

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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS

DIVISION 4. PROPERTY OF OPEN- ENROLLMENT CHARTER SCHOOLS

19 TAC §100.1067

The Texas Education Agency (TEA) proposes an amendment to §100.1067, concerning possession and control of the public property of a former charter holder. The proposed amendment would implement Senate Bill (SB) 1454, 86th Texas Legislature, 2019, which established state oversight of related-party and other transactions conducted by charter schools and described how closed charter school funds and property are to be handled.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 100.1067 describes the commissioner's authority to take control of and dispose of public property held by a former charter holder.

SB 1454, 86th Texas Legislature, 2019, amended Texas Education Code (TEC), Chapters 12 and 39A. The bill established state oversight of related-party and other transactions conducted by charter schools and provided for the management of assets of an open-enrollment charter school that ceases to operate. Prior to the enactment of SB 1454, the TEC did not expressly address provisions for property disposition of former charter holders or closed open-enrollment charter schools.

SB 1454 pertains to the control and disposition of real property purchased with public funds upon a charter holder's ceasing operations. The proposed changes would outline two general actions TEA may direct the former charter holder to take -- retain or sell the property or transfer the property -- and details the procedures associated with each.

The proposed amendment to §100.1067(a) would clarify the commissioner's authority to direct disposition of the charter holder's property.

The proposed amendment to §100.1067(b) would align the language with SB 1454 and clarify the commissioner's authority to cure defective audits submitted by charter schools.

Proposed new §100.1067(c)(1) would describe the commissioner's authority to direct the method of disposition of real

property when the charter holder has purchased the property with state funds.

Proposed new §100.1067(c)(2) would describe the commissioner's authority to direct the method of distribution of personal property when the charter holder has purchased the property with state funds.

Proposed new §100.1067(c)(3) would describe the commissioner's authority to direct the method of distribution of property when the charter holder has leased the property with state funds.

Proposed new §100.1067(d) would describe the authority of the commissioner with regard to expenditures for maintenance of the property.

Proposed new §100.1067(e) would describe the actions the charter holder shall take upon the termination of operations of the open-enrollment charter school.

Proposed new §100.1067(g) would specify that the commissioner has discretion to direct disposition of the property in the best interest of Texas students.

FISCAL IMPACT: Kelsey Oeser, deputy commissioner for educator 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.

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 the commissioner's authority to take control and direct disposition of former charter holder property purchased and leased

with public money. The proposed amendment would revise the rule to be consistent with SB 1454, 86th Texas Legislature, 2019.

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: Ms. Oeser 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 implementing legislation and ensuring that rule language is based on current law. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins June 18, 2021, and ends July 19, 2021. 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 June 18, 2021. 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/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §12.106, as amended by Senate Bill (SB) 1454, 86th Texas Legislature, 2019, which describes the nature of state funding that a charter holder is entitled to receive and details disposition of state funds after a charter school ceases to operate; TEC, §12.128, as amended by SB 1454, 86th Texas Legislature, 2019, which outlines how charter schools may use and dispose of property purchased with public funds; TEC, §12.1281, as added by SB 1454, 86th Texas Legislature, 2019, which describes how a former charter holder may dispose of its property purchased with state funds after the charter school ceases to operate; TEC, §12.1282, as added by SB 1454, 86th Texas Legislature, 2019, which details how a former charter holder may be permitted to transfer property purchased with state funds; TEC, §12.1283, as added by SB 1454, 86th Texas Legislature, 2019, which details how the agency may sell property from a former charter holder, originally purchased with state funds; TEC, §12.1284, as added by SB 1454, 86th Texas Legislature, 2019, which describes generally final disposition of funds by Texas Education Agency after closure of charter school operations; and TEC, §39A.256, as amended by SB 1454, 86th Texas Legislature, 2019, which describes generally how a board of managers may be appointed to a closing charter school by the commissioner and details the

authority such a board of managers would have with regard to a school's final closure.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §12.106 and §12.128, as amended by Senate Bill (SB) 1454, 86th Texas Legislature, 2019; §§12.1281, 12.1282, 12.1283, and 12.1284, as added by SB 1454, 86th Texas Legislature, 2019; and 39A.256, as amended by SB 1454, 86th Texas Legislature, 2019.

§100.1067. Possession and Control of the Public Property of a Former Charter Holder.

(a) Disposition of audited property. ~~The~~ [If the exhibits to the annual audit reports filed by a former charter holder are in substantial compliance with §100.1063(f) of this title (relating to Use of Public Property by a Charter Holder), the] commissioner of education shall take possession, assume control, and supervise the disposition of the public property disclosed by the annual audit report as filed with the Texas Education Agency (TEA) or as revised pursuant to subsection (b) of this section. At any time, the commissioner may appoint a board of managers to transfer the property or may direct the governing board of the charter holder to transfer the property. The commissioner may transfer or direct the transfer of property to any public school if the commissioner determines that the transfer is in the best interest of students. For purposes of this section, references to a charter holder refers to both an organization that currently holds a charter contract and an organization that formerly held a charter contract [those exhibits as provided by subsection (c) of this section].

(b) Disposition of property--defective audit. If the ~~to the~~ [exhibits to the] annual audit reports filed by a former charter holder are not in substantial compliance with §100.1063(f) of this title (relating to Use of Public Property by a Charter Holder), the commissioner shall use such legal process as may be available under Texas law to take possession and assume control of all property of the former charter holder and, using such legal process, supervise the disposition of such property in accordance with law. The commissioner may transfer or direct the transfer of property to any public school if the commissioner determines that the transfer is in the best interest of students.

(1) At any time [prior to taking possession and assuming control of the affected property], the commissioner may determine whether the [exhibits to the] annual audit reports filed by a former charter holder substantially comply with §100.1063(f) of this title.

(2) At the commissioner's sole discretion, the commissioner may cure any defects in the annual audit reports by reviewing the audit reports and reclassifying the transactions and restating the financial statements or [filed exhibits] by securing, at the former charter holder's expense, such professional services as may be required to create and/or audit the necessary exhibits to the annual audit reports.

(3) ~~The~~ [If successful in curing all defects in such exhibits, the] commissioner may, at the commissioner's sole discretion, take possession, assume control, and supervise the disposition of the public property disclosed by the annual audit reports and any revisions made under this subsection [those exhibits as provided by subsection (c) of this section].

(c) Method of disposition of property. The commissioner may take possession, assume control, and supervise the disposition of property by taking one or more of the following actions.

(1) For real property purchased with funds received under the Texas Education Code (TEC), §12.106, the commissioner shall direct the charter holder to dispose of the property through one of the following methods.

(A) The charter holder may retain or sell the property and provide reimbursement to the state. The following provisions apply to a charter holder that retains or sells the property.

(i) The charter holder must notify the commissioner more than 30 calendar days prior to the last day of instruction that the charter holder intends to reimburse the state for its interest in the property and specify whether the charter holder intends to retain or sell the real property.

(ii) The charter holder must provide the commissioner a written assurance that the charter holder will comply with the requirements of TEC, §12.1284.

(iii) The charter holder must obtain the written consent of the commissioner.

(iv) The charter holder must file an affidavit in the real property records of the county in which the real property is located disclosing the state interest in the property at least 30 calendar days prior to the last day of instruction.

(v) Not later than 30 calendar days after the charter school's last day of operation, the charter holder must deposit with the Texas Comptroller of Public Accounts an amount equal to 110% of the estimated state reimbursement for the property as directed by the commissioner, which TEA will calculate by taking the fair-market value of the property as determined by an appraisal approved by the commissioner, subtracting the principal amount of any debt described by TEC, §12.128(e), and multiplying that result by the percentage of funds received under TEC, §12.106, used to purchase the property as disclosed in the most recent audit under TEC, §44.008.

(vi) The charter holder must prepare and submit a final audit under TEC, §44.008. This audit must be filed by the deadline specified in TEC, §44.008, and must disclose:

(I) the total amount of funds received under TEC, §12.106, that were used to purchase each separate item of real property to be retained or sold by the charter holder;

(II) the total amount of federal funds that were used to purchase each separate item of real property to be retained or sold by the former charter holder; and

(III) the total amount of funds that were used to purchase the property to be retained or sold by the former charter holder.

(vii) The charter holder shall timely make all required payments relating to the property, including note payments; shall maintain the premises; and shall maintain full insurance coverage as determined by the commissioner until the state has received its full reimbursement and released its claim to the property.

(viii) The following provisions apply if the charter holder elects to retain the property.

(I) After the final annual audit report is filed, TEA will calculate the final state reimbursement amount, which is calculated by taking the fair-market value of the property as determined by the commissioner less the final principal amount of any debt described by TEC, §12.128(e), that was incurred prior to the charter school's cessation of operations and multiplying that amount by the percent of funds received under TEC, §12.106, used to purchase the property as disclosed in the final audit report filed under TEC, §44.008, or as modified pursuant to this section.

(II) If the final state reimbursement amount is greater than the deposit made with the comptroller under this section, the former charter holder must make the additional deposit to the

comptroller within 30 calendar days of TEA's determination of the final state reimbursement amount or as otherwise ordered by the commissioner.

(III) Once the charter holder has filed its final audit report under TEC, §44.008, and sufficient funds are on deposit with the comptroller to pay the final reimbursement amount, the commissioner may request the comptroller to distribute the deposit as directed by TEA and release any state claim on the property. Any remaining funds on deposit with the comptroller may be returned to the former charter holder once the state has received the full final reimbursement amount.

(IV) If the charter holder fails to complete its final financial audit under TEC, §44.008, or fails to make an additional payment to the comptroller as required, the charter holder shall forfeit the amount deposited with the comptroller and shall dispose of the property as ordered by the commissioner.

(ix) The following provisions apply if the charter holder sells the property.

(I) The property must be sold for at least fair-market value, as determined under this section.

(II) The property must be sold no later than one year after the last day of instruction.

(III) If the property is sold prior to the completion of the final audit report under TEC, §44.008, for an amount greater than the fair-market value used to determine the estimated state reimbursement amount, the charter holder shall deposit with the comptroller an amount equal to the difference between the estimated fair-market value and the sales price multiplied by the percentage of state funds used to purchase the property based on the most recent audit pursuant to TEC, §44.008.

(IV) After the property has been sold and the final audit report, pursuant to TEC, §44.008, has been filed, TEA shall calculate the final state reimbursement amount.

(V) The final state reimbursement amount is calculated by taking the final gross sales price of the property less the remaining principal amount of any debt described by TEC, §12.128(e), that was incurred prior to the charter school's cessation of operations and multiplying that amount by the percent of funds received under TEC, §12.106, used to purchase the property as disclosed in the final audit report under TEC, §44.008, or as revised pursuant to this section.

(VI) If the final state reimbursement amount is greater than the total deposit made with the comptroller, the former charter holder must make the additional deposit to the comptroller within 30 calendar days or as otherwise ordered by the commissioner.

(VII) Once the former charter holder has filed its final audit report under TEC, §44.008, and sold the property, and once sufficient funds are on deposit with the state comptroller's office to pay the final reimbursement amount, the commissioner may request the comptroller to distribute the deposit and release any state claim on the property. Any funds on deposit with the comptroller may be returned to the former charter holder once the state has received the full final reimbursement amount.

(VIII) The release of claims may be made in a closing where an independent third party is responsible for distributing the funds necessary to supplement the escrow account with the comptroller's office. If the property is sold before the final audit has been submitted to TEA, TEA may elect to release its claim on the property based on the most recent audit report.

(IX) If the charter holder fails to complete its final financial audit under TEC, §44.008, fails to sell the property within one year after the last day of instruction, or fails to make an additional payment to the comptroller as required, the charter holder shall forfeit the amount deposited with the state comptroller and shall dispose of the property as ordered by the commissioner.

(x) For purposes of determining the fair-market value of the real property, the charter holder shall provide an appraisal from a certified appraiser approved by the commissioner not less than 30 calendar days after the final order of revocation, non-renewal, surrender, or return of the charter, or as otherwise directed by the commissioner.

(xi) The commissioner may direct the charter holder to contract with a specified, certified appraiser or require the charter holder to obtain additional appraisals and may then choose which appraisal will be used to calculate fair-market value.

(xii) Subject to the satisfaction of any security interest or lien described by TEC, §12.128(e), if the commissioner determines a former charter holder failed to comply with this section or TEC, §12.1282, on request of TEA, the attorney general shall take any appropriate legal action to compel the former charter holder to convey title to TEA or other governmental entity authorized by TEA to maintain or dispose of the property.

