arrangement for the provision of:

(1) clinical pathology services;

(2) anatomic pathology services; and

(3) blood bank services.

(b) Pathology services provided or contracted for by private mental hospital shall maintain:

(1) a pathologist, either full time or as a consultant on a scheduled basis;

(2) adequate and qualified personnel to supervise and conduct the service in order to meet the patients' needs;

(3) adequate facilities, space, and equipment to perform pathology examinations;

(4) at least one medical technologist on duty or available on call at all times;

(5) signed duplicate copies of all reports that are filed in the patients' records; and

(6) safety equipment, such as a fire blanket, an eyewash station, and an emergency shower station.

(c) Each private mental hospital shall formulate written policies and procedures with regard to pathology services that are reviewed and revised at least annually and include the following:

(1) A complete listing and description of each available test.

(2) A list of analytical methods employed and information concerning the basis for the listed "normal" range made available to each medical staff member.

(3) Written procedures regarding:

(A) ordering of tests;

(B) collection of specimens;

(C) proper identification, storage, and preservation of specimens; and

(D) deadlines for reporting results.

(4) Written plan for a preventative and corrective maintenance program that includes a description of records to be maintained on each piece of equipment showing the date of inspection and the validation or performance evaluation.
(5) The checks and rechecks done on chemical and biochemical solutions to ensure proper reactivity.
(6) The lab should participate regularly in proficiency surveys or reference sample service or both.

Source: The provisions of this §403.470 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.471. Radiology Services.

(a) Each private mental hospital shall provide for:
(1) a written plan describing the organization of radiology services; or
(2) arrangement for the provisions of radiology services on a contractual basis to meet the needs of hospitalized patients. Such contracted services shall meet these same requirements.

(b) Radiology services provided or contracted for by a private mental hospital shall:
(1) be directed by a qualified radiologist on the medical staff or by a consultant on a scheduled basis;
(2) maintain at least one qualified radiologic technologist on duty or on call at all times;
(3) provide for safety procedures to assure that radiology services provided are free of hazards for patients and personnel;
(4) provide adequate qualified personnel, space, and equipment for the reception, examination, and treatment of patients;
(5) maintain a written record of calibration on equipment on at least an annual basis; and
(6) provide authenticated reports of radiology examinations and therapy in the patient's medical record and retain duplicates in the radiology department.

(c) Each private mental hospital shall formulate written policies and procedures with regard to radiology services that include:
(1) a written description shall be maintained in each nursing station of all examinations and therapy available through radiology services;
(2) the requirements for written medical orders;
(3) regulations for the use, handling, and storage of radioactive elements;
(4) a written plan for the referral of patients for evaluation and treatment for services not provided; and
(5) at least an annual review, which must be dated and signed, to indicate time of last review.

Source: The provisions of this §403.471 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.472. Emergency Services: Written Plan; Policies and Procedures; Adequate Medical Records; Facilities; Responsibility for Services.

(a) Each private mental hospital shall have a well-defined written plan for providing emergency services, including physical as well as psychiatric emergencies based on the need and the capability of the facility. This plan shall:
(1) describe the procedures whereby an ill or injured person can be assessed and either treated or referred to another facility, as appropriate;
(2) be reviewed and updated at least annually; and
(3) describe emergency procedures and life saving procedures.

(b) Each private mental hospital shall have written policies and procedures concerning the extent of treatment to be provided in the emergency situations. These policies and procedures shall:
(1) be approved by the medical staff and by the administration of the private mental hospital; and
(2) be reviewed at least annually, revised as necessary, and dated to indicate the time of last review.

(c) All information relative to emergency care shall be included in the patient's clinical record.

(d) A review of emergency medical records shall be conducted annually by each private mental hospital in order to evaluate the quality of emergency medical care being provided. The emergency service should maintain a log, file, or register. The information in the register should be minimal, containing only those items necessary for reference. However, it should contain at least the name, date, time of arrival, clinical record number, and nature of injury of each patient served, type of treatment rendered, and disposition of patient.

(e) Facilities for physical or psychiatric emergency service or both shall be such as to insure the effective care of the patient.

(f) Wherever the emergency service is provided, the private mental hospital and the medical staff shall be responsible for insuring that the emergency patient care provided meets the same standards of care prevailing in the private mental hospital itself.

Source: The provisions of this §403.472 adopted to be effective December 24, 1979, 4 TexReg 4496.

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§403.473. Social Work Services: Provision of Services, Functions Performed; Social Work Staff and Qualifications; Service Records.

(a) Each private mental hospital must have a written description and organizational plan for the provision of psychiatric social work services.

(b) If the private mental hospital has a social service department, that department should perform the following functions:

(1) Secure information about patient's development and current life situation to provide psychosocial data for diagnosis and treatment planning.

(2) Direct therapeutic services to patients, patient groups, or families to assist patients with their social functioning needs as part of the treatment planning.

(3) Participate in interdisciplinary conferences concerning diagnostic formulation, treatment planning, and progress reviews.

(4) Identification or development of community resources to facilitate the smooth movement of patients in and out of the hospital from preadmission to aftercare.

(c) If the private mental hospital has a social services department, or if social reviews are provided on a contractual basis, the supervisor of social services must have a master of social work degree from an accredited school of social work. Social work staff must be numerically adequate to perform the stated functions.

(d) Entries in patient records by social work personnel should include:

(1) the psychosocial and developmental study information for appropriate patients;

(2) social work therapies with patients;

(3) home environmental studies where indicated;

(4) contacts or cooperative activities with community agencies;

(5) social service summaries; and

(6) follow-up reports on discharged patients.

Source: The provisions of this §403.473 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.474. Psychological Services: Provision of Services; Functions Performed; Psychology Staff and Qualifications.

(a) Each private mental hospital must have a written description and organizational plan for the provision of clinical psychological services.

(b) If the private mental hospital has a psychology department, that department should perform the following functions:

(1) assist in diagnosis developed as a result of psychological testing and interviewing;

(2) provision of patient therapy, research, program development, and training;

(3) participate in interdisciplinary conferences concerning diagnostic formulation, treatment planning, and progress reviews.

(c) If the private mental hospital has a psychology department or if psychological services are provided on a contractual basis, the supervisor of psychological services must be provided by a psychologist licensed by the Texas State Board of Examiners of Psychologists.

(d) All psychological services provided should be recorded in the patient's clinical record.

Source: The provisions of this §403.474 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.475. Activity Services; Patient Library.

