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 1. OFFICE OF THE GOVERNOR

CHAPTER 5. GENERAL ADMINISTRATION

SUBCHAPTER C. REGULATORY COMPLIANCE DIVISION

1 TAC §§5.201 - 5.213

The Regulatory Compliance Division of the Office of the Governor (Division) proposes new §§5.201 - 5.213 in new subchapter C at 1 TAC Chapter 5, concerning the functions of the Division under Subchapter C, Chapter 57 of the Texas Occupations Code.

EXPLANATION OF NEW SUBCHAPTER

The Division is responsible for conducting an independent review of certain state agencies' proposed rules that affect market competition to assess their consistency with state policy as clearly articulated by the Legislature in state statute. The establishment of the Division and its functions are governed by Subchapter C, Chapter 57 of the Texas Occupations Code, which was added by the 86th Legislature, Regular Session, in Senate Bill 1995 (SB 1995). The primary purposes of the new subchapter are to specify the state agencies that are required by statute to submit proposed rules to the Division, to provide guidance regarding the procedures that state agencies must follow when submitting proposed rules to the Division, and to formalize the practices that the Division follows when reviewing proposed rules.

Proposed new §5.201 identifies those state agencies that are required by statute to submit proposed rules to the Division. Proposed new §5.202 defines certain terms for use throughout the new subchapter. Proposed new §5.203 addresses the computation of time for purposes of the new subchapter. Proposed new §5.204 states which proposed rules must be submitted to the Division and describes when and how proposed rules must be submitted to the Division. Proposed new §5.205 sets out how the Division will provide public notice of the submission of proposed rules to the Division. Proposed new §5.206 addresses when and how state agencies must supplement proposed rule submissions. Proposed new §5.207 states what the Division's review of a proposed rule encompasses and what activities the Division may undertake when reviewing a proposed rule. Proposed new §5.208 explains how and when the Division will accept public comments on a proposed rule that is under Division review. Proposed new §§5.209, 5.210, and 5.211 address the issuance of determination letters on proposed rules by the Division and the effect of the Division's decision to approve or reject a proposed rule. Proposed new §5.212 describes the limitation on the information and communications that the Division may consider when reviewing a proposed rule. Proposed new §5.213 sets out the information that the Division will make publicly available on its website.

FISCAL NOTE

Erin Bennett, Director of the Regulatory Compliance Division, has determined that for each year of the first five years in which the new subchapter is in effect, there are no expected fiscal implications for the state or local governments as a result of enforcing or administering the new subchapter. Ms. Bennett has further determined that there is no anticipated effect on local employment or local economies as a result of the new subchapter.

PUBLIC BENEFIT AND COSTS

Ms. Bennett has also determined that for each year of the first five years in which the new subchapter is in effect, the public benefit anticipated as a result of enforcing or administering the new subchapter will be to implement the statutory changes made by SB 1995, including ensuring that state agencies do not enact rules that are anticompetitive without a statutory basis, and to standardize and provide notice of the Division's requirements and practices regarding the review of proposed rules. There are no anticipated economic costs to persons required to comply with the new subchapter. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Bennett has also determined that for each year of the first five years the new subchapter is in effect, the new subchapter will have the following effect on government growth. The Office of the Governor established the Division pursuant to SB 1995, using its available appropriated funds and adding new FTE positions as necessary. The new subchapter only provides guidance regarding how the Division will carry out its statutory functions and will not create or eliminate any government programs or require the creation or elimination of any employee positions. The new subchapter will not require an increase or decrease in future legislative appropriations to the Office of the Governor or change any fees paid to the Office of the Governor. The new subchapter is a new regulation, in response to statutory changes made by SB 1995, and does not expand, limit, or repeal any existing regulations. While the new subchapter specifies the state agencies that are subject to the Division's rule review process under statute, the new subchapter does not increase or decrease the number of individuals subject to the applicability of the subchapter. To the extent that the new subchapter facilitates the Division's rule review process being more effective in preventing the adoption of anticompetitive rules without a statutory basis,
the new subchapter may positively affect the state's economy, though the size of any such effect is unknown.

SUBMITTAL OF COMMENTS

Written comments regarding the new subchapter may be submitted to Erin Bennett, Office of the Governor, Regulatory Compliance Division, P.O. Box 12428, Austin, Texas 78711 or to RegulatoryCompliance@gov.texas.gov with the subject line "Division Rules." The deadline for receipt of comments is 5:00 p.m. CST on May 25, 2020. All requests for a public hearing on the new subchapter, submitted under the Administrative Procedure Act, must be received by the Division no more than fifteen (15) days after the notice of the proposed new subchapter has been published in the Texas Register.

STATUTORY AUTHORITY

The new subchapter is proposed under §57.107 of the Texas Occupations Code, which provides that the Division may adopt rules to carry out its functions under that subchapter.

Cross Reference to Statute:

Subchapter C, Chapter 57, Texas Occupations Code, as added by Senate Bill 1995, 86th Legislature, Regular Session.

§5.201. Applicability.

(a) The rule review process established in Subchapter C, Chapter 57 of the Texas Occupations Code, and implemented by this subchapter, applies only to the following state agencies:

(1) the Texas State Board of Public Accountancy;
(2) the Texas State Board of Acupuncture Examiners;
(3) the Texas Appraiser Licensing and Certification Board;
(4) the Texas Board of Architectural Examiners;
(5) the Texas Behavioral Health Executive Council;
(6) the Texas Board of Chiropractic Examiners;
(7) the State Board of Dental Examiners;
(8) the Texas Board of Professional Engineers and Land Surveyors;
(9) the Finance Commission of Texas;
(10) the Texas Commission on Fire Protection;
(11) the Texas Funeral Service Commission;
(12) the Texas Board of Professional Geoscientists;
(13) the Texas Commission on Law Enforcement;
(14) the Texas Medical Board;
(15) the Texas Board of Medical Radiologic Technology;
(16) the Texas Department of Motor Vehicles;
(17) the Texas Board of Nursing;
(18) the Texas Board of Occupational Therapy Examiners;
(19) the Texas Optometry Board;
(20) the Texas State Board of Pharmacy;
(21) the Texas Board of Physical Therapy Examiners;
(22) the Texas Physician Assistant Board;
(23) the Texas State Board of Plumbing Examiners;
(24) the Texas Real Estate Commission;
(25) the Texas Board of Respiratory Care;
(26) the Council on Sex Offender Treatment; and
(27) the State Board of Veterinary Medical Examiners.

(b) The inclusion or exclusion of a state agency in subsection (a) of this section does not represent a determination by the Regulatory Compliance Division of the Office of the Governor that the state agency does or does not require active supervision by the state in order to invoke state-action antitrust immunity under federal antitrust law.

(c) The rule review process established in Subchapter C, Chapter 57 of the Texas Occupations Code, and implemented by this subchapter, does not apply to emergency rulemaking.


In this subchapter:

(1) "Affects market competition" means:

(A) creates a barrier to market participation in this state;
(B) results in higher prices or reduced competition for a product or service provided by or to a license holder in this state;

(2) "Division" means the Regulatory Compliance Division of the Office of the Governor established in Subchapter C, Chapter 57 of the Texas Occupations Code.

(3) "State agency" means a state agency listed in §5.201(a) of this subchapter.

§5.203. Computation of Time.

In computing a period of days in this subchapter, if the last day of any period is a Saturday, Sunday, or a national or state holiday included in Section 662.003(a) or (b) of the Texas Government Code, the period is extended to include the next day that is not a Saturday, Sunday, or national or state holiday.

§5.204. Submission of Proposed Rule to Division.

(a) A state agency must submit to the division, before final adoption, any proposed rule that has been published in the Texas Register, including a new rule, a rule change, a rule repeal, or a rule readoption, if:

(1) the state agency determines that the proposed rule would affect market competition in this state relating to a business, occupation, or profession for which a license is issued; or

(2) the division identifies the proposed rule as one that may affect market competition in this state relating to a business, occupation, or profession for which a license is issued.

(b) A state agency acting under subsection (a)(1) of this section may submit the proposed rule to the division no earlier than the date that the proposed rule is published in the Texas Register. If the division identifies a proposed rule for submission to the division under subsection (a)(2) of this section, the division shall notify in writing the state agency head and the presiding officer of the governing body of the state agency not later than the last day of the public comment period provided for the proposed rule in the Texas Register. There is no deadline by which a state agency must submit a proposed rule to the division.

(c) A state agency submitting a proposed rule to the division must include with the rule submission memorandum:

(1) a copy of the proposed rule as it appeared in the Texas Register in its entirety;
(2) copies of all of the state agency's administrative records regarding the proposed rule, including any information or comments that the state agency received from the public; and

(3) any other information that the state agency considers relevant to the division's review of the proposed rule.

(d) A state agency submitting a proposed rule to the division must submit it by:

(1) hand delivery to "Office of the Governor, Attn: Regulatory Compliance Division, State Insurance Building, 1100 San Jacinto, Austin, Texas 78701";

(2) mail to "Office of the Governor, Attn: Regulatory Compliance Division, P.O. Box 12428, Austin, Texas 78711"; or

(3) email to "RegulatoryCompliance@gov.texas.gov".

(e) Not later than the 10th business day after the date that the division receives a proposed rule submission from a state agency, the division shall:

(1) make available to the public on the division's website the rule submission memorandum submitted by the state agency;

(2) provide notice on the division's website that the division is accepting public comments on the proposed rule and the deadline and instructions for submitting public comments; and

(3) notify by email all persons who have requested notification of proposed rule submissions received by the division.


(a) While a proposed rule is being reviewed by the division, the state agency must provide to the division copies of any administrative records regarding the proposed rule created or received by the state agency after submission of the proposed rule to the division, including any revisions to the proposed rule that the state agency intends to adopt in response to information or comments received from the public by the state agency.

(b) If a state agency supplements a proposed rule submission under subsection (a) of this section with a substantial amount of administrative records or with revisions that significantly change the proposed rule in nature or scope, the division may:

(1) require the submission of an updated rule submission memorandum;

(2) re-open or extend the public comment period on the proposed rule; and

(3) deem the supplemented submission a new submission, including restarting the 90 day period for the division to issue a determination letter approving or rejecting the proposed rule.

§5.207. Review of Proposed Rule by Division.

(a) The division shall conduct a thorough, independent review of each proposed rule submitted to the division under §5.204 of this subchapter to determine:

(1) if the effect of the proposed rule on market competition is consistent with state policy as established by the state agency's governing statute; and

(2) whether the proposed rule promotes a clearly articulated and affirmatively expressed policy as established by the legislature to displace competition with government action.

(b) In conducting a review of a proposed rule, the division may request information from the state agency that submitted the proposed rule or require the state agency to conduct an analysis of possible implications of the proposed rule. The division may also hold public hearings.


(a) In conducting a review of a proposed rule, the division shall solicit and consider written public comments from identified persons submitted to the division before the deadline provided on the division's website.

(b) Except as provided in subsection (c) of this section, the division shall accept and consider public comments submitted to the division on or before the 30th day after the date that the rule submission memorandum for the proposed rule is made available to the public on the division's website.

(c) At the request of a state agency in a rule submission memorandum, and upon the state agency's showing of an extraordinary circumstance or a need for the state agency to meet a statutory or administrative deadline, the division may provide for a shorter public comment period on a proposed rule in order for the division to conduct an expedited review of the proposed rule.

(d) The division may, but is not required to, consider public comments regarding a proposed rule submitted by the division outside of the public comment period provided by the division under subsection (b) or (c) of this section.

§5.209. Determination by Division on Proposed Rule.

(a) Not later than the 90th day after the postmark date of a state agency's mailed proposed rule submission or the date on which the division receives a state agency's hand delivered or emailed proposed rule submission, the division shall issue a determination letter approving or rejecting the proposed rule.

(b) The division shall include in the determination letter an explanation of the division's reasons for approving or rejecting the proposed rule, including a discussion of the division's determination regarding the consistency of the proposed rule with applicable state policy. If the division rejects a proposed rule, the division shall include in the determination letter instructions for revising the proposed rule to be consistent with applicable state policy. At its discretion, the division may provide either precise or general instructions for revising the proposed rule and must identify its instructions as such.

(c) The division shall send the determination letter to the state agency head and the presiding officer of the governing body of the state agency that submitted the proposed rule, and shall make the determination letter available to the public on the division's website.

(d) A determination letter issued by the division is not subject to appeal.


A state agency may finally adopt a proposed rule required to be submitted to the division under §5.204 of this subchapter if:

(1) the division issues a determination letter approving the proposed rule under §5.209 of this subchapter; or

(2) the division issues a determination letter rejecting the proposed rule under §5.209 of this subchapter with precise instructions for the revision of the proposed rule and the state agency revises the proposed rule according to the division's instructions.
§5.211. Withdrawal of Proposed Rule.
A state agency must withdraw from consideration for final adoption a proposed rule if the division issues a determination letter rejecting the proposed rule under §5.209 of this subchapter and:

(1) the determination letter only includes general instructions for the revision of the proposed rule; or

(2) the determination letter includes precise instructions for the revision of the proposed rule but the state agency does not revise the proposed rule according to the division's instructions.

§5.212. Limitation of Division Consideration to Public Information.
When conducting a review of a proposed rule under §5.207 of this subchapter or deciding whether to direct a state agency to submit a proposed rule to the division under §5.204(a)(2) of this subchapter, the division may only consider information or communications that are:

(1) submitted to the division in writing from an identified person and made available to the public;
(2) submitted in a public hearing; or
(3) generally known to the public.

§5.213. Division Website.
The division shall maintain a website on which the division makes available to the public:

(1) the rule submission memorandum for each proposed rule that is currently under review by the division;

(2) the deadline and instructions for submitting public comments on each proposed rule that is currently under review by the division;

(3) all determination letters issued by the division; and

(4) a means through which any person may sign up to be notified when the division receives a proposed rule submission or issues a determination letter on any proposed rule.

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

Filed with the Office of the Secretary of State on April 9, 2020.
TRD-202001424
Erin Bennett
Director, Regulatory Compliance Division
Office of the Governor
Earliest possible date of adoption: May 24, 2020
For further information, please call: (512) 463-8500

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 353. MEDICAID MANAGED CARE
SUBCHAPTER O. DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

1 TAC §353.1305
The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §353.1305, concerning Uniform Hospital Rate Increase Program.

BACKGROUND AND PURPOSE
The purpose of the rule amendment is to include non-state-owned institutions for mental diseases (IMDs) as a class of hospital eligible for rate increases under the uniform hospital rate increase program (UHRIP).

UHRIP is a Medicaid managed care directed payment program authorized by 42 CFR §438.6(c). HHSC launched UHRIP as a pilot project in December 2017 in the El Paso and Bexar managed care service delivery areas (SDAs). In September 2018, UHRIP expanded to the entire state. Through UHRIP, managed care organizations (MCOs) are contractually required to increase the reimbursement rate paid to hospitals for inpatient and outpatient services. The rate increase is a uniform percentage that varies by hospital class. UHRIP is a voluntary program and requires participation from all MCOs and network hospitals in an SDA.

Federal regulation has largely prohibited states from receiving federal Medicaid funds for services provided to beneficiaries in IMDs. This restriction is commonly referred to as the "Medicaid IMD Exclusion." However, two exemptions exist under §1905(a) of the Social Security Act: (1) inpatient hospital services and nursing facility services for individuals 65 years of age or older, and (2) inpatient psychiatric hospital services for individuals under age 21.

HHSC proposes to include non-state-owned IMDs among the classes of hospitals eligible for rate increases under UHRIP. Rate increases will apply only to payments made for inpatient psychiatric hospital services provided by non-state-owned IMDs to individuals under the age of 21 or inpatient hospital services provided by non-state-owned IMDs to individuals 65 years of age or older. Expanding UHRIP to these providers will increase the availability of services for eligible Medicaid beneficiaries with behavioral health needs.

HHSC also proposes to clarify that UHRIP rate increases apply only to the in-network managed care claims billed under the primary National Provider Identifier (NPI) number associated with the hospital. This proposed change clarifies that a non-hospital sub-provider owned or operated by a hospital is not eligible to receive the increase.

SECTION-BY-SECTION SUMMARY
The proposed amendment to §353.1305(c) adds "non-state-owned IMDs" as a class of hospital eligible to receive rate increases under UHRIP for inpatient services.

The proposed amendment to §353.1305(e) adds that rate increases for a non-state owned IMD are limited to inpatient services provided to individuals under the age of 21 and to inpatient services provided to individuals 65 years or older. The proposed amendment also clarifies that UHRIP rate increases apply only to in-network managed care claims billed under a hospital’s primary NPI number associated with the hospital.

FISCAL NOTE
Trey Wood, Acting Deputy Executive Commissioner for Financial Services, 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 not create a new rule;

(6) the proposed rule will not expand, limit, or repeal 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 has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed rule will allow non-state-owned IMDs to receive a directed payment under UHRIP. However, participation in the program described by the proposed rules is optional.

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 does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Charles Greenberg, Director of Hospital Finance and Waiver Programs, has determined that for each year of the first five years the rule is in effect, the public benefit will be that eligible Medicaid beneficiaries have access to inpatient hospital services that meet their behavioral health needs.

Trey Wood 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. Participation in the program is optional.

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 HEARING

Details for the public hearing will be published as a notice in the Texas Register at a later date.

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC, Mail Code 1000, P.O. Box 13247, Austin, Texas 78711-3247, or by email to RAD_1115_Waiver_Finance@hhsc.state.tx.us.

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; or (2) emailed before midnight on the last day of the comment period. If the 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 20R046" in the subject line.

STATUTORY AUTHORITY

The amendment 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 Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC’s duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32; and Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.

The amendment affects Human Resources Code Chapter 32 and Government Code Chapters 531 and 533.

§353.1305. Uniform Hospital Rate Increase Program.

(a) Introduction. This section describes the circumstances under which HHSC directs an MCO to provide a uniform percentage rate increase to hospitals in the MCO’s network in a designated service delivery area (SDA) for the provision of inpatient services, outpatient services, or both. This section also describes the methodology used by HHSC to calculate and administer such rate increase.

(b) Definitions. The following definitions apply when the terms are used in this section. Terms that are used in this and other sections of this subchapter may be defined in §353.1301 of this subchapter (relating to General Provisions).

(1) Children’s hospital--A Medicaid hospital designated by Medicare as a children’s hospital.

(2) Inpatient hospital services--Services ordinarily furnished in a hospital for the care and treatment of inpatients under the direction of a physician or dentist, or a subset of these services identified by HHSC. Inpatient hospital services do not include skilled nursing facility or intermediate care facility services furnished by a hospital with swing-bed approval, and any other services that HHSC determines should not be subject to the rate increase.

(3) Institution for mental diseases (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness.

(4) Non-urban public hospital--

(A) A hospital owned and operated by a governmental entity, other than a hospital described in paragraph (8) of this subsection, defining rural public hospital, or a hospital described in paragraph (10) of this subsection, defining urban public hospital; or

(B) A hospital meeting the definition of rural public-fi

nanced hospital in §355.8065(b)(37) of this title (relating to Disproportionate Share Hospital Reimbursement Methodology), other than a hospital described in paragraph (7) of this subsection defining rural private hospital.

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(5) Outpatient hospital services—Preventive, diagnostic, therapeutic, rehabilitative, or palliative services that are furnished to outpatients of a hospital under the direction of a physician or dentist, or a subset of these services identified by HHSC. HHSC may, in its contracts with MCOs governing rate increases under this section, exclude from the definition of outpatient hospital services such services as are not generally furnished by most hospitals in the state, or such services that HHSC determines should not be subject to the rate increase.

(6) Program period—A period of time for which HHSC will contract with participating MCOs to pay increased capitation rates for the purpose of provider payments under this section. Each program period is equal to a state fiscal year beginning September 1 and ending August 31 of the following year. An SDA that is unable to participate in the program described in this section beginning September 1 may apply to participate beginning March 1 of the program period and ending August 31. Participation during such a modified program period is subject to the application and intergovernmental-transfer deadlines described in subsection (g) of this section.

(7) Rural private hospital—A privately-operated hospital that is a rural hospital as defined in §355.8052 of this title (relating to Inpatient Hospital Reimbursement).

(8) Rural public hospital—A hospital that is owned and operated by a governmental entity and is a rural hospital as defined in §355.8052 of this title.

(9) State-owned hospital—A hospital that is owned and operated by a state university or other state agency.

(10) Urban public hospital—A hospital that is operated by or under a lease contract with one of the following entities: the Dallas County Hospital District, the El Paso County Hospital District, the Harris County Hospital District, the Tarrant County Hospital District, the Travis County Healthcare District dba Central Health, the University Health System of Bexar County, the Ector County Hospital District, the Lubbock County Hospital District, or the Nueces County Hospital District.

(c) Classes of participating hospitals.

(1) HHSC may direct the MCOs in an SDA that is participating in the program described in this section to provide a uniform percentage rate increase to all hospitals within one or more of the following classes of hospital with which the MCO contracts for inpatient or outpatient services:

(A) children’s hospitals;
(B) non-urban public hospitals;
(C) rural private hospitals;
(D) rural public hospitals;
(E) state-owned hospitals;
(F) urban public hospitals; [and]
(G) non-state-owned IMDs; and [all other hospitals, except institutions for mental diseases]
(H) all other hospitals.

(2) If HHSC directs rate increases to more than one class of hospital within the SDA, the percentage rate increases directed by HHSC may vary between classes of hospital.

(d) Eligibility. HHSC determines eligibility for rate increases by SDA and class of hospital.

(1) Service delivery area. Only hospitals in an SDA that includes at least one sponsoring governmental entity are eligible for a rate increase.

(2) Class of hospital. HHSC will identify the class or classes of hospital within each SDA described in paragraph (1) of this subsection to be eligible for a rate increase. HHSC will consider the following factors when identifying the class or classes of hospital eligible for a rate increase and the percent increase applicable to each class:

(A) whether a class of hospital contributes more or less significantly to the goals and objectives in HHSC’s quality strategy, as required in 42 C.F.R. §438.340, relative to other classes;

(B) which class or classes of hospital the sponsoring governmental entity wishes to support through intergovernmental transfers (IGTs) of public funds, as indicated on the application described in subsection (g) of this section; and

(C) the percentage of Medicaid costs incurred by the class of hospital in providing care to Medicaid managed care clients that are reimbursed by Medicaid MCOs prior to any uniform rate increase administered under this section.

(e) Services subject to rate increase.

(1) HHSC may direct the MCOs in an SDA to increase rates for all or a subset of inpatient services, or for a subset of outpatient services, or all or a subset of both, based on the service or services that will best advance the goals and objectives of HHSC’s quality strategy.

(2) In addition to the limitations described in paragraph (1) of this subsection, rate increases for a non-state-owned IMD are limited to inpatient psychiatric hospital services provided to individuals under the age of 21 and to inpatient hospital services provided to individuals 65 years or older.

(3) UHRIP rate increases will apply only to the in-network managed care claims billed under a hospital’s primary National Provider Identifier (NPI) and will not be applicable to NPIs associated with non-hospital sub-providers owned or operated by a hospital.

(f) Determination of percentage of rate increase.

(1) In determining the percentage of rate increase applicable to one or more classes of hospital, HHSC will consider the following factors:

(A) information from the participants in the SDA (including hospitals, managed-care organizations, and sponsoring governmental entities) on one or both of the following, as indicated on the application described in subsection (g) of this section:

(i) the amount of IGT the sponsoring governmental entities propose to transfer to HHSC to support the non-federal share of the increased rates for the first six months of a program period; and

(ii) the percentage rate increase the SDA participants propose for one or more classes of hospital for the first six months of a program period;

(B) the class or classes of hospital determined in subsection (d)(2) of this section;

(C) the type of service or services determined in subsection (e) of this section;

(D) actuarial soundness of the capitation payment needed to support the rate increase;

(E) available budget neutrality room under any applicable federal waiver programs;
(F) hospital market dynamics within the SDA; and

(G) other HHSC goals and priorities.

(2) HHSC will limit the percentage rate increases determined pursuant to this subsection to no more than the levels that are supported by the amount described in paragraph (1)(A)(i) of this subsection. Nothing in this section may be construed to limit the authority of the state to require the sponsoring governmental entities to transfer additional funds to HHSC following the reconciliation process described in section 353.1301(g) of this title, if the amount previously transferred is less than the non-federal share of the amount expended by HHSC in the SDA for this program.

(3) After determining the percentage of rate increase using the process described in paragraphs (1) and (2) of this subsection, HHSC will modify its contracts with the MCOs in the SDA to direct the percentage rate increases.

(g) Application process; timing and amount of transfer of non-federal share.

(1) The stakeholders in an SDA initiate the request for HHSC to implement a uniform hospital rate increase program by submitting an application using a form prescribed by HHSC.

(A) The stakeholders in the SDA, including hospitals, sponsoring governmental entities, and MCOs, are expected to work cooperatively to complete the application.

(B) The application provides an opportunity for stakeholders to have input into decisions about which classes of hospital and services are subject to the rate increases, and the percentage rate increase applicable to each class, but HHSC retains the final decision-making authority on these aspects of the program following the processes described in subsections (d) - (f) of this section.

(C) HHSC must receive the completed application no later than six months before the beginning of the program period or modified program period in which the SDA proposes to participate.

(D) HHSC will process the application, contact SDA representatives or stakeholders if there are questions, and notify the stakeholders in the SDA of its decisions on the application, including the classes of hospital eligible for the rate increase, the services subject to the increase, the percentage rate increase applicable to each class, and the total amount of IGT required for the first six months of the program period.

(2) Sponsoring governmental entities must complete the IGT for the first six months of the program period no later than four months prior to the start of the program period, unless otherwise instructed by HHSC. For example, for the program period beginning September 1, 2017, HHSC must receive the IGT for the first six months no later than May 1, 2017; for the modified program period beginning March 1, 2018, HHSC must receive the IGT no later than November 1, 2017.

(3) Following the transfer of funds described in paragraph (2) of this subsection, sponsoring governmental entities must transfer additional IGT at such times and in such amounts as determined by HHSC to be necessary to ensure the availability of funding of the non-federal share of the state's expenditures under this section and HHSC's compliance with the terms of its contracts with MCOs in the SDA. In no event may transfers for directed increases in a program period occur later than November 1 of the calendar year.

(4) HHSC will instruct sponsoring governmental entities as to the required IGT amounts. Required IGT amounts will include all costs associated with the uniform rate increase, including costs associated with premium taxes, risk margins, and administration, plus ten percent.

(b) Effective date of rate increases. HHSC will direct MCOs to increase rates under this section beginning the first day of the program period that includes the increased capitation rates paid by HHSC to each MCO pursuant to the contract between them.

(i) Reconciliation. HHSC will reconcile the amount of the non-federal funds actually expended under this section during the program period with the amount of funds transferred to HHSC by the sponsoring governmental entities for that same period using the methodology described in §353.1301(g) of this subchapter.

(j) Recoupment. Payments under this section may be subject to recoupment as described in §353.1301(k) of this subchapter.

(k) December 2017 limited eligibility. Notwithstanding the other provisions of this section, any SDA that received approval from CMS by April 15, 2017, may participate in the program described in this section for dates of service beginning December 1, 2017. Sponsoring governmental entities must complete the IGT for the period of December 1, 2017, through February 28, 2018, by a date to be determined by HHSC.

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 April 10, 2020.
TRD-202001428
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 24, 2020
For further information, please call: (512) 424-6863

CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8212
The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8212, concerning Waiver Payments to Hospitals for Uncompensated Charity Care.

BACKGROUND AND PURPOSE
The purpose of the rule amendment is to clarify how the uncompensated-care (UC) payment amount is calculated, including what constitutes total eligible UC costs and eligible hospital charity-care costs, as well as the process of returning to governmental entities the non-federal share of funds in the event of certain recouplings.

Currently, subsection (g) defines "total eligible uncompensated costs" for a hospital receiving both Disproportionate Share Hospital (DSH) payments and UC payments as the hospital's DSH hospital-specific limit (HSL) plus the unreimbursed costs of inpa-
tient and outpatient services provided to uninsured charity-care patients. The intent of this definition is to ensure that a hospital is not being reimbursed for the same costs in both DSH and UC. A hospital may have unreimbursed charity-care costs that are not included in the hospital's DSH HSL. HHSC proposes to amend the definition of "total eligible uncompensated costs" to clarify the intended meaning, which is that a hospital's total eligible uncompensated costs include the unreimbursed charity-care costs that are not included in the hospital's DSH HSL for the corresponding program year.

In addition, HHSC proposes to clarify that a hospital's uninsured charity-care payments must be included in a hospital's UC application and will be considered in the calculation of a hospital's annual maximum uncompensated-care payment. The proposed change is consistent with the current UC protocol described in the Texas Healthcare Transformation and Quality Improvement Program 1115 Medicaid demonstration waiver, approved by the Centers for Medicare & Medicaid Services.

HHSC also proposes to amend the recoupment provision to clarify that, in the event funds are recouped from a hospital, the non-federal share will be returned to the governmental entities in proportion to each entity’s initial contribution to funding the UC program.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.8212(g) revises the definition of "total eligible uncompensated costs" to clarify that a hospital's total eligible uncompensated costs include the unreimbursed charity-care costs that are not included in the hospital's DSH HSL for the corresponding program year. The proposed amendment also clarifies that uninsured charity-care payments must be included in the hospital's UC application and will be considered in the calculation of a hospital's annual maximum uncompensated-care payment.

The proposed amendment to §355.8212(j) revises the explanation of how the non-federal share is returned in the event of certain recoupments. The non-federal share of any recouped funds will be returned to the governmental entities in proportion to each entity's initial contribution to funding the program.

FISCAL NOTE

Trey Wood, Acting Deputy Executive Commissioner for Financial Services, 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 not create a new rule;
(6) the proposed rule will not expand, limit, or repeal existing rule;
(7) the proposed rule will not change 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 has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed rule does not impose any additional costs on any small businesses, micro-businesses, or rural communities required to comply.

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 does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Charles Greenberg, Director of Hospital Finance and Waiver Programs, has determined that for each year of the first five years the rule is in effect, the public benefit will be that providers will have a better understanding of the policies and methodologies governing how the uncompensated-care payment is calculated, what constitutes eligible hospital charity-care costs, and how the non-federal share of recouped funds is returned to governmental entities.

Trey Wood has also determined that for the first five years the rule is in effect, there is no anticipated cost to persons required to comply with the proposed rule, as there is no requirement for hospitals to alter their business practices. The proposed rule provides clarity to existing agency practices.

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 HEARING

Details for the public hearing will be published as a notice in the Texas Register at a later date.

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC, Mail Code 1000, P.O. Box 13247, Austin, Texas 78711-3247, or by email to RAD_1115_Waiver_Finance@hhsc.state.tx.us.

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 or (2) emailed before midnight on the last day of the comment period. If the 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 20R047" in the subject line.

STATUTORY AUTHORITY

The amendment 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
Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32.

The amendment affects Human Resources Code Chapter 32 and Government Code Chapter 531.

§355.8212. Waiver Payments to Hospitals for Uncompensated Charity Care.

(a) Introduction. Texas Healthcare Transformation and Quality Improvement Program §1115(a) Medicaid demonstration waiver payments are available under this section to help defray the uncompensated cost of charity care provided by eligible hospitals on or after October 1, 2019. Waiver payments to hospitals for uncompensated care provided before October 1, 2019, are described in §355.8201 of this division (relating to Waiver Payments to Hospitals for Uncompensated Care). Waiver payments to hospitals must be in compliance with the Centers for Medicare & Medicaid Services approved waiver Program Funding and Mechanics Protocol, HHSC waiver instructions, and this section.

(b) Definitions.

(1) Affiliation agreement--An agreement, entered into between one or more privately-operated hospitals and a governmental entity that does not conflict with federal or state law. HHSC does not prescribe the form of the agreement.

(2) Allocation amount--The amount of funds approved by the Centers for Medicare & Medicaid Services for uncompensated-care payments for the demonstration year that is allocated to each uncompensated-care provider pool or individual hospital, as described in subsections (f)(2) and (g)(6) of this section.

(3) Anchor--The governmental entity identified by HHSC as having primary administrative responsibilities on behalf of a Regional Healthcare Partnership (RHP).

(4) Centers for Medicare & Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(5) Charity care--Healthcare services provided without expectation of reimbursement to uninsured patients who meet the provider's charity-care policy. The charity-care policy should adhere to the charity-care principles of the Healthcare Financial Management Association Principles and Practices Board Statement 15 (December 2012). Charity care includes full or partial discounts given to uninsured patients who meet the provider's financial assistance policy. Charity care does not include bad debt, courtesy allowances, or discounts given to patients who do not meet the provider's charity-care policy or financial assistance policy.