(xiii) All payments made by the charter holder to retain real property must be made with non-state funds. Lease payments received for state property are state property.

(xiv) A decision by the commissioner under this section is final and may not be appealed.

(B) The charter holder may transfer the property using one of the following methods.

(i) Transfer to TEA.

(I) Subject to the satisfaction of any security interest or lien, the former charter holder shall transfer the property, including a conveyance of title, to TEA no later than two weeks after the last day of instruction.

(II) The following provisions apply to the sale of public real property by TEA.

(-a-) After TEA receives title to real property described by TEC, §12.128, TEA may sell the property at any price acceptable to TEA.

(-b-) On request of TEA, the General Land Office shall enter into a memorandum of understanding to sell real property for TEA as required by TEC, §12.1283. The memorandum of understanding may allow the General Land Office to recover from the sale proceeds any cost incurred by the office or commission in the sale of the property.

(-c-) Subject to the satisfaction of any security interest or lien described by TEC, §12.128(e), proceeds from the sale of property under this section shall be deposited in the charter school liquidation fund.

(ii) Transfer to a school district or open-enrollment charter school under TEC, §12.1282.

(I) The following order of priority shall be used when transferring to a school district or open-enrollment charter school under this clause:

(-a-) a charter school with the highest or second-highest accountability rating with no campus rated at the lowest or second-lowest accountability rating and whose approved geographic boundary encompasses the property to be transferred;

(-b-) a school district that has the highest or second-highest accountability rating with no campus rated at the lowest or second-lowest accountability rating and whose geographic boundary includes the property to be transferred;

(-c-) a charter school with the third-highest accountability rating with no campus rated at the lowest or second-lowest accountability rating and whose approved geographic boundary encompasses the property to be transferred; and

(-d-) a school district with the third-highest accountability rating with no campus rated at the lowest or second-lowest accountability rating and whose geographic boundary encompasses the property to be transferred.

(II) A school district or an open-enrollment charter school may receive property under this clause only if:

(-a-) the open-enrollment charter school or school district receiving the property:

(-1-) has not received notice of the expiration or revocation of the contract for charter, notice of reconstitution of its governing body, or the assignment of an accreditation rating of Not Accredited-Revoked;

(-2-) agrees to the transfer;

(-3-) agrees to identify the property as purchased wholly using state funds on the school's annual financial report filed under TEC, §44.008; and

(-4-) agrees that if the property is sold within three years, the charter holder or school district will remit the sales proceeds back to TEA to be deposited in the charter school liquidation fund;

(-b-) any creditor with a security interest in or lien on the property described by TEC, §12.128(e), agrees to the transfer; and

(-c-) the transfer of the property does not make the open-enrollment charter school or school district receiving the property insolvent.

(III) Property received by an open-enrollment charter school or school district under this clause is considered state property. TEA may require a set amount of remuneration in exchange for the property, may accept bids, or may accept bids with a minimum bid amount established. If TEA takes bids, TEA shall transfer the property to the highest qualified bidder from the highest priority category established in subclause (I) of this clause, except as provided by subsection (g) of this section.

(2) For personal property purchased with state funds, the commissioner shall direct the charter holder to dispose of the property through one of the following methods.

(A) If TEA determines that the cost of disposing of personal property described by TEC, §12.128, transferred to TEA by an open-enrollment charter school that ceases to operate exceeds the return of value from the sale of the property, TEA may distribute the personal property to open-enrollment charter schools and school districts in a manner determined by the commissioner.

(B) On request of TEA, the Texas Facilities Commission shall enter into a memorandum of understanding to sell personal property for TEA as required by TEC, §12.1283.

(i) A memorandum of understanding entered into as provided by this subparagraph may allow the Texas Facilities Commission to recover from the sale proceeds any cost incurred by the office or commission in the sale of the property.

(ii) Subject to the satisfaction of any security interest or lien described by TEC, §12.128(e), proceeds from the sale of personal property under this section shall be deposited in the charter school liquidation fund.

(3) For property leased with state funds, the commissioner may direct the charter holder to assign the charter holder's interest in the lease to TEA or may direct the charter holder to cancel the lease.

(d) Maintenance of property. TEA may approve an expenditure of remaining funds by a former charter holder for insurance or utilities for or maintenance, repairs, or improvements to property described by this section, and TEA may lease the property in its possession if TEA determines that the action is reasonably necessary to dispose of the property or preserve the property's value.

(e) Funds and assets following termination of operations. After extinguishing all payable obligations owed by the charter school that ceases to operate, and after disposing of all real and personal property owned by the charter school that ceases to operate, the former charter holder shall:

(1) remit to TEA any remaining funds as described by TEC, §12.106(h), and any state reimbursement amounts as described by TEC, §12.128, to be deposited in the charter school liquidation fund;

(2) transfer all or a portion of the remaining funds to another charter school that has all or part of the operations of the former charter school assigned to it under TEC, §12.116(d)(2), if ordered by the commissioner, only if the charter school:

(A) has not received notice of possible adverse action or sanction by the commissioner;

(B) has an academic accountability rating at the district level of A or B and no campus with a rating of D or F;

(C) has a Charter FIRST rating of Meets Standard Achievement or above;

(D) has an accreditation rating of Accredited;

(E) does not have any warrant holds by which state payments issued to payees indebted to the state, or payees with a tax delinquency, are held by the comptroller until the debt is satisfied in accordance with Texas Government Code, §403.055; and

(F) agrees to classify the property as state property; or

(3) take any combination of the actions described by paragraphs (1) and (2) of this subsection.

{(e) Method for audited property. In taking possession, assuming control, and supervising the disposition of property that has been properly recorded by a former charter holder under §100.1063(f) of this title, the commissioner:}

{(1) shall accept and rely on the cost basis disclosure of all public property and all other property acquired by the former charter holder disclosed by the annual audit reports already on file with the agency and, if needed, by the annual audit report for the fiscal year in which the charter holder ceased operations;}

{(2) shall take possession and assume control over all public property disclosed by the annual audit reports;}

{(3) shall permit the former charter holder to designate the property to be used by the commissioner to satisfy the amount required by paragraph (2) of this subsection, and defer to the reasonable wishes of the former charter holder in this respect;}

{(4) may liquidate property designated by the former charter holder and, if the commissioner determines it to be necessary, liquidate other property; and}

{(5) shall return to the possession and control of the former charter holder any property in excess of the ownership interest of the State of Texas and/or federal grant or funding agencies of all public property disclosed by the annual audit reports, in accordance with current fair market valuation of the property.}

(f) [(d)] Use of legal process. Notwithstanding subsection (c) of this section, the commissioner may use such legal process as may be available under Texas law to take possession and assume control over the public property disclosed by the annual audit reports and, using such legal process, supervise the disposition of such property in accordance with law.

(g) Commissioner authority. The commissioner has discretion to direct disposition of the property in the best interest of Texas students.

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 June 7, 2021.

TRD-202102191

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: July 18, 2021

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



TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

SUBCHAPTER B. LICENSING REQUIREMENTS

22 TAC §463.9

The Texas Behavioral Health Executive Council proposes amendments to §463.9, relating to Licensed Specialist in School Psychology.

Overview and Explanation of the Proposed Rule. Trainee status for LSSPs is now obsolete since applicants are no longer preapproved to take the jurisprudence examination. Since applicants must pass the examination prior to application, future trainee status for LSSP applicants will no longer be issued; therefore this part of the rule is proposed to be amended to reflect this change.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed rule pertains to the qualifications necessary to obtain a license to practice psy-

chology. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Psychologists, in accordance with §501.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may propose this rule.

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

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

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

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

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

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

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

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

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

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

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via email to rules@bhec.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 rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

In accordance with §501.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §501.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

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

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

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

§463.9. *Licensed Specialist in School Psychology.*

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

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

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

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

(d) Applicants who do not hold active NCSP certification, or who did not graduate from a training program approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association, must have completed a graduate degree in psychology from a regionally accredited institution of higher education. Applicants applying under this subsection must have completed, either as part of their graduate degree program or after conferral of their graduate degree, at least 60 graduate level semester credit hours from a regionally accredited institution of higher education. A maximum of 12 internship hours may be counted toward this requirement. For purposes of this rule, a graduate degree in psychology means the name of the candidate's major or program of studies is titled psychology.

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

- (1) Psychological Foundations, including:
 - (A) biological bases of behavior;
 - (B) human learning;
 - (C) social bases of behavior;
 - (D) multi-cultural bases of behavior;
 - (E) child or adolescent development;
 - (F) psychopathology or exceptionalities;
- (2) Research and Statistics;
- (3) Educational Foundations, including any of the following:

- (A) instructional design;

(B) organization and operation of schools;

(C) classroom management; or

(D) educational administration;

(4) Assessment, including:

(A) psychoeducational assessment;

(B) socio-emotional, including behavioral and cultural, assessment;

(5) Interventions, including:

(A) counseling;

(B) behavior management;

(C) consultation;

(6) Professional, Legal and Ethical Issues; and

(7) A Practicum.

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

(1) At least 600 of the internship hours must have been completed in a public school.

(2) The internship must be provided through a formal course of supervised study from a regionally accredited institution of higher education in which the applicant was enrolled; or the internship must have been obtained in accordance with Council §463.11(d)(1) and (d)(2)(C) of this section.

(3) Any portion of an internship completed within a public school must be supervised by a Licensed Specialist in School Psychology, and any portion of an internship not completed within a public school must be supervised by a Licensed Psychologist.

(4) No experience which is obtained from a supervisor who is related within the second degree of affinity or consanguinity to the supervisee may be utilized.

(5) Unless authorized by the Council, supervised experience received from a supervisor practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

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

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

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

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

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

~~[(g) Trainee Status.]~~

~~[(1) An applicant for the specialist in school psychology license who has not yet passed the Jurisprudence Examination, but who otherwise meets all licensing requirements under this rule, may practice~~

in the public schools under the supervision of a Licensed Specialist in School Psychology, as a trainee for not more than one year.]

[(2) A trainee status letter shall be issued to an applicant upon proof of licensing eligibility, save and except proof of passage of the Jurisprudence Examination.]

[(3) An individual with trainee status is subject to all applicable laws governing the practice of psychology.]

[(4) A trainee's status may be suspended or revoked upon a showing of a violation of the Council's rules or any law pertaining to the practice of psychology, and the individual may be made the subject of an eligibility proceeding. The one-year period for trainee status shall not be tolled by any suspension of the trainee status.]

[(5) Following official notification from the Council upon passage of the Jurisprudence Examination or the expiration of one year, whichever occurs first, an individual's trainee status shall terminate.]

[(6) An individual practicing under trainee status must be designated as a trainee.]

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

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

(A) the individual is enrolled in an internship, practicum or other site based training in a psychology program in a regionally accredited institution of higher education; or

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

[(C) the individual has been issued a trainee status letter.]

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

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

(4) The authority to practice referenced in paragraph (1)(B) [and (C)] of this subsection is limited to the first or initial application filed by an individual under this rule, but is not applicable to any subsequent applications filed under this rule. [The Council will not issue more than one trainee status letter to an individual, regardless of the number of applications filed.]

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 June 4, 2021.

TRD-202102167

Darrel D. Spinks
Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: July 18, 2021

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



CHAPTER 465. RULES OF PRACTICE

22 TAC §465.2

The Texas Behavioral Health Executive Council proposes amendments to §465.2, relating to Supervision.

Overview and Explanation of the Proposed Rule. Trainee status for LSSPs is now obsolete since applicants are no longer preapproved to take the jurisprudence examination. Since applicants must pass the examination prior to application, future trainee status for LSSP applicants will no longer be issued; therefore this part of the rule is proposed to be amended to reflect this change.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed rule pertains to the scope of practice, standards of care, or ethical practice for the practice of psychology. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Psychologists, in accordance with §501.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may propose this rule.

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

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

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

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

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

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not

required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

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

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

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

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via email to rules@bhec.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 rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

In accordance with §501.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §501.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

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

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

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

§465.2. Supervision.

(a) Supervision in General. The following rules apply to all supervisory relationships.

(1) Licensee is responsible for the supervision of all individuals that the licensee employs or utilizes to provide psychological services of any kind.

(2) Licensees shall ensure that their supervisees have legal authority to provide psychological services.

