

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. “(No change)” indicates that existing rule text at this level will not be amended.

## TITLE 16. ECONOMIC REGULATION

### PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

#### CHAPTER 33. LICENSING

The Texas Alcoholic Beverage Commission (TABC) proposes to amend 16 TAC §33.2, relating to Application and Fee Payment Procedures, 16 TAC §33.23, relating to License and Permit Fees, 16 TAC §33.44, relating to Excise Tax Bonds, 16 TAC §33.45, relating to Bonds for Alternating Brewery Proprietorships and Contract Brewing Arrangements, 16 TAC §33.57, relating to Application Withdrawn, 16 TAC §33.75, relating to Penalties and Suspension, 16 TAC §33.93, relating to Notification Requirements, 16 TAC §33.100, relating to General Provisions, 16 TAC §33.103, relating to Notice and Opportunity for Hearing, and 16 TAC §33.104, relating to Contents of Emergency Order. TABC also proposes to repeal 16 TAC §33.101, relating to Authority of the Executive Director, and 16 TAC §33.105, relating to Appeals of Emergency Orders.

The proposed amendment to §33.2(a) removes a reference to physical application forms provided by TABC to reflect the fact that applications may now be filled out and submitted in a digital format through the agency's online business portal.

The proposed amendment to §33.23(c) reduces the minimum number of days that a nonprofit temporary event permit may be issued from two days to one day. The agency's goal is to reduce the regulatory burden on applicants.

The proposed amendments to §§33.44(b) and 33.75(c) update internal rule citations to the appropriate, current rules to conform with previous changes to rule numbering.

The proposed amendments to §33.45 remove references to statutes and terms that correspond with the former brewer's permit that was eliminated by House Bill 1545 (2019).

The proposed amendment to §33.57(b) alters the method for calculating the minimum number of days that must elapse before the agency may withdraw an application. Currently, §33.57(b) provides that TABC may consider an application withdrawn if an applicant fails to respond to requests from the agency for additional information or for remittance of a fee within ten business days. The proposed amendment changes that timeline to ten calendar days to account for the fact that the agency's online business portal is generally accessible 24 hours a day, seven days a week. However, the agency still retains discretion to withdraw the application after that time period.

The proposed amendment to §33.93(b) removes a reference to reporting changes to the contact information for seller-server schools. The requirements for seller server school certificates

are found in Chapter 50 and the agency is proposing to relocate that language to §50.24 in a separate and simultaneous rule-making.

The proposed amendments to §33.100: (1) clarify that emergency orders suspending licenses or permits are initially issued without a hearing, as provided by Alcoholic Beverage Code §11.614; (2) better align the rule language with the statutory language in §11.614(a); and (3) remove obsolete and redundant language regarding the applicability of the Open Meetings Act and Administrative Procedure Act. TABC also proposes to repeal §33.101 because it is redundant due to the proposed amendments to §33.100. The proposed amendments to §33.103 better align the rule language with the statutory language in §11.614(c) and clarify that the administrative law judge's decision to affirm, modify, or set aside the order is final. The proposed changes to §33.103 render §33.105 obsolete, therefore TABC is proposing to repeal §33.105. Finally, the proposed amendment to §33.104 simply adds language clarifying that the term of the suspension must be in the agency's emergency order.

TABC presented the proposed amendments at a stakeholder meeting on October 3, 2024, and received comments. TABC considered these comments when drafting this proposal.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Andrea Maceyra, Chief of Regulatory Affairs, has determined that during each year of the first five years the proposed amendments are in effect, there will be no fiscal impact on state or local governments because of enforcing or administering the amended rules. Mrs. Maceyra made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the amended rules. Mrs. Maceyra also does not anticipate any measurable effect on local employment or the local economy because of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendments are in effect, Mrs. Maceyra expects that enforcing or administering the amended rules will have the public benefit of ensuring current rules align with existing statutes and clarify existing regulations. Mrs. Maceyra does not expect the proposed amendments will impose economic costs on persons required to comply with the amended rules.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TABC has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TABC is not required to prepare a regulatory flexibility analysis.

GOVERNMENT GROWTH IMPACT STATEMENT. TABC has determined that for each year of the first five years that the proposed amendments are in effect, they:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TABC has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TABC will consider any written comments on the proposal that are received by TABC no later than 5:00 p.m., central time, December 29, 2024. Send your comments to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov) or to the Office of the General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127. TABC staff will hold a public hearing to receive oral comments on the proposed rule at 10:00 a.m. on December 19, 2024. Interested persons should visit the TABC's public website at [www.tabc.texas.gov](http://www.tabc.texas.gov) or contact TABC Legal Assistant Kelly Johnson at (512) 206-3367, prior to the meeting date to receive further instructions.

## SUBCHAPTER A. APPLICATIONS

### 16 TAC §33.2

STATUTORY AUTHORITY. TABC proposes the amendments pursuant to TABC's rulemaking authority under Texas Alcoholic Beverage Code §§5.31, 11.614(d), 30.08(2), 62.14(d), 63.05(d). Section 5.31 authorizes TABC to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code. Section 11.614(d) authorizes TABC to "prescribe procedures for the determination and appeal of an emergency order issued under section 11.614." Section 30.08(2) directs TABC to "adopt rules which it determines to be necessary to implement and administer the provisions of Chapter 30, including "the duration for a permit issued under Chapter 30." Sections 62.14(d) and 63.05(d) both authorize TABC "by rule to require an entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to post with the commission a bond in an amount determined by the commission."

CROSS-REFERENCE TO STATUTE. The proposed amendment to §33.2 implements Alcoholic Beverage Code §§5.55(a), 11.33, and 61.31(a). The proposed amendment to §33.23 implements Alcoholic Beverage Code §30.02. The proposed

amendment to §33.44 implements Chapter 204 of the Alcoholic Beverage Code. The proposed amendments to §33.45 implement Alcoholic Beverage Code §§62.14 and 63.05. The proposed amendment to §33.57 implements Alcoholic Beverage Code §§5.31(b)(5) and 11.43(j). The proposed amendment to §33.75 implements Alcoholic Beverage Code §§14.09, 16.08, 16.12, 25.16, 28.19, 28.20, 30.02, 32.25, and 69.18. The proposed amendment to §33.93 implements Alcoholic Beverage Code §106.14. The proposed amendments to §§33.100 - 33.105 implement Alcoholic Beverage Code §11.614.

§33.2. *Application and Fee Payment Procedures.*

(a) Applications for licenses, permits and certificates shall be made by an applicant in such a manner as may be directed by the executive director [upon forms provided by the commission].

(b) - (e) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Matthew Cherry

Senior Counsel

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## SUBCHAPTER B. FEES AND PAYMENTS

### 16 TAC §33.23

STATUTORY AUTHORITY. The amendments are proposed pursuant to TABC's rulemaking authority under §§5.31 and 30.08(2) of the Texas Alcoholic Beverage Code. Section 5.31 provides that TABC may prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code. Section 30.08(2) directs TABC to "adopt rules which it determines to be necessary to implement and administer the provisions of Chapter 30, including the duration for a permit issued under Chapter 30."

§33.23. *License and Permit Fees.*

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

(c) An applicant for a Nonprofit Entity Temporary Event authorization shall pay a fee of \$50 per day [with a two-day minimum], pursuant to §33.78 of this title. The authorization must be in effect for all days that alcoholic beverages will be present at the temporary event location, from delivery to removal.

(d) - (e) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER C. BONDS

### 16 TAC §33.44, §33.45

STATUTORY AUTHORITY. The amendments are proposed pursuant to TABC's rulemaking authority under §§5.31, 62.14(d) and 63.05(d) of the Texas Alcoholic Beverage Code. Section 5.31 provides that TABC may prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code. Sections 62.14(d) and 63.05(d) both authorize TABC "by rule to require an entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to post with the commission a bond in an amount determined by the commission."

#### §33.44. *Excise Tax Bonds.*

(a) (No change.)

(b) Each bond required under this section shall be set by the executive director at an amount determined pursuant to §41.39[§41.42] of this title that will protect the state against the anticipated tax liability of the principal for any six-week period based on previous average alcoholic beverage sales or estimates of the future average volume of sales.

(c) - (h) (No change.)

#### §33.45. *Bonds for Alternating Brewery Proprietorships and Contract Brewing Arrangements.*

(a) This section relates to Alcoholic Beverage Code §§62.14 and 63.05 [§§11.71, 12.01(a)(6), 13.04(e), 61.41(d) and 62.01(a)(5)].

(b) (No change.)

(c) A licensee [or permittee] who was not subject to the bond requirements of subsection (b) [or (e)] of this section at the time of application must post the required bond at the time it becomes subject to those requirements.

(d) The licensee [or permittee] may, within 30 days of the notice specified in §33.40(l)(1) of this title request a hearing on the question of whether the criteria established by this section for forfeiture of a bond have been satisfied. The hearing shall be conducted in accordance with Chapter 2001 of the Government Code.

(e) Release of Surety. A license [or permit] holder may request release and return of the surety required by subsection (b) [or (e)] of this section upon:

- (1) expiration of the license [or permit];
- (2) voluntary cancellation of the license [or permit];

(3) verification that the applicant or license [or permit] holder has acquired fee interest in a brewing [or manufacturing] facility (as appropriate in reference to subsection (b) [subsections (b) and (e)] of this section); or

(4) verification that the license [or permit] holder no longer is a party to an alternating brewery proprietorship or contract brewing arrangement.

(f) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER D. APPLICATION REVIEW AND PROTESTS

### 16 TAC §33.57

STATUTORY AUTHORITY. The amendments are proposed pursuant to TABC's rulemaking authority under §5.31 of the Texas Alcoholic Beverage Code. Section 5.31 provides that TABC may prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code.

#### §33.57. *Application Withdrawn.*

(a) (No change.)

(b) If an applicant fails to respond to requests from the TABC for additional information or for remittance of a license or permit fee within ten (10) calendar [business] days of the request, the TABC may consider the application withdrawn by the applicant.

(c) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER E. EVENTS AT A TEMPORARY LOCATION

### 16 TAC §33.75

STATUTORY AUTHORITY. The amendments are proposed pursuant to TABC's rulemaking authority under §5.31 of the Texas Alcoholic Beverage Code. Section 5.31 provides that TABC may prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code.

#### §33.75. *Penalties and Suspension.*

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

(c) The executive director may temporarily suspend an applicant's right to apply for a temporary authorization for violations of offenses against the general welfare under §34.3[§35.34] of this title that occur in connection with the use of a temporary authorization.

(d) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER F. LICENSE AND PERMIT ACTION

### 16 TAC §33.93

STATUTORY AUTHORITY. The amendments are proposed pursuant to TABC's rulemaking authority under §5.31 of the Texas Alcoholic Beverage Code. Section 5.31 provides that TABC may prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code.

#### §33.93. Notification Requirements.

(a) (No change.)

(b) A person who holds a license, permit, or certificate issued by the Alcoholic Beverage Commission shall file a notice of change of mailing address with the Commission within seven (7) business days of the change. [A person who holds a certificate issued by the Commission shall file the change of address with the Seller/Server Training Division at TABC, P.O. Box 13127, Austin, Texas 78711.]

(c) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER G. EMERGENCY ORDERS

### 16 TAC §§33.100, 33.103, 33.104

STATUTORY AUTHORITY. The amendments are proposed pursuant to TABC's rulemaking authority under §§5.31 and 11.614

of the Texas Alcoholic Beverage Code. Section 5.31 provides that TABC may prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code. Section 11.614 authorizes TABC to prescribe procedures for the determination and appeal of an emergency orders temporarily suspending a license.

#### §33.100. General Provisions.

(a) The purpose of this subchapter is to implement the commission's authority under Texas Alcoholic Beverage Code Section 11.614 to issue an emergency order temporarily suspending a permit or license without a hearing.

(b) The commission, executive director, or executive director's designee may issue an emergency order suspending the permit or license of a business without a hearing if the commission, executive director, or executive director's designee determines that the continued operation of the business constitutes a continuing threat to the public welfare.

~~[(c) All hearings under this subchapter, including appeals, may be held by teleconference or videoconference in compliance with applicable provisions of the Texas Open Meetings Act (Tex. Gov't Code Ch. 551) and the Administrative Procedure Act (Tex. Gov't Code Ch. 2001).]~~

#### §33.103. Notice and Opportunity for Hearing.

If an emergency order is issued without a hearing, the executive director or his designee shall set the time and place for a hearing to affirm, modify, or set aside [on] the emergency order [to be conducted by the State Office of Administrative Hearings]. The hearing shall be conducted by the State Office of Administrative Hearings and the decision rendered by the Administrative Law Judge is final.

#### §33.104. Contents of Emergency Order.

An emergency order issued under this subchapter shall contain at least the following:

- (1) the name and address of the license or permit holder and information sufficient to identify the premises affected by the order;
- (2) a brief statement of fact supporting the issuance of the order;
- (3) a determination that the continued operation of a permitted or licensed business would constitute a continuing threat to the public welfare; and
- (4) a statement of the term of the suspension [order], including the date on which it begins and ends.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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### 16 TAC §§33.101, §33.105

STATUTORY AUTHORITY. The repeals are proposed pursuant to TABC's rulemaking authority under §§5.31 and 11.614 of the Texas Alcoholic Beverage Code. Section 5.31 provides that TABC may prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code. Section 11.614 authorizes TABC to prescribe procedures for the determination and appeal of an emergency orders temporarily suspending a license.

§33.101. *Authority of the Executive Director.*

§33.105. *Appeals of Emergency Orders.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## CHAPTER 45. MARKETING PRACTICES

The Texas Alcoholic Beverage Commission (TABC) proposes to amend 16 TAC §45.9, relating to Withdrawal of Application, 16 TAC §45.11, relating to When Reapplication is Required, 16 TAC §45.12, relating to Application Procedures During Interruption of Federal Agency Operations, 16 TAC §45.20, relating to Exhibiting Certificates to Representatives of the Commission, 16 TAC §45.23, relating to Alteration of Labels, 16 TAC §45.30, relating to Certificates of Registration for a Distilled Spirit Product, 16 TAC §45.40, related to Certificate of Registration for a Malt Beverage Product, 16 TAC §45.50, relating to Certificate of Registration for Wine, and 16 TAC §45.105, relating to Advertising.

The proposed amendment to §45.9 adds language to mirror the process for license and permit application withdrawals found in §33.57. This change is intended to provide clarity for applicants and consistency for the agency. The proposed amendments to §§45.11, 45.12, and 45.20 remove redundant language in references to a Certificate of Label Approval (COLA) and change references to the product registration certificate for consistency. The proposed amendment to §45.23 allows the executive director to name a designee to approve relabeling of bottled alcoholic beverages to ensure agency efficiency and removes redundant language. The proposed amendments to §§45.30, 45.40, and 45.50 make corresponding changes in each section to update the product registration process for distilled spirits, malt beverages, and wine, to mirror existing agency practices.

The proposed amendments to §45.105 provide clarity on the permissible forms of outdoor advertising at retail establishments. Pursuant to Alcoholic Beverage Code §108.52, "no outdoor advertising is permitted in this state except that which is authorized by this section or under rules of the commission..." Currently, §45.105(a) references a restriction on certain types of outdoor advertising and creates an inference that the rule also authorizes other forms of outdoor advertising. Proposed subsection (a)(2) is intended to clarify that, unless otherwise prohibited under the rule, outdoor advertising is permissible. For

additional clarity, the subsection also incorporates the Alcoholic Beverage Code's definitions for outdoor advertising, billboards, and electric signs. Proposed subsection (a)(5) reiterates the inducement prohibitions in §45.110 and Alcoholic Beverage Code §§102.04, 102.07, 102.15, and 108.06. Proposed subsection (a)(6) acknowledges the permissible avenues for upper-tier members to sell or provide signage to retailers under §§45.113(d) and 45.117(d), which may meet the definition of outdoor advertising, so that the prohibition in subsection (a)(5) does not conflict with those authorizations. Lastly, proposed subsection (a)(6) also allows the signage provided to a retailer by an upper-tier member under §§45.113 and 45.117 to be placed on the exterior walls of the building or enclosure on the retailer's premises. This change is intended to reduce the regulatory burden on retailers.