(6) Data year--A 12-month period that is described in §355.8066 of this subchapter (relating to Hospital-Specific Limit Methodology) and from which HHSC will compile cost and payment data to determine uncompensated-care payment amounts. This period corresponds to the Disproportionate Share Hospital data year.

(7) Delivery System Reform Incentive Payments (DSRIP)--Payments related to the development or implementation of a program of activity that supports a hospital's efforts to enhance access to health care, the quality of care, and the health of patients and families it serves. These payments are not considered patient-care revenue and are not offset against the hospital's costs when calculating the hospital-specific limit as described in §355.8066 of this subchapter.

(8) Demonstration year--The 12-month period beginning October 1 for which the payments calculated under this section are made. This period corresponds to the Disproportionate Share Hospital (DSH) program year. Demonstration year one corresponded to the 2012 DSH program year.

(9) Disproportionate Share Hospital (DSH)--A hospital participating in the Texas Medicaid program that serves a disproportionate share of low-income patients and is eligible for additional reimbursement from the DSH fund.

(10) Governmental entity--A state agency or a political subdivision of the state. A governmental entity includes a hospital authority, hospital district, city, county, or state entity.

(11) HHSC--The Texas Health and Human Services Commission or its designee.

(12) Institution for mental diseases (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness.

(13) Intergovernmental transfer (IGT)--A transfer of public funds from a governmental entity to HHSC.

(14) Large public hospital--An urban public hospital - Class one as defined in §355.8065 of this subchapter (relating to Disproportionate Share Hospital Reimbursement Methodology).

(15) Mid-Level Professional--Medical practitioners which include the following professions only:

(A) Certified Registered Nurse Anesthetists;
(B) Nurse Practitioners;
(C) Physician Assistants;
(D) Dentists;
(E) Certified Nurse Midwives;
(F) Clinical Social Workers;
(G) Clinical Psychologists; and
(H) Optometrists.

(16) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(17) Regional Healthcare Partnership (RHP)--A collaboration of interested participants that work collectively to develop and submit to the state a regional plan for health care delivery system reform. Regional Healthcare Partnerships will support coordinated, efficient delivery of quality care and a plan for investments in system transformation that is driven by the needs of local hospitals, communities, and populations.

(18) RHP plan--A multi-year plan within which participants propose their portion of waiver funding and DSRIP projects.

(19) Rural hospital--A hospital enrolled as a Medicaid provider that is:
(A) located in a county with 60,000 or fewer persons according to the 2010 U.S. Census; or

(B) designated by Medicare as a Critical Access Hospital (CAH) or a Sole Community Hospital (SCH); or

(C) designated by Medicare as a Rural Referral Center (RRC); and

(i) is not located in a Metropolitan Statistical Area (MSA), as defined by the U.S. Office of Management and Budget; or

(ii) is located in an MSA but has 100 or fewer licensed beds.

(20) Service Delivery Area (SDA)--The counties included in any HHSC-defined geographic area as applicable to each MCO.

(21) Uncompensated-care application--A form prescribed by HHSC to identify uncompensated costs for Medicaid-enrolled providers.

(22) Uncompensated-care payments--Payments intended to defray the uncompensated costs of charity care as defined in paragraph (5) of this subsection.

(23) Uninsured patient--An individual who has no health insurance or other source of third-party coverage for the services provided. The term includes an individual enrolled in Medicaid who received services that do not meet the definition of medical assistance in section 1905(a) of the Social Security Act (Medicaid services), if such inclusion is specified in the hospital's charity-care policy or financial assistance policy and the patient meets the hospital's policy criteria.


(c) Eligibility. A hospital that meets the requirements described in this subsection may receive payments under this section.

(1) Generally. To be eligible for any payment under this section:

(A) a hospital must be enrolled as a Medicaid provider in the State of Texas at the beginning of the demonstration year; and

(B) if it is a hospital not operated by a governmental entity, it must have filed with HHSC an affiliation agreement and the documents described in clauses (i) and (ii) of this subparagraph.

(i) The hospital must certify on a form prescribed by HHSC:

(I) that it is a privately-operated hospital;

(II) that no part of any payment to the hospital under this section will be returned or reimbursed to a governmental entity with which the hospital affiliates; and

(III) that no part of any payment to the hospital under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the hospital’s receipt of the supplemental funds.

(ii) The governmental entity that is party to the affiliation agreement must certify on a form prescribed by HHSC:

(I) that the governmental entity has not received and has no agreement to receive any portion of the payments made to any hospital that is party to the agreement;

(II) that the governmental entity has not entered into a contingent fee arrangement related to the governmental entity's participation in the waiver program;

(III) that the governmental entity adopted the conditions described in the certification form prescribed by or otherwise approved by HHSC pursuant to a vote of the governmental entity's governing body in a public meeting preceded by public notice published in accordance with the governmental entity's usual and customary practices or the Texas Open Meetings Act, as applicable; and

(IV) that all affiliation agreements, consulting agreements, or legal services agreements executed by the governmental entity related to its participation in this waiver payment program are available for public inspection upon request.

(iii) Submission requirements.

(I) Initial submissions. The parties must initially submit the affiliation agreements and certifications described in this subsection to the HHSC Rate Analysis Department on the earlier of the following occurrences after the documents are executed:

(-a-) the date the hospital submits the uncompensated-care application that is further described in paragraph (2) of this subsection; or

(-b-) the new affiliation cut-off date posted on HHSC Rate Analysis Departments' website for each payment under this section.

(II) Subsequent submissions. The parties must submit revised documentation to HHSC as follows:

(-a-) When the nature of the affiliation changes or parties to the agreement are added or removed, the parties must submit the revised affiliation agreement and related hospital and governmental entity certifications.

(-b-) When there are changes in ownership, operation, or provider identifiers, the hospital must submit a revised hospital certification.

(-c-) The parties must submit the revised documentation thirty days before the projected deadline for completing the IGT for the first payment under the revised affiliation agreement. The projected deadline for completing the IGT is posted on HHSC Rate Analysis Department's website for each payment under this section.

(III) A hospital that submits new or revised documentation under subclause (I) or (II) of this clause must notify the Anchor of the RHP in which the hospital participates.

(IV) The certification forms must not be modified except for those changes approved by HHSC prior to submission.

(-a-) Within 10 business days of HHSC Rate Analysis Department receiving a request for approval of proposed modifications, HHSC will approve, reject, or suggest changes to the proposed certification forms.

(-b-) A request for HHSC approval of proposed modifications to the certification forms will not delay the submission deadlines established in this clause.

(V) A hospital that fails to submit the required documentation in compliance with this subparagraph is not eligible to receive a payment under this section.

(2) Uncompensated-care payments. For a hospital to be eligible to receive uncompensated-care payments, in addition to the requirements in paragraph (1) of this subsection, the hospital must:
(A) submit to HHSC an uncompensated-care application for the demonstration year, as is more fully described in subsection (g)(1) of this section, by the deadline specified by HHSC; and
(B) submit to HHSC documentation of:
   (i) its participation in an RHP; or
   (ii) approval from CMS of its eligibility for uncompensated-care payments without participation in an RHP.

(3) Changes that may affect eligibility for uncompensated-care payments.

(A) If a hospital closes, loses its license, loses its Medicare or Medicaid eligibility, withdraws from participation in an RHP, or files bankruptcy before receiving all or a portion of the uncompensated-care payments for a demonstration year, HHSC will determine the hospital's eligibility to receive payments going forward on a case-by-case basis. In making the determination, HHSC will consider multiple factors including whether the hospital was in compliance with all requirements during the demonstration year and whether it can satisfy the requirement to cooperate in the reconciliation process as described in subsection (i) of this section.

(B) A hospital must notify HHSC Rate Analysis Department in writing within 30 days of the filing of bankruptcy or of changes in ownership, operation, licensure, Medicare or Medicaid enrollment, or affiliation that may affect the hospital's continued eligibility for payments under this section.

(d) Source of funding. The non-federal share of funding for payments under this section is limited to public funds from governmental entities. Prior to processing uncompensated-care payments for the final payment period within a waiver demonstration year for any uncompensated-care pool or sub-pool described in subsection (f)(2) of this section, HHSC will survey the governmental entities that provide public funds for the hospitals in that pool or sub-pool to determine the amount of funding available to support payments from that pool or sub-pool.

(e) Payment frequency. HHSC will distribute waiver payments on a schedule to be determined by HHSC and posted on HHSC's website.

(f) Funding limitations.
   (1) Payments made under this section are limited by the maximum aggregate amount of funds allocated to the provider's uncompensated-care pool for the demonstration year. If payments for uncompensated care for an uncompensated-care pool attributable to a demonstration year are expected to exceed the aggregate amount of funds allocated to that pool by HHSC for that demonstration year, HHSC will reduce payments to providers in the pool as described in subsection (g)(6) of this section.

   (2) HHSC will establish the following uncompensated-care pools: a state-owned hospital pool, a non-state-owned hospital pool, a physician group practice pool, a governmental ambulance provider pool, and a publicly owned dental provider pool.

   (A) The state-owned hospital pool.
      (i) The state-owned hospital pool funds uncompensated-care payments to state-owned teaching hospitals, state-owned IMDs, and the Texas Center for Infectious Disease.
      (ii) HHSC will determine the allocation for this pool at an amount less than or equal to the total annual maximum uncompensated-care payment amount for these hospitals as calculated in subsection (g)(2) of this section.

   (B) Non-state-owned provider pools. HHSC will allocate the remaining available uncompensated-care funds, if any, among the non-state-owned provider pools as described in this subparagraph. The remaining available uncompensated-care funds equal the amount of funds approved by CMS for uncompensated-care payments for the demonstration year less the sum of funds allocated to the state-owned hospital pool under subparagraph (A) of this paragraph. HHSC will allocate the funds among non-state-owned provider pools based on the following amounts.
      (i) For the physician group practice pool, the governmental ambulance provider pool, and the publicly owned dental provider pool:
         (I) for demonstration year nine, an amount to equal the percentage of the applicable total uncompensated-care pool amount paid to each group in demonstration year six; and
         (II) for demonstration years ten and after, an amount to equal a percentage determined by HHSC annually based on factors including the amount of reported charity-care costs for the previous demonstration year and the ratio of reported charity-care costs to hospitals' charity-care costs.
      (ii) For the non-state-owned hospital pool, all of the remaining funds after the allocations described in clause (i) of this subparagraph. HHSC will further allocate the funds in the non-state-owned hospital pool among all hospitals in the pool and create non-state-owned hospital sub-pools as follows:
         (I) calculate a revised maximum payment amount for each non-state-owned hospital as described in subsection (g)(6) of this section and allocate that amount to the hospital; and
         (II) group all non-state-owned hospitals into sub-pools based on their geographic location within one of the state's Medicaid service delivery areas (SDAs), as described in subsection (g)(7) of this section.

   (3) Payments made under this section are limited by the availability of funds identified in subsection (d) of this section and timely received by HHSC. If sufficient funds are not available for all payments for which the providers in each pool or sub-pool are eligible, HHSC will reduce payments as described in subsection (h)(2) of this section.

   (4) If for any reason funds allocated to a provider pool or to individual providers within a sub-pool are not paid to providers in that pool or sub-pool for the demonstration year, the funds will be redistributed to other provider pools based on each pool's pro-rata share of remaining uncompensated costs for the same demonstration year. The redistribution will occur when the reconciliation for that demonstration year is performed.

(g) Uncompensated-care payment amount.

(1) Application.
   (A) Cost and payment data reported by a hospital in the uncompensated-care application is used to calculate the annual maximum uncompensated-care payment amount for the applicable demonstration year, as described in paragraph (2) of this subsection.

   (B) Unless otherwise instructed in the application, a hospital must base the cost and payment data reported in the application on its applicable as-filed CMS 2552 Cost Report(s) For Electronic Filing Of Hospitals corresponding to the data year and must comply with the application instructions or other guidance issued by HHSC.
(i) When the application requests data or information outside of the as-filed cost report(s), a hospital must provide all requested documentation to support the reported data or information.

(ii) For a new hospital, the cost and payment data period may differ from the data year, resulting in the eligible uncompensated costs based only on services provided after the hospital's Medicaid enrollment date. HHSC will determine the data period in such situations.

(2) Calculation.

(A) A hospital's annual maximum uncompensated-care payment amount is the sum of the components described in clauses (i) - (iv) of this subparagraph.

(i) The hospital's inpatient and outpatient charity-care costs pre-populated in or reported on the uncompensated-care application, as described in paragraph (3) of this subsection, reduced by interim DSH payments for the same program period, if any, that reimburse the hospital for the same costs. To identify DSH payments that reimburse the hospital for the same costs, HHSC will:

(1) Use self-reported information on the application to identify charges that can be claimed by the hospital in both DSH and UC, convert the charges to cost, and reduce the cost by any applicable payments described in paragraph (3) of this subsection;

(II) Calculate a DSH-only uninsured shortfall by reducing the hospital's total uninsured costs, calculated as described in §355.8066 of this chapter, by the result from subclause (I) of this clause;

(III) Reduce the interim DSH payment amount by the sum of:

(a) the DSH-only uninsured shortfall calculated as described in subclause (II) of this clause; and

(b) the hospital's Medicaid shortfall, calculated as described in §355.8066 of this chapter.

(ii) Other eligible costs for the data year, as described in paragraph (4) of this subsection;

(iii) Cost and payment adjustments, if any, as described in paragraph (5) of this subsection; and

(iv) For each large public hospital, the amount transferred to HHSC by that hospital's affiliated governmental entity to support DSH payments to that hospital and private hospitals for the same demonstration year.

(B) A hospital also participating in the DSH program cannot receive total uncompensated-care payments under this section (related to inpatient and outpatient hospital services provided to uninsured charity-care individuals) and DSH payments that exceed the hospital's total eligible uncompensated costs. For purposes of this requirement, "total eligible uncompensated costs" means the hospital's DSH hospital-specific limit (HSL) plus the unreimbursed costs of [non-covered] inpatient and outpatient services provided to uninsured charity-care patients not included in the HSL for the corresponding program year.

(3) Hospital charity-care costs.

(A) For each hospital required by Medicare to submit schedule S-10 of the CMS 2552-10 cost report, HHSC will pre-populate the uncompensated-care application described in paragraph (1) of this subsection with the uninsured charity-care charges and payments reported by the hospital on schedule S-10 for the hospital's cost reporting period ending in the calendar year two years before the demonstration year. For example, for demonstration year 9, which coincides with federal fiscal year 2020, HHSC will use data from the hospital's cost reporting period ending in calendar year 2018. Hospitals should also report any additional payments associated with their uninsured charity charges that were not captured in worksheet S-10 in the application described in paragraph (1) of this subsection.

(B) For each hospital not required by Medicare to submit schedule S-10 of the CMS 2552-10 cost report, the hospital must report its hospital charity-care charges and any payments received for services provided to uninsured patients for the hospital's cost reporting period ending in the calendar year two years before the demonstration year on the uncompensated-care application described in paragraph (1) of this subsection.

(i) The instructions for reporting eligible charity-care costs in the application will be consistent with instructions contained in schedule S-10.

(ii) An IMD may not report charity-care charges for services provided during the data year to patients aged 21 through 64.

(4) Other eligible costs.

(A) In addition to inpatient and outpatient charity-care costs, a hospital may also claim reimbursement under this section for uncompensated charity care, as specified in the uncompensated-care application, that is related to the following services provided to uninsured patients who meet the hospital's charity-care policy:

(i) direct patient-care services of physicians and mid-level professionals; and

(ii) certain pharmacy services.

(B) A payment under this section for the costs described in subparagraph (A) of this paragraph are not considered inpatient or outpatient Medicaid payments for the purpose of the DSH audit described in §355.8065 of this subchapter.

(5) Adjustments. When submitting the uncompensated-care application, a hospital may request that cost and payment data from the data year be adjusted to reflect increases or decreases in costs resulting from changes in operations or circumstances.

(A) A hospital:

(i) may request that costs not reflected on the as-filed cost report, but which would be incurred for the demonstration year, be included when calculating payment amounts; and

(ii) may request that costs reflected on the as-filed cost report, but which would not be incurred for the demonstration year, be excluded when calculating payment amounts.

(B) Documentation supporting the request must accompany the application, and provide sufficient information for HHSC to verify the link between the changes to the hospital's operations or circumstances and the specified numbers used to calculate the amount of the adjustment.

(i) Such supporting documentation must include:

(I) a detailed description of the specific changes to the hospital's operations or circumstances;

(II) verifiable information from the hospital's general ledger, financial statements, patient accounting records or other relevant sources that support the numbers used to calculate the adjustment; and

(III) if applicable, a copy of any relevant contracts, financial assistance policies or other policies/procedures that verify the change to the hospital's operations or circumstances.
(ii) HHSC will deny a request if it cannot verify that costs not reflected on the as-filed cost report will be incurred for the demonstration year.

(C) Notwithstanding the availability of adjustments impacting the cost and payment data described in this section, no adjustments to the state payment cap will be considered for purposes of Medicaid DSH payment calculations described in §355.8065 of this subchapter.

(6) Reduction to stay within uncompensated-care pool allocation amounts. Prior to processing uncompensated-care payments for any payment period within a waiver demonstration year for any uncompensated-care pool described in subsection (f)(2) of this section, HHSC will determine if such a payment would cause total uncompensated-care payments for the demonstration year for the pool to exceed the allocation amount for the pool and will reduce the maximum uncompensated-care payment amounts providers in the pool are eligible to receive for that period as required to remain within the pool allocation amount.

(A) Calculations in this paragraph will be applied to each of the uncompensated-care pools separately.

(B) HHSC will calculate the following data points:

(i) For each provider, prior period payments to equal prior period uncompensated-care payments for the demonstration year.

(ii) For each provider, a maximum uncompensated-care payment for the payment period to equal the sum of:

(I) the portion of the annual maximum uncompensated-care payment amount calculated for that provider (as described in this section and the sections referenced in subsection (f)(2)(B) of this section) that is attributable to the payment period; and

(II) the difference, if any, between the portions of the annual maximum uncompensated-care payment amounts attributable to prior periods and the prior period payments calculated in clause (i) of this subparagraph.

(iii) The cumulative maximum payment amount to equal the sum of prior period payments from clause (i) of this subparagraph and the maximum uncompensated-care payment for the payment period from clause (ii) of this subparagraph for all members of the pool combined.

(iv) A pool-wide total maximum uncompensated-care payment for the demonstration year to equal the sum of all pool members' annual maximum uncompensated-care payment amounts for the demonstration year from paragraph (2) of this subsection.

(v) A pool-wide ratio calculated as the pool allocation amount from subsection (f)(2) of this section divided by the pool-wide total maximum uncompensated-care payment amount for the demonstration year from clause (iv) of this subparagraph.

(C) If the cumulative maximum payment amount for the pool from subparagraph (B)(iii) of this paragraph is less than the allocation amount for the pool, each provider in the pool is eligible to receive its maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph without any reduction to remain within the pool allocation amount.

(D) If the cumulative maximum payment amount for the pool from subparagraph (B)(iii) of this paragraph is more than the allocation amount for the pool, HHSC will calculate a revised maximum uncompensated-care payment for the payment period for each provider in the pool as follows:

(i) The physician group practice pool, the governmental ambulance provider pool, and the publicly owned dental provider pool. HHSC will calculate a capped payment amount equal to the product of each provider's annual maximum uncompensated-care payment amount for the demonstration year from paragraph (2) of this subsection and the pool-wide ratio calculated in subparagraph (B)(v) of this paragraph.

(ii) The non-state-owned hospital pool.

(I) For rural hospitals, HHSC will:

(a) sum the annual maximum uncompensated-care payment amounts from paragraph (2) of this subsection for all rural hospitals in the pool;

(b) in demonstration year:

(1) nine, set aside for rural hospitals the amount calculated in item (a) of this subclause; or

(2) ten and after, set aside for rural hospitals the lesser of the amount calculated in item (a) of this subclause or the amount set aside for rural hospitals in demonstration year nine;

(c) calculate a ratio to equal the annual hospital pool-wide amount from item (b) of this subclause divided by the total annual maximum uncompensated-care payment amount for rural hospitals from item (a) of this subclause and

(d) calculate a capped payment amount equal to the product of each rural hospital's annual maximum uncompensated-care payment amount for the demonstration year from paragraph (2) of this subsection and the ratio calculated in item (c) of this subclause.

(II) For non-rural hospitals, HHSC will:

(a) sum the annual maximum uncompensated-care payment amounts from paragraph (2) of this subsection for all non-rural hospitals in the pool;

(b) calculate an amount to equal the difference between the pool allocation amount from subsection (f)(2) of this section and the set-aside amount from subclause (I)(b)- of this clause;

(c) calculate a ratio to equal the result from item (b) of this subclause divided by the total annual maximum uncompensated-care payment amount for non-rural hospitals from item (a) of this subclause and

(d) calculate a capped payment amount equal to the product of each non-rural hospital's annual maximum uncompensated-care payment amount for the demonstration year from paragraph (2) of this subsection and the ratio calculated in item (c) of this subclause.

(III) The revised maximum uncompensated-care payment for the payment period equals the lesser of:

(a) the maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph; or

(b) the difference between the capped payment amount from subclause (I) or (II) of this clause and the prior period payments from subparagraph (B)(ii) of this paragraph.

(IV) HHSC will allocate to each non-state-owned hospital the revised maximum uncompensated-care payment amount from subclause (III) of this clause.

(7) Non-state-owned hospital SDA sub-pools. After HHSC completes the calculations described in paragraph (6) of this subsection, HHSC will place each non-state-owned hospital into a sub-pool based on the hospital's geographic location in a designated
Medicaid SDA for purposes of the calculations described in subsection (h) of this section.

(8) Prohibition on duplication of costs. Eligible uncompensated-care costs cannot be reported on multiple uncompensated-care applications, including uncompensated-care applications for other programs. Reporting on multiple uncompensated-care applications is duplication of costs.

(9) Advance payments.

(A) In a demonstration year in which uncompensated-care payments will be delayed pending data submission or for other reasons, HHSC may make advance payments to hospitals that meet the eligibility requirements described in subsection (c)(2) of this section and submitted an acceptable uncompensated-care application for the preceding demonstration year from which HHSC calculated an annual maximum uncompensated-care payment amount for that year.

(B) The amount of the advance payments will:

(i) in demonstration year nine, be based on uninsured charity-care costs reported by the hospital on schedule S-10 of the CMS 2552-10 cost report used for purposes of sizing the UC pool, or on documentation submitted for that purpose by each hospital not required to submit schedule S-10 with their cost report; and

(ii) in demonstration years ten and after, be a percentage, to be determined by HHSC, of the annual maximum uncompensated-care payment amount calculated by HHSC for the preceding demonstration year.

(C) Advance payments are considered to be prior period payments as described in paragraph (6)(B)(i) of this subsection.

(D) A hospital that did not submit an acceptable uncompensated-care application for the preceding demonstration year is not eligible for an advance payment.

(E) If a partial year uncompensated-care application was used to determine the preceding demonstration year’s payments, data from that application may be annualized for use in computation of an advance payment amount.

(h) Payment methodology.

(1) Notice. Prior to making any payment described in subsection (g) of this section, HHSC will give notice of the following information:

(A) the payment amount for each hospital in a pool or sub-pool for the payment period (based on whether the payment is made quarterly, semi-annually, or annually);

(B) the maximum IGT amount necessary for hospitals in a pool or sub-pool to receive the amounts described in subparagraph (A) of this paragraph; and

(C) the deadline for completing the IGT.

(2) Payment amount. The amount of the payment to hospitals in each pool or sub-pool will be determined based on the amount of funds transferred by the affiliated governmental entities as follows:

(A) If the governmental entities transfer the maximum amount referenced in paragraph (1) of this subsection, the hospitals in the pool or sub-pool will receive the full payment amount calculated for that payment period.

(B) If the governmental entities do not transfer the maximum amount referenced in paragraph (1) of this subsection, each hospital in the pool or sub-pool will receive a portion of its payment amount for that period, based on the hospital's percentage of the total payment amounts for all hospitals in the pool or sub-pool.

(3) Final payment opportunity. Within payments described in this section, governmental entities that do not transfer the maximum IGT amount described in paragraph (1) of this subsection during a demonstration year will be allowed to fund the remaining payments to hospitals in the pool or sub-pool at the time of the final payment for that demonstration year. The IGT will be applied in the following order:

(A) to the final payments up to the maximum amount; and

(B) to remaining balances for prior payment periods in the demonstration year.

(i) Reconciliation. HHSC will reconcile actual costs incurred by the hospital for the demonstration year with uncompensated-care payments, if any, made to the hospital for the same period:

(1) If a hospital received payments in excess of its actual costs, the overpaid amount will be recouped from the hospital, as described in subsection (j) of this section.

(2) If a hospital received payments less than its actual costs, and if HHSC has available waiver funding for the demonstration year in which the costs were accrued, the hospital may receive reimbursement for some or all of those actual documented unreimbursed costs.

(3) Each hospital that received an uncompensated-care payment during a demonstration year must cooperate in the reconciliation process by reporting its actual costs and payments for that period on the form provided by HHSC for that purpose, even if the hospital closed or withdrew from participation in the uncompensated-care program. If a hospital fails to cooperate in the reconciliation process, HHSC may recoup the full amount of uncompensated-care payments to the hospital for the period at issue.

(j) Recoupment.

(1) In the event of an overpayment identified by HHSC or a disallowance by CMS of federal financial participation related to a hospital's receipt or use of payments under this section, HHSC may recoup an amount equivalent to the amount of the overpayment or disallowance. The non-federal share of any funds recouped from the hospital will be returned to the governmental entities in proportion to each entity's initial contribution to funding the program in the applicable program year[entity that owns or is affiliated with the hospital].

(2) Payments under this section may be subject to adjustment for payments made in error, including, without limitation, adjustments under §371.1711 of this title (relating to Recoupment of Overpayments and Debits), 42 CFR Part 455, and Chapter 403 of the Texas Government Code. HHSC may recoup an amount equivalent to any such adjustment.

(3) HHSC may recoup from any current or future Medicaid payments as follows:

(A) HHSC will recoup from the hospital against which any overpayment was made or disallowance was directed.

(B) If, within 30 days of the hospital's receipt of HHSC's written notice of recoupment, the hospital has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all future Medicaid payments from the hospital until HHSC has recovered an amount equal to the amount overpaid or disallowed.
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 April 10, 2020.

TRD-202001427
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 24, 2020
For further information, please call: (512) 424-6863

TITeLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 62. COMMISSIONER’S RULES CONCERNING THE EQUALIZED WEALTH LEVEL

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 19 TAC §62.1072 are not included in the print version of the Texas Register. The figures are available in the on-line version of the April 24, 2020, issue of the Texas Register.)

Texas Education Agency (TEA) proposes the repeal of §62.1071 and an amendment to §62.1072, concerning the equalized wealth level. The proposed repeal of 19 TAC §62.1071 would remove outdated provisions. The proposed amendment to 19 TAC §62.1072 would implement House Bill (HB) 3, 86th Texas Legislature, 2019, by adopting as part of the Texas Administrative Code (TAC) new manuals that describe the processes and procedures that TEA will use in the administration of the provisions of Texas Education Code (TEC), Chapter 49, and the fiscal, procedural, and administrative requirements that must be met by school districts subject to TEC, Chapter 49.

BACKGROUND INFORMATION AND JUSTIFICATION: TEA has adopted the procedures contained in each yearly manual for districts subject to wealth equalization as part of the TAC since 2011. Manuals adopted for previous school years remain in effect with respect to those school years. Each school year's manual for districts subject to wealth equalization explains how districts subject to wealth equalization are identified; the fiscal, procedural, and administrative requirements those districts must meet; and the consequences for not meeting requirements. The manual also provides information on using the online Foundation School Program (FSP) System to fulfill certain requirements.

HB 3, 86th Texas Legislature, 2019, transferred, redesignated, and amended TEC, §41.006, as §49.006, authorizing the commissioner to adopt rules necessary for implementation of TEC, Chapter 49. Provisions from TEC, Chapter 41, Equalized Wealth Level, were transferred to TEC, Chapter 49, Options for Local Revenue Levels in Excess of Entitlement.

To align with changes made by HB 3, the title for 19 TAC Chapter 62 would change from "Commissioner's Rules Concerning the Equalized Wealth Level" to "Commissioner's Rules Concerning Options for Local Revenue Levels in Excess of Entitlement."

The proposed repeal of §62.1071, Manual for Districts Subject to Wealth Equalization, would remove outdated provisions from the 2016-2017 school year. The rule is obsolete.

The proposed amendment to §62.1072, Manual for Districts Subject to Wealth Equalization, 2017-2018 and 2018-2019 School Years, would adopt in rule the official TEA publications Options and Procedures for Local Revenue in Excess of Entitlement 2019-2020 School Year as Figure: 19 TAC §62.1072(a) and Options and Procedures for Local Revenue in Excess of Entitlement 2020-2021 School Year as Figure: 19 TAC §62.1072(b). Additionally, the section title would change from "Manual for Districts Subject to Wealth Equalization, 2017-2018 and 2018-2019 School Years" to "Options and Procedures for Local Revenue in Excess of Entitlement, 2019-2020 and 2020-2021 School Years."

Significant changes addressed in the new publications are as follows.

Chapter 41 Provisions

TEC, Chapter 41, was renumbered to TEC, Chapter 49, and amended by HB 3, 86th Texas Legislature, 2019.

Early Agreement Credit Provision

Districts purchasing attendance credits from the state in accordance with former TEC, Chapter 41, Subchapter D (Option 3), were able to obtain a discount in the form of an early agreement credit in accordance with former TEC, §41.098. The discount was limited to 4.0% of the computed cost of Option 3 before any discounts were applied or $80 multiplied by the number of weighted average daily attendance (WADA) purchased, whichever was less. To qualify, the district subject to the provisions of TEC, Chapter 41, was to submit a signed Option 3 agreement to TEA with a postmark on or before September 1 of the applicable year. TEC, §41.098, was repealed by HB 3, and no equivalent provision was enacted in TEC, Chapter 49. Therefore, this provision will not continue.

Current Year Values

As established in TEC, §48.269, this determination is based on estimates of enrollment for school year 2019-2020 and estimated property values for tax year 2019. Because TEA does not yet have final state certified property values for tax year 2019, it is using 2018 state certified property values increased by 5.76%, in accordance with the 2020-2021 General Appropriations Act, as a proxy for tax year 2019.

Netting Provision

TEC, §41.0041, which provided certain districts the option of authorizing the commissioner to withhold state aid in lieu of holding an election, has been repealed. However, provisions in TEC, §48.257(c), allow districts to offset the reduction of excess local revenue against TEC, Chapter 48, Subchapter F, funds. All districts will have the option to use state aid calculated under TEC, Chapter 48, Subchapter F, as an offset to their attendance credit for purposes of reducing their local revenue level. Districts using this option are required to submit the district intent/choice selection form and complete an Option 3 netting contract.

92-93 Hold Harmless Provision

The Chapter 41 hold harmless provision allowed a district to retain more wealth than it would otherwise keep at the equalized wealth level (EWL). A district was eligible for this provision if the revenue per WADA generated by applying a $1.17 rate to the tax
base at the EWL was less than what the district's revenue per WADA was in 1992-1993. This provision, which allowed a distri-

This provision, which allowed a district to keep a higher tax base, referred to as the hold harmless tax base, so that its 1992-1993 revenue per WADA was maintained, was repealed by HB 3.

HB 3 created the Equalized Wealth Transition Grant, which will be phased out over the next five years. A school district is en-
titled to receive an annual allotment in an amount equal to the amount of additional revenue a school district received for the 2018-2019 school year under former TEC, §41.002. Beginning in school year 2020-2021, estimates of local property values for the current year will be collected from districts for use in determin-
inations for districts with local revenue levels in excess of ent-

For purposes of calculating a district's allotment under the Equal-
ized Wealth Transition Grant, the amount to which a district is en-
titled will be reduced by 20% for the 2020-2021 school year; 40% for the 2021-2022 school year; 60% for the 2022-2023 school year; and 80% for the 2023-2024 school year.

The proposed amendment would address new and revised pro-
visions as applicable in the publication for each school year: Fig-
ure: 19 TAC §62.1072(a) for the 2019-2020 school year and Fig-
ure: 19 TAC §62.1072(b) for the 2020-2021 school year.

FISCAL IMPACT: Leo Lopez, associate commissioner for school
finance, has determined that for the first five-year period the pro-
posal is in effect there are no additional costs to state or local
government required to comply with the proposal beyond what is authorized by statute.