(3) Licensees may delegate only those responsibilities that supervisees may legally and competently perform.

(4) All individuals who receive psychological services requiring informed consent from an individual under supervision must be informed in writing of the supervisory status of the individual and how the patient or client may contact the supervising licensee directly.

(5) All materials relating to the practice of psychology, upon which the supervisee's name or signature appears, must indicate the supervisory status of the supervisee. Supervisory status must be indicated by one of the following:

(A) Supervised by (name of supervising licensee);

(B) Under the supervision of (name of supervising licensee);

(C) The following persons are under the supervision of (name of supervising licensee); or

(D) Supervisee of (name of supervising licensee).

(6) Licensees shall provide an adequate level of supervision to all individuals under their supervision according to accepted professional standards given the experience, skill and training of the supervisee, the availability of other qualified licensees for consultation, and the type of psychological services being provided.

(7) Licensees shall utilize methods of supervision that enable the licensee to monitor all delegated services for legal, competent, and ethical performance. No more than fifty percent of the supervision

may take place through remote or electronic means. Licensees may exceed fifty percent remote or electronic supervision if supervision is provided through synchronous audiovisual means.

(8) Licensees must be competent to perform any psychological services being provided under their supervision.

(9) Licensees shall document their supervision activities in writing, including any remote or electronic supervision provided. Documentation shall include the dates, times, and length of supervision.

(10) Licensees may only supervise the number of supervisees for which they can provide adequate supervision.

(b) Supervision of Students, Interns, Residents, Fellows, and Trainees. The following rules apply to all supervisory relationships involving students, interns, residents, fellows, and trainees.

(1) Unlicensed individuals providing psychological services pursuant to §§501.004(a)(2), 501.2525(a)(2)(A), or 501.260(b)(3) of the Occupations Code must be under the supervision of a qualified supervising licensee at all times.

(2) Supervision must be provided by a qualified supervising licensee before it will be accepted for licensure purposes.

(3) A licensee practicing under a restricted status license is not qualified to, and shall not provide supervision for a person seeking to fulfill internship or practicum requirements or a person seeking licensure under the Psychologists' Licensing Act, regardless of the setting in which the supervision takes place, unless authorized to do so by the Council. A licensee shall inform all supervisees of any disciplinary order restricting the licensee's license and assist the supervisees with finding appropriate alternate supervision.

(4) A supervisor must document in writing a supervisee's performance during a practicum, internship, or period of supervised experience required for licensure. The supervisor must provide this documentation to the supervisee.

(5) A supervisor may allow a supervisee, as part of a required practicum, internship, or period of supervised experience required for licensure under Chapter 501, to supervise others in the delivery of psychological services.

(6) Licensees may not supervise an individual to whom they are related within the second degree of affinity or consanguinity.

(c) Supervision of Provisionally Licensed Psychologists and Licensed Psychological Associates. The following rules apply to all supervisory relationships involving Provisionally Licensed Psychologists and Licensed Psychological Associates.

(1) Provisionally Licensed Psychologists must be under the supervision of a Licensed Psychologist and may not engage in independent practice unless the provisional licensee is licensed in another state to independently practice psychology and is in good standing in that state.

(2) A Provisionally Licensed Psychologist may, as part of a period of supervised experience required for licensure as a psychologist, supervise others in the delivery of psychological services.

(3) A supervisor must provide at least one hour of individual supervision per week. A supervisor may reduce the amount of weekly supervision on a proportional basis for supervisees working less than full-time.

(d) Supervision of Licensed Specialists in School Psychology interns and other individuals authorized by §463.9(g)(1) (relating to Licensed Specialist in School Psychology) [trainees]. The following

rules apply to all supervisory relationships involving Licensed Specialists in School Psychology, as well as all interns and other individuals authorized by §463.9(g)(1) [trainees] working toward licensure as a specialist in school psychology.

~~[(1) A supervisor must provide an LSSP trainee with at least one hour of supervision per week, with no more than half being group supervision. A supervisor may reduce the amount of weekly supervision on a proportional basis for trainees working less than full-time.]~~

(1) ~~[(2)]~~ Supervision within the public schools may only be provided by a Licensed Specialist in School Psychology who has a minimum of 3 years of experience providing psychological services within the public school system without supervision. To qualify, a licensee must be able to show proof of their license, credential, or authority to provide unsupervised school psychological services in the jurisdiction where those services were provided, along with documentation from the public school(s) evidencing delivery of those services.

(2) ~~[(3)]~~ Supervisors must sign educational documents completed for students by the supervisee, including student evaluation reports, or similar professional reports to consumers, other professionals, or other audiences. It is not a violation of this rule if supervisors do not sign documents completed by a committee reflecting the deliberations of an educational meeting for an individual student which the supervisee attended and participated in as part of the legal proceedings required by federal and state education laws, unless the supervisor also attended and participated in such meeting.

(3) ~~[(4)]~~ Supervisors shall document all supervision sessions. This documentation must include information about the duration of sessions, as well as the focus of discussion or training. The documentation must also include information regarding:

(A) any contracts or service agreements between the public school district and university school psychology training program;

(B) any contracts or service agreements between the public school district and the supervisee;

(C) the supervisee's professional liability insurance coverage, if any;

(D) any training logs required by the school psychology training program; and

(E) the supervisee's ~~[trainee or]~~ licensure status or legal authority to provide psychological services.

(4) ~~[(5)]~~ Supervisors must ensure that each individual completing any portion of the internship required for licensure as an LSSP, is provided with a written agreement that includes a clear statement of the expectations, duties, and responsibilities of each party, including the total hours to be performed by the intern, benefits and support to be provided by the supervisor, and the process by which the intern will be supervised and evaluated.

(5) ~~[(6)]~~ Supervisors must ensure that supervisees have access to a process for addressing serious concerns regarding a supervisee's performance. The process must protect the rights of clients to receive quality services, assure adequate feedback and opportunities for improvement to the supervisee, and ensure due process protection in cases of possible termination of the supervisory relationship.

(e) The various parts of this rule should be construed, if possible, so that effect is given to each part. However, where a general provision conflicts with a more specific provision, the specific provision shall control.

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 June 4, 2021.

TRD-202102168

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: July 18, 2021

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



22 TAC §465.38

The Texas Behavioral Health Executive Council proposes amendments to §465.38, relating to Psychological Services for Schools.

Overview and Explanation of the Proposed Rule. Rules 463.10, 463.11, and 465.12 have been amended so the references to these rules in subsection (e), of this rule, are proposed to be amended to reflect these changes.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed rule pertains to the scope of practice, standards of care, or ethical practice for the practice of psychology. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Psychologists, in accordance with §501.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may propose this rule.

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

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

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

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year pe-

riod the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

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

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

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

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

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

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via email to rules@bhec.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 rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

In accordance with §501.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §501.2015 of the Tex. Occ. Code, which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

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

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

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

§465.38. Psychological Services for Schools.

(a) This rule acknowledges the unique difference in the delivery of school psychological services in public and private schools from psychological services in the private sector. The Council recognizes the purview of the State Board of Education and the Texas Education Agency in safeguarding the rights of school children in Texas. The mandated multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas, among other factors, allow for rules of practice in public and private schools which reflect these occupational distinctions from the private practice of psychology.

(b) Scope of Practice.

(1) An LSSP is a person who is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions which attempt to improve the learning, adjustment and behavior of students. Such activities include, but are not limited to, addressing special education eligibility, conducting manifestation determinations, and assisting with the development and implementation of individual educational programs, conducting behavioral assessments, and designing and implementing behavioral interventions and supports.

(2) The assessment of emotional or behavioral disturbance, solely for educational purposes, using psychological techniques and procedures is considered the practice of school psychology.

(3) The delivery of school psychological services in the public schools of this state shall be consistent with nationally recognized standards for the practice of school psychology. Licensees providing school psychological services in a private school should comply with those same nationally recognized standards where possible, but at a minimum, must comply with all applicable Council rules, including those related to informed consent, notification of the right to file a complaint, competency, forensic services, and misuse of services.

(c) The specialist in school psychology license permits the licensee to provide school psychological services only in public and private schools. A person utilizing this license may not provide psychological services in any context or capacity outside of a public or private school.

(d) The correct title for an individual holding a specialist in school psychology license is Licensed Specialist in School Psychology or LSSP. An LSSP who has achieved certification as a Nationally Certified School Psychologist (NCSPP) may use this credential along with the license title of LSSP.

(e) Providers of Psychological Services Within the Public Schools.

(1) School psychological services may be provided in Texas public schools only by individuals authorized by this Council to provide such services. Individuals who may provide such school psychological services include:

(A) LSSPs; and

(B) interns and post-doctoral fellows working towards licensure as a psychologist.

~~[(B) Those individuals listed in §463.11; and]~~

~~[(C) Individuals seeking to fulfill the licensing requirements of §463.10 of this title (relating to Licensed Psychological Associate) or §463.12 of this title (relating to Licensed Psychologist).]~~

(2) Licensees who do not hold the specialist in school psychology license may contract for specific types of psychological services, such as clinical psychology, counseling psychology, neuropsychology, and family therapy, but any such contracting may not involve the broad range of school psychological services listed in subsection (b)(1) of this section.

(3) An LSSP who contracts with a school to provide school psychological services must notify the school of any intent or plan to subcontract or assign those services to another provider prior to entering into the agreement. An LSSP subject to this provision shall be responsible for ensuring the school psychological services delivered comply with subsection (b)(3) of this section.

(f) Compliance with Applicable Education Laws. LSSPs shall comply with all applicable state and federal laws affecting the practice of school psychology, including, but not limited to:

(1) Texas Education Code;

(2) Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g;

(3) Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. §1400 et seq.;

(4) Texas Public Information Act, Texas Government Code, Chapter 552;

- (5) Section 504 of the Rehabilitation Act of 1973;
- (6) Americans with Disabilities Act (ADA) 42 U.S.C. §12101; and
- (7) HIPAA when practicing in a private school.

(g) Informed Consent in a Public School. Informed consent for a Licensed Specialist in School Psychology must be obtained in accordance with the Individuals with Disabilities Education Improvement Act (IDEIA) and the U.S. Department of Education's rules governing parental consent when delivering school psychological services in the public schools, and is considered to meet the requirements for informed consent under Board rules. No additional informed consent, specific to any Council rules, is necessary in this context. Licensees providing psychological services under subsection (e)(2) of this section, or in a private school however, must obtain informed consent as otherwise required by the Council rules.

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

Filed with the Office of the Secretary of State on June 4, 2021.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: July 18, 2021

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



PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

CHAPTER 681. PROFESSIONAL COUNSELORS

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §681.2

The Texas Behavioral Health Executive Council proposes amendments to §681.2, relating to Definitions.

Overview and Explanation of the Proposed Rule. The proposed amendment to §681.2 is intended to provide clarity to the definition of art therapy and correct a typographical error.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed rule provides definitions for the rules in Chapter 681, which pertain to the qualifications necessary to obtain a license as well as the scope of practice, standards of care, or ethical practice for the practice of professional counseling. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this

rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may propose this rule.

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

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

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

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

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

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

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

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

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

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via email to rules@bhec.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 rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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

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

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

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

§681.2. *Definitions.*

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

(1) Accredited school--An institution of higher education accredited by a regional accrediting agency recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education.

(2) Act--The Licensed Professional Counselor Act, Texas Occupations Code, Chapter 503.

(3) Art therapy--A form of counseling [human service profession] in which clients[, facilitated by the art therapist,] use art media, the creative process, and the resulting artwork to explore their feelings, reconcile emotional conflicts, foster self-awareness, manage behavior, develop social skills, improve reality orientation, reduce anxiety and increase self-esteem.

(4) Board--The Texas State Board of Examiners of Professional Counselors.

(5) Client(s)--A person(s) who requests and receives counseling services from a licensee or who has engaged in a therapeutic relationship with a licensee.

(6) Consent for services--Process for receiving permission from the legally authorized person who agrees to services.

(7) Consent Form--A document executed by the legally authorized person to ensure the client is aware of fees and arrangements for payment; counseling purposes, goals, and techniques; restrictions placed on the license by the Council; limits on confidentiality; intent of the licensee to use another individual to provide counseling treatment intervention to the client; supervision of the licensee by another licensed health care professional including the name, address, contact information, and qualifications of the supervisor; and the name, address, and telephone number of the Council for the purpose of reporting violations of the Act or this chapter.

