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 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER L. LOCAL FUNDS MONITORING

1 TAC §355.8707

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §355.8707, concerning Notification Requirements for the Creation of a Local Provider Participation Fund (LPPF).

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill 4289, 86th Legislature, Regular Session, 2019 by establishing a process that requires certain political subdivisions to notify HHSC of the creation of a new local provider participation fund (LPPF) as authorized by Texas Health and Safety Code Chapter 300 or Texas Health and Safety Code Chapter 300A. This rule will ensure that HHSC receives appropriate and timely notices of newly created LPPFs, which will enable the agency to maintain oversight and reduce the risk of federal recoupment.

The proposal is also necessary to comply with the requirements of 42 CFR §433.51, Public Funds as the State share of Financial Participation, 42 CFR §433.68, Permissible Health Care-Related Taxes, 42 CFR §433.74, Reporting Requirements, and Section 1903(w)(1)(A)(i)-(iii) of the Social Security Act.

SECTION-BY-SECTION SUMMARY

Proposed new §355.8707(a) provides for the required notification and specifies content of the notification, including where to direct the notification, contact information for the political subdivision, and documents related to LPPF formation and adoption. Subsection (b) clarifies that any political subdivision implementing an LPPF is subject to annual local funds monitoring reporting requirements.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

1) the proposed rule will not create or eliminate a government program;
2) implementation of the proposed rule will not affect the number of HHSC employee positions;
3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
4) the proposed rule will not affect fees paid to HHSC;
5) the proposed rule will create a new rule;
6) the proposed rule will not expand, limit, or repeal an existing rule;
7) the proposed rule will increase the number of individuals subject to the rule; and
8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood, Chief Financial Officer, has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural community impact related to the rule because there is no requirement to alter current business practices. In addition, no rural communities contract with HHSC in any program or service affected by the proposed rule.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to receive a source of federal funds or comply with federal law and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public will benefit from the continuation of local jurisdictions' support of the Medicaid program.

Trey Wood, Chief Financial Officer, has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the proposed rule specifies a structured process for political subdivisions that create an LPPF to follow in order to meet the existing requirements of data submission and reporting system training.

TAKINGS IMPACT ASSESSMENT
HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Frances Morgan, Director of PFD Local Funds Monitoring, 4601 Guadalupe Street, Mail Code H400, Austin, Texas, 78751 or by email to PFD_LFM@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R120" in the subject line.

STATUTORY AUTHORITY

The new rule is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §32.021 and Texas Government Code §351.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Health and Safety Code §300.0154 and §300A.0154, which require the Executive Commissioner of HHSC to adopt rules relating to LPPF reporting.

The new rule affects Texas Government Code §531.0055; Texas Human Resources Code §32.021 and Texas Government Code §351.021(a); and Texas Health and Safety Code §300.0154 and §300A.0154.

§355.8707. Notification Requirements for the Creation of a Local Provider Participation Fund (LPPF).

(a) A local government, as defined in Texas Health and Safety Code Chapter 300, or a district, as defined in Texas Health and Safety Code Chapter 300A, that creates a new local provider participation fund (LPPF) as authorized by those chapters must send HHSC notice of the creation of a new LPPF according to the following procedures.

1. HHSC must receive notice of a newly created LPPF electronically to PFD_LFM@hhs.texas.gov no later than 10 business days from the date of the local government or district's creation of the LPPF.

2. The notice must contain the following.

(A) Contact information for at least two employees, board members, or elected officials of the local government or district authorized to implement an LPPF, as well as any individuals the local government or district authorizes to receive informational updates related to LPPF formation and reporting. Contact information shall include:

(i) full names;

(ii) titles and description of involvement with the LPPF (if not an employee, board member, or elected official of the local government or district);

(iii) email addresses; and

(iv) phone numbers.

(B) Audio recordings of discussions or written minutes from public meetings, such as commissioner's court meetings or hospital district board meetings, that document the approval of LPPF formation and any associated rate setting.

(C) Resolution approving rules and procedures for LPPF mandatory assessment payments.

(D) Resolution authorizing the formation of the LPPF, collection of a mandatory assessment payment, and use of funds from the mandatory assessment payments.

(E) Public notices from a hardcopy or digital source, such as a newspaper article, notifying providers in the jurisdiction of the intent to create an LPPF and set associated rates.

(F) Copies of written notice provided to the chief operating officer of each provider that will be required to pay a mandatory assessment.

(G) Invoices or other records of LPPF mandatory assessments and payments received from providers, if any have been made at the time notice is provided to HHSC.

(H) Any agreements between the local government or district implementing the LPPF (including a local government that created the district under Texas Health and Safety Code §300A.0021) and a health care provider or entity related to a health care provider that is required to pay a mandatory assessment, if applicable.

3. On receipt of a notice for the creation of an LPPF, HHSC:

(A) acknowledges receipt of the notice to the local government or district; and

(B) reviews the information submitted by the local government or district.

(i) HHSC may request additional information from the local government or district. The additional information must be received by HHSC no later than 10 business days from the date of the written request for additional information.

(ii) HHSC will extend this deadline for an additional 10 business days if it receives a request for the extension prior to the initial 10 business day due date. A request for an extension that is not received by the stated deadline will not be accepted.

4. No local government or district may transfer local funds generated by an LPPF to HHSC via IGT until it has completed the following steps.

(A) Notify HHSC of the creation of the LPPF in accordance with this section and receive acknowledgment of receipt from HHSC.

(B) Provide HHSC with any additional information requested by HHSC as provided in this section.

(C) Establish a unique TexNet Account through the Texas Comptroller.

(D) Establish a Texas Identifier Number (TIN) through the Provider Finance Department by emailing RAD_Payment@hhs.texas.gov.

(b) Any local government or district that creates an LPPF is subject to annual reporting requirements under 1 TAC Chapter 355, Subchapter L (relating to Local Funds Monitoring).
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 March 16, 2023.
TRD-202301085
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: April 30, 2023
For further information, please call: (737) 867-7877

**TITLE 4. AGRICULTURE**

**PART 13. PRESCRIBED BURNING BOARD**

**CHAPTER 225. GENERAL PROVISIONS**

4 TAC §§225.1 - 225.4

The Texas Prescribed Burning Board (Board), a semi-independent board administratively attached to the Texas Department of Agriculture (Department), proposes amendments to 4 TAC §§225.1 - 225.4.

The Board identified the need for the amendments during its rule review conducted pursuant to Texas Government Code §2001.039, the adoption of which can be found in the Review of Agency Rules section of this issue.

The proposed amendments to §225.1 remove definitions of terms that are not used in Title 4, Part 13 and clarify the definition of "sponsor".

The proposed amendments to §225.2 add "certified and insured" before "prescribed burn manager" to standardize terminology used in this part, and remove language that is unnecessary because it is provided by statute.

The proposed amendments to §225.3 remove an unnecessary cross reference to TCEQ rules.

The proposed amendments to §225.4 make editorial changes and remove the 30 day deadline for certified and insured prescribed burn managers to notify the Department of changes to their information.

**LOCAL EMPLOYMENT IMPACT STATEMENT:** The Department has determined that the proposed amendments will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

**GOVERNMENT GROWTH IMPACT STATEMENT:** Pursuant to Texas Government Code, §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, the Department has determined the following:

1. the proposed amendments do not create or eliminate a government program;
2. implementation of the proposed amendments does not require the creation or elimination of employee positions;

3. implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Department;
4. the proposed amendments do not require an increase or decrease in fees paid to the Department;
5. the proposed amendments do not create a new regulation;
6. the proposed amendments will not expand, limit, or repeal an existing regulation;
7. the proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
8. the proposed amendments do not positively or adversely affect this state's economy.

**FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT:** Patrick Dudley, Coordinator for Agriculture Commodity Boards and Producer Relations, has determined that for each year of the first five years the proposed amendments are in effect, enforcing or administering the proposed amendments does not have foreseeable implications relating to costs or revenues of the state or local governments.

**PUBLIC BENEFITS AND PROBABLE ECONOMIC COST:** Mr. Dudley has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be improved readability and clarity of Board rules. Mr. Dudley has also determined that for each year of the first five-year period the proposed amendments are in effect, there will be no cost to persons who are required to comply with the proposed amendments.

**FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES:** The Department has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, are not required.

Comments on the proposed amendments may be submitted by mail to Patrick Dudley, Coordinator for Agriculture Commodity Boards and Producer Relations, P.O. Box 12847, Austin, Texas 78711, or by email to Patrick.Dudley@TexasAgriculture.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Natural Resources Code §153.046, which provides that the Board shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

Natural Resources Code, Chapter 153, is affected by this proposal.

§225.1. Definitions.

The following words and terms, when used in Title 4, Part 13 of the Texas Administrative Code, shall have the following meanings, unless the context clearly indicates otherwise.

{(1) Act—Prescribed Burning, Chapter 153, Texas Natural Resources Code}
of been prescribed the TexReg Service.

sessions, of qualified talent.
ment.
man-made containment.
The tool agency, private land

agriculture, local government, or an entity acting on behalf of a state agency or institution or local government, as defined by §2259.001 of the Texas Government Code.

Lead Burn Instructor--An individual who provides leadership and coordination in the conduct of a board-approved certified and insured prescribed burn manager course and has authority to select all instructors.

Local Government--A municipality or other political subdivision of this state or a combination of political subdivisions, including a combination created under Chapter 791 of the Texas Government Code.

(14) NRCS--Natural Resources Conservation Service of the United States Department of Agriculture.

(15) NWCG--National Wildfire Coordinating Group.

(16) Prescribed Burning--The controlled application of fire to fuels under specified environmental conditions in accordance with a written prescribed burn plan.

(17) Prescribed Burning Organization--An entity established for the purpose of promoting the use of prescribed burning as a tool for land management, including an entity established to represent interests of persons involved in land conservation and/or land management.

(18) Sponsor--An [approved university, governmental agency, an association, a private independent business, or other qualified] entity approved [by the Board] to conduct continuing [fire] training activities used to meet continuing [for credit toward prescribed burn manager certification and continued] fire training requirements.

(19) Structures containing sensitive receptors--A man-made structure utilized for human residence or business, the containment of livestock, or the housing of sensitive live vegetation. The term "man-made structure" does not include such things as range fences, roads, bridges, hunting blinds or facilities used solely for the storage of hay or other livestock feeds. The term "sensitive live vegetation" is defined as vegetation which has potential to be damaged by smoke and heat, examples of which include, but are not limited to: nursery production, mushroom cultivation, pharmaceutical plant production, or laboratory experiments involving plants.

(20) TAMU--Texas A&M University, or a branch of the Texas A&M University system.

(21) TFS--Texas A&M Forest Service.

(22) TCEQ--Texas Commission on Environmental Quality.

(23) TPWD--Texas Parks and Wildlife Department.

(24) TSSWCB--Texas State Soil and Water Conservation Board.

(25) TTU--Texas Tech University or a branch of the Texas Tech University System.

(26) USDA--United States Department of Agriculture.

§225.2. Categories of [Prescribed Burn Manager] Certification.

[44a] Certified and insured prescribed [Prescribed] burn managers may be certified in one of the following categories:

(1) Commercial Certified and Insured Prescribed Burn Manager. A commercial certified and insured prescribed burn manager may conduct prescribed burns for hire on any property allowed by his or her certification, including that of his or her employer.

(2) Private Certified and Insured Prescribed Burn Manager. A private certified and insured prescribed burn manager conducts prescribed burns on property owned by, leased by, or occupied by the private certified and insured prescribed burn manager or that person's employer. An employee qualifies as a private certified and insured prescribed burn manager if he or she is employed to perform duties related to the operation and conducts prescribed burning activities[.] but does not provide the necessary equipment.