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 COMMU-
UNITY IMPACT: The proposal has no direct adverse economic
impact for small businesses, microbusinesses, or rural communi-
ties; 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 im-
pose a burden on private real property and, therefore, does not

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Gov-
ernment Growth Impact Statement assessment for this proposed
rulemaking. During the first five years the proposed rulemaking
would be in effect, it would repeal an existing regulation to re-
move outdated provisions and expand an existing regulation to
impose the requirements of recently enacted legislation.

The proposed rulemaking would not create or eliminate a gov-
ernment program; would not require the creation of new em-
ployee 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 reg-
ulation; would not limit 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. Lopez 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 informing the public of the existence of annual
publications relating to school district options for local revenue in
excess of entitlement. 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. The proposed rule action would place
the specific procedures contained in the Options for Local Rev-
enue in Excess of Entitlement publications for the 2019-2020
and 2020-2021 school years in the TAC. TEA administers the
wealth equalization provisions of the TEC, Chapter 49, accord-
ing to the procedures specified in each yearly manual for districts
subject to wealth equalization. Data reporting requirements are
addressed primarily through the online FSP System.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK
REQUIREMENTS: The 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 April 24, 2020, and ends June 8, 2020. A request
for a public hearing on the proposal submitted under the Adminis-
trative Procedure Act must be received by the commissioner of education not more than 14 calen-
dar days after notice of the proposal has been published in the Texas Register on April 24, 2020. A form for sub-
mitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Com-
missioner_Rules_(TAC)/Proposed_Commissioner_of_Educa-
tion_Rules/. Comments on the proposal may also be submitted
to Cristina De La Fuente-Valadez, Rulemaking, Texas Education
Agency, 1701 North Congress Avenue, Austin, Texas 78701.

19 TAC §62.1071

STATUTORY AUTHORITY. The repeal is proposed under Texas
Education Code (TEC), §49.006, which authorizes the commis-
sioner of education to adopt rules necessary for the implementa-
tion of TEC, Chapter 49, Options for Local Revenue Levels in
Excess of Entitlement.

CROSS REFERENCE TO STATUTE. The repeal imple-
ments Texas Education Code, §49.006.


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

Filed with the Office of the Secretary of State on April 13, 2020.

TRD-202001443
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency

Earliest possible date of adoption: May 24, 2020
For further information, please call: (512) 475-1497

19 TAC §62.1072

STATUTORY AUTHORITY. The amendment is proposed under
Texas Education Code (TEC), §49.006, which authorizes the
commissioner of education to adopt rules necessary for the im-

implementation of TEC, Chapter 49, Options for Local Revenue Levels in Excess of Entitlement.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §49.006.


(a) For the 2019-2020 [2017-2018] school year, the processes and procedures that the Texas Education Agency (TEA) will use in the administration of the provisions of the Texas Education Code (TEC), Chapter 49, [Chapter 44] and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 49, [Chapter 44] must meet are described in the official TEA publication Options and Procedures for Local Revenue in Excess of Entitlement 2019-2020 School Year [Manual for Districts Subject to Wealth Equalization 2017-2018 School Year], provided in this subsection.

Figure: 19 TAC §62.1072(a) [Figure: 19 TAC §62.1072(a)]

(b) For the 2020-2021 [2018-2019] school year, the processes and procedures that the TEA will use in the administration of the provisions of the TEC, Chapter 49, [Chapter 44] and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 49, [Chapter 44] must meet are described in the official TEA publication Options and Procedures for Local Revenue in Excess of Entitlement 2020-2021 School Year [Manual for Districts Subject to Wealth Equalization 2018-2019 School Year], provided in this subsection.

Figure: 19 TAC §62.1072(b) [Figure: 19 TAC §62.1072(b)]

(c) The specific processes, procedures, and requirements used in the manuals for districts subject to wealth equalization are established biennially by the commissioner of education and communicated to all school districts.

(d) School district actions and inactions in previous school years and data from those school years will continue to be subject to the annual manual for districts subject to wealth equalization with respect to those years.

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 April 13, 2020.
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Cristina De La Fuente-Valdez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: May 24, 2020
For further information, please call: (512) 475-1497

CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY

19 TAC §109.1001 (Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 19 TAC §109.1001(e)(4), (e)(5), (f)(4), and (f)(5), are not included in the print version of the Texas Register. The figures are available in the on-line version of the April 24, 2020, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §109.1001, concerning financial accountability. The proposed amendment would update financial accountability rating information and rating worksheets for school districts and open-enrollment charter schools.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 109.1001 includes the financial accountability rating system and rating worksheets that explain the indicators that TEA will analyze to assign financial accountability ratings for school districts and open-enrollment charter schools. The rule also specifies the minimum financial accountability rating information that a school district or an open-enrollment charter school is to report to parents and taxpayers in the district.

The proposed amendment would clarify the financial accountability rating indicators terminology used to determine each school district's rating for the 2019-2020 rating year and subsequent years by revising the ratings worksheet calculations in §109.1001(e)(4), (e)(5), (f)(4), and (f)(5). The proposed amendment would also include terminology clarifications to the rating worksheets in §109.1001(e)(4), (e)(5), (f)(4), and (f)(5). The proposed worksheets, dated April 2020, would differ from the current worksheets, dated June 2019, as follows.

Figure: 19 TAC §109.1001(e)(4)

Indicator 4 would be revised to correct misspelled terminology used in the calculation worksheets.

Indicators 5 and 8 would be revised to clarify terminology that aligns with the calculation used to score the indicator when student membership increases.

The determination of school district rating chart in the worksheet would be revised to update reference to TEC, Chapter 49, instead of Chapter 41, as that chapter was transferred and redesignated by HB 3, 86th Texas Legislature, 2019.

Figure: 19 TAC §109.1001(e)(5)

Indicator 4 would be revised to correct misspelled terminology used in the calculation worksheets.

Indicators 5 and 11 would be revised to clarify terminology that aligns with the calculation used to score the indicator when student membership increases.

Indicator 6 would be revised to correct misspelled terminology used in the calculation worksheets.

Indicators 15 and 19 would be revised to correct misspelled terminology used in the calculation worksheets.

The determination of points chart in the worksheet would be revised to correct misspelled terminology for indicator 15.

The determination of school district rating chart in the worksheet would be revised to update reference to TEC, Chapter 49, instead of Chapter 41, as that chapter was transferred and redesignated by HB 3, 86th Texas Legislature, 2019.

Figure: 19 TAC §109.1001(f)(4)
Indicator 4 would be revised to correct misspelled terminology used in the calculation worksheets.

Indicators 5 and 8 would be revised to clarify terminology that aligns with the calculation used to score the indicator when student membership increases.

Figure: 19 TAC §109.1001(f)(5)

Indicator 4 would be revised to correct misspelled terminology used in the calculation worksheets.

Indicators 5 and 11 would be revised to clarify terminology that aligns with the calculation used to score the indicator when student membership increases.

Indicator 20 would be revised to correct misspelled terminology used in the calculation worksheets.

The proposed amendment would also update statutory references in subsections (i) and (k).

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance, 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 expand an existing regulation by clarifying terminology used to define FIRST indicators.

The proposed rulemaking 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 limit or 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. Lopez 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 ensuring that the provisions of the financial accountability rating system align to make the indicators uniform for all school districts and charter schools and would provide a fair and equitable rating for all school districts and charter schools. 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: The 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 April 24, 2020, and ends June 8, 2020. 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 April 24, 2020. 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/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §12.104, which subjects open-enrollment charter schools to the prohibitions, restrictions, or requirements relating to public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, G, and J, and TEC, Chapter 39A; TEC, §39.082, which requires the commissioner to develop and implement a financial accountability rating system for public schools and establishes certain minimum requirements for the system, including an appeals process; TEC, §39.083, which requires the commissioner to include in the financial accountability system procedures for public schools to report and receive public comment on an annual financial management report; TEC, §39.085, which requires the commissioner to adopt rules to implement TEC, Chapter 39, Subchapter D, which addresses financial accountability for public schools; and TEC, §39.151, which requires the commissioner to provide a process by which a district or charter school can challenge an agency decision related to academic or financial accountability under TEC, Chapter 39. This process must include a committee to make recommendations to the commissioner. These provisions collectively authorize and require the commissioner to adopt the financial accountability system rules, which implement each requirement of statute applicable to districts and open-enrollment charter schools.


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

(e) The TEA will base the financial accountability rating of a school district on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediately prior fiscal year.

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

(4) The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 are based on financial data from fiscal years 2017, 2018, and 2019, respectively, and are pro-

Figure: 19 TAC §109.1001(e)(4)

(5) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated April 2020 [June 2019] for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(e)(5)

(6) (No change.)

(i) The TEA will base the financial accountability rating of an open-enrollment charter school on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

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


Figure: 19 TAC §109.1001(f)(4)

(5) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated April 2020 [June 2019] for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(5)

(6) (No change.)

(g) - (h) (No change.)

(i) The types of financial accountability ratings that school districts or open-enrollment charter schools may receive for the rating year 2015-2016 and all subsequent rating years are as follows.

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

(5) No Rating. Beginning with the financial accountability rating for rating year 2016-2017 and all subsequent rating years, in accordance with the procedures established in this section, a school district receiving territory due to an annexation order by the commissioner under the TEC, §13.054, or consolidation under the TEC, Chapter 49 [44], Subchapter H, will not receive a rating for two consecutive rating years beginning with the rating year that is based on financial data from the fiscal year in which the order of annexation becomes effective. After the second rating year, the receiving district will be subject to the financial accountability rating system established by the commissioner in this section.

(j) (No change.)

(k) The commissioner may lower a financial accountability rating based on the findings of an action conducted under the TEC, Chapter 39 or 39A, or change a financial accountability rating in cases of disaster, flood, extreme weather conditions, fuel curtailment, or another calamity.

(l) - (q) (No change.)

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

Filed with the Office of the Secretary of State on April 13, 2020.

TRD-202001438

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: May 24, 2020

For further information, please call: (512) 475-1497

CHAPTER 150. COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL

SUBCHAPTER AA. TEACHER APPRAISAL

19 TAC §150.1012, §150.1013

The Texas Education Agency (TEA) proposes new §150.1012 and §150.1013, concerning teacher appraisal. The proposed new sections would implement Texas Education Code (TEC), §21.3521 and §48.112, by establishing rules for teacher designation.

BACKGROUND INFORMATION AND JUSTIFICATION: House Bill 3, 86th Texas Legislature, 2019, added TEC, §21.3521, which established a local optional teacher designation system, and TEC, §48.112, which established a teacher incentive allotment. Proposed new §150.1012 and §150.1013 would implement the new statutes by specifying the requirements for school districts and charter schools to implement local teacher designation systems and the requirements for teachers with certification by the National Board for Professional Teaching Standards to be designated as recognized.

Following is a description of proposed new §150.1012 and §150.1013.

§150.1012. Local Optional Teacher Designation System

Proposed new subsection (a) would define terms used in the section. The subsection would also establish fees for teacher incentive allotment teacher designation and system renewal, as allowable under TEC, §21.3521(i).

Proposed new subsection (b) would specify the eligibility requirements for teachers to receive designations under an approved local optional teacher designation system and generate teacher incentive allotment funds for designation.

Proposed new subsection (c) would outline the application and approval requirements for school districts to be approved to designate teachers through a local teacher designation system.
Proposed new subsection (d) would address the process for districts to be approved to expand or amend their local designation systems.

Proposed new subsection (e) would specify the monitoring and program evaluation process for approved local designation systems, which includes an annual data collection.

Proposed new subsection (f) would outline the reasons a teacher's designation may be revoked or a district's approval to designate teachers through their local designation system may be revoked.

Proposed new subsection (g) would establish how a school district must use the funds received through the teacher incentive allotment.

§150.1013. National Board for Professional Teaching Standards

Proposed new subsection (a) would define terms used in the section.

Proposed new subsection (b) would specify the requirements for teachers to be eligible for designation.

Proposed new subsection (c) would establish the process for school districts to be reimbursed for fees paid to the National Board for Professional Teaching Standards. If National Board fees were paid by a teacher, the district must establish a process to ensure the teacher is reimbursed prior to the district being reimbursed by TEA.

Proposed new subsection (d) would address the use of funds received through the teacher incentive allotment.

FISCAL IMPACT: Tim Regal, associate commissioner for education support, 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 beyond what the authorizing statute requires.

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: Proposed new §150.1012(a)(2) would impose fees on a school district requesting approval of a teacher designation system or renewal of such a system. However, in accordance with TEC, §21.3521, the proposed fees are not subject to Texas Government Code, §2001.0221.

The proposed rulemaking 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 expand, limit, or 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. Regal 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 ensuring that rule language is based on current law and providing school districts and open-enrollment charter schools with clear processes and requirements to implement a local optional teacher designation system and designate teachers with National Board certification. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal imposes a data and reporting impact on school districts and charter schools that apply to offer a local optional teacher designation system. This data collection is necessary to implement TEC, §21.3521. The data collected will include a qualitative and quantitative application, yearly performance evaluations once approved, and additional qualitative and quantitative applications as local designation systems expand.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The 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 April 24, 2020, and ends May 26, 2020. 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 April 24, 2020. 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/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valdez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §21.3521, as added by House Bill (HB) 3, 86th Texas Legislature, 2019, which specifies that the commissioner: (1) shall ensure that local optional teacher designation systems meet the statutory requirements for the system; (2) shall prioritize high needs campuses; (3) shall enter into a memorandum of understanding with Texas Tech University regarding assessment of local iterations of the local optional teacher designation system; (4) shall periodically conduct evaluations of the effectiveness of the local optional teacher designation system; (5) may adopt fees, which are exempted from the requirements of Texas Government Code, §2001.0045 and §2001.0221, to implement the local optional teacher designation system; and (6) may adopt rules to implement the local optional teacher designation system; and TEC, §48.112, as added by HB
3, 86th Texas Legislature, 2019, which established a teacher incentive allotment and requires the commissioner to designate rural campuses and annually make available to the public a list of campuses with projected allotment amounts per teacher designation at each campus.


§150.1012. Local Optional Teacher Designation System.

(a) General provisions.

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

(A) Active Texas certification—A valid certification labeled as provisional, professional, or standard under §230.31(a) of this title (relating to Types of Certificates) or a visiting international teacher certification under §230.41 of this title (relating to Visiting International Teacher Certificates).

(B) Charter school—A Texas public school that meets one of the following criteria:

(i) is operated by a charter holder under an open-enrollment charter granted either by the State Board of Education or commissioner of education pursuant to Texas Education Code (TEC), §12.101, identified with its own county district number;

(ii) has a charter granted under TEC, Chapter 12, Subchapter C, and is eligible for benefits under TEC, §§11.174 and 48.252; or

(iii) has a charter granted under TEC, §§29.259, and Human Resources Code, §221.002.

(C) Classroom teacher—An educator who is employed by a school district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide or a full-time administrator.

(D) Data capture year—The year in which the teacher observation and student growth measure is collected based on the proposed local teacher designation system.

(E) Designated teacher—An exemplary, master, or recognized teacher.

(F) Eligible teaching assignment—An assignment based on campus, subject taught, or grade taught.

(G) National Board certification—Certification issued by the National Board for Professional Teaching Standards.

(H) Provisional approval—Conditional approval of a school district local optional teacher designation system that would require resubmission of system review and/or data validation for further approval.

(I) Reliability—The degree to which an instrument used to measure teacher performance and student growth produces stable and consistent results.

(J) Rural—A campus within a school district with fewer than 5,000 enrolled students that is categorized as a rural district type by the Texas Education Agency (TEA), a campus within a school district with fewer than 5,000 enrolled students categorized as rural by the National Center for Education Statistics, or a campus defined in TEC, §48.112(o)(1).

(K) School district—The definition of a school district includes charter schools as defined in subparagraph (B) of this paragraph.

(L) Student growth—Student academic progress achieved in response to the pedagogical practices of teachers, as measured at the individual teacher level by one or more standards-aligned measures of student growth.

(M) Teacher observation—One or more observations of a teacher instructing students for a minimum of 45 minutes or multiple observations that aggregate to at least 45 minutes.

(N) Validity—The degree to which an instrument used to measure teacher performance and student growth measures what it is intended to measure.

(2) Fees for teacher incentive allotment teacher designation and system renewal. A school district requesting approval of a teacher designation system or renewal of such a system shall pay the applicable fees from the following list:

(A) a $500 fee for each teacher submitted for designation to TEA; or

(B) a system renewal fee to be determined by the commissioner and established in rule.

(b) Teacher eligibility.

(1) Teachers eligible to earn or receive designations under an approved local optional teacher designation system must meet the following requirements:

(A) the teacher holds an active Texas certification under Chapter 233 of this title (relating to Categories of Classroom Teacher Certificates), a Reading Specialist Certificate under Chapter 239, Subchapter D, of this title (relating to Reading Specialist Certificate), or a legacy Master Teacher Certificate;

(B) the teacher is employed or is to be employed by the recommending school district in a role ID coded as 087 (Teacher) in the Texas Student Data System Public Education Information Management System (TSDS PEIMS) description of codes for 90 days at 100% of the day (equivalent to four and one-half months or a full semester) or 180 days at 50-99% of the day and compensated for that employment; and

(C) the teacher is not currently designated under a local optional teacher designation system, unless the teacher is being recommended for a higher designation or is in the last year of a teacher designation.

(2) School districts are eligible to receive funding for each designated teacher if the teacher meets the requirements in paragraph (1)(A) and (B) of this subsection.

(c) Application procedures and approval process.

(1) The following provisions apply to applications submitted under this section.

(A) If TEA determines that an application is incomplete, TEA may provide the applicant with notice of the deficiency and an opportunity to submit missing required information. If the missing required information is not submitted within seven calendar days after notice is provided, the application will be denied.

(B) If TEA determines that an application does not meet the standards established under TEC, §21.3521, and this section, TEA may permit the applicant to resubmit the application within three months of the original submission. If no resubmission is timely made, the application will be denied.
(C) An applicant that demonstrates the need for ongoing support will be required to submit additional information that may result in provisional approval for one year. A school district with this approval status cannot add eligible teaching assignments to its local optional teacher designation system.

(D) An applicant that has a local optional teacher designation system that has been paying teachers in the 2019-2020 school year may be issued provisional approval for two years if the system does not contain either a teacher observation component as specified in paragraph (2)(A)(i) of this subsection or a student growth component as specified in paragraph (2)(A)(ii) of this subsection. A school district with this approval status cannot add eligible teaching assignments to its local optional teacher designation system.

(E) Applications that are determined to meet the standards established under TEC, §21.3521 and §48.112, and this section shall be approved for an initial term of five years.

(2) The application shall include the following for each teacher group:

(A) components of a local system for issuing designations, including:

(i) a teacher observation component that contains:

(I) a plan for calibration, congruence, and review of teacher observation data and implementation of next steps; and

(II) an approved teacher observation rubric including the Texas Teacher Evaluation and Support System, Marzano’s Teacher Evaluation Model and rubric created by the National Institute for Excellence in Teacher and The Danielson Group, or another rubric that is based on observable, job-related behaviors, including teacher implementation of discipline management and the performance of teachers’ students. A school district may be required to provide teacher observation videos if the ratings cannot be verified from the data submitted; and

(ii) a student growth component that:

(I) if using a student learning objective, is standards-aligned, measures the level of preparedness for each student at the beginning of the school, and measures the mastery level for each student at the end of the school year based on a body of evidence;

(II) if using a portfolio method, demonstrates that student work is standards-aligned, demonstrates mastery of standards, and includes criteria for scoring; or

(III) if using school district- or teacher-created assessments, is standards-aligned and conforms to a district rubric for district- or teacher-created assessments. A school district must approve district- or teacher-created assessments for the purpose of determining student growth by using a district process and rubric for approval of such assessments;

(B) test administration processes for all student growth that will lead to validity and reliability of results, including:

(i) test security protocols;

(ii) testing windows;

(iii) testing accommodations; and

(iv) annual training for test administrators; and

(C) data for all teachers in eligible teaching assignments, including student growth, and observation data for all teachers in eligible teaching assignments for the data capture year. Multi-year data shall include student growth and observation data from the same year and teaching assignment.

(d) System expansion and amendments.

(1) School districts must apply for approval for additional eligible teaching assignments.

(2) Proposed amendments to the student growth measure or teacher observation component of previously approved school district teacher designation systems must be submitted to TEA at least three months before implementing the new system. Additional information and application processes may be requested.

(e) Monitoring and program evaluation of approved local designation systems. For the annual data submission, approved school districts shall submit the following information regarding a local teacher designation system:

(1) the distribution of allotment funds from the previous school year in accordance with the funding provisions of subsection (g) of this section;

(2) a response plan to annual surveys administered to teachers, campus principals, and human resources personnel gauging the perception of a school district’s local designation system; and

(3) teacher observations and student growth measure data for all teachers in eligible teaching assignments if school districts are submitting new teacher designations. TEA reserves the right request data for the purposes of performance evaluation and investigation based on data review outcomes.

(f) Continuing approval and renewal.

(1) Approved local optional teacher designation systems are subject to review at least once every five years. However, a review may be conducted at any time at the discretion of TEA.

(2) Approval of local optional designation systems are voidable by TEA for one or more of the following reasons:

(A) failure to fulfill all local optional designation system requirements;

(B) failure to comply with annual data submission requirements;

(C) failure to comply with the provisions of TEC, §21.3521 and §48.112;

(D) failure to implement the local optional teacher designation system as approved by TEA and Texas Tech University; or

(E) at the discretion of the commissioner.

(3) Approval of individual teacher designations are voidable by TEA for one or more of the following reasons:

(A) a teacher has not fulfilled all designation requirements;

(B) the school district at which the designation was earned has had its local optional designation system voided;

(C) the National Board for Professional Teaching Standards revokes a National Board certification that provided the basis for a teacher’s designation;

(D) the suspension, revocation, cancellation, or surrender of a certificate issued by the State Board for Educator Certification to a designated teacher; or

(E) at the discretion of the commissioner.
(g) Funding.

(1) State funding.

(A) Teacher incentive allotment funds will be disbursed to school districts in the same school year for which the teacher designations are approved. The initial disbursement may occur either upon final approval of a local teacher designation system or in the school year following final approval.

(ii) For the initial disbursement after the approval of a local teacher designation system or system expansion, at least 90% of each allotment received must be spent on compensation of teachers employed at the campus at which the teacher for whom the school district received the allotment was employed for the first year of the designation.

(ii) Disbursements subsequent to the initial disbursement must meet the requirements of paragraph (2) of this subsection.

(B) A school district is eligible to earn the base allotment for each designated teacher assigned to a zero-enrollment campus or to central administration if the designated teacher meets the requirements in subsection (b)(2) of this section, plus the multiplier based on the school district's average student point value and rural status, if applicable.

(C) Funding for teachers who work at multiple campuses shall be distributed proportionally by the percent of time the employee is working in a role coded as 087 (Teacher) in the TSDS PEIMS code descriptions at each campus.

(2) Status and use of state funds. A school district that receives teacher incentive allotment funding must comply with the requirements of TEC, §48.112. Allotment funding generated by a designated teacher working for multiple school districts shall be split equally among the districts that employ the teacher.

§150.1013. National Board for Professional Teaching Standards.

(a) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Active Texas certification--A valid certification labeled as one year, provisional, professional, or standard under §230.31(a) of this title (relating to Types of Certificates) or a visiting international teacher certification under §230.41 of this title (relating to Visiting International Teacher Certificates).

(2) Charter school--A Texas public school that meets one of the following criteria:

(A) is operated by a charter holder under an open-enrollment charter granted either by the State Board of Education or commissioner of education pursuant to Texas Education Code (TEC), §12.101, identified with its own county district number;

(B) has a charter granted under TEC, Chapter 12, Subchapter C, and is eligible for benefits under TEC, §11.174 and 48.252, or

(C) has a charter granted under TEC, §29.259, and Human Resources Code, §221.002.

(3) Classroom teacher--An educator who is employed by a school or district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide or a full-time administrator.

(4) National Board certification--Certification issued by the National Board for Professional Teaching Standards.

(5) School district--The definition of a school district includes charter schools as defined in paragraph (2) of this subsection.

(b) Eligibility.

(1) Teachers with current National Board certification are eligible for a recognized designation starting in the 2020-2021 school year if the teacher:

(A) meets the requirements in §150.1012(b)(1)(A) of this title (relating to Local Optional Teacher Designation System); and

(B) registers his or her National Board certification in Texas in the National Board Certified Teacher directory by the annual date set by the commissioner.

(2) Teachers with current National Board certification are eligible for a recognized designation starting in the 2019-2020 school year if:

(A) the teacher meets the requirements in §150.1012(b)(1)(A) of this title;

(B) the teacher registers his or her National Board certification in Texas in the National Board Certified Teacher directory by the annual date set by the commissioner; and

(C) the school district at which the teacher with National Board certification was employed in the 2019-2020 school year can demonstrate evidence of differentiated compensation for the teacher paid during the 2019-2020 school year.

(3) Teachers who are designated as recognized based on paragraphs (1) and (2) of this subsection are eligible to earn and receive designations under §150.1012 of this title.

(c) Reimbursement.

(1) Beginning with the 2020-2021 school year, the first year of recognized designation will be the year in which the National Board certification was earned. For National Board certifications earned prior to the 2020-2021 school year, the first year of the recognized designation will be the 2020-2021 school year unless the 2020-2021 school year is the last year of National Board certification.

(2) The last valid year of the recognized designation is the last school year in which the National Board certification is valid unless the teacher earned a designation in a local optional teacher designation system under §150.1012 of this title, in which case the later of last year of designation applies.

(3) School districts are eligible to receive funding for a designated teacher if the teacher meets the following requirements:

(A) the teacher meets the requirements in §150.1012(b)(1)(A) of this title; and

(B) the teacher has been or will be employed by the school district receiving the funding in a role ID coded as 087 (Teacher) in the Texas Student Data System Public Education Information Management System description of codes for 90 days at 100% of the day (equivalent to four and one-half months or a full semester) or 180 days at 50-99% of the day and compensated for that employment.

(c) Reimbursement.

(1) Beginning in the 2020-2021 school year, school districts may request reimbursement for the following eligible National Board fees paid under TEC, §21.3521, by the district or the teacher with National Board certification when National Board certification has been successfully earned:

PROPOSED RULES   April 24, 2020   45 TexReg 2639

Overview and Explanation of the Proposed Rule. The proposed new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorize the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council’s duties and implement Chapter 507. Section 2001.004 of the Tex. Gov’t Code requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. These proposed rules are the general framework regarding the Executive Council’s operations and the implementation of its statutory duties.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are 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 rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules 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 rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

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

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined that for the first five-year period the proposed rules are 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 rules 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 rules 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 rules do 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 rules are 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 rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the this agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, since although they are new rules they essentially consolidate the rules from four regulatory boards into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation; they do not increase or decrease the num-

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ber of individuals subject to the rules’ applicability; and they do not positively or adversely affect the state’s economy.

Taking Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. 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 rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The new rules are 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 these new rules 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.

Lastly, the Executive Council proposes these new rules 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 proposal.

§881. Authority.

This chapter is promulgated under the authority of Occupations Code, Chapter 507, and applies to each member board.

§881. Definitions.

(a) The following definitions are generally applicable throughout the agency's rules and policies:

(1) The term "ALJ" as used herein shall refer to an administrative law judge employed by SOAH.

(2) The terms "Chapter 501," "Chapter 502," "Chapter 503," "Chapter 505," and "Chapter 507" as used herein shall refer to the corresponding chapter in the Occupations Code.

(3) The term "Executive Council" or "Council" as used herein shall refer to the Texas Behavioral Health Executive Council (BHEC).

(4) The term "member board" as used herein shall refer to:

(A) The Texas State Board of Examiners of Marriage and Family Therapists (TSBEMFT);

(B) The Texas State Board of Examiners of Professional Counselors (TSBEP);

(C) The Texas State Board of Examiners of Psychologists (TSBEP); or

(D) The Texas State Board of Social Worker Examiners (TSBSWE).

(5) The term "PFD" as used herein shall refer to a proposal for decision issued by an ALJ.

(6) The terms "professional development" and "continuing education" as used herein have the same meaning.

(7) The term "SOAH" as used herein shall refer to the State Office of Administrative Hearings.

(8) The term "TAC" as used herein shall refer to the Texas Administrative Code.

(b) The following definitions apply only to those rules specific to the regulation of the practice of marriage and family therapy:

(1) "LMFT" refers to a licensed marriage and family therapist and has the same meaning as assigned by §502.002 of the Occupations Code.

(2) "LMFT Associate" refers to a licensed marriage and family therapist associate and has the same meaning as assigned by §502.002 of the Occupations Code.

(c) The following definitions apply only to those rules specific to the regulation of professional counseling:

(1) "LPC" refers to a licensed professional counselor and has the same meaning as assigned by §503.002 of the Occupations Code.

(2) "LPC Intern" refers to an individual licensed as a professional counselor intern under §503.308 of the Occupations Code.

(d) The following definitions apply only to those rules specific to the regulation of psychology:

(1) "LPA" or "Psychological Associate" refers to an individual licensed as a psychological associate under §501.259 of the Occupations Code.

(2) "LSSP" refers to an individual licensed as a specialist in school psychology under §501.260 of the Occupations Code.

(3) "Provisionally licensed psychologist" or "provisional licensee" means an individual licensed as a psychologist with provisional status under §501.253 of the Occupations Code.

(4) "PSYPACT" refers to the Psychology Interjurisdictional Compact found in Chapter 501, Subchapter L of the Occupations Code.

(e) The following definitions apply only to those rules specific to the regulation of the practice of social work:

(1) "LBSW" refers to a licensed baccalaureate social worker and has the same meaning as assigned by §505.002 of the Occupations Code.
(2) "LCSW" refers to a licensed clinical social worker and has the same meaning as assigned by §505.002 of the Occupations Code.

(3) "LMSW" refers to a licensed master social worker and has the same meaning as assigned by §505.002 of the Occupations Code.

(4) "LMSW-AP" refers to an individual licensed as a master social worker with the advanced practitioner specialty recognition.

§881.3. Council and Board Meetings.

(a) Every regular, special, or called meeting of the Council or a member board shall be open to the public as provided by the Government Code, Chapter 551 ("the Open Meetings Act").

(b) A quorum for the Council or a member board shall consist of a majority of all the respective members as designated by statute. When a quorum is present, a motion before the body is carried by an affirmative vote of the majority of the members present and participating in the vote.

(c) The presiding officers of the Council and member boards may make and second motions, as well as vote on any matter brought before their respective body without the necessity of relinquishing the chair.

(d) The Council and each member board shall provide the public with a reasonable opportunity to appear before the respective body and offer public comment on any issue under the Council's or member board's jurisdiction. Persons wishing to offer public comment must sign in at the beginning of the meeting and may speak during the public comment portion of the meeting. The presiding officer shall maintain decorum and orderly proceedings, and may limit the time allowed for each individual providing public comment.

§881.4. Council Member Terms.

(a) The terms for the Council members selected by the Texas State Board of Examiners of Psychologists and the Texas State Board of Social Worker Examiners shall expire as follows:

(1) for professional members, on February 1st of odd years; and

(2) for public members, on February 1st of even years.

(b) The terms for the Council members selected by the Texas State Board of Examiners of Professional Counselors and the Texas State Board of Examiners of Marriage and Family Therapists shall expire as follows:

(1) for professional members, on February 1st of even years; and

(2) for public members, on February 1st of odd years.

(c) Member boards may reappoint members to serve on the Council without limitation as to the number of terms served.

(d) A member selected to fill a vacancy on the Council holds office for the unexpired portion of the term.

§881.5. Conflicts of Interest and Recusals.

(a) A Council or board member who has any personal or professional interest that might reasonably tend to influence the discharge of the member's duties in a matter pending before the agency, shall disclose that conflict in an open meeting called and held in compliance with Chapter 551 of the Government Code. Should the required disclosure relate to a matter to be considered during a closed meeting, the member shall disclose the conflict during the closed meeting. A Council or board member may neither vote nor otherwise participate in any discussion or decision on a pending matter where the member's personal or professional interest might reasonably tend to influence the discharge of the member's duties. Any conflict disclosed by a board member shall be entered in the minutes or certified agenda of the meeting.

(b) An individual who has any personal or professional interest that might reasonably tend to influence the discharge of the individual's duties while serving on a committee, temporary suspension or disciplinary review panel, or workgroup, shall disclose that conflict to the committee, panel, or workgroup, as well as to the Executive Director. The individual may neither vote nor otherwise participate in any discussion or decision on a pending matter where the individual's personal or professional interest might reasonably tend to influence the discharge of the individual's duties. Any conflict shall be entered in any minutes or notes kept by the committee, panel, or workgroup.