(8) Council--The Texas Behavioral Health Executive Council.

(9) Counseling-related field--A mental health discipline using human development, psychotherapeutic, and mental health principles including, but not limited to, clinical or counseling psychology, psychiatry, social work, marriage and family therapy, and counseling and guidance. Non-counseling related fields include, but are not limited to, sociology, education, administration, dance therapy and theology.

(10) Executive Director--The executive director for the Texas Behavioral Health Executive Council. The executive director may delegate responsibilities to other staff members.

(11) Direct client contact--Time spent counseling clients.

(12) Health care professional--Any person licensed, certified, or registered by the state in a health related profession.

(13) Indirect hours--Time spent in management, administration or other aspects of counseling service ancillary to direct client contact.

(14) Jurisprudence exam--The Texas State Board of Examiners of Licensed Professional Counselors Jurisprudence exam. An online exam based upon the statutes and rules relating to the practice of counseling.

(15) License--An LPC license, LPC license with art therapy specialty designation, or LPC Associate license issued by the Council.

(16) Licensee---A person who holds an LPC license, LPC license with art therapy specialty designation, or LPC Associate license.

(17) LPC--Licensed Professional Counselor. A person holding an LPC license as a professional counselor with authority to practice in independent practice.

(18) LPC Associate--Licensed Professional Counselor Associate. A person who holds an LPC Associate license to practice counseling only under a [board]Council-approved supervisor and not as an independent practitioner.

(19) Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a denomination, church, sect or religious organization legally recognized under the Internal Revenue Code, 26 U.S.C. §501(c)(3) and other individuals participating with them in pastoral counseling if:

(A) the counseling activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of the legally recognized denomination, church, sect, religious organization or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26 Code of Federal Regulations, L1.6033-2(g)(i)(2012);

(B) the individual providing the service remains accountable to the established authority of that denomination, church, sect, religious organization or integrated auxiliary; and

(C) the person does not use the title of or hold himself or herself out as a professional counselor.

(20) Supervisor--An LPC approved by the Council as meeting the requirements set out in §681.93 of this title (relating to Supervisor Requirements) to supervise an LPC Associate.

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

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

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



SUBCHAPTER B. RULES OF PRACTICE

22 TAC §681.41

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

Overview and Explanation of the Proposed Rule. The proposed amendment clarifies a licensee's duty to take reasonable action in response to actions by third-parties.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical prac-

tice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed rule pertains to the scope of practice, standards of care, or ethical practice for the practice of professional counseling. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with § 503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may propose this rule.

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

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

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

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

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

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

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

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

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

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via email to rules@bhec.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 rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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

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

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

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

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

§681.41. *General Ethical Requirements.*

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

(1) the effectiveness of services;

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

(3) the practice or field of counseling.

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

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

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

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

(1) fees and arrangements for payment;

(2) counseling purposes, goals, and techniques;

(3) any restrictions placed on the license by the Council;

(4) the limits on confidentiality;

(5) any intent of the licensee to use another individual to provide counseling treatment intervention to the client;

(6) supervision of the licensee by another licensed health care professional including the name, address, contact information and qualifications of the supervisor;

(7) the name, address and telephone number of the Council for the purpose of reporting violations of the Act or this chapter; and

(8) the established plan for the custody and control of the client's mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's counseling practice.

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

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

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

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

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

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

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

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

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

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

(3) A licensee may not engage in sexual contact with a client if the contact begins less than five (5) years after the end of the counseling relationship; the non-therapeutic relationship must be consensual, not the result of exploitation by the licensee, and is not detrimental to the client.

(4) For purposes of paragraphs (2) and (3) of this subsection, the licensee must be able to demonstrate there has been no exploitation and the non-therapeutic relationship is not detrimental to the client in light of all relevant factors, including, but not limited to, the factors set forth in §681.42(b)(4)(A) - (G) of this title (relating to Sexual Misconduct).

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

- (A) family members;
- (B) personal friends;
- (C) educational associates; or

(D) business associates.

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

(7) The licensee must not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with a client if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.

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

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

(p) The licensee must take reasonable precautions to protect clients from physical or emotional harm resulting from interaction:

- (1) within a group; or
- (2) individual counseling.

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

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

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

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

(t) Billing Requirements.

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

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

(3) Pursuant to Texas Health and Safety Code, Chapter 611, on the written request of a client, a client's guardian, or a client's parent

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

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

(5) With the exception of an unkept appointment, a licensee may not submit to a client or a third party payor a bill for counseling treatment intervention the licensee knows or should know is improper, unreasonable, or unnecessary.

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

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

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

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

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

(z) A licensee must not knowingly overtreat a client.

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

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

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

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

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

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

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



SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §681.72

The Texas Behavioral Health Executive Council proposes amendments to §681.72, relating to Required Application Materials.

Overview and Explanation of the Proposed Rule. The proposed amendment is necessary to ensure the regulatory standard for substantial equivalency comports with the underlying statutory requirement.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed rule pertains to the qualifications necessary to obtain a license. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may propose this rule.

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

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

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

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

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

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not

required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

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

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

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

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via email to rules@bhec.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 rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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

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

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

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

§681.72. Required Application Materials.

(a) To apply for LPC Associate, the applicant must submit:

(1) the Council's application form;

(2) all applicable fees;

(3) official examination results from the National Board of Certified Counselors verifying a passing score on the National Counselor Exam (NCE) or National Clinical Mental Health Counselor Exam (NCMHCE) issued no more than five (5) years before the date the application was received;

(4) completion certificate for the Texas jurisprudence exam dated no more than six months before the date the application was received;

(5) an official graduate transcript(s);

(6) a practicum/graduate intern documentation form;

(7) a supervisory agreement form; and

(8) The holder of a current license in good standing issued by another jurisdiction equivalent to the Texas LPC Associate license must submit official verification of his or her license, including official verification of any supervised experience recognized by the issuing jurisdiction. If supervised experience cannot be verified by the issuing jurisdiction, the Council may consider a supervised experience documentation form with verification of the supervisor's credentials.

(b) To apply for LPC as the holder of a current Texas LPC Associate license, the applicant must submit:

(1) the Council's application form;

(2) all applicable fees;

(3) completion certificate for the jurisprudence exam dated no more than six months before the date the application for LPC was received;

(4) the Council's supervised experience documentation form; and

(5) other information or forms as requested by the Council.

(c) To apply for LPC as the holder of a current license equivalent to a Texas LPC license issued by another jurisdiction, the applicant's license must be in good standing and must submit:

(1) all of the items listed in subsection (a)(1)-(5) of this section;

(2) official verification of the license, including official verification of any supervised experience recognized by the issuing jurisdiction; and

(3) other information or forms as requested by the Council.

(4) The five-year expiration of the NCE or NCMHCE score does not apply to an applicant who has held a license issued by a United States jurisdiction in good standing for at least two (2) years before the date the application for LPC was received.

(d) To apply for supervisor status, an LPC must:

(1) have held the LPC license in good standing for at least 60 months;

(2) submit an application and all applicable fees; and

(3) submit a completion certificate for an acceptable supervisor training. An acceptable supervisor training is:

(A) a doctoral level course in the supervision of professional counseling or mental health services which was taken for credit at an accredited school and documented on an official transcript; the qualifying doctoral level course may have been completed no more than five (5) years before the date the application for supervisor status was received; or

(B) a 40-clock-hour supervision course as set forth in §681.147 of this title (relating to 40-Clock-Hour Supervisor Training Course); the qualifying 40-clock-hour supervision course may have been completed no more than two (2) years before the date the application for supervisor status was received.

(e) An applicant who holds a current LPC license in good standing issued by another jurisdiction must be substantially equivalent to Texas licensure requirements.

~~[(f) Licensure requirements that either match or exceed Texas requirements are considered to be substantially equivalent.]~~

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 June 4, 2021.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: July 18, 2021

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



22 TAC §681.73

The Texas Behavioral Health Executive Council proposes amendments to §681.73, relating to Application for Art Therapy Specialty Designation.

Overview and Explanation of the Proposed Rule. The proposed amendment is necessary because the agency has received in-

formation that the American Art Therapy Association is being replaced as an accrediting body. This amendment will allow the agency to rely upon accreditation by its successor.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed rule pertains to the qualifications necessary to obtain a license. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with § 503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may propose this rule.

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

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

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

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

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

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

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

rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

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

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

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via email to rules@bhec.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 rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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

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

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

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

§681.73. *Application for Art Therapy Specialty Designation.*

(a) A person applying for licensure with an art therapy specialty designation must:

(1) meet the requirements for an LPC license set out in this chapter;

(2) hold either:

(A) a master's or doctoral degree in art therapy that includes 700 hours of supervised practicum from an accredited school; or

(B) all of the following:

(i) a master's degree in a counseling-related field;

(ii) a minimum of 21 semester hours or the equivalent of sequential course work in the history, theory, and practice of art therapy;

(iii) 700 hours of supervised practicum from an accredited school;

(3) have the experience requirements set out in subsection (c) of this section; and

(4) submit documentation of successful completion of the Certification Examination in Art Therapy of the Art Therapy Credentials Board.

(b) The Council will accept an individual course from an art therapy program accredited through the American Art Therapy Association (or its successor) as satisfying the education requirements set out in §681.82 of this title (relating to Academic Requirements) if not less than 75% of the course content is substantially equivalent to the content of a course required in §681.83 of this title (relating to Academic Course Content).

(c) As part of the supervised experience requirements for art therapy specialty designation under the Act, §503.303, an applicant must fulfill the requirements of §§681.91-681.93 of this title and must have the following:

(1) 1,500 client contact hours under supervision of a licensed professional counselor with an art therapy specialty designation, if the applicant holds a master's or doctoral degree in art therapy that includes 700 hours of practicum; or

(2) 2,000 client contact hours under supervision of a licensed professional counselor with an art therapy specialty designation, if the applicant holds a master's degree in counseling or a counseling related field and has a minimum of 21 semester hours or the equivalent

lent of sequential course work in the history, theory, and practice of art therapy with 700 hours practicum.

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 June 4, 2021.

TRD-202102184

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: July 18, 2021

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



22 TAC §681.82

The Texas Behavioral Health Executive Council proposes amendments to §681.82, relating to Academic Requirements.

Overview and Explanation of the Proposed Rule. The proposed amendment is necessary to ensure the minimum degree requirement applies equally to counseling and counseling-related degrees. Additionally, the proposed amendment is being made to streamline the application process for qualified out of state applicants.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed rule pertains to the qualifications necessary to obtain a license. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with § 503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may propose this rule.

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

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

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

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

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

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

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

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

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

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via email to rules@bhec.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 rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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

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

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

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

§681.82. Academic Requirements.

(a) Persons applying for licensure must have a graduate degree in counseling or a counseling-related field of:

(1) at least 48 semester hours of coursework in a counseling or counseling-related field for applicants who began the qualifying program before August 1, 2017; and

(2) at least 60 semester hours of coursework in a counseling or counseling-related field for applicants who began the qualifying program on or after August 1, 2017.

(b) An applicant who holds a graduate degree in a counseling related field must have an official transcript documenting satisfaction of the requirements described in §681.83 of this title (relating to Academic Course Content).

(c) An applicant who has held a full active LPC in good standing issued by a United States jurisdiction for at least two (2) years immediately preceding the date the application was received will be deemed to have met all academic and experience requirements, including the practicum, if the applicant can demonstrate 3,000 hours of supervised experience and has completed at least 48 semester hours of coursework in a graduate degree program in a counseling or a counseling-related field, with 300 clock hours of supervised practicum.

(d) The 48/60 semester hours must be designed to train a person to provide direct services to assist clients in a professional counseling relationship using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life. The 48/60 semester hours may be course work that was part of the graduate degree in a counseling-related field, may be in addition to course work taken for the qualifying program, or a combination of both.

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 June 4, 2021.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: July 18, 2021

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



22 TAC §681.93

The Texas Behavioral Health Executive Council proposes amendments to §681.93, relating to Supervisor Requirements.

Overview and Explanation of the Proposed Rule. The Council is no longer mailing renewal permits; verification of licensure status is done online. The proposed amendment will reduce regulatory burden by allowing the supervisor to print and keep a copy of the online license verification in lieu of a wall certificate.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed rule pertains to the qualifications necessary to obtain a license, as well as the scope of practice, standards of care, or ethical practice for a profession. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may propose this rule.