(3) Not-for-Profit Certified and Insured Prescribed Burn Manager. A not-for-profit certified and insured prescribed burn manager conducts prescribed burns on property owned or leased by a prescribed burning organization or on property owned or leased by a person who is a member of a prescribed burning organization. For purposes of this section, a prescribed burning organization must be an association, cooperative, or organization legally formed and authorized under Texas law, or a domestic entity legally formed under the Texas Business Organizations Code, and must:

(A) hold a certificate of account status from the Texas Comptroller of Public Accounts reflecting that the association, cooperative, organization, or domestic entity is current in paying all franchise taxes due under Texas law, or provide appropriate documentation, issued by the Texas Comptroller of Public Accounts, or in a form approved by the Board, that the association, cooperative, organization, or domestic entity is exempt from the payment of franchise taxes under Texas law;

(B) have its registered office and principal place of business in the State of Texas; and

(C) provide, as one of the primary purposes of the organization, education and training to its members or shareholders regarding the safe and effective use of prescribed burning within the State of Texas as an agricultural, ranching, and land management practice, or provide education and other resources to its member or shareholders regarding land conservation and management.

(4) Governmental Certified and Insured Prescribed Burn Manager. A certified and insured prescribed burn manager employed by and acting on behalf of a government unit must apply for certification to act as a certified and insured prescribed burn manager as an authorized employee of a governmental unit. A governmental certified and insured prescribed burn manager is limited to conducting pre-
scribed burns on property owned, leased, or controlled by the governmental unit while acting in the course and scope of his or her duties as an employee of the governmental unit.

[(b) The Board shall have sole and absolute discretion to determine whether an applicant meets the requirements necessary for the category of certification.]

[(c) Additional insurance requirements may apply to each category as determined by the Board.]

§225.3. Minimum Standards for Prescribed Burning

[(a) TCEQ regulates outdoor burning in Texas. TCEQ requirements may be found at Texas Administrative Code, Title 30, Chapter 411, Subchapter B (relating to Outdoor Burning).]

[(b) The prescribed burning standards established by the Board represent the minimum requirements for conducting prescribed burning in the state of Texas as a certified and insured prescribed burn manager. These standards are established to ensure that every reasonable precaution is taken to prevent prescribed burns from escaping the perimeter of the burn area and to minimize the effects of smoke emissions as outlined in the written prescribed burn plan. The standards do not, and are not intended to, preempt or supersede requirements established by state, federal, or private natural resource management organizations, but rather, are intended to serve as a baseline for effectively planning and conducting prescribed burns as a certified and insured prescribed burn manager.]


(a) [An applicant or a] certified and insured prescribed burn manager or applicant must:

1. timely respond to all requests for information from the Board regarding an application, renewal, insurance, or prescribed burning activities conducted by the certified and insured prescribed burn manager; and

2. notify the Department within 30 days of any change in personal information provided as part of the application for certification.

(b) If a certified and insured prescribed burn manager fails to timely report the information as required by subsection (a) of this section, a certified and insured prescribed burn manager is subject to administrative sanctions as set forth in §§153.102 - 153.104 of the Natural Resources Code, including the enforcement rules and schedule of disciplinary sanctions adopted by the Department.

(c) Failure to provide information required in this section may be grounds for denial of an application or may result in the suspension or revocation of a certification.

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 March 17, 2023.

TRD-202301090
Skyler Shafer
Assistant General Counsel
Prescribed Burning Board

Earliest possible date of adoption: April 30, 2023
For further information, please call: (512) 936-9360

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CHAPTER 226. REQUIREMENTS FOR CERTIFICATION BY THE BOARD

4 TAC §§226.1 - 226.3, 226.5 - 226.7

The Texas Prescribed Burning Board (Board), a semi-independent board administratively attached to the Texas Department of Agriculture (Department), proposes amendments to 4 TAC §§226.1 - 226.3, 226.5 - 226.7.

The Board identified the need for the amendments during its rule review conducted pursuant to Texas Government Code §2001.039, the adoption of which can be found in the Review of Agency Rules section of this issue.

The proposed amendments to §226.1 reorganize cross-references to other Board rules.

The proposed amendments to §226.2 remove unnecessary language, as provisions for compliance and renewal are already addressed by statute and other rules.

The proposed amendments to §226.3 clarify the necessary experience required to become a certified and insured prescribed burn manager, and remove unnecessary language.

The proposed amendments to §226.5 remove the subsection that provides fees will be prorated based on when an application is submitted, and make editorial changes.

The proposed amendments to §226.6 allow the Department, in addition to the Board, to approve deadline extensions, and make editorial changes.

The proposed amendments to §226.7 remove the subsection related to reciprocity with New Mexico, Oklahoma, Louisiana, or a federal agency, and make editorial changes.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed amendments will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, the Department has determined the following:

1. the proposed amendments do not create or eliminate a government program;
2. implementation of the proposed amendments does not require the creation or elimination of employee positions;
3. implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Department;
4. the proposed amendments do not require an increase or decrease in fees paid to the Department;
5. the proposed amendments do not create a new regulation;
6. the proposed amendments will not expand, limit, or repeal an existing regulation;
7. the proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Patrick Dudley, Coordinator for Agriculture Commodity Boards and Producer Relations, has determined that for each year of the first five years the proposed amendments are in effect, enforcing or administering the proposed amendments does not have foreseeable implications relating to costs or revenues of the state or local governments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Mr. Dudley has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be improved readability and clarity of Board rules. Mr. Dudley has also determined that for each year of the first five-year period the proposed amendments are in effect, there will be no cost to persons who are required to comply with the proposed amendments.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, are not required.

Comments on the proposed amendments may be submitted by mail to Patrick Dudley, Coordinator for Agriculture Commodity Boards and Producer Relations, P.O. Box 12847, Austin, Texas 78711, or by email to Patrick.Dudley@TexasAgriculture.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Natural Resources Code §153.046, which provides that the Board shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

Natural Resources Code, Chapter 153, is affected by this proposal.

§226.1. Application for Certification.
(a) To be eligible for certification as a certified and insured prescribed burn manager, an individual must submit the following to the Department:

1. a signed application on a form prescribed by the Board;
2. documentation of experience, as set forth in §226.3 of this title (relating to Experience);
3. documentation of training, as set forth in §226.4 of this title (relating to Training);
4. [2] the required fee, set forth in §226.5 of this title (relating to Fees); and
5. [3] proof of insurance coverage that meets the minimum requirements of §227.1 of this title (relating to Minimum Insurance Requirements).

[4] documentation of training, as set forth in §226.3 of this title (relating to Experience); and


(b) In accord with §2.1 of this title (relating to Application for a License), an incomplete application for certification shall become void on the one-year anniversary of the submission of the incomplete application and an applicant will be required to resubmit the application. This action is not a denial of a license for any purpose under the Texas Government Code, the Texas Agriculture Code, or these rules.

§226.2. Term of Certification.
(a) A certification shall be effective for a period of two years,[ contingent on compliance with all qualifications required under the Natural Resources Code, Chapter 153 and the rules adopted by the Board thereunder, including continuing training and insurance verification requirements].

(b) A certified and insured prescribed burn manager must renew the certification prior to the expiration every two years.

§226.3. Experience.
(a) To become [be certified as] a certified and insured prescribed burn manager, an applicant must:
1. demonstrate the following minimum level of experience:
   (A) [4] a minimum of three years' experience [years] of prescribed burning [as a member of a burn team]; and
   (B) [2] a minimum of thirty days' experience conducting [30 days of] prescribed burns; and [ , with at least 5 of those days]
   (C) a minimum of five days' experience as the individual responsible for all aspects of the prescribed burn; or [-]

   (2) [4] submit [An individual that submits] documentation of achievement of NWCG Prescribed Burn Boss Type 2 (RXB2) [meets the experience qualifications required by this section].

   (c) The Board may determine that other proof of experience submitted may qualify to meet the requirements of this section, or that additional experience is needed to meet the requirements of this section.

   (d) There shall be no exception to the requirement of experience for any individual seeking certification as a certified and insured prescribed burn manager.

§226.5. Fees.
(a) All applications [applicants] for certification or renewal must be accompanied with the [submit a $500] certification fee determined by [4] the Department.

(b) Fees will be prorated based on when the application for certification is submitted, as outlined on the application.

(c) [4] Fees will [A fee paid in association with a void application or denied renewal shall] not be refunded for denied applications.

(d) [4] Renewal fees submitted after the expiration date of the certification are subject to late fees prescribed in §12.024 of the Texas Agriculture Code.

§226.6. Renewal of Certification.
(a) The Department will send notice to certified and insured prescribed burn managers at least 30 days prior to the expiration of a certification to the last known contact information provided. [At least 30 days prior to the expiration of a certification for prescribed burn manager, the Department will attempt to send notice to the certified and
insured prescribed burn manager at the last known contact information provided to the Department.

(b) To be eligible for certification renewal, a certified and insured prescribed burn manager must submit the following to the Department:

(1) the certification renewal fee;

(2) [Completion and] certification of six [hours of] CFT hours [credits] for the two-year period preceding the renewal in the following categories of instruction:

(A) one hour of instruction dedicated to laws and regulations;

(B) one hour of instruction dedicated to smoke management; and

(C) four hours of instruction in any additional topics as listed in §229.2 and §229.3 of this title (relating to Wildland Firefighting and Approval of Continuing Fire Training Activity [§§229.2 - 229.3 of this chapter, relating to wildland firefighting or approval of continuing fire training activity]; and

(3) proof of liability insurance coverage.

(d) A certified and insured prescribed burn manager may file a written request for an extension of time for compliance with any deadline in these rules. Such request for extension may be granted by the Board or the Department if the applicant files appropriate documentation to show good cause for failure to comply timely with the requirements of this subsection. Good cause includes extended illness, extended medical disability, or other extraordinary hardship which is beyond the control of the certified and insured prescribed burn manager.

(e) A certified and insured prescribed burn manager who fails to satisfy all requirements necessary for certification within one year following the expiration of the certification must submit a new application for certification as described in §226.4 of this chapter (relating to Training).

§226.7. Reciprocity of Certification.

[a] The Board may enter into a memorandum of agreement with the state(s) of New Mexico, Oklahoma, and/or Louisiana, or a federal agency for reciprocity in certification of prescribed burn managers.

[b] Applicants seeking reciprocity in certification must submit an application, including fee, demonstrating that the applicant:

(1) meets the training and experience requirements of this chapter [as required by Chapter 228 of this title (relating to Procedures for Certified and Insured Prescribed Burn Managers)]; and

(2) meets insurance coverage requirements set forth in §227.1 of this title (relating to Minimum Insurance Requirements) [by maintaining a liability insurance policy demonstrating coverage of at least $1 million per occurrence, and $2 million aggregate].

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 March 17, 2023.

TRD-202301089
Skyler Shafer
Assistant General Counsel
Prescribed Burning Board

Earliest possible date of adoption: April 30, 2023
For further information, please call: (512) 936-9360

CHAPTER 227. REQUIREMENTS FOR CERTIFIED AND INSURED PRESCRIBED BURN MANAGERS

4 TAC §227.1, §227.4

The Texas Prescribed Burning Board (Board), a semi-independent board administratively attached to the Texas Department of Agriculture (Department), proposes amendments to 4 TAC §227.1, §227.4, and the repeal of §227.3. The proposed amendments and repeal are referred to as the proposal.

The Board identified the need for the proposal during its rule review conducted pursuant to Texas Government Code §2001.039, the adoption of which can be found in the Review of Agency Rules section of this issue.

The proposed amendments to §227.1 require documentation of any conditions, endorsements, exceptions or limitations to the liability insurance policy carried by a certified and insured prescribed burn manager to be disclosed to the Department in addition to the Board, require proof of insurance to be submitted annually instead of by December 31, and make editorial changes.

The repeal of §227.3 is proposed clarify the necessary experience required to become a certified and insured prescribed burn manager, and remove unnecessary language.