TABC presented the proposed amendments at a stakeholder meeting on October 3, 2024, and received comments. TABC considered these comments when drafting this proposal.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Andrea Maceyra, Chief of Regulatory Affairs, has determined that during each year of the first five years the proposed amendments are in effect, there will be no fiscal impact on state or local governments because of enforcing or administering the amended rules. Mrs. Maceyra made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the amended rules. Mrs. Maceyra also does not anticipate any measurable effect on local employment or the local economy because of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendments are in effect, Mrs. Maceyra expects that enforcing or administering the amended rules will have the public benefit of ensuring current rules align with existing statutes and clarify regulatory requirements. The proposal also reduces the regulatory burden on certain licensees and permittees. Mrs. Maceyra does not expect the proposed amendments will impose economic costs on persons required to comply with the amended rules.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TABC has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TABC is not required to prepare a regulatory flexibility analysis.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TABC has determined that for each year of the first five years that the proposed amendments are in effect, they:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TABC has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TABC will consider any written comments on the proposal that are received by TABC no later than 5:00 p.m., central time, December 29, 2024. Send your comments to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov) or to the Office of the General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127. TABC staff will hold a public hearing to receive oral comments on the proposed rule at 10:00 a.m. on December 19, 2024. Interested persons should visit the TABC's public website at [www.tabc.texas.gov](http://www.tabc.texas.gov) or contact TABC Legal Assistant Kelly Johnson at (512) 206-3367, prior to the meeting date to receive further instructions.

## SUBCHAPTER A. GENERAL PROVISIONS

### 16 TAC §§45.9, 45.11, 45.12

STATUTORY AUTHORITY. TABC proposes the amendments pursuant to TABC's rulemaking authority under §§5.31, 101.67, 101.671, and 108.52(c) of the Texas Alcoholic Beverage Code. Section 5.31 provides that TABC may prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code. Sections 101.67 and 101.671 direct TABC to prescribe rules for the registration of alcoholic beverage products with the state. Section 108.52(c) directs the agency to adopt reasonable rules relating to the type of outdoor advertising retail licensees and permittees may erect or maintain on the retailer's premises.

CROSS-REFERENCE TO STATUTE. The proposed amendments to §§45.9, 45.11, 45.12, 45.20, 45.23, 45.30, 45.40 and 45.50 implement Alcoholic Beverage Code §§5.31, 101.67, and 101.671. The proposed amendments to §45.105 implement Alcoholic Beverage Code §108.52.

#### §45.9. *Withdrawal of Application.*

(a) An applicant may unconditionally withdraw their application for product registration at any time prior to [~~product registration or~~] issuance of a certificate of product registration or a notification of denial.

(b) If an applicant fails to respond to requests from the TABC for additional information or for remittance of a product registration fee within ten (10) calendar days of the request, the TABC may consider the application withdrawn by the applicant.

(c) An application that is withdrawn is not considered denied and may be refiled at any time. Withdrawal of an application, whether affirmatively by the applicant or due to the applicant's failure to respond to requests for information or fees, does not trigger the right to appeal or any other due process rights.

#### §45.11. *When Reapplication is Required.*

(a) For products registered with the commission using a [~~federal~~] COLA, any change to the label or product that requires issuance of a new COLA requires reapplication for product registration with the commission.

(b) For products registered with the commission that are not eligible for a [~~federal~~] COLA, any change to the label or product requires

reapplication for product registration with the commission, except for the following permissible label revisions:

(1) Deleting any non-mandatory label information, including text, illustrations, graphics, and ingredients;

(2) Repositioning any label information, including text, illustrations, and graphics;

(3) Changing the color of the background or text, the shape, or the proportionate size of labels;

(4) Changing the type size or font or make appropriate changes to the spelling (including punctuation marks and abbreviations) of words;

(5) Changing the type of container or net contents statement;

(6) Adding, deleting, or changing optional information referencing awards, medals or a rating or recognition provided by an organization as long as the rating or recognition reflects simply the opinion of the organization and does not make a specific substantive claim about the product or its competitors;

(7) Adding, deleting, or changing holiday or seasonal-themed graphics, artwork, or salutations;

(8) Adding, deleting, or changing promotional sponsorship-themed graphics, logos, artwork, dates, event locations or other sponsorship-related information; [~~and~~]

(9) Adding, deleting or changing references to a year or date; and [-]

(10) Any TTB-authorized allowable revisions to an approved COLA that do not require application for a new COLA.

(c) Not later than September 1, 2023, producers of products required to obtain a first [~~federal~~] COLA pursuant to Alcoholic Beverage Code §101.67(a) must reapply for commission registration of any such product that will be shipped or imported into the state, manufactured and offered for sale, or distributed or sold on or after Sept. 1, 2023, unless granted an exception under subsection (d) of this section.

(d) The executive director may issue a temporary certificate [~~Certificate~~] of product registration [~~Registration~~] containing an expiration date at the request of a producer demonstrating that the producer requires additional time beyond September 1, 2023, to use up products bearing labels approved by the commission and printed before December 31, 2020.

#### §45.12. *Application Procedures during Interruption of Federal Agency Operations.*

(a) - (d) (No change.)

(e) If the TTB grants the COLA or exemption application, the applicant must re-apply with the commission for product registration within 30 calendar days of receipt of the [~~federal~~] COLA or exemption.

(f) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER B. ENFORCEMENT

### 16 TAC §45.20, §45.23

STATUTORY AUTHORITY. The amendments are proposed pursuant to TABC's rulemaking authority under §§5.31, 101.67, and 101.671 of the Texas Alcoholic Beverage Code. Section 5.31 provides that TABC may prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code. Sections 101.67 and 101.671 direct TABC to prescribe rules for the registration of alcoholic beverage products with the state.

§45.20. *Exhibiting Certificates to Representatives of the Commission.*

It shall be unlawful for any person to fail or refuse to exhibit, upon demand or request by any authorized representative of the commission, the certificate of product registration [~~approval as~~] issued by the United States Department of the Treasury or the commission [~~executive director~~].

§45.23. *Alteration of Labels.*

No person may alter, mutilate, destroy, obliterate, or remove any mark, brand, or label on an alcoholic beverage product held for sale in this state except:

(1) as authorized by Texas law; and

(2) that the executive director or their designee may, on written application, permit additional labeling or relabeling of bottled alcoholic beverages with labels [~~covered by certificates of label approval~~] that comply with the requirements of this subchapter and with state law.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 15, 2024.

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Matthew Cherry  
Senior Counsel  
Texas Alcoholic Beverage Commission  
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For further information, please call: (512) 206-3491



## SUBCHAPTER C. SPECIFIC REQUIREMENTS FOR DISTILLED SPIRITS

### 16 TAC §45.30

STATUTORY AUTHORITY. The amendments are proposed pursuant to TABC's rulemaking authority under §§5.31, 101.67, and 101.671 of the Texas Alcoholic Beverage Code. Section 5.31 provides that TABC may prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code.

Sections 101.67 and 101.671 direct TABC to prescribe rules for the registration of alcoholic beverage products with the state.

§45.30. *Certificate of Registration for a Distilled Spirit Product.*

(a) No distilled spirit may be shipped into the state or sold within the state without a certificate [~~Certificate~~] of product registration [~~Registration~~] issued by the commission.

(b) An applicant for a certificate [~~Certificate~~] under this section must hold a distiller's and rectifier's permit or a nonresident seller's permit issued by the commission.

(c) The application [~~An applicant must submit an application~~] to register a distilled spirit product [~~on the prescribed commission form~~]. The application [~~The application~~] must contain the following:

(1) a legible copy of the product's COLA; [~~the product COLA issued by the TTB;~~]

(2) all information required to complete the application [~~form~~]; and

(3) an [~~the~~] application fee of \$25.

~~[(d) A legible copy of the COLA must be included with the application. If the COLA is not legible, an actual label that is affixed to the distilled spirit as shipped or sold, or an exact color copy of a label must be included with the application.]~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER D. SPECIFIC REQUIREMENTS FOR MALT BEVERAGES

### 16 TAC §45.40

STATUTORY AUTHORITY. The amendments are proposed pursuant to TABC's rulemaking authority under §§5.31, 101.67, and 101.671 of the Texas Alcoholic Beverage Code. Section 5.31 provides that TABC may prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code. Sections 101.67 and 101.671 direct TABC to prescribe rules for the registration of alcoholic beverage products with the state.

§45.40. *Certificate of Registration for a Malt Beverage Product.*

(a) No malt beverage may be shipped into the state or sold within the state without a certificate [~~Certificate~~] of product registration [~~Registration~~] issued by the commission.

(b) An applicant for a certificate [~~Certificate~~] under this section must hold a brewer's license, nonresident brewer's license, or brewpub license issued by the commission.

(c) A nonresident brewer's agent may file an application for a certificate [~~Certificate~~] of product registration [~~Registration~~] on behalf of a holder of a nonresident brewer's license.

(d) The application to register a malt beverage product must contain the following [An applicant must submit an Application to Register a Malt Beverage on the form prescribed by the commission along with the application fee to the commission. The application must contain the following]:

(1) If the product is eligible for a COLA:

(A) a legible copy of the product's COLA;

~~[(B) an actual label that is affixed to the malt beverage as shipped or sold, or a legible exact color copy of a label; and]~~

~~[(B) [(C)] all information required to complete the application form; and[.]]~~

(C) an application fee of \$25.

(2) If the product is not eligible for a COLA:

~~(A) [an actual label that is affixed to the malt beverage as shipped or sold, or] a legible exact color copy of the label;~~

(B) a TTB formulation; [and]

~~(C) all information required to complete the application; and [form.]]~~

(D) an application fee of \$25.

(e) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Matthew Cherry

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Texas Alcoholic Beverage Commission

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## SUBCHAPTER E. SPECIFIC REQUIREMENTS FOR WINE

### 16 TAC §45.50

STATUTORY AUTHORITY. The amendments are proposed pursuant to TABC's rulemaking authority under §§5.31, 101.67, and 101.671 of the Texas Alcoholic Beverage Code. Section 5.31 provides that TABC may prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code. Sections 101.67 and 101.671 direct TABC to prescribe rules for the registration of alcoholic beverage products with the state.

§45.50. *Certificate of Registration for Wine.*

(a) Except as provided by §45.4(b) of this title, no wine may be shipped into the state or sold within the state without a certificate ~~[Certificate]~~ of product registration ~~[Registration]~~ issued by the commission.

(b) An applicant for a certificate ~~[Certificate]~~ under this section must hold a winery permit or a nonresident seller's permit issued by the commission.

(c) The application to register a wine product must contain the following [An applicant must submit an Application to Register a Wine on the form prescribed by the commission along with the application fee to the commission. The application must contain the following]:

(1) If the product is eligible for a COLA:

(A) a legible copy of the product's COLA [a legible copy of the COLA];

~~[(B) an actual label that is affixed to the wine as shipped or sold, or a legible exact color copy of a label; and]~~

~~[(B) [(C)] all information required to complete the application; and [form.]]~~

(C) an application fee of \$25.

(2) If the product is not eligible for a COLA:

~~(A) [an actual label that is affixed to the wine as shipped or sold, or] a legible exact color copy of the label;~~

(B) the TTB formulation, if required by the TTB; ~~[and]~~

~~(C) all information required to complete the application form; and[.]]~~

(D) an application fee of \$25.

(d) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Matthew Cherry

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## SUBCHAPTER F. ADVERTISING AND PROMOTION

### 16 TAC §45.105

STATUTORY AUTHORITY. The amendments are proposed pursuant to TABC's rulemaking authority under §§5.31 and 108.52 of the Texas Alcoholic Beverage Code. Section 5.31 provides that TABC may prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code. Section 108.52(c) directs TABC to adopt reasonable rules relating to the type of outdoor advertising retail licensees and permittees may erect or maintain on the retailer's premises.

§45.105. *Advertising.*

(a) Retailer Establishments.

(1) This subsection relates to Alcoholic Beverage Code §§108.07, 108.51, and 108.52.

(2) Retail-tier licensees and permittees may, in accordance with this section, erect and maintain on the retailer's premises:

(A) outdoor advertising, as defined in Alcoholic Beverage Code §108.51(1);



(B) billboards, as defined in Alcoholic Beverage Code §108.51(2); and

(C) electric signs, as defined in Alcoholic Beverage Code §108.51(3).

(3) [(2)] Except as provided in paragraph (4) [(3)] of this subsection, retail-tier license and permit holders may not advertise any price for an alcoholic beverage on any sign, billboard, marquee, or other display located on the retailer's premises in such a manner that the price may be read by persons outside of the premises.

(4) [(3)] It is an exception to the restriction in paragraph (3) [(2)] of this subsection if:

(A) the holder of a food and beverage certificate places a menu on the exterior wall of the premises so that it can be read outside of the premises only by a pedestrian close to the menu. To qualify for the exception granted in this paragraph, the menu visible outside of the premises must be of the same size and in the same sized font as the menu presented to the establishment's customers, and must show both food and beverage prices; or

(B) the holder of a wine and malt beverage retailer's permit, brewpub license, retail dealer's on-premise license, or a license or permit authorizing sales of alcoholic beverages for pickup under Alcoholic Beverage Code §§28.1001 or 32.155 places a menu in a drive-through lane so that it can be read outside of the premises only by a person in a vehicle in the drive-through lane.

(5) Licensees and permittees in the manufacturing and wholesaling tiers may not, directly or indirectly, pay a retailer for any outdoor advertising, billboards, or electric signs displayed on the retailer's premises.

(6) Licensees and permittees in the manufacturing and wholesaling tiers may furnish, give, or sell interior signs to retailers in accordance with §45.113(d) and §45.117(d) of this title. Retailers may use the interior signs for outdoor advertising purposes only on the exterior walls or enclosure of the building where the license or permit is issued and inside the building.

(b) - (d) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Matthew Cherry

Senior Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3491



## CHAPTER 50. ALCOHOLIC BEVERAGE SELLER SERVER AND DELIVERY DRIVER TRAINING

### SUBCHAPTER C. SELLER SERVER SCHOOL CERTIFICATES AND REQUIREMENTS

#### 16 TAC §50.24

The Texas Alcoholic Beverage Commission (TABC) proposes to amend 16 TAC §50.24, relating to Seller Server School Certificates and Requirements. The proposed amendment adds language clarifying that the holder of a seller server certificate must maintain a current mailing address, telephone number, and email address on file with TABC. The proposed amendment also requires the holder of such a certificate to update that information within seven business days of any changes. This proposal is intended to ensure the agency has current contact information for all certificate holders. This proposal is made in conjunction with proposed amendments to 16 TAC §33.93, which were done in a separate and simultaneous rulemaking.

TABC presented the proposed amendment at a stakeholder meeting on October 3, 2024, and received no comments.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Andrea Maceyra, Chief of Regulatory Affairs, has determined that during each year of the first five years the proposed amendment is in effect, there will be no fiscal impact on state or local governments because of enforcing or administering the amended rule. Mrs. Maceyra made this determination because the proposed amendment does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the amended rule. Mrs. Maceyra also does not anticipate any measurable effect on local employment or the local economy because of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendment is in effect, Mrs. Maceyra expects that enforcing or administering the amended rule will have the public benefit of ensuring current rules related to seller server training are easier for interested parties to locate. The proposed amendment also helps ensure the agency has updated contact information for each certificate holder, which helps the agency better administer the Alcoholic Beverage Code. Mrs. Maceyra does not expect the proposed amendment will impose economic costs on persons required to comply with the amended rule.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TABC has determined that the proposed amendment will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TABC is not required to prepare a regulatory flexibility analysis.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TABC has determined that for each year of the first five years that the proposed amendment is in effect, it:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TABC has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TABC will consider any written comments on the proposal that are received by TABC no later than 5:00 p.m., central time, December 29, 2024. Send your comments to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov) or to the Office of the General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127. TABC staff will hold a public hearing to receive oral comments on the proposed rule at 10:00 a.m. on December 19, 2024. Interested persons should visit the TABC's public website at [www.tabc.texas.gov](http://www.tabc.texas.gov), or contact TABC Legal Assistant Kelly Johnson at (512) 206-3367, prior to the meeting date to receive further instructions.

STATUTORY AUTHORITY. TABC proposes the amendment pursuant to TABC's rulemaking authority under §§5.31 and 106.14 of the Texas Alcoholic Beverage Code. Section 5.31 provides that TABC may prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code. Section 106.14 directs the commission to adopt rules establishing requirements for approved seller training programs.

CROSS-REFERENCE TO STATUTE. The proposed amendments implement Alcoholic Beverage Code §§5.31 and 106.14.

*§50.24. Notice of Change of Location.*

The holder of a certificate issued under this subchapter must maintain a current mailing address, telephone number, and email address on file with the Seller/Server Training Division. The holder shall file any changes to its mailing address, telephone number, or email address within seven (7) business days of the change, through the agency-designated reporting system or by mailing the Seller/Server Training Division at TABC, P.O. Box 13127, Austin, Texas 78711. [comply with §33.93 of this title.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 15, 2024.

TRD-202405561

Matthew Cherry

Senior Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3491



## PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

### CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

#### 16 TAC §70.60

The Texas Department of Licensing and Regulation (Department) proposes an amendment to an existing rule at 16 Texas

Administrative Code (TAC), Chapter 70, §70.60, regarding the Industrialized Housing and Buildings program. The proposed change is referred to as the "proposed rule."

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 70, implement Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings.