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

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

each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

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

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

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

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

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

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

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

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via email to rules@bhec.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 rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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

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

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

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

§681.93. Supervisor Requirements.

(a) A supervisor must keep a written record of each supervisory session in the file for the LPC Associate.

(1) The supervisory written record must contain:

(A) a signed and dated copy of the Council's supervisory agreement form for each of the LPC Associate's supervisors;

(B) a copy of the LPC Associate's online license verification [~~wall certificate~~] noting the dates of issuance and expiration;

(C) fees and record of payment;

(D) the date of each supervisory session;

(E) a record of an LPC Associate's leave of one month or more, documenting the supervisor's approval and signed by both the LPC Associate and the supervisor; and

(F) a record of any concerns the supervisor discussed with the LPC Associate, including a written remediation plan as prescribed in subsection (e) of this section.

(2) The supervisor must provide a copy of all records to the LPC Associate upon request.

(b) The full professional responsibility for the counseling activities of the LPC Associate rests with the LPC Associate's approved supervisor(s). If the LPC Associate receives disciplinary action by the Council, the supervisor may also be subject to disciplinary action.

(1) Supervisors must review all provisions of the Act and Council rules in this chapter during supervision.

(2) The supervisor must ensure the LPC Associate is aware of and adheres to all provisions of the Act and Council rules.

(c) The supervisor must avoid any relationship that impairs the supervisor's objective, professional judgment.

(1) The supervisor may not be related to the LPC Associate within the second degree of affinity or within the third degree of consanguinity.

(2) The supervisor may not be an employee of his or her LPC Associate.

(d) The supervisor must submit to the Council accurate documentation of the LPC Associate's supervised experience within 30 days of the end of supervision or the completion of the LPC Associate's required hours, whichever comes first.

(e) If a supervisor determines the LPC Associate may not have the counseling skills or competence to practice professional counseling under an LPC license, the supervisor will develop and implement a written plan for remediation of the LPC Associate, which must be reviewed and signed by the LPC Associate and maintained as part of the LPC Associate's file.

(f) The supervisor must ensure the supervised counseling experience of the LPC Associate were earned:

(1) after the LPC Associate license was issued; and

(2) in not less than 18 months of supervised counseling experience.

(g) A supervisor whose license has expired is no longer an approved supervisor and:

(1) must immediately inform all LPC Associates under his or her supervision and assist the LPC Associates in finding alternate supervisors; and

(2) must refund all supervisory fees for supervision after the expiration of the supervisor status.

(3) Hours accumulated under the person's supervision after the date of license expiration may not count as acceptable hours.

(h) Upon execution of a Council order for probated suspension, suspension, or revocation of the LPC license with supervisor status, the supervisor status is revoked. A licensee whose supervisor status is revoked:

(1) must immediately inform all LPC Associates under his or her supervision and assist the LPC Associates in finding alternate supervisors; and

(2) must refund all supervisory fees for supervision after the date the supervisor status is revoked; and

(3) hours accumulated under the person's supervision after the date of license expiration may not count as acceptable hours.

(i) Supervision of an LPC Associate without having Council approved supervisor status is grounds for disciplinary action.

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 June 4, 2021.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: July 18, 2021

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



22 TAC §681.114

The Texas Behavioral Health Executive Council proposes amendments to §681.114, relating to Licensing of Military Service Members, Military Veterans, and Military Spouses.

Overview and Explanation of the Proposed Rule. The proposed amendment is necessary to determine substantial equivalency for out of state licensees that are military service members, military veterans, and military spouses.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed rule pertains to the qualifications necessary to obtain a license. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with § 503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may propose this rule.

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

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

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

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

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

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

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

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

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

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

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via email to rules@bhec.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 rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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

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

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

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

§681.114. Licensing of Military Service Members, Military Veterans, and Military Spouses.

(a) An applicant applying for licensure under this section must comply with Council rule, §882.60 of this title (relating to Special Provisions Applying to Military Service Members, Veterans, and Spouses).

(b) Substantial Equivalency Determination. In accordance with §55.004 of the Occupations Code, the licensing requirements for a license to practice professional counseling in another jurisdiction will be considered substantially equivalent to Texas' requirements if the following criteria are met:

(1) the applicant has been fully licensed to practice professional counseling for the two years immediately preceding the date the application is received; and

(2) has no disciplinary history.

~~[(b) Licensing requirements that either match or exceed Texas requirements are considered substantially equivalent.]~~

(c) If an applicant has been fully licensed to practice professional counseling in another United States jurisdiction for less than two years immediately preceding the date the application is received, and has no disciplinary history, staff may grant 125 hours of credit for every month of independent professional counseling practice toward any deficit in experience requirements.

(d) [(e)] For an application submitted by a verified military service member or military veteran, the applicant must receive credit towards any licensing requirements, except an examination requirement, for verified military service, training, or education that the Council determines is relevant to the licensing requirements. [unless he or she holds a restricted license issued by another jurisdiction or has a criminal history for which adverse licensure action is authorized by law.]

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

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: July 18, 2021

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



SUBCHAPTER D. SCHEDULE OF SANCTIONS

22 TAC §681.205

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

Overview and Explanation of the Proposed Rule. The proposed amendments to §681.41(d) and §681.93(a)(1)(B), found elsewhere in this edition of the *Texas Register*, requires corresponding amendments to this rule, the Schedule of Sanctions.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed rule pertains to a schedule of sanctions. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with § 503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may propose this rule.

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

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

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

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

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

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

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

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

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

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via email to rules@bhec.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 rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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

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

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

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

§681.205. *Schedule of Sanctions.*

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

Figure: 22 TAC §681.205

[Figure: 22 TAC §681.205]

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

Filed with the Office of the Secretary of State on June 4, 2021.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

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



PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

SUBCHAPTER C. APPLICATIONS AND LICENSING

22 TAC §801.205

The Texas Behavioral Health Executive Council proposes new §801.205, relating to Remedy for Incomplete License Requirements.

Overview and Explanation of the Proposed Rule. The new rule is necessary to allow the Texas State Board of Examiners of Marriage and Family Therapists to make exceptions for applicants that have difficulty fulfilling certain licensing requirements due to a declared disaster. For example, some LMFT Associates have expressed difficulty in meeting the required in-person supervised experience hours because, due to the COVID-19 pandemic, some supervisors or employers are only allowing telehealth services. The new rule will grant the Board flexibility in approving these future applications for the full LMFT license.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The proposed new rule pertains to qualifications necessary to obtain a license to practice marriage and family therapy; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Marriage and Family Therapists, in accordance with §502.1515 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose this new rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Tex. Occ. Code and may propose this new rule.

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

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

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

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

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

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

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

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

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

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via email to rules@bhec.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 rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

In accordance with §502.1515 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code, which states the Board shall propose to the Executive Council rules regarding qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for the profession; continuing education requirements; or a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for the profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

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

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

§801.205. Remedy for Incomplete License Requirements.

(a) An applicant who does not meet all of the prerequisites for a particular license under Chapter 502 of the Occupations Code, may petition the Council for a waiver or modification of the prerequisite(s). An applicant may not petition for the waiver or modification of the degree required for the particular license sought or passage of the requisite examinations.

(b) The Council may waive or modify a prerequisite for obtaining a license under Chapter 502 of the Occupations Code, subject to subsection (a) of this section, if:

(1) the prerequisite is not mandated by federal law, the state constitution or statute, or 22 TAC Part 41 (relating to Texas Behavioral Health Executive Council); and

(2) the failure or inability to meet the prerequisite was due to a disaster declared under Chapter 418 of the Government Code or under similar authority in another jurisdiction.

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

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

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

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



PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

CHAPTER 881. GENERAL PROVISIONS

SUBCHAPTER B. RULEMAKING

22 TAC §881.21

The Texas Behavioral Health Executive Council proposes amendments to §881.21, relating to Petition for Rulemaking.

Overview and Explanation of the Proposed Rule. The proposed amendment corrects a typographical error. Currently subsection (f) of this rule references §201.021(d) of the Tex. Gov't Code, but the correct citation should be §2001.021(d). Therefore, this proposed amendment is necessary to correct this statutory reference.

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

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

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

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

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

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

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

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

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

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

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via email to rules@bhec.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 un-

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

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

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

Lastly, the Executive Council proposes this rule 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 section.

§881.21. Petition for Rulemaking.

(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 economics, if such information can be derived from available sources without undue cost or burden.

(d) A petition for rulemaking which involves any of those matters set forth in §507.153(a) of the Occupations Code will be submitted by agency staff to the appropriate member board for initial review and consideration.

(e) 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.

(f) The term "interested person" as used in this rule, shall have the same meaning as that assigned by §2001.021(d) [~~§201.021(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.

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Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

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



CHAPTER 882. APPLICATIONS AND LICENSING

SUBCHAPTER A. LICENSE APPLICATIONS

22 TAC §882.11

The Texas Behavioral Health Executive Council proposes amendments to §882.11, relating to Applicants with Foreign Degrees.

Overview and Explanation of the Proposed Rule. The proposed amendment expands the number of acceptable foreign degree evaluation services who conduct foreign degree evaluations to include members of the Association of International Credential Evaluators, Inc. This proposed change is being brought based in part upon the suggestion of the Registrar's Office at the University of Texas at Austin.

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

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants and the general public because the proposed rule will provide greater opportunity to comply with the Executive Council's licensing requirements while still applying a consistent standard. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

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

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

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

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

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

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

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

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via email to rules@bhec.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 rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules nec-

essary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

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

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

§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 translator that is certified by the American Translators Association, a reputable foreign translator or translation service, or a U.S. college or university official.

(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) or the Association of International Credential Evaluators, Inc. (AICE). 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.

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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CHAPTER 883. RENEWALS

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §883.1

The Texas Behavioral Health Executive Council proposes amendments to §883.1, relating to Renewal of a License.

OVERVIEW AND EXPLANATION OF THE PROPOSED RULE.

The proposed amendment is intended to modify the assessment of late fees such that licensees need only pay a late renewal fee for late renewals, rather than a late fee in addition to the standard renewal fee.

FISCAL NOTE. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year pe-

riod the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, 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 of state or local government. Conversely, Mr. Spinks has determined there will be a decrease or loss in revenues to state government as a result of this proposed amendment. Under the proposed amendment a licensee filing a late renewal would only have to pay the late renewal fee, as opposed to currently having to pay the renewal fee in addition to the late fee. If the same historical number of licensees that filed late renewals this past year continue to do so, then the amount of fees collected by this agency will be reduced by approximately \$241,769.00 on an annual basis.

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

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

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the

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

TAKINGS IMPACT ASSESSMENT. Mr. Spinks has determined that there are no private real property interests affected by the proposed 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, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via email to rules@bhec.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 rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

The Executive Council proposes this amended 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; as well as §507.255 of the Tex. Occ. Code which requires the Executive Council to charge late renewal fees.

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

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

§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 ~~or~~ ~~and~~ late renewal 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.

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

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Darrel D. Spinks
Executive Director

Texas Behavioral Health Executive Council

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



CHAPTER 885. FEES

22 TAC §885.1

The Texas Behavioral Health Executive Council proposes amendments to §885.1, relating to Executive Council Fees.

Overview and Explanation of the Proposed Rule. The proposed amendment is intended to clarify that late fees are not applicable to licenses on inactive status, which is currently stated in §882.21. Additionally, the proposed amendment is intended to clarify that when a person's license has been expired for certain periods of time, it is referring to delinquent license status as stated in §882.21.

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

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

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

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

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

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

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

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

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to pre-

pare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via email to rules@bhec.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 rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

The Executive Council proposes this amended 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.

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

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

§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 Texas 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) (No change.)

(c) Late fees. (Not applicable to Inactive Status)

(1) If the person's license has been expired (i.e., delinquent) 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 (i.e., delinquent) 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 (i.e., delinquent) 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 requirements of this state.

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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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

The Texas Department of Insurance (TDI) proposes amending 28 TAC §§21.2 - 21.4, 21.6, 21.102, 21.104, 21.120, 21.203 - 21.205, 21.301, 21.403, 21.408, 21.701, 21.703 - 21.705,

21.901, 21.1004 - 21.1007, 21.1101, 21.1110, 21.2001, 21.2006, 21.2010, 21.2011, 21.2202, 21.2204, 21.2212, 21.2501, 21.2601, 21.2604, 21.2606, 21.2702, 21.2819, 21.2902, 21.3201, 21.3302, 21.3303, 21.3305, 21.3701, 21.3802, and 21.4105, concerning deceptive and unfair trade practices.