The proposed amendments to §227.4 change the requirements for maintenance of prescribed burn records and make editorial changes.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposal will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, the Department provides the following Government Growth Impact Statement for the proposal. For each year of the first five years the proposal will be in effect, the Department has determined the following:

1. the proposal does not create or eliminate a government program;
2. implementation of the proposal does not require the creation or elimination of employee positions;
3. implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Department;
4. the proposal does not require an increase or decrease in fees paid to the Department;
5. the proposal does not create a new regulation;
6. the proposal will repeal an existing regulation, but not expand or limit an existing regulation;
7. the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and

8. the proposal does not positively or adversely affect this state's economy.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Patrick Dudley, Coordinator for Agriculture Commodity Boards and Producer Relations, has determined that for each year of the first five years the proposal is in effect, enforcing or administering the proposal does not have foreseeable implications relating to costs or revenues of the state or local governments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Mr. Dudley has determined that for each year of the first five-year period the proposal is in effect, the public benefit will be improved readability and clarity of Board rules. Mr. Dudley has also determined that for each year of the first five-year period the proposal is in effect, there will be no cost to persons who are required to comply with the proposal.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposal, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, are not required.

Comments on the proposal may be submitted by mail to Patrick Dudley, Coordinator for Agriculture Commodity Boards and Producer Relations, P.O. Box 12847, Austin, Texas 78711, or by email to Patrick.Dudley@TexasAgriculture.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Natural Resources Code §153.046, which provides that the Board shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

Natural Resources Code, Chapter 153, is affected by this proposal.

§227.1 Minimum Insurance Requirements.

(a) At all times during the certification period, a certified and insured prescribed burn manager must maintain liability insurance coverage that insures the certified and insured prescribed burn manager for damages to any persons or any property occurring as a result of prescribed burning activities conducted under Natural Resources Code, Chapter 153, and the rules adopted thereunder, in the following minimum amounts:

1. at least $1 million of liability coverage for each single occurrence of bodily injury to or destruction of property; and

2. a policy period minimum aggregate limit of at least $2 million.

(b) Documentation of any conditions, endorsements, exceptions or limitations to the liability insurance policy must be [must be] disclosed to the Board and the Department [or its designee].

(c) To demonstrate proof of coverage, a certificate of insurance from an insurance company or the declaration page including detailed policy information are considered valid documentation.

(d) In lieu of a liability insurance coverage policy, a certificate of insurance from an insurance company, including the declaration page and detailed policy information, or a document approved by the Board.

(e) Annually [by December 31 annually], each certified and insured prescribed burn manager must submit proof of minimum coverage requirements demonstrating compliance with the requirements set forth in subsections [subsection] (a) or (d) of this section.

(f) A certified and insured prescribed burn manager must immediately notify the Department in writing in the event of a change, reduction, lapse, or cancellation of liability insurance coverage. If liability insurance coverage lapses or falls below the minimum requirements set forth in subsection (a) of this section, the certification may be suspended or revoked, [in accordance with the procedures set forth in Title 4, Part 1, Chapter 4, Subchapter A of this title (relating to Enforcement, Investigation, Penalties and Procedures)].

§227.4 Maintenance of Prescribed Burn Records.

(a) A certified and insured prescribed burn manager must maintain the following records:

1. a current certificate of [for all] insurance [maintained by the certified and insured prescribed burn manager] that meets the requirements of §153.082 of the Natural Resources Code and §227.1 of this title (relating to Minimum Insurance Requirements), together with a complete copy of any applicable policy or policies, along with all endorsements, exclusions or limitations issued with respect to such policy or policies;

2. the current certified and insured prescribed burn manager certificate [reflecting status as a certified and insured prescribed burn manager]; and

3. certificates of completion for all approved CFT hours [activities] completed during the current certification period, on a form provided by the [CFT] sponsor; and

4. documentation of all burn experience, including any training not applicable toward CFT credit, obtained during the current certification period.

(b) A certified and insured prescribed burn manager must also maintain a prescribed burn file for each prescribed burn conducted which must include:

1. For each prescribed burn, the prescribed burn file must include:

   1. the written burn plan that meets the requirements of §228.1 of this title (relating to Written Prescribed Burn Plan Required) [for the prescribed burn];

   2. [B] documentation of notice to adjacent landowners and TCEQ, if required by §153.047(4) of the Natural Resources Code and §228.2 of this title (relating to Notification Requirements Prior to Prescribed Burns);
(3) [EC] documentation of notice to the county dispatch office and Texas A&M Forest Service, as required [sheriff’s department and local fire authorities, if any, as recommended] by §228.2 of this title;

[(D)] documentation of notice to the Texas A&M Forest Service, prior to burning for forest management purposes, if applicable, as required by Title 30, Part 1, Chapter 111, Subchapter B, §111.219 of the Texas Administrative Code (relating to General Requirements for Allowable Outdoor Burning); and

[(E)] documentation of notice to TCEQ regarding coastal salt-marsh burning, if required by, as required by Title 30, Part 1, Chapter 111, Subchapter B, §111.211 of the Texas Administrative Code (relating to Exception for Prescribed Burn); and [©]

[(2) For prescribed burns conducted during a burn ban, the prescribed burn file must also include:]

[(A)] notices, when applicable, required by §228.4 of this title (relating to Conducting Burns During a [County] Burn Ban), [© and]

[(B)] a completed burn checklist for the prescribed burn conducted when a county burn ban is in effect.

(c) The records required by subsections (a) and (b) of this section shall be made available to the Department for inspection at the location of such records upon reasonable notice by the Department.

(d) Records required by subsections (a) and (b) of this section shall be kept for the longer of five years from the date of original issuance, or for so long as any complaint, litigation, or Department investigation is pending against the certified and insured prescribed burn manager.

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 March 17, 2023.

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Skyler Shafer
Assistant General Counsel
Prescribed Burning Board
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For further information, please call: (512) 936-9360

CHAPTER 228. PROCEDURES FOR CERTIFIED AND INSURED PRESCRIBED BURN MANAGERS

4 TAC §§228.1 - 228.4

The Texas Prescribed Burning Board (Board), a semi-independent board administratively attached to the Texas Department of Agriculture (Department), proposes amendments to 4 TAC §§228.1 - 228.4.

The Board identified the need for the amendments during its rule review conducted pursuant to Texas Government Code §2001.039, the adoption of which can be found in the Review of Agency Rules section of this issue.

The proposed amendments to §228.1 change burn plan requirements to include a burn/no burn checklist.

The proposed amendments to §228.2 require notice of prescribed burns to be provided in advance to the local county dispatch office and the Texas A&M Forest Service central dispatch office, and remove unnecessary language.

The proposed amendments to §228.3 change the requirement that a certified and insured prescribed burn manager (CIPBM) be present during a prescribed burn to instead require the CIPBM to be present during an active prescribed burn as determined by the CIPBM, and remove unnecessary language.

The proposed amendments to §228.4 remove notification requirements for conducting burns during a burn ban that no longer reflect current practice, and make editorial changes.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed amendments will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, the Department has determined the following:

1. the proposed amendments do not create or eliminate a government program;
2. implementation of the proposed amendments does not require the creation or elimination of employee positions;
3. implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Department;
4. the proposed amendments do not require an increase or decrease in fees paid to the Department;
5. the proposed amendments do not create a new regulation;
6. the proposed amendments will not expand, limit, or repeal an existing regulation;
7. the proposed amendments do not increase or decrease the number of individuals subject to the rule’s applicability; and
8. the proposed amendments do not positively or adversely affect this state’s economy.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Patrick Dudley, Coordinator for Agriculture Commodity Boards and Producer Relations, has determined that for each year of the first five years the proposed amendments are in effect, enforcing or administering the proposed amendments does not have foreseeable implications relating to costs or revenues of the state or local governments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Mr. Dudley has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be improved readability and clarity of Board rules. Mr. Dudley has also determined that for each year of the first five-year period the proposed amendments are in effect, there will be no cost to persons who are required to comply with the proposed amendments.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, are not required.

Comments on the proposed amendments may be submitted by mail to Patrick Dudley, Coordinator for Agriculture Commodity Boards and Producer Relations, P.O. Box 12847, Austin, Texas 78711, or by email to Patrick.Dudley@TexasAgriculture.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Natural Resources Code §153.046, which provides that the Board shall establish standards for prescribed burning certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

Natural Resources Code, Chapter 153, is affected by this proposal.

§228.1. Written Prescribed Burn Plan Required.

(a) To ensure effective planning necessary to achieve desired effects from prescribed burning, a written prescribed burn plan must be completed by the certified and insured prescribed burn manager in advance of the planned prescribed burn. The prescribed burn plan should provide reasonable assurance that the prescribed burn will be confined to the predetermined area and conducted in a manner that will accomplish the land management objectives.

(b) A written prescribed burn plan must include, at a minimum, the following information:

(1) purpose of burn;
(2) location and description of the area to be burned;
(3) personnel required for managing the fire;
(4) type and amount of vegetation to be burned;
(5) area (acres) to be burned;
(6) fire prescription and firing techniques, including smoke management components;
(7) safety and contingency plans addressing escaped fires and smoke management; and
(8) a written [criteria the certified and insured prescribed burn manager will use for making] burn/no burn checklist [decisions].

[(c) For burns conducted during a burn ban, the Burn/Do Not Burn checklist described in subsection (b)(8) of this section must also be in writing.]

§228.2. Notifications Requirements Prior to Prescribed Burns.

(a) Prior to conducting prescribed burn activities, a certified and insured prescribed burn manager must:

(1) provide written notification to the residents, owners, occupants or operators of structures containing sensitive receptors [if they are] located within 300 feet of and in the general direction downwind from the prescribed burn;
(2) upon request, provide the landowner or landowner’s agent:

(A) proof of [current] insurance coverage applicable to the prescribed burn that meets the minimum requirements set forth in §227.1 of this title (relating to Minimum Insurance Requirements); and
(B) proof of current prescribed burn manager certification; and
(3) provide notice to the local county dispatch office and the Texas A&M Forest Service central dispatch office [maintain the documentation required in paragraph (2) of this subsection on site at all times during a prescribed burn].

[(d) Failure to comply with any of the notice requirements in subsection (a) of this section is a violation that may result in penalties under Chapter 4 of this title (relating to Prescribed Burning Board Enforcement Program).]

[(e) In addition to the TCEQ notification requirements set forth at Title 30, Chapter 111, Subchapter B of the Texas Administrative Code (relating to Outdoor Burning), the certified and insured prescribed burn manager is also responsible for compliance with additional notification requirements for prescribed burns which may vary by county, including local ordinances.]

[(f) It is strongly recommended that the certified and insured prescribed burn manager alert local officials by providing notice to the county sheriff’s office and local fire authorities in proximity of the prescribed burn prior to burning.]

§228.3. Personnel Required to Conduct a Prescribed Burn.

(a) In all cases covered by these rules, a certified and insured prescribed burn manager [with insurance coverage as required by §227.1 of this title (relating to Minimum Insurance Requirements)] must be present [at all times] during an active [a] prescribed burn as determined by the certified and insured prescribed burn manager.

(b) The certified and insured prescribed burn manager is responsible for ensuring that a sufficient number of individuals are present to meet the personnel requirements set forth in the written prescribed burn plan for the protection and safety of persons and adjacent property.

[(c) Personnel requirements for conducting prescribed burns vary depending on the size of the burn area, fuel volatility, and man-]
agagement of adjacent areas and it is the responsibility of the certified and insured prescribed burn manager to ensure compliance with this section.)

§228.4. Conducting Burns During a Burn Ban.

(a) [1a] All TCEQ, state and local requirements for outdoor burning shall apply at all times.

(b) [1a] A certified and insured prescribed burn manager may not conduct a burn in a county in which a current Governor's and/or Presidential Declaration of Emergency or Disaster is in effect that expressly prohibits all outdoor burning.

(c) [1a] The certified and insured prescribed burn manager must provide written notification to [the county commissioners court and] the county judge, or the county judge's designee, prior to the prescribed burn. The written notification must include [including] the following:

1. the location of where the prescribed burn is to take place;
2. the name of the certified and insured prescribed burn manager; and
3. contact information for the certified and insured prescribed burn manager, including, but not limited to: address and emergency contact telephone numbers.