(a) Each private mental hospital shall provide for and have a written plan describing the organization of and arrangement for the provision of rehabilitation and occupational therapies.

(b) Activity services provided by a private mental hospital shall:

(1) be under the supervision of a psychiatrist, and directed by an individual who has demonstrated competence and experience or training in directing activity therapies;

(2) be adequate in number and qualifications to conduct the services to meet the patients' needs; and

(3) be carried out in adequate facilities, space, and equipment.

(c) Activity therapies shall be available to patients on a daily basis and shall be based on evaluation and assessment that result in specific individual goals that are coordinated with the overall treatment plan for each patient.

(d) A library for patients' use shall be readily available.

Source: The provisions of this §403.475 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.476. Chaplain Service.

Religious and spiritual services shall be made available to those patients requesting such services.

Source: The provisions of this §403.476 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.477. External Disasters: Written Plan; Contents of Plan.

Each private mental hospital shall have a written plan for the proper and timely care of casualties arising from external disastersand shall periodically rehearse such plan. The following regulations regarding external disaster plans shall be followed:

(1) To meet its responsibilities for emergency casualty care at the time of a disaster, each private mental hospital shall develop a disaster plan based on its capabilities.

(2) The plan should be developed in conjunction with other emergency facilities in the community so that adequate logistical provisions are made for the organization of the private mental hospital's activities in coordination with those of other facilities. A private mental hospital's participation may range from providing first aid, or preparing casualties for transfer, to administering definitive care.

(3) Planning may include consultation with local civil authorities and with representatives of medical agencies in order to cooperatively establish an effective chain of command at the disaster site and to make appropriate jurisdictional provisions. Such cooperative planning should result in provisions for disaster-site triage and for the distribution of patients that makes the most efficient use of available facilities and services.

(4) The hospital has the responsibility for informing the community of its potential and its limitation in the event of a community disaster. The extent of the hospital's resources should be clearly identified for local police, rescue squads, and ambulance teams.

(5) The disaster plan shall be rehearsed at least twice a year, preferably as part of a coordinated effort in which other community emergency service agencies participate. The drill shall involve the medical staff, as well as administrative, nursing, and other hospital personnel. Actual movement or evacuation of patients is optional. There shall be a written report and evaluation of all drills.

(6) The disaster plan should make provision within the private mental hospital for:

(A) an efficient system of notifying and assigning personnel;

(B) unified medical command;

(C) availability of adequate basic utilities and supplies, including gas, water, food, and essential medical and supportive materials;

(D) conversion of all usable space into clearly defined areas for efficient triage, for patient observation, and for immediate care;

(E) prompt transfer of casualties, when necessary, and after preliminary medical or surgical services have been rendered, to the facility most appropriate for administering definitive care;

(F) a special disaster medical record, such as an appropriate tag, shall accompany the casualty as he is moved;

(G) procedures for the prompt discharge or transfer of patients in the private mental hospital who can be moved without jeopardy;

(H) procedures for maintaining security in order to keep unauthorized persons out of the triage area; and

(I) arrangements for a public information center and the assignment of public relations liaison duties to a qualified individual. Arrangements with communications media will help to provide an organized dissemination of information.

Source: The provisions of this §403.477 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.478. Internal Disasters: Written Plan; Contents of Plan.

Each private mental hospital shall have a written plan for the proper and timely care of casualties arising from internal disastersand shall periodically rehearse such plan. The following regulations regarding internal disaster plans shall be followed:

(1) Fire and internal disaster plans that incorporate evacuation procedures should be developed with the assistance of qualified fire, safety, and other appropriate experts. Among the provisions should be:

(A) plans for the assignment of personnel to specific tasks and responsibilities;

(B) instructions relating to the use of alarm systems and signals;

(C) information concerning methods of fire containment;

(D) systems for notification of appropriate persons;

(E) information concerning the location of fire-fighting equipment;

(F) specification of evacuation routes and procedures; and

(G) other provisions as the local situation dictates.

(2) These plans shall be made available to all private mental hospital personnel and shall be posted throughout the private mental hospital.

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(3) Fire drills shall be held at least quarterly and drills for other internal disaster circumstances shall be held at least twice a year for each shift of personnel and under varied conditions in order to:
   (A) insure that all personnel on all tours of duty are trained to perform assigned tasks;
   (B) insure that all personnel on all tours of duty are familiar with the use and operation of the fire-fighting equipment in the private mental hospital; and
   (C) evaluate the effectiveness of the plan.

(4) The actual evacuation of patients to safe areas during a drill is optional. There should be a written report and evaluation of all drills.

(5) Each private mental hospital shall insure that it has fire protection services provided by the local fire department or by the private mental hospital itself. In areas in which it is not precluded by law, each private mental hospital's automatic and manually activated fire alarm systems should have a direct line to the municipal circuit of the local fire department or a connection either to a remote receiver or through a central station as approved by NFPA.

Source: The provisions of this §403.478 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.479. Patient Education and Vocational Rehabilitation Services.

(a) Each private mental hospital shall have a written plan describing the organization of patient education and vocational rehabilitation services or the arrangements for the provision of such servies to meet the needs of its patients. The written plan shall:
   (1) provide for great flexibility of program choice;
   (2) specify the organization, philosophy, and methods of the facility's education and vocational rehabilitation resources and/or those utilized within the community;
   (3) relate these services to the therapeutic goals, scope, and organization of the psychiatric facility;
   (4) specify lines of responsibility;
   (5) define the roles of the education and vocational rehabilitation services personnel, the methods of personnel utilization, and interdisciplinary collaboration within the facility; and
   (6) describe arrangements for the provision of education and vocational rehabilitation services provided outside the psychiatric facility, including the responsibilities and mechanisms for continuing effective liaison and coordination of programs and therapeutic efforts.

(b) There shall be available a sufficient number of appropriately qualified staff and necessary supporting personnel to provide patient education services.

(c) There shall be available a sufficient number of appropriately qualified staff and necessary supporting personnel to provide vocational rehabilitation services.

(d) There shall be written policies and procedures for the provision of patient education and vocational rehabilitationservices. These policies shall identify purposes, specific objectives, and methods for each type of service.

(e) There shall be documentation of effective implementation of all patient education and vocational rehabilitation services provided to each patient. There shall be an evaluation of each patient's education and vocational rehabilitation needs, including academic, intellectual, vocational and social appraisal, and appraisal of speech, hearing and sight, and other special physical considerations.