EXPLANATION. The proposed amendments (1) change instances of the obsolete "State Board of Insurance" to "Department of Insurance," (2) replace obsolete statutory references to Insurance Code articles that have changed because of codification, (3) update websites and addresses, (4) correct punctuation and grammatical errors, and (5) make nonsubstantive language and usage changes to adhere to current agency style (e.g., capitalizing "Commissioner" and changing "shall" to other context-appropriate words).

The proposed amendments to the sections are described in the following paragraphs, organized by subchapter.

Subchapter A. Unfair Competition and Unfair Practices of Insurers, and Misrepresentation of Policies. Amendments are proposed to §§21.2, 21.3, and 21.6 to update obsolete statutory references. Additional amendments are proposed to §21.3 and §21.4 to update obsolete references to the State Board of Insurance.

Additional amendments include: "shall" is replaced with "may" in §21.3; superfluous "or" instances are removed in §21.4; and in §21.6, "shall" is replaced with "will."

Subchapter B. Advertising, Certain Trade Practices, and Solicitation. Amendments are proposed to §§21.102, 21.104, and 21.120 to remove obsolete references to "viatical." An amendment is proposed to §21.120 to update an obsolete mailing address. Amendments are proposed to §21.120 to change "shall" to "must," change "division" to "title," and update a regulatory reference.

Subchapter C. Unfair Claims Settlement Practices. Amendments are proposed to §21.203 and §21.205 to update obsolete statutory references. Amendments are proposed to §21.204 to correct a typo in a citation to §21.203 and update obsolete references to the State Board of Insurance.

Additional amendments to §21.203 include replacing "shall" with "may" or "will," as appropriate; capitalization of "Commissioner of Insurance"; addition of missing periods; deletions of "the"; and changes to syntax for proper grammar. In §21.204, additional amendments include replacing "shall" with "must," replacing "such" with "the" in two places, and replacing "of" with "by." In §21.205, an additional amendment includes replacing "shall" with "must."

Subchapter D. Statistical Agents. Amendments are proposed to §21.301 to update obsolete statutory references. Amendments also include deleting "shall" or replacing it with "will" and "must," as appropriate; capitalizing "Commissioner"; inserting the word "following"; and inserting a comma and a colon where needed.

Subchapter E. Unfair Discrimination Based on Sex or Marital Status. Amendments are proposed to §21.403 to update obsolete references to "the board," to remove obsolete references to "non-profit legal service corporations," delete unnecessary uses of the word "shall" and revise text as appropriate to reflect removal of "shall," and correct punctuation. Amendments are proposed to §§21.403 and 21.408 to update obsolete statutory references.

Subchapter H. Unfair Discrimination. Amendments are proposed to §§21.701, 21.703, and 21.705 to update obsolete statutory references. Amendments are proposed in §21.704 to update an obsolete mailing address and to replace "shall" with "may." Additional amendments in §21.703 include replacing "mental retardation" with "intellectual disability" to conform with the Diagnostic and Statistical Manual of Mental Disorders and to conform with changes to the Health and Safety and Insurance Codes; replacing "handicap or partial handicap" with "disability or partial disability" to conform with changes to Insurance Code §544.002.

Subchapter I. Prohibited Agent Practices. Amendments are proposed to §21.901 to update obsolete statutory references. Additional amendments include adding and deleting commas; deleting one instance of "shall" and replacing another instance with "will"; and replacing "shall be" with "are," "pursuant" with "according"; and "article" with "chapter."

Subchapter J. Prohibited Trade Practices. Amendments are proposed to §§21.1004 - 21.1007 to update obsolete statutory references. Additional amendments include adding a hyphen in §21.1004; deleting an unnecessary comma and replacing "shall" with "may" and "shall be" with "is" in §21.1005, as appropriate; and making the word "To" lowercase in the heading of §1.006 and replacing "shall" with "does" in §21.1006.

An amendment to §21.1004 updates a section title. An amendment to §21.1007 removes an unnecessary and obsolete mailing address.

In addition, amendments delete §21.1004(f) and (g) because subsection (f) is no longer effective, and subsection (g) is no longer relevant. Subsection (g) contains an expiration clause for subsection (f), providing for the section to expire on January 1, 2008. An amendment also deletes §21.1004(d) because the provision provides an out-of-date effective date for the section.

Subchapter K. Certification of Creditable Coverage. Amendments are proposed to §21.1101 to update obsolete statutory references and an amendment is proposed to §21.1110 to remove an unnecessary and obsolete mailing address. Additional amendments include adding a comma, hyphens, punctuating "USC" to make it "U.S.C.," capitalizing "Commissioner of Insurance." The defined term "risk pool" is removed from §21.1101 because the term is not used in the subchapter, and the paragraphs that follow it are renumbered as appropriate.

Subchapter L. Medical Child Support, Unfair Practices. Amendments are proposed to §§21.2001, 21.2006, 21.2010, and 21.2011 to update obsolete statutory references and delete the words "shall" and "shall be" or replace it with "must," "will," or "are," as appropriate. Additional amendments in §21.2001 include replacing dashes with double hyphens, and adding punctuation to "USC" to make it "U.S.C." An additional amendment in §21.2010 removes an unnecessary and obsolete mailing address. Additional amendments in §21.2011 include deleting "will subject" and replacing with "subjects" and replacing "application" with "applicable."

Subchapter M. Mandatory Benefit Notice Requirements. Amendments are proposed to §21.2106 to remove an unnecessary and obsolete mailing address.

Subchapter N. Life Insurance Illustrations. Amendments are proposed to §§21.2202, 21.2204, and 21.2212 to update obsolete statutory references. Additional amendments to §21.2202 include changing the capitalization of "subchapter" and "Commis-

sioner." Additional amendments to §21.2204 include changing the capitalization of "subchapter" and "Commissioner," deleting two instances of an unnecessary "shall," and changes to syntax. Additional amendments to §21.2212 include changing "subsection" to "subchapter," and deleting an unnecessary "shall."

Subchapter Q. Complaint Records to be Maintained. Amendments are proposed to §21.2501 to update obsolete statutory references and eliminating unnecessary uses of "the."

Subchapter R. Diabetes. Amendments to §§21.2601, 21.2604, and 21.2606 to update obsolete statutory references. Additional amendments to §21.2601 include changing a colon to a period, eliminating unnecessary uses of "shall," capitalizing "Commissioner," revising references to current statutes for consistency with current agency style, and adding punctuation to "USC" to change it to "U.S.C." Additional amendments to §21.2604 include replacing "shall" with "must," adding hyphens and commas where grammatically appropriate, changing numbers rendered in words to numerals, replacing "on-going" with "ongoing," and eliminating unnecessary use of "services." Additional amendments to §21.2606 include replacing "shall" with "must" or "should" as appropriate and updating the title of the Commissioner of Public Health.

Subchapter S. Association Plans. Amendments are proposed to §21.2702 to update obsolete statutory references. Additional amendments include changing a colon to a period, capitalizing "Commissioner," eliminating unnecessary uses of "shall," and adding commas and hyphens where appropriate.

Subchapter T. Submission of Clean Claims. Amendments are proposed to §21.2819 to revise a reference to an Administrative Code section and to remove an unnecessary and obsolete mailing address.

Subchapter U. Arrangements Between Indemnity Carriers and HMOs for Point-of-Service Coverage. Amendments are proposed to §21.2901 and §21.2902 to update obsolete statutory references. Additional amendments in §21.2901 include eliminating an unnecessary "shall" and adding commas where grammatically appropriate. Additional amendments in §21.2902 include replacing "shall" with "must," "will," "do," or "may" as appropriate; replacing "pursuant" with "according;" adding the word "by;" and updating the heading of a subchapter in a reference to the Administrative Code.

Subchapter X. Evaluation of Network Physicians and Providers. Amendments are proposed to §21.3201 to update obsolete statutory references and an out-of-date website address. Additional amendments include changing the capitalization of "Applicability," changing a colon to a period, eliminating an unnecessary "shall," replacing "shall" with "must," and removing text addressing ways to request the Texas Standardized Credentialing Application via mail or over the phone.

Subchapter Y. Unfair Discrimination in Compensation for Women's Health Care. Amendments are proposed to §§21.3302, 21.3303, and 21.3305 to update obsolete statutory references. Additional amendments include replacing a colon with a period and eliminating an unnecessary "shall" in §21.3302 and replacing "shall" with "must," "than" with "from," and "if" with "whether" in §21.3305.

Subchapter CC. Electronic Health Care Transactions. Amendments are proposed to §21.3701 to update obsolete statutory references and to update a mailing address. Additional amendments include correcting a citation to a section in the Adminis-

trative Code, replacing "shall" with "must" or "will," as appropriate; replacing "ten" with "10;" and replacing "Department of Insurance" with "department." Amendments are also proposed to update the titles of department staff, which have changed due to internal reorganizations.

Subchapter DD. Eligibility Statements. Amendments are proposed to §21.3802 to update obsolete statutory references and eliminate an unnecessary "shall."

Subchapter GG. Health Care Quality Assurance Presumed Compliance. Amendments are proposed to §21.4105 to update obsolete website references and an obsolete mailing address. Additional amendments include adding the word "as," making the word "department" possessive, replacing "shall" with "will," and eliminating an unnecessary use of the word "internet."

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Justin Beam, chief clerk, Office of the Chief Clerk, General Counsel Division, has determined that during each year of the first five years the proposed new amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of the proposed amendments. The proposed amendments are limited to updating statutory citations to reflect the recodification of the Insurance Code, updating website addresses, removing obsolete addresses and state agency names, correcting typographical and grammatical errors, and other nonsubstantive changes. Because the proposed amendments make no substantive changes, they neither add to or decrease state revenues or expenditures nor change any requirements placed on local governments.

Mr. Beam does not anticipate any measurable effect on local employment or the local economy as a result of this proposal because the proposed amendments do not make any substantive changes.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Beam expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules are accurate and transparent by reflecting the updated Insurance Code references and the correct agency name, contact information, and website address for TDI.

Mr. Beam expects that the proposed amendments will not increase the cost of compliance for stakeholders because they do not impose substantive changes.

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

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a cost on regulated persons, thus no additional rule-makings are required under Government Code §2001.0045.

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

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;

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

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

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on July 19, 2021. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., central time, on July 19, 2021. If TDI holds a public hearing, TDI will consider comments presented at the hearing.

SUBCHAPTER A. UNFAIR COMPETITION AND UNFAIR PRACTICES OF INSURERS, AND MISREPRESENTATION OF POLICIES

28 TAC §§21.2 - 21.4, 21.6

STATUTORY AUTHORITY. TDI proposes amendments to §§21.2 - 21.4 and 21.6 under Insurance Code §§463.006, 541.401, 543.001, and 36.001.

Insurance Code §463.006 provides that the Commissioner adopt rules necessary to carry out and supplement the Texas Life and Health Insurance Guaranty Association Act.

Insurance Code §541.401 provides that the Commissioner may adopt and enforce rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

Insurance Code §543.001 provides that the Commissioner may adopt and enforce rules as provided by Chapter 541, Subchapter I, to ensure life insurance companies do not circulate statements that misrepresent the terms, benefits, or dividends received on a life insurance policy or certificate.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.2 implements Insurance Code Chapter 541 and Insurance Code §543.001. Section 21.3 implements Insurance Code §541.003. Section 21.4 implements Insurance Code §541.061. Section 21.6 implements Insurance Code §463.451.

§21.2. Interpretations.

The meanings given to the provisions, terms, and words of this regulation are not to be limited to the common law meaning, which may have been given thereto, but are to be interpreted to accomplish the purpose of these sections in accordance with the provisions of [the] Insurance Code Chapter 541 and Insurance Code §543.001[; Article 21-21, §13].

§21.3. Unfair Trade Practices Prohibited.

(a) Misrepresentation of insurance policies, unfair competition, and unfair practices by insurers, agents, and other connected persons are prohibited by Insurance Code Chapter 541 and Insurance Code §543.001 [Article 21-20 and Article 21-21] or by other provisions of the Insurance Code and this chapter [by these sections of the Texas State Board of Insurance]. No person may [shall] engage in this state in any trade practice that is a misrepresentation of an insurance policy, that is an unfair method of competition, or that is an unfair or deceptive act or practice as defined by the provisions of the Insurance Code or as defined by these sections and other rules and regulations [of the State Board of Insurance] authorized by the Insurance Code.