(d) [1a] The certified and insured prescribed burn manager must also provide notification prior to and upon completion of the burn to:

1. the local county dispatch [sheriff's] office; and
2. the TCEQ regional office;
3. [the Texas A&M Forest Service] TFS central dispatch office;
4. [fire suppression entities serving the area located immediately within the jurisdiction where the burn is located; and]
5. the local emergency response dispatch office.

(e) When burning during a burn ban, all certified and insured prescribed burn managers are required to establish and adhere to a written Burn/Do Not Burn checklist.

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 March 17, 2023.
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Skyler Shafer
Assistant General Counsel
Prescribed Burning Board
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For further information, please call: (512) 936-9360

CHAPTER 229. CONTINUING FIRE TRAINING

4 TAC §§229.1 - 229.4

The Texas Prescribed Burning Board (Board), a semi-independent board administratively attached to the Texas Department of Agriculture (Department), proposes amendments to 4 TAC §§229.1 - 229.4.

The Board identified the need for the amendments during its rule review conducted pursuant to Texas Government Code §2001.039, the adoption of which can be found in the Review of Agency Rules section of this issue.

The proposed amendments to §229.1 add wildland firefighting to the list of eligible continuing fire training activities for clarity, and change "CFT credits" to "CFT hours".

The proposed amendments to §229.2 change "CFT credit" to "CFT hours" and make editorial changes.

The proposed amendments to §229.3 remove the requirement for CFT training activities to be submitted for approval 30 days prior to the CFT activity, add a cross reference to another rule, change the topics that CFT activities can cover, and make editorial changes.

The proposed amendments to §229.4 allow a Lead Burn Instructor to approve CFT activities, require sponsors of CFT activities to provide a completed PBB Form 607 to participants, and make editorial changes.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed amendments will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, the Department has determined the following:

1. the proposed amendments do not create or eliminate a government program;
2. implementation of the proposed amendments does not require the creation or elimination of employee positions;
3. implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Department;
4. the proposed amendments do not require an increase or decrease in fees paid to the Department;
5. the proposed amendments do not create a new regulation;
6. the proposed amendments will not expand, limit, or repeal an existing regulation;
7. the proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
8. the proposed amendments do not positively or adversely affect this state's economy.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Patrick Dudley, Coordinator for Agriculture Commodity Boards and Producer Relations, has determined that for each year of the first five years the proposed amendments are in effect, enforcing or administering the proposed amendments does not have foreseeable implications relating to costs or revenues of the state or local governments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Mr. Dudley has determined that for each year of the first five-year
period the proposed amendments are in effect, the public benefit will be improved readability and clarity of Board rules. Mr. Dudley has also determined that for each year of the first five-year period the proposed amendments are in effect, there will be no cost to persons who are required to comply with the proposed amendments.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments; therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, are not required.

Comments on the proposed amendments may be submitted by mail to Patrick Dudley, Coordinator for Agriculture Commodity Boards and Producer Relations, P.O. Box 12947, Austin, Texas 78711, or by email to Patrick.Dudley@TexasAgriculture.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Natural Resources Code §153.046, which provides that the Board shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

Natural Resources Code, Chapter 153, is affected by this proposal.

§229.1. Eligible Continuing Fire Training Activities.
(a) Eligible continuing fire training activities may include:
   (1) lectures;
   (2) panel discussions;
   (3) organized video or film with live instruction;
   (4) field demonstrations; [or]
   (5) wildland firefighting as provided by §229.2 of this chapter (relating to Wildland Firefighting); and/or
   (6) [§5] other activities approved by the Board.
(b) The Board shall assign no more than one CFT hour [credit] for each hour of actual instruction time at an approved activity. No CFT hours [credit] will be given for time used for the promotion of sponsor or other activities of the sponsor or for time used for organizational, political, or other unrelated activities.
(c) All proposed CFT training, courses, and [credit] hours must be pre-approved by the Board, Board Chairman, or a Lead Burn Instructor provided that all requirements for course content provided in §229.3 of this title (relating to Approval of Continuing Fire Training Activity) are met.
(d) Department staff and Board members may observe and monitor approved activities at no cost to the Department or the Board.

§229.2. Wildland Firefighting.
(a) Wildland firefighting is an eligible activity that may satisfy [mandatory] CFT requirements [for certified and insured prescribed burn managers]. To receive CFT hours [credit] for wildland firefighting, the certified and insured prescribed burn manager must:
   (1) be under the direction of a responsive organization that manages wildland fires which create a substantial risk of causing imminent harm to nearby property or persons;
   (2) have been a requested resource assigned to a firefighting position upon check in;
   (3) provide the incident commander with an Incident Personnel Performance Rating form upon assignment to be completed for documentation of the individual's performance; and
   (4) submit an Incident Personnel Performance Rating form to a lead burn instructor or the Board for review.
(b) CFT hours [credit] for wildland firefighting activities may not exceed three hours per two-year certification period.
(c) Final approval of wildland firefighting activities by the Board is required to be eligible for CFT hours [credit].

§229.3. Approval of Continuing Fire Training Activity.
(a) For a training activity to be approved as eligible for CFT hours [credit], the activity must be submitted to the Board, Board Chairman, or a Lead Burn Instructor for approval.
(b) To be approved [by the board, Board Chairman, or Lead Burn Instructor] a sponsor must:
   (1) [(a)] demonstrate that the CFT activity will be conducted by a qualified instructor;
   (2) [(a)] provide information demonstrating that the activity has significant educational or practical content to ensure competency of participants;
   (3) [(5)] utilize a Board-approved record keeping procedure to record attendance;
   (4) [(5)] in addition to the requirements in §226.6 of this title (relating to Renewal of Certification), demonstrate that all CFT activities relate to prescribed burning and will cover one or more of the following topics:
      (A) safety factors;
      (B) environmental consequences;
      (C) burning techniques;
      (D) equipment characteristics;
      [(E) laws and regulations;]
      (E) [(F)] advanced technology; or
      (F) [(G)] other [smoke management].
(c) All CFT activities must comply with applicable federal and state laws, including the Americans with Disabilities Act requirements for access to activities.
(d) The Board, Board Chairman, or a Lead Burn Instructor will respond within 10 business days of receipt of the application and approve, deny, or request additional information from the sponsor.
(e) Approval of CFT activities [training courses] is [only] valid for twelve months from the date of approval.

§229.4. Requirements for Training Activity Sponsors.
(a) A university, governmental agency, an association, a private [independent] business, or other [qualified] entity may be
approved by the Board, Board Chair, or a Lead Burn Instructor as a sponsor for a prescribed burn training activity. To be eligible to sponsor a CFT training activity, a sponsor must submit a written proposal to the Board, Board Chair, or a Lead Burn Instructor which includes a detailed list of the subjects to be covered and the planned activities.

(b) Sponsors approved to conduct CFT activities must:

1. upon completion of the activity, submit a roster to the Department within 14 days of the completed activity, which contains, at a minimum:

   A. the names of the [name and current certificate number] certified and insured prescribed burn managers participating who successfully complete the activity; and

   B. the certificate number of the certified and insured prescribed burn managers participating;

2. ensure that the training hours [credits] awarded correspond proportionately to the net instruction time; and

3. distribute a certificate of completion and a completed PBB Form 607 on the date of the activity. A certificate of completion [to eligible certified and insured prescribed burn managers which] includes, but is not limited to:

   A. the name of the sponsor;

   B. the name of the lead burn instructor;

   C. the lead burn instructor's phone number;

   D. the date and name of the approved activity;

   E. the name of the county in which the approved activity was held; and

   F. the number of CFT [credit] hours and type of hours [credit] earned.

(c) The Board may suspend or deny approval for any or all sponsored training courses if a sponsor fails to file a timely activity report, fails to provide the quality of activity required by the Board, or fails to comply with any other requirements for approval or that are a part of these 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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Skyler Shafer
Assistant General Counsel
Prescribed Burning Board
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CHAPTER 230. LEAD BURN [BURNING] INSTRUCTOR REQUIREMENTS

4 TAC §§230.1 - 230.4
The Texas Prescribed Burning Board (Board), a semi-independent board administratively attached to the Texas Department of Agriculture (Department), proposes amendments to 4 TAC §§230.1 - 230.4.

The Board identified the need for the amendments during its rule review conducted pursuant to Texas Government Code §2001.039, the adoption of which can be found in the Review of Agency Rules section of this issue.

The proposed amendments to §230.1 change the requirements for lead burn instructor eligibility.

The proposed amendments to §230.2 remove unnecessary language.

The proposed amendments to §230.3 make editorial changes and add recommended curriculum topics to certified and insured prescribed burn manager training courses.

The proposed amendments to §230.4 allow the Board to designate a member to develop and approve the standardized test to be administered to all applicants seeking status as a certified and insured prescribed burn manager, remove a subsection related to the appointment of subcommittee to approve the test, and make editorial changes.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed amendments will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, the Department has determined the following:

1. the proposed amendments do not create or eliminate a government program;

2. implementation of the proposed amendments does not require the creation or elimination of employee positions;

3. implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Department;

4. the proposed amendments do not require an increase or decrease in fees paid to the Department;

5. the proposed amendments do not create a new regulation;

6. the proposed amendments will not expand, limit, or repeal an existing regulation;

7. the proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

8. the proposed amendments do not positively or adversely affect this state's economy.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Patrick Dudley, Coordinator for Agriculture Commodity Boards and Producer Relations, has determined that for each year of the first five years the proposed amendments are in effect, enforcing or administering the proposed amendments does not have foreseeable implications relating to costs or revenues of the state or local governments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Mr. Dudley has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be improved readability and clarity of Board rules. Mr. Dudley has also determined that for each year of the first five-year
period the proposed amendments are in effect, there will be no cost to persons who are required to comply with the proposed amendments.

**FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES:** The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, are not required.

Comments on the proposed amendments may be submitted by mail to Patrick Dudley, Coordinator for Agriculture Commodity Boards and Producer Relations, P.O. Box 12847, Austin, Texas 78711, or by email to Patrick.Dudley@TexasAgriculture.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Natural Resources Code §153.046, which provides that the Board shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

Natural Resources Code, Chapter 153, is affected by this proposal.

§230.1. **Lead Burn Instructor Eligibility.**

(a) A lead burn instructor must conduct an approved CFT course, but may utilize assistance from a training cadre, as the lead burn instructor deems appropriate.

(b) In order to be eligible to conduct a CFT course, a lead burn instructor must have:

1. a minimum of fifty days' experience conducting prescribed burns [25 days of prescribed burns as the individual solely responsible for the prescribed burn];

2. a minimum of twenty-five days' experience conducting [50 days of burns in any position on the burn, with at least 75% of those days on] prescribed burns as a burn boss or the individual solely responsible for the prescribed burn;

3. a minimum of 35 days of prescribed burn management;

4. taken or taught a Board approved certified and insured prescribed burn manger course or be qualified as a NWCG Prescribed Burn Boss Type 2 (RXB2) or higher; and

5. made at least 10 presentations of technical information to groups in a formal setting.

(c) Lead burn instructors must be approved by the Board.

§230.2. **Annual Lead Burn Instructor Meeting.**

(a) In order to maintain approval as a lead burn instructor, a lead burn instructor must attend an annual meeting designated by the Board for the purpose of continuing education, to be held in conjunction with, but separately from, a regularly scheduled [semi-annual] meeting of the Board.

(b) Lead burn instructors that do not attend the annual meeting will no longer qualify to be a lead burn instructor, unless the absence is excused by a majority vote [at a duly called meeting] of the Board.

§230.3. **Certification and Curriculum.**

(a) All curriculum taught during a certified and insured prescribed burn manager training course [school] shall be approved by the Board.

(b) The minimum [Minimum] curriculum [shall be 24] hours for each certified and insured prescribed burn manager training course shall be at least 24 hours [school], with the total class length at the discretion of the lead burn instructor [responsible for] conducting the course [class].