The proposed rule amendment at §70.60(e) would allow the team lead for the initial certification of a manufacturing plant to also conduct regular in-plant inspections as an employee of a third-party inspection agency. The amendment would expand the pool of candidates for this position to employees of the third-party inspection agency responsible for regular in-plant inspections of the manufacturer or the design review agency responsible for review of the manufacturer's design package. The proposed rules are necessary to allow the Department the possibility of focusing its limited resources on long-term, risk-based auditing of those plants.

#### *Code Council Recommendations*

The proposed rule was presented to and discussed by the Industrialized Housing and Buildings Code Council at its meeting on November 12, 2024. The Code Council did not make any changes to the proposed rule. The Code Council voted and recommended that the proposed rule be published in the *Texas Register* for public comment.

#### SECTION-BY-SECTION SUMMARY

The proposed rule amends §70.60(e) to allow the team lead for the initial certification of a manufacturing plant to also conduct regular in-plant inspections as an employee of a third-party inspection agency.

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Mr. Couvillon has determined that for each year of the first five years the proposed rule is in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rule is in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Because Mr. Couvillon has determined that the proposed rule will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas Government Code §2001.022.

#### PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be the increased number of individuals who will be able to conduct an inspection for the certification of a manufacturing plant, resulting in needed inspections being done more rapidly.

Additionally, expanding the pool of qualified individuals able to conduct an inspection will allow the Department more time and

resources to focus on risk-based audits of previously certified manufacturing facilities rather than participating as the team leader in plant certification inspections. The Department will maintain the authority to conduct and lead certification inspections and provide oversight as needed.

#### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

#### FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

#### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rule does not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rule does not create or eliminate a government program.
2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rule does not require an increase or decrease in fees paid to the agency.
5. The proposed rule does not create a new regulation.
6. The proposed rule expands, limits, or repeals an existing regulation.

The proposed rule repeals an existing regulation by removing the prohibition that the leader of a team conducting a plant certification inspection may not be an employee of the third-party inspection agency responsible for regular in-plant inspections of the manufacturer or the design review agency responsible for review of the manufacturer's design package.

7. The proposed rule does not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rule does not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rule and the proposed rule does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

#### PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Shamica Mason, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

#### STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapters 51 and 1202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 1202. No other statutes, articles, or codes are affected by the proposed rules.

#### §70.60. Responsibilities of the Department--Plant Certification.

(a) - (d) (No change.)

(c) [The team leader may not be an employee of the third party inspection agency (TPIA) responsible for regular in-plant inspections of the manufacturer or the design review agency (DRA) responsible for review of the manufacturer's design package.] The following persons may not solicit, offer, or agree to provide future design review or in-plant inspection services for the manufacturer prior to the manufacturer completing all certification requirements:

(1) an agency other than the manufacturer's current third-party inspection agency (TPIA) [TPIA] or design review agency (DRA) [DRA] that provides a certification team member; and

(2) any team member that is not employed by the manufacturer's current TPIA or DRA.

(f) - (k) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024.

TRD-202405568

Doug Jennings  
General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 463-7750



## CHAPTER 112. HEARING INSTRUMENT FITTERS AND DISPENSERS

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 112, Subchapter A, §112.2; Subchapter E, §112.44; and Subchapter L, §112.110; the repeal of existing rules at Subchapter H, §112.70 and §112.72; and the addition of new rules at Subchapter H, §112.70 and §§112.73 - 112.76, regarding the Hearing Instrument Fitters and Dispensers program. These proposed changes are referred to as "proposed rules."

### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 112, implement Texas Occupations Code, Chapter 402, Hearing Instrument Fitters and Dispensers; and Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Department.

The proposed rules are necessary to update the current administrative rules and the continuing education (CE) requirements for hearing instrument fitter and dispenser apprentices, license holders, and CE providers. The proposed rules are a result of changes suggested during the required four-year rule review related to CE; changes recommended by the Education and Examination Workgroup of the Hearing Instrument Fitters and Dispensers Advisory Board; and other suggested changes made possible, in part, by House Bill (HB) 1560, 87th Legislature, Regular Session (2021), the Department's Sunset legislation.

The proposed rules also change the CE provider registration term from one year to two years and increase the registration application fees from \$200 annually to \$400 every two years. Beginning May 1, 2025, the provider registrations will change from one-year to two-year terms, and the application and renewal fees will reflect this change. Existing provider registrations will be valid for one year if renewed before May 1, 2025, or for two years if renewed on or after May 1, 2025.

#### *Four-Year Rule Review Changes*

The proposed rules include changes as a result of the required four-year rule review conducted under Texas Government Code §2001.039. The Department conducted the required four-year rule review of the rules under 16 TAC Chapter 112, and the Commission readopted the rule chapter in its entirety and in its current form. (Proposed Rule Review, 45 TexReg 7281, October 9, 2020. Adopted Rule Review, 46 TexReg 2050, March 26, 2021).

In response to the Notice of Intent to Review that was published, the Department received comments from two interested parties regarding 16 TAC Chapter 112, one of which is applicable to this rules package and will be addressed as part of this rules package. The comment suggested changes to the continuing education provider registration fee under §112.110. The comment suggested having a separate CE provider registration fee of \$25 paid bi-annually for out-of-state CE providers, which may encourage more out-of-state providers to become registered CE providers for the Hearing Instrument Fitters and Dispensers program. The Department disagrees with the suggestion to treat out-of-state providers differently, and this suggested change is not included in the proposed rules.

The proposed rules include changes based on the Department's review of the rules during the rule review process related to con-

tinuing education and changes recommended by the Education and Examination Workgroup.

#### *Other Changes Made Possible by HB 1560*

HB 1560, Sections 1.15 and 1.25, amended Texas Occupations Code §402.207(c) and repealed §402.303, to remove detailed requirements regarding the number of CE hours, the methods of CE delivery, the types of CE providers, and the approval of CE providers and courses. HB 1560, Section 1.12, also added broad rulemaking authority under Texas Occupations Code §51.405 regarding CE requirements and CE providers. The proposed rules revise and/or eliminate some of the CE provisions that were previously required by statute. The proposed rules allow more flexibility on the methods of CE delivery and the types of CE hours that may be obtained, and they eliminate the need for individual CE courses to be approved by the Department.

The proposed rules prescribe and expand the CE hours, courses, and methods of delivery. The proposed rules decrease the number of CE hours an apprentice permit holder must complete during the apprentice year, specify the type of proof necessary to claim CE credit during the apprentice permit year, and limit how and when an apprentice can claim CE credit. The proposed rules expand the methods of CE course delivery a hearing instrument fitter and dispenser license holder can use to earn CE hours; limit how and when a license holder can claim CE credit; and provide details on alternative methods for a license holder to obtain CE hours.

The proposed rules also modify provisions for CE providers relating to registration and application requirements; registration issuance, term, and renewal requirements; and the responsibilities imposed on CE providers. The proposed rules also extend the CE provider registration term from one year to two years and restructure the registration fees from \$200 annually to \$400 every two years. In addition, the proposed rules eliminate the current requirement that each CE course offered or provided by a registered CE provider must be approved by the Department.

Finally, the proposed rules include changes recommended by Department staff to correct and update citations and cross-references to improve accuracy, readability, and consistency in the rule text.

#### *Advisory Board Recommendations*

The proposed rules were presented to and discussed by the Hearing Instrument Fitters and Dispensers Advisory Board at its meeting on October 30, 2024. The Advisory Board made changes to the proposed rules at §112.70(g) to clarify that CE hours earned by a hearing-instrument fitters and dispensers licensee serving as a proctor during an exam are classified as in-person CE hours, and not as virtual or online CE hours. The Advisory Board voted and recommended that the proposed rules with changes be published in the *Texas Register* for public comment.

### SECTION-BY-SECTION SUMMARY

#### *Subchapter A. General Provisions.*

The proposed rules amend §112.2, Definitions. The proposed rules add definitions for the following new terms: "continuing education methods of delivery," "in-person continuing education course," "online continuing education course," and "virtual (or virtually) continuing education course." The proposed rules also amend the existing definition of "continuing education hour"; reorganize in alphabetical order the existing terms "continuing ed-

ucation hour" and "contract"; and renumber the terms in this section.

#### *Subchapter E. Apprentice Permit.*

The proposed rules amend §112.44, Apprentice Permit - Continuing Education. The proposed rules under subsection (a) reduce the required number of CE hours from 20 hours to 10 hours during the apprentice year; eliminate the requirement that all CE hours must be completed in the classroom; allow five CE hours to be completed online; and clarify that virtual courses are not considered online courses. The proposed rules amend subsection (b) to clarify that all CE courses completed during an apprentice year must be provided by a Department-registered continuing education provider. The proposed rules amend subsection (c) by requiring the permit holder to provide proof of attendance in a form and manner prescribed by the Department. The proposed rules add new subsections (d) and (e) to clarify that the apprentice permit holder will not receive credit for completing the same CE course more than once during the permit term, will not receive credit without attending the full CE course, and will not receive partial credit for attending less than the full course.

#### *Subchapter H. Continuing Education Requirements.*

The proposed rules repeal §112.70, Continuing Education - Hours and Courses. The requirements in this section are being repealed and replaced with the updated requirements in new §112.70.

The proposed rules add new §112.70, Continuing Education - Hours, Courses, and Methods of Delivery. This new section replaces existing §112.70, with the following proposed changes. The proposed rules change the title of this section from "Continuing Education - Hours and Courses" to "Continuing Education - Hours, Courses, and Methods of Delivery." The proposed rules reorganize this section to group the requirements for each CE method or activity into separate subsections. The proposed rules clarify in subsection (b) that a license holder may complete the 20 CE hours that are required each license term through the continuing education methods prescribed under subsections (c) - (g).

The proposed rules under subsection (c) allow hearing instrument fitter and dispenser license holders to earn the required CE hours by completing CE courses offered in-person, online, or virtually and prescribe the conditions under which the hours can be completed. The proposed rules increased the current limit on the number of CE hours received from a manufacturer CE provider from no more than five hours to no more than 10 hours per license term. The proposed rules continue the current limit on the number of online CE hours received to no more than 10 hours per license term, but the proposed rules clarify that virtual courses are not considered to be online course.

The proposed rules under subsection (d) clarify that a license holder may not receive more than five hours of CE credit per license term for preparation of a published book or article. The proposed rules under subsection (e) address earning CE credit for completion of academic courses related to the fitting and dispensing of hearing instruments. The proposed rules under subsection (f) address earning CE credit for participating in or teaching programs directly related to the fitting and dispensing of hearing instruments and limit the number of CE hours that may be received per license term to five CE hours. The proposed rules under subsection (g) authorize license holders to earn continuing education hours by serving as proctors for practical tests, with a maximum of one in-person CE hour per test date and four

in-person CE hours per license term. The proposed rules under subsection (h) address activities that will not receive CE credit, and the proposed rules under subsection (i) addresses statutory CE exemptions.

The proposed rules repeal §112.72, Continuing Education--Providers. The requirements in this section are being repealed and replaced with the updated requirements in new §§112.73 - 112.76.

The proposed rules add new §112.73, Continuing Education Provider--Registration Requirement and Application. The proposed rules require CE providers to register with the Department in order to offer or provide CE courses for the Hearing Instrument Fitters and Dispensers program. The proposed rules prescribe the application requirements for a CE provider registration. The proposed rules require the courses provided by a CE provider meet certain specified requirements, but the individual CE courses no longer must be approved by the Department.

The proposed rules add new §112.74, Continuing Education Provider--Issuance of Registration. The proposed rules provide details on CE provider registrations issued by the Department after a CE provider registration application has been approved.

The proposed rules add new §112.75, Continuing Education Provider--Registration Term; Renewal. The proposed rules extend the current CE provider registration term from one year to two years and specify the requirements for renewal and the consequences of non-renewal. The proposed rules include transition provisions. A registration is valid for one year if the registration was issued before May 1, 2025, or two years if the registration was issued on or after May 1, 2025. Similarly, the proposed rules establish that a registration renewed by the Department is valid for one year if the renewal was issued before May 1, 2025, and must be renewed annually, or two years if the renewal was issued on or after May 1, 2025, and must be renewed every two years. The proposed rules also provide that a list of registered CE providers will be available through a search function on the Department's website.

The proposed rules add new §112.76, Continuing Education Provider--Provider Responsibilities. The proposed rules establish the responsibilities of CE providers registered with the Department and include provisions addressing advertisements, credit hours, delivery and administration of the courses, validation for online and virtual courses, certificates of completion, recordkeeping, and audits. The proposed rules also specify actions by a CE provider that constitute violations of the rules.

#### *Subchapter L. Fees.*

The proposed rules amend §112.110, Fees. The proposed rules under subsection (f) restructure registration and renewal fees for continuing education providers to align with the CE provider registration term that is being extended from one year to two years. The continuing education provider registration fee is increased from a \$200 fee paid upon application and then a \$200 fee paid annually upon renewal, to a \$400 fee paid upon application and a \$400 fee paid every two years upon renewal.

### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

#### *State Government*

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reduc-

tions in costs to the state government to administer and enforce the proposed rules. The proposed rules do not impact program costs since they do not increase or decrease the need for personnel or resources. The activities required to implement the proposed rule changes, if any, are one-time program administration tasks that are routine in nature.

Mr. Couvillon has determined that in the first year of the first five years the proposed rules are in effect, a gain in revenue of \$1,800 is expected for the state government. As of August 1, 2024, there were 18 continuing education (CE) providers approved by TDLR. The proposed rules change a provider approval with a one-year term to a provider registration with a two-year term, and the fee paid will be \$400 every two years for a registration instead of \$200 annually for an approval. It is assumed that half the providers will renew before the rule change becomes effective in Fiscal Year One and the other half will renew after the change becomes effective. Thus, approximately half the providers would pay the current renewal fee of \$200 for a one-year approval, and the other half will pay the proposed renewal fee of \$400 for a two-year registration. Because half of the providers will pay the increased fee in the first fiscal year, the result will be an increase of revenue in that one year of \$1,800. In each subsequent year of the first five years the proposed rules are in effect, half as many providers will pay the increased fee, resulting in no additional revenue in those years.

#### *Local Government*

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to local governments, and there is no estimated increase or loss in revenue to local governments. Local governments are not responsible for administering the state regulation of hearing instrument fitters and dispensers under Occupations Code, Chapter 402. Thus, there are no foreseeable implications relating to costs or revenues of local governments as a result of enforcing or administering the proposed rules.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Because Mr. Couvillon has determined that the proposed rules will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas Government Code §2001.022.

#### PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be additional flexibility on the methods of CE delivery and the types of CE hours that may be obtained, and the elimination of the need for individual CE courses to be approved. These proposed rules decrease the number of CE hours an apprentice permit holder must complete during the apprentice year. The proposed rules expand the methods of CE course delivery a hearing instrument fitter and dispenser license holder can use to earn CE hours; and provide details on alternative methods for a license holder to obtain CE hours. These proposed changes will make access to continuing education credit easier for licensees and permit holders and allow more flexibility when obtaining CE hours. The reduction in required CE hours may save apprentice permit holders the amount they pay in CE fees.

The proposed rules also repeal and replace the Department's approval of a provider with a registration and update application requirements for CE providers; delineate the registration is-

suance requirements for CE providers and the registration term and renewal requirements for CE providers; and identify the responsibilities imposed on CE providers. These changes will provide greater clarity and guidance to CE providers regarding the registration requirements and the CE providers' responsibilities.

The proposed rules also extend the CE provider registration term from one year to two years and increase the application fees from \$200 annually to \$400 every two years. In addition, the proposed rules eliminate the current requirement that each CE course offered or provided by a registered CE provider must be approved by the Department. These changes will allow providers to renew their registration less often and will reduce work for providers by eliminating the requirement to submit each course given for approval.

#### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH THE PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no significant economic costs to persons who are required to comply with the proposed rules, including licensees, permit holders, and CE providers. The rules do not impose additional fees upon licensees or permit holders, nor do they create requirements that would obligate licensees or CE providers to expend funds for equipment, technology, staff, supplies, or infrastructure.

#### FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. The Hearing Instrument Fitters and Dispensers program regulates individuals, many of which may be established as a small or micro-business. Additionally Continuing Education Providers may also be established as a small or micro-business. It is unknown how many of these businesses, individuals or the entities that employ them fall within the definitions of a small or micro-business as data regarding the number of employees and gross annual sales is not collected by the agency. However, the proposed rules do not impose any costs so they cannot have an adverse economic effect on any business. Because the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

#### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Thus, the agency is not required to take any further action under Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules expand, limit, and repeal an existing regulation.

The proposed rules expand an existing regulation by adding definitions for clarification; by providing clarification on which activities count as CE and on the time basis to determine the amount of CE credited; by providing details on CE provider registrations issued by the Department after a CE provider registration application has been approved; by establishing additional responsibilities of CE providers registered with the Department; and by including provisions addressing and expanding requirements for advertisements, credit hours, delivery and administration of the courses, validation for online and virtual courses, certificates of completion, recordkeeping, and audits. The proposed rules also expand an existing regulation by specifying actions by a CE provider that constitute violations of the rules.