(b) Irrespective of the fact that the improper trade practice is not defined in any other section of these rules and regulations, no person may [shall] engage in this state in any trade practice which is determined pursuant to law to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

§21.4. Misrepresentation Defined; Standards for Determining Misrepresentation.

The term misrepresentation, or the prohibited conduct, act, or practice that constitutes misrepresentation by a person subject to the provisions of these sections, is defined as any one of the following acts or omissions:

- (1) any untrue statement of a material fact; [or]
- (2) any omission to state a material fact necessary to make the statements made (considered in the light of the circumstances under which they are made) not misleading; [or]
- (3) the making of any statement in such manner or order as to mislead a reasonably prudent person to a false conclusion of a material fact; [or]
- (4) (No change.)
- (5) any failure to disclose any matter required by law to be disclosed, including failure to make disclosures [disclosure] in accordance with the provisions of these sections and other applicable rules [of the State Board of Insurance].

§21.6. Prohibition against the Use of Guaranty Fund Protection in the Sale of Insurance.

The use in any manner of the protection afforded by the Life and Health Insurance Guaranty Association Act [Life, Accident, Health, and Hospital Service Insurance Guaranty Act] (the Act) by any person in the sale of any product included within the scope of the Act ([the] Insurance Code[;] Chapter 463 [Article 21-28-D]) will [shall] constitute unfair competition and unfair practices under [the] Insurance Code[;] Chapter 541 [Article 21-21,] and will [shall] be subject to the provisions thereof.

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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TRD-202102192

James Person

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6584



SUBCHAPTER B. ADVERTISING, CERTAIN TRADE PRACTICES, AND SOLICITATION DIVISION 1. INSURANCE ADVERTISING

28 TAC §§21.102, 21.104, 21.120

STATUTORY AUTHORITY. TDI proposes amendments to §§21.102, 21.104, and 21.120 under Insurance Code §562.106 and §36.001.

Insurance Code §562.106 provides that if the Commissioner reasonably believes that a program operator or marketer may not be operating in compliance with Chapter 562, the Commissioner by order may require the program operator or marketer to submit to the Commissioner any advertisement, solicitation, or marketing materials or other document requested by the Commissioner.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Sections 21.102 and 21.104 implement Insurance Code, Chapter 541, Subchapter B-1. Sections 21.102, 21.104, and 21.120 implement Insurance Code §562.052.

§21.102. *Scope.*

For the purpose of this division:

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

(3) "Policy" includes any policy, plan, certificate, contract, evidence of coverage, agreement, statement of coverage, cover note, certificate of policy, rider or endorsement which provides, limits, or controls insurance for any kind of loss or expense or because of the continuation, impairment, or discontinuance of human life or annuity benefits issued by an insurer, ~~viatical or~~ life settlement contracts, premium finance agreements, or any other product offered by an insurer and regulated by the Department.

(4) "Insurer" includes any individual, partnership, corporation, organization, or person issuing evidence of coverage or insurance, or any other entity acting as an insurer to which this division can be made legally applicable including, as applicable, Health Maintenance Organizations, and all insurance companies doing the business of insurance in this state such as capital stock companies, mutual companies, title insurance companies, fraternal benefits societies, local mutual aid associations, local mutual burial associations, statewide mutual assessment companies, county mutual and farm mutual insurance companies, Lloyds' plan companies, reciprocal or interinsurance exchanges, stipulated premium insurance companies, and group hospital service companies and, as can be made appropriate, premium finance companies, and ~~viatical and~~ life settlement providers.

(5) "Agent" includes each agent, solicitor, counselor, and soliciting representative of an insurer and, as can be made appropriate, ~~viatical and~~ life settlement brokers and provider representatives.

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

§21.104. *Requirement of Identification of Policy or Insurer.*

(a) - (c) (No change.)

(d) All advertisements, other than institutional, shall explicitly and conspicuously disclose that the product concerned is property, life or other insurance, an annuity, HMO coverage, a ~~viatical or~~ life settlement contract, or a prepaid legal services contract, on the basis that each of these products are classified or addressed by statute or rule or as the products are filed with the department. It is sufficient for an insurer to use the term "PPO plan" in advertisements when referring to a preferred provider benefit plan offered under Insurance Code Chapter 1301.

(e) - (i) (No change.)

§21.120. *Filing for Review.*

(a) Any advertisement required to be submitted or submitted voluntarily by an insurer licensed to do business in Texas ~~must~~ ~~shall~~ be accompanied by a transmittal letter addressed to the ~~Advertising Unit,~~ Texas Department of Insurance, Life and Health Lines, MC-LH-LHL, ~~[333 Guadalupe, Mail Code 111-2A, Austin, Texas 78701, or]~~ P.O. Box ~~12030~~~~[149104]~~, Austin, Texas ~~78711-2030~~ ~~[78714-9104]~~. The transmittal letter ~~must~~ ~~shall~~ contain the following information:

(1) - (5) (No change.)

(6) an attachment explaining all variable material; the variable material ~~must~~ ~~shall~~ be identified with brackets on the advertisement(s).

(b) All advertisements ~~must~~ ~~shall~~ be submitted in duplicate.

(c) (No change.)

(d) An advertisement subject to requirements regarding filing of the advertisement with the department for review under the Insurance Code or Texas Administrative Code, Title 28, and that is the same as or substantially similar to an advertisement previously reviewed and accepted by the department, is not required to be filed for review. For the purposes of this subsection, "substantially similar" means the new advertisement does not introduce any substantive content not previously reviewed, nor does it eliminate any content satisfying required disclosures or that would render the advertisement noncompliant with §21.112 of this title ~~[division]~~ (relating to General Prohibition). A person or entity wishing to introduce a "substantially similar" advertisement must file a signed written statement with the department at the address identified in subsection (a) of this section. Such statement must identify or illustrate the changes to be introduced, and list the previously reviewed and accepted form(s) in which those changes would appear, including the form number(s) and the department's filing number(s) under which those forms were previously reviewed and accepted.

(e) The following rules require that advertisements be filed with the department for review at or prior to use:

(1) §3.1744 ~~[§3.1707]~~ of this title (relating to Advertising, Sales and Solicitation Materials; Filing Prior to Use), regarding ~~viatical and~~ life settlement contracts;

(2) - (4) (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 June 7, 2021.

TRD-202102193



SUBCHAPTER C. UNFAIR CLAIMS SETTLEMENT PRACTICES

28 TAC §§21.203 - 21.205

STATUTORY AUTHORITY. TDI proposes amendments to §§21.203 - 21.205 under Insurance Code Chapter 542.014 and §36.001.

Insurance Code Chapter 542.014 provides that the Commissioner may adopt rules necessary to implement the Unfair Claim Settlement Practices Act.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.203 implements Insurance Code §542.003. Section 21.204 implements Insurance Code §542.006. Section 21.205 implements Insurance Code §542.007.

§21.203. *Unfair Claim Settlement Practices.*

No insurer may [shall] engage in unfair claim settlement practices. Unfair claim settlement practices means committing or performing any of the following:

- (1) (No change.)
- (2) failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies, provided that "pertinent communications" will [shall] exclude written communications that are direct responses to specific inquiries made by the insurer after initial report of a claim. An acknowledgment within 15 business days is presumed to be reasonably prompt;
- (3) - (5) (No change.)
- (6) failure of any insurer to maintain, in substantial compliance with §21.2504 of this title (relating to Complaint Record; Required Elements; Explanation and Instructions), a complete record of all complaints, as that term is defined in §21.202(4) of this title (relating to Definitions), which it has received during the preceding three years or since the date of its most recent financial examination by the Commissioner of Insurance [commissioner of insurance], whichever time is shorter. For purposes of this section, "substantial compliance" has the meaning set out in §21.2503 of this title (relating to Compliance Standard);
- (7) (No change.)
- (8) not attempting in good faith to promptly settle [promptly] claims where liability has become reasonably clear under one portion of the policy in order to influence settlement under other portions of the policy coverage. (This provision does not apply to those situations where payment under one portion of coverage constitutes evidence of liability under another portion of coverage.);
- (9) failing to promptly provide [promptly] to a policyholder a reasonable explanation of the basis in the insurance policy in

relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;

(10) - (12) (No change.)

(13) undertaking to enforce a full and final release from a policyholder when, in fact, only a partial payment has been made. (This provision will [shall] not prevent or have application to the compromise settlement of doubtful or disputed claims.);

(14) - (16) (No change.)

(17) with respect to the Texas personal auto policy, delaying or refusing [~~to delay or refuse~~] settlement of a claim solely because there is other insurance of a different type available to satisfy partially or entirely the loss forming the basis of that claim. The claimant who has a right to recover from either or both insurers is entitled to choose under which coverage and in what order payment is to be made;

(18) a violation of [the] Insurance Code Chapter 542; ~~Articles 21.55~~;] by an insurer subject to its provisions; or

(19) (No change.)

§21.204. *Special Claim Reports and Statistical Plan.*

If the department finds [~~it should be found by the Texas Department of Insurance~~] based on complaint or complaints of unfair claim settlement practices as described in §21.203 of this title (relating to Unfair Claim [Claims] Settlement Practices), that an insurer should be subjected to closer supervision with respect to such practices, it may require the [such] insurer to file a report at such periodic intervals as the department deems necessary. The [Such] periodical reports must [shall] contain the following information:

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

(3) the total number of written claims settled, including the original amount filed for by the insured, the settled amount, and the classification by [~~of~~] line of insurance of each individual settled claim, for the past 12-month period or from the date of the insurer's last periodic report, whichever time is shorter;

(4) (No change.)

(5) the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. Such periodic reports must [shall] be filed with the department [~~State Board of Insurance and the commissioner of insurance~~].

§21.205. *Minimum Standard of Performance.*

All insurers must [shall] maintain their affairs so that no unfair claims settlement practices are committed and the minimum standard of performance for all insurers (as that term is used in [the] Insurance Code Chapter 542, Subchapter A; ~~Articles 21.21-2~~) is to comply with the provisions of §21.203 of this title (relating to Unfair Claims Settlement Practices).

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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James Person

General Counsel

Texas Department of Insurance

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SUBCHAPTER D. STATISTICAL AGENTS

28 TAC §21.301

STATUTORY AUTHORITY. TDI proposes amendments to §21.301 under Insurance Code §§38.207 and 36.001.

Insurance Code §38.207 provides that the Commissioner may adopt rules necessary to accomplish the purposes of Chapter 38, Subchapter E.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.301 implements Insurance Code Chapter 38, Subchapter E.

§21.301. Performance Standards for Designated Statistical Agent.

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

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

(4) Designated statistical agent--An organization duly designated by or contracted with the Commissioner ~~commissioner~~ to gather insurance data from insurers according to a statistical plan.

(5) Statistical plan--A document promulgated by the Commissioner ~~commissioner~~ that specifies the information to be reported, the insurers who must report the information, and the procedures and format for the information to be reported to the designated statistical agent.

(b) Each designated statistical agent must ~~shall~~ comply with the agreed upon standards of performance.

(c) If, after notice and the opportunity for a hearing, the Commissioner ~~commissioner~~ determines that a designated statistical agent has failed to comply with the agreed upon standards of performance, the Commissioner ~~commissioner~~ may impose sanctions against the designated statistical agent under ~~the Texas~~ Insurance Code Chapter 82 ~~[Annotated, Article 1.10 §7]~~, including but not limited to an administrative monetary penalty under ~~the Texas~~ Insurance Code Chapter 84 ~~[Annotated, Article 1.10E]~~.

(d) In determining the amount of the administrative monetary penalty, the Commissioner ~~commissioner~~ will ~~shall~~ consider the following factors described in this subsection.

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

(8) Any other consideration that the Commissioner ~~commissioner~~ may deem appropriate.

(e) - (f) (No change.)

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

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General Counsel
Texas Department of Insurance
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SUBCHAPTER E. UNFAIR DISCRIMINATION BASED ON SEX OR MARITAL STATUS

28 TAC §21.403, §21.408

STATUTORY AUTHORITY. TDI proposes amendments to §21.403 and §21.408 under Insurance Code §541.401 and §36.001.