(f) There shall be appropriate and adequate space and equipment for the patient education and vocational rehabilitationservices to be provided effectively and efficiently in pleasant and functional surroundings, readily accessible to the patients of the psychiatric facility.

(g) There shall be a staff development program for patient education and vocational rehabilitation services personnel.

Source: The provisions of this §403.479 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.480. Medical Staff: Responsibility for Quality of Care; Qualifications.

(a) Each private mental hospital must have an organized medical staff which is responsible to the governing body of the private mental hospital for the quality of medical and overall psychiatric care provided to patients and for the ethical and professional services of its members.

(b) Members of the medical staff who are responsible for the diagnosis and treatment of psychiatric disorders must be certified or eligible for certification by the American Board of Psychiatry and Neurology. Physicians who do not meet these qualifications must be under the supervision of a qualified staff psychiatrist.

Source: The provisions of this §403.480 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.481. Medical Staff: Responsibilities and Duties.

(a) The governing body of each private mental hospital must delegate the responsibility of medical functions, which includes psychiatric functions, to the medical staff, including recommendations as to the professional qualifications of all physicians who practice in the private mental hospital. The medical staff is responsible for the quality of all categories of medical care rendered to patients in the private mental hospital.

(b) Maintaining high standards of medical care will depend upon the character of the staff and the effectiveness of its organization to carry out the following duties:

(1) selection of persons recommended for staff appointments and hospital privileges;

(2) constant analysis and review of the clinical work done in the private mental hospital through its various committees;

(3) support of medical staff and hospital policies;

(4) maintenance of adequate medical records;

(5) procurement of autopsies.

(c) Attending physicians are responsible for requesting consultations when indicated. It is the duty of the private mental hospital staff through its medical director and chiefs of services and executive committee to make certain that members of the staff do not fail in the matter of calling consultants as needed.

Source: The provisions of this §403.481 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.482. Medical Staff: Programs; Plans; Policies; Professional Personnel Meetings.

(a) Each medical staff member must be able to show evidence of participation in continuing medical education as recommended by his or her discipline designed to keep them informed of new developments and new skills in medicine.

(b) In each private mental hospital where electroconvulsive therapy is utilized, a written plan of administration and recovery care shall be developed by the medical staff with the consultation and approval of an anesthesiologist (M.D.) consultant.

(c) Each private mental hospital must have a written procedure whereby an ill or injured person can be assessed and either treated or referred to an appropriate facility as indicated. This service will also be provided for any ill or injured person who is present at the private mental hospital.

(d) There should be regular multidisciplinary meetings including physicians, social workers, psychologists, occupational therapists, and nurses who can plan and implement treatment goals for psychiatric patients.

Source: The provisions of this §403.482 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.483. Medical Staff: Membership; Appointment Procedure; Qualifications; Privileges; Active Staff; Other Categories of the Staff.

(a) Medical staff appointments for a private mental hospital shall be made by the active staff and approved by the governing body prior to being admitted to the staff. The prevailing custom is for a term of one year, with reappointments continued so long as qualifications remain satisfactory.

(b) Members of the medical staff of a private mental hospital must be licensed and be qualified professionally and ethically for the positions to which they are appointed.

(c) The privileges of each member of the medical staff of a private mental hospital shall be determined on the basis of professional qualifications and demonstrated ability.

(d) Regardless of any other categories of staff who have privileges in the private mental hospital, there shall be an active staff, properly organized, which shall perform all the organizational duties pertaining to the medical staff. The organizational duties of the active staff shall include:

(1) maintenance of high quality in all medical/psychiatric care and treatment in the hospital;

(2) organization of the medical staff, including adoption of rules and regulations which must be approved by the governing body of the private mental hospital, for its government, election of its officers, and recommendations to the governing body upon all appointments to the medical staff and grants of hospital privileges; and

(3) other recommendations to the governing body of the private mental hospital upon matters within the purview of the medical staff.

(e) In larger private mental hospitals and in some smaller private mental hospitals, the medical staff may include one or more of the following categories in addition to the active staff, but this in no way modifies the duties and responsibilities of the active staff:

(1) *Honorary staff.* The honorary staff shall be former active staff, retired or *emeritus*, and other physicians of reputation whom it is desired to honor.

(2) *Consulting staff.* The consulting staff shall be recognized specialists willing to serve in such capacity. A member of the consulting staff may also be a member of the active staff, but only if the two appointments are made.

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(3) *Courtesy staff.* The courtesy staff shall be members who use the hospital infrequently or less experienced members undergoing a period of probation before being considered for appointment to the active staff.

Source: The provisions of this §403.483 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.484. Medical Staff: Organization; Officers; Bylaws; Committees.

(a) The medical staff of each private mental hospital shall have such officers as may be necessary for the government of the medical staff. Officers shall be members of the active staff and shall be elected by the active staff.

(b) Medical staff bylaws to govern and enable the medical staff to carry out its responsibilities in accordance with the provisions of this subchapter shall be adopted.

(c) The complexity of committee organization of the medical staff depends upon the size and composition of the medical staff of the individual private mental hospital. A small medical staff may wish to function as a committee of the whole. Others may wish to combine committee functions in two or three committees. The structure of committee organization is a decision to be made by the medical staff so long as the following required committee functions are carried out:

(1) The executive committee shall coordinate the activities and general policies of the various departments; act for the medical staff as a whole under such limitations as may be imposed by the medical staff, and receive and act upon the reports of the medical records and such other committees as the medical staff may designate. The executive committee shall meet at least once a month and shall maintain a permanent record of its proceedings and actions.

(2) The credentials committee shall review applications for appointment and reappointment to all categories of the medical staff. The credentials committee shall delineate the privileges to be extended to the applicant and make appropriate recommendations according to the procedure outlined in the private mental hospital's medical staff bylaws.

(3) The joint conference committee shall be a medico-administrative advisory committee and the official means of liaison among the medical staff, the governing body, and the administrator. In the absence of a joint conference committee, a formal means of liaison between the governing board and the medical staff must be established.

(4) The medical records committee shall supervise the maintenance of medical records at the required standard of completeness. On the basis of documented evidence, the medical records committee shall also review and evaluate the quality of medical care given the patient. The medical records committee shall meet at least once a month and shall submit a monthly report in writing to the executive committee.

Source: The provisions of this §403.484 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.485. Medical Staff: Meetings.