(c) A Council or board member may not vote or otherwise participate in any discussion or decision conducted during a meeting held in compliance with Chapter 551 of the Government Code regarding a complaint or eligibility proceeding previously heard by the member while serving on a temporary suspension panel or disciplinary review panel. A Council or board member who is disqualified under this subsection shall be recused from any voting or discussions on the matter, and the recusal shall be entered in the minutes or certified agenda of the meeting.

(d) Any individual who is required to make a disclosure or is recused or restricted from voting or participating in some manner under this rule, shall refrain from influencing or attempting to influence the discussion or decision on a matter in which the individual is prohibited from participating. The presiding officer or Executive Director may take reasonable steps to enforce this requirement, including requiring that the individual leave the room before beginning or continuing with a meeting, hearing, discussion, or vote.

(e) A disclosure required by this rule must be made as soon as possible once an individual becomes aware of facts giving rise to a duty to take action under this rule. Any information received by a Council or board member or agency staff that might reasonably lead one to believe that an individual has a duty to take action under this rule must be sent to the Executive Director, who shall then forward the information to the individual.

(f) Except as provided for in subsection (c) of this section, this rule shall not operate to preclude a Council member from voting or otherwise participating in any discussion or decision due solely to a member's service on an underlying member board.

(g) It is presumed that the judgment of a reasonable person subject to this rule would not be materially affected because the individual holds a license issued by this agency or one of its member boards.

(h) A person does not have an interest which is in conflict with the proper discharge of duties contemplated under this rule if any benefit or detriment accrues to the person, or any individual or group with whom the person is associated, to no greater extent than any other similarly situated person.

§881.6. Limited Delegation of Executive Council Authority to Member Boards.

By rule, policy, or custom, the Council may delegate to a member board any responsibility or authority not exclusively reserved to the Council in statute. The Council retains responsibility and oversight for any decisions or actions undertaken by a member board under this grant of authority. The Council may reverse, modify, or refer any decisions
or actions taken by a member board under the authority of this rule back to that member board for further action or consideration.

§881.7. Unofficial Statements and Decisions.

Statements and decisions made by an individual Council or board member, an advisory committee member, or a member of the agency staff are not binding on the Council, or its member boards, when conducting agency business, unless otherwise stated in these rules.

§881.8. Former Council or Board Members.

(a) A Council or board member whose term has expired and who has ceased to serve will not be employed or utilized to represent the Council or one of its member boards for two years after the member’s service has ended.

(b) A former Council or board member may not represent that the member is an official or unofficial representative of the Council or one of its member boards. Any such representations are not binding in any way.

(c) A former Council or board member may not disclose confidential or privileged information obtained during the member’s service on the Council or board. Such disclosure is deemed unprofessional conduct and is grounds for disciplinary action.

§881.9. Prohibition Against Dual Office Holding.

(a) The Executive Director and appointed members of the agency (i.e., Council and board members) may not accept an offer to serve in another non-elective office unless they first obtain from the Council or their respective member board, a finding that the member has satisfied Article XVI, §40, of the Texas Constitution.

(b) The Council or board must make a written record of any finding under subsection (a) of this section. The finding must include any compensation that the member or Executive Director receives from holding the additional office, including salary, bonus, or per diem payment.


(a) In the event of a conflict between a Council rule and the state or federal constitution, a state or federal statute, or a rule, guideline, or requirement promulgated by a federal office or agency, the state or federal law, guideline, or requirement shall control.

(b) In the event of a conflict between a rule in 22 TAC Part 41 and Parts 21, 30, 34, and 35; the rules in Part 41 shall prevail.

§881.11. Access to Agency Records by Appointed Members.

(a) Each member of the Council is entitled to access all information and records written, produced, collected, assembled, or maintained by the Council or a member board, including confidential information. The access granted under this subsection is limited to official agency business only.

(b) Each member of an underlying board is entitled to access all information and records written, produced, collected, assembled, or maintained by the member’s respective board, including confidential information. The access granted under this subsection is limited to official agency business only.

(c) A request for access to information or records by a Council or board member must be directed to the Executive Director. If the request for access relates to the Executive Director, the request may be directed to the presiding officer for the Council and the General Counsel.

(d) Notwithstanding the foregoing, a Council or board member may not access any confidential, non-public, or proprietary examination materials if the member intends to apply for or is a current applicant for licensure with this agency.
Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council has determined that for the first five-year period the proposed rules are 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 rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules 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 rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

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

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined that for the first five-year period the proposed rules are 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 rules 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 rules 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 rules do 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 rules are 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 rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the this agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, since although they are new rules they essentially consolidate the rules from four regulatory boards into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules’ applicability; and they do 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 rules. 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 rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimates the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The new rules are 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 these new rules 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 these new rules 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.

Lastly, the Executive Council proposes part of these new rules under the authority found in §2001.021 of the Tex. Gov't Code which requires state agencies to prescribe by rule the form for a petition for adoption of rules by interested persons and the procedure for its submission, consideration, and disposition.

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

§881.20. Rulemaking by the Executive Council.

(a) The Council shall adopt rules necessary to perform its duties and implement Title 3, Subtitle I, Chapter 507 of the Occupations Code. When carrying out its rulemaking functions, the Council shall abide by the requirements of the Administrative Procedure Act found in Chapter 2001 of the Government Code.
(b) The Council shall have exclusive rulemaking authority for the agency, including rules governing general agency operations, administration of licensure, investigation of complaints, and sanction procedures. In connection with this rulemaking authority, the Council must also review draft rules proposed by each member board for anti-competitive impacts, administrative consistency, and good governance concerns.

(c) The Council may propose and adopt a rule governing those matters set forth in §507.153(a) of the Occupations Code if a draft rule has been proposed by the member board for the profession. Member boards may not propose new draft rules or changes to rules except as authorized by §507.153(a).

(d) Member boards must submit a new draft rule or rule change to the Council for consideration by submitting a draft of the rule with any deletions crossed through and additions underlined. The draft must also contain each of the notice components required in a preamble (e.g., §2001.024 of the Government Code) when proposing a new rule or changes to an existing rule. When submitting a new draft rule or rule change to the Council, member boards must also submit any information or comments received from the public in connection with the proposed rule.

(e) When reviewing a draft rule proposed by a member board, the Council may:

(1) Request additional information relevant to the rule from the member board;

(2) Require the member board to conduct new or additional analysis of possible implications of the rule;

(3) Solicit public comment or hold public hearings, or alternatively, request the member board do so; and

(4) Make non-substantive, editorial changes to the rule as necessary.

(f) Following the review of a draft rule submitted by a member board, the Council shall either accept the draft rule as proposed and initiate formal rulemaking proceedings or return the draft rule to the member board for revision. When returning a rule for revision, the Council must include an explanation of the decision to reject the rule as proposed, and may recommend changes that would make the rule acceptable to the Council.

(g) The Council shall, with regard to rules proposed pursuant to §507.153(a) of the Occupations Code, share with the appropriate member board any public comments received following publication of a proposed rule in the Texas Register. Following publication of a proposed rule and review of any public comments received, a member board shall suggest any changes needed to the proposed rule or vote to recommend adoption, tabling, or withdrawal of the rule and advise the Council of such. Thereafter, the Council may adopt the rule as proposed, withdraw or table the rule in accordance with the member board’s recommendation, or return the rule to the member board for further revision. When returning a rule for revision, the Council must include an explanation of the decision to not adopt the rule as proposed, and may recommend any changes that would make the rule acceptable to the Council.

(h) The Council may make non-substantive, editorial changes to a draft rule as necessary.

(i) The Council shall consider each of the following factors when reviewing a draft rule submitted by a member board:

(1) Whether the proposed rule promotes a clearly articulated and affirmatively expressed policy as established by the legislature to displace competition with government action, or whether the proposed rule reflects the exercise of discretion or implied authority by a member board;

(2) Whether absence of the proposed rule poses a significant risk of harm or danger to the public health, safety, or welfare of the residents of the state that is easily recognizable and not remote or dependent on tenuous argument;

(3) Whether the proposed rule seeks to regulate activities or services requiring specialized skill or training and whether the public clearly needs and will benefit from the proposed rule;

(4) Whether the proposed rule would have the effect of directly or indirectly increasing the cost of mental health services and, if so, whether the increase would be more harmful to the public than the harm that might result from the absence of the proposed rule;

(5) Whether the proposed rule would significantly reduce market participation or competition in the state and, if so, whether the reduction would be more harmful to the public than the harm that might result from the absence of the proposed rule; and

(6) Whether the residents of the state are or may be effectively protected by other means.


(a) Any interested person may petition for rulemaking in accordance with §2001.021 of the Government Code by submitting to the Council a written request for the adoption of a rule or rule change. The written request must contain a return mailing address for the agency’s response.

(b) The written request must, at a minimum, set forth or identify the rule the petitioner wants the Council to adopt or change, reasons why the petitioner believes the requested rulemaking is necessary, and include a copy of the proposed rule or any proposed changes with deletions crossed through and additions underlined. Additionally, the written request must affirmatively show that the requestor qualifies as an interested person under this rule. Requests which do not affirmatively show that the requestor qualifies as an interested person under this rule may be denied.

(c) The written request should also address the economic cost to persons required to comply with the rule, the effects of the rule on small or micro-businesses or rural communities, and the impact the rule would have on local employment or economies, if such information can be derived from available sources without undue cost or burden.

(d) The Council will respond to a written request for adoption of a rule from an interested person in accordance with §2001.021 of the Government Code.

(e) The term “interested person” as used in this rule, shall have the same meaning as that assigned by §2001.021(d) of the Government Code. Additionally, a person who submits a petition under this rule must affirm that they qualify as an interested person in the petition. Petitions which do not contain such an affirmation may be denied.

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 April 9, 2020.
TRD-202001402
SUBCHAPTER C. PERSONNEL

22 TAC §§881.30 - 881.32


Overview and Explanation of the Proposed Rule. The proposed new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.101 and 507.102 of the Tex. Occ. Code authorize the Executive Council to employ an executive director and develop policymaking and management responsibilities for the Executive Council and executive director. Additionally, §656.048 of the Tex. Gov't Code requires state agencies to adopt rules relating to training and education for agency administrators and employees. Lastly, §661.002 of the Tex. Gov't Code requires state agencies to adopt rules and prescribe procedures relating to the operation of the agency sick leave pool. These proposed rules implement these requirements.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are 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 rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules 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 rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

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

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined that for the first five-year period the proposed rules are 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 rules 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 rules 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 rules do 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 rules are 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 rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, since although they are new rules they essentially consolidate the rules from four regulatory boards into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do 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 rules. 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 rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.
Statutory Authority. The new rules are 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 these new rules 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 proposes part of these new rules under the authority found in §656.048 of the Tex. Gov't Code which requires state agencies to adopt rules relating to training and education for agency administrators and employees.

Lastly, the Executive Council proposes these new rules pursuant to the authority found in §661.002 of the Tex. Gov't Code which requires state agencies to adopt rules and prescribe procedures relating to the operation of an agency sick leave pool.

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

§881.30. Executive Director.

(a) The Council shall determine qualifications for and employ an Executive Director who shall be the Chief Executive Officer of the agency.

(b) The duties of the Executive Director shall be to administer and enforce the applicable law, to assist in conducting Council meetings, and to carry out other responsibilities as assigned by the Council.

(c) The Executive Director shall have the authority and responsibility for the operations and administration of the agency and such additional powers and duties as prescribed by the Council. As chief executive of the agency, the Executive Director shall be responsible for the management of all aspects of administration of the agency to include personnel, financial and other resources in support of the applicable law, rules, policies, mission and strategic plan of the agency. The Executive Director may delegate any responsibility or authority to an employee of the Council. Responsibility or authority granted to the Executive Director shall include an employee designated by the Executive Director, yet accountability to the Council for all management and activity rests with the Executive Director.

(d) The Executive Director may implement any emergency orders or proclamations issued by the Governor to suspend or amend existing statutes and rules. The Executive Director will notify the Council of the actions taken to comply with the Governor’s emergency orders or proclamations.

§881.31. Agency Staff Training and Education.

(a) In accordance with the State Employee Training Act found at Government Code, Chapter 656, Subchapter C, agency staff may be permitted or required to attend training or education programs if those programs relate to the employee's duties or prospective duties, materially aid effective administration of the agency's functions, and serve an important public purpose.

(b) The Council's Executive Director shall be eligible to attend training and education programs, and shall determine which other employees will be permitted or required to attend training.

(c) Employees who receive training must utilize the training opportunity to prepare for technological and legal developments facing the agency, or to increase professional capabilities or competence directly related to the work of the agency.

(d) An employee, prior to receiving training for three or more months, during which the employee does not perform the employee's regular duties, must enter into a written agreement with the Council to comply with the requirements of §656.103(a) of the Government Code. Employees who fail or refuse to enter into such an agreement shall not be permitted to attend training lasting three or more months.

(e) The Council shall pay the costs and expenses related to approved training in accordance with the State Employee Training Act, the Comptroller's rules and regulations, and the Council's own policies relating to employee reimbursement.

§881.32. Sick Leave Pool.

(a) The Council hereby establishes a sick leave pool to assist employees and their immediate families in dealing with catastrophic illness or injury that forces them to exhaust all accrued sick leave.

(b) The Council’s sick leave pool shall be administered by the Executive Director in accordance with Chapter 661 of the Government Code, the rules and regulations of the Employees Retirement System of Texas, and the Texas Human Resources Statutes Inventory manual published by the Texas State Auditor's Office.

(c) The Executive Director shall develop and prescribe procedures for the operation of the sick leave pool, and include such procedures in the Council’s personnel manual.

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

File with the Office of the Secretary of State on April 9, 2020.

TRD-202001403
Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Earliest possible date of adoption: May 24, 2020
For further information, please call: (512) 305-7700

SUBCHAPTER D. CONTRACTS AND PROCUREMENT

22 TAC §881.40, §881.41

The Texas Behavioral Health Executive Council proposes new §881.40 and §881.41, relating to Contracts and Procurement for the Executive Council.

Overview and Explanation of the Proposed Rule. The proposed new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Section 2155.076 of the Tex. Gov't Code requires state agencies to develop and adopt protest procedures for resolving vendor protests relating to purchasing issues, which must be consistent with the comptroller's rules. Section 2156.005 of the Tex. Gov't Code requires state agencies making purchases to adopt the comptroller’s rules related to bid opening and tabulation. Section 2260.052 of the Tex. Gov't Code requires state agencies with rulemaking authority to develop rules to govern the negotiation and mediation of a claim for breach of contract. Section 2261.202 of the Tex. Gov't Code requires state agencies that make procurements to establish and adopt by rule a policy that clearly defines the

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contract monitoring roles and responsibilities. Section 2161.003 of the Tex. Gov't Code requires a state agency to adopt the comptroller's rules adopted under §2161.002 of the Tex. Gov't Code, pertaining to historically underutilized businesses, as the agency's own rules. These proposed rules implement these requirements.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are 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 rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules 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 rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

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

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined that for the first five-year period the proposed rules are 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 rules 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 rules 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 rules do 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 rules are 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 rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, since although they are new rules they essentially consolidate the rules from four regulatory boards into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do 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 rules. 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 rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Record@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov’t Code.

Statutory Authority. The new rules are 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 these new rules 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.

Lastly, the Executive Council proposes these new rules pursuant to the authority found in §§2155.076, 2156.005, 2161.002, 2161.003, 2260.052, and 2261.202 of the Tex. Gov't Code which as previously discussed requires state agencies to enact rules pertaining to bidding, purchasing, contracting, procurement, protests, and dispute resolution.

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

§881.40. Agency Contracts and Purchasing
(a) In accordance with §2155.076 of the Government Code, the Council adopts by reference the rules of the Comptroller of Public Accounts regarding purchasing protest procedures set forth in 34 TAC, Part 1, Chapter 20, Subchapter F, Division 3. All vendor protests un-
Under this rule must be submitted to the Council’s Chief Financial Officer, who shall initiate a review of the protest. Any appeal to a determination of a protest by the Chief Financial Officer shall be to the Executive Director, who may elect to submit the appeal to the Council for final determination. The Council shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the Council’s retention schedule.

(b) In accordance with §2156.005 of the Government Code, the Council adopts by reference the rules of the Comptroller of Public Accounts regarding bid opening and tabulation set forth in 34 TAC Part 1, Chapter 20, Subchapter C, Division 2.

(c) In accordance with §2260.052 of the Government Code, the Council adopts by reference the rules of the Office of the Attorney General in 1 TAC Part 3, Chapter 68 (relating to Negotiation and Mediation of Certain Contract Disputes). The rules set forth a process to permit parties to structure a negotiation or mediation in a manner that is most appropriate for a particular dispute regardless of the contract’s complexity, subject matter, dollar amount, or method and time of performance.

(d) In accordance with §2261.202 of the Government Code, the Executive Director shall be responsible for monitoring agency contracts and for monitoring agency compliance with all applicable laws governing agency contracting. The Executive Director may delegate those duties necessary to carry out this responsibility to other agency staff who report directly to the Executive Director.

§881.41. Use of Historically Underutilized Businesses (HUBS).

In accordance with §2161.003 of the Government Code, the Council adopts by reference the rules of the Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter D, Division 1.

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 April 9, 2020.

TRD-202001404
Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Earliest possible date of adoption: May 24, 2020
For further information, please call: (512) 305-7700

CHAPTER 882. APPLICATIONS AND LICENSING

SUBCHAPTER A. LICENSE APPLICATIONS

22 TAC §§882.1 - 882.13

The Texas Behavioral Health Executive Council proposes new §§882.1 - 882.13, relating to License Applications.

Overview and Explanation of the Proposed Rule. The proposed new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Section 507.254 of the Tex. Occ. Code authorizes the Executive Council to issue a license, which must also include the name of the applicable board. Generally, these proposed new rules implement the application process and procedures which will be used by the Executive Council.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are 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 rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules 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 rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

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

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined that for the first five-year period the proposed rules are 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 rules 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 rules 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 rules do not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.004 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 rules are 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 rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the this agency; they do not require an increase or decrease in fees paid to the
agency; they do not create a new regulation, since although they are new rules they essentially consolidate the rules from four regulatory boards into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or adversely affect the state's economy.

Takeings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. 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 rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The new rules are 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 these new rules 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 proposes these new rules in part under the authority found in §§2005.003 and 2005.006 of the Tex. Gov't Code which requires state agencies to adopt rules for processing applications and issuing licenses, as well as complaint procedures for the same.

Lastly, the Executive Council proposes these new rules 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.

Sections 507.252 - 507.254 and 507.259 of the Tex. Occ. Code are affected by these proposed new rules; no other code, articles or statutes are affected by this proposal.


Applications for licensure are processed in the following manner:

(1) Applicants must submit for review an official application form, the corresponding application fee, and all information required by law to the Council. The responsibility for submitting a complete application resides solely with the applicant. An application submitted with the incorrect fee amount will be returned to the applicant.

(2) Applications are reviewed in the order in which they are received, unless the applicant qualifies for expedited processing under §55.005 of the Occupations Code. Applicants who qualify for expedited processing will have their applications processed as soon as practicable. The Council will notify applicants of any deficiency in their application.

(3) Applications for licensure under Chapters 502, 503, and 505 of the Occupations Code which are incomplete will be held open for one year from the date of receipt, after which, if still incomplete, they will expire. Applications for licensure under Chapter 501 of the Occupations Code which are incomplete will be held open for 90 days from the date of receipt, after which, if still incomplete, they will expire. If licensure is sought after an application has expired, a new application and filing fee must be submitted.

(4) Applications containing a substantive problem with an applicant's qualifications that cannot be resolved by reviewing staff shall proceed through the following chain of review until such matter is resolved to the agency's satisfaction:

(A) Reviewing staff's immediate supervisor;

(B) Licensing Manager;

(C) Executive Director;

(D) Committee established by the member board for the profession charged with addressing application or licensing matters; and

(E) Full member board for the profession.

(5) Once an application is complete, the applicant is either approved or denied to sit for any required examinations, or approved or denied licensure. Agency staff will send out a letter reflecting the agency's determination and instructions for the next steps needed, if any.

§882.2. General Application File Requirements.

(a) To be complete, an application file must contain all information needed to determine an applicant's eligibility to sit for the required examinations, or the information and examination results needed to determine an applicant's eligibility for licensure. At a minimum, all applications for licensure must contain:

(1) An application in the form prescribed by the Council based on member board rules and corresponding fee(s);

(2) An official transcript from a properly accredited institution indicating the date the degree required for licensure was awarded or conferred. Transcripts must be received by the Council directly from the awarding institution, a transcript or credential delivery service, or a credentials bank that utilizes primary source verification;

(3) A fingerprint-based criminal history record check through the Texas Department of Public Safety and the Federal Bureau of Investigation;

(4) A self-query report from the National Practitioner Data Bank (NPDB) reflecting any disciplinary history or legal actions taken against the applicant. A self-query report must be submitted to the agency in the sealed envelope in which it was received from the NPDB;

(5) Verification of the citizenship and immigration status information of non-citizen, naturalized, or derived U.S. citizen appli-
cants through the DHS-USCIS Systematic Alien Verification for Entitlements Program (SAVE). Applicants must submit the documentation and information required by the SAVE program to the Council;

(6) Examination results for any required examinations taken prior to applying for licensure;

(7) Documentation of any required supervised experience, supervision plans, and agreements with supervisors; and

(8) Any other information or supportive documentation deemed relevant by the Council and specified in its application materials.

(b) The Council will accept examination results and other documentation required or requested as part of the application process from a credentials bank that utilizes primary source verification.

§882.3. Review and Appeal of License Denials.

(a) If an application for licensure is denied at the staff or committee level, the applicant will have 30 days from the date of denial as shown on the letter to submit a written request to the Council for review by the member board. The written request must be received on or before the 30th day following the date of denial for the request to be timely. If a timely written request for review is not made, the denial is final.

(b) If an application for licensure is denied by a member board, the applicant will have 30 days from the date of denial as shown on the letter to submit a written request to the Council for a hearing at SOAH. The Council must receive the written request on or before the 30th day following the date of denial for the request to be timely. If a timely request is made, the Council shall refer the contested case to SOAH for a hearing. If a timely written request is not made, the denial is final.

(c) The Council shall render a final decision on an application for licensure based upon the record following an appeal at SOAH. The final decision shall be in writing and shall be signed by the presiding officer for the Council or the Executive Director.

§882.4. Assistance in Licensing Determinations.

(a) Each member board shall be responsible for reviewing any licensing matters and questions raised or brought to it by agency staff regarding an application or renewal. The member boards may utilize committees to address application or licensing matters, and shall provide the Council with a recommendation as to any licensing matters or questions raised or brought to it by agency staff regarding an application or renewal.

(b) The Council shall review all licensing matters for anti-competitive impacts, administrative consistency, and good governance concerns. The Council may not substitute its judgment in licensing determinations for that of a member board where, in its sole determination, none of the aforementioned concerns are present.

(c) The Council shall solicit input from and request the assistance of a member board when considering an application for issuance or renewal of a license if there are concerns about an applicant related to the standard of care or professional qualifications. The Council may specify the format of the input and assistance requested to satisfy the requirements of this rule.

§882.5. Jurisprudence Examination Requirement.

Applicants must take and pass the jurisprudence examination no more than 6 months prior to submitting an application for licensure to the Council.

§882.6. Limitation on Number of Examination Attempts.

(a) An applicant may take an examination administered or required by the Council no more than three times. Failure to pass an examination subject to this rule within three attempts, will result in an automatic denial of an application.

(b) An applicant whose application is denied under this rule may reapply for licensure, but will not be allowed or approved to sit for the exam again until the applicant has submitted a detailed study plan designed to address the known or suspected areas of deficiency. The study plan must be approved by the relevant member board before authorization will be given to retake the examination.

(c) Examinations which do not require pre-authorization by the Council to take, are not subject to this rule.

§882.7. Reasonable Accommodations for Persons with Disabilities and Dyslexia.

(a) The Council shall comply with applicable provisions of the Americans with Disabilities Act (ADA) in its applications procedures by providing reasonable accommodations that do not violate or undermine the agency’s mission or state law.

(b) It is the responsibility of the individual applicant to inform the Council in advance of any reasonable accommodations needed during the application process, including any examinations conducted by the agency. Only requests which give the Council sufficient notice and opportunity to provide reasonable accommodations without disrupting the normal business of the agency will be considered.

(c) Requests for reasonable accommodations under this rule must contain each of the following:

(1) a written description of the disability, as well as the functional limitations resulting from the disability;

(2) the specific accommodations requested;

(3) a description of any accommodations received in the past for the disability; and

(4) a formal medical or mental health diagnosis made or confirmed within the last five years by a licensed professional qualified to make the diagnosis describing the need for specific accommodations. The diagnosis must have been made or confirmed within the last 12 months for psychiatric disabilities. This requirement does not apply to physical or sensory disabilities of a permanent or unchanging nature.

(d) The Council will provide reasonable examination accommodations to an applicant who has been diagnosed as having dyslexia, as defined in §51.970 of the Education Code. When requesting reasonable examination accommodations under this subsection, the applicant must comply with subsection (c) of this section.

§882.8. Rescheduling of Examination Due to Religious Holy Day.

(a) Applicants wishing to observe a religious holy day on which their religious beliefs prevent them from taking an examination scheduled by the Council on that religious holy day will be allowed to take the examination on an alternate date.

(b) Applicants wishing to take an examination, scheduled on a religious holy day, on an alternate date must submit a written request to take the examination on an alternate date and state the religious holy day they wish to observe. Applicants must submit their written request prior to being scheduled for an examination.

(c) The Council may extend any time periods for completing an examination, as needed when scheduling an alternate examination date.

§882.9. Established Application Processing Times.

(a) The Council shall publish the minimum, maximum, and median times for processing applications during the preceding
of these periods. These figures will be updated on an annual basis.

(b) Applicants whose application processing time exceeds 90 days or the maximum processing time published on the agency's website, whichever is greater, may submit a written complaint to the Executive Director requesting a timely resolution of any dispute arising from the delay.

(c) The Executive Director shall, upon receipt of a proper complaint, review the matter to determine whether the agency has good cause, as that term is defined in §2005.004 of the Government Code, for exceeding the maximum application processing time. If the maximum application processing time was exceeded and good cause is not found, the Council shall refund any application fee paid in connection with the delayed application.

(d) There is no appeal of the determination made by the Executive Director under this rule. A complaint is waived if not filed within 30 days of licensure.

§882.10. Applicants with Pending Complaints.
The Council may hold an application in abeyance up to 180 days if there is a complaint pending against the applicant concerning an alleged violation listed in §507.301 of the Occupations Code. A final decision on the application may not be rendered until the Council has made a final determination on the pending complaint. The applicant will be permitted to take all required exams while the complaint is pending, but will not be licensed unless approved by the Council.

§882.11. Applicants with Foreign Degrees.
(a) An applicant with a foreign degree must submit an official transcript and certified translation when applying for licensure. The official transcript must be translated to English by the issuing institution, a university that is certified by the American Translators Association, a reputable foreign translator or translation service, or a U.S. college or university official. A verification of the degree earned must be included in the application.

(b) An applicant with a foreign degree must have the degree evaluated to determine if it is comparable to the degree required for the particular license sought. Foreign degree evaluations must be sent directly to the Council from the evaluation service, submitted by the applicant in the sealed envelope in which they are received from the evaluation service, or be submitted as directed by agency staff.

(c) Foreign degree evaluations must be conducted by a foreign degree evaluation service that is a member of the National Association of Credential Evaluation Services (NACES). Alternatively, the Council will accept foreign degree evaluations from the National Register of Health Service Psychologists for persons applying under Chapter 501 of the Occupations Code and the International Social Work Degree Recognition and Evaluation Service for persons applying under Chapter 505 of the Occupations Code.

(d) The Council retains the exclusive authority to determine whether a foreign degree is comparable to the degree required for licensure.

§882.12. Refusal to Issue License for Failure to Pay Child Support.
(a) The Council shall, in accordance with §232.0135 of the Family Code, refuse to issue a license to an individual if the Council receives notice from a child support agency that the applicant has failed to pay child support under a support order for six months or more and the child support agency requests the Council to deny issuance of a license.

(b) Following receipt of notice from a child support agency, the Council may not issue a license until the child support agency has notified the Council that the applicant has met one or more of the requirements set out in §232.0135(b) of the Family Code.

(c) The Council may charge the applicant a fee equal to the application fee for a refusal under this rule.

§882.13. Protections Based On Affiliation with Religious Organizations.
In accordance with Chapter 2400 of the Government Code, the Council may not deny an application or renewal of a license based wholly or partly on a person's membership in, affiliation with, or contribution, donation, or other support provided to a religious organization.

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 April 9, 2020.
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Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Earliest possible date of adoption: May 24, 2020
For further information, please call: (512) 305-7700

SUBCHAPTER B. LICENSE

22 TAC §§882.20 - 882.27

The Texas Behavioral Health Executive Council proposes new §§882.20 - 882.27, relating to License.

Overview and Explanation of the Proposed Rule. The proposed new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Section 507.254 of the Tex. Occ. Code authorizes the Executive Council to issue a license, which must also include the name of the applicable board. Generally, these proposed new rules provide the form and function for the licenses issued by the Executive Council.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period that the proposed rules are 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 rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules 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 rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.
Probable Economic Costs. Mr. Spinks has determined that for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined that for the first five-year period the proposed rules are 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 rules 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 rules 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 rules do 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 rules are 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 rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the this agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, since although they are new rules they essentially consolidate the rules from four regulatory boards into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do 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 rules. 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 rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses; offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The new rules are 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 these new rules 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.

Lastly, the Executive Council proposes these new rules 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.

Section 507.254 of the Tex. Occ. Code is affected by these proposed new rules; no other code, articles or statutes is affected by this proposal.

§882.20. Form of License.

(a) Each member board shall be responsible for the content and design of its licenses, subject to the approval of the Council. A license issued by the Council shall prominently reflect the member board for the profession and reference the board being a member of the Council.

(b) A license shall include the full legal name of the license holder at the time of licensure and the unique license number assigned to the license.

§882.21. License Statuses.

(a) Active Status. Any licensee with a license on active status may practice pursuant to that license, subject to any restrictions imposed by the Council. Active status is the only status under which a licensee may engage in the practice of the licensees's respective profession.

(b) Inactive Status.

(1) A licensee with an unrestricted active license may elect inactive status through the Council's online licensing system. A licensee who elects inactive status must return the licensees's current renewal certificate for the license to the Council, and pay the associated fee.

(2) A licensee with an inactive license is not required to comply with continuing education requirements while the license is inactive.

(3) The inactive status period for a license shall coincide with the license renewal period. At the end of the renewal period, if the inactive status has not been renewed or the license returned to active status, the license will expire.
(4) In order to continue on inactive status, an inactive licensee must renew the inactive status each renewal period. Licensees may renew their inactive status through the Council's online licensing system by completing the online renewal requirements and paying the associated fee.

(5) A licensee with a pending complaint may not place a license on inactive status. If disciplinary action is taken against a licensee's inactive license, the licensee must reactivate the license until the terms of the disciplinary action or restricted status have been terminated. Failure to reactivate a license when required by this paragraph shall constitute grounds for further disciplinary action.

(6) An inactive license may be reactivated at any time by submitting a written request to return to active status to the Council's office. When reactivating a license, a licensee must pay the renewal fee associated with the license. A license that has been reactivated is subject to the standard renewal schedule and requirements, including renewal and late fees. Notwithstanding the foregoing, a license that is reactivated within 60 days of its renewal date will be considered as having met all renewal requirements and will be renewed for the next renewal period.

(7) Any licensee reactivating a license from inactive status must provide proof of completion of the continuing education requirements for renewal of that particular license before reactivation will occur.

(8) A licensee wishing to reactivate a license that has been on inactive status for four years or more must take and pass the relevant jurisprudence exam with the minimum acceptable score, unless the licensee holds another license on active status within the same profession.

(c) Delinquent Status. A licensee who fails to renew a license for any reason when required is considered to be on delinquent status. Any license delinquent for more than 12 consecutive months shall expire. A licensee may not engage in the practice of the licensee's respective profession under a delinquent license. The Council may sanction a delinquent licensee for violations of its rules.

(d) Restricted Status. Any license that is currently suspended, on probation, or is currently required to fulfill some requirements in an agency order is a restricted license.