The proposed rules limit an existing regulation by eliminating the need for individual CE courses to be approved and by removing a provision authorizing the Department to consult with an advisory board member regarding provider applications.

7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

#### PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 16 TAC §112.2

##### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 402, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 402. No

other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

##### §112.2. Definitions.

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

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

(8) ~~[(40)]~~ Continuing education--Education intended to maintain and improve the quality of professional services in the fitting and dispensing of hearing instruments, to keep licensees knowledgeable of current research, techniques, and practices, and provide other resources which will improve skills and competence in the fitting and dispensing of hearing instruments.

~~[(8)]~~ Continuing education hour--A period of time equal to 50 minutes.

(9) Continuing education hour--A period of time equal to at least 50 minutes.

~~[(9)]~~ Contract--See definition for "written contract for services."

(10) Continuing education methods of delivery--The methods of delivering or providing continuing education courses, which include in-person, online, and virtual (or virtually) as those terms are defined in this section.

(11) (No change.)

(12) Contract--See definition for "written contract for services."

(13) ~~[(12)]~~ Department--The Texas Department of Licensing and Regulation.

(14) ~~[(13)]~~ Direct supervision--The physical presence with prompt evaluation, review and consultation of a supervisor any time a temporary training permit holder is engaged in the act of fitting and dispensing of hearing instruments.

(15) ~~[(14)]~~ Executive director--The executive director of the department.

(16) ~~[(15)]~~ Fitting and dispensing hearing instruments--The measurement of human hearing by the use of an audiometer or other means to make selections, adaptations, or sales of hearing instruments. The term includes prescribing, ordering, or authorizing the use of hearing instruments, the making of impressions for earmolds to be used as a part of the hearing instruments, and providing any necessary post-fitting counseling for the purpose of fitting and dispensing hearing instruments.

(17) ~~[(16)]~~ Hearing aid--Any wearable device designed for, offered for the purpose of, or represented as aiding persons with or compensating for impaired hearing. The term includes hearing instruments and over-the-counter hearing aids.

(18) ~~[(17)]~~ Hearing instrument--A prescription hearing aid as that term is defined by 21 C.F.R. Section 800.30.

(19) ~~[(18)]~~ Indirect supervision--The daily evaluation, review, and prompt consultation of a supervisor any time a permit holder is engaged in the act of fitting and dispensing hearing instruments.

(20) In-person continuing education course--A continuing education course that is delivered live and where the instructor and the

person taking the course are at the same physical location or the course is offered virtually.

(21) [(19)] License--A license issued by the department under the Act and this chapter to a person authorized to fit and dispense hearing instruments.

(22) [(20)] Licensee--Any person licensed or permitted by the department under Texas Occupations Code Chapter 401 or 402.

(23) [(21)] Manufacturer--The term includes a person who applies to be a continuing education provider who is employed by, compensated by, or represents an entity, business, or corporation engaged in any of the activities described in this paragraph. An entity, business, or corporation that:

(A) - (E) (No change.)

(24) [(22)] Non-Manufacturer--Any person, entity, buyer group, or corporation that does not meet the definition of a manufacturer.

(25) Online continuing education course--A continuing education course that is recorded and posted on a website for a person to take and complete. An online course does not include a live course delivered in-person or virtually. Virtual courses and webinars which are real-time and offer interaction between the provider and the attendee are not considered online courses.

(26) [(23)] Over-the-counter hearing aid--The term has the meaning assigned by 21 C.F.R. Section 800.30.

(27) [(24)] Person--An individual, corporation, partnership, or other legal entity.

(28) [(25)] Sale--The term includes a lease, rental, or any other purchase or exchange for value. The term does not include a sale at wholesale by a manufacturer to a person licensed under the Act or to a distributor for distribution and sale to a person licensed under the Act.

(29) [(26)] Specific Product Information--Specific product information shall include, but not be limited to, brand name, model number, shell type, and circuit type.

(30) [(27)] Supervisor--A supervisor is an individual who holds a valid license to fit and dispense hearing instruments under Texas Occupations Code, Chapter 401 or 402, other than an individual licensed under §401.311 or §401.312, and who meets the qualifications established by Texas Occupations Code, §402.255 and this chapter.

(31) [(28)] Telehealth--See definition(s) in Subchapter N, Telehealth.

(32) [(29)] Temporary training permit--A permit issued by the department to an individual who meets the qualifications established by Texas Occupations Code, Chapter 402, Subchapter F, and this chapter, to authorize the permit holder to fit and dispense hearing instruments only under the direct or indirect supervision, as required and as appropriate, of an individual who holds a license to fit and dispense hearing instruments without supervision under Texas Occupations Code, Chapter 401 or 402, other than an individual licensed under §401.311 or §401.312.

(33) Virtual (or virtually) continuing education course--A continuing education course delivered through a live webcast, video-conference, or other method that allows for real-time interaction or communications between the instructor and the persons taking the course. Virtual courses and webinars which are real-time and offer interaction between the provider and the attendee are not considered online courses.

(34) [(30)] Working days--Working days are Monday through Friday, 8:00 a.m. to 5:00 p.m.

(35) [(31)] Written contract for services--A written contract between the license holder and purchaser of a hearing instrument as set out in §112.140 (relating to Joint Rule Regarding the Sale of Hearing Instruments).

(36) [(32)] 30-day trial period--The period in which a person may cancel the purchase of a hearing instrument.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 15, 2024.

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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 475-4879



## SUBCHAPTER E. APPRENTICE PERMIT

### 16 TAC §112.44

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 402, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 402. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021), the Department's Sunset legislation.

§112.44. *Apprentice Permit--Continuing Education.*

(a) The apprentice permit holder must complete 10 hours of continuing education during the apprentice year, with no more than five of the 10 hours being completed through online courses. Virtual courses are not considered online courses.

[(a) Pursuant to Texas Occupations Code §402.207, the apprentice permit holder must complete twenty (20) hours of classroom continuing education during the apprentice year.]

(b) The continuing education courses must be provided by a department-registered continuing education provider. The apprentice permit holder must complete the continuing education courses in one or more of the following approved subjects relating to the fitting and dispensing of hearing instruments:

(1) - (15) (No change.)

(c) The apprentice permit holder must provide written proof of attendance or completion of a continuing education [an approved]



course in a form and manner prescribed by the department [on a department-approved form or in a manner prescribed by the department].

(d) The apprentice permit holder will not receive credit for completing the same continuing education course more than once during the permit term.

(e) The apprentice permit holder will not receive credit unless the apprentice permit holder attended the full continuing education course. There is no partial credit for attending less than the full course.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

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## SUBCHAPTER H. CONTINUING EDUCATION REQUIREMENTS

### 16 TAC §112.70, §112.72

#### STATUTORY AUTHORITY

The proposed repeals are repealed under Texas Occupations Code, Chapters 51 and 402, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapters 51 and 402. No other statutes, articles, or codes are affected by the proposed repeals.

The legislation that enacted the statutory authority under which the proposed repeals are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§112.70. Continuing Education--Hours and Courses.

§112.72. Continuing Education--Providers.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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### 16 TAC §§112.70, 112.73 - 112.76

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 402, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 402. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021), the Department's Sunset legislation.

§112.70. Continuing Education--Hours, Courses, and Methods of Delivery.

(a) This section applies to a hearing instrument fitter and dispenser license holder.

(b) Except as provided under subsection (i), a license holder must complete 20 continuing education hours during each license term. The hours may be completed through the continuing education methods prescribed under subsections (c) - (g).

(c) A license holder may earn the required continuing education hours by completing continuing education courses offered in-person, online, or virtually. The following conditions apply:

(1) A continuing education course must be provided by a continuing education provider that holds a current department registration.

(2) A license holder may not receive more than 10 hours of continuing education credit per license term from online courses offered by registered continuing education providers. Virtual courses are not considered to be online courses.

(3) A license holder may not receive more than 10 hours of continuing education credit per license term from in-person, online, or virtual courses offered by registered manufacturer continuing education providers.

(4) A license holder will not receive credit for completing the same continuing education course more than once during the same license term. If a provider offers the same course content through different methods of delivery (in-person, online, or virtual), the course is considered to be the same course.

(5) A license holder will not receive credit unless the license holder attended the full continuing education course. A license holder who is late or who leaves early will not receive credit for attending the continuing education course. There is no partial credit for attending less than the full course.

(d) A license holder may be credited with continuing education hours for a published book or article written by the license holder that contributes to the license holder's professional competence.

(1) The department may approve credit hours based on the degree that the published book or article advanced knowledge regarding the fitting and dispensing of hearing instruments.

(2) A license holder may not receive more than 5 hours of continuing education credit per license term for preparation of the published books or articles under this subsection.

(e) A license holder may be credited with continuing education hours for completion of academic courses at an accredited college or university in areas directly supporting development of skills and competence in the fitting and dispensing of hearing instruments.

(1) To receive credit for completion of academic work, the license holder must submit an official transcript(s) from accredited school(s) showing completion of hours in appropriate areas for which the license holder received a passing grade.

(2) A license holder may not receive more than the total number of academic credit hours earned per license term for the completion of academic courses at an accredited college or university in areas directly supporting development of skills and competence in the fitting and dispensing of hearing instruments.

(f) A license holder may be credited with continuing education hours for participating in or teaching programs directly related to the fitting and dispensing of hearing instruments, which are offered by an accredited college or university.

(1) These programs may include institutes, seminars, workshops, or conferences, but not academic courses for students.

(2) To receive credit for participating in or teaching programs, the license holder must submit to the department evidence sufficient to prove a direct relation between teaching programs claimed for continuing education credit directly relate to the fitting and dispensing of hearing instruments. The department resolves all questions of evidentiary sufficiency.

(3) A license holder may not receive more than 5 hours of continuing education credit per license term for participating in or teaching programs under this subsection.

(g) A license holder may be credited with in-person continuing education hours by serving as a proctor for the practical test, not to exceed one hour of in-person continuing education credit for each test date and with a maximum of four hours of in-person continuing education credit earned each license term.

(h) The department will not approve continuing education credit for any license holder for:

(1) education incidental to the regular professional activities of a license holder such as knowledge gained through experience or research;

(2) organization activity such as serving on committees or councils or as an officer in a professional organization; and

(3) any program which is not described in, or in compliance with, this section.

(i) Pursuant to Texas Occupations Code §402.305, the department may renew the license of a license holder who has not complied with the continuing education requirements if the license holder:

(1) submits proof from an attending physician that the license holder suffered a serious disabling illness or physical disability that prevented compliance with the continuing education requirements during the 24 months before the end of the license term; or

(2) was licensed for the first time during the 24 months before the end of the license term.

§112.73. Continuing Education Provider--Registration Requirement and Application.

(a) A continuing education provider must be registered by the department to offer or provide continuing education courses for the Hearing Instrument Fitters and Dispensers program. An applicant for a

continuing education provider registration shall meet the requirements set out in this subchapter.

(b) Unless otherwise indicated, an applicant must submit all required information in a form and manner prescribed by the department.

(c) To apply for a continuing education provider registration, a person must:

(1) submit a completed application in a form and manner prescribed by the department;

(2) specify whether the applicant is seeking to be registered as a manufacturer or a non-manufacturer continuing education provider;

(3) specify the method(s) of delivering continuing education courses (online, in-person, or virtual);

(4) provide a brief description of the applicant's capability in developing and instructing continuing education courses;

(5) provide a business plan with clearly defined purposes such as policies on inclement weather, refunds, and cancellations; and

(6) pay the provider initial application fee under §112.110.

(d) The courses provided by a continuing education provider must:

(1) include subject matter to increase or support the development of skills and competence in the fitting and dispensing of hearing instruments or in studies or disciplines related to fitting and dispensing of hearing instruments;

(2) have objectives of specific information and skills to be learned; and

(3) use educational methods and materials and qualified instructors and presenters to adequately implement learner objectives.

(e) An applicant must complete all registration requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§112.74. Continuing Education Provider--Issuance of Registration.

(a) The department will issue an applicant, whose application has been approved, a registration containing the registered provider's name, registration number, and expiration date.

(b) A continuing education provider registration issued by the department remains the property of the department.

(c) The department will issue a duplicate registration upon written request by the provider, in a form and manner prescribed by department, and upon payment of the duplicate/replacement fee under §112.110.

§112.75. Continuing Education Provider--Registration Term; Renewal.

(a) A provider registration is valid for two years from the date of issuance.

(1) An initial provider registration is valid for one year if the initial registration was issued before May 1, 2025; or two years if the initial registration was issued on or after May 1, 2025.

(2) A renewed provider registration is valid for one year if the renewed registration was issued before May 1, 2025; or two years if the renewed registration was issued on or after May 1, 2025.

(b) To renew the continuing education provider registration, the provider must:

(1) submit a completed renewal application in a form and manner prescribed by the department; and

(2) pay the provider registration renewal fee under §112.110.

(c) If the registration is not renewed on or before the expiration date, the registration expires. The continuing education provider may not offer or provide continuing education courses with an expired registration.

(d) A person whose registration has expired may renew the registration in accordance with 16 TAC §60.31 and §60.83. The continuing education provider is subject to late renewal fees.

(e) A list of registered continuing education providers will be available through a search function on the department's website.

§112.76. Continuing Education Provider--Provider Responsibilities.

(a) A registered provider must comply with all continuing education requirements set out in this subchapter.

(b) Advertisements. A registered provider may advertise as a registered continuing education provider for the Hearing Instrument Fitters and Dispensers program. A registered provider must include in all advertisements for a continuing education course the provider's registration number assigned to it by the department. A registered provider's website announcements concerning courses are considered advertisements for purposes of this rule.

(c) Credit hours. A registered provider will determine the number of hours of continuing education credit for a course. One hour of continuing education credit is equivalent to at least 50 minutes of actual instruction time.

(d) Delivery and administration of the courses.

(1) A registered provider must ensure that courses are delivered in a manner conducive to learning.

(2) If a registered provider offers the same course content through different methods of delivery (in-person, online, or virtual), the course is considered to be the same course.

(3) A registered provider must ensure that instructors possess both the subject matter knowledge they are teaching as well as the teaching ability required to impart the information.

(4) A registered provider is responsible for the conduct and administration of its courses, including the punctuality of classroom sessions, verification of participant attendance, and instructor performance.

(e) Validation for online and virtual courses.

(1) A registered provider shall maintain a method to validate the identity of the person taking the course.

(2) A registered provider shall incorporate a course content validation process that verifies a person's participation and comprehension of course material.

(f) Certificate of Completion. No later than 20 days after the date of the course, a registered provider shall issue a certificate of completion to each participant who attended and completed the entire continuing education course. The certificate of completion shall contain:

(1) the registered provider's name, registration number, and manufacturer or non-manufacturer status;

(2) the name of the participant and participant's license or permit number;

(3) the title of the course;

(4) the date and location of the course;

(5) the subject(s) included in the course;

(6) the delivery method of the course (in-person, online, or virtual);

(7) the number of continuing education credit hours given; and

(8) the signature of the registered provider.

(g) A registered provider shall not provide a certificate of completion to a participant who did not attend or complete the full continuing education course. A participant who is late or who leaves early will not receive credit for attending the continuing education course.

(h) A registered provider must maintain attendance and course completion records of all continuing education activities for a period of five years after completion of a course.

(i) The department may conduct an onsite or online audit of the continuing education courses offered by a provider.

(1) Audits may be conducted without prior notice to the provider, and department employees and representatives may enroll and attend a course without identifying themselves as employees or representatives of the department.

(2) Upon request, a provider shall provide information, including copies of specified records, to the department within 10 days of the date of the request.

(3) A provider shall cooperate fully with the department, its employees and representatives in the investigation of a complaint or performance of an audit.

(j) Violations. Any of the following actions by a registered provider is a violation of this chapter and may result in the assessment of administrative penalties and/or administrative sanctions against the registered provider:

(1) issuing a certificate of completion to an individual who did not complete the continuing education course;

(2) refusing to issue a certificate of completion to an individual who has satisfactorily completed a continuing education course;

(3) fraud or misrepresentation in an application for a provider registration;

(4) fraud or misrepresentation regarding maintenance of records, teaching method, program content, or issuance of certificates; or

(5) failing to cooperate with the department in an investigation or audit.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 15, 2024.

TRD-202405541



## SUBCHAPTER L. FEES

### 16 TAC §112.110

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 402, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 402. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021), the Department's Sunset legislation.

§112.110. *Fees.*

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

(f) Continuing Education Provider Registration: [~~education provider fee--\$200 annually.~~]

(1) Initial application fee--\$200 before May 1, 2025; \$400 on or after May 1, 2025.

(2) Renewal application fee--\$200 before May 1, 2025; \$400 on or after May 1, 2025.

(g) - (j) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 15, 2024.