(a) The improvement in care and treatment of private mental hospital patients is the responsibility of the medical staff. To accomplish this, meetings of the medical staff are required to review, analyze, and evaluate the clinical work of its members.

(b) The medical staff shall meet monthly.

(c) Attendance requirements for all medical staff meetings shall be determined by the executive committee and shall be stated in the medical staff bylaws. The requirements for each individual member of the medical staff and for the total attendance at each meeting shall be clearly stated in the bylaws of the medical staff. Records of attendance shall be kept.

(d) Adequate minutes of all meetings shall be kept.

(e) The method adopted to insure adequate evaluation of clinical practice in the hospital shall be determined by the medical staff and clearly stated in the medical staff bylaws.

Source: The provisions of this §403.485 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.486. Nursing Services.

(a) Each private mental hospital shall have:

(1) a nursing service under the direction of a registered nurse who:

(A) has a graduate degree in psychiatric nursing; or

(B) has at least three years experience in psychiatric nursing.

(2) on duty at all times an RN with either a graduate degree in psychiatric nursing or one year of experience in psychiatric nursing.

(3) an appropriate number of licensed professional nursing personnel on duty at all times to plan, assign, supervise, and evaluate nursing care, as well as to assure that patients receive the care that requires the judgment and specialized skills of a registered nurse.

(b) The nursing services department of each private mental hospital shall:

(1) organize a departmental written plan including administrative authority with delineation of responsibilities and duties of each category of nursing personnel;

(2) establish working relationships with other services of the hospital, both administrative and professional;

(3) provide a sufficient number of licensed vocational nurses, mental health workers, and other ancillary nursing personnel to meet the needs of the patients;

(4) have regularly scheduled monthly meetings of professional nursing staff to discuss patient care, inservice training, nursing service problems, and administrative problems. Minutes of all meetings shall be kept; and

(5) develop a mechanism to assure nursing proficiencies required to perform special procedures or therapies or both. This should be based on educational experience and especially on present skills and knowledge. Registered nurses requesting these privileges should demonstrate these skills in a supervised setting to determine if they are proficient to perform these procedures independently. This documentation should be maintained in each employee's folder.

(c) Each private mental hospital shall formulate written policies and procedures that are reviewed and revised at least annually and include the following:

(1) nursing philosophy and objectives;

(2) personnel policies;

(3) procedures:

(A) movement of patients;

(B) management of patients;

(C) nursing (medically oriented);

(D) charting;

(E) program description.

(4) emergency and safety, including both medical and psychiatric emergencies.

Source: The provisions of this §403.486 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.487. Patient Rights: Written Statement and Interpretation of Rights; Restrictions on Rights.

(a) Upon admission of every patient to a private mental hospital, the head of the hospital, or his designee, shall inform the patient and any relative or friend who accompanies him to the hospital, in simple, nontechnical language all of his patient rights.

(b) Documentation that the patient was given notification of his rights must be kept in the patient's clinical record.

(c) Written copies of patient rights shall be prominently displayed at all times in patients' dayrooms, recreation rooms, and other gathering places within the private mental hospital frequented by patients in social activities.

(d) Except to the extent that the attending psychiatrist determines and documents in the individual patient's clinical record that it is necessary for the welfare of the patient to impose restrictions, each patient in a private mental hospital has the following rights:

(1) to receive visitors;

(2) to have religious freedom in accordance with the principles, tenets, or teachings of any established church, if requested by the patient or if requested by his next of kin or guardian;

(3) to communicate with persons outside the private mental hospital;

(4) to communicate by uncensored and sealed mail with legal counsel, the courts, the Attorney General of the State of Texas, his or her family, and the Texas Department of Mental Health and Mental Retardation;

(5) to receive and place telephone calls;

(6) to wear his or her own clothes and to keep and use his or her own personal possessions;

(7) to inspect and obtain a copy of his or her clinical records.

(e) Any restriction imposed by the attending psychiatrist on the exercise of the rights enumerated in subsection (d) of this section for the welfare of a particular patient and the reasons for the restriction shall be made a part of the clinical record of that patient. Every restriction must be reviewed at least every 30 days and there must be documentation in the patient's record regarding reasons for continuing of or removal of a restriction.

(f) Each patient in a private mental hospital has, without restriction, the following rights.

(1) to not be subjected to research except with his or her informed consent;

(2) to not receive a lobotomy except with his or her informed consent;

(3) to be treated and addressed with respect and dignity, and to not be subjected to patient abuse;

(4) to not be subjected to the use of behavior modification techniques except with his or her informed consent;

(5) the right to *habeas corpus*, which is not affected by admission to a private mental hospital as a voluntary or involuntary patient;

(6) to not be required to perform labor for the benefit of the private mental hospital;

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(7) to not be deemed by the private mental hospital as incompetent to manage personal affairs, contract, hold a professional, occupational, or vehicle operator's license, marry and obtain a divorce, or make a will solely because of admission or commitment to a private mental hospital. A legal determination of incompetency generally requires a judicial action separate from the admission or commitment of a person to a private mental hospital;

(8) if the patient is a voluntarily admitted patient, to leave the private mental hospital 96 hours after filing with the head of the private mental hospital a written request for his or her release, signed by the patient or by someone on his or her behalf and with his or her consent; provided, however, that the patient may be detained for longer than 96 hours pursuant to a court order that has been obtained within the 96-hour period.

(g) A private mental hospital shall not deem a patient's civil rights and legal capacity to be affected by his or her voluntary admission to a private mental hospital.

Source: The provisions of this §403.487 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.488. Patient Rights: Use of Restraint or Seclusion.

A patient in a private mental hospital shall not be subjected to the use of restraint or seclusion except within the following provisions:

(1) The use of restraint or seclusion is authorized only upon the written and signed order of a licensed physician entered into the patient's clinical record. A telephone order that is signed and dated within 24 hours by the appropriate physician is an acceptable policy.

(2) The patient's clinical record shall state the reasons for the issuance of the order and shall also state the behavior necessary for release from seclusion or restraint.

(3) Restraint or seclusion of a patient shall be maintained only so long as he or she is exhibiting unacceptable behavior.

(4) In the event the patient resists the use of restraint or seclusion, only such force as is reasonable and necessary shall be used to implement restraint or seclusion.

(5) A patient in physical restraint or seclusion shall be checked at least every 15 minutes, and a record of the checks shall be made in the patient's clinical record.