(c) Recommended curriculum topics include:

1. Fire History and Use; Ecological Effects;
2. Fire Behavior;
3. Fire Weather;
4. Fuel Moisture/Characteristics;
5. Topographic Influences;
6. Fire Effects;
7. Prescribed Burn Planning [the Burn];
8. Equipment and Safety;
9. Firing Technique;
10. Smoke Management;
11. Laws and Regulations;
12. Equipment and Safety;
13. Evaluation of Pre-burn Area(s); and
14. Holding and Contingency; and

(d) Upon completion of the prescribed burn school, all applicants must take a standardized test approved by the Board.

§230.4. **Standardized Test.**

(a) A standardized test, to be administered to all applicants seeking status as a certified and insured prescribed burn manager shall be:

1. developed and approved by the Board, or, at [1a] the discretion of the Board, a member designated [subcommittee appointed] by the Board; and
2. reviewed annually by lead burn instructors at the annual lead burn instructor meeting to make sure all examination instructions, questions and tasks are up to date and cover all required curriculum, [;]

3. approved by the Board.

(b) Any subcommittee appointed by the Board under this section shall include, at a minimum, one Board member as chair and one lead burn instructor from each of the five eco-regions described in §226.4(d) of this title, relating to training.

4. A minimum passing grade for the standardized test will be 70%.

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 March 17, 2023.

TRD-202301095
The Texas Education Agency (TEA) proposes amendments to §102.1303 and §102.1313, concerning innovation districts. The proposed amendments would modify the requirements for renewal of a local innovation plan.

BACKGROUND INFORMATION AND JUSTIFICATION: Chapter 102, Subchapter JJ, establishes provisions relating to the applicable processes and procedures for innovation districts.

The proposed amendment to §102.1303(a) would clarify that it is the district's final and most recent academic performance rating that must be at least acceptable performance in order to be eligible for designation as an innovation district.

The proposed amendment to §102.1313(a)(2) would specify that the district is not required to notify the commissioner of education of the board's intention to vote on the adoption of the renewal of a local innovation plan.

Proposed new §102.1313(a)(3)(A) would require the district to meet eligibility requirements under §102.1303 in order to be eligible to renew a local innovation plan. Proposed new §102.1313(a)(3)(B) would allow a district that chooses to renew its local innovation plan to do so in the six months subsequent to the plan's expiration date to maintain a continuous designation as a district of innovation.

Proposed new §102.1313(a)(3)(B)(i) would clarify that the term of a renewed plan may not begin prior to the date on which it is adopted by the board of trustees unless the plan is adopted as renewed within the six months following its expiration date. Proposed new §102.1313(a)(3)(B)(ii) would clarify that the term of a plan renewed during the six months subsequent to the plan's expiration date begins on the date of expiration of the prior term and may not exceed five years. Proposed new §102.1313(a)(3)(B)(iii) would clarify that any changes made to the plan during the renewal process are not effective prior to the date of adoption of the renewed plan, and proposed new §102.1313(a)(3)(B)(iv) would require the district to indicate the date of adoption next to any changes made to the plan during the renewal process in order to denote the earliest date the changes may take effect. Proposed new §102.1313(a)(3)(B)(v) would clarify that a district whose plan is not renewed during the six months subsequent to the plan's expiration date shall comply with all previously adopted exemptions upon the plan's expiration date and begin the initial adoption process over again in its entirety should the district wish to pursue designation as an innovation district in the future.

FISCAL IMPACT: Steve Lechlohp, deputy commissioner for government, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would both expand and limit an existing regulation. The proposed amendment to §102.1313 would add eligibility criteria for the purposes of renewing a local innovation plan, establish a time period after a plan's expiration but before its renewal during which a district's designation as an innovation district is valid, require districts to note changes made to the plan during the renewal process, and clarify that districts whose plan is expired and not renewed during the established timeline shall, upon the date of the plan's expiration, comply with all exemptions that were previously formally adopted and begin the adoption process over in its entirety should they wish to be designated a district of innovation again. The proposed amendment to §102.1313 also limits an existing regulation by reducing the process requirements associated with renewal.

The proposed amendments would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Lechlohp has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to clarify eligibility criteria for designation as an innovation district and to specify that the eligibility requirements for initial adoption of local innovation plan are applicable to renewal of a local innovation plan, as well as to clarify requirements for renewal of a local innovation plan. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.
PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins March 31, 2023, and ends May 1, 2023. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on March 31, 2023. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code, §12A.009, which authorizes the commissioner of education to adopt rules to implement districts of innovation.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §12A.009.

§102.1303. Eligibility.
(a) A district is eligible for designation as an innovation district if the district's final and most recent performance rating under [the] Texas Education Code (TEC), §39.054, is at least acceptable performance, as indicated in the applicable year's academic accountability manual adopted under §97.1001 of this title (relating to Accountability Rating System).

(b) A board of trustees may not vote on the final approval of the innovation plan if the district is assigned either a final or preliminary rating below acceptable performance, as indicated in the applicable year's academic accountability manual adopted under §97.1001 of this title. In the event the preliminary rating is changed, the board of trustees may then vote to become an innovation district.

§102.1313. Amendment, Rescission, or Renewal.
(a) A district innovation plan may be amended, rescinded, or renewed if the action is approved by a majority vote of the district-level committee established under [the] Texas Education Code (TEC), §11.251, or a comparable committee if the district is exempt from that section, and a two-thirds majority vote of the board of trustees.

1. Amendment. An amendment to an approved plan does not change the date of the term of designation as an innovation district. Exemptions that were already formally approved are not required to be reviewed.

2. Rescission. A district must notify the Texas Education Agency within five business days of rescission and provide a date at which time it will be in compliance with all sections of the TEC, but no later than the start of the following school year.

3. Renewal. During renewal, all sections of the plan and exemptions shall be reviewed and the district must follow all components outlined in §102.1307 of this title (relating to Adoption of Local Innovation Plan), except that a district is not required to notify the commissioner of education of the board's intention to vote on the adoption of the proposed plan under §102.1307(a)(2) of this title.

(A) A district must meet eligibility requirements under §102.1303 of this title (relating to Eligibility) in order to renew an innovation plan.

(B) In the event that a district fails to renew a plan prior to the expiration of its term, a district may renew the plan in the six months subsequent to the plan's date of expiration in order to maintain a continuous designation as a district of innovation.

(i) The term of a renewed plan, subject to §102.1311 of this title (relating to Term), may not begin prior to the date on which the board votes to adopt the renewed plan, unless the plan is adopted during the six months subsequent to the plan's date of expiration.

(ii) If a plan is renewed during the timeline described in this subparagraph, the renewed plan will have a term not to exceed five calendar years, beginning on the date of expiration of the prior term.

(iii) If a plan is renewed during the timeline described in this subparagraph and changes are made to the plan during the renewal process, those changes will be in effect from the date of adoption of the renewed plan through the expiration date of the renewed plan, unless amended, rescinded, or terminated.

(iv) If changes are made to the plan during the renewal process, the district shall mark the changes with the date of the vote to renew the plan in order to denote the earliest date those changes may take effect.

(v) A district whose plan is not renewed during the timeline described in this subparagraph shall comply with all previously approved exemptions immediately upon expiration of the plan and begin the adoption process over again in its entirety should the district wish to pursue designation as a district of innovation in the future.

(b) The district shall notify the commissioner [of education] of any actions taken pursuant to subsection (a) of this section along with the associated TEC exemptions and local approval dates.

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 March 20, 2023.
TRD-202301096
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: April 30, 2023
For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS
PART 5. STATE BOARD OF DENTAL EXAMINERS
CHAPTER 104. CONTINUING EDUCATION
22 TAC §104.2
The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §104.2, concerning continuing education providers. The proposed amendment reflects the merger of the regional examining board CDCA-WREB-CITA. The proposed amendment includes the States Resources for Testing and Assessments (SRTA), Central Regional Dental Testing Services Inc. (CRDTS), and the American Association of Dental Boards – Accredited Continuing Education Program (AADB-ACE) as board approved continuing education providers. The proposed amendment removes Dental Quality Assurance and Dentist Secure Labs as continuing education providers.
FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state’s economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov’t. Code §2001.0045.

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the Texas Register. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§104.2 Providers.

(a) The Board hereby establishes a list of providers for continuing education courses. Unless specifically required by state law or Board rule, the Board shall not accept or approve specific continuing education courses for requirements related to the issuance or renewal of license, registrations, or sedation/anesthesia permits.

(b) At least once per calendar year, the Board shall review the list of providers for continuing education and any applications submitted for continuing education providers, and shall consider additions or removals of providers from the list provided in this section.

(1) The Presiding Officer may establish an ad hoc committee pursuant to 22 TAC §100.8 (relating to Ad Hoc Committees of the Board) to review the addition or removal of providers and make recommendations to the full Board for approval.

(2) The Board and any ad hoc committee shall consider classifying each provider for full continuing education provider authorization, including clinical, scientific, and sedation/anesthesia provider courses, or for a limited continuing education provider authorization restricted to courses related to risk management, recordkeeping, ethics, and non-clinical dental assistant duties continuing education. If no classification is assigned to a provider, the provider shall be considered a full continuing education provider.

(3) Any addition, removal, or classification of providers shall require a majority vote of the full Board in an open meeting. A provider being considered for addition, removal, or classification shall be given 10 business days notice of the consideration, and shall be provided an opportunity to appear and make a presentation or submit supporting documentation at the scheduled meeting of the Board or any ad hoc committee regarding the addition, removal, or classification.

(c) Board staff shall develop and provide an application form for continuing education providers. The application form shall provide instructions for submitting provider information and supporting documentation. The Board shall provide the application form for continuing education providers and general instructions on the continuing education provider application process on its public website. Any request to become an approved continuing education provider must be submitted on the application form provided by the Board; failure to utilize the Board’s application form shall be grounds to reject the application request.

(d) The Board shall consider the following criteria when reviewing providers:

1. the health, safety, and welfare of the residents of Texas;
2. access to providers for licensees and registrants in all portions of Texas;
3. competency of course providers, and quality of course materials;
4. internal and external audits, guidelines, safeguards, and standards to ensure consistent and quality education; and
5. demonstrable clinical, professional, and/or scientific education experience.

(e) Continuing Education courses endorsed by the following providers will meet the criteria for acceptable continuing education hours if such hours are certified by the following providers:

1. American Dental Association--Continuing Education Recognition Program (CERP);
2. American Dental Association, its component, and its constituent organizations;
3. Academy of General Dentistry, and its constituents and approved sponsors;
4. Dental/dental hygiene schools and programs accredited by the Commission on Dental Accreditation of the American Dental Association;
5. American Dental Association approved specialty organizations;
6. American Dental Hygienists' Association, its component, and its constituent organizations;
(7) American Medical Association approved specialty organizations;
(8) American Medical Association approved hospital courses;
(9) National Dental Association, its constituent, and its component societies;
(10) National Dental Hygienists' Association, its constituent, and its component societies;
(11) Medical schools and programs accredited by the Standards of the Medical Specialties, the American Medical Association, the Advisory Board for Osteopathic Specialists and Boards of Certification, or the American Osteopathic Association;
(12) The Commission on Dental Competency Assessments-The Western Regional Examining Board-The Council of Interstate Testing Agencies (CDCA-WREB-CITA), States Resources for Testing and Assessments (SRTA), and Central Regional Dental Testing Services Inc. (CRDTS);

[(12) Western Regional Examining Board;]

(13) American Academy of Dental Hygiene;
(14) American Dental Education Association;
(15) American Heart Association;
(16) Texas Dental Hygiene Educators' Association;
(17) Dental Laboratory Association of Texas;
(18) Dental Assisting National Board;
(19) American Dental Assistants Association and its constituent organizations;
(20) The Compliance Division, LLC;
(21) Dental Compliance Specialists, LLC; and
(22) Other entities approved by the Board as shown in the attached graphic for this section.