## TITLE 22. EXAMINING BOARDS

### PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

#### CHAPTER 463. APPLICATIONS AND EXAMINATIONS

## SUBCHAPTER B. LICENSING REQUIREMENTS

### 22 TAC §463.9

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Psychologists proposes amendments to §463.9, relating to Licensed Specialist in School Psychology.

Overview and Explanation of the Proposed Rule. The proposed amendment will amend language identified during the quadrennial rule review to align with statute regarding unlicensed practice of school psychology outside an educational program. The amendment will clarify an unlicensed individual may complete an internship or other program if begun while enrolled in a psychology program.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§463.9. *Licensed Specialist in School Psychology.*

(a) License Requirements. An applicant for licensure as a specialist in school psychology must:

- (1) hold an appropriate graduate degree;
- (2) provide proof of specific graduate level coursework;
- (3) provide proof of an acceptable internship;
- (4) provide proof of passage of all examinations required by the Council; and
- (5) meet the requirements imposed under §501.2525(a)(3) - (9) of the Occupations Code.

(b) Applicants who hold active certification as a Nationally Certified School Psychologist (NCSP) are considered to have met all requirements for licensure under this rule except for passage of the Jurisprudence Examination. Applicants relying upon this subsection must provide the Council with their NCSP certification number.

(c) Applicants who graduated from a training program accredited or approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association are considered to have met all training and internship requirements for licensure under this rule. Applicants relying upon this subsection must submit an official transcript indicating the degree and date the degree was awarded or conferred.

(d) Appropriate Graduate Degrees.

(1) Applicants who do not hold active NCSP certification, or who did not graduate from a training program accredited or approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association, must have completed a graduate degree in psychology from a regionally accredited institution of higher education. For purposes of this rule, a graduate degree in psychology means the name of the candidate's major or program of study is titled psychology.

(2) Applicants applying under this subsection must have completed, either as part of their graduate degree program or after conferral of their graduate degree, at least 60 graduate level semester credit hours from a regionally accredited institution of higher education. A maximum of 12 internship hours may be counted toward this requirement.

(3) An applicant who holds a graduate degree that does not qualify under subsection (d)(1) but meets the requirements of subsection (d)(2) is considered to have an appropriate graduate degree if:

(A) the applicant holds a certificate of completion from a graduate-level training program designed to train individuals from related disciplines in the practice of school psychology;

(B) the applicant holds a graduate degree in a discipline related to psychology from a regionally accredited institution of higher education;

(C) the applicant is licensed, certified, or registered in good standing to practice school psychology in another jurisdiction; or

(D) the applicant was licensed, certified, or registered to practice school psychology in another jurisdiction within the previous

ten years before application for licensure and was not subject to any administrative or disciplinary actions during that same time period.

(e) Applicants applying under subsection (d) of this section must submit evidence of graduate level coursework as follows:

- (1) Psychological Foundations, including:
  - (A) biological bases of behavior;
  - (B) human learning;
  - (C) social bases of behavior;
  - (D) multi-cultural bases of behavior;
  - (E) child or adolescent development;
  - (F) psychopathology or exceptionalities;
- (2) Research and Statistics;
- (3) Educational Foundations, including any of the following:
  - (A) instructional design;
  - (B) organization and operation of schools;
  - (C) classroom management; or
  - (D) educational administration;
- (4) School-based Assessment, including:
  - (A) psychoeducational assessment;
  - (B) socio-emotional, including behavioral and cultural, assessment;
- (5) School-based Interventions, including:
  - (A) counseling;
  - (B) behavior management;
  - (C) consultation;
- (6) Professional, Legal and Ethical Issues; and
- (7) A School-based Practicum.

(f) Applicants applying under subsection (d) of this section must have completed an internship with a minimum of 1200 hours and that meets the following criteria:

- (1) At least 600 of the internship hours must have been completed in a public school.
- (2) The internship must be provided through a formal course of supervised study from a regionally accredited institution of higher education in which the applicant was enrolled; or the internship must have been obtained in accordance with Council §463.11(d)(1) and (d)(2)(C) of this title.
- (3) Any portion of an internship completed within a public school must be supervised by a Licensed Specialist in School Psychology, and any portion of an internship not completed within a public school must be supervised by a Licensed Psychologist.
- (4) No experience which is obtained from a supervisor who is related within the second degree of affinity or consanguinity to the supervisee may be utilized.
- (5) Unless authorized by the Council, supervised experience received from a supervisor practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(6) Internship hours must be obtained in not more than two placements. A school district, consortium, and educational co-op are each considered one placement.

(7) Internship hours must be obtained in not less than one or more than two academic years.

(8) An individual completing an internship under this rule must be designated as an intern.

(9) Interns must receive no less than two hours of supervision per week, with no more than half being group supervision. The amount of weekly supervision may be reduced, on a proportional basis, for interns working less than full-time.

(10) The internship must include direct intern application of assessment, intervention, behavior management, and consultation, for children representing a range of ages, populations and needs.

(g) Provision of psychological services in the public schools by unlicensed individuals.

(1) An unlicensed individual may provide psychological services under supervision in the public schools if[ ]

~~[(A)] the individual is enrolled in an internship, practicum or other site based training in a psychology program in a regionally accredited institution of higher education. An unlicensed individual no longer enrolled in a psychology program may nevertheless continue providing psychological services through completion of an internship, practicum, or other site based training begun while enrolled in the psychology program.[ or]~~

~~[(B)] the individual has completed an internship that meets the requirements of this rule, and has submitted an application for licensure as a Licensed Specialist in School Psychology to the Council that has not been denied or returned.~~

(2) An unlicensed individual may not provide psychological services in a private school setting unless the activities or services provided are exempt under §501.004 of the Psychologists' Licensing Act.

~~[(3)] An unlicensed individual may not engage in the practice of psychology under paragraph (1)(B) of this subsection for more than forty-five days following receipt of the application by the Council.~~

~~[(4)] The authority to practice referenced in paragraph (1)(B) of this subsection is limited to the first or initial application filed by an individual under this rule, but is not applicable to any subsequent applications filed under this rule.~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024.

TRD-202405571

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706



**22 TAC §463.10**

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Psychologists proposes amendments to §463.10, relating to Licensed Psychologists.

**Overview and Explanation of the Proposed Rule.** The proposed amendment will remove language identified during the quadrennial rule review to align with statute regarding waiving experience requirements for applicants with a license in another jurisdiction.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency;

it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

**Applicable Legislation.** This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

**Statutory Authority.** The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§463.10. *Licensed Psychologists.*

(a) Licensure Requirements. An applicant for licensure as a psychologist must:

- (1) hold a doctoral degree in psychology from a college or university accredited by a regional accrediting organization;
- (2) pass all examinations required by the agency;
- (3) submit documentation of supervised experience from a licensed psychologist which satisfies the requirements of Council §463.11 of this title; and
- (4) meet all other requirements of §501.2525 of the Occupations Code.

(b) Degree Requirements.

(1) For those applicants with a doctoral degree conferred on or after January 1, 1979, the transcript must state that the applicant has a doctoral degree that designates a major in psychology.

(2) For those applicants with a doctoral degree conferred prior to January 1, 1979, the transcript must reflect a doctoral degree that designates a major in psychology or the substantial equivalent of a doctoral degree in psychology in both subject matter and extent of training. A doctoral degree will be considered the substantial equivalent to a doctoral degree in psychology if the training program meets the criteria of Council rule §463.15 of this title.

(c) An applicant who holds an active Certificate of Professional Qualification in Psychology (CPQ) is considered to have met all requirements for licensure under this rule except for passage of the Jurisprudence Examination. Applicants relying upon this subsection must request that documentation of their certification be sent directly to the Council from the Association of State and Provincial Psychology Boards (ASPPB), be submitted to the Council in the sealed envelope in which it was received by the applicant from ASPPB, or be submitted to the Council as directed by agency staff.

(d) An applicant who holds an active specialist certification with the American Board of Professional Psychology (ABPP) is considered to have met all requirements for licensure under this rule except for passage of the EPPP and Jurisprudence Examination. Applicants relying upon this subsection must request that documentation of their specialist certification be sent directly to the Council from ABPP, be submitted to the Council in the sealed envelope in which it was received by the applicant from ABPP, or be submitted to the Council as directed by agency staff.

(e) The requirement for documentation of supervised experience under this rule is waived for an applicant who is actively licensed as a doctoral-level psychologist in good standing and has been practicing psychology in another jurisdiction for at least five years. ~~[or can affirm that the applicant has received at least 3,000 hours of supervised experience from a licensed psychologist in the jurisdiction where the supervision took place. At least half of those hours (a minimum of 1,500 hours) must have been completed within a formal internship, and the remaining one-half (a minimum of 1,500 hours) must have been completed after the doctoral degree was conferred.]~~ Applicants relying upon this subsection must request that verification of their out-of-state licensure be sent directly to the Council from the other jurisdiction, be submitted to the Council in the sealed envelope in which it was received by the applicant from the other jurisdiction, or be submitted to the Council as directed by agency staff.

(f) Provisional License.

(1) An applicant who has not yet passed the required examinations or is seeking to acquire the supervised experience required under Council §463.11 of this title may practice under the supervision

of a licensed psychologist as a provisionally licensed psychologist for not more than two years if the applicant meets all other licensing requirements.

(2) A provisional license will be issued to an applicant upon proof of provisional license eligibility. However, a provisional license will not be issued to an applicant who was issued a provisional license in connection with a prior application.

(3) A provisionally licensed psychologist is subject to all applicable laws governing the practice of psychology.

(4) A provisionally licensed psychologist may be made the subject of an eligibility or disciplinary proceeding. The two-year period for provisional licensure shall not be tolled by any suspension of the provisional license.

(5) A provisional license will expire after two years if the person does not qualify for licensure as a psychologist

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024.

TRD-202405572

Darrel D. Spinks  
Executive Director

Texas State Board of Examiners of Psychologists  
Earliest possible date of adoption: December 29, 2024  
For further information, please call: (512) 305-7706



## SUBCHAPTER E. EXAMINATIONS

### 22 TAC §463.31

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Psychologists proposes amendments to §463.31, relating to Minimum Passing Scores for Examinations.

Overview and Explanation of the Proposed Rule. The proposed amendment would reduce the required passing score on the psychology jurisprudence exam from 90% to 85%.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be



no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this

State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§463.31. Minimum Passing Scores for Examinations.*

(a) Cut-off Scores for the Examination for Professional Practice in Psychology. The minimum acceptable score for the Examination for Professional Practice in Psychology is 500 for computer based examinations and seventy percent (70%) for paper based versions of the test.

(b) Cut-off Scores for the School Psychology Examination. The minimum acceptable score for the School Psychology Examination is the same as the current cut-off score for the Nationally Certified School Psychologist credential.

(c) Cut-off Scores for the Jurisprudence Examination. The minimum acceptable score for the Jurisprudence Examination for all applicants is eighty-five (85%) [~~ninety percent (90%)~~].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706

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# PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

## CHAPTER 681. PROFESSIONAL COUNSELORS

### SUBCHAPTER B. RULES OF PRACTICE

#### 22 TAC §681.37

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Professional Counselors proposes amendments to §681.37, relating to Billing and Financial Arrangements.

**Overview and Explanation of the Proposed Rule.** The proposed amendment will remove language identified during the quadrennial rule review to better align with the agency's statute.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is

required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

**Applicable Legislation.** This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

**Statutory Authority.** The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education re-

quirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§681.37. Billing and Financial Arrangements.*

(a) Billing Requirements.

(1) A licensee must bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual written agreement.

(2) Relationships between a licensee and any other person used by the licensee to provide services to a client must be so reflected on billing documents.

(3) Upon the written request of a client, a client's guardian, or a client's parent (sole managing, joint managing or possessory conservator) if the client is a minor, a licensee must provide, in plain language, a written explanation of the types of treatment and charges for counseling treatment intervention previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(4) A licensee may not knowingly overcharge a client.

(5) A licensee may not submit to a client or a third party payor a bill for counseling treatment intervention the licensee knows or should know is improper, unreasonable, or unnecessary. However, nothing in this rule should be construed to prevent a licensee from submitting a bill for an unkept appointment.

(b) In accordance with §503.401(a)(4) of the Act, a licensee must not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting clients or patronage.

(c) A licensee employed or under contract with a chemical dependency facility or a mental health facility must comply with the requirements in the Texas Health and Safety Code, §164.006, relating to soliciting and contracting with certain referral sources. [~~Compliance with the Treatment Facilities Marketing Practices Act, Texas Health and Safety Code Chapter 164, will not be considered as a violation of state law relating to illegal remuneration.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706

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**22 TAC §681.41**

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Professional Counselors proposes amendments to §681.41, relating to General Ethical Requirements.

**Overview and Explanation of the Proposed Rule.** The proposed amendment will remove language identified during the quadrennial rule review as potentially unenforceable, while not changing the substantive requirement that a licensee not make or benefit from false, misleading, deceptive, fraudulent, or exaggerated claims.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council esti-

mates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§681.41. General Ethical Requirements.*

(a) A licensee must not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the licensee's services, including, but not limited to:

(1) the effectiveness of services;

(2) the licensee's qualifications, capabilities, background, training, experience, education, professional affiliations, fees, products, or publications; or

(3) the practice or field of counseling.

(b) A licensee must not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the services of a mental health organization or agency, including, but not limited to, the effectiveness of services, qualifications, or products.

~~[(e) A licensee must discourage a client from holding exaggerated or false ideas about the licensee's professional services, including, but not limited to, the effectiveness of the services, practice, qualifications, associations, or activities. If a licensee learns of exaggerated or false ideas held by a client or other person, the licensee must take immediate and reasonable action to correct the ideas held.]~~

~~[(d) A licensee must make reasonable efforts to discourage others whom the licensee does not control from making misrepresentations; exaggerated or false claims; or false, deceptive, or fraudulent statements about the licensee's practice, services, qualifications, associations, or activities. If a licensee learns of a misrepresentation; exaggerated or false claim; or false, deceptive, or fraudulent statement made by another, the licensee must take reasonable action to correct the statement.]~~

(c) ~~[(e)]~~ Technological means of communication may be used to facilitate the therapeutic counseling process.

(d) ~~[(f)]~~ A licensee may take reasonable action to inform medical or law enforcement personnel if the licensee determines there is a probability of imminent physical injury by the client to the client or others, or there is a probability of immediate mental or emotional injury to the client.

(e) ~~[(g)]~~ The licensee must take reasonable precautions to protect clients from physical or emotional harm resulting from interaction:

(1) within a group; or

(2) individual counseling.

(f) ~~[(h)]~~ A licensee must not evaluate any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses in the evaluation the licensee has not personally interviewed the individual.

(g) ~~[(i)]~~ A licensee must not knowingly overtreat a client.

(h) ~~[(j)]~~ A licensee must not aid or abet the unlicensed practice of professional counseling by a person required to be licensed under the Act.

(i) ~~[(k)]~~ A licensee must report to the Council knowledge of any unlicensed practice of counseling.

(j) ~~[(l)]~~ A licensee or an applicant must not participate in the falsification of any materials submitted to the Council.

(k) [(m)] A licensee must not provide services while impaired by a physical, mental, or medical condition or by medication, drugs, or alcohol.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706



## 22 TAC §681.44

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Professional Counselors proposes repeal of §681.44, relating to Drugs and Alcohol Use.

**Overview and Explanation of the Proposed Rule.** The proposed repeal will remove language identified during the quadrennial rule review as unnecessary and duplicative, without changing the substantive impact of the rules.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of no longer enforcing or administering the rule. Additionally, Mr. Spinks has determined that repealing the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the proposed repeal will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of repealing the rule language will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed repeal will have no impact on local em-

ployment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

**Applicable Legislation.** This repeal is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

**Statutory Authority.** The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, stan-

dards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§681.44. Drugs and Alcohol Use.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706



**22 TAC §681.47**

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Professional Counselors proposes repeal of §681.47, relating to Assumed Names.

**OVERVIEW AND EXPLANATION OF THE PROPOSED RULE.** The proposed repeal will remove language identified during the quadrennial rule review as potentially in conflict with the Texas Business and Commerce Code, while not changing the substantive requirement in other rules that a licensee not make or benefit from false, misleading, deceptive, fraudulent, or exaggerated claims.

**FISCAL NOTE.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of no longer enforcing or administering the rule. Additionally, Mr. Spinks has determined that repealing the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**PUBLIC BENEFIT.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the proposed repeal will provide greater clarity and consistency in the

Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of repealing the rule language will be to help the Executive Council protect the public.

**PROBABLE ECONOMIC COSTS.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

**SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES.** Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**LOCAL EMPLOYMENT IMPACT STATEMENT.** Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**REQUIREMENT FOR RULES INCREASING COSTS TO REGULATED PERSONS.** The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**GOVERNMENT GROWTH IMPACT STATEMENT.** For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**TAKINGS IMPACT ASSESSMENT.** Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**REQUEST FOR PUBLIC COMMENTS.** Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at

least 30 days from the date of publication of this proposal in the *Texas Register*.