(6) An order for restraint or seclusion is valid for only 24 hours. If a patient has been in restraint or seclusion for a 24-hour period, a new order for restraint or seclusion must be issued by a physician. The new order must also state the reasons for its issuance and must be entered into the patient's clinical record.

(7) In order for a room to be used as a seclusion room, the room must have:

(A) no exposed electrical outlets;

(B) variable and adequate lighting;

(C) an observation window through which an observer can see the entire room;

(D) detention screens on all outside windows; and

(E) no fixtures on which a patient can harm himself.

Source: The provisions of this §403.488 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.489. Patient Rights: Confidentiality.

(a) Private mental hospital records which directly or indirectly identify a patient, former patient, or proposed patient shall be kept confidential except where:

(1) consent is given by the individual identified, his legal guardian, or his parent if he is a minor. If the patient is deceased, consent may be given by the executor or administrator of his estate. If there is no appointment of an executor or administrator, consent may be given by the deceased patient's spouse, or, if none, by any adult person related to the deceased patient within the first degree of consanguinity;

(2) disclosure may be necessary to carry out the provisions of the Texas Mental Health Code;

(3) a court directs upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to the public interest; or

(4) the head of the private mental hospital determines that disclosure would be in the best interest of the patient.

(b) Nothing in subsection (a) of this section shall preclude disclosure of information as to the patient's current condition to members of his family or to his relatives or friends.

(c) Disclosure of information concerning alcohol and drug abuse patients is governed by 42 C.F.R. Part 2.

Source: The provisions of this §403.489 adopted to be effective December 24, 1979, 4 TexReg 4496.

§403.490. License Application Process.

(a) All correspondence with reference to an application for a new license to operate a private mental hospital is to be directed to the commissioner of the Texas Department of Mental Health and Mental Retardation.

(b) An application fee and a license fee shall accompany the application for a license. See Exhibit A, which is available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711. If the department denies the license, only the license fee shall be returned. The application fee is $25. The annual license fee payable on August 31 of each year is $50.

(c) After receipt of proper application for license and the required fee, the department shall make such investigation as it deems desirable. If the department finds that the premises are suitable and that the applicant is qualified to operate a mental hospital in accordance with the requirements and standards established by law and by the department, the department shall issue a license authorizing the designated licensee to operate a mental hospital on the premises described and for the bed capacity specified in the license.

(d) However, if operation of the mental hospital involves acquisition, construction, or modification of a facility, a change in bed capacity, provision of new services, or expansion of existing services for which a certificate of need or an exemption certificate is required under the Texas Health Planning and Development Act, the department shall not issue the license unless and until the certificate of need or the exemption certificate has been granted to that applicant under that act.

(e) Subject to the applicable provisions of the Texas Health Planning and Development Act, the authorized bed capacity may be increased at any time upon the approval of the department and may be reduced at any time by notifying the department.

(f) A license issued by the department is not transferable or assignable.

(g) A license remains in effect until suspended or revoked by the department or surrendered by the licensee.

(h) The department may require every licensee to make annual, periodical, and special reports and to keep such records as it considers necessary to insure compliance with the provisions of this Code and the rules, regulations, and standards of the department.

(i) The department may make such investigations as it deems necessary and proper to obtain compliance with the provisions of this Code and such rules, regulations, and standards as the department prescribes.

(j) Any duly authorized agent of the department may at any reasonable time enter upon the premises of any private mental hospital to inspect the facilities and conditions, to observe the program for care and treatment, to question employees of the hospital, and may have access for the purpose of examination and transcription to such records and documents as are relevant to the investigation.

(k) The department may maintain an action in the name of the State of Texas for injunction or any other process against any person or political subdivision to restrain the unlicensed operation of a mental hospital.

Source: The provisions of this §403.490 adopted to be effective December 24, 1979, 4 TexReg 4496.

Cross References: This section cited in 25 TAC §403.468 (relating to Clinical Records: Administrative Procedures; Medical Staff Responsibilities; Contents of the Clinical Record).

SUBCHAPTER R. PATIENT ABUSE IN PRIVATE PSYCHIATRIC HOSPITALS.

Authority: The provisions of this subchapter issued under Texas Civil Statute, Article 5547-202.

§403.501. Purpose.

The purpose of this subchapter is to identify and prohibit patient abuse and neglect by employees, affiliates, and agents of private psychiatric hopistals and to prescribe principles for its report and prevention.

Source: The provisions of this §403.501 adopted to be effective July 23, 1986, 11 TexReg 3160.

§403.502. Application.

This subchapter applies to all private psychiatric hospitals licensed by the department under Texas Civil Statutes, Article 5547-88, et seq., other than those operated by community mental health and mental retardation centers.

Source: The provisions of this §403.502 adopted to be effective July 23, 1986, 11 TexReg 3160.

§403.503. Definitions.

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

Affiliate—Any school, organization, or entity associated in a working alliance with a hospital (by contract).

Agent—Any individual not employed by the hospital but working under the auspices of the hospital, such as volunteers, consultants, students, etc.

Administrator—The individual with primary responsibility for day-to-day operation of the hospital.

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Alleged—Pertaining to an event about which an assertation or declaration has been made without proof, and which its maker proposes to support with evidence.

Child—A person under 18 years of age who is not and has not been married or who has not had his disabilities of minority removed for general purposes.

Confirmation—The determination by the Office of Client Services and Rights Protection, Texas Department of Mental Health and Mental Retardation, that patient abuse or neglect has occured.

Department—The Texas Department of Mental Health and Mental Retardation.

Designee—Any person temporarily appointed to fulfill the duties and assume the responsibilities of another.

Disabled person—A person with a mental, physical, or developmental disability between 18 and 65 years of age.

Elderly person—A person 65 years of age or older.

Exploitation—The illegal or improper act or process of an employee using the resources of a patient for monetary or personal benefit, profit, or gain.

Major physical injury—Any injury determined to be serious by appropriate medical personnel who examine the patient. Examples of major physical injury include, but are not limited to the following: fracture; dislocation of any joint; internal injury; nonsuperficial contusion; concussion; first, second, or third degree burn; or any laceration requiring sutures.

Minor physical injury—Any injury determined not to be serious by appropriate medical personnel who examine the patient. Examples of minor physical injury include, but are not limited to, the following; superficial laceration, contusion, or abrasion.

Negligence—The doing of something that a person of ordinary prudence would not have done under the same or similar circumstances, or the failure to do something that a person of ordinary prudence would have done under the same or similar circumstances.