(e) Retirement Status. A licensee who is on active or inactive status may retire the license by notifying the Council in writing prior to the renewal date for the license. A licensee with a delinquent status may also retire the license by notifying the Council in writing prior to the license expiring. However, a licensee with a pending complaint or restricted license may not retire the license. A licensee who retires a license shall be reported to have retired in good standing.

(f) Resignation Status. A licensee may resign only upon express agreement with the Council.

(g) Expired Status. A license that has been delinquent for more than 12 consecutive months or any inactive license that is not renewed or reactivated is considered to be expired.

(h) Revoked Status. A revoked status results from a license being revoked pursuant to an agency order.

§882.22. Reinstatement of a License.

(a) A person whose license has expired or been retired, revoked, or resigned, may apply for reinstatement of the license. A person seeking re-licensure must apply for reinstatement, rather than applying for a new license.

(b) An application for reinstatement shall be in writing and in the form prescribed by the Council.

(c) In the case of revocation or resignation, application for reinstatement shall not be made prior to one year after the effective date of the revocation or resignation or prior to any time period specified in the order of revocation or resignation. A person whose license was revoked under §108.053 may apply for reinstatement of the license if the person meets the requirements of §108.055 of the Occupations Code.

(d) A person seeking reinstatement of a license shall appear in person before the Council or member board to answer any questions or address any concerns raised by the person's application if requested by a council or board member or the Executive Director. Failure to comply with this paragraph shall constitute grounds for denial of the application for reinstatement.

(e) The Council may approve or deny an application for reinstatement, and in the case of a denial, the Council may also set a reasonable period that must elapse before another application may be filed. The Council may also impose reasonable terms and conditions that an applicant must satisfy before reinstatement of an unrestricted license.

(f) An application for reinstatement of an expired, retired, revoked, or resigned license may be granted upon proof of each of the following:

(1) payment of the application fee;

(2) submission of a self-query report from the National Practitioner Data Bank (NPDB) reflecting any disciplinary history or legal actions taken against the applicant. A self-query report must be submitted to the agency in the sealed envelope in which it was received from the NPDB;

(3) a fingerprint based criminal history check which reflects no disqualifying criminal history;

(4) passage of any examinations required by a member board;

(5) documentation of any continuing education required by a member board; and

(6) submission of any other documentation or information requested in the application or which the Council or a member board may deem necessary in order to ensure the public's safety.

(g) The Council will evaluate each of the following criteria when considering reinstatement of an expired, revoked, or resigned license:

(1) circumstances surrounding the expiration, revocation, or resignation of the license;

(2) conduct of the applicant subsequent to the expiration, revocation, or resignation of the license;

(3) lapse of time since the expiration, revocation, or resignation of the license;

(4) compliance with all terms and conditions imposed by the Council or a member board in any previous order; and

(5) applicant's present qualification to practice the regulated profession based upon the history of related employment, service, education, or training, as well as the applicant's continuing education since the expiration, revocation, or resignation of the license.

(h) Notwithstanding time limits on original applications and examinations found elsewhere in these rules, an applicant seeking reinstatement of a license must submit all required documentation and
information, and successfully pass all required examinations within the period specified by the Council. Failure to do so shall result in the application for reinstatement expiring.

§882.23. License Required to Practice.

(a) A person may not engage in or represent that the person is engaged in the practice of marriage and family therapy, professional counseling, psychology, or social work within this state, unless the person is licensed or otherwise authorized to practice by law.

(b) A person is engaged in the practice of marriage and family therapy within this state if any of the criteria set out in §502.002(6) of the Licensed Marriage and Family Therapist Act occurs either in whole or in part in this state.

(c) A person is engaged in the practice of professional counseling within this state if any of the criteria set out in §503.003(a) of the Licensed Professional Counselor Act occurs either in whole or in part in this state.

(d) A person is engaged in the practice of psychology within this state if any of the criteria set out in §501.003(b) of the Psychologists’ Licensing Act occurs either in whole or in part in this state.

(e) A person is engaged in the practice of social work within this state if any of the criteria set out in §505.0025 of the Social Work Practice Act occurs either in whole or in part in this state.

§882.24. Authorized Practice of Marriage and Family Therapy Without a License.

Notwithstanding Rule §882.23 of this chapter, the activities or services described in §502.004 of the Licensed Marriage and Family Therapist Act are exempt from the Council’s jurisdiction and do not require a license.

§882.25. Authorized Practice of Professional Counseling Without a License.

Notwithstanding Rule §882.23 of this chapter, the activities or services described in Subchapter B of the Licensed Professional Counselor Act, together with the use of titles and descriptions of persons as contemplated therein, are exempt from the Council’s jurisdiction and do not require a license.

§882.26. Authorized Practice of Psychology Without a License.

(a) Notwithstanding Rule §882.23 of this chapter, the activities or services described in §501.004 of the Psychologists’ Licensing Act are exempt from the Council’s jurisdiction and do not require a license.

(b) The activity or service of a post-doctoral fellow or resident in psychology is exempt from the Council’s jurisdiction pursuant to §501.004(a)(2) of the Psychologists’ Licensing Act if all of the following criteria are met:

1. The person is enrolled in a formal post-doctoral program that is:
   
   (A) accredited by the American Psychological Association (APA) or is a member of the Association of Psychology Post-doctoral and Internship Centers (APPIC); or
   
   (B) substantially equivalent to a program described in subparagraph (A) of this paragraph;

2. The activities or services take place under qualified supervision and are part of the formal post-doctoral program; and

3. The person is designated as a psychological intern or trainee, or by another title that clearly indicates the person’s training status.

(c) A formal post-doctoral program which meets the following criteria will be considered substantially equivalent to an APA accredited or APPIC member program:

1. An organized experience with a planned and programmed sequence of supervised training experiences.

2. A designated psychologist responsible for the program who possesses expertise or competence in the program’s area.

3. Two or more licensed psychologists on staff, at least one designated as supervisor with expertise in area of practice.

4. A minimum of 2 hours per week of face-to-face supervision.

5. A minimum of 2 additional hours per week of learning activities.

6. A minimum of 25% of the fellow’s time is spent providing professional psychological services.

7. Admission requirements that require the applicant to complete all professional degree requirements and a pre-doc internship, which at a minimum meets Council requirements.

8. A requirement that participants use titles such as intern, resident, fellow, or trainee.

9. Documentation describing the goals, content, organization, entrance requirements, staff, mechanisms for a minimum of 2 evaluations per year, and a statement that the program meets Texas’ licensure requirements.

10. At a minimum, an informal due process procedure regarding deficiencies and grievances.

11. A written requirement for at least 1500 hours to be completed in not less than 9 months and not more than 24 months.

§882.27. Authorized Practice of Social Work Without a License.

Notwithstanding Rule §882.23, the activities or services described in §505.003 of the Social Work Practice Act are exempt from the Council’s jurisdiction and do not require a 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.

Filed with the Office of the Secretary of State on April 9, 2020.

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Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council

Earliest possible date of adoption: May 24, 2020

For further information, please call: (512) 305-7700

SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

22 TAC §§882.30 - 882.36

The Texas Behavioral Health Executive Council proposes new §§882.30 - 882.36, relating to Duties and Responsibilities.

Overview and Explanation of the Proposed Rule. The proposed new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council
to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Section 507.254 of the Tex. Occ. Code authorizes the Executive Council to issue a license, which must also include the name of the applicable board. These proposed new rules pertain to the duties and responsibilities of applicants going through the application process and licensee once they have obtained a license, which generally prohibit false or deceptive statements or practices.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are 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 rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules 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 rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

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

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined that for the first five-year period the proposed rules are 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 rules 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 rules 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 rules do 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 rules are 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 rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, since although they are new rules they essentially consolidate the rules from four regulatory boards into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules’ applicability; and they do 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 rules. 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 rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The new rules are 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 these new rules 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.

Lastly, the Executive Council proposes these new rules 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.

Sections 507.155 and 507.254 of the Tex. Occ. Code are affected by these proposed new rules; no other code, article or statute is affected by this proposal.

§882.30. Display of License.
(a) A licensee must display an official copy of the holder's license in a prominent place in the office, building, complex, or facility where services are delivered. An official copy of a license is the original or a copy issued by the Council bearing the state agency's seal.

(b) In lieu of subsection (a) of this section, a person licensed under Chapter 501 or 505 may provide to a patient or client written notification of the holder's license number accompanied by instructions for verification of same.

§882.31. Advertising Restrictions.
Licenses may not authorize, use, or make any public statements or advertisements that are false, deceptive, misleading or fraudulent, either because of what they state, convey or suggest or what they omit concerning their own training, experience, supervision status, abilities or competence; their academic degrees; their credentials; their institutional or association affiliations; or their publications or research.

§882.32. Duty to Update Name and Address.

(a) Applicants and licensees must update their name, main address, business address, email address, and phone number in the Council's online licensing system within 30 days of a change. The main address entered by an applicant or licensee must be capable of receiving mail addressed to the applicant or licensee from the agency. It is the responsibility of the individual to ensure the agency has the correct contact information for that individual.

(b) Official agency correspondence will be sent to an applicant's or licensee's main address, unless otherwise required by law. The street address portion of an applicant's or licensee's main address will not be displayed in results returned from the online licensee search function, but will continue to be publicly available via the Public Information Act. Applicants and licensees may also enter a business address in the agency's online licensing system which will be displayed, without redaction, in public search results.

(c) A name change request must be accompanied by a copy of a current driver's license, social security card, marriage license, divorce decree or court order reflecting the change of name.

§882.33. Disclosure of Proprietary Examination Materials or Information Prohibited.
It is considered unprofessional conduct and grounds for disciplinary action, including denial of licensure or renewal, for any applicant or licensee to disclose the contents or any proprietary materials or information from the examinations utilized by the Council.

§882.34. Filing of False or Misleading Information with the Council.

(a) Applicants. Applicants are prohibited from providing false or misleading statements, information, or omissions in their applications, documents, and communications with the Council or member boards. For an infraction of this type, the Council may agree to process an application or other document pursuant to an eligibility order. For a serious infraction of this type that could lead to licensure of an unqualified person, the Council may deny licensure.

(b) Licensees. The Council will open a complaint against a licensee for false or misleading statements, information, or omissions made in connection with an application, renewal, document, or other communication with the Council. For an infraction that led to the licensure or renewal of an unqualified person or a change in license status, the Council may revoke the license or deny any future renewal of the license.

§882.35. Required Profile Information.

Pursuant to §2054.2606 of the Government Code, all licensed psychologists must establish and maintain a public profile within the profile system maintained by the Council. The licensee's profile must contain all of the following information:

(1) the name of the license holder and the address and telephone number of the license holder's primary practice location;

(2) whether the license holder's patient, client, user, customer, or consumer service areas, as applicable, are accessible to disabled persons, as defined by federal law;

(3) the type of language translating services, including translating services for a person with impairment of hearing, that the license holder provides for patients, clients, users, customers, or consumers, as applicable;

(4) if applicable, insurance information, including whether the license holder participates in the state child health plan under Chapter 62, Health and Safety Code, or the Medicaid program;

(5) the education and training received by the license holder, as required by the licensing entity;

(6) any specialty certification held by the license holder;

(7) the number of years the person has practiced as a license holder; and

(8) if applicable, any hospital affiliation of the license holder.

§882.36. Compliance with State and Federal Law.
Licenses comply with all applicable state and federal laws affecting the practice of marriage and family therapy, professional counseling, psychology, or social work including, but not limited to:

(1) Health and Safety Code, Chapter 611, Mental Health Records;

(2) Family Code:

(A) Chapter 32, Consent to Medical, Dental, Psychological and Surgical Treatment;

(B) Chapter 153, Rights to Parents and Other Conservators to Consent to Treatment and Access to Child's Records; and

(C) Chapter 261, Duty to Report Child Abuse and Neglect;

(3) Human Resource Code, Chapter 48, Duty to Report Elder Abuse and Neglect;

(4) Civil Practice and Remedy Code, Chapter 81, Duty to Report Sexual Exploitation of a Patient by a Mental Health Services Provider;

(5) Insurance Code as it relates to submission of billing and third-party payments for mental health services provided by a licensee;

(6) Code of Criminal Procedure, Chapter 46B, Incompetency to Stand Trial, and Chapter 46C, Insanity Defense;

(7) Occupations Code, Chapter 102, Solicitation of Patients; Chapter 104, Healing Art Practitioners; Chapter 105, Unprofessional Conduct; and Chapter 113, Mental Health Telemedicine and Telehealth Services;

(8) Education Code, Chapter 51, Duty to Report Sexual Harassment and Assault, Dating Violence, and Stalking; and

(9) 18 United States Code §1347 Health Care Fraud.

PROPOSED RULES April 24, 2020 45 TexReg 2657
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) 305-7700

SUBCHAPTER D. CRIMINAL HISTORY AND LICENSE ELIGIBILITY

22 TAC §§882.40 - 882.42

The Texas Behavioral Health Executive Council proposes new §§882.40 - 882.42, relating to Criminal History and License Eligibility.

Overview and Explanation of the Proposed Rule. The proposed new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Section 507.254 of the Tex. Occ. Code authorizes the Executive Council to issue a license, which must also include the name of the applicable board; and §507.156 of the Tex. Occ. Code requires the Executive Council to adopt rules pertaining to the Executive Council’s authority to revoke, suspend, or deny a license based upon a criminal conviction. These proposed new rules implement this statutory duty.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are 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 rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules 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 rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

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

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined that for the first five-year period the proposed rules are 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 rules 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 rules 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 rules do 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 rules are 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 rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the this agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, since although they are new rules they essentially consolidate the rules from four regulatory boards into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules’ applicability; and they do 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 rules. 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 rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe
how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The new rules are 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 these new rules 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 proposes these new rules pursuant to the authority found in §507.156 of the Tex. Occ. Code, which requires the Executive Council to adopt rules necessary to comply with Chapter 53 of the Tex. Occ. Code.

Lastly, the Executive Council proposes these new rules 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.

Sections 507.153 and 507.251 of the Tex. Occ. Code are affected by these proposed new rules; no other code, articles or statutes are affected by this proposal.

§882.40. Criminal History Background Checks.

(a) Before the Council will issue a license, an applicant must undergo a fingerprint-based criminal history record check.

(b) The Council may require a licensee to obtain an updated fingerprint-based criminal history record check at any time.

(c) A licensee who was not required to undergo a fingerprint-based criminal history record check as a condition of licensure, must undergo a fingerprint-based criminal history check if directed by the Council as a condition for renewal of a license. A licensee may fulfill all other renewal requirements, but a report must be received by the Council from the Texas Department of Public Safety and the Federal Bureau of Investigation before a license will be renewed.

(d) Applicants and licensees who hold a license issued by the Council or one of its member boards and who underwent a fingerprint-based criminal history record check as part of the licensing process for that license, do not need to undergo another check.

§882.41. Criminal History Evaluations.

(a) In compliance with Chapter 53 of the Occupations Code, the Council will provide criminal history evaluation letters.

(b) A person may request the Council provide a criminal history evaluation letter if the person is planning to enroll or is enrolled in an educational program that prepares the person for a license with this agency and the person has reason to believe that the person may be ineligible for licensure due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(c) The requestor must submit to the Council a completed application form requesting an evaluation letter, the required fee, and certified copies of court documentation about all convictions, deferred adjudications, or other final dispositions which may form the basis for the person's eligibility.

(d) Requestors must obtain a fingerprint criminal history record check after they have submitted an application for a criminal history evaluation letter.

(e) The Council has the authority to investigate a request for a criminal history evaluation letter and may require the requestor to provide additional information about the convictions and other dispositions.

(f) The Council will provide a written response to the requestor within 90 days of receipt of the request, unless a more extensive investigation is required or the requestor fails to comply with the Council's investigation.

(g) In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the licensing authority at the time the letter is issued, the Council's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

§882.42. Ineligibility Due to Criminal History.

(a) The Council may revoke or suspend a license, disqualify a person from receiving or renewing a license, or deny a person the opportunity to be examined for a license due to a felony or misdemeanor conviction, or a plea of guilty or nolo contendere followed by deferred adjudication, if the offense:

(1) directly relates to the duties and responsibilities of a licensee;

(2) is listed in Article 42A.054 of the Code of Criminal Procedure; or

(3) was a sexually violent offense, as defined by Article 62.001 of the Code of Criminal Procedure.

(b) In determining whether a criminal conviction directly relates to the duties and responsibilities of a licensee, the agency shall consider the factors listed in §53.022 of the Occupations Code. Each member board shall determine which crimes are directly related to the duties and responsibilities of its licensees.

(c) If the agency determines that a criminal conviction directly relates to the duties and responsibilities of a licensee, the agency must consider the factors listed in §53.023 of the Occupations Code when determining whether to suspend or revoke a license, disqualify a person from receiving a license, or deny a person the opportunity to take a licensing examination. It shall be the responsibility of the applicant or licensee to provide documentation or explanations concerning each of the factors listed in the law. Any documentation or explanations received will be considered by the agency when deciding whether to suspend or revoke a license, disqualify a person from receiving a license, or deny a person the opportunity to take a licensing examination.

(d) Notwithstanding any schedule of sanctions adopted by the Council or a member board, the Council shall:

(1) revoke a license due to a felony conviction under §35A.02 of the Penal Code, concerning Medicaid fraud, in accordance with §36.132 of the Human Resources Code;

(2) revoke or suspend a license for unprofessional conduct in accordance with §105.002 of the Occupations Code; and

(3) revoke a license due to a license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(e) In accordance with Chapter 108 of the Occupations Code, an application for licensure as a psychologist or social worker will be denied if the applicant:...
(1) is required to register as a sex offender under Chapter 62 of the Code of Criminal Procedure;

(2) has been previously convicted of or placed on deferred adjudication for the commission of a felony offense involving the use or threat of force; or

(3) has been previously convicted of or placed on deferred adjudication for the commission of an offense:

(A) under §§22.011, 22.02, 22.021 or 22.04 of the Penal Code, or an offense under the laws of another state or federal law that is equivalent to an offense under one of those sections;

(B) during the course of providing services as a health care professional; and

(C) in which the victim of the offense was a patient.

(f) A person whose application was denied under subsection (e) of this section, may reapply for licensure if the person meets the requirements of §108.054 of the Occupations Code.

(g) In accordance with §108.053 of the Occupations Code, the Council shall revoke the license of a psychologist or social worker if the licensee is:

(1) convicted or placed on deferred adjudication for an offense described by subsection (e)(2) or (3) of this section; or

(2) required to register as a sex offender under Chapter 62 of the Code of Criminal Procedure.

(h) The Council will provide notice to a person whose application has been denied due to criminal history as required by §53.0231 and §53.051 of the Occupations Code.

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

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Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Earliest possible date of adoption: May 24, 2020
For further information, please call: (512) 305-7700

SUBCHAPTER E. CONTINUING EDUCATION

22 TAC §882.50

The Texas Behavioral Health Executive Council proposes new §882.50, relating to Continuing Education and Audits, in new Subchapter E, relating to Continuing Education.

Overview and Explanation of the Proposed Rule. The proposed new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Section 507.254 of the Tex. Occ. Code authorizes the Executive Council to issue a license, which must also include the name of the applicable board. In order to maintain and renew a license, each license holder is required to obtain a minimum amount of education per renewal period in order to renew a license. Each applicable board will determine the minimum amount of required education and the Executive Council will ensure compliance. This proposed new rule pertains to the Executive Council's ability to audit license holders for compliance purposes.

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 efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. 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 that 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 that 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 the this agency; it does not require an increase or decrease in fees paid to the
agency; it does not create a new regulation, since although it is a new rule it essentially consolidates the rules from four regulatory boards into one agency, as required by statute, thereby reducing the amount of regulations in Texas; 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 to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov’t Code.

Statutory Authority. The new 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 new 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.

Lastly, the Executive Council proposes these new rules 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.

Sections 507.153, 507.157, and 507.301 of the Tex. Occ. Code are affected by these proposed new rules; no other code, articles or statutes are affected by this proposal.

§882.50. Continuing Education and Audits.

(a) All persons issued a license by the Council are obligated to continue their professional education by completing a minimum amount of continuing education during each renewal period that they hold a license from this agency. The specific continuing education requirements for a license holder will be determined by the member board authorized to set those requirements.

(b) The Council conducts two types of audits regarding continuing education. Licensees shall comply with all agency requests for documentation and information concerning compliance with continuing education requirements.

(1) Random audits. Each month, 10% of the licensees will be selected by an automated process for an audit of the licensee’s compliance with the agency’s continuing education requirements. The agency will notify a licensee of the audit. Upon receipt of an audit notification, a licensee must submit continuing education documentation through the agency’s online licensing system, or by fax, email, or regular mail before a license will be renewed.

(2) Individualized audits. The Council may also conduct audits of a specific licensee’s compliance with its continuing education requirements at any time the agency determines there are grounds to believe that a licensee has not complied with the requirements of this rule. Upon receipt of notification of an individualized audit, the licensee must submit all requested documentation within the time period specified in the notification.

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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SUBCHAPTER F. LICENSING PROVISIONS RELATED TO MILITARY SERVICE MEMBERS, VETERANS, AND MILITARY SPOUSES

22 TAC §882.60, §882.61

The Texas Behavioral Health Executive Council proposes new §882.60 and §882.61, relating to Licensing Provisions Related to Military Service Members, Veterans, and Military Spouses.

Overview and Explanation of the Proposed Rule. The proposed new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Section 507.254 of the Tex. Occ. Code authorizes the Executive Council to issue a license, which must also include the name of the applicable board. Chapter 55 of the Tex. Occ. Code requires state agencies that issue a license to adopt rules pertaining to licensing eligibility requirements for military service members, veterans, and spouses. These proposed new rules implement this statutory duty.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are 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 rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules does not have foreseeable

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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 rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

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

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined that for the first five-year period the proposed rules are 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 rules 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 rules 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 rules do 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 rules are 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 rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, since although they are new rules they essentially consolidate the rules from four regulatory boards into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do 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 rules. 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 rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The new rules are 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 these new rules 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 proposes these new rules pursuant to the authority found in §507.156 of the Tex. Occ. Code which requires the Executive Council to adopt rules necessary to comply with Chapter 53 of the Tex. Occ. Code.

Lastly, the Executive Council proposes these new rules 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.

Sections 55.004 - 55.009 of the Tex. Occ. Code are affected by these proposed new rules; no other code, article or statute is affected by this proposal.


(b) A license may be issued to a military service member, military veteran, or military spouse upon proof of one of the following:

(1) the applicant holds a current license in another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license sought in this state; or

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(2) within the five years preceding the application date, the applicant held the license sought in this state;

(c) An applicant applying as a military spouse must submit proof of marriage to a military service member.

(d) Each member board shall develop and maintain a method for determining substantial equivalency under subsection (b) of this section.

(e) As part of the application process, the Executive Director may waive any prerequisite for obtaining a license, other than the requirements in subsection (b) of this section, the jurisprudence examination, and the fingerprint criminal history background check, if it is determined that the applicant's education, training, and experience provide reasonable assurance that the applicant has the knowledge and skills necessary for entry-level practice under the license sought. When making this determination, the Executive Director must consult with the relevant member board or its designated application or licensing committee and consider the board's or committee's input and recommendations. In the event the Executive Director does not follow a recommendation of the board or committee, the Executive Director must submit a written explanation to the board or committee explaining why its recommendation was not followed. No waiver may be granted where a military service member or military veteran holds a license issued by another jurisdiction that has been restricted, or where the applicant has a disqualifying criminal history.

(f) Each member board may develop and maintain alternate methods for a military service member, military veteran, or military spouse to demonstrate competency in meeting the requirements for obtaining a license.

(g) Each member board shall develop and maintain a method for applying credit toward license eligibility requirements for applicants who are military service members or military veterans with verifiable military service, training, or education. An applicant may not receive credit toward licensing requirements under this subsection if the applicant holds another license that has been restricted, or if the applicant has a disqualifying criminal history.

(h) The initial renewal date for a license issued pursuant to this rule shall be set in accordance with the agency's rule governing initial renewal dates.

§882.61. Special Licensing Provisions for Military Spouses.

(a) A military spouse shall be issued a license to practice marriage and family therapy, professional counseling, psychology, or social work if the person meets each of the following requirements:

(1) the spouse notifies the Council on an agency approved form of the spouse's intent to practice a particular profession in this state;

(2) the spouse provides verification of licensure in good standing in another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for licensure in this state;

(3) the spouse submits a copy of the law reflecting the current licensing standards for the relevant profession in the state where the spouse is licensed, with the relevant portions highlighted for easy reference;

(4) the spouse submits proof of residency in this state and a copy of the spouse's military identification card; and

(5) the Council provides confirmation to the spouse that it has verified the spouse's license in the other jurisdiction and that the spouse is authorized to practice a particular profession.

(b) The Council shall determine substantial equivalency based upon the determinations made by the member boards under subsection §882.60(d) of this chapter.

(c) The Council may rely upon the following when verifying licensure under this subsection: official verification received directly from the other jurisdiction, a government website reflecting active licensure and good standing, or verbal or email verification directly from the other jurisdiction.

(d) A military spouse issued a license under this rule is subject to all laws and regulations in the same manner as a regularly licensed provider.

(e) A license issued under this rule is valid while the holder's spouse is stationed at a military installation in this state or for three years from the date of issuance, whichever is less. A license issued under this rule cannot be renewed or extended.

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
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Texas Behavioral Health Executive Council
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SUBCHAPTER G. EMERGENCY TEMPORARY LICENSE

22 TAC §882.70

The Texas Behavioral Health Executive Council proposes new §882.70, relating to Emergency Temporary License.

Overview and Explanation of the Proposed Rule. The proposed new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2018). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Section 507.254 of the Tex. Occ. Code authorizes the Executive Council to issue a license, which must also include the name of the applicable board. Sections 501.263, 502.258, 503.308, and 505.357 of the Tex. Occ. Code require the adoption of rules for the Executive Council to issue a temporary license. This proposed new rule implements this statutory duty.

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 rules 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 efficiencies and consistency by consolidating all the same or similar requirements from the
boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. 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 that for the first five 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 that 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 that 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 the agency; it does not require an increase or decrease in fees paid to the agency; they do not create a new regulation, since although they are new rules they essentially consolidate the rules from four regulatory boards into one agency, as required by statute, thereby reducing the amount of regulations in Texas; 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 to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov’t Code.

Statutory Authority. The new 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 new 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 proposes this new rule pursuant to the authority found in §§501.263, 502.258, 503.308, and 505.357 of the Tex. Occ. Code which requires the Executive Council to adopt rules for the issuance of temporary licenses.

Lastly, the Executive Council proposes these new rules 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 proposal.

§882.70.  Emergency Temporary License.

(a)  The Council shall issue an emergency temporary license to practice marriage and family therapy, professional counseling, psychology, or social work if:

(1)  the Governor declares a disaster under §418.014 and issues a proclamation in accordance with Government Code §418.016 suspending regulatory statutes and rules which would prevent, hinder, or delay necessary action in coping with the declared disaster;

(2)  the Executive Director determines that enacting these emergency licensing provisions are necessary in that disaster area; and

(3)  the applicant meets the requirements set forth herein below.

(b)  An emergency temporary license issued pursuant to this rule will expire thirty (30) days after issuance or upon termination of the state of disaster, whichever occurs first.

(c)  An emergency temporary license issued pursuant to this rule is valid only for the practice of marriage and family therapy, professional counseling, psychology, or social work within the disaster area designated by the governor.
(d) To be eligible for an emergency temporary license, an applicant must:

(1) submit an application in the form prescribed by the Council; and

(2) submit written verification that the applicant is actively licensed, certified, or registered to practice marriage and family therapy, professional counseling, psychology, or social work in another jurisdiction and that the licensure, certification, or registration is in good standing.

(e) For purposes of subsection (d) of this section, the term "good standing" means there is not current disciplinary action on the out-of-state license, certification, or registration.

(f) An emergency temporary license may be renewed in thirty (30) day increments if the disaster declaration has not expired or been terminated. To renew a license, an individual must submit a renewal application on a board-approved form on or before the license expiration date.

(g) An individual practicing under an emergency temporary license must:

(1) display a copy of the emergency temporary license in a conspicuous location when delivering services, or provide written notification of the license number and instructions on how to verify the status of a license when initiating services with a patient or client;

(2) provide notification to the public and the patient or client regarding how a complaint may be filed with the Council; and

(3) comply with all other applicable Council rules.

(h) There is no fee associated with the application, issuance, or renewal of an emergency temporary 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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Darrel D. Spinks
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Texas Behavioral Health Executive Council
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CHAPTER 883. RENEWALS
SUBCHAPTER A. GENERAL PROVISIONS
22 TAC §§883.1 - 883.3


Overview and Explanation of the Proposed Rule. The proposed new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Section 507.255 of the Tex. Occ. Code authorizes the Executive Council to renew licenses issued by the Executive Council, which must also include the name of the applicable board, and these proposed new rules implement this statutory duty. Generally, these proposed new rules establish the requirements for the biennial renewal of a license, and this biennial renewal period will be based upon the last day of the license holder's birth month.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are 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 rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules do 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 rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

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

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined that for the first five-year period the proposed rules are 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 rules 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 rules 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 rules do 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 rules are 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 rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they
do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, since although they are new rules they essentially consolidate the rules from four regulatory boards into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do 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 rules. 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 rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The new rules are 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 these new rules 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.

Lastly, the Executive Council proposes these new rules under the authority of §507.255 of the Tex. Occ. Code which authorizes the Executive Council to issue license renewals upon meeting certain criteria.

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

§883.1. Renewal of a License.

(a) All licenses subject to the jurisdiction of the Council are renewable on a biennial basis and must be renewed online.

(b) Renewals are due on the last day of the license holder's birth month, but may be completed up to 60 days in advance.

(c) Licensees must pay all applicable renewal and late fees, indicate compliance with any continuing education requirements, and comply with any other requests for information or requirements contained within the online renewal system as a prerequisite for renewal of a license.

(d) In addition to the requirements of subsection (c) of this section, licensees must also show compliance with each of the following as a condition of renewal:

(1) provide or update the standardized set of information about their training and practices required by §105.003 of the Health and Safety Code; and

(2) affirm or demonstrate successful completion of a training course on human trafficking prevention described by §116.002 of the Occupations Code.

(e) Licensed psychologists must update their online profile information when renewing their license.

(f) A license may not be renewed until a licensee has complied with the requirements of this rule.

(g) A licensee who falsely reports compliance with continuing education requirements on his or her renewal form or who practices with a license renewed under false pretenses will be subject to disciplinary action.

(h) Licensees will be sent notification of their approaching renewal date at least 30 days before their renewal date. This notification will be sent to the licensee's main address via first class mail. Responsibility for renewing a license rests exclusively with the licensee, and the failure of the licensee to receive the reminder notification from the Council shall not operate to excuse a licensee's failure to timely renew a license or any unlawful practice with a subsequent delinquent license.

§883.2. Initial License Renewal Dates.

(a) The license expiration date for a license issued by this agency is the last day of the licensee's birth month.

(b) The initial renewal date for a license issued or reinstated by this agency shall be set as follows:

(1) A license issued or reinstated within 180 days prior to the last day of a licensee's birth month shall be set for renewal on the next expiration date following a period of two years from the date of issuance or reinstatement.

(2) A license issued or reinstated more than 180 days prior to the last day of a licensee's birth month shall be set for renewal on the next expiration date following a period of one year from the date of issuance or reinstatement.

(c) Following the initial renewal dates set forth in subsection (b) of this section, a license shall become subject to the standard renewal schedule and requirements.

(d) Notwithstanding subsection (b) of this section, for individuals with more than one license from a member board, the initial renewal date for a newly issued or reinstated license shall coincide with the individual's existing license renewal date.

§883.3. Nonrenewal for Failure to Pay Child Support.

(a) The Council shall, in accordance with §232.0135 of the Family Code, refuse to renew a license if the Council receives notice from a child support agency that the licensee has failed to pay child support under a support order for six months or more and the child support agency requests the Council to deny the renewal of an existing license.

(b) Following receipt of notice from a child support agency, the Council may not renew a license until the child support agency has notified the Council that the licensee has met one or more of the requirements set out in §232.0135(b) of the Family Code.
The Council may charge the licensee a fee equal to the renewal fee for a denial under this rule.

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

Filed with the Office of the Secretary of State on April 9, 2020.

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Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Earliest possible date of adoption: May 24, 2020
For further information, please call: (512) 305-7700

SUBCHAPTER B. RENEWAL PROVISIONS FOR MILITARY PERSONNEL

22 TAC §883.10

The Texas Behavioral Health Executive Council proposes new §883.10, relating to Renewal Terms for Military Personnel on Active Duty.