**APPLICABLE LEGISLATION.** This repeal is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

**STATUTORY AUTHORITY.** The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§681.47. *Assumed Names.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706



**22 TAC §681.49**

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Professional Counselors proposes amendments to §681.49, relating to Advertising and Announcements.

**Overview and Explanation of the Proposed Rule.** The proposed amendment will remove language identified during the quadrennial rule review as potentially unenforceable, while not changing the substantive requirement that a licensee not make or benefit from false, misleading, or deceptive advertising.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or de-

crease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

#### §681.49. Advertising and Announcements.

(a) Information used by a licensee in any advertisement or announcement must not contain information which is false, inaccurate, misleading, incomplete, out of context, deceptive or not readily verifiable. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, and billing statements.

(b) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(1) makes any misrepresentation of fact or omits a fact necessary to make the statement misleading;

(2) makes any representation likely to create an unjustified expectation about the results of a mental health care service or procedure;

(3) compares a mental health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(4) contains a testimonial that includes false, deceptive, or misleading statements, or fails to include disclaimers or warnings as to the credentials of the person making the testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or licensure of a mental health care professional;

(6) advertises or represents that health care insurance deductibles or co-payments may be waived or are not applicable to health care services to be provided if the deductibles or co-payments are required;

(7) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or co-payments are required; or

~~[(8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or]~~

(8) ~~[(9)]~~ advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved for or used by another profession or professional.

(c) A licensee who retains or hires others to advertise or promote the licensee's practice remains responsible for the statements and representations.

(d) The highest academic degree in counseling or a counseling-related field earned from an accredited school may be used when advertising or announcing counseling treatment intervention to the public or in counseling-related professional representations. A degree in counseling or a counseling-related field received at a foreign university may be used if the degree would be accepted as a transfer degree by an accredited school.

(e) Notwithstanding the foregoing, a licensee may advertise or announce his or her other degrees from an accredited school if the subject of the degree is specified.

(f) The Council imposes no restrictions on advertising by a licensee with regard to the use of any medium, the licensee's personal appearance, or the use of his or her personal voice, the size or duration of an advertisement by a licensee, or the use of a trade name.

(g) All advertisements or announcements of counseling including telephone directory listings by a person licensed by the Council must clearly state the licensee's licensure status by the use of a title such as "Licensed Counselor", or "Licensed Professional Counselor", or "LPC", or a statement such as "licensed by the Texas



Behavioral Health Executive Council" with reference to the "Texas State Board of Examiners of Professional Counselors."

(h) An LPC Associate must indicate Associate status on all advertisements, billing, and announcements of counseling treatment by the use of the term "LPC Associate. "On all advertisements, billings and announcements of counseling treatment by an LPC Associate, the Associate's name must be followed by the name of the supervisor.

(i) A licensee is required to hold the art therapy specialty designation in order to use the title "art therapist" or the initials "AT." A licensee who does not hold the designation may use art therapy as a counseling method but may not use the title or initials.

(j) A licensed professional counselor who is a Council-approved supervisor may use the designation "LPC-S" when advertising their supervisory status.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024.

TRD-202405591

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706



## SUBCHAPTER C. APPLICATION AND LICENSING

### 22 TAC §681.81

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Professional Counselors proposes amendments to §681.81, relating to General Academic Requirements.

**Overview and Explanation of the Proposed Rule.** The proposed amendment will remove language identified during the quadrennial rule review that is superseded by Council rule §882.11.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be

no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

**Applicable Legislation.** This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

**Statutory Authority.** The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this

State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§681.81. General Academic Requirements.*

(a) The Council will accept as meeting academic requirements graduate degrees from accredited schools that meet the requirements of §681.82 of this title. [~~(relating to Academic Requirements)~~ and §681.83 of this title. ~~(relating to Academic Course Content).~~]

(b) [~~Degrees and course work received at foreign universities will be acceptable only if such course work would be counted as transfer credit by an accredited school.~~] The applicant must provide the Council with documents and evidence to establish his or her formal education is equivalent to at least a master's degree granted by an accredited school. In order to meet this requirement the applicant must comply with Council §882.11 of this title. [~~(relating to Applicants with Foreign Degrees).~~]

(c) Applicants must provide upon request a course description from an official school catalog or bulletin or a course syllabus to substantiate the relevance of the course to the academic requirements of §681.83 of this title.

(d) The Council will not consider undergraduate level courses as meeting any academic requirements for licensure unless the applicant's official transcript clearly shows the course was awarded graduate credit by the school.

(e) The Council will consider courses for which an applicant's official transcript indicates a passing grade or credit was earned.

(f) In evaluating transcripts, the Council will consider a quarter hour of academic credit as two-thirds of a semester hour.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024.

TRD-202405592

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706



**22 TAC §681.92**

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Professional Counselors proposes amendments to §681.92, relating to Experience Requirements.

Overview and Explanation of the Proposed Rule. The proposed amendment will remove language identified during the quadrennial rule review as unnecessary and duplicative, without changing the substantive impact of the rule.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§681.92. *Experience Requirements.*

(a) All applicants for LPC licensure must complete supervised experience acceptable to the Council of 3,000 clock-hours under a Council-approved supervisor.

(1) All internships physically occurring in Texas must be completed under the supervision of a Council-approved supervisor.

(2) For all internships physically completed in a jurisdiction other than Texas, the supervisor must be a person licensed or certified by that jurisdiction in a profession that provides counseling and who has the academic training and experience to supervise the counseling services offered by the Associate. The applicant must provide documentation acceptable to the Council regarding the supervisor's qualifications.

(b) The supervised experience must include at least 1,500 clock-hours of direct client counseling contact. Only actual time spent counseling may be counted.

(c) An LPC Associate may not complete the required 3,000 clock-hours of supervised experience in less than 18 months.

(d) The experience must consist primarily of the provision of direct counseling services within a professional relationship to clients by using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life.

(e) The LPC Associate must receive direct supervision consisting of a minimum of four (4) hours per month of supervision in individual (up to two Associates or group (three or more) settings while the Associate is engaged in counseling unless an extended leave of one month or more is approved in writing by the Council approved supervisor. No more than 50% of the total hours of supervision may be received in group supervision.

~~[(f) An LPC Associate may have up to two (2) supervisors at one time.]~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024.

TRD-202405593



## 22 TAC §681.101

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Professional Counselors proposes amendments to §681.101, relating to Examinations.

**Overview and Explanation of the Proposed Rule.** The proposed amendment will remove language identified during the quadrennial rule review as unnecessary, without changing the substantive impact of the rule.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the

residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

**Applicable Legislation.** This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

**Statutory Authority.** The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Ex-

ecutive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§681.101. Examinations.*

[(a)] Each applicant for licensure is required to take and pass the National Counselor Exam or the National Clinical Mental Health Counselor Exam and complete the jurisprudence exam prior to application.

[(b) The development or administration of the examination may be contracted to a national testing company.]

[(c) The National Counselor Examination and the National Clinical Mental Health Counselor Exam are administered at testing centers located in various cities throughout the state. The jurisprudence exam is available online at the Council's website.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024.

TRD-202405594

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706



## SUBCHAPTER D. SCHEDULE OF SANCTIONS

### 22 TAC §681.204

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Professional Counselors proposes amendments to §681.204, relating to Other Actions.

**Overview and Explanation of the Proposed Rule.** The proposed amendment will remove language identified during the quadrennial rule review to better align with the agency's statute.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public

benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

**Applicable Legislation.** This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§681.204. Other Actions.*

Complaints may be resolved by issuance of a warning letter [or a conditional letter of agreement, which does not involve a formal disciplinary action].

[(1)] Warning letters inform licensees of their duties under the Act, the Council Act, or council rules, and whether the council has a concern about the circumstances surrounding the complaint.

[(2)] A conditional letter of agreement informs the licensee of the licensee's duties under the Act, the Council Act, or Council rules; whether the conduct or omission complained of appears to violate such duties, and creating Council ordered conditions for the long-term resolution of the issues in the complaint. This conditional letter of agreement specifies the immediate disposition of the complaint. The licensee is issued the conditional letter of agreement by staff; and a signature of agreement by the licensee is required. If the licensee fails to comply with all the Council ordered conditions in the specified time frame outlined in the conditional letter agreement, staff will open a new complaint arising out of non-compliance with the conditional letter agreement or the underlying conduct.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024.

TRD-202405595

Darrel D. Spinks  
Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706



**22 TAC §681.205**

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Professional Counselors proposes amendments to §681.205, relating to Schedule of Sanctions.

Overview and Explanation of the Proposed Rule. The proposed amendment would update the schedule of sanctions to reflect amendments proposed in other rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is

required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

**Applicable Legislation.** This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

**Statutory Authority.** The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care,

and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§681.205. *Schedule of Sanctions.*

The following standard shall apply to violations of the Act and these rules.

Figure: 22 TAC §681.205

[Figure: 22 TAC §681.205]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024.

TRD-202405596

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706



## PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

### CHAPTER 781. SOCIAL WORKER LICENSURE

#### SUBCHAPTER B. RULES OF PRACTICE

##### 22 TAC §781.306

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Social Worker Examiners proposes amendments to §781.306, relating to Professional Representation.

**Overview and Explanation of the Proposed Rule.** The proposed amendment will remove language identified during the quadrennial rule review as potentially unenforceable, while not changing the substantive requirement that a licensee not make or benefit from false, misleading, deceptive, fraudulent, or exaggerated claims.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the->

[rulemaking-process/](#). The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

**Applicable Legislation.** This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

**Statutory Authority.** The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§781.306. *Professional Representation.*

(a) A social worker shall not misrepresent any professional qualifications or associations.

(b) A social worker shall not misrepresent the attributes of any agency or organization, or make unreasonable, misleading, deceptive, fraudulent, exaggerated, or unsubstantiated claims about the effectiveness of any services.

~~[(c) A social worker shall not encourage, or within the social worker's power, allow a client to hold exaggerated ideas about the effectiveness of the social worker's services.]~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.



Filed with the Office of the Secretary of State on November 18, 2024.

TRD-202405574

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706



## 22 TAC §781.310

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Social Worker Examiners proposes amendments to §781.310, relating to Billing and Financial Relationships.

**Overview and Explanation of the Proposed Rule.** The proposed amendment will remove language identified during the quadrennial rule review to better align with the agency's statute.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is

required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

**Applicable Legislation.** This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

**Statutory Authority.** The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education re-

quirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§781.310. *Billing and Financial Relationships.*

(a) A licensee shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting clients or patronage for or from any health care professional. In accordance with the provisions of the Act, §505.451, a licensee is subject to disciplinary action if the licensee directly or indirectly offers to pay or agrees to accept remuneration to or from any person for securing or soliciting a client or patronage. Payment of credentialing or other fees to insurance companies or other third party payers to be part of an approved provider list shall not be considered as a violation of this chapter.

(b) A licensee employed or under contract with a chemical dependency facility or a mental health facility, shall comply with the requirements in the Texas Health and Safety Code, §164.006, relating to soliciting and contracting with certain referral sources. [~~Compliance with the Treatment Facilities Marketing Practices Act, Texas Health and Safety Code, Chapter 164, shall not be considered as a violation of state law relating to illegal remuneration.~~]

(c) A licensee shall not knowingly or flagrantly overcharge a client, and shall bill clients and/or third parties for only those services that the licensee actually renders.

(d) Billing documents shall accurately reflect any collateral service the licensee uses to help serve the client.

(e) A licensee may not submit to a client and/or a third party payer a bill for services that the licensee knows were not provided, with the exception of a missed appointment, or knows were improper, unreasonable or unnecessary.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024.

TRD-202405575

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706



**22 TAC §781.313**

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Social Worker Examiners proposes to repeal §781.313, relating to Corporations and Business Names.

Overview and Explanation of the Proposed Rule. The proposed repeal will remove language identified during the quadrennial rule review as potentially in conflict with the Texas Business and Commerce Code, while not changing the substantive requirement in other rules that a licensee not make or benefit from false, misleading, deceptive, fraudulent, or exaggerated claims.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of no longer enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the proposed repeal will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of repealing the rule language will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency;

it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed repeal may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

**Applicable Legislation.** This repeal is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

**Statutory Authority.** The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§781.313. *Corporations and Business Names.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024.

TRD-202405576

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706



## SUBCHAPTER D. SCHEDULE OF SANCTIONS

### 22 TAC §781.804

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Social Worker Examiners proposes amendments to §781.804, relating to Other Disciplinary Actions.

**Overview and Explanation of the Proposed Rule.** The proposed amendment will remove language identified during the quadrennial rule review as not comporting with the agency's statute.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not

required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

**Applicable Legislation.** This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

**Statutory Authority.** The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license

holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

#### *§781.804. Other Disciplinary Actions.*

Complaints may be resolved by issuance of a warning letter [~~or a conditional letter of agreement,~~] which does [dø] not involve a formal disciplinary action.

[(1)] Warning letters inform [informing] licensees of their duties under the Act or this chapter[~~],~~ and whether the conduct or omission complained of may appear to violate such duties.

[(2)] ~~A conditional letter of agreement informs the licensee of the licensee's duties under the Act of this chapter, whether the conduct or omission complained of may appear to violate such duties, and creating Council ordered conditions for the resolution of the issues in the complaint. Staff may issue the conditional letter of agreement to the licensee, a signature by the licensee is required, and the letter will specify the disposition of the complaint. If the licensee fails to comply with all the Council ordered conditions in the specified time frame outlined in the conditional letter agreement, staff will open a new complaint arising out of non-compliance with the conditional letter agreement and/or the underlying conduct.]~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024.

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Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706



## **22 TAC §781.805**

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Social Worker Examiners proposes amendments to §781.805, relating to Schedule of Sanctions.

**Overview and Explanation of the Proposed Rule.** The proposed amendments would update the schedule of sanctions to reflect amendments proposed in other rules.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to pre-

pare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

**Applicable Legislation.** This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

**Statutory Authority.** The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§781.805. Schedule of Sanctions.*

The following standard sanctions shall apply to violations of the Act and these rules.

Figure: 22 TAC §781.805

[Figure: 22 TAC §781.805]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024.

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Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

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For further information, please call: (512) 305-7706



## PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

### CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

#### SUBCHAPTER B. RULES OF PRACTICE

##### 22 TAC §801.43

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists proposes amendments to §801.43, relating to Professional Representation.

**Overview and Explanation of the Proposed Rule.** The proposed amendment will remove language identified during the quadrennial rule review as potentially unenforceable, while not changing the substantive requirement that a licensee not make or benefit from false, misleading, deceptive, fraudulent, or exaggerated claims.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small

businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**REQUEST FOR PUBLIC COMMENTS.** Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

**Applicable Legislation.** This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

**Statutory Authority.** The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists

previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§801.43. Professional Representation.*

(a) A licensee is subject to and bound by provisions of the Act, the Council Act, and council rules.

(b) A licensee that becomes aware of another licensee violating state or federal law within the jurisdiction of the Council may attempt to resolve the violation informally with the other licensee, if the violation does not involve actual or likely harm to an individual or the public. Any unresolved violations must be reported to the Council. A licensee that becomes aware of another licensee violating a state or federal law within the jurisdiction of the Council, involving actual or likely harm to an individual or the public, must report the violation to the Council.

(c) Licensure and Supervisory Status.

(1) When providing professional therapeutic services as defined in §801.42 of this title, [~~relating to Professional Therapeutic Services~~], a licensee must indicate his or her licensure status as an LMFT or LMFT Associate, including any probationary status or other restrictions placed on the licensee by the council.

(2) An LMFT Associate must not represent themselves as an independent practitioner. An LMFT Associate's name must be followed by a statement such as "supervised by (name of supervisor)" or a statement of similar effect, together with the name of the supervisor. This disclosure must appear on all marketing materials, billing documents, and practice related forms and documents where the LMFT Associate's name appears, including websites and intake documents. This paragraph is effective January 1, 2023.

(d) A licensee may not make any false, misleading, deceptive, fraudulent, or exaggerated claim or statement about the licensee's services, including:

- (1) the effectiveness of services;
- (2) the licensee's qualifications, capabilities, background, training, education, experience, professional affiliations, fees, products, or publications; or

(3) the practice of marriage and family therapy.

(e) A licensee may not misrepresent any agency or organization by presenting it as having attributes that it does not possess.

~~[(f) A licensee may not encourage, or within the licensee's power, allow a client to hold exaggerated ideas about the efficacy of services provided by the licensee.]~~

~~[(g) If a licensee learns of a misrepresentation, exaggerated, false, deceptive, or fraudulent claim or statement made by another, the licensee must take reasonable action to correct the misrepresentation, claim, or statement.]~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024.

TRD-202405579

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706



**22 TAC §801.44**

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists proposes amendments to §801.44, relating to Relationships with Clients.

Overview and Explanation of the Proposed Rule. The proposed amendment will remove language identified during the quadrennial rule review to better align with the agency's statute.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules nec-

essary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§801.44. Relationships with Clients.*

(a) A licensee must provide marriage and family therapy professional services only in the context of a professional relationship.