Patient—Any person receiving inpatient services from a private psychiatric hospital.

Source: The provisions of this §403.503 adopted to be effective July 23, 1986, 11 TexReg 3180.

§403.504. Patient Abuse and Neglect Defined.

(a) Class I abuse means any act or failure to act done knowingly, recklessly, or intentionally, including incitement to act, which caused or could have caused major physical injury to the patient. Without regard to injury, any sexual activity between an employee, employee of an affiliate, or agent and a patient will be considered to be Class I abuse.

(b) Class II abuse means any act or failure to act done knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused minor physical injury to a patient; and exploitation.

(c) Class III abuse means any use of verbal or other communication to curse, vilify, or degrade a patient, or threaten a patient with physical or emotional harm, or any act which vilifies, degrades, or threatens a patient with physical or emotional harm.

(d) Neglect means the negligence of any employee, affiliate, or agent which causes or may have caused any physical or emotional injury to a patient. Examples of neglect shall include, but are not limited to, failure to carry out as prescribed individual program plan or treatment plan; failure to provide adequate nutrition, clothing, or health care; or failure to provide a safe environment.

(e) Patient abuse shall not include:

(1) proper use of restraint or seclusion, the approved application of behavior modification techniques, or other action taken in accordance with the written policies and procedures of the hospital; or

(2) such actions as an employee may reasonably believe to be immediately necessary to avoid imminent harm to himself, patients, or other persons if such actions are limited to those actions reasonably believed to be necessary under the existing circumstances.

Source: The provisions of this §403.504 adopted to be effective July 23, 1986, 11 TexReg 3160.

§403.505. Responsibilities of Administrators.

Patient abuse or neglect by hospital employees, employees of affiliates, and agents is prohibited and shall be grounds for disciplinary action. The hospital shall be responsible for establishing a mechanism for reporting and investigating alleged cases of patient abuse and neglect and initiating appropriate disciplinary action in confirmed cases of patient abuse and neglect. This mechanism shall include at a minimum:

(1) delineation of the responsibility of each employee, affiliate, or agent who has cause to believe that a patient has been or may be adversely affected by abuse or neglect to promptly report such cases as required by the Texas Family Code, §34.01 and §34.02, and the Texas Human Resources Code, §48.036, to the Department of Human Services and to the administrator or his or her designee;

(2) procedures for the administrator or his or her designee to promptly and objectively investigate each alleged case of patient abuse or neglect;

(3) provisions for reporting alleged or suspected cases of patient abuse or neglect in accordance with any appropriate laws, as follows:

(A) all allegations of abuse or neglect must be reported to the Department of Human Services pursuant to the Texas Family Code §34.01 and §34.02, and the Texas Human Resources Code, §48.036, and to the Office of Client Services and Rights Protection, Texas Department of Mental Health and Mental Retardation. The Office of Client Services and Rights Protection shall be notified by telephone, (512) 465-4545, within 48 hours of receiving an allegation, or at 8 a.m. on the first succeeding work day for reports received on weekends and holidays. This office may then conduct an investigation which may include the following elements when warranted:

(i) a visit to the hospital;

(ii) interviews with the administrator, other staff, the alleged perpetrator, and victim; and

(iii) review of documentation, such as photographs of injuries, medical reports, patient records, and hospital investigative reports;

(B) criminal acts must be reported to law enforcement agencies. The administrator shall report alleged or suspected patient abuse-related crime to local law enforcement agencies.

(C) child abuse must be reported to the Texas Department of Human Services and to the Office of Client Services and Rights Protection, as follows. Any person having cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect shall report in accordance with the Texas Family Code, §34.02. If the administrator has cause to believe that a child's physical or mental health has been or may be adversely affected by abuse or neglect (whether or not by hospital employees), the administrator or his designee shall make a report as required by the Texas Family Code, §34.01 and §34.02, as amended, when appropriate. Initial verbal reports can be made to the Texas Department of Human Services child abuse hotline, (800) 252-5400, or the local Texas Department of Human Services field office. Written notification of the incident shall be made by the hospital to the Department of Human Services field office within five working days. A final report concerning the completed investigation of the alleged abuse or neglect will be sent to the Texas Department of Human Services field office by the hospital; and

(D) abuse, neglect, or exploitation of an elderly or disabled patient must be reported to the Texas Department of Human Services. When the administrator has reasonable cause to believe that an elderly or disabled patient is in or has been in a state of abuse, exploitation, or neglect, the administrator shall make a report to the Texas Department of Human Services as required by the Human Resources Code, §48.036. Any employee, affiliate, or agent who has reasonable cause to believe that an elderly or disabled person is in a state of abuse, exploitation, or neglect shall make a report to the Texas Department of Human Services as required by the Human Resources Code, §48.036. During normal working hours, the report should be made to the local DHS Adult Protective Services Office. At night and on weekends, the administrator should call the toll free number, (800) 252-5400;

(4) procedures for implementing prompt, proper, and sufficient disciplinary action when a charge of patient abuse or neglect is confirmed. Confirmation of the allegation will be based on a review of the hospital's investigation and/or the findings of the investigation conducted by the Office of Client Services and Rights Protection;

(A) disciplinary action shall be based on criteria including but not limited to:

(i) the seriousness of the patient abuse or neglect;

(ii) the circumstances surrounding the event; and

(iii) the employee's record;

(B) when the administrator determines that patient abuse or neglect has occurred, he or she shall take immediate disciplinary action;

(5) procedures to be followed if it is determined that a patient is responsible for abuse of another patient; and

(6) provisions for preparation of a written report of findings and action taken.

(A) The hospital's investigation shall be completed, including the written report within five calendar days of receiving an allegation and shall be made available to the Office of Client Services and Rights Protection immediately. The report of investigation and action taken shall be maintained by the hospital for a period of five years. (See Exhibit A, which is adopted by reference and may be obtained from the Texas Department of Mental Health and Mental Retardation, Client Services and Rights Protection, P.O. Box 12668, Austin, Texas 78711.)

(B) Final reports of suspected child abuse and neglect shall also be reported on Form 1B, office of youth care investigations, final report of suspected child abuse and neglect in a child care facility and sent to the Office of Client Services and Rights Protection. (See Exhibit B, which is adopted by reference and may be obtained from the Texas Department of Mental Health and Mental Retardation, Office of Client Services and Rights Protection, P.O. Box 12668, Capitol Station, Austin, Texas 78711.)