Overview and Explanation of the Proposed Rule. The proposed new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Section 507.255 of the Tex. Occ. Code authorizes the Executive Council to renew licenses issued by the Executive Council, which must also include the name of the applicable board; and §55.002 of the Tex. Occ. Code requires state licensing agencies to adopt a rules regarding licensing renewal exemptions for individuals serving as military service members. This proposed new rule implements the statutory duty.

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 enacting or administering the rule. Additionally, Mr. Spinks has determined that enacting 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 efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. 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 enacting the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined that 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 that 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 the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, since although it is a new rule it essentially consolidates the rules from four regulatory boards into one agency, as required by statute, thereby reducing the amount of regulations in Texas; 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 to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Exec-
utive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The new 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 new 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 proposes this new rule under the authority of §507.255 of the Tex. Occ. Code which requires the Executive Council to issue license renewals upon meeting certain criteria.

Lastly, the Executive Council proposes this new rule pursuant to the authority found in §55.002 of the Tex. Occ. Code which requires state licensing agencies to adopt a rules regarding licensing renewal exemptions for individuals serving as military service members.

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

§883.10. Renewal Terms for Military Personnel on Active Duty.

(a) Licensees serving on active duty, as defined by §55.001 of the Occupations Code, may request a waiver from the continuing education requirements and renewal fees associated with the renewal of their license. Licensees who submit a written request to the Council prior to their renewal date each renewal period, and provide the Council with official verification of active duty status during their renewal period, will be granted a waiver from the continuing education requirements and renewal fees associated with the renewal of their license for that renewal period.

(b) Licensees with an expired or delinquent license may request their license be reinstated or returned to active status if they would have been eligible for a waiver under subsection (a) of this section, prior to their license expiring or becoming delinquent. Licensees seeking relief under this subsection must do so within two years of their license becoming delinquent.

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) 305-7700

CHAPTER 884. COMPLAINTS AND ENFORCEMENT
SUBCHAPTER A. FILING A COMPLAINT

22 TAC §§884.1 - 884.6

The Texas Behavioral Health Executive Council proposes new §§884.1 - 884.6, relating to Filing a Complaint.

Overview and Explanation of the Proposed Rule. The proposed new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507. Section 2001.004 of the Tex. Gov't Code requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. These proposed rules are the general framework regarding the Executive Council's procedures for filing a complaint.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are 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 rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules 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 rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules 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 rules are in effect, there will be no additional economic costs to persons required to comply with these rules.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rules are 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 rules 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 rules 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 rules do 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 rules are 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 rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the this agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, since although they are new rules they essentially consolidate the rules from four regulatory boards into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules’ applicability; and they do 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 rules. 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 rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The new rules are 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 these new rules 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 proposes these new rules pursuant to the authority found in §507.204 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning the investigation of a complaint filed with the Executive Council.

Lastly, the Executive Council proposes these new rules 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.

Sections 507.201-507.207 and 507.301-507.361 of the Tex. Occ. Code are affected by these proposed new rules; no other code, article or statute are affected by this proposal.

§884.1. Timeliness of Complaints.
(a) A complaint not involving sexual misconduct will be considered timely if brought within five years of the date of the termination of professional services.

(b) A complaint alleging sexual misconduct will be considered timely if brought within seven years after the date of termination of services or within five years of the patient, client or recipient of services reaching the age of majority, whichever is greater.

(c) A complaint arising out of a matter required to be reported to the Council pursuant to rule §884.32 of this chapter, will be considered timely if brought within five years of the date the matter is reported to the Council. Limitations shall not begin to run for any such complaint until the matter is reported in accordance with Council rules.

§884.2. Standardized Complaint Form.
All complaints must be submitted on the Council-approved complaint form. The complaint form can be obtained free of charge from the Council's website or by requesting a copy from the Council.

§884.3. Special Requirements for Complaints Alleging Violations Related to Court Ordered Evaluations.

(a) A person who seeks to file a complaint alleging a statutory or rule violation arising out of or related to a court ordered evaluation (e.g. child custody evaluation, adoption evaluation, competency or insanity evaluation, psychological evaluation) must, in addition to submitting a Council-approved complaint form, comply with the requirements of this rule when filing a complaint. This rule does not apply to evaluations conducted in administrative proceedings before a state or federal agency.

(b) A complaint subject to this rule may not be filed prior to entry of judgment or final order by the trial court, or alternatively, prior to dismissal of the case. A complaint received by the Council prior to these specified events will be dismissed by staff as premature. A complaint dismissed as premature may be resubmitted as a new complaint upon the occurrence of one of these events.

(c) A complaint subject to this rule will be considered timely filed if brought within the time period specified by the general rule governing timeliness of complaints or within one year of the relevant event specified in subsection (b) of this section, whichever is greater.

(d) A complaint subject to this rule must include the following documentation or information:

(1) A copy of the court order appointing the licensee to conduct the evaluation, or alternatively, a transcript or excerpt therefrom or written statement from an attorney-of-record in the case reflecting the licensee's appointment;

(2) A copy of the licensee's expert report, or a statement that no such report was produced or provided;
A copy of any judgment, final order, or dismissal entered by the trial court; and

A copy of any documents provided by the licensee describing the costs of services, the nature of the services provided, as well as any limitations associated with those services, or a statement that no such documents were provided.

A complaint that does not substantially comply with subsection (d) of this section, shall be dismissed by agency staff. A complaint may be held open for no more than 30 days following notice to the complainant regarding any such deficiency, after which, agency staff shall dismiss the complaint if the deficiency is not cured.

A complaint subject to this rule shall be dismissed unless the complainant can show:

1. The licensee was disqualified or struck as an expert witness by the trial court;

2. The licensee's opinion or inferences (i.e. testimony or report) complained of were ruled inadmissible by the trial court;

3. A curriculum vitae and written report by an expert that provides a fair summary of the expert's opinions regarding the applicable law governing the licensee's expert opinion or report (i.e. standard of care) and the manner in which the licensee failed to meet the requirements of the applicable law. The report must come from an expert qualified to render an expert opinion under Texas law on the relevant subject;

4. A letter from an attorney licensed to practice law in Texas setting forth the applicable law governing the licensee's expert opinion or report and reflecting an opinion as to the manner in which the licensee failed to meet the requirements of the applicable law; or

5. The agency would be likely to prevail at a hearing before SOAH based upon the information provided.

Complaints Alleging Violation of Court Orders or Education Law:

A person who seeks to file a complaint alleging a violation of a court order in connection with the delivery of services by a licensee must, in addition to submitting a Council-approved complaint form, submit a certified copy of the court order violated and a certified copy of the judgment, order, or minutes of the court reflecting a finding of violation by the licensee. A complaint subject to this rule not in strict compliance with this requirement will be dismissed by agency staff.

Complaints Involving Standard of Care Issues in Schools:

An individual wishing to file a complaint against a licensee for any matter relating to the identification, evaluation, or educational placement of or the provision of a free appropriate public education to a student, must first exhaust all administrative remedies available to that individual under 19 TAC §89.1150 of the Commissioner’s Rules Concerning Special Education Services, Texas Education Agency. An individual that has gone through a due process hearing with the Texas Education Agency will be considered to have exhausted all administrative remedies.

For purposes of this rule, limitations shall not begin to run until all of the administrative remedies referenced in paragraph (1) of this subsection, have been exhausted.

Notwithstanding paragraph (1) of this subsection, an individual employed or contracted by the same public or private school as the licensee may file a complaint covered by paragraph (1) of this subsection, regardless of whether any administrative remedies available under state or federal education law are utilized by the parent or legal guardian of a student. A complaint brought under this provision shall be subject to the rule of limitations.

This rule shall not operate to preclude any individual from filing a complaint against a licensee for any matter other than those described in paragraph (1) of this subsection, nor shall it operate to limit the Council’s ability to bring a complaint for any matter within the agency’s jurisdiction.


In accordance with Chapter 2400 of the Government Code, the Council and member boards may not initiate or take disciplinary action, including eligibility proceedings, against applicants or licensees based wholly or partly on the person's membership in, affiliation with, or contribution, donation, or other support provided to a religious organization.

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 April 9, 2020.

Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council

Earliest possible date of adoption: May 24, 2020

For further information, please call: (512) 305-7700

SUBCHAPTER B. INVESTIGATIONS AND DISPOSITION OF COMPLAINTS

22 TAC §§884.10 - 884.12

The Texas Behavioral Health Executive Council proposes new §§884.10 - 884.12, relating to Investigation and Disposition of Complaints.

Overview and Explanation of the Proposed Rule. The proposed new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorize the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507. Section 2001.004 of the Tex. Gov't Code requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. These proposed rules are the general framework regarding the Executive Council's procedures for investigating and potentially resolving a complaint.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are 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 rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules 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 rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

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

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined that for the first five-year period the proposed rules are 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 rules 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 rules 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 rules do 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 rules are 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 rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, since although they are new rules they essentially consolidate the rules from four regulatory boards into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules’ applicability; and they do not positively or adversely affect the state’s economy.

Taking Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. 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 rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov’t Code.

Statutory Authority. The new rules are 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 these new rules 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 proposes these new rules pursuant to the authority found in §507.204 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning the investigation of a complaint filed with the Executive Council.

The Executive Council proposes these new rules pursuant to the authority found in §507.305 and §507.306 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning informal proceedings to resolve a complaint and assistance in disciplinary proceedings.

Lastly, the Executive Council proposes these new rules 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.

Sections 507.201 - 507.207 and 507.301 - 507.361 of the Tex. Occ. Code are affected by these proposed new rules; no other code, article or statute is affected by this proposal.

§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) cases involving a probability of imminent physical harm to the public;

(2) cases involving sexual misconduct;

(3) cases involving applicants for licensure; and
(4) 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 complainant 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.

§884.11. Informal Conferences.

(a) The purpose of an informal conference shall be to provide the complainant with an opportunity to be heard, the respondent with an opportunity to show compliance with the law, and for the agency staff or Disciplinary Review Panel to make a recommendation regarding the informal disposition of the complaint. An informal disposition may be made of any complaint by stipulation, conditional letter of agreement, agreed or consent order, or dismissal.

(b) Agency staff may conduct an informal conference if counsel for the agency reasonably believes that expert testimony is not required to prove a violation of a standard of care or the scope of practice for the profession. Agency staff shall exercise reasonable control over the mode and order of the appearance by the parties, the presentation of witnesses and evidence, and the overall order and decorum during the proceedings. Complainants and respondents will be provided an opportunity to be heard by staff, at a time separate and apart from the other.

(c) A Disciplinary Review Panel shall consist of not more than three board members selected by the member board. The panel shall confer with each other and select a chair for the informal conference. The panel chair shall exercise reasonable control over the mode and order of the appearance by the parties, the presentation of witnesses and evidence, and the overall order and decorum during the proceedings. Complainants and respondents will be provided an opportunity to be heard by the panel, at a time separate and apart from the other.

(d) Complainants and respondents may appear with legal counsel at informal conferences and shall be provided with an opportunity to present witnesses and any evidence they believe 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) Complainants and respondents are encouraged to attend informal conferences, but attendance is voluntary.

(1) Failure by a respondent to attend an informal conference does not constitute professional misconduct or failure to cooperate with a Council investigation, but a respondent is not entitled to a new or additional informal conference if agency staff or the panel makes a disciplinary recommendation regarding the licensee in absentia.

(2) Failure by a complainant to attend an informal conference may result in a recommendation for dismissal of the complaint.

(f) A complaint which is not dismissed or resolved by agreement following an informal conference, shall be filed as a contested case with the State Office of Administrative Hearings.

(g) An attorney for the agency must be present at all informal conferences.

(h) Informal conferences are not open meetings subject to Chapter 551 of the Government Code and no formal record of the proceedings shall be made or maintained.

(i) The Council finds and declares that informal conferences are part of the confidential complaint and investigation process, and as such, the Disciplinary Review Panel and agency staff shall take any and all steps necessary to ensure the confidentiality of informal conferences in accordance with §507.205 of the Occupations Code.

(a) The Council must approve and enter all final orders following a contested case before SOAH or where no agreement exists between the agency and the respondent regarding the disposition of a contested enforcement related matter. However, each member board shall be responsible for reviewing complaints involving the standard of care, ethical guidelines, or scope of practice following a contested case before SOAH and making a recommendation to the Council regarding the final disposition. A recommendation from a member board must include any recommended modifications to the findings of fact and conclusions of law in the PFD, as well as the recommended sanction. A proposed final order reflecting a member board’s recommendations shall satisfy the requirements of this rule.

(b) The Council shall review recommendations from member boards for anti-competitive impacts, administrative consistency, and good governance concerns. The Council may not substitute its judgment in contested enforcement matters for that of a member board where, in its sole determination, none of the aforementioned concerns are present.

(e) The Council may solicit input from and request the assistance of a member board when considering a contested enforcement matter if there are concerns about the standard of care or ethical practice shown by a licensee. The Council may specify the format of the input and assistance requested to satisfy the requirements of this rule.

(d) Each member board is authorized to dismiss complaints and approve and enter agreed final orders and informal dispositions; Council ratification is not required. The Executive Director shall report the number of dismissals and agreed orders entered under this rule at Council meetings.

(e) Disposition by the Executive Director.

(1) The Executive Director is authorized to:

(A) dismiss a complaint if the investigator and legal counsel agree that a violation did not occur or that the agency lacks jurisdiction over the complaint;

(B) dismiss a complaint recommended for dismissal by a Disciplinary Review Panel;

(C) dismiss a complaint following a contested case hearing before SOAH where the ALJ finds no violation of the law has occurred;

(D) accept the voluntary resignation of a license;

(E) offer, approve, and enter agreed orders if the disciplinary sanction imposed complies with the disciplinary guidelines and relevant schedule of sanctions and

(F) enter an order suspending a license upon receipt of an order suspending a license issued under Chapter 232 of the Family Code. Council ratification is not required.

(2) The Executive Director shall report the number of agreed orders, dismissals, resignations, and suspensions ordered, along with a brief summary of the basis for each, to the Council and relevant member board at the next regular meeting.

(3) The Executive Director must, when offering an agreed order or resignation order prior to an informal conference, advise the respondent of the right to an informal conference and that the matter will be set for an informal conference if requested or if an informal disposition cannot be agreed upon.

(f) Any person who files a complaint will be notified of the disposition of the complaint. A person who filed a complaint that is dismissed will be notified of the dismissal by letter and the letter will reflect the legal basis or reason for the dismissal. A person who filed a complaint resulting in disciplinary action will be sent a copy of the Council’s final order.

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

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SUBCHAPTER C. DISCIPLINARY GUIDELINES AND SCHEDULE OF SANCTIONS

22 TAC §884.20, §884.21

The Texas Behavioral Health Executive Council proposes new §884.20 and §884.21, relating to Disciplinary Guidelines and Schedule of Sanctions.

Overview and Explanation of the Proposed Rule. The proposed new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorize the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council’s duties and implement Chapter 507. Section 2001.004 of the Tex. Gov’t Code requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. These proposed rules are the general framework regarding the Executive Council’s procedures for imposing sanctions.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are 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 rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules 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 rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules 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 rules are in effect, there will
be no additional economic costs to persons required to comply with these rules.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined that for the first five-year period the proposed rules are 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 rules 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 rules 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 rules do 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 rules are 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 rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, since although they are new rules they essentially consolidate the rules from four regulatory boards into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules’ applicability; and they do 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 rules. 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 rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov’t Code.

Statutory Authority. The new rules are 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 these new rules 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 proposes these new rules pursuant to the authority found in §507.204 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning the investigation of a complaint filed with the Executive Council.

The Executive Council proposes these new rules pursuant to the authority found in §507.304 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning a schedule of sanctions.

Lastly, the Executive Council proposes these new rules 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.

Sections 507.201-507.207 and 507.301-507.361 of the Tex. Occ. Code are affected by these proposed new rules; no other code, articles or statutes are affected by this proposal.


(a) Purpose. These disciplinary sanction guidelines are designed to provide guidance in assessing sanctions for violations of the Occupations Code, Chapter 507, and the Council’s rules. The purpose of disciplinary sanctions is to protect the public, deter future violations, offer opportunities for rehabilitation if appropriate, punish violators, and deter others from violations. These guidelines are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements.

(1) Single Violation. The standard disciplinary sanctions outlined in the applicable schedule of sanctions shall apply to cases involving a single violation, and in which there are no aggravating or mitigating factors.

(2) Multiple Violations. The Council may impose more severe or restrictive sanctions for multiple violations.

(3) Aggravating and Mitigating Factors. The Council may impose more or less severe or restrictive sanctions, based on any aggravating and/or mitigating factors that are found to apply in a particular case.

(4) The standard and minimum disciplinary sanctions outlined below are applicable to persons who are being sanctioned for the first time. The Council may consider more severe or restrictive sanc-
tions if the persons have had sanctioned assessed against them previously.

(5) The maximum disciplinary sanction in all cases is revocation of the license, which may be accompanied by an administrative penalty of up to $5,000 per violation. In accordance with §507.352 of the Occupations Code, each day the violation continues or occurs is a separate violation.

(6) Each violation constitutes a separate offense, even if arising out of a single act.

(7) Failure to list a specific violation or Council rule in this rule does not prevent the Council from taking disciplinary action for such a violation.

(8) If a sanction for a violation of state or federal law is not listed in this rule, or specifically stated elsewhere, the sanction shall be a reprimand and administrative penalty.

(9) Notwithstanding paragraph (8) of this subsection, the Council will evaluate and determine the appropriate sanction for a licensee with a qualifying criminal conviction in accordance with §53.021 of the Occupations Code.

(10) The Council may combine an administrative penalty with another standard disciplinary sanction to protect the public or deter future violations.

(b) Standard Disciplinary Sanctions. The Council may impose the following disciplinary sanctions which are listed in descending order of severity:

(1) Revocation;
(2) Suspension for a definite period of time;
(3) Suspension plus probation of any or all of the suspension period;
(4) Probation of the license for a definite period of time;
(5) Reprimand; and
(6) Administrative penalty.

(c) The following standard disciplinary sanctions shall apply to violations of:
Figure: 22 TAC §884.20(c)

(d) Additional Conditions. The Council may impose additional conditions or restrictions upon a license deemed necessary to facilitate the rehabilitation and education of the licensee and to protect the public, including but not limited to:

(1) Consultation with the licensee on matters of ethics rules, laws and standards of practice by a licensed professional approved by the Council;
(2) Restrictions on the licensee's ability to provide certain types of services or to provide services to certain classes of patients;
(3) Restrictions on the licensee's supervision of others in a particular area of practice;
(4) Completion of a specified number of continuing education hours on specified topics approved in advance by the Council in addition to any minimum number required of all licensees as a condition of licensure;
(5) Taking and passing with the minimum required score of any examination required by the Council of a licensee; and
(6) Undergoing a psychological or medical evaluation by a qualified professional approved in advance by the Council and undergoing any treatment recommended pursuant to the evaluation.

(e) Aggravating Factors. Aggravating factors are those which may increase the severity of unprofessional conduct, justifying the imposition of a more severe penalty. Such factors include, but are not limited to, the following:

(1) Physical or emotional harm and the type and severity thereof;
(2) Economic harm to any individual or entity and the severity thereof;
(3) Increased potential for harm to the public;
(4) Attempted concealment of misconduct;
(5) Premeditated conduct;
(6) Intentional misconduct;
(7) Prior written warnings or written admonishments from any supervisor or governmental agency or official regarding statutes or regulations pertaining to the licensee's practice;
(8) Prior misconduct of a similar or related nature;
(9) Disciplinary history;
(10) Likelihood of future misconduct of a similar nature;
(11) Violation of a Council order;
(12) Failure to implement remedial measures to correct or alleviate harm arising from the misconduct;
(13) Lack of rehabilitative effort or potential; and
(14) Improper or inappropriate motive.

(f) Mitigating Factors. Mitigating factors are those which may reduce the severity of unprofessional conduct. Such factors include, but are not limited to, the following:

(1) Acceptance of responsibility;
(2) Self-reporting of unprofessional conduct;
(3) Implementation of remedial measures to correct or mitigate harm arising from the unprofessional conduct;
(4) Good-faith motive;
(5) Rehabilitative efforts or potential; and
(6) Prior community service.

§884.21. Assessment of Sanction.
The Council, subject to §507.306 of the Occupations Code, has the exclusive authority to assess sanctions against licensees who are found to have violated a law within its jurisdiction. While the Council will consider an ALJ's recommendations as to the sanctions to be imposed, it is not bound by such recommendations. The appropriate sanction is not a proper finding of fact or conclusion of law, and the determination of the appropriate sanction is reserved to the Council based upon the relevant schedule of sanctions and record in a contested case.

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

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SUBCHAPTER D. DUTIES AND RESPONSIBILITIES

22 TAC §§884.30 - 884.32

The Texas Behavioral Health Executive Council proposes new §§884.30 - 884.32, relating to Duties and Responsibilities.

Overview and Explanation of the Proposed Rule. The proposed new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorize the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council’s duties and implement Chapter 507. Section 2001.004 of the Tex. Gov’t Code requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. These proposed rules require licensees to provide notice to the public of the complaint process, they require licensees to cooperate with Executive Council investigations, and they require licensees to report legal actions and a discipline.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are 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 rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules 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 rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

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

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined that for the first five-year period the proposed rules are 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 rules 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 rules 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 rules do 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 rules are 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 rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, since although they are new rules they essentially consolidate the rules from four regulatory boards into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do 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 rules. 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 rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of
the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The new rules are 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 these new rules 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 proposes these new rules pursuant to the authority found in §507.204 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning the investigation of a complaint filed with the Executive Council.

The Executive Council proposes these new rules pursuant to the authority found in §507.202 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning notice to the public of the complaint process.

Lastly, the Executive Council proposes these new rules 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.

Sections 507.201-507.207 and 507.301-507.361 of the Tex. Occ. Code are affected by these proposed new rules; no other code, articles or statutes are affected by this proposal.

Licensees must cooperate with and respond to Council investigations. Failure to cooperate or respond shall serve as grounds for a Council-initiated complaint and disciplinary action.

(a) Licensees shall provide notice to the public (e.g., patients, clients) that complaints can be filed with the Council by any of the following methods:
   (1) on a registration form, application, written contract for services, or other intake paperwork required by licensees prior to delivering services;
   (2) on a sign prominently displayed in the licensee's place of business or location where services are delivered. The sign must be printed on paper of no less than 8-1/2 inches by 11 inches in size;
   (3) in a prominent and easily accessible location on the licensee's website; or
   (4) in a bill for services.
(b) The notice required by this rule must include the Council's name, mailing address, and telephone number, as well as the following statement:
   Figure: 22 TAC §884.31(b)

§884.32. Reportable Legal Action and Discipline.
(a) Licensees are required to report legal actions as follows:
   (1) Any conviction, sentence, dispositive agreement, or order placing the licensee on community supervision or pretrial diversion, must be reported in writing to the Council within thirty days of the underlying event. A report must include the case number, court, and county where the matter is filed, together with a description of the matter being reported. A licensee shall provide copies of court documents upon request from agency staff.
   (2) Any lawsuit brought by or against a licensee concerning or related to the delivery of services regulated by this agency or billing practices by the licensee. A report must include a copy of the initial pleading filed by or served upon the licensee, and must be submitted to the Council within thirty days of either filing by or service upon the licensee.
   (3) Any administrative or disciplinary action initiated against a licensee by another health regulatory agency in this state or any other jurisdiction, or any agency or office within the federal government, must be reported to the Council by sending notification of the action within thirty days of the licensee receiving notice of the action. A report must include a copy of any complaint, notice of violation, or other documentation received by the licensee from the initiating entity which describes the factual basis for the action. A licensee must also supplement this report to the Council with a copy of any order, letter, or determination setting forth the final disposition of the matter within thirty days following the final disposition.
   (b) A complaint shall be opened if a reported criminal action constitutes grounds for disciplinary action under applicable state or federal law. A complaint may be opened if a reported civil action constitutes grounds for disciplinary action under Council rules.
   (c) Reciprocal Discipline:
   (1) A complaint may be opened upon receipt of a report of discipline against a licensee by another health licensing agency in this state or any other jurisdiction.
   (2) The Council will impose disciplinary action on a licensee according to its own schedule of sanctions for the conduct forming the basis of the other health licensing agency's disciplinary action.
   (3) A voluntary surrender of a license in lieu of disciplinary action or during an investigation by another health licensing agency constitutes disciplinary action under this rule.

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

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SUBCHAPTER E. LICENSE SUSPENSION

22 TAC §884.40, §884.41

The Texas Behavioral Health Executive Council proposes new §884.40 and §884.41, relating to License Suspension.

Overview and Explanation of the Proposed Rule. The proposed new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151
and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council’s duties and implement Chapter 507. Section 2001.004 of the Tex. Gov’t Code requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. These proposed rules pertain to the Executive Council's proceedings to temporarily suspend a license.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are 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 rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules do 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 rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

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

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined that for the first five-year period the proposed rules are 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 rules 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 rules 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 rules do 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 rules are 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 rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the this agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, since although they are new rules they essentially consolidate the rules from four regulatory boards into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules’ applicability; and they do not positively or adversely affect the state’s economy.

Taking Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rules. 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 rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov’t Code.

Statutory Authority. The new rules are 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 these new rules 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 proposes these new rules pursuant to the authority found in §507.204 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning the investigation of a complaint filed with the Executive Council.

Lastly, the Executive Council proposes these new rules 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.
Sections 507.201-507.207 and 507.301-507.361 of the Tex. Occ. Code are affected by these proposed new rules; no other code, article or statute is affected by this proposal.

§884.40. Temporary Suspension of a License.

(a) In accordance with §507.302 of the Occupations Code, a license shall be temporarily suspended when the Council or an executive committee of the Council determines that the continued practice by a licensee (respondent) would constitute a continuing and imminent threat to the public welfare.

(b) An executive committee of the Council shall convene as follows:

(1) For each temporary suspension proceeding, the Council may appoint a three-member executive committee, called a "suspension panel," to consider the information and evidence presented by agency staff. The suspension panel must have at least one member from the same profession as the respondent and a majority of members from the respondent's member board. The suspension panel shall confer with each other and name a chair of the suspension panel.

(2) In the event of the recusal of a suspension panel member or the inability of a suspension panel member to attend a temporary suspension proceeding, the presiding officer for the Council may appoint an alternate council member to serve on the suspension panel.

(3) The suspension panel may convene in-person or via telephone, video conference, or other electronic means.

(c) Temporary Suspension Hearing. The meeting at which the suspension panel considers a temporary suspension is a temporary suspension hearing. At the temporary suspension hearing, agency staff shall present evidence and information to the suspension panel that the continued practice by a person licensed by the Council would constitute a continuing and imminent threat to the public welfare. Notice of the temporary suspension hearing shall be sent to the respondent no less than 10 days before the hearing by personal service or by registered or certified mail.

(d) Order of Temporary Suspension. If a majority of the suspension panel votes to temporarily suspend a license, the suspension shall have immediate effect, and the chair of the suspension panel will sign an Order of Temporary Suspension. The Order of Temporary Suspension shall include a factual and legal basis establishing imminent peril to the public health, safety, or welfare, as required by §2001.054(c-1) of the Government Code. The Order shall be sent to the respondent by first-class mail or email.

(e) Temporary Suspension Without Notice. In accordance with §507.302(b) of the Occupations Code, a license may be suspended without notice to the respondent if at the time of the suspension, agency staff request a hearing before SOAH to be held as soon as practicable but no later than 14 days after the date of the temporary suspension. The hearing is referred to as the "probable cause hearing."

(f) Notice, Continuance, and Waiver of Probable Cause Hearing. Agency staff shall serve notice of the probable cause hearing upon the respondent in accordance with SOAH's rules. The respondent may request a continuance or waiver of the probable cause hearing. If the ALJ grants the continuance request or the respondent waives the probable cause hearing, the suspension remains in effect until the suspension is considered by SOAH at the continued probable cause hearing or at the final hearing. If the probable cause hearing is not held within 14 days and the respondent did not request a continuance or waive the probable cause hearing, the suspended license is reinstated.

(g) Probable Cause Hearing. At the probable cause hearing, an ALJ shall determine whether there is probable cause to continue the temporary suspension of the license and issue an order on that determination.

(h) Final Hearing. The State Office of Administrative Hearings shall hold a hearing no later than 61 days from the date of the temporary suspension. At this hearing, agency staff shall present evidence supporting the continued suspension of the license and may present evidence of any additional violations related to the licensee. This hearing is referred to as the "final hearing."

(i) Notice and Continuance of Final Hearing. Agency staff shall send notice of the final hearing in accordance with SOAH's rules. The respondent may request a continuance or waive the final hearing. If a final hearing is not held within 61 days of the date of the temporary suspension and the respondent did not request a continuance or waive the final hearing, the license is reinstated.

(j) Proposal for Decision. Following the final hearing, the ALJ shall issue a PFD on the suspension. The PFD may also address any other additional violations related to the licensee.

(k) A temporary suspension takes effect immediately and shall remain in effect until:

(1) a final or superseding order of the Council is entered;

(2) the ALJ issues an order determining that there is no probable cause to continue the temporary suspension of the license; or

(3) a SOAH hearing is not timely held.

§884.41. Suspension of License for Failure to Pay Child Support.

(a) On receipt of a final court order or order from a Title IV-D agency (e.g. the Texas Attorney General) suspending a license due to failure to pay child support, the Executive Director shall immediately determine if the Council has issued a license to the obligor named on the order, and, if a license has been issued:

(1) enter an order of suspension of the license;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license.

(b) The Council shall implement the terms of an order suspending a license without additional review or hearing. The Council will provide notice of suspension as appropriate to the licensee and others concerned with the license.

(c) The Council may not modify, remand, reverse, vacate, or stay an order suspending a license issued under Chapter 232 of the Family Code and may not review, vacate, or reconsider the terms of a final order suspending the license.

(d) A licensee who is the subject of a court order or order from a Title IV-D agency suspending the individual's license is not entitled to a refund for any fee paid to the Council.

(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures.

(f) An individual who continues to engage in the practice of marriage and family therapy, professional counseling, psychology, or social work after the implementation of the order suspending the individual's license is liable for the same civil and criminal penalties provided for engaging in the licensed activity without a license or while a license is suspended.

(g) On receipt of a court order or order from a Title IV-D agency vacating or staying an order suspending a license, the Execu-
The individual must pay a reinstatement fee in an amount
equal to the renewal fee for the license prior to issuance of the license.

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

Filed with the Office of the Secretary of State on April 9, 2020.

TRD-202001418
Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Earliest possible date of adoption: May 24, 2020
For further information, please call: (512) 305-7700

SUBCHAPTER F. SPECIAL PROVISIONS
FOR PERSONS LICENSED TO PRACTICE
PSYCHOLOGY

22 TAC §884.50, §884.51

The Texas Behavioral Health Executive Council proposes new
§884.50 and §884.51, relating to Special Provisions for Persons
Licensed to Practice Psychology.

Overview and Explanation of the Proposed Rule. The proposed
new rules are needed to implement Tex. H.B. 1501, 86th Leg.,
R.S. (2019). This legislation created the Texas Behavioral
Health Executive Council and authorized the Executive Council
to regulate marriage and family therapists, professional coun-
selors, psychologists, and social workers. Sections 507.151
and 507.152 of the Tex. Occ. Code authorize the Executive
Council to administer and enforce Chapters 501, 502, 503,
505, and 507 of the Tex. Occ. Code, as well as adopt rules as
necessary to perform the Executive Council's duties and
implement Chapter 507. Section 2001.004 of the Tex. Gov't
Code requires state agencies to adopt rules of practice stating
the nature and requirements of all available formal and informal
procedures. These proposed rules pertain to the Executive
Council's proceedings for competency evaluations and remedial

Fiscal Note. Darrel D. Spinks, Executive Director of the Exec-
utive Council, has determined that for the first five-year period
the proposed rules are in effect, there will be no additional esti-
mated cost, reduction in costs, or loss or increase in revenue to
the state or local governments as a result of enforcing or admin-
istering the rules. Additionally, Mr. Spinks has determined that
enforcing or administering the rules 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
two-year period the proposed rules are in effect there will be a
benefit to licensees, applicants, and the general public because
the proposed rules will provide greater efficiencies and consist-
tency by consolidating all the same or similar requirements from
the boards for marriage and family therapists, professional coun-
selors, psychologists, and social workers and implementing the
same under one agency, the Executive Council. Mr. Spinks has
also determined that for each year of the first five years the rules
are in effect, the public benefit anticipated as a result of enforcing
the rules will be to help the Executive Council protect the public.