Figure: 22 TAC §104.2(e)(22)

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 March 15, 2023.
TRD-202301081
Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: April 30, 2023
For further information, please call: (512) 305-8910

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS
CHAPTER 463. APPLICATIONS AND EXAMINATIONS
SUBCHAPTER B. LICENSING REQUIREMENTS

22 TAC §463.8
The Texas Behavioral Health Executive Council proposes amendments to §463.8, relating to Licensed Psychological Associate.

Overview and Explanation of the Proposed Rule. The proposed amendments correct typographical errors in subsections (a)(3), (b)(3), and (c)(3). The proposed amendment to subsection (a)(2) will allow for the supervised experience from an internship, practicum, or the like to count towards licensure if it is obtained under an individual licensed as an LSSP, instead of only under the supervision of a psychologist. Subsection (c)(5) has been amended to allow a provisionally licensed psychologist to count supervision hours obtained towards the independent practice requirements as an LPA. Subsection (d) has been deleted to correspond with changes made to §463.11, which deletes the gap requirements for when supervised experience was obtained and when an application was submitted. Subsection (f) extends a grandfathering provision for degrees in psychology that began before August 31, 2019. And subsection (g) creates a way for applicants with deficiencies to petition to remediate certain areas of deficiency.

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://bhec.texas.gov/proposed-rule-changes-and-the-rule-making-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on April 30, 2023, which is at least 30 days from the date of publication of this proposal in the Texas Register.

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.

§463.8. Licensed Psychological Associate.

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

(1) hold a graduate degree in psychology from a regionally accredited institution of higher education;

(2) provide documentation of at least six (6) semester credit hours of practicum, internship or other structured experience within the applicant's graduate degree program under the supervision of a licensed psychologist or under the supervision of an individual that holds a license as a specialist in school psychology;

(3) pass all examinations required by the Council and meet each of the criteria listed in §501.2525(a)(3) - (9) [§501.2525(a)(2)-(9)] of the Occupations Code; and

(4) demonstrate graduate level coursework in each of the following areas:

(A) Psychological Foundations:

(i) the biological bases of behavior;

(ii) the acquired or learned bases of behavior, including learning, thinking, memory, motivation and emotion;

(iii) the social, cultural, and systemic bases of behavior;

(iv) the individual or unique bases of behavior, including personality theory, human development, and abnormal behavior;

(B) Research and Statistics:

(i) the methodological used to investigate questions and acquire knowledge in the practice of psychology;

(ii) coursework in research design and methodology, statistics, critical thinking, and scientific inquiry;

(C) Applied Psychology:

(i) the history, theory, and application of psychological principles;

(ii) the application of psychological theories to individuals, families, and groups;

(D) Assessment:

(i) intellectual, personality, cognitive, physical, and emotional abilities, skills, interests, and aptitudes;

(ii) socio-economic, including behavioral, adaptive, and cultural assessment;

(E) Interventions:

(i) the application of therapeutic techniques;

(ii) behavior management;

(iii) consultation; and
(b) Degree Requirements.

(1) For purposes of this rule:

(A) a graduate degree in psychology means the name of the candidate’s major or program of studies contains the term "psychology;"

(B) a specialist degree shall be treated as a graduate degree; and

(C) one semester credit hour equals one and one-half quarter credit hours.

(2) A degree utilized to meet the requirements of this rule must consist of at least sixty (60) semester credit hours, with no more than twelve (12) semester credit hours of practicum, internship, or structured experience being counted toward the total degree hour requirement.

(3) Applicants must demonstrate proof of the graduate level coursework required in subsection (a)(2) and [(a)(4) of this section by identifying which courses or training listed on their transcripts satisfy the required areas of study. Applicants may be required to provide the Council with an official course catalogue or description from their university or training program to verify whether a course meets the requirements of this rule.

(c) Supervision Requirements.

(1) A licensed psychological associate must practice under the supervision of a licensed psychologist and may not practice independently.

(2) Notwithstanding paragraph (1) of this subsection and subject to the limitations set out in paragraph (3) of this subsection, a licensed psychological associate may practice independently if:

(A) the licensee can demonstrate at least 3,000 hours of post-graduate degree experience in the delivery of psychological services under the supervision of one or more licensed psychologists;

(B) the supervised experience was obtained in not less than 24 consecutive months, but not more than 48 consecutive months, and in not more than three placements; and

(C) the licensee submits an application for independent practice evidencing proof of the required supervised experience.

(3) A licensed psychological associate meeting the requirements of paragraph (2) of this subsection shall be approved for independent practice, but remains subject to all Council rules, including [Council] §465.9 of this title. [relating to Competency].

(4) Applicants shall not utilize any supervised experience obtained from a psychologist with a restricted license or to whom they are related within the second degree of affinity or consanguinity to satisfy the requirements of this rule.

(5) Applicants licensed as specialists in school psychology or as a provisionally licensed psychologist may utilize experience acquired under that license if the experience was supervised by a licensed psychologist.

(d) [om] The correct title for a person licensed under this rule shall be "licensed psychological associate" or "psychological associate."

(e) [om] A licensed psychological associate authorized to practice independently under this rule must inform all patients and clients as part of the informed consent process, whether the licensee holds a master's, specialist or doctoral degree, and provide the patient with a current copy of any informational pamphlet or brochure published by the Council describing the differences between the levels of training and education received in master's, specialist, and doctoral degree programs. In lieu of providing each patient or client with a copy of the required pamphlet or brochure, licensees may publish in a conspicuous manner, the pamphlet or brochure on their website or provide a link to the pamphlet or brochure on the Council's website.

(f) [om] Continuation of Prior Law.

(1) Notwithstanding subsection (b)(2) of this section, a person who began a graduate program before August 31, 2019, leading to a degree in psychology, that otherwise meets the requirements of subsection (a)(1) of this section, shall be considered to have met the requirements of subsection (b)(2) of this section if the individual has completed 42 semester credit hours.

(2) Applicants with degrees consisting of less than 42 semester credit hours may utilize a maximum of 12 semester credit hours from another graduate degree program in psychology to achieve the total of 42 semester credit hours to meet the requirement of subsection (f)(1) of this section.

(g) Remedy for Incomplete Licensure Requirements.

(1) An applicant who has completed a graduate degree in psychology, from a regionally accredited institution of higher education, that consists of at least sixty (60) semester credit hours, is currently licensed as an LSSP, or meets the requirements of subsection (f) of this section, and who does not meet all of the qualifications for licensure set out in subsection (a)(2) and (4) of this section may petition for permission to remediate an area of deficiency. An applicant may not, petition for the waiver or modification of the requisite degree or passage of the requisite examinations.

(2) The Council may allow an applicant to remediate a deficiency identified in paragraph (1) of this subsection if the applicant can demonstrate:

(A) the prerequisite is not mandated by federal law, the state constitution or statute, or 22 TAC Part 41; and
(B) the remediation would not adversely affect the public welfare.

(3) The Council may approve or deny a petition under this subsection, and in the case of approval, may condition the approval on reasonable terms and conditions designed to ensure the applicant's education, training, and experience provide reasonable assurance that the applicant has the knowledge and skills necessary for entry-level practice as a licensed psychological associate.

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 March 20, 2023.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: April 30, 2023
For further information, please call: (512) 305-7706

PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

CHAPTER 681. PROFESSIONAL COUNSELORS

SUBCHAPTER B. RULES OF PRACTICE

22 TAC §681.35

The Texas Behavioral Health Executive Council proposes new §681.35, relating to Informed Consent.

OVERVIEW AND EXPLANATION OF THE PROPOSED RULE. This proposed new rule transfers the existing requirements for informed consent from current §681.41 to this new rule, and it adds new language in subsection (d). Subsection (d) is intended to create a standard by which informed consent can be provided by licensees to clients while licensees are employed by agencies or institutions, where obtaining signed documentation may not be possible or easily accomplished. The proposed amendment requires the same level of notice and public protection that is currently required, while also creating a regulation that is not overly burdensome or impossible to comply with for licensees.

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://bhec.texas.gov/proposed-rule-changes-and-the-rule-making-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on April 30, 2023, which is at least 30 days from the date of publication of this proposal in the Texas Register.

PROPOSED RULES March 31, 2023 48 TexReg 1703
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.

§681.35. Informed Consent.

(a) Regardless of setting, a licensee must provide counseling only in the context of a professional relationship. Prior to providing services, a licensee must obtain from an individual a signed informed consent, signed written receipt of information, or in the case of involuntary treatment a copy of the appropriate court order, including the following:

1. fees and arrangements for payment;
2. counseling purposes, goals, and techniques;
3. any restrictions placed on the license by the Council;
4. the limits on confidentiality;
5. any intent of the licensee to use another individual to provide counseling treatment intervention to the client;
6. supervision of the licensee by another licensed health care professional including the name, address, contact information and qualifications of the supervisor;
7. the name, address and telephone number of the Council for the purpose of reporting violations of the Act or this chapter; and
8. the established plan for the custody and control of the client's mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's counseling practice.

(b) A licensee must inform the client in writing of any changes to the items in subsection (a) of this section, prior to initiating the change.

(c) Prior to the commencement of counseling 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, as well as any applicable part of the divorce decree. A licensee must maintain these documents in the client's record and abide by the documents at all times. When federal or state statutes provide an exemption to secure consent of a parent or guardian prior to providing services to a minor, a licensee must follow the protocol set forth in such federal or state statutes.

(d) A licensee acting within the scope of employment with an agency or institution is not required to obtain a signed informed consent, but must document, in writing, that the licensee informed the client of the information required by subsection (a) of this section and that the client consented.

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 March 20, 2023.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Earliest possible date of adoption: April 30, 2023
For further information, please call: (512) 305-7706

22 TAC §681.36

The Texas Behavioral Health Executive Council proposes new §681.36, relating to Client Records.

OVERVIEW AND EXPLANATION OF THE PROPOSED RULE. This proposed new rule transfers the existing requirements for records from current §681.41 to this new 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, 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://bhec.texas.gov/proposed-rule-changes-and-the-rule-making-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on April 30, 2023, which is at least 30 days from the date of publication of this proposal in the Texas Register.

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.

§681.36. Client Records.

(a) For each client, a licensee must keep accurate records of:

1. signed informed consent, signed written receipt of information, or, in the case of involuntary treatment, a copy of the appropriate court order;

2. intake assessment;

3. dates of counseling treatment intervention;

4. principal treatment methods;

5. progress notes;

6. treatment plan; and

7. billing information.

(b) In the absence of applicable state and federal laws, rules or regulations, records held by a licensee must be kept for a minimum of seven (7) years from the date of termination of services with the client, or five (5) years after the client reaches the age of majority, whichever is greater.

(c) Records created by a licensee during the scope of employment with an agency or institution must be maintained by the licensee unless the records are maintained by the employer.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.
The Texas Behavioral Health Executive Council proposes new §681.37, relating to Billing and Financial Arrangements.

OVERVIEW AND EXPLANATION OF THE PROPOSED RULE. This proposed new rule transfers the existing requirements for billing and financial arrangements from current §681.41 to this new 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, 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 §2001.002 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://bhec.texas.gov/proposed-rule-changes-and-the-rule-making-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on April 30, 2023, which is at least 30 days from the date of publication of this proposal in the Texas Register.

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 in-
stance, 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.


(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) Pursuant to Texas Health and Safety Code, Chapter 611, on 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) With the exception of an unkept appointment, 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.

(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.

Filed with the Office of the Secretary of State on March 20, 2023.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Earliest possible date of adoption: April 30, 2023
For further information, please call: (512) 305-7706

22 TAC §681.38

The Texas Behavioral Health Executive Council proposes new §681.38, relating to Conflicts, Boundaries, Dual Relationships, and Termination of Relationships.

OVERVIEW AND EXPLANATION OF THE PROPOSED RULE. This proposed new rule transfers the existing requirements regarding conflicts, boundaries, dual relationships, and termination of relationships with clients from current §681.41 to this new 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, 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://tbehc.texas.gov/proposed-rule-changes-and-the-rule-making-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on April 30, 2023, which is at least 30 days from the date of publication of this proposal in the Texas Register.