Source: The provisions of this §403.505 adopted to be effective July 23, 1986, 11 TexReg 3160.

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§403.506. Training in Prevention of Patient Abuse and/or Neglect.

(a) Within 60 days after the effective date of this subchapter, all current employees shall be oriented to the contents of these rules by the administrator or his or her designee. Within 30 days of the date of employement and, when possible, prior to coming into direct contact with the patients, new employees shall receive instruction on the contents of this subchapter. Acknowledgement of this instruction shall be certified by the employee and filed in his or her personnel file.

(b) Documentation shall be maintained and updated for all employees, affiliates, and agents receiving such training.

Source: The provisions of this §403.506 adopted to be effective July 23, 1986, 11 TexReg 3160.

§403.507. Notification of Patients of Abuse Reporting Procedures.

All patients shall be notified of procedures to report abuse or neglect and their right to call the Office of Client Services and Rights Protection toll free, (800) 252-8154, if they are victims or observers of abuse or neglect.

Source: The provisions of this §403.507 adopted to be effective July 23, 1986, 11 TexReg 3160.

SUBCHAPTER S. EARLY CHILDHOOD INTERVENTION PROGRAM.

§403.530. Interagency Council on Early Childhood Intervention.

The Texas Department of Mental Health and Mental Retardation hereby adopts by reference the guidelines promulgated by the Interagency Council on Early Childhood Intervention codified under 25 TAC §§621.21-621.28. Copies of these regulations may be obtained from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

Source: The provisions of this §403.530 adopted to be effective February 7, 1983, 8 TexReg 281.

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SUBCHAPTER T. CLIENT ABUSE AND NEGLECT IN COMMUNITY MENTAL HEALTH AND MENTAL RETARDATION CENTERS

Cross References: This subchapter cited in 25 TAC §405.624 (relating to Rights of All Clients Receiving Mental Retardation Services).

§403.551. Purpose.

The purpose of these rules is to identify and prohibit client abuse and neglect by employees, affiliates, and agents of community mental health and mental retardation centers and to prescribe principles for its report and prevention.

Source: The provisions of this §403.551 adopted to be effective July 31, 1984, 9 TexReg 3872.

§403.552. Application.

These sections apply to all community mental health and mental retardationcenter.

Source: The provisions of this §403.552 adopted to be effective July 31, 1984, 9 TexReg 3872.

§403.553. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings uness the context clearly indicates otherwise:

Affiliate—Any school, organization, or entity associated in a working alliance with a center (by contract).

Agent—Any individual not employed by the center but working under the auspices of the center, such as volunteers, consultants, students, etc.

Alleged—Pertaining to an event about which all assertion or declaration has been made without proof, and which its maker proposes to support with evidence.

Center—A community mental health and mental retardation center.

Child—A person under 18 years of age who is not and has not been married or who has not had his disabilities of minority removed for general purposes.

Client—Any person receiving services from a community mental retardation center.

Commissioner—The commissioner of theTexas Department of Mental Health and Mental Retardation.

Community mental health and mental retardation center—

(1) a community mental health center,

(2) a community mentbbbal retardation center, or

(3) a community mental health and mental retardation center, administered by a Board of Trustees appointed pursuant to the Texas Mental Health and Mental Retardation Act (Texas Civil Statutes article 5547-201 to 5547-204), offering services which either alone or in conjunction with other service agencies woned or operated by it, or affiliated by contract with such center, provides an effective mental health or mental retardation services program or both to persons residing in its area.

Confirmation—The determination by the executive director that client abuse and neglect ha occurred.

Department—The Texas Department of Mental Health and Mental Retardation.

Designee—Any person temporarily appointed to fulfill duties and assume the responsibilties of another.

Disabled person—A person with a mental, physical, or developmental disability between 18 and 65 years of age.

Elderly person—A person 65 years of age or older.

Executive director—The head of a commuity mental health and mental retardation center.

Exploitation—The illegal or improper act or process of an employee using hte resources of a client for monetary or personal benefit, profit, or gain.

Major physical injury—Any injury determined to be serious by appropriate medical personnel who examine the client. Examples of major physical injury include, but are not limited to, the following: death; fracture; dislocation of any joint; internal injury; nonsuperficial contusion; concussion; first, second, or third degree burn; or any laceration requiring sutures.

Minor physical injury—Any injury determined not to be serious by appropriate medical personnel who examine the client. Examples of minor physical injury include, but are not limited to, the following: superficial laceration, contusion, or abrasion.

Negligence—The doing of something that a person of ordinary prudence would not have done under the same or similar circumstances, or the failuree to do something that a person of ordinary prudence would have done under the same or similar circumstances.

Source: The provisions of this §403.553 adopted to be effective July 31, 1984, 9 TexReg 3872.

§403.554. Client Abuse and Neglect Defined.

(a) *Class I Abuse*—Any act or familure to act done knowingly, recklessly, or intentioanlly, including incitement to act, which causes or may have caused major physical injury to a client. Without regard to injury, any sexual activity between an employee, employee of an affiliate, or agent and a client will be considered to be Class I abuse.

(b) *Class II abuse*—Any act or failure to act done knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused minor physical injury to a client.

(c) *Class III abuse*—Any use of verbal or other communication to curse, vilify or degrade a client, or threaten a client with physical or emotional harm, or any act which vilifies, degrades, or threatens a client with physical or emotional harm.

(d) *Neglect*—The negligence of any employee affiliate or agent which causes or may have caused any physical or emotional injury to a client. Examples of neglect shall include, but are not limited to, failure to carry out a prescribed individual program plan or treatment plan; failure to provide adequate nutrition, clothing, or health care; or failure to provide a safe environment.

(e) Client abuse shall not include:

(1) proper use of restraints of seclusion, the approved application of behavior modification techniques, or other actions taken in accordance with the written policies and procedures of the center;

(2) such actions as an employee may reasonably believe to be immediately necessary to avoid imminment harm to himself, clients, other persons, or property if such actions are limited only to those actions reasonably believed to be necessary under the existing circumstances;

(3) other actions taken in accordance with applicable departmental rules and/or policies and procedures of the community centers.

Source: The provisions of this §403.554 adopted to be effective July 31, 1984, 9 TexReg 3872.

§403.555. Administrative Enforcement.