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

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

Regulatory Flexibility Analysis for Small and Micro-Businesses
and Rural Communities. Mr. Spinks has determined that the
proposed rules 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 flexibil-
ity analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has deter-
mined that the proposed rules will have no impact on local em-
ployment or on local economy. Thus, the Executive Council is not
required to prepare a local employment impact statement pur-

Requirement for Rules Increasing Costs to Regulated Persons.
The proposed rules do not impose any new or additional costs to
regulated persons, state agencies, special districts, or local gov-
ernments; therefore, pursuant to §2001.0045 of the Tex. Gov't
Code, no repeal or amendment of another rule is required to of-
set any increased costs. Additionally, no repeal or amendment of
another rule is required because the proposed rules are nec-
essary to protect the health, safety, and welfare of the residents
of this state and because regulatory costs imposed by the Exec-
utive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year
period the proposed rules are in effect, the Executive Council
estimates that the proposed rules will have no effect on govern-
ment growth. The proposed rules do not create or eliminate a
government program; they do not require the creation or elimi-
nation of employee positions; they do not require the increase or
decrease in future legislative appropriations to the agency; they
do not require an increase or decrease in fees paid to the agency;
they do not create a new regulation, since although they are new
rules they essentially consolidate the rules from four regulatory
boards into one agency, as required by statute, thereby reducing
the amount of regulations in Texas; they do not expand an ex-
isting regulation; they do not increase or decrease the number of
individuals subject to the rules' applicability; and they do 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 pro-
posed rules. Thus, the Executive Council is not required to pre-
pare a takings impact assessment pursuant to §2007.043 of the
Tex. Gov't Code.

Request for Public Comments. Comments on the proposed
rules may be submitted to Brenda Skiff, Public Information
Officer, Texas State Board of Examiners of Psychologists, 333
Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of
publication of this proposal in the Texas Register. Comments
may also be submitted via fax to (512) 305-7701, or via email to
Open.Records@tsbep.texas.gov.
The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The new rules are 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 these new rules 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 proposes these new rules pursuant to the authority found in §507.204 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning the investigation of a complaint filed with the Executive Council.

Lastly, the Executive Council proposes these new rules 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.

Sections 501.158, 501.411, 507.201 - 507.207, and 507.301 - 507.361 of the Tex. Occ. Code are affected by these proposed new rules; no other code, article or statute is affected by this proposal.

§884.50. Competency Evaluations under Chapter 501 of the Occupations Code.

(a) In accordance with §501.158 of the Occupations Code, based upon the Council’s reasonable belief that an applicant or person licensed under Chapter 501 is not physically or mentally competent to provide psychological services with reasonable skill and safety to patients or has a physical or mental disease or condition that would impair the person's competency to provide psychological services, the Council may request the person submit to:

(1) a physical examination by a physician approved by the Council; or

(2) a mental examination by a physician or psychologist approved by the Council.

(b) The Council may carry out its functions under this rule by and through an executive committee of the Council, which may convene as follows:

(1) For each competency evaluation proceeding, the Council may appoint a three-member executive committee, called a "competency evaluation panel," to issue requests for physical or mental examinations, conduct show cause hearings, and issue orders determining whether a person’s failure to submit to an examination was justified or unjustified. The competency evaluation panel must consist of a majority from TSBEP with at least one member holding the same license as the respondent. The competency evaluation panel shall confer with each other and name a chair for the panel.

(2) In the event of the recusal of a competency evaluation panel member or the inability of a panel member to attend a competency evaluation proceeding, the presiding officer for the Council may appoint an alternate council member to serve on the competency evaluation panel.

(3) The competency evaluation panel may convene in-person or via telephone, video conference, or other electronic means.

(c) If the person should refuse, ignore, or fail to comply with the Council’s request, the Council shall issue an order requiring the person to show cause for the person’s refusal at a hearing on the order scheduled for not later than the thirtieth (30) day after the notice is served on the person. Notice shall be provided by either personal service or by registered mail, return receipt requested. The meeting at which the Council considers a person’s failure to comply with an examination request is a "show cause hearing." At the show cause hearing, agency staff may present evidence and information to the Council that demonstrates the reasonable belief that an examination is necessary and may also present evidence of any additional violations related to the person. The person may appear, at the show cause hearing, in person and by counsel and present evidence to justify the person’s refusal to submit to examination as well as respond to any additional violations.

(d) After the show cause hearing, if a majority of the Council votes that the person’s failure to comply with the request was unjustified then the Council shall issue an order requiring the person to submit to the examination. If a majority of the Council votes that the person’s failure to comply with the request was justified, then the Council shall issue an order withdrawing the request for the examination.

(e) If the person fails to comply with the order issued after the show cause hearing requiring the person to submit to a physical or mental examination, the Council may take disciplinary action against the person by docketing the matter at SOAH.

(f) Following a SOAH hearing, the ALJ shall issue a PFD on whether the person’s failure to comply with the Council’s order and request was justified. The PFD shall also address any other additional violations related to the person.

(g) The Council shall review the PFD at a regularly scheduled meeting after the PFD is issued and the Council shall issue a final order in the matter.

(h) An appeal from the Council’s order under this section is governed by Chapter 2001 of the Government Code.


(a) In accordance with §501.411 of the Occupations Code, the Council may issue and establish the terms of a non-disciplinary remedial plan to resolve the investigation of a complaint against a person licensed under Chapter 501.

(b) A remedial plan may not contain a provision that;

(1) revokes, suspends, limits, or restricts a person’s license or other authorization to practice psychology; or

(2) assesses an administrative penalty against a person.

(c) A remedial plan may not be imposed to resolve a complaint;

(1) concerning significant patient harm; or
(2) in which the appropriate resolution may involve a restriction or limitation on the manner in which a license holder practices psychology or the suspension or revocation of a license.

(d) The Council may not issue a remedial plan to resolve a complaint against a license holder if the license holder has previously entered into a remedial plan with the Council for the resolution of a different complaint.

(e) The Council may issue a remedial plan to resolve a complaint against a license holder in which the appropriate resolution involves a reprimand, administrative penalty, or a combination thereof under the appropriate schedule of sanctions.

(f) The Council may assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering the plan.

(g) In accordance with §507.205 of the Occupations Code, a remedial plan is confidential complaint information and not subject to public disclosure.

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 April 9, 2020.
TRD-202001419
Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council

Earliest possible date of adoption: May 24, 2020
For further information, please call: (512) 305-7700

SUBCHAPTER G. COMPLIANCE

22 TAC §884.55

The Texas Behavioral Health Executive Council proposes new §884.55, relating to Compliance.

Overview and Explanation of the Proposed Rule. The proposed new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorize the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council’s duties and implement Chapter 507. Section 2001.004 of the Tex. Gov’t Code requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. This proposed rule pertains to the Executive Council’s procedures for monitoring and ensuring compliance with Executive Council orders.

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 efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. 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 that 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 that 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 §2001.004§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 the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, since although it is a new rule it essentially consolidates the rules from four regulatory boards into one agency, as required by statute, thereby reducing the amount of regulations in Texas; 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.
The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The new 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 new 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 proposes this new rule pursuant to the authority found in §507.204 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning the investigation of a complaint filed with the Executive Council.

The Executive Council proposes this new rule pursuant to the authority found in §507.404 of the Tex. Occ. Code which requires the Executive Council to adopt rules regarding monitoring of a license holder’s compliance with Executive Council orders.

Lastly, the Executive Council proposes this new 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. Sections 507.201-507.207 and 507.301-507.361 of the Tex. Occ. Code are affected by this proposed new rule; no other code, article or statute is affected by this proposal.

§884.55. Monitoring Compliance with Disciplinary Orders.

Each member board shall coordinate with agency staff and be responsible for monitoring its applicants and licensees who are ordered by the Council to take or undergo certain corrective, preventative, or rehabilitative steps within a disciplinary or eligibility order. The member boards shall ascertain whether its applicants and licensees are performing the required acts within the designated time period, and make appropriate recommendations to the Council for modification of the terms of an order or for further enforcement proceedings based upon noncompliance.

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

SUBCHAPTER H. CONTESTED CASES

22 TAC §§884.60 - 884.65

The Texas Behavioral Health Executive Council proposes new §§884.60 - 884.65, relating to Contested Cases.

Overview and Explanation of the Proposed Rule. The proposed new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council’s duties and implement Chapter 507. Section 2001.004 of the Tex. Gov’t Code requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. These proposed rules pertain to the Executive Council’s procedures for conducting a contested case to resolve a complaint.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rules are 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 rules. Additionally, Mr. Spinks has determined that enforcing or administering the rules do 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 rules are in effect there will be a benefit to licensees, applicants, and the general public because the proposed rules will provide greater efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. Mr. Spinks has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help the Executive Council protect the public.

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

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined that for the first five-year period the proposed rules are 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 rules 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 rules 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 rules do 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 rules are 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 rules are in effect, the Executive Council estimates that the proposed rules will have no effect on government growth. The proposed rules do not create or eliminate a government program; they do not require the creation or elimination of employee positions; they do not require the increase or decrease in future legislative appropriations to the this agency; they do not require an increase or decrease in fees paid to the agency; they do not create a new regulation, although they are new rules they essentially consolidate the rules from four regulatory boards into one agency, as required by statute, thereby reducing the amount of regulations in Texas; they do not expand an existing regulation; they do not increase or decrease the number of individuals subject to the rules’ applicability; and they do 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 rules. 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 rules may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small businesses; if the proposed rules are believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rules, describe and estimate the economic impact of the rules on small businesses, offer alternative methods of achieving the purpose of the rules; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rules are to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov’t Code.

Statutory Authority. The new rules are 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 these new rules 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 proposes these new rules pursuant to the authority found in §507.204 of the Tex. Occ. Code which requires the Executive Council to adopt rules concerning the investigation of a complaint filed with the Executive Council.

Lastly, the Executive Council proposes these new rules 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.

Sections 507.201-507.207 and 507.301-507.361 of the Tex. Occ. Code are affected by these proposed new rules; no other code, articles or statutes are affected by this proposal.

§884.60. Witness Fees.

(a) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to attend a hearing or deposition pursuant to §507.206 of the Occupations Code, in connection with a complaint, shall be entitled to reimbursement of expenses as set forth in §2001.103 of the Government Code.

(b) The party or agency at whose request a witness appears or the deposition is taken shall be responsible for payment of the expenses required by this rule.

§884.61. Contested Case Hearing Costs.

(a) Costs associated with a contested case hearing before SOAH shall be determined according to the rules in 1 TAC §155.423 unless determined in accordance with subsection (b) of this section.

(b) On the written request by a party to a case or on request of the ALJ, a written transcript of all or part of the proceedings shall be prepared. The cost of the transcript is borne by the requesting party. This section does not preclude the parties from agreeing to share the costs associated with the preparation of a transcript. If only the ALJ requests a transcript, costs will be assessed to the respondent(s) or applicant(s), as appropriate.

§884.62. Final Decision and Order.

(a) A final decision or order following a contested case at SOAH shall be in writing and shall be signed by the presiding officer for the Council.

(b) A party who appeals a final agency decision or order must pay all costs for the preparation of the original or a certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court.

§884.63. Motion for Rehearing.

(a) A motion for rehearing is a prerequisite to appeal from a Council’s final decision or order in a contested case. A motion for rehearing shall be filed and handled in accordance with Government Code, Chapter 2001, Subchapter F.
(b) The Executive Director is authorized to grant or deny requests to extend the deadline for filing a motion for rehearing in accordance with Government Code, Chapter 2001, Subchapter F.

(c) In the event of an extension, the motion for rehearing may be overruled by operation of law in accordance with Government Code, Chapter 2001, Subchapter F.

§884.65. Corrected Final Decision and Order. The Executive Director may enter a corrected order to correct a clerical mistake in an order of the Council.

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 April 9, 2020.

TRD-202001421
Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council

Earliest possible date of adoption: May 24, 2020
For further information, please call: (512) 305-7700

CHAPTER 885. FEES

22 TAC §885.1

The Texas Behavioral Health Executive Council proposes new §885.1, relating to Fees.

Overview and Explanation of the Proposed Rule. The proposed new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council’s duties and implement Chapter 507. Section 507.154 of the Tex. Occ. Code authorizes the Executive Council to set fees necessary to cover the costs of administering Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code. This proposed new rule implements this statutory duty.

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, the Executive Council will increase some application and renewal fees but only to the extent necessary to meet the contingency rider found in §18.11 of Art. IX in the General Appropriations Act for 2020-2021, see Tex. H.B. 1, 86th Leg., R.S. (2019); there will be no additional estimated cost, reduction in costs, or loss in revenue to the state or local governments as a result of enforcing or administering the rule. The proposed rule will result in an increase in revenue to the state, but only in the amount necessary to cover the aforementioned contingency rider. 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 efficiencies and consistency by consolidating all the same or similar requirements from the boards for marriage and family therapists, professional counselors, psychologists, and social workers and implementing the same under one agency, the Executive Council. 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 that for the first five-year period the proposed rule is in effect, there will be some additional economic costs to some persons required to comply with this rule. This proposed rule will increase application fees for the following license types: Licensed Baccalaureate Social Worker (LBSW) and Licensed Master Social Worker (LMSW) applications will increase by $29; Licensed Clinical Social Worker (LCSW) applications will increase by $29; Social Worker supervisor status applications will increase by $30; initial Licensed Marriage and Family Therapist (LMFT) associate applications will increase by $29; LMFT by endorsement applications will increase by $31; LMFT supervisor status applications will increase by $30; Licensed Professional Counselor (LPC), LPC intern, and provisional license applications will increase by $31; and LPC supervisor status applications will decrease by $50. This proposed rule will increase renewal fees for the following license types: LBSW and LMSW renewal applications will increase by $61; LMSW advanced practitioner and LCSW renewal applications will increase by $63; LMFT and LMFT associate renewal applications will increase by $11; LPC renewal applications will increase by $41; LPC supervisor status renewal applications will decrease by $50; and Licensed Specialist in School Psychology renewal applications will increase by $21. This proposed rule will create a new fee for the renewal of supervisor status for social workers which will be $50.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined that 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 costs to state agencies, special districts, or local governments; but, as previously discussed, the proposed rule does impose some new or additional costs to regulated persons. Pursuant to §2001.0045(e)(9) of the Tex. Gov’t Code, no repeal or amendment of another rule is required to offset any increased costs because this rule is necessary to implement legislation. Newly enacted §507.154 of the Tex. Occ. Code authorizes the Executive Council to set fees necessary to cover the costs of administering the newly formed agency. The new and increased application and renewal fees are necessary to meet the contingency rider found in §18.11 of Art. IX in the General Appropriations Act for 2020-2021, see Tex. H.B. 1, 86th Leg., R.S. (2019). Additionally, no repeal or amend-
ment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state.

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 the agency; as previously discussed and described, it does require some increases in fees paid to the agency but the increases to some of the application and renewal fees is legislatively required to cover the costs for administering the agency; it does not create a new regulation, since although it is a new rule it essentially consolidates the rules from four regulatory boards into one agency, as required by statute, thereby reducing the amount of regulations in Texas; 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.

Taking 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 to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov’t Code.

Statutory Authority. The new 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 new 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 proposes this new rule pursuant to the authority found in §507.154 of the Tex. Occ. Code which authorizes the Executive Council to set fees necessary to cover the costs of administering Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code.

Lastly, the Executive Council proposes these new rules 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, article or statute is affected by this proposal.

§885.1. Executive Council Fees.

(a) General provisions.

(1) All fees are nonrefundable and cannot be waived except as otherwise permitted by law.

(2) Fees required to be submitted online to the Council must be paid by debit or credit card. All other fees paid to the Council must be in the form of a personal check, cashier's check, or money order.

(3) For applications and renewals, the Council is required to collect fees to fund the Office of Patient Protection (OPP) in accordance with Occupations Code §101.307, relating to the Health Professions Council.

(4) For applications, examinations, and renewals, the Council is required to collect subscription or convenience fees to recover costs associated with processing through Texas.gov.

(5) All examination fees are to be paid to the Council’s designee.

(b) The Executive Council adopts the following chart of fees:

Figure: 22 TAC §885.1(b)

(c) Late fees.

(1) If the person’s license has been expired for 90 days or less, the person may renew the license by paying to the Council a fee in an amount equal to one and one-half times the base renewal fee.

(2) If the person’s license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the Council a fee in an amount equal to two times the base renewal fee.

(3) If the person’s license has been expired for one year or more, the person may not renew the license; however, the person may apply for reinstatement of the license.

(d) Open Records Fees. In accordance with §552.262 of the Government Code, the Council adopts by reference the rules developed by the Office of the Attorney General in 1 TAC Part 3, Chapter 70 (relating to Cost of Copies of Public Information) for use by each governmental body in determining charges under Government Code, Chapter 552 (Public Information) Subchapter F (Charges for Providing Copies of Public Information).

(e) Military Exemption for Fees. All licensing and examination base rate fees payable to the Council are waived for the following individuals:

(1) military service members and military veterans, as those terms are defined by Chapter 55, Occupations Code, whose military service, training, or education substantially meets all licensure requirements; and

(2) military service members, military veterans, and military spouses, as those terms are defined by Chapter 55, Occupations Code, who hold a current license issued by another jurisdiction that has
licensing requirements that are substantially equivalent to the require-
ments of this state.
The agency certifies that legal counsel has reviewed the pro-
posal and found it to be within the state agency's legal authority
to adopt.

Filed with the Office of the Secretary of State on April 9, 2020.
TRD-202001422
Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Earliest possible date of adoption: May 24, 2020
For further information, please call: (512) 305-7700

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TITLE 31.  NATURAL RESOURCES AND CONSERVATION
PART 10.  TEXAS WATER DEVELOPMENT BOARD
CHAPTER 353.  INTRODUCTORY PROVISIONS
SUBCHAPTER G.  TEXAS NATURAL RESOURCES INFORMATION SYSTEM (TNRIS)

[PARTNERSHIPS]

31 TAC §353.102, §353.103
The Texas Water Development Board (TWDB) proposes adding new 31 Texas Administrative Code (TAC) §353.102 and
§353.103, relating to geographic information standards, and
amending the name of 31 TAC Chapter 353 Subchapter G to
broaden the scope of its subject matter.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS
FOR THE PROPOSED ADDITIONS
The purpose of the proposed additions is to establish standards
that achieve uniformity of data and compatibility among geo-
graphic information software products used by state agencies
and to place the standards under the direction of the state ge-
ographic information officer. Proposed additions for GIS stan-
dards are identical to those currently under the Department of
Information Resources (DIR), which intends to repeal its rules
set out in 1 TAC Chapter 205. The rules are proposed to move
to the Texas Water Development Board (TWDB) because the
state geographic information officer resides within this agency.
The current Chapter 353 Subchapter G, Texas Natural Re-
sources Information System Partnerships, is proposed to be
renamed Texas Natural Resources Information System (TNRIS)
to allow for inclusion of multiple rules related to this TWDB
program within a single subchapter.

SECTION BY SECTION DISCUSSION OF THE PROPOSED RULES
§353.102 Definitions
Proposed §353.102 provides descriptions for terms related to
geographic information technology, including a description for
the state geographic information officer.

§353.103 State Agency Geographic Information Standards
Proposed §353.103 adopts standards to guarantee that data cre-
atured or procured by state agencies achieve compatibility with all
geographic information software products. Standards also en-
sure the data are uniform in the event datasets are compiled
from different sources.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERN-
MENTS
Rebecca Treviño, Chief Financial Officer, has determined that
there will be no significant fiscal implications for state or local
governments resulting from the proposed rulemaking. For the
first five years these rules are in effect, there is no expected
additional cost to state or local governments resulting from their
administration.

These rules are not expected to result in reductions in costs to
either state or local governments. There is no change in costs
for state and local governments because the proposed additions
transfer responsibility for state geographic information standards
from DIR to TWDB. These rules are not expected to have any
impact on state or local revenues. The rules and their admin-
istration will not require any increase in expenditures for state or
local governments. Additionally, there are no foreseeable impli-
cations relating to state or local governments’ costs or revenue
resulting from these rules.

Because these rules will not impose a cost on regulated persons,
the requirement included in Texas Government Code Section
2001.0045 to repeal a rule does not apply.
The board invites public comment regarding this fiscal note.
Written comments on the fiscal note may be submitted to the
contact person at the address listed under the Submission of
Comments section of this preamble.

PUBLIC BENEFITS AND COSTS
Ms. Treviño also has determined that for each year of the first
five years the proposed rulemaking is in effect, there will be no
additional cost to the public.

LOCAL EMPLOYMENT IMPACT STATEMENT
The board has determined that a local employment impact state-
ment is not required because the proposed rules do not ad-
versely affect a local economy in a material way for the first five
years they are in effect, since they will impose no new require-
ments on local economies. The board also has determined that
there will be no adverse economic effect on small businesses,
micro-businesses, or rural communities from enforcing this rule-
making. The board also has determined that there is no anticip-
pated economic cost to persons who are required to comply with
the rulemaking as proposed. Therefore, no regulatory flexibility
analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION
The board reviewed the proposed rulemaking in light of the
regulatory analysis requirements of Texas Government Code
§2001.0225 and determined that the rulemaking is not subject
to Texas Government Code §2001.0225, because it does not
meet the definition of a "major environmental rule" as defined in
the Administrative Procedure Act. A "major environmental rule"
is defined as a rule that protects the envi-
ronment or reduce risks to human health from environmental
exposure, or a rule that may adversely affect in a material way
the economy or a sector of the economy, productivity, compe-
The intent of the rulemaking is to ensure state agencies develop geographic information in a compatible format for ease of data exchange, seek out data procurement partners for cost share and cost reduction, and to ensure maps depicting boundary lines include a "not surveyed by a professional surveyor" disclaimer.

Even if the proposed rules were major environmental rules, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather is proposed under the authority of Texas Water Code §16.021. Therefore, the proposed rules do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT

The board evaluated the proposed rules and performed an analysis of whether they constitute a taking under Texas Government Code Chapter 2007. The specific purpose of the rules is to provide state agency standards for geographic information procurement and compilation.

Promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, these rules require state agency compliance with standards for geographic information technology without burdening or restricting or limiting an owner's right to property and reducing its value by 25% or more. Therefore, the proposed rulemaking does not constitute a taking under Texas Government Code Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT

The board reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined that for the first five years the proposed rules would be in effect, the proposed rules will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy. The proposed rules transfer authority for state geographic information standards from DIR to TWDB.

SUBMISSION OF COMMENTS

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the Texas Register.

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and Texas Water Code §16.021.


§353.102. Definitions.

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

(1) Geographic information system (GIS)--A system of computer hardware, software and procedures used to store, analyze and display geographic data and related tabular data in a geographic context to solve complex planning and management problems in a wide variety of applications.

(2) Geographic dataset--Digital data which illustrate and describe some characteristic of the earth's surface or a region near the earth's surface. A geographic dataset employs a defined, earth-based coordinate system which allows its use in a geographic information system. For the purposes of this rule, geospatial has the same meaning as geographic.

(3) Geographic dataset enhancement--Substantial alteration of a geographic dataset which increases its usefulness through the addition or modification of attribute (tabular) data fields, improvements in spatial accuracy, or extension of geographical coverage.

(4) Geospatial metadata--A description of the characteristics of a geographic dataset recorded in a standard format. Characteristics include data content, quality, purpose, condition, format, spatial coordinate system, availability, etc. The Federal Geographic Data Committee has defined a formal content standard for digital geospatial metadata for use by federal agencies.

(5) GIS map product--A geographic representation, in paper or electronic format, displaying features from one or more geographic datasets. Small scale images that are clearly intended only for graphic illustration within a larger publication are not considered to be GIS map products.

(6) High priority imagery and datasets (HPIDS)--HPIDS are geographic datasets identified by the state Geographic Information Officer as high priority for acquisition or enhancement, developed or acquired by state agencies, and intended for sharing and integration into a single statewide compilation.

(7) State Agency--A department, commission, board, office, council, authority, or other agency, other than an institution of higher education, in the executive or judicial branch of state government, that is created by the constitution or a statute of this state.
§353.103. State Agency Geographic Information Standards.

(a) Applicability. All users and developers of geographic datasets and geographic information systems in state agencies must comply with the technical standards specified in this section. Activities conducted by a registered professional land surveyor while engaged in the practice of professional surveying, as defined in the Professional Land Surveying Practices Act (Art. 5282c, VTCS) are exempt from these standards.

(b) Implementation guidance. Pursuant to Water Code §16.021(c), the GIO provides guidance to the Executive Administrator of the Texas Water Development Board and to the Department of Information Resources (the department). The guidance provided by the GIO to the department relates to technology standards developed by the department for geographic datasets pursuant to Water Code §16.021(c)(4).

(c) Geographic Information Standards.

(1) Geographic dataset acquisition and development.

(A) Standard. An agency planning to acquire, develop, or enhance a geographic dataset that may correspond to an HPIDS dataset shall coordinate such activity with the GIO to determine potential use of the HPIDS master contract.

(B) Procurement of public domain geographic datasets. An agency that procures a copy of a federal or other public domain geographic dataset shall make the dataset available to the Texas Natural Resources Information System (TNRIS). TNRIS will make these datasets available to other agencies, institutions of higher education, and to the public.

(2) Geographic dataset exchange: Data format. An agency that originates or adds data content to a non-proprietary geographic dataset and distributes the dataset to another state agency, institution of higher education, or the public must make the dataset available in at least one digital format that is recognized by the most commonly used geographic information systems. This requirement does not preclude the agency from offering the dataset in other data formats. The GIO provides guidance on acceptable formats for data exchange.

(3) Geographic dataset documentation.

(A) Preparation. An agency shall prepare documentation for each geographic dataset that it both:

(i) originates and/or adds data content to; and

(ii) distributes as a standard product to another state agency, institution of higher education, or the public.

(B) Statement of Purpose. Documentation must include a statement of the purpose or intended use of the dataset and a disclaimer warning against unintended uses of the dataset. If an agency is aware of specific inappropriate uses of the dataset which some users may be inclined to make, the dataset disclaimer must specifically warn against those uses.

(C) Format. This documentation must be in a geospatial metadata format specified by the GIO.

(D) Delivery. In responding to a request for a geographic dataset, an agency shall provide the requestor a copy of the documentation.

(4) GIS map product disclaimer. Any map product, in paper or electronic format, produced using geographic information system technology and intended for official use and/or distribution outside the agency, must include a disclaimer statement advising against inappropriate use. If the nature of the map product is such that a user could incorrectly consider it to be a survey product, the disclaimer must clearly state that the map is not a survey product.

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 April 10, 2020.
TRD-202001430
Joe Reynolds
Interim General Counsel
Texas Water Development Board
Earliest possible date of adoption: May 24, 2020
For further information, please call: (512) 463-7686

TITLE 34. PUBLIC FINANCE
PART 1. COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)
SUBCHAPTER C. CLAIMS PROCESSING--TRAVEL VOUCHERS
34 TAC §5.22
The Comptroller of Public Accounts proposes amendments to §5.22 concerning state of Texas travel guidance.

The amendment to subsection (a) changes ’Web site’ to ”website” to conform with current spelling of the term and to be consistent with the way the term is spelled in Chapter 6.

The amendments to subsection (b)(3) clarify that a state agency may not reimburse a state employee for any costs or expenses in excess of those incurred for official travel that result from a state employee’s personal preference or convenience.

The amendments to subsection (b)(4) clarify that a state agency may not reimburse a state employee for a travel expense incurred by or on behalf of another state employee, except under the circumstances specified in this subsection.

The amendments to subsection (g)(2)(B) and (C) require point-to-point mileage to be documented by an employee’s vehicle odometer reading or by the single, readily available electronic mapping service selected by the employee’s agency, institution of higher education, or other entity required to comply with Government Code, Chapter 660, and adopted by internal policy of the agency, institution, or entity.

The amendments to subsection (j)(1)(C) change ”Texas Procurement and Support Services” to ”comptroller’s Statewide Procurement Division” because the name of that division has changed.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rules are in effect, the rules: will not create or eliminate a government pro-
gram; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that the proposed amendments would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Rob Coleman, Director, Fiscal Management Division, at rob.coleman@cpa.texas.gov or at P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the Texas Register.

The amendments are proposed under Government Code, §660.021, which authorizes the comptroller to adopt rules relating to the administration of Government Code, Chapter 660, concerning travel expenses, and the travel provisions of the General Appropriations Act.

The amendments implement Government Code, Chapter 660, concerning travel expenses.

§5.22. State of Texas Travel Guidance.

(a) General travel information will be maintained on the comptroller's website [Web site]. The information will include procedures, as provided in this rule, Government Code, Chapter 660, and the General Appropriations Act; examples; guidelines that will help support the travel expense reimbursement process for state agencies. Procedures, amounts, timing, limits, required documentation, permissible payees, distinctions among different types of state employees, or any other details concerning travel expense payments or reimbursements by a state agency are governed by Government Code, Chapter 660, the General Appropriations Act, and the rules adopted by the comptroller under Government Code, Chapter 660.

(b) Eligible expenses. A travel expense must be incurred before it is eligible for reimbursement.

(1) For lodging and transportation expenses, proof of payment must be documented to validate that the expenses were actually incurred.

(2) A state employee who receives free transportation or lodging in exchange for points or other non-monetary credits has not incurred an expense for reimbursement purposes.

(3) A state agency may not reimburse a state employee for any costs or expenses in excess of those incurred for official travel that result from a state employee's personal preference or convenience.

(4) A state agency may not reimburse a state employee for a travel expense incurred by or on behalf of another state employee, unless:

(A) the reimbursement is authorized by law; or

(B) the travel expense is incurred while the paying state employee and other state employee(s) are traveling on official state business; the circumstances surrounding payment of the travel expense necessitate the reimbursement of the paying state employee; and the reimbursement of the paying state employee is approved by the state agency.

(c) Erroneous processing and erroneous vouchers.

(1) A state agency or a state employee may not seek reimbursement of a travel expense that the agency or employee knows or reasonably should know is not reimbursable.

(2) The comptroller's omission of a particular travel expense reimbursement as erroneous during a post-payment audit does not prevent the comptroller from designating a similar reimbursement as erroneous in a subsequent audit.

(d) Meal and lodging expenses.

(1) A state employee may be reimbursed for meal and/or lodging expenses that are incurred on a day that the employee conducts state business. The reimbursement is limited to the rates set forth in the General Appropriations Act. The reimbursement limit applies without a carry-over from one day to another.

(2) Meal and lodging expenses incurred at a duty point the night before state business begins are reimbursable.

(3) Meal and lodging expenses incurred more than one night before state business begins are not reimbursable unless traveling to the duty point reasonably requires more than one day or the expenses are incurred to qualify for a discount airfare.

(e) Apartment or house rental expenses.

(1) An apartment or house rental expense may be reimbursed if:

(A) the purpose of the rental is the conservation of state funds; and

(B) the agency reasonably anticipates that the employee will be using the apartment or house while conducting state business throughout the term of the lease.

(f) Other reimbursable expenses.

(1) In accordance with Government Code, §660.141, a state employee may be reimbursed for travel expenses incurred while staying extra days at a duty point to qualify for a discount airfare. Such expenses may be reimbursed only if:

(A) the amount of the reimbursement plus the amount of the discount is less than the average coach airfare or the contracted airfare; and

(B) the employing agency determines that the employee's absence for the extra days is not detrimental to the agency.

(2) Incidental expenses.

(A) Pursuant to Government Code, §660.002, a state employee or legislator is entitled to be reimbursed for incidental expenses when they are incurred for a state business reason.

(B) Examples of reimbursable incidental expenses include, but are not limited to: mandatory charges or mandatory service charges; telephone calls; toll charges; parking charges; repair charges for a state-owned vehicle; postage; passport or visa charges required for foreign travel; and currency exchange fees.

(C) Tips or gratuities and excess baggage charges for personal belongings are not reimbursable expenses.
 Expenses of transportation by rented or public conveyance.

(A) Pursuant to Government Code, §660.092, a state agency may pay or reimburse the expense of transporting a state employee by rented or public conveyance if the transportation is provided by a commercial transportation company as defined by Government Code, §660.002(6).

(B) To be considered a commercial transportation company as defined by Government Code, §660.002(6), an entity must be covered by insurance that covers any accident or loss that occurs while transporting people or goods for pay, as required by law.

(C) A commercial transportation company as defined by Government Code, §660.002(6), includes a transportation network driver.

(g) Mileage.

(1) Amount of mileage reimbursement.