(b) A licensee must make known in writing to a prospective client the important aspects of the professional relationship, including the licensee's status as an LMFT or LMFT Associate, any probationary status or other restrictions placed on the licensee by the council, office procedures, after-hours coverage, fees, and arrangements for payment (which might affect the client's decision to enter into the relationship).

(c) A licensee must obtain an appropriate consent for treatment before providing professional services. A licensee must make reasonable efforts to determine whether the conservatorship, guardianship, or parental rights of the client have been modified by a court. Before the commencement of therapy services to a minor client who is named in a custody agreement or court order, a licensee must obtain and review a current copy of the custody agreement or court order in a suit affecting the parent-child relationship. A licensee must maintain these documents in the client's record. When federal or state statutes provide an exemption to secure consent of a parent or guardian before providing services to a minor, such as in Texas Family Code, Chapter 32, [(relating to Consent to Treatment of Child by Non-Parent or Child),] a licensee must follow the protocol set forth in such federal or state statutes.

(d) A licensee must make known in writing to a prospective client the confidential nature of the client's disclosures and the clinical record, including the legal limitations of the confidentiality of the mental health record and information.

(e) No commission or rebate or any other form of remuneration may be given or received by a licensee for the referral of clients for professional services. A licensee employed or under contract with a chemical dependency facility or a mental health facility must com-



ply with the requirements in Texas Health and Safety Code, §164.006. [(relating to Soliciting and Contracting with Certain Referral Sources)- Compliance with Texas Health and Safety Code, Chapter 164 (relating to Treatment Facilities Marketing and Admission Practices) is not considered a violation of state law regarding illegal remuneration.]

(f) A licensee may not exploit the licensee's position of trust with a client or former client.

(g) A licensee may not engage in activities that seek to meet the licensee's personal needs instead of the needs of the client.

(h) A licensee may not provide marriage and family therapy services to family members, personal friends, educational associates, business associates, or others whose welfare might be jeopardized by such a dual relationship.

(i) A licensee must set and maintain professional boundaries with clients and former clients.

(j) A licensee may disclose confidential information to medical or law enforcement personnel if the licensee determines there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client.

(k) In group therapy settings, the licensee must take reasonable precautions to protect individuals from physical or emotional trauma resulting from interaction within the group.

(l) A licensee must make a reasonable effort to avoid non-therapeutic relationships with clients or former clients. A non-therapeutic relationship is an activity begun by either the licensee, the client, or former client for the purposes of establishing a social, business, or other relationship not related to therapy. A licensee must ensure the welfare of the client or former client if a non-therapeutic relationship arises.

(m) A licensee may not bill clients or third parties for services not actually rendered or as agreed to in writing.

(n) A licensee must end a professional relationship when it is reasonably clear the client is not benefiting from it. Upon ending a professional relationship, if the client still requires mental health services, the licensee must make reasonable efforts to provide a written referral to clients for appropriate services and to facilitate the transfer to appropriate care.

(o) A licensee who engages in technology-assisted services must provide the client with the licensee's license number and information on how to contact the council by telephone, electronic communication, or mail. The licensee must comply with all other provisions of this chapter.

(p) A licensee may not offer services that are beyond the licensee's professional competency, and the services provided must be within accepted professional standards of practice and appropriate to the needs of the client. In emerging areas in which generally recognized standards for preparatory training do not exist, licensees must take reasonable steps to ensure the competence of their work and to protect clients, research participants, and other affected individuals from the potential for harm.

(q) A licensee must base all services on an assessment, evaluation, or diagnosis of the client.

(r) A licensee must evaluate a client's progress on a continuing basis to guide service delivery and must make use of supervision and consultation as indicated by the client's needs.

(s) A licensee may not knowingly offer or provide professional services to an individual concurrently receiving professional

services from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent professional services, the licensee must take immediate and reasonable action to inform the other mental health services provider.

(t) A licensee may not aid or abet the unlicensed practice of marriage and family therapy services by a person required to be licensed under the Act. A licensee must report to the council knowledge of any unlicensed practice.

(u) A licensee may not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with a client, if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.

(v) A licensee must refrain from providing services when they know or should know that their physical or mental health or lack of objectivity are likely to impair their competency or harm a client or other person with whom they have a professional relationship.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024.

TRD-202405580

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706



## 22 TAC §801.50

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists proposes the repeal of §801.50 relating to Corporation and Business Names.

Overview and Explanation of the Proposed Rule. The proposed repeal will remove language identified during the quadrennial rule review as potentially in conflict with the Texas Business and Commerce Code, while not changing the substantive requirement in other rules that a licensee not make or benefit from false, misleading, deceptive, fraudulent, or exaggerated claims.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of no longer enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the proposed repeal will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of repealing the rule language will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to this agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, George H. W. Bush State Office Building, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701, or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this

State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.50. *Corporation and Business Names.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024

TRD-202405581

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706



## 22 TAC §801.53

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists proposes amendments to §801.53, relating to Advertising and Announcements.

Overview and Explanation of the Proposed Rule. The proposed amendment will remove language identified during the quadrennial rule review as potentially unenforceable, while not changing the substantive requirement that a licensee not make or benefit from false, misleading, or deceptive advertising.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to pre-

pare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**REQUEST FOR PUBLIC COMMENTS.** Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

**Applicable Legislation.** This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

**Statutory Authority.** The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§801.53. Advertising and Announcements.*

(a) Information used by a licensee in any advertisement or announcement of services may not contain information which is false, misleading, deceptive, inaccurate, incomplete, out of context, or not readily verifiable. Advertising includes any announcement of services, letterhead, business cards, commercial products, and billing statements. Only the highest academic degree earned from an accredited college or university or only the highest academic degree earned at

a foreign university that has been determined to be equivalent to a degree from an accredited institution or program by a member of the National Association of Credential Evaluation Services and relevant to the profession of therapy or a therapy-related field shall be used when advertising or announcing therapeutic services to the public or in therapy-related professional representations. A licensee may advertise or announce his or her other degrees or equivalent degrees earned at foreign institutions from accredited colleges or universities if the subject of the degree is specified.

(b) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(1) makes any material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes any representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(4) contains a testimonial that includes false, deceptive, or misleading statements, or fails to include disclaimers or warnings as to the credentials of the person making the testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(6) advertises or represents that health care insurance deductibles or co-payments may be waived or are not applicable to health care services to be provided if the deductibles or co-payments are required;

(7) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or co-payments are required; or

~~[(8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or]~~

(8) ~~[(9)]~~ advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(c) The council imposes no restrictions on advertising by a licensee with regard to the use of any medium, the licensee's personal appearance, or the use of his or her personal voice, the size or duration of an advertisement by a licensee, or the use of a trade name. A licensee who retains or hires others to advertise or promote the licensee's practice remains responsible for the statements and representations made.

(d) All advertisements or announcements of therapeutic services including telephone directory listings by a licensee must clearly state his or her license status by the use of a title such as "Licensed Marriage and Family Therapist," "LMFT," "Licensed Marriage and Family Therapist Associate," "LMFT Associate," "Licensed Marriage and Family Therapist Supervisor," "LMFT-S," or "LMFT Supervisor."

(e) A licensee may not include in advertising or announcements any information or any reference to certification in a field outside of therapy or membership in any organization that may be confusing or misleading to the public as to the services or legal recognition of the licensee.

(f) An LMFT or LMFT Associate holding a provisional license must indicate the provisional status on all advertisements, billing, and announcements of treatment by the use of the term "Provisional Li-

censed Marriage and Family Therapist" or "Provisional Licensed Marriage and Family Therapist Associate," as appropriate.

(g) If a licensee becomes aware of a misuse of licensee's license certificate or misrepresentation of a licensee's services or the results of licensee's services, the licensee must report the misuse or misrepresentation to the Council within 30 days of becoming aware of the misuse or misrepresentation.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024.

TRD-202405582

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706

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**SUBCHAPTER C. APPLICATIONS AND LICENSING**

**22 TAC §801.115**

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists proposes new §801.115, relating to Applicants Currently Licensed as an LMFT in Another Jurisdiction.

Overview and Explanation of the Proposed Rule. The proposed new rule deems marriage and family therapist applicants who are licensed to practice independently in another jurisdiction for two years to have met all academic and experience requirements if they meet all minimum statutory requirements for licensure.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules nec-

essary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Specifically, the Executive Council proposes this rule pursuant to the authority found in §502.258 of the Tex. Occ. Code, which grants the Executive Council authority to adopt a rule for the issuance of a temporary license.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.115. Applicants Currently Licensed as an LMFT in Another Jurisdiction.

An applicant who has held an independent, active license as an LMFT in good standing issued by another jurisdiction for at least two years immediately preceding the date the application was received will be deemed to have met all academic and experience requirements, if the applicant can demonstrate:

- (1) 3,000 hours of work experience that includes at least 1,500 hours of direct clinical services;
- (2) 200 hours of supervision that includes at least 100 hours of individual supervision; and
- (3) has completed a master's or doctoral degree with a graduate internship.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024.

TRD-202405583

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706

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**22 TAC §801.204**

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists proposes amendments to §801.204, relating to Licensing of Military Service Members, Military Veterans, and Military Spouses.

**Overview and Explanation of the Proposed Rule.** The proposed amendment will remove language identified during the quadrennial rule review to better align with the agency's statute.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a gov-

ernment program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**REQUEST FOR PUBLIC COMMENTS.** Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

**Applicable Legislation.** This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

**Statutory Authority.** The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the na-

ture and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§801.204. Licensing of Military Service Members, Military Veterans, and Military Spouses.*

(a) An applicant for licensure under this section must comply with Council §882.60 of this title [(relating to Special Provisions Applying to Military Service Members, Veterans, and Spouses)].

[(b) Licensed by another United States jurisdiction.]

[(1) If an applicant has been licensed as an LMFT in another United States jurisdiction for the two years immediately preceding the date the application is received, and has no disciplinary history, the academic (including the internship) and experience requirements shall be considered met.]

[(2) If an applicant has been licensed as an LMFT in another United States jurisdiction for less than two years immediately preceding the date the application is received, and has no disciplinary history, staff may grant one month of credit for every two months of independent marriage and family therapy practice toward any deficit in the academic internship or experience requirements.]

(b) [(e)] Upon request, an applicant must provide acceptable proof of current licensure issued by another jurisdiction. Upon request, the applicant must provide proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.

(c) [(d)] For an application for a license submitted by a verified military service member or military veteran, the applicant will receive credit towards any licensing or apprenticeship requirements, except an examination requirement, for verified military service, training, or education relevant to the occupation, unless he or she holds a restricted license issued by another jurisdiction or if he or she has a disqualifying criminal history as described by the Act, the Council Act, or Council rules.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706



## SUBCHAPTER D. SCHEDULE OF SANCTIONS

### 22 TAC §801.303

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists proposes amendments to §801.303, relating to Other Ac-

tion and Explanation of the Proposed Rule. The proposed amendment will remove language identified during the quadrennial rule review to better align with the agency's statute.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§801.303. Other Actions.*

A complaint may be resolved by issuance of a warning letter [~~or a conditional letter of agreement~~] which does not involve a formal disciplinary action.

~~[(1)] A warning letter informs the licensee of the licensee's duties under the Act, the Council Act, or council rules and whether the council has a concern about the circumstances surrounding the complaint.~~

~~[(2) A "Conditional Letter of Agreement" informs the licensee of the licensee's duties under the Act, the Council Act, or council rules, whether the conduct or omission complained of appears to violate such duties, and creating council-ordered conditions for the long-term resolution of the issues in the complaint. This "Conditional Letter of Agreement" specifies the immediate disposition of the complaint. The licensee is issued the "Conditional Letter of Agreement" by staff; a signature of agreement by the licensee is required. If the licensee fails to comply with all the council-ordered conditions in the specified time frame outlined in the "Conditional Letter of Agreement," staff will open a new complaint arising out of the non-compliance with a "Conditional Letter of Agreement" or the underlying conduct.]~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2024.

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Darrel D. Spinks  
Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706

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**22 TAC §801.305**

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists proposes amendments to §801.305, relating to Schedule of Sanctions.

Overview and Explanation of the Proposed Rule. The proposed amendment would update the schedule of sanctions to reflect amendments proposed in other rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.



Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**REQUEST FOR PUBLIC COMMENTS.** Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

**Applicable Legislation.** This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

**Statutory Authority.** The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§801.305. Schedule of Sanctions.*

The following standard sanctions shall apply to violations of the Texas Occupations Code, Chapter 502 and 22 Texas Administrative Code, Part 35.

Figure: 22 TAC §801.305

[~~Figure: 22 TAC §801.305~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Darrel D. Spinks  
Executive Director

Texas State Board of Examiners of Marriage and Family Therapists  
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For further information, please call: (512) 305-7706

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**PART 41. TEXAS BEHAVIORAL  
HEALTH EXECUTIVE COUNCIL**

**CHAPTER 881. GENERAL PROVISIONS  
SUBCHAPTER B. RULEMAKING**

**22 TAC §881.20**

The Texas Behavioral Health Executive Council proposes amendments to §881.20, relating to Rulemaking by the Executive Council.

**Overview and Explanation of the Proposed Rule.** The proposed amendment will remove language identified during the quadrennial rule review as unnecessary and duplicative, without changing the substantive impact of the rule.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency;

it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**REQUEST FOR PUBLIC COMMENTS.** Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/index.html>. The deadline for receipt of comments is 5:00 p.m., Central Time, on December 29, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

**Applicable Legislation.** This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

**Statutory Authority.** The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§881.20. Rulemaking by the Executive Council.*

(a) The Council shall adopt rules necessary to perform its duties and implement Title 3, Subtitle I, Chapter 507 of the Occupations Code. When carrying out its rulemaking functions, the Council shall abide by the requirements of the Administrative Procedure Act found in Chapter 2001 of the Government Code.

(b) The Council shall have exclusive rulemaking authority for the agency, including rules governing general agency operations, administration of licensure, investigation of complaints, and sanction procedures. In connection with this rulemaking authority, the Council must also review draft rules proposed by each member board for anti-competitive impacts, administrative consistency, and good governance concerns.

(c) The Council may propose and adopt a rule governing those matters set forth in §507.153(a) of the Occupations Code if a draft rule has been proposed by the member board for the profession. Member boards may not propose new draft rules or changes to rules except as authorized by §507.153(a).

(d) Member boards must submit a new draft rule or rule change to the Council for consideration by submitting a draft of the rule with any deletions crossed through and additions underlined. The draft must also contain each of the notice components required in a preamble (e.g.,

§2001.024 of the Government Code) when proposing a new rule or changes to an existing rule. When submitting a new draft rule or rule change to the Council, member boards must also submit any information or comments received from the public in connection with the proposed rule.

(e) When reviewing a draft rule proposed by a member board, the Council may:

(1) Request additional information relevant to the rule from the member board;

(2) Require the member board to conduct new or additional analysis of possible implications of the rule; and

(3) Solicit public comment or hold public hearings, or alternatively, request the member board do so. ~~and~~

~~[(4) Make non-substantive, editorial changes to the rule as necessary.]~~

(f) Following the review of a draft rule submitted by a member board, the Council shall either accept the draft rule as proposed and initiate formal rulemaking proceedings or return the draft rule to the member board for revision. When returning a rule for revision, the Council must include an explanation of the decision to reject the rule as proposed, and may recommend changes that would make the rule acceptable to the Council.

(g) The Council shall, with regard to rules proposed pursuant to §507.153(a) of the Occupations Code, share with the appropriate member board any public comments received following publication of a proposed rule in the *Texas Register*. Following publication of a proposed rule and review of any public comments received, a member board shall suggest any changes needed to the proposed rule or vote to recommend adoption, tabling, or withdrawal of the rule and advise the Council of such. Thereafter, the Council may adopt the rule as proposed, withdraw or table the rule in accordance with the member board's recommendation, or return the rule to the member board for further revision. When returning a rule for revision, the Council must include an explanation of the decision to not adopt the rule as proposed, and may recommend any changes that would make the rule acceptable to the Council.

(h) The Council may make non-substantive, editorial changes to a draft rule as necessary.