Insurance Code §541.401 provides that the Commissioner may adopt and enforce rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Sections 21.403 and 21.408 implement Insurance Code §544.002.

§21.403. Definitions.

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

(1) Insurer--~~Includes~~ ~~Shall include~~, but ~~is~~ not be limited to, all life, health, and accident companies; ~~;~~ ~~;~~ capital stock companies; ~~;~~ ~~;~~ mutual assessment life insurance companies; ~~;~~ ~~;~~ statewide mutual assessment corporations; ~~;~~ ~~;~~ county mutual insurance companies; ~~;~~ ~~;~~ local mutual aid associations; ~~;~~ ~~;~~ farm mutual insurance companies; ~~;~~ ~~;~~ mutual or natural premium life or casualty insurance companies; ~~;~~ ~~;~~ general casualty companies; ~~;~~ ~~;~~ Mexican casualty companies; ~~;~~ ~~;~~ Lloyds, reciprocal, or inter-insurance exchanges; ~~;~~ ~~;~~ nonprofit hospital, medical, or dental service corporations including, but not limited to, companies subject to the Insurance Code Chapter 842 ~~[chapter 20]~~, as amended; ~~;~~ ~~;~~ stipulated premium insurance companies; ~~;~~ ~~;~~ fidelity, guaranty, and surety companies; ~~;~~ ~~;~~ title insurance companies; ~~;~~ ~~;~~ health maintenance organizations; ~~;~~ ~~;~~ ~~non-profit legal service corporations;~~ and all other organizations, corporations, or persons engaged in the business of insurance, whether or not named previously; provided, however, these sections do ~~shall~~ not apply to any society, company, or other insurer whose activities are by statute exempt from the regulation of the department ~~board~~ and which are entitled by statute to an exemption certificate from the department ~~board~~ in evidence of their exempt status; nor to fraternal benefit societies.

(2) Policy--~~Includes~~ ~~Shall include~~ any insurance policy, plan, certificate or subscriber agreement, statement of coverage, binder, rider, endorsement, or application, if attached, offered by any person or entity engaged in the business of insurance or board-regulated prepaid services in this state.

§21.408. Amendments.

The subject matters covered by this subchapter ~~these sections~~ treat only a portion of the subject matters contemplated by ~~the~~ Insurance

Code Chapter 541[, Article 21.21,] and are not exhaustive on this subject; therefore, these sections remain open for corrections and future additions as the needs may arise or procedures require.

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SUBCHAPTER H. UNFAIR DISCRIMINATION

28 TAC §§21.701, 21.703 - 21.705

STATUTORY AUTHORITY. TDI proposes amendments to §§21.701 and 21.703 - 21.705 under Insurance Code §541.401 and §36.001. TDI proposes amendments to §21.705 under Insurance Code §545.003.

Insurance Code §541.401 provides that the Commissioner may adopt and enforce rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

Insurance Code §545.003 provides that the Commissioner may adopt rules to be followed for an HIV-related test requested or required by an issuer.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.701 implements Insurance Code §541.001.

Section 21.703 implements Insurance Code §544.002. Section 21.704 implements Insurance Code Chapter 545. Section 21.705 implements Insurance Code §545.052.

§21.701. Purpose.

The purpose of these sections is to identify specific acts or practices which are prohibited by [the] Insurance Code §541.057 and §544.002[, Article 21.21, §4(7), and the Insurance Code, Article 21.21-3].

§21.703. Definitions Concerning Discrimination.

For the purpose of §21.702 of this title (relating to Unfairly Discriminatory Acts or Practices) and to effectuate the objectives of [the] Insurance Code §544.002[, Article 21.21-3], the definitions specified in this section are applicable. The words "physical or mental impairment" include, but are not limited to, any psychological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following bodily systems: neurological, musculoskeletal, special sense organs, respiratory and speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine system or any mental or physiological disorder such as intellectual disability [mental retardation], organic brain syndrome, emotional or mental

illness, and specific learning disabilities. As used in [the] Insurance Code §544.002 [,] [Article 21.21-3], the words "disability or partial disability" ["handicap or partial handicap"] mean a physical or mental impairment which substantially limits one or more of the person's major life activities.

§21.704. Unfair Discrimination.

(a) General propositions.

(1) No inquiry in an application for health or life insurance coverage, or in an investigation conducted by or on behalf of an insurer in connection with an application for such coverage, may [shall] be directed toward determining the proposed insured's sexual orientation.

(2) (No change.)

(3) Insurers may [shall] not direct, require, or request insurance support organizations to investigate, directly or indirectly, the sexual orientation of a proposed insured or a beneficiary.

(b) Medical/lifestyle applications, questions, and underwriting standards.

(1) No question may [shall] be used which is designed to establish the sexual orientation of the proposed insured.

(2) - (6) (No change.)

(7) No adverse underwriting decision may [shall] be made because medical records or a report from any other source shows that the proposed insured has demonstrated acquired immune deficiency syndrome-related concerns by seeking counseling from health care professionals. This paragraph does not apply to a proposed insured seeking or having sought treatment.

(8) Whenever a proposed insured is requested to take an HIV-related test in connection with an application for insurance, the use of such a test must be revealed to the proposed insured or to any other person legally authorized to consent to such a test, and his or her written authorization obtained. The form of such authorization must be printed on a separate piece of paper and must contain the specific language in the form, entitled Notice and Consent for HIV-Related Testing, which the Texas Department of Insurance has adopted and incorporated herein by reference, effective January 7, 1997. This form is published by the Texas Department of Insurance and copies of this form are available from and on file at the offices of the [Life/Health Group, Mail Code 106-1E, of the] Texas Department of Insurance, Life and Health Lines, MC-LH-LHL [at 333 Guadalupe], P.O. Box 12030 [449104], Austin, Texas 78711-2030 [78714-9104]. Other information may be included so long as it is not misleading or violative of any applicable law or rule. Testing may be required only on a nondiscriminatory basis. No adverse underwriting decision shall be made on the basis of such a positive HIV-related test unless the established test protocol as provided by §21.705 of this title (relating to Nondiscriminatory Testing for Human Immunodeficiency Virus) has been followed.

(9) (No change.)

(10) The result of an HIV-related test is is [shall be] confidential.

(A) - (B) (No change.)

(C) Written notice of a positive HIV-related test result must [shall] be provided by the insurer to either:

(i) - (ii) (No change.)

{(e) Effective date. This section becomes effective February 1, 1988, except for paragraphs (8) and (9) of subsection (b) of this section, which become effective January 7, 1997.}

(c) [(d)] Severability. If any provision of this section or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of the provisions of this section which can be given effect without the invalid provisions or application. To this end, all provisions of this subchapter are declared to be severable.

§21.705. *Nondiscriminatory Testing for Human Immunodeficiency Virus.*

A proposed insured for life or health and accident insurance, or for coverage by a company licensed under [the] Insurance Code[,], Chapter 842 [29], or with a licensed health maintenance organization may be required to be tested for the presence of the human immunodeficiency virus (HIV). Requiring such testing is not unfair discrimination provided:

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

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SUBCHAPTER I. PROHIBITED AGENT PRACTICES

28 TAC §21.901

STATUTORY AUTHORITY. TDI proposes amendments to §21.901 under Insurance Code §541.401 and §36.001.

Insurance Code §541.401 provides that the Commissioner may adopt rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.901 implements Insurance Code §543.001.

§21.901. *Prohibition Against Solicitation or Acceptance of Power of Attorney.*

(a) - (c) (No change.)

(d) Premium finance company provisions. The provisions of this section will [shall] not prohibit any person subject to the provisions of this section from accepting applications for premium financing on premium financing agreement forms that include a power of attorney in favor of the premium financing company for purposes of canceling a financed insurance contract, so long as the power-of-attorney provisions comply with statutory provisions of [the] Insurance Code[,], Chapter 651 [24], concerning the financing of insurance premiums.

(e) Declaration of unfair practice. The failure to comply with the provisions of this section constitutes [shall constitute] unfair competition and unfair practices according [pursuant] to [the] Insurance Code Chapter 541[,], Article 21.2[,], and is [shall be] subject to the provisions of that chapter [article].

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SUBCHAPTER J. PROHIBITED TRADE PRACTICES

28 TAC §§21.1004 - 21.1007

STATUTORY AUTHORITY. TDI proposes amendments to §§21.1004 - 21.1007 under Insurance Code §§541.401, 544.304, 544.354, and 36.001.

Insurance Code §541.401 provides that the Commissioner may adopt rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

Insurance Codes §544.304 provides that the Commissioner adopt rules necessary to implement Insurance Code Chapter 544, Subchapter G.

Insurance Code §544.354 provides that the Commissioner adopt rules necessary to accomplish the purpose of Insurance Code Chapter 544, Subchapter G.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.1004 implements Insurance Code §551.107. Section 21.1005 implements Insurance Code Chapter 541. Section 21.1006 and §21.1007 implement Insurance Code §§541.001, 541.003, and 541.401.

§21.1004. *Restrictions on Certain Claims in Residential Property Insurance and Transition Plan Requirement.*

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

(c) Premium consequence prohibited. An insurer may not assign any premium consequence through a premium surcharge or claims-free program based on filed claims occurring on or after September 1, 2005, in whole or in part, due to:

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

(3) a claim that an insurer is prohibited from using under Insurance Code [Article 5.35-4 §3 (repealed as) §544.353[,], HB 2018 79th Legislature, Regular Session)].

(d) Claims-free programs. Claims-free programs must be based on sound actuarial principles. Actuarial support as specified in §5.9332 of this title (relating to Categories of Supporting Information [Filing Requirements]) must be filed with the department in the event such program is introduced or changed.

(e) (No change.)

~~[(f) Transition plan required. If an insurer introduces a new method or changes an existing method of considering, utilizing, reviewing, or otherwise evaluating a policyholder's claim experience, including a tier classification, which results in an increase of 10% or more in premium for any policyholder, a transition plan is required and must be filed with the department. The transition plan shall:]~~

~~[(1) be reasonable and promote market and rate stability;]~~

~~[(2) take into consideration any changes other than claims history that may impact overall rates and premiums; and]~~

~~[(3) moderate or otherwise mitigate overall rate and premium increases for individual policyholders over one or several renewal periods.]~~

~~[(g) Expiration clause. Subsection (f) of this section expires January 1, 2008.]~~

§21.1005. *Prohibition of Underwriting Guidelines Based on the Purchase of Types or Amounts of Coverage in Excess of Minimum Limits Liability Coverage.*

(a) Prohibition. Effective September 1, 1995, an insurer or agent may ~~[shall]~~ not use an underwriting guideline for private passenger automobile insurance based, in whole or in part, on whether an insured or applicant purchases types or amounts of coverage in excess of the minimum automobile liability coverage required to show proof of financial responsibility under the Motor Vehicle Safety Responsibility Act, Transportation Code, Chapter 601 ~~[Texas Safety Responsibility Law, Texas Civil Statutes, Article 6701h]~~. The failure to comply with this section constitutes an unfair trade practice in the business of insurance in violation of ~~[the]~~ Insurance Code Chapter 541 ~~[, Article 21.21]~~, and is ~~[shall be]~~ subject to the provisions thereof.

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

§21.1006. *Prohibition Against Declining to ~~[To]~~ Write Residential Property Insurance Based on the Age or Value of the Property.*

(a) (No change.)

(b) An insurer may not decline to write residential property insurance based on the age of the property sought to be insured. This provision does not prohibit an insurer from declining to write coverage based on physical conditions of the property, including wiring, heating, air conditioning, plumbing, and roofing. This provision does ~~[shall]~~ not prohibit the Texas Windstorm Insurance Association from requiring, in accordance with the provisions of Chapter 2210 ~~[Article 21.49]~~ of the Insurance Code, different building code standards to qualify for coverage based on the date that the structure was constructed, repaired, or additions were made.

(c) (No change.)

~~[(d) This rule takes effect September 1, 1997.]~~

§21.1007. *Restrictions on Using Guidelines Based on a Water Damage Claim, Previous Mold Damage, or a Mold Damage Claim.*

(a) - (c) (No change.)

(d) This subsection contains provisions related to underwriting and rating based on a previous appliance-related claim.

(1) - (6) (No change.)

(7) Water damage repair certificate form (PC327 WDR-1). An inspector must use the water damage repair certificate form (PC327 WDR-1) found on TDI's website at www.tdi.texas.gov ~~