(A) The mileage reimbursement rate is established by the legislature in the General Appropriations Act.

(B) With the exception of tolls and parking expenses, the mileage reimbursement rate is inclusive of all expenses associated with the operation of the employee's personal vehicle.

(2) Determination of reimbursable mileage.

(A) The number of miles traveled by an employee for state business may be determined by point-to-point itemization.

(B) Point-to-point mileage may be documented by an employee's vehicle odometer reading or by the [a] readily available electronic mapping service selected under subparagraph (C) of this paragraph [such as MapQuest, Yahoo Maps, Google Maps, satellite-based navigation systems, etc., as determined] by the employee's [each] agency, institution of higher education, or other entity required to comply with Government Code, Chapter 660.

(C) Each agency, institution of higher education, or other entity required to comply with Government Code, Chapter 660, must select no more than one readily available electronic mapping service for use by its employees and must adopt the service by internal policy.

(h) Travel advance accounts.

(1) A state agency may establish an account for advancing funds to a state employee for the employee's projected travel expenses.

(2) A state agency that declines to establish a travel advance account may not make travel advances.

(3) A travel advance account may not be used for any purpose other than to make travel advances.

(4) A state agency may not issue a travel advance to:

(A) a prospective state employee;

(B) an employee of another state agency unless the employee will be providing services to the agency issuing the travel advance; or

(C) a person who is not a state employee, including a commercial transportation company, a commercial lodging establishment, a credit card issuer, and a travel agency.

(5) The comptroller may not reimburse the travel advance account of a state agency for a travel advance to a state employee who at the time of the advance had been properly reported to the comptroller as being indebted to the state.

(6) Under and over advances.

(A) If a state employee received a travel advance that is less than the reimbursable expenses incurred, the employing state agency may reimburse the employee for the difference.

(B) If an employee received a travel advance that is greater than the reimbursable expenses incurred, then the employee shall promptly reimburse the account for the difference.

(7) A travel advance account may not be reimbursed for a travel expense that would not have been reimbursed if the account had not been used.

(i) Voucher and documentation requirements.

(1) The comptroller requires supporting information and/or documentation to be included on a voucher prior to submission for payment.

(2) Supporting documentation must be sufficient to detail the expenses claimed. Supporting documentation requirements apply to a travel expense that is paid directly and to a travel expense reimbursement made by an agency. The information or documentation required changes periodically; however, it generally includes the following: documentation of employee's headquarters, required itemizations, purpose of trip, and required receipts.

(j) Audits conducted by the comptroller.

(1) Under Government Code, §660.028, the comptroller is required to periodically audit travel vouchers submitted for payment either before or after the comptroller issues a warrant or initiates an electronic funds transfer in response to the voucher. These audits and examinations assist the comptroller's office in determining whether:

(A) the expenses were reasonable and necessary;

(B) the purpose of travel clearly involved state business and was consistent with the agency's legal authority;

(C) the travel conducted and expenses incurred complied with the Travel Regulations Act, comptroller rules, travel provisions of the General Appropriations Act, the comptroller's Statewide Procurement Contract requirements, and policies and procedures adopted by the comptroller's office; and

(D) the number of individuals traveling for the same or a similar purpose was necessary to perform state business

(2) The comptroller may question the fiscal responsibility of a payment even if it is technically legal.

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 April 7, 2020.

TRD-202001378
Victoria North
Chief Counsel Fiscal and Agency Affairs Legal Services Division
Comptroller of Public Accounts
Earliest possible date of adoption: May 24, 2020
For further information, please call: (512) 475-2220
PART 11. TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

CHAPTER 302. GENERAL PROVISIONS RELATING TO THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §302.2

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (TESRS) propose an amendment to Chapter 302, General Provisions Relating to the Texas Emergency Services Retirement System, §302.2.

The proposed amendment clarifies the Board rule regarding benefit distributions to satisfy the plan qualification requirements under the Internal Revenue Code of 1986, as amended.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT. Kevin Deiters, Executive Director, has determined that for each year of the first five-year period the proposed amendment is in effect, there are no foreseeable implications related to the cost or revenues of state or local governments.

PUBLIC BENEFIT/COST NOTE: Mr. Deiters has also determined that for the first five-year period the amended rule is in effect, the public benefit will be a more clearly defined process for the administration of the pension system as well as compliance with applicable federal law.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT: There are no anticipated economic costs to persons who are required to comply with the amendment to these rules, as proposed. There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and 2001.024(a)(6).

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES. There will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing the amendment; therefore, no regulatory flexibility analysis or economic impact statement, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. For each year of the first five years the proposed amendment will be in effect, TESRS has determined that the amendment

1. will not create or eliminate a government program;
2. will not result in the addition or reduction of employees;
3. will not require an increase or decrease in future legislative appropriations;
4. will not lead to an increase or decrease in fees paid to a state agency;
5. will not create a new regulation;
6. will not repeal an existing regulation;
7. will not result in an increase or decrease in the number of individuals subject to the rule; and
8. will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TESRS has determined that no private real property interests are affected by this proposal and 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 COMMENTS: Comments on the amended rule may be submitted in writing to Kevin Deiters, Executive Director, Texas Emergency Services Retirement System, P.O. Box 12577, Austin, TX 78711-2577, submitted electronically to outreach@tesrs.texas.gov, or faxed to (512) 936-3480. Comments must be received no later than thirty days from the date of publication of this proposal.

STATUTORY AUTHORITY: The amendment is proposed pursuant to Texas Government Code, §861.006, which authorizes the state board to adopt rules as necessary for the administration of the fund in compliance with the Internal Revenue Code of 1986, as amended.

No other rule or statute is affected by this action.

§302.2 Benefit Distributions.

(a) In this section:

2. "§401(a)(9) requirements" means the requirements under §401(a)(9) of the code and Treasury Regulations §1.401(a)(9)-1 through §1.401(a)(9)-9.

(b) The annual benefit based on the service of a member may not exceed the amount permitted by the code and related regulations for the appropriate year, including without limitation, §415(b) of the code. If the aggregated benefit otherwise payable under the pension system and any other defined benefit plan maintained by a political subdivision that has contributed to the fund on behalf of the member would otherwise exceed the benefits allowable under federal law, the reduction in benefits must first be applied to the extent possible from the other plan, and only after those reductions, from the fund.

(c) A retirement annuity or benefits to a qualified beneficiary under the pension system may not begin after the deadlines provided under the code and related regulations, including, without limitation, the deadlines provided by subsection (d) of this section.

(d) All distributions under the fund must at all times comply with and conform to the §401(a)(9) requirements, and any distribution required under the incidental death benefits requirements of §401(a) of the code will be treated as a distribution under the §401(a)(9) requirements. This subsection overrides any distribution options inconsistent with the §401(a)(9) requirements. The pension system shall develop procedures to ensure that distributions comply with the §401(a)(9) requirements, including the requirement that a member's entire interest under the pension system will be distributed, or begin to be distributed, to the member no later than April 1 of the year after the later of the year in which the member ceases performing qualified service for a participating department or with respect to a member who attains age 70-1/2 on or before December 31, 2019, the year in which the member attains age 70-1/2, or with respect to a member who attains age 70-1/2 after December 31, 2019, the year in which the member attains age 70.

(e) If the annual compensation of a member is ever taken into account for any purpose of the fund, that annual compensation may not exceed the limit in effect under §401(a)(17) of the code, as periodically adjusted in accordance with guidelines provided by the United States Secretary of the Treasury.
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 April 13, 2020.
TRD-202001435
Kevin Deiters
Executive Director
Texas Emergency Services Retirement System
Earliest possible date of adoption: May 24, 2020
For further information, please call: (512) 936-3480

CHAPTER 304. MEMBERSHIP IN THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §§304.2 - 304.4

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (TESRS) proposes to amend Chapter 304, Membership in the Texas Emergency Services Retirement System, with proposed new §§304.2 - 304.4.

The proposed new rules are necessary to allow a participating department to revoke its election to participate in TESRS in an actuarially sound manner and to allow employees of participating departments to participate in TESRS in a manner that maintains the qualified status of the pension system, each as contemplated under House Bill (H.B.) 3247, 86th Legislature, Regular Session, 2019, which amended §§861 - 865, Texas Government Code.

The proposed new rules §§304.2 and 304.3 would allow a participating department to revoke its election to participate in TESRS in a manner that protects the actuarial soundness of the pension system and the accrued benefits of active fire fighters, EMS personnel, and support personnel in the pension system by requiring those departments that revoke participation in the pension system to pay within five years of the date of revocation a revocation charge equal to the department's allocated share of the TESRS net pension liability.

If adopted, the proposed new rule §304.2 would allow a participating department to revoke its election to participate in the pension system in a manner that maintains an actuarially sound pension system. The new rule would apply to the following five circumstances:

1. A department notifies the pension system of its intent to no longer participate;
2. A department ceases to exist or perform emergency services;
3. A department ceases to enroll eligible members or make required contributions;
4. A department is no longer funded or maintained by political subdivision; or
5. All members of a department become ineligible to continue participating (i.e., all become paid employees of a non-governmental entity or covered by another pension system).

Proposed new rule §304.3 will protect the pension benefits of members of a department that revokes its participation in the pension system by fully vesting their accrued benefits as of the date of the department's revocation. The proposed new rule provides a schedule detailing the calculation of vested accrued benefits for members.

Proposed new rule §304.4 will allow employees of a participating department to participate in the pension system in a manner that ensures the participation of employees of participating departments, whether full-time or part-time, satisfies the plan qualification requirements under §401(a) of the Internal Revenue Code of 1986, as amended (Code), and to maintain the status of the pension system as a governmental plan under §414(d) of the Code.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT. Kevin Deiters, Executive Director, has determined that for each year of the first five-year period the proposed amendment is in effect, there are no foreseeable implications related to the cost or revenues of state or local governments.

Only those departments that either voluntarily elect to revoke participation in the pension system, take action that effectively revokes participation in the pension system as described in the rule, or cease to enroll paid members or make required contributions will incur costs. The revocation charge is determined in a manner to ensure the actuarial soundness of the pension system and will be equal to the department's share of the unfunded liability of the pension system. Any additional revenues earned by the pension system as a result of the revocation charge will offset future losses in contribution revenue from the governing bodies of those participating departments that revoke their participation in the pension system and will reduce the overall unfunded liability of the pension system.

PUBLIC BENEFIT/COST NOTE: Mr. Deiters has also determined that for the first five-year period the amended rule is in effect, the public benefit will be a more clearly defined process for the administration of the pension system, an opportunity for departments to revoke an otherwise irrevocable election to participate in the pension system in an actuarially sound manner, and an opportunity for certain participating departments to enroll paid members in the pension system.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT: There are no anticipated economic costs to persons who are required to comply with the amendment to these rules, as proposed. There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and 2001.024(a)(6).

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES. There will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing the amendment; therefore, no regulatory flexibility analysis or economic impact statement, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. For each year of the first five years the proposed amendment will be in effect, TESRS has determined that the amendment

(1) will not create or eliminate a government program;
(2) will not result in the addition or reduction of employees;
(3) will not require an increase or decrease in future legislative appropriations;
(4) will only increase charges paid to the state agency by those departments that voluntary elect to revoke participation in the
pension system or by those departments that elect to enroll paid
employees in the pension system in order to maintain the actu-
arial soundness of the system;

(5) will not create a new regulation;

(6) will not repeal an existing regulation;

(7) will not result in an increase or decrease in the number of
individuals subject to the rule; and

(8) will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TERSs has determined that
no private real property interests are affected by this proposal
and 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

PUBLIC COMMENTS: Comments on the proposed rules may
be submitted in writing to Kevin Deiters, Executive Director,
Texas Emergency Services Retirement System, P.O. Box
12577, Austin, TX 78711-2577, submitted electronically to
outreach@ters.texas.gov, or faxed to (512) 936-3480. Comments
must be received no later than sixty days from the date of
publication of this proposal.

STATUTORY AUTHORITY: The new rules are proposed pur-
suant to Texas Government Code, §862.001(B), which autho-
rizes the state board to adopt rules that allow the governing body
of a participating department to revoke its election to participate
in the pension system in a manner that maintains an actuari-
ally sound pension system. The proposed rules are further autho-
rized by Texas Government Code, §862.001 which provides that
each person that performs emergency services duties for a par-
ticipating department, regardless of whether the person receives
compensation from a participating department is a member of
the pension system.

No other rule or statute is affected by this action.

§304.2. Departmental Revocation of Participation in the Pension
System.

(a) For purposes of this section and §304.3 of this title:

(1) "Effective date of revocation" means the later of the
date upon which the requirements listed in subsection (c) of this
section are satisfied or the date upon which the revocation occurs.

(2) "Revocation" means the occurrence of one of the events
listed in subsection (b) of this section.

(b) A participating department will revoke, or be deemed to
have revoked, its election to participate in the pension system as
provided under §862.001(b), Texas Government Code, upon the occur-
rence of one of the following events: (i) a department notifies the
pension system of its intent to no longer participate in the pension
system, (ii) a department ceases to exist or ceases to perform emergency
services, (iii) a department ceases to enroll its eligible members in the
pension system or to make contributions to the pension system for eligi-
ble members as required under Chapter 865, Texas Government Code,
(iv) the political subdivision associated with the department establishes
a paid department and no longer funds or otherwise maintains the
department, or (v) all members of a department become ineligible to con-
tinue participating in the pension system as paid employees pursuant to
§304.4(c) of this title or because they are covered by another public
retirement system in the state.

(c) In connection with a revocation:

(1) the governing body of the department must provide
written notice of its intent to no longer participate in the pension system
or the circumstances causing the revocation the occur to the executive
director, the governing body of the political subdivision associated
with the department, and all current members of the department at
least 120 days prior to the date the revocation will occur or, if such
prior notice is not possible, as soon as practicable, provided that the
notice period may be shortened or waived by the executive director in
his or her sole discretion;

(2) the local board of the department must certify (i) that
all individuals who have performed emergency services or support ser-
dices (if applicable) for the department and were eligible to participate
in the pension system during the 2 years prior to the date the revocation
occurs have been properly enrolled in the pension system and (ii) the
accuracy of the department's membership roster and the total amount
of qualified service earned by each current and former member as of
the date the revocation occurs;

(3) all affected members of the department as defined in
§304.3(a) of this title will become fully vested in such affected mem-
ber's accrued benefit as determined under §304.3 of this title as of the
date the revocation occurs, regardless of the years of qualified service
or age of such affected member as of such date, and the affected mem-
ber's accrued benefit shall be nonforfeitable as of such date; and

(4) no later than 60 days after receipt of the notice required
under subsection (c)(1) of this section or notice from the executive di-
tector under subsection (d) of this section, the governing body of the
political subdivision associated with the department must pay, or enter
into an agreement to pay in accordance with subsection (j) of this sec-
tion (i) all required contributions for each month of service performed
by members prior to the date the revocation occurs that have not been
paid, including, without limitation, contributions for any months of
service which have not yet been invoiced by the pension system and
for members of the department who were not enrolled in the pension
system but should have been during the 2 years prior to the date the
revocation occurs; and (ii) the revocation charge as determined under
subsection (b) of this section in order to maintain an actuarially sound
pension system as required by §862.001(b), Texas Government Code.

(d) If the executive director becomes aware that one of the
events listed in subsection (a) of this section has occurred and the gov-
erning body of a participating department has not provided notice of
such event to the pension system as required under subsection (c)(1) of
this section, the executive director will send written notice to the gov-
erning body of the participating department and the governing body
of the political subdivision associated with the department as soon as
administratively possible to inform them that a revocation of the de-
partment's election to participate in the pension system has occurred
and to notify each party of its responsibilities under this §304.2. If the
parties notify the executive director within 30 days of the date of the
notice provided under this subsection (d) that the revocation was un-
intentional and provide evidence satisfactory to the executive director
that the circumstances that caused the revocation have been cured, the
revocation will be deemed to have not occurred.

(e) The executive director will notify the state board of the
occurrence of any revocation under this §304.2 at the next meeting of
the state board following the effective date of the revocation.

(f) As of the effective date of the revocation, (i) the revoking
department will no longer be considered a participating department in
the pension system, (ii) all additional members of the department may
be enrolled in the pension system, (iii) no member of the department
may accrue additional qualified service or benefits in connection with
the performance of emergency services or support services for the department, and (iv) the governing body of the department and the governing body of the political subdivision associated with the department will have no further financial obligations to the pension system, except as provided under an agreement entered into under subsection (c)(4) above.

(g) Within 90 days after the effective date of revocation, the executive director will send written notice to each current member, vested terminated member, and retiree of the department by first class mail to the person's most recent address of record on file with the pension system. Such notice will explain how the person's benefits provided under the pension system are affected by the department's revocation, including, without limitation, the immediate vesting of the member's accrued benefit as determined under §304.3 of this title (if applicable), the amount of such accrued benefit, and information related to when and how the member may commence such accrued benefit.

(h) In order to maintain an actuarially sound pension system as required under §862.001(b), Texas Government Code, the governing body of the political subdivision associated with the department that revokes its participation in the pension system will be charged an additional amount as determined by the pension system's actuary in accordance with generally accepted actuarial standards. Such revocation charge shall be an amount equal to the department's allocated share of the pension system's net pension liability.

(i) For purposes of this §304.2, the department's allocated share of the pension system's net pension liability shall be equal to the greater of (1) or (2) where (1) equals the average of the department's contribution allocation percentage in the 2 most recent audited reports of information required for disclosure by GASB Statement No. 68 (GASB 68) and (2) equals the average of the department's contribution allocation percentage in the 2 most recent audited reports of information required for disclosure by GASB 68 after adjustments for decreases, if any, in the department's contribution rate per month and for decreases, if any, in the number of active members in the 5 most recent plan years. The pension system's net pension liability used to determine the revocation charge under this §304.2 is the net pension liability of the pension system as reported in the most recent audited financial report of the pension system as that term is defined by GASB Statement No. 67.

(j) The governing body of the political subdivision associated with the department may enter into a written agreement with the pension system to pay any unpaid contributions, the revocation charge determined under subsection (h) of this section, or both over a period of time not to exceed 5 years. Interest on such amount due will accrue at the assumed rate of investment return of the pension system at the time the agreement is entered into, except that interest will be waived if full payment of the amount is completed no later than the first (1st) anniversary of the effective date of revocation.

(k) Neither the pension system nor the state board, nor any employee of the pension system, including, without limitation, the executive director, shall be liable to any person for any claim or loss of benefits resulting from the revocation of a department's participation in the pension system.

(l) Notwithstanding anything to the contrary above, the state board may temporarily suspend the ability of any department to voluntarily revoke its election to participate in the pension system as described in subsection (b)(i) of this section if continuing to allow such revocations would have a negative impact on the administration or actuarial soundness of the pension system.

§304.3 Determination of Accrued Benefit.

(a) For purposes of §304.2 of this title and this §304.3, an "affected member" means each current member of a participating department who is listed on the department's certified membership roster as required under §304.2(c)(2) of this title and who has not commenced a retirement benefit prior to the date a revocation occurs as determined under §304.2 of this title.

(b) Each affected member will be fully vested in the affected member's accrued benefit in the pension system as of the date the revocation occurs, regardless of the years of qualified service or age of such affected member as of such date, as determined under subsection (c), (d), or (e) of this section, as applicable.

(c) If the affected member has less than 10 years of qualified service with the pension system as of the date the revocation occurs, his or her accrued benefit will be equal to the product of (1) and (2) where:

(1) equals the product of the actual number of years of qualified service the affected member has earned with the pension system, including any partial years, multiplied by five percent (5%); and

(2) equals the full service retirement annuity determined under §308.2(f) of this title based on the department's average monthly Part One contributions as of such date.

(d) If the affected member has at least 10 years but less than 15 years of qualified service with the pension system as of the date the revocation occurs, his or her accrued benefit will be equal to the product of (1) and (2) where:

(1) equals the sum of fifty percent (50%) plus the product of the actual number of years of qualified service, including any partial years, in excess of 10 years that the affected member has earned with the pension system multiplied by ten percent (10%); and

(2) equals the full service retirement annuity determined under §308.2(f) of this title based on the department's average monthly Part One contributions as of such date.

(e) If the affected member has 15 years of qualified service or more with the pension system as of the date the revocation occurs, his or her accrued benefit will be equal to the full service retirement benefit determined under §308.2(f) of this title plus any supplemental benefit determined under §308.2(g) of this title based on the department's average monthly Part One contributions and the affected member's actual years of qualified service as of such date.

(f) An affected member who vests in his or her accrued benefit under this §304.3 may commence such accrued benefit upon attaining age 55 by applying for a retirement benefit in accordance with Chapter 864, Texas Government Code.

(g) Accrued benefits of vested terminated members and retirees of a department will not be affected by a department's revocation of its participation in the pension system under §304.2 of this title. A vested terminated member of such department may commence his or her accrued benefit upon attaining age 55 by applying for a retirement benefit in accordance with Chapter 864, Texas Government Code, and a retiree of such department will continue to receive the retirement benefit he or she was receiving as of the date of such revocation.

§304.4 Employees of Participating Departments.

(a) In this section, "Code" means the Internal Revenue Code of 1986, as amended.

(b) Effective September 1, 2019, the 86th Texas Legislature adopted H.B. 3247 which amended §862.002, Texas Government Code, to allow the employees of a participating department to participate in the pension system. Pursuant to the authority granted to
the state board under §861.006(a), Texas Government Code, and as contemplated by §302.7 of this title, the state board adopts this rule to ensure the participation of employees of participating departments, whether full-time or part-time, satisfies the plan qualification requirements under §401(a) of the Code and to maintain the status of the pension system as a governmental plan under §414(d) of the Code.

(c) Notwithstanding §862.002, Texas Government Code, the employees of any department that does not constitute or is not part of a governmental entity or a government-controlled entity are not eligible to participate in the pension system, including, without limitation, a §501(c)(3) or other nonprofit corporation incorporated under state law that contracts with a governmental entity to provide fire protection and emergency response services for the general public or receives public funding for the performance of such services.

(d) For purposes of this section, a participating department will constitute or will be considered to be a part of a governmental entity if the participating department is a department of a municipality, county, special-purpose district or authority or any other political subdivision of the state of Texas whose employees are considered employees of a governmental entity.

(e) For purposes of this section, a participating department will constitute or will be considered to be a part of a government-controlled entity if a majority of the governing body of the department is composed of publicly elected or appointed officials of the state of Texas or individuals appointed by such elected or appointed officials, regardless of whether or not the department itself is a governmental entity.

(f) Solely for purposes of participation in the pension system and, except as otherwise provided below, prior to the first date of participation in the pension system, if a governmental entity or government-controlled entity has both employees and volunteers who are performing emergency services or support services, the governing body of such entity may elect to treat its paid employees as members of a paid department that is separate from its volunteer department, and such paid department may make a separate election as to whether or not to participate in the pension system under §862.001(a-1), Texas Government Code. The governing body of such governmental entity or government-controlled entity must notify the executive director in writing of its election to treat its paid employees as members of a separate department prior to any election to participate in the pension system.

(g) Notwithstanding subsection (f) of this section above, the governing body of a participating department that constitutes or is part of a governmental entity or a government-controlled entity that has made an election to participate in the pension system under §862.001(a-1), Texas Government Code, before September 1, 2020, may elect to treat its paid employees as members of a separate paid department that will not participate in the pension system by notifying the executive director in writing of its election no later than December 31, 2020. Such paid department will not be considered to have elected to participate in the pension system and its paid employees will not be enrolled as members of the pension system unless a separate election is made by the governing body of the department on behalf of such paid department to participate in the pension system.

(h) Any governmental entity or government-controlled entity that elects to separate its paid employees and volunteers into different departments for purposes of participation in the pension system under this §304.4 must maintain separate records for each department, including, without limitation, records related to the enrollment of its members and qualified service earned by each member in such department.

(i) For purposes of determining a member's eligibility to participate in the pension system, if a member performs emergency services or support services as both an employee and a volunteer for the same participating department, such member will not be eligible to earn qualified service for his or her service in both positions unless each position has different roles and responsibilities that are clearly distinct from the roles and responsibilities of the other position.

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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For further information, please call: (512) 936-3474

CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §§310.5, 310.13, 310.14

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (TESRS) proposes changes to Chapter 310, Administration of the Texas Emergency Services Retirement System with the amendment of §310.5 and the proposed new §310.13 and §310.14.

The proposed new and amended rules are necessary to clarify Board rules governing the administration of TESRS and to allow for the delegation of certain duties to the executive director as contemplated under House Bill (H.B.) 3247, 86th Legislature, Regular Session, 2019, which amended §§861-865, Texas Government Code.

If adopted, the proposed amendment to §310.5 would establish the staggered two-year terms served by trustees of the local board to begin March 1st and end the last day of February of the second year and would further describe the composition of the six-member local board.

Proposed new rule §310.13 describes the delegation of local board duties to the executive director as provided under §865.0121, Texas Government Code, when the trustees of a local board have not been appointed or when the local board fails to perform its duties.

Proposed new rule §310.14 describes the delegation of duties to the executive director upon the discontinuance of department participation in the pension system as provided under §864.010 when a department ceases to exist or withdraws from the pension system.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT.
Kevin Deiters, Executive Director, has determined that for each year of the first five-year period the proposed amendment is in effect, there are no foreseeable implications related to the cost or revenues of state or local governments.

Only those departments who withdraw from the system or cease to exist or whose local boards fail to perform the required duties of a local board will incur costs in the form of an administrative penalty. This penalty is authorized because any local board that does not perform local board duties will necessarily fail to sub-
mit required reports to the Board. Any revenues earned by the pension system will offset the cost of the executive director performing the delegated duties on behalf of the department or local board, as applicable.

PUBLIC BENEFIT/COST NOTE: Mr. Deiters has also determined that for the first five-year period the amended rule is in effect, the public benefit will be a more clearly defined process for the administration of the pension system.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT: There are no anticipated economic costs to persons who are required to comply with the amendment to these rules, as proposed. There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and §2001.024(a)(6).

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES. There will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing the amendment; therefore, no regulatory flexibility analysis or economic impact statement, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. For each year of the first five years the proposed amendment will be in effect, TERS has determined that the amendment

(1) will not create or eliminate a government program;
(2) will not result in the addition or reduction of employees;
(3) will not require an increase or decrease in future legislative appropriations;
(4) will result in an increase in administrative penalties paid to a state agency by the governing body of the political subdivision whose duties are delegated to the executive director or whose local board of its participating department fails to perform its duties, which include required reporting to the Board;
(5) will not create a new regulation;
(6) will not repeal an existing regulation;
(7) will not result in an increase or decrease in the number of individuals subject to the rule; and
(8) will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TERS has determined that no private real property interests are affected by this proposal and 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 COMMENTS: Comments on the amended rule may be submitted in writing to Kevin Deiters, Executive Director, Texas Emergency Services Retirement System, P.O. Box 12577, Austin, TX 78711-2577, submitted electronically to outreach@ters.texas.gov, or faxed to (512) 936-3480. Comments must be received no later than thirty days from the date of publication of this proposal.

STATUTORY AUTHORITY: The amendment and new rules are proposed pursuant to Texas Government Code, §865.006(b), which authorizes the state board to adopt rules as necessary for the administration of the fund. The new rules are further authorized by Texas Government Code, §865.0121, which authorizes the state board to adopt a procedure by which the duties of a local board may be delegated to the executive director. The proposed new rules are further authorized by Texas Government Code, §865.016, which allows the Board to impose an administrative penalty on a local board.

No other rule or statute is affected by this action.

§310.5. Local Board of Trustees.
(a) A local board annually shall elect a chair, vice chair and secretary [for a given calendar year] no later than the last day of February of each [such] calendar year. The participating department head may not be elected to serve as the chair of the local board.

(b) A meeting of a local board is subject to the Texas Open Meetings law (Chapter 551, Government Code).

(c) Trustees of a local board serve staggered two-year terms that begin March 1 and end the last day of February of the second year. A vacancy on a local board is filled for the remainder of the unexpired term by the procedure by which the position was originally filled.

(1) Trustee Selected by Governing Body of Political Subdivision. The trustee selected by the governing body of the political subdivision serves on the local board to ensure the responsibilities of the local board and governing body are fulfilled, including but not limited to the submission of the local contributions to the pension system for each member performing emergency services or support services for the participating department for each month of service beginning on the date that the member enters the pension system.

(A) In a municipality, the trustee selected may be the chief financial officer of the municipality or, if there is no officer designated as chief financial officer, the person who performs the duties of chief financial officer or a person designated by the chief financial officer or by the person performing the duties of chief financial officer.

(B) In an emergency services district, the trustee selected may be a member of the board of emergency services commissioners or the person who performs the duties of chief financial officer or a person designated by the chief financial officer or by the person performing the duties of chief financial officer.

(C) In any other political subdivision, the trustee selected may be the chief financial officer or the person who performs the duties of chief financial officer or a person designated by the chief financial officer or by the person performing the duties of chief financial officer.

(2) Trustees Representing a Participating Department. Three trustees who are active members of a participating department, who are members of the pension system for whom pension system monthly contributions are being paid, and who were each elected by a majority vote of the members of the participating department who are members of the pension system serve on the local board to ensure the responsibilities of the local board and participating department are fulfilled, including but not limited to the enrollment of eligible members in the pension system by the participating department head.

(3) Trustees Representing a Political Subdivision or Unit of Government. Two trustees who reside within the political subdivision of which the participating department is a part are each chosen by a majority vote of the other four members of the local board to ensure the responsibilities of the local board are fulfilled.

§310.13. Delegation of Local Board Duties to Executive Director.
(a) In the event the local board cannot be constituted under §865.012, Texas Government Code, for any reason, the participating department head of such participating department, with the written consent of the governing body of the political subdivision associated with
the department, shall notify the executive director in writing no later than the last business day in February of the failure to constitute the local board and authorize the delegation of the local board's duties to the executive director under this section.

(b) In the event a local board fails to perform any of the duties required by the local board under state law for a period of 12 months or more, including, without limitation, the failure to hold at least 2 meetings during the prior calendar year, the failure to convene within a reasonable time to determine a member's right to a disability benefit, or the failure to verify the accuracy of the membership roster under §310.8 of this title, the executive director will send written notice to the local board chair, the participating department head, and the governing body of the political subdivision associated with such department of the local board's failure to perform its duties as soon as administratively practicable following such failure and will request that the local board take action to resolve such failure within a specified timeframe that is at least 90 days. If the local board fails to perform its duties within such specified timeframe, the local board will be deemed to have designated its duties to the executive director, and the executive director is authorized by the state board to perform the duties of the local board and to make any determinations required of the local board on and after such date.

(c) An annual administrative penalty will be imposed on the governing body of the political subdivision associated with the department for each calendar year, or portion thereof, during which the executive director performs the duties of the local board as provided under this section. The amount of such administrative penalty will be $2,500 for the first calendar year and will increase by 5% for each subsequent calendar year.

(d) The participating department head shall provide the executive director with any information that is requested by the executive director in order to carry out the duties delegated to the executive director under this section, including, without limitation, any service records of members and retirees or any injury reports that may be related to a disability claim.

(e) Once the duties of a local board have been delegated to the executive director under this section, the executive director shall continue to act on behalf of the local board until such time as the participating department head or the governing body of the political subdivision associated with the department notifies the executive director in writing that a local board has been constituted and will perform the duties required of it under state law.

(f) The executive director may waive an administrative penalty under this section if the executive director determines, after a written request for a waiver from a local board, participating department head or governing body of the political subdivision, that the failure was beyond the control of the parties responsible for convening the local board and was not the result of neglect, indifference, or lack of diligence.


(a) The governing body of a political subdivision associated with a former participating department may delegate the duties required by such governing body under §864.010, Texas Government Code, to the executive director by providing a written request to delegate such duties to the executive director.

(b) In the event the governing body of the political subdivision associated with a participating department that discontinues its participation in the pension system or ceases to exist fails to perform the duties required by such governing body under §864.010, Texas Government Code, for a period of 12 months or more and does not otherwise elect to delegate its duties to the executive director pursuant to subsection (a) of this section, the governing body of the political subdivision will be deemed to have designated its duties to the executive director, and the executive director is authorized by the state board to perform the duties of such governing body.

(c) A one-time administrative penalty of $2,500 is imposed on the governing body of the political subdivision associated with the department that delegates its duties, or whose duties are delegated, in accordance with this section.

(d) The participating department head, if any, or the governing body of the political subdivision shall provide the executive director with any information that is requested by the executive director in order to carry out the duties delegated to the executive director under this section, including, without limitation, copies of all membership records for members and retirees and the minutes of all local board meetings.

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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