(i) The Council shall consider each of the following factors when reviewing a draft rule submitted by a member board:

(1) Whether the proposed rule promotes a clearly articulated and affirmatively expressed policy as established by the legislature to displace competition with government action, or whether the proposed rule reflects the exercise of discretion or implied authority by a member board;

(2) Whether absence of the proposed rule poses a significant risk of harm or danger to the public health, safety, or welfare of the residents of the state that is easily recognizable and not remote or dependent on tenuous argument;

(3) Whether the proposed rule seeks to regulate activities or services requiring specialized skill or training and whether the public clearly needs and will benefit from the proposed rule;

(4) Whether the proposed rule would have the effect of directly or indirectly increasing the cost of mental health services and, if so, whether the increase would be more harmful to the public than the harm that might result from the absence of the proposed rule;

(5) Whether the proposed rule would significantly reduce market participation or competition in the state and, if so, whether the reduction would be more harmful to the public than the harm that might result from the absence of the proposed rule; and

(6) Whether the residents of the state are or may be effectively protected by other means.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

Earliest possible date of adoption: December 29, 2024

For further information, please call: (512) 305-7706



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 15. TEXAS VETERANS COMMISSION

#### CHAPTER 452. ADMINISTRATION GENERAL PROVISIONS

##### 40 TAC §452.2

The Texas Veterans Commission (Commission) proposes amendments to Chapter 452, Administration General Provisions, §452.2, Advisory Committees.

##### PART I. PURPOSE AND BACKGROUND

The proposed amendments update the rule to remove references to the following advisory committees, which the Commissioners voted to abolish at the last Commission meeting: the Veteran Services Advisory Committee and the Veterans County Service Officer Advisory Committee.

##### PART II. EXPLANATION OF SECTIONS

###### Section 452.2 Advisory Committees

Removes Subsection (b) Veteran Services Advisory Committee.

Removes Subsection (d) Veterans County Service Officer Advisory Committee.

Renumbers Subsection (c) Fund for Veterans' Assistance Advisory Committee as new subsection (b).

##### PART III. IMPACT STATEMENTS

###### FISCAL NOTE

Michelle Nall, the Texas Veterans Commission's Chief Financial Officer, has determined for each year of the first five years the proposed rule amendments are in effect, there will not be an increase in expenditures or revenue for state and local government due to administering the proposed rule.

###### COSTS TO REGULATED PERSONS

Ms. Nall has also determined that there will not be anticipated economic costs for people required to comply with the proposed rule amendments.

#### LOCAL EMPLOYMENT IMPACT

Charles Catoe, the Texas Veterans Commission's Director of Operations, has determined that the proposed rule amendments will not significantly impact employment conditions in the state.

#### SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Megan Tamez, Director of the Veterans Entrepreneur Program at the Texas Veterans Commission, has determined that the proposed rule amendments will not adversely affect small businesses, micro-businesses, or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis are not required.

#### PUBLIC BENEFIT

Mr. Deabay has determined that for each of the first five years the proposed rule amendments are in effect, the public benefit anticipated due to administering the amended rule will more closely align with the Texas Veterans Commission's operations.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendments are in effect, the following statements will apply:

The proposed rule amendments will not create or eliminate a government program.

Implementation of the proposed rule amendments will not require creation of new employee positions, or elimination of existing employee positions.

Implementation of the proposed rule amendments will not require an increase or decrease in future legislative appropriations to the agency.

No fees will be created by the proposed rule amendments.

The proposed rule amendments will not require new regulations.

The proposed rule amendments have no effect on existing regulations.

The proposed rule amendments have no effect on the number of individuals subject to the rule's applicability.

The proposed rule amendments have no effect on this state's economy.

#### PART IV. COMMENTS

Comments on the proposed amended rules may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to [rulemaking@tvc.texas.gov](mailto:rulemaking@tvc.texas.gov). Please include "Advisory Committee Rules" in the subject line for comments submitted electronically. The Commission must receive comments post-marked no later than 30 days from the date this proposal is published in the *Texas Register*.

#### STATUTORY AUTHORITY

The rule amendments are proposed under Texas Government Code §434.010, which authorizes the commission to establish rules it considers necessary for its administration.

#### §452.2. Advisory Committees.

(a) The commission may establish advisory committees in accordance with Texas Government Code, Chapter 2110. The following shall apply to each advisory committee:

(1) Agency role. The executive director may direct one or more staff members of the agency to assist each advisory committee. These positions shall be non-voting.

(2) Committee size and appointment of members. Each advisory committee shall be composed of nine members appointed by the commission. Members of each committee serve at the pleasure of the commission and may be removed from a committee by a majority vote of the commission.

(3) Committee chair and vice chair.

(A) The committee chair will be selected by the commission. The committee chair shall serve a term as determined by the commission. The committee chair determines the agenda for each meeting.

(B) The vice chair of each advisory committee is selected by the committee's voting members. Committee vice chair term lengths are one or two-year terms as determined by the committee's voting members and are limited to two years of service as the vice chair during their appointment to the committee. The vice chair shall perform the chair duties when the chair is unavailable or unable to perform.

(4) Conditions of membership.

(A) Terms of service. The term of office for each member will be determined by the commission in order to achieve staggered terms. In the event that a member cannot complete his or her term, or is removed by the commission, the commission shall appoint a qualified replacement to serve the remainder of the term.

(B) Participation. Participation on an advisory committee is voluntary.

(C) Compensation. Advisory committee members appointed by the commission shall serve without compensation.

(D) Reimbursement. The commission may, if authorized by law and the executive director, reimburse a member of a committee for reasonable and necessary expenses up to four times per calendar year. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement of expenses for advisory committee members.

(5) Training. Each committee member shall receive initial training to ensure compliance with the Open Meetings Act. Training should also include an overview of the agency's mission and organizational structure, the overall purpose or goals of the committee, as well as other information that will assist members to accomplish committee goals.

(6) Responsibilities. Each advisory committee will review issues and provide advice to the commission, as charged by the commission.

(7) Meetings. Each advisory committee shall meet as needed by the commission. Advisory committee meetings may be conducted by video conference. Each advisory committee shall be subject to meeting at the call of the committee chair or designee. A quorum shall consist of a majority of the committee membership. The committees shall comply with Open Meetings Act requirements as provided in Texas Government Code, Chapter 551.

(8) Reports. The committee chair or designee of each advisory committee shall regularly report to the commission regarding its activities and recommendations, and, when requested by the commission, shall file with the commission a report containing:

- (A) the minutes of meetings;
- (B) a memo summarizing the meetings; and
- (C) a list of the committee's recommendations, if any.

(9) Evaluation and duration. Each advisory committee shall remain in existence as long as deemed necessary by the commission based on a regular evaluation of the continuing need for each advisory committee. The executive director or staff may assist with this evaluation at the direction of the commission.

(10) Formation of subcommittees. Each advisory committee shall notify the commission of any adopted subcommittees and their purpose in its quarterly report.

~~[(b) Veteran Services Advisory Committee.]~~

~~[(1) Purpose. The purpose of the Veteran Services Advisory Committee (VSAC) is to develop recommendations to improve overall services to veterans, their families, and survivors by the TVC. TVC leadership will provide veteran service topics to the committee for analysis and feedback.]~~

~~[(2) Committee member qualifications. The Committee shall be comprised of veterans and/or non-veterans that are interested in significantly improving the quality of life for all Texas veterans, their families, and survivors.]~~

~~(b) [(e)] Fund for Veterans' Assistance Advisory Committee.~~

~~(1) Purpose. The purpose of the Fund for Veterans' Assistance Advisory Committee is to evaluate grant applications and make recommendations to the commission.~~

~~(2) Committee member qualifications.~~

~~(A) Committee members may include representatives from veterans' organizations, non-profit or philanthropic organizations, veterans or family members of veterans, and other individuals with the experience and knowledge to assist the committee with achievement of its purpose.~~

~~(B) Committee members may not include officers, directors or employees of organization or entities that have an open Fund for Veterans' Assistance grant during the member's tenure or that intend to submit an application for a Fund for Veterans' Assistant grant.~~

~~(C) Committee members will be required to sign non-disclosure and conflict of interest agreements before reviewing grant applications. Committee members found in violation of the non-disclosure agreement will be prohibited from evaluating grant applications and making recommendations to the commission. Committee members found in violation of any agreement may also be removed from the committee by the commission.~~

~~(3) Meetings. The Fund for Veterans' Assistance Advisory Committee shall meet as needed to make grant recommendations to the commission.~~

~~[(d) Veterans County Service Officer Advisory Committee.]~~

~~[(1) Purpose. The purpose of the Veterans County Service Officer Advisory Committee is to develop recommendations to improve the support and training of Veterans County Service Officers and to increase coordination between Veterans County Service Officers and the Texas Veterans Commission related to the statewide network of services being provided to veterans.]~~

~~[(2) Committee member qualifications. The members shall be current Veterans County Service Officers with the experience and knowledge to assist the committee with achievement of its purpose.]~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Kathleen Cordova

General Counsel

Texas Veterans Commission

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For further information, please call: (737) 320-4167



#### 40 TAC §452.9, §452.10

The Texas Veterans Commission (Commission) proposes two new rules in Chapter 452 of Title 40, Part 15 of the Texas Administrative Code, §452.9 and §452.10.

#### PART I. PURPOSE AND BACKGROUND

The first proposed new rule describes how the agency's employee sick leave pool is administered in accordance with Texas Government Code Chapter 661. The new rule complies with Texas Government Code §661.002(c), which requires state agencies to adopt rules and prescribe procedures for administering the agency's employee sick leave pool.

The second proposed new rule establishes procedures for administering the agency's family leave pool in accordance with Texas Government Code §661.022, which requires state agencies to adopt rules and prescribe procedures for operating the family leave pool.

The Commission has previously established policies for the sick and family leave pools. The new rules are to acknowledge the current Commission practices formally.

#### PART II. EXPLANATION OF SECTIONS

##### §452.9. Sick Leave Pool

New §452.9 sets out how the agency administers the agency's sick leave pool.

##### §452.10 Family Leave Pool

New §452.10 describes how the agency administers the agency's family leave pool.

#### PART III. IMPACT STATEMENTS

##### FISCAL NOTE

Michelle Nall, the Texas Veterans Commission's Chief Financial Officer, has determined that for the first five-year period the proposed new rules are in effect there will be no fiscal implications for state or local governments. The related policies and procedures are in place, and there is no anticipated additional cost because of the rulemaking.

##### COSTS TO REGULATED PERSONS

Ms. Nall has also determined that there will be no anticipated economic costs for persons required to comply with the proposed new rules.

## LOCAL EMPLOYMENT IMPACT

Charles Catoe, Director of Operations for the Texas Veterans Commission, has determined that the proposed new rules will not significantly impact employment conditions in the state.

## SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Megan Tamez, Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed new rules will not adversely affect small businesses, micro-businesses, or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis are not required.

## PUBLIC BENEFIT

Mr. Deabay has also determined that for each year of the first five-year period the rules are in effect, the anticipated public benefit will be enhanced transparency on agency policy and procedures.

## GOVERNMENT GROWTH IMPACT STATEMENTS

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendment is in effect, the following statements will apply:

1. The proposed rule amendment will not create or eliminate a government program.
2. Implementation of the proposed rule amendment will not require creation of new employee positions, or elimination of existing employee positions.
3. Implementation of the proposed rule amendment will not require an increase or decrease in future legislative appropriations to the agency.
4. No fees will be created by the proposed rule amendment.
5. The proposed rule amendment will not require new regulations.
6. The proposed rule amendment has no effect on existing regulations.
7. The proposed rule amendment has no effect on the number of individuals subject to the rule's applicability.
8. The proposed rule amendment has no effect on this state's economy.

## PART IV. COMMENTS

Comments on the proposed new rules may be submitted to Attention: General Counsel, Texas Veterans Commission, P.O. Box 12277, Austin, Texas 78711 or by fax to (512) 475-2395. Comments may also be submitted electronically to rulemaking@tvc.texas.gov. For comments submitted electronically, please include "Leave Pool Rules" in the subject line. The deadline for submission of comments is thirty (30) days from the publication date of the proposed new rules in the *Texas Register*. Comments should be organized consistently with the organization of the rule under consideration.

## PART V.

### STATUTORY AUTHORITY

The rules are proposed under Texas Government Code §434.010, granting the commission the authority to establish rules, Texas Government Code §661.002(c), which requires

state agencies to adopt rules and prescribe procedures relating to the administration of the agency's sick leave pool, and Texas Government Code §661.022, which requires state agencies to adopt rules and prescribe procedures relating to the operation of a family leave pool.

No other statutes, articles, or codes are affected by the proposal.

### §452.9. Sick Leave Pool.

(a) A sick leave pool is established to alleviate hardship caused to an employee and the employee's immediate family if a catastrophic injury or illness forces the employee to exhaust all eligible leave time earned by that employee and to lose compensation time from the state.

(b) The Human Resources Director is designated as the pool administrator and shall develop and maintain the necessary policy for the administration of the sick leave pool consistent with Texas Government Code, Chapter 661.

(c) All contributions to the sick leave pool are voluntary. Employees who make contributions to the pool may not stipulate who receives their contributions.

(d) An employee may only withdraw time from the sick leave pool in the case of a catastrophic illness or injury of the employee or the employee's immediate family member. The employee must have exhausted all eligible paid leave prior to being awarded sick leave from the pool. The pool administrator shall review the request and determine the amount of time an employee may withdraw from the pool.

### §452.10. Family Leave Pool.

(a) A family leave pool is established to provide eligible employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement, and caring for a seriously ill family member or the employee's own serious illness, including pandemic-related illnesses or complications caused by a pandemic.

(b) All employee contributions to the family leave pool are voluntary. There is no limitation on the amount or frequency of contributions. Employees who contribute accrued sick or vacation leave hours to the pool may not designate the contributed hours for use by a specific employee. Employees who contribute leave hours to the pool may not withdraw the contributed hours.

(c) An employee may only apply to withdraw time from the family leave pool if the employee has exhausted all eligible personal leave due to:

(1) the birth of a child;

(2) the placement of a foster child or adoption of a child under 18 years of age;

(3) the placement of any person 18 years of age or older requiring guardianship;

(4) a serious illness to an immediate family member of the employee, including pandemic-related illness;

(5) an extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member; or

(6) a previous donation of time to the pool.

(d) The Texas Veterans Commission's Human Resources Director is designated as the pool administrator.

(e) The pool administrator shall develop and maintain a policy, operating procedures, and forms, as necessary, for the administration of the family leave pool subject to approval by the Executive Director.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Kathleen Cordova

General Counsel

Texas Veterans Commission

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For further information, please call: (737) 320-4167



## CHAPTER 463. VETERAN VERIFICATION LETTER

### 40 TAC §§463.1 - 463.4

The Texas Veterans Commission proposes the repeal of Title 40, Texas Administrative Code, Part 15, Chapter 463, relating to the Veteran Verification Letter.

#### PART I. PURPOSE AND BACKGROUND

The proposed repeal is to remove a rule that is not required by statute. The requirements contained in the rule may instead be outlined in Texas Veterans Commission procedures.

#### PART II. EXPLANATION OF SECTIONS

The repeal of Chapter 463 removes procedures for requesting a Veteran Verification Letter.

#### PART III. IMPACT STATEMENTS

##### FISCAL NOTE

Michelle Nall, the Texas Veterans Commission's Chief Financial Officer, has determined that for the first five-year period the proposed rule repeal will be in effect, there will be no fiscal implications for state or local governments. The related policies and procedures are in place, and there is no anticipated additional cost because of the rulemaking.

##### COSTS TO REGULATED PERSONS

Ms. Nall has also determined that there will be no anticipated economic costs for persons required to comply with the proposed rule repeal.

##### LOCAL EMPLOYMENT IMPACT

Charles Catoe, Director of Operations for the Texas Veterans Commission, has determined that the proposed rule repeal will not significantly impact employment conditions in the state.

##### SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Megan Tamez, Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule repeal will not adversely affect small businesses, micro-businesses, or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis are not required.

##### PUBLIC BENEFIT

Mr. Deabay has also determined that for each year of the first five-year period the proposed rule repeal will be in effect, the anticipated public benefit will be clearer guidance on the Veteran Verification Letter process.

#### GOVERNMENT GROWTH IMPACT STATEMENTS

Mr. Deabay has also determined that for each year of the first five years that the proposed rule repeal is in effect, the following statements will apply:

1. The proposed rule repeal will not create or eliminate a government program.
2. Implementation of the proposed rule repeal will not require creation of new employee positions, or elimination of existing employee positions.
3. Implementation of the proposed rule repeal will not require an increase or decrease in future legislative appropriations to the agency.
4. No fees will be created by the proposed rule repeal.
5. The proposed rule repeal will not require new regulations.
6. The proposed rule repeal has no effect on existing regulations.
7. The proposed rule repeal has no effect on the number of individuals subject to the rule's applicability.
8. The proposed rule repeal has no effect on this state's economy.

#### PART IV. COMMENTS

Comments on the proposed rule repeal rule may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to [rulemaking@tvc.texas.gov](mailto:rulemaking@tvc.texas.gov). For comments submitted electronically, please include "Chapter 463 Rules" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

#### PART V. STATUTORY AUTHORITY

The rule repeal is proposed under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration. No other statutes, articles, or codes are affected by this proposal.

No other statutes, articles, or codes are affected by the proposal.

§463.1. *Purpose.*

§463.2. *Application.*

§463.3. *Definitions.*

§463.4. *Process.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Kathleen Cordova

General Counsel

Texas Veterans Commission

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