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 that 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.

§681.38. Conflicts, Boundaries, Dual Relationships, and Termination of Relationships

(a) A licensee must not engage in activities for the licensee's personal gain at the expense of a client.

(b) A licensee may promote the licensee’s personal or business activities to a client if such activities, services or products are to facilitate the counseling process or help achieve the client’s counseling goals.

(c) A licensee must set and maintain professional boundaries.

(d) Except as provided by this subchapter, non-therapeutic relationships with clients are prohibited.

(e) A non-therapeutic relationship is any non-counseling activity initiated by either the licensee or client that results in a relationship unrelated to therapy.

(f) A licensee may not engage in a non-therapeutic relationship with a client if the relationship begins less than two (2) years after the end of the counseling relationship.

(g) A licensee may not engage in a romantic relationship or sexual contact with a client within five (5) years after the end of the counseling relationship.

(h) For purposes of paragraphs (2) and (3) of this subsection, the licensee must be able to demonstrate the relationship was consensual, not the result of exploitation by or on the part of the licensee, and that the non-therapeutic relationship is not detrimental to the client in light of all relevant factors, including, but not limited to, the factors set forth in §681.42(b)(4)(A) - (G) of this title (relating to Sexual Misconduct).

(i) The licensee must not provide counseling services to previous or current:

(A) family members;

(B) personal friends;

(C) educational associates; or

(D) business associates.

(j) The licensee must not give or accept a gift from a client or a relative of a client valued at more than $50, borrow or lend money or items of value to clients or relatives of clients, or accept payment in the form of goods or services rendered by a client or relative of a client.

(k) The licensee must 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.

(l) The licensee must not knowingly offer or provide counseling to an individual concurrently receiving counseling treatment intervention from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent therapy, the licensee must request release from the client to inform the other professional and strive to establish positive and collaborative professional relationships.

(m) A licensee must terminate a professional counseling relationship when it is reasonably clear the client is not benefiting from the relationship.
(g) Upon termination of a relationship if professional counseling is still necessary, the licensee must take reasonable steps to facilitate the transfer to appropriate care.

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 March 20, 2023.
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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: April 30, 2023
For further information, please call: (512) 305-7706

22 TAC §681.41

The Texas Behavioral Health Executive Council proposes amendments to §681.41, relating to General Ethical Requirements.

OVERVIEW AND EXPLANATION OF THE PROPOSED RULE. Subsections (e), (f), (h), (i), (j), (k), (l), (m), (n), (q), (r), (s), (t), (v), (w), and (x) are proposed to be deleted from this rule and adopted in separate rules to organize the rules of practice in a more accessible and intuitive manner. Additionally, subsection (u) is proposed to be deleted as duplicative, because the same requirement already exists in §681.45.

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 that 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://bhec.texas.gov/proposed-rule-changes-and-the-rule-making-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on April 30, 2023, which is at least 30 days from the date of publication of this proposal in the Texas Register.

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.

(c) 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.

(4) Regardless of setting, a licensee must provide counseling only in the context of a professional relationship. Prior to providing services, a licensee must obtain from an individual a signed informed consent; signed written receipt of information; or in the case of involuntary treatment a copy of the appropriate court order, including the following:

1. fees and arrangements for payment;
2. counseling purposes, goals, and techniques;
3. any restrictions placed on the license by the Council;
4. the limits on confidentiality;
5. any intent of the licensee to use another individual to provide counseling treatment intervention to the client;
6. supervision of the licensee by another licensed health care professional including the name, address, contact information and qualifications of the supervisor;
7. the name, address and telephone number of the Council for the purpose of reporting violations of the Act or this chapter; and
8. the established plan for the custody and control of the client's mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's counseling practice.

A licensee must inform the client in writing of any changes to the items in subsection (c) of this section, prior to initiating the change.

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

(h) 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.

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.

(i) A licensee must not engage in activities for the licensee's personal gain at the expense of a client.

(k) A licensee may promote the licensee's personal or business activities to a client if such activities, services or products are to facilitate the counseling process or help achieve the client's counseling goals. Prior to engaging in any such activities, services or product sales with the client, the licensee must first inform the client of the licensee's personal and/or business interest therein. A licensee must not exert undue influence in promoting such activities, services or products.

(l) A licensee must set and maintain professional boundaries.

(m) Except as provided by this subchapter, non-therapeutic relationships with clients are prohibited.

(1) A non-therapeutic relationship is any non-counseling activity initiated by either the licensee or client that results in a relationship unrelated to therapy.

(2) A licensee may not engage in a non-therapeutic relationship with a client if the relationship begins less than two (2) years after the end of the counseling relationship; the non-therapeutic relationship must be consensual, not the result of exploitation by the licensee, and is not detrimental to the client.

(3) A licensee may not engage in sexual contact with a client if the contact begins less than five (5) years after the end of the counseling relationship; the non-therapeutic relationship must be consensual, not the result of exploitation by the licensee, and is not detrimental to the client.
[(4) For purposes of paragraphs (2) and (3) of this subsection, the licensee must be able to demonstrate there has been no exploitation and the non-therapeutic relationship is not detrimental to the client in light of all relevant factors, including, but not limited to, the factors set forth in §681.42(b)(4)(A) - (G) of this title (relating to Sexual Misconduct).]

[(5) The licensee must not provide counseling services to previous or current:]

[(A) family members;]
[(B) personal friends;]
[(C) educational associates; or]
[(D) business associates.]

[(6) The licensee must not give or accept a gift from a client or a relative of a client valued at more than $50, borrow or lend money or items of value to clients or relatives of clients, or accept payment in the form of goods or services rendered by a client or relative of a client.]

[(7) The licensee must 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.]

[(n) The licensee must not knowingly offer or provide counseling to an individual concurrently receiving counseling treatment intervention from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent therapy, the licensee must request release from the client to inform the other professional and strive to establish positive and collaborative professional relationships.]

[(f) [(o) 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.]

[(g) [(p) 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.

[(q) For each client, a licensee must keep accurate records of:]

[(1) signed informed consent, signed written receipt of information, or, in the case of involuntary treatment, a copy of the appropriate court order]
[(2) intake assessment;]
[(3) dates of counseling treatment intervention;]
[(4) principal treatment methods;]
[(5) progress notes;]
[(6) treatment plan; and]
[(7) billing information.]

[(r) In the absence of applicable state and federal laws, rules or regulations, records held by a licensee must be kept for a minimum of seven (7) years from the date of termination of services with the client, or five (5) years after the client reaches the age of majority, whichever is greater.]

[(s) Records created by licensees during the scope of their employment by agencies or institutions that maintain client records are not required to comply with (q) and (r) of this section.]

[(t) Billing Requirements.]

[(t1) 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.]

[(t2) 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.]

[(t3) Pursuant to Texas Health and Safety Code, Chapter 611, on 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.]

[(t4) A licensee may not knowingly overcharge a client.]

[(t5) With the exception of an unkept appointment, 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.]

[(tu) A licensee must comply with all requirements of Texas Health and Safety Code Chapters 611 and 181 concerning the release of mental health records and confidential information.]

[(tv) Prior to the commencement of counseling 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, as well as any applicable part of the divorce decree. A licensee must maintain these documents in the client's record and abide by the documents at all times. When federal or state statutes provide an exemption to secure consent of a parent or guardian prior to providing services to a minor, a licensee must follow the protocol set forth in such federal or state statutes.]

[(tw) A licensee must terminate a professional counseling relationship when it is reasonably clear the client is not benefiting from the relationship.]

[(tx) Upon termination of a relationship if professional counseling is still necessary, the licensee must take reasonable steps to facilitate the transfer to appropriate care.]

[(u) [(ys) 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.]

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

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

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

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

PROPOSED RULES  March 31, 2023  48 TexReg 1711
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.

Filed with the Office of the Secretary of State on March 20, 2023.

TRD-202301111
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Earliest possible date of adoption: April 30, 2023
For further information, please call: (512) 305-7706

22 TAC §681.52

The Texas Behavioral Health Executive Council proposes amendments to §681.52, relating to Parenting Facilitation.

OVERVIEW AND EXPLANATION OF THE PROPOSED RULE. Rule 681.41 has been proposed to be amended so a corresponding amendment to subsection (y) of this rule has been proposed.

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 that 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://bhec.texas.gov/proposed-rule-changes-and-the-rule-making-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on April 30, 2023, which is at least 30 days from the date of publication of this proposal in the Texas Register.

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.

§681.52  Parenting Facilitation.
(a) In accordance with Texas House Bill 1012, 81st Legislature, 2009, and Family Code, Chapter 153, this section establishes the practice standards for licensees who desire to serve as parenting facilitators.

(b) In accordance with Texas Family Code, §153.601(3-a), a "parenting facilitator" means an impartial third party:

(1) who, regardless of the title by which the person is designated by the court, performs any function described by Texas Family Code, §153.6061, in a suit; and

(2) who:

(A) is appointed under Texas Family Code, Chapter 153, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion or on a motion or agreement of the parties to assist parties in resolving parenting issues through procedures that are not confidential; and

(B) is not appointed under another statute or a rule of civil procedure.

(c) Notwithstanding any other provision of this chapter, licensees who desire to serve as parenting facilitators must comply with all applicable requirements of the Texas Family Code, Chapter 153, and this section. Licensees must also comply with all requirements of this chapter unless a provision is clearly inconsistent with the Texas Family Code, Chapter 153, or this section.

(d) In accordance with Texas Family Code, §153.6102(e), a licensee serving as a parenting facilitator must not provide other professional counseling services to any person while simultaneously providing parent facilitation services. This section does not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

(e) In accordance with Texas Family Code, §153.6101(b)(1), a licensed professional counselor associate must not serve as a parenting facilitator.

(f) A licensee serving as a parenting facilitator utilizes child-focused alternative dispute resolution processes, assists parents in implementing their parenting plan by facilitating the resolution of disputes in a timely manner, educates parents about children's needs, and engages in other activities as referenced in Texas Family Code, Chapter 153.

(g) A licensee serving as a parent facilitator must assist the parties involved in reducing harmful conflict and in promoting the best interests of the children.

(h) A licensee serving as a parenting facilitator functions in four primary areas in providing services.

(1) Conflict management function--The primary role of the parenting facilitator is to assist the parties to work out disagreements regarding the children to minimize conflict. To assist the parents in reducing conflict, the parenting facilitator may monitor the electronic or written exchanges of parent communications and suggest productive forms of communication that limit conflict between the parents.

(2) Assessment function--A parenting facilitator must review applicable court orders, including protective orders, social studies, and other relevant records to analyze the imasses and issues as brought forth by the parties.

(3) Educational function--A parenting facilitator must educate the parties about child development, divorce, the impact of parental behavior on children, parenting skills, and communication and conflict resolution skills.

(4) Coordination/case management function--A parenting facilitator must work with the professionals and systems involved with the family (for example, mental health, health care, social services, education, or legal) as well as with extended family, stepparents, and significant others as necessary.

(i) A licensee, serving as a parenting facilitator, must be alert to the reasonable suspicion of acts of domestic violence directed at a parent, a current partner, or children. The parenting facilitator must adhere to protection orders, if any, and take reasonable measures to ensure the safety of the participants, the children and the parenting facilitator, while understanding that even with appropriate precautions a guarantee that no harm will occur can be neither stated nor implied.

(j) In order to protect the parties and children in domestic violence cases involving power, control and coercion, a parenting facilitator must tailor the techniques used so as to avoid offering the opportunity for further coercion.

(k) A licensee serving as a parent facilitator must be alert to the reasonable suspicion of substance abuse by parents or children, as well as mental health impairment of a parent or child.

(l) A licensee serving as a parenting facilitator must not provide legal advice.

(m) A licensee serving as a parenting facilitator must serve by written agreement of the parties and/or formal order of the court.

(n) A licensee serving as a parenting facilitator must not initiate providing services until the licensee has received and reviewed the fully executed and filed court order or the signed agreement of the parties.