Client abuse or neglect by center employees, employee of affiliates, and agents is prohibited and shall be grounds for disciplinary action. The center shall be responsible for establishing a mechanism for reporting and investigating alleged cases of client abuse and neglect and initiating appropriate disciplinary or other action in confirmed cases of client abuse and neglect. This mechanism shall include at a minimum:

(1) delineation of the responsibility of each employee, affiliate, or agent to promptly report cases of alleged client abuse or neglect to the executive director or his or her designee;

(2) procedures for the executive director or his or her designee to promptly and objectively investigate each alleged case of client abuse or neglect;

(3) provisions for reporting alleged or suspected cases of client abuse and neglect in accordance with any appropriate laws, as follows:

(A) criminal acts to law enforcement agencies. The executive director shall report alleged or suspected client abuse-related crime to local law enforcement agencies.

(B) child abuse to the Texas Department of Human Resources and to the Office of Client Services and Rights Protection, central office.

(i) If the executive director believes that a child has been or may be adversely affected by abuse and/or neglect (whether or not by center employees), the executive director or his or her designee shall make a report as required by the Texas Family Code, §34.01 and §34.02, as amended, when appropriate. Initial verbal reports can be made to the Texas Department of Human Resources child abuse hotline, (800) 252-5400, or the local Texas Department of Human Resources field office. A final report concerning the completed investigation of the alleged abuse or neglect will be sent to the Texas Department of Human Resources field office.

(ii) The executive director shall immediately submit a "Notification of Suspected Child Abuse and Neglect in an Institutional Faciltiy" (Form 1A) to the Office of Client Services and Rights Protection to be forwarded, as required, to the Governor's Office of Youth Care Investigation (Criminal Justice Divison). Within 10 days of the date the alleged abuse or neglect was reported to the executive director, the executive director shall submit a "Final Report of Suspected Child Abuse and Neglect in an Institutional Facility" (Form 1B) to the Office of Client Services and Rights Protection, to be forwarded, as requried, to the Governor's Office of Youth Care Investigatino. Copies of the forms to be used are herein adopted by reference and may be obtained from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

(C) abuse, neglect, or exploitation of an elderly or disabled client to the Texas Department of Human Resources. When the executive director has reason to believe that an elderly or disabled client is in or has been in a state of abuse, exploitation, or neglect, the executive director shall make a report to the Texas

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Department of Human Resources as required by the Human ResourcesCode, §48.036. During normal working hours, the report should be made to the local DHR Adult Protective Services Office. At night and on weekends, the executive director should call the toll free number, (800) 252-5400.

(4) procedures for implementing prompt, proper, and sufficient disciplinary action when charge of client abuse or neglect is substantiated, based on criteria including but not limited to:
  (A) the seriousness of the client abuse and/or neglect,
  (B) the circumstances surrounding the event,
  (C) the employee's record.

(5) procedures to be followed if it is determined that a client is responsible for abuse of another client.

(6) provisions for preparation of a written report of findings and action taken. The report of the investigation and action taken shall be maintained for a period of five years and shall be made available to the deparment at the request of the commissioner or his or her designee (See Exhibit A, which is adopted by reference and may be obtained from the Texas Department of Mental Health and Mental Retardation, central office, P.O. Box 12668, Austin, Texas 78711.). A quarterly summary of investigations will be sent to the Office of Client Services and Rights Protection, Central Office (See Exhibit B, which is adopted by reference and may be obtained from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.).

Source: The provisions of this §403.555 adopted to be effective July 31, 1984, 9 TexReg 3872.

§403.556. Training in Prevention of Client Abuse and/or Neglect.

(a) Within 60 days after the effective date of these rules, all current employees shall be oriented to the contents of these rules by the executive director or by his or her designee. Within 30 days of the date of employment and, when possible, prior to coming into direct, unsupervised contact with clients, new employees shall receive instruction on the contents of these rules. Acknowledgement of this instruction shall be certified by the employee and filed in his or her personnel file.

(b) Docmentation shall be maintained and updated for all employees, affiliates, and agents receiving such training.

(c) All current employees in frequent, direct contact with clients shall receive appropriate instructions on the prevention and management of aggressive behavior. Documentation shall be maintained and updated for employees receiving such instruction.

Source: The provisions of this §403.556 adopted to be effective July 31, 1984, 9 TexReg 3872.

§403.557. References.

Reference is made to the following statutes, rules of the department, and attorney general opinions:

(1) Texas Civil Statutes article 5547-201;
(2) Texas Civil Statutes article 5547-202, §2.12;
(3) Texas Civil Statutes article 5547-204;
(4) Texas Civil Statutes article 5547-87;
(5) Texas Civil Statutes article 695c-2, §9;
(6) Texas Penal Code, Chapter 19 and Chapter 21, §§22.01, 22.04, 22.05, 22.07, 22.08, 22.10;
(7) Texas Family Code, §§11.01, 34.01, and 34.02;
(8) Human Resources Code, Title 2, Chapte 25;
(9) Human Resources Code, Chapter 48;
(10) Attorney General Opinions H-237 (1974), H-985 (1977), and H-494 (1975);
(11) Texas Civil Statutes article 5547-300.

Source: The provisions of this §403.557 adopted to be effective July 31, 1984, 9 TexReg 3872.

§403.558. Distribution.

(a) The provisions of this subchapter shall be distributed to:
  (1) members of the Texas Board of Mental Health and Mental Retardation;
  (2) deputy commissioners and directors of central office;
  (3) superintendents and directors of all Texas Department of Mental Health and Mental Retardation (TDMHMR) facilities;
  (4) chairpersons of the boards of trustees of community mental health and mental retardation centers;
  (5) directors of community mental health and mental retardation centers;
  (6) the Texas Association for Retarded Citizens;
  (7) the Texas Association on Mental Deficiency;
  (8) the Parent Association for the Retarded of Texas;

(9) the Texas Association for Mental Health;
(10) the attorney general of Texas;
(11) the Governor's Office of Youth Care Investigation;
(12) the Texas Department of Health;
(13) the Texas Department of Human Resources;
(14) the Texas Youth Council; and
(15) the Alliance for Mental Recovery;
(16) Advocacy, Inc.

(b) The director of each community mental health and mental retardation center shall be responsible for duplicating and disseminating copies of this subchapter to:
(1) appropriate staff, and
(2) any client, employee, or other person desiring a copy.

(c) The director of each community mental health and mental retardation center shall be resonsible for insuring that all employees have access to a copy of this section.

Source: The provisions of this §403.558 adopted to be effective July 31, 1984, 9 TexReg 3872.

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