(o) A licensee serving as a parenting facilitator must maintain impartiality in the process of parenting facilitation. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.

(p) A licensee serving as a parenting facilitator:

(1) must terminate or withdraw services if the licensee determines the licensee cannot act in an impartial or objective manner;

(2) must not give or accept a gift, favor, loan or other item of value from any party having an interest in the parenting facilitation process;

(3) must not coerce or improperly influence any party to make a decision;
(4) must not intentionally or knowingly misrepresent or omit any material fact, law, or circumstance in the parenting facilitator process; and

(5) must not accept any engagement, provide any service, or perform any act outside the role of parenting facilitation that would compromise the facilitator's integrity or impartiality in the parenting facilitation process.

(q) A licensee serving as a parenting facilitator may make referrals to other professionals to work with the family, but must avoid actual or apparent conflicts of interest by referrals. No commissions, rebates, or similar remuneration must be given or received by a licensee for parenting facilitation or other professional referrals.

(r) A licensee serving as a parenting facilitator should attempt to bring about resolution of issues by agreement of the parties; however, the parenting facilitator is not acting in a formal mediation role. An effort towards resolving an issue, which may include therapeutic, mediation, education, and negotiation skills, does not disqualify a licensee from making recommendations regarding any issue that remains unresolved after efforts of facilitation.

(s) A licensee serving as a parenting facilitator must communicate with all parties, attorneys, children, and the court in a manner which preserves the integrity of the parenting facilitation process and considers the safety of the parents and children.

(t) A licensee serving as a parenting facilitator:

(1) may meet individually or jointly with the parties, as deemed appropriate by the parenting facilitator, and may interview the children;

(2) may interview any individuals who provide services to the children to assess the children's needs and wishes; and

(3) may communicate with the parties through face-to-face meetings or electronic communication.

(u) A licensee serving as a parenting facilitator must, prior to the beginning of the parenting facilitation process and in writing, inform the parties of:

(1) the limitations on confidentiality in the parenting facilitation process; and

(2) the basis of fees and costs and the method of payment including any fees associated with postponement, cancellation and/or nonappearance, and the parties' pro rata share of the fees and costs as determined by the court order or written agreement of the parties.

(v) Information obtained during the parenting facilitation process must not be shared outside the parenting facilitation process except for professional purposes, as provided by court order, by written agreement of the parties, or as directed by the Council.

(w) In the initial session with each party, a licensee serving as a parenting facilitator must review the nature of the parenting facilitator's role with the parents to ensure that they understand the parenting facilitation process.

(x) A licensee serving as a parenting facilitator:

(1) must comply with all mandatory reporting requirements, including but not limited to Texas Family Code Chapter 261, concerning abuse or neglect of minors;

(2) must report to law enforcement or other authorities if they have reason to believe that any participant appears to be at serious risk to harm themselves or a third party;

(3) must maintain records necessary to support charges for services and expenses and must make a detailed accounting of those charges to the parties and their counsel if requested to do so;

(4) must maintain notes regarding all communications with the parties, the children, and other persons with whom they speak about the case; and

(5) must maintain records in a manner that is professional, legible, comprehensive, and inclusive of information and documents that relate to the parenting facilitation process and that support any recommendations made by the licensee.

(y) Records of a licensee serving as a parenting facilitator, are not mental health records and are not subject to the disclosure requirements of Texas Health and Safety Code, Chapter 611. At a minimum, records must be maintained for the period of time described in §681.36 [§681.111(c)] of this title (relating to Client Records), as otherwise directed by the court.

(2) Records of a licensee serving as a parenting facilitator must be released on the request of either parent, as directed by the court, or as directed by the Council.

(aa) Charges for parenting facilitation services must be based upon the actual time expended by the parenting facilitator or as directed by the written agreement of the parties and/or formal order of the court.

(bb) All fees and costs must be appropriately divided between the parties as directed by the court order of appointment and/or as noted in the parenting facilitators' written fee disclosure to the parties.

(cc) Fees may be disproportionately divided fees if one parent is disproportionately creating a need for services and if such a division is outlined in the court order of appointment and/or as noted in the parenting facilitators' written fee disclosure to the parties.

(dd) Services and activities for which a licensee serving as a parenting facilitator may charge include time spent interviewing parents, children and collateral sources of information; preparation of agreements, correspondence, and reports; review of records and correspondence; telephone and electronic communication; travel; court preparation; and appearances at hearings, depositions and meetings.

(ee) The minimum training for a licensee serving as a parent facilitator that is required by Texas Family Code, §153.6101(b)(2) is:

(1) eight hours of family violence dynamics training provided by a family violence service provider;

(2) 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court;

(3) 24 classroom hours of training in the fields of family dynamics, child development, family law; and

(4) 16 hours of training in the laws and Council rules governing parent coordination and facilitation, and the multiple styles and procedures used in different models of service.

(ff) A licensee serving as a parent facilitator must decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the licensee's skill or expertise.

(gg) Since parenting facilitation services are addressed under multiple titles in different jurisdictions nationally, acceptability of training to meet the requirements of subsection (ee) of this section, is based on functional skills taught during the training rather than the use of specific titles or 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 March 20, 2023.

TRD-202301112
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Earliest possible date of adoption: April 30, 2023
For further information, please call: (512) 305-7706

SUBCHAPTER D. SCHEDULE OF SANCTIONS

22 TAC §681.205

The Texas Behavioral Health Executive Council proposes amendments to §681.205, relating to Schedule of Sanctions.

OVERVIEW AND EXPLANATION OF THE PROPOSED RULE. Amendments to §681.41 have been proposed, so corresponding amendments to this rule are also being proposed.

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://bhec.texas.gov/proposed-rule-changes-and-the-rule-making-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on April 30, 2023, which is at least 30 days from the date of publication of this proposal in the Texas Register.

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 sanctions shall apply to violations of the Act and these rules.

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.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
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For further information, please call: (512) 305-7706

PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

CHAPTER 882. APPLICATIONS AND LICENSING

SUBCHAPTER A. LICENSE APPLICATIONS

22 TAC §882.10

The Texas Behavioral Health Executive Council proposes the repeal of §882.10, relating to Applicants with Pending Complaints.

OVERVIEW AND EXPLANATION OF THE PROPOSED RULE. The proposed repeal of this rule is necessary because it is proposed to be replaced with a new rule. The new rule will allow for the abeyance of an application up to 180 days when there is a pending complaint against the applicant that involves sexual misconduct or imminent physical harm to the public. All other applicants with complaints will have their application processed as normal, the complaint will not impact the licensure application. The pending complaint will still be investigated and processed according to the normal route as well.

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 enforcing or administering the repealed rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule 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 rule repeal is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule repeal 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 repeal is in effect, the public benefit anticipated as a result of enforcing the rule repeal 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 repeal is in effect, there will be no additional economic costs to persons required to comply with this rule repeal.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. Mr. Spinks has determined for the first five-year period the proposed rule 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 rule 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 rule 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 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 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 rule repeal is in effect, the Executive Council estimates that the proposed rule repeal will have no effect on government growth. The proposed rule 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 rule 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 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://bhbec.texas.gov/proposed-rule-changes-and-the-rule-making-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on April 30, 2023, which is at least 30 days from the date of publication of this proposal in the Texas Register.

STATUTORY AUTHORITY. The rule 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 rule 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.

The Executive Council also proposes this rule 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.

§882.10. Applicants with Pending Complaints.

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

22 TAC §882.10

The Texas Behavioral Health Executive Council proposes new §882.10, relating to Applicants with Pending Complaints.

Overview and Explanation of the Proposed Rule. The proposed new rule changes the way Council staff will process applications when the applicant has a pending complaint. If the applicant has a pending complaint that involves sexual misconduct or imminent physical harm to the public then the application may be held in abeyance for up to 180 days while a determination on the complaint is made. All other applicants with complaints will have their application processed as normal, the complaint will not impact the licensure application. The pending complaint will still be investigated and processed according to the normal route as well.

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://bhexec.texas.gov/proposed-rule-changes-and-the-rule-making-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on April 30, 2023, which is at least 30 days from the date of publication of this proposal in the Texas Register.

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.

§884.10 Applicatns with Pending Complaints
(a) The Council may hold an application in abeyance up to 180 days if there is a high priority complaint pending against the applicant. Alternatively, the Council may issue a license subject to an eligibility order in lieu of abatement.

(b) An application will be permitted to take all required exams while an application is abated.

(c) Notwithstanding any other rule, the Council may enter findings of fact and conclusions of law and take disciplinary action against a license for acts or omissions that occurred prior to the issuance of the license.

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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Texas Behavioral Health Executive Council
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CHAPTER 884: COMPLAINTS AND ENFORCEMENT
SUBCHAPTER B: INVESTIGATIONS AND DISPOSITION OF COMPLAINTS

22 TAC §884.10
The Texas Behavioral Health Executive Council proposes amendments to §884.10, relating to Investigation of Complaints.

OVERVIEW AND EXPLANATION OF THE PROPOSED RULE. The proposed amendments reduce the priority rating system for complaints from four levels to two. The high priority shall be for all complaints involving sexual misconduct or imminent physical harm and all other complaints shall be a normal priority.

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 §2008.002 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://bhec.texas.gov/proposed-rule-changes-and-the-rule-making-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on April 30, 2023, which is at least 30 days from the date of publication of this proposal in the Texas Register.

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.

§884.10. Investigation of Complaints.

(a) The following priority rating system shall serve to distinguish between categories of complaints. The priority rating system is as follows:

1. High Priority - cases involving sexual misconduct or a probability of imminent physical harm to the public or a member of the public; and
2. Regular Priority - cases involving all other violations of state or federal law.

(b) The Enforcement Division shall investigate all complaints in a timely manner. A schedule shall be established for conducting each phase of a complaint that is under the control of the Council not later than the 30th day after the date the complaint is received. The schedule shall be kept in the information file of the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file, and all parties to the complaint must be notified in writing not later than the seventh day after the date the change is made.
(c) The Council may accept, but is not obligated to investigate, a complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint.
(d) A complaint may explain the allegations made in the complaint by attaching or including with the complaint any evidence the complainant believes is relevant to a determination of the allegations, including written statements or communications, medical or mental health records, recordings, photographs, or other documentary evidence.
(e) A review will be conducted upon receipt of a complaint to determine if the Council has jurisdiction over the complaint, and if so, whether the complaint states an allegation which, if true, would constitute a violation of the Council's rules or other law within the jurisdiction of the Council.
(f) Complaints that do not state a violation of a law within the jurisdiction of the Council shall be dismissed. If the complaint alleges a violation of a law within the jurisdiction of another agency, the complaint will be referred to that agency as required or allowed by law.
(g) Complaints that state a violation of a law within the jurisdiction of the Council shall be investigated by an investigator assigned by the Enforcement Division.
(h) Licensees will receive written notice of any alleged complaint(s), including specific information regarding any violation(s) encountered. Notice to a licensee is effective and service is complete when sent by registered or certified mail to the licensee's address of record at the time of the mailing.
(i) Following completion of the investigation, an investigation report shall be drafted. This report shall include a recommendation as to whether the investigation has produced sufficient evidence to establish probable cause that a violation has occurred.
(j) The Enforcement Division Manager (or the manager's designee) and legal counsel shall review the investigation report to determine if there is probable cause that a violation occurred.
(k) A complaint for which the staff determines probable cause exists shall be referred for an informal conference by agency staff or a member board's Disciplinary Review Panel. Agency staff shall send the respondent notice of the date and time of the informal conference.
(l) A complaint for which staff or a Disciplinary Review Panel determines that probable cause does not exist shall be referred for dismissal.
(m) The services of a private investigator shall be retained only in the event that staff investigator positions are vacant or inadequate to provide essential investigative services. The services of a private investigative agency shall be obtained in accordance with the state's procurement procedures.
(n) If a complainant or respondent are represented by an attorney, any notice or service required by law shall be made upon the attorney at the attorney's last known address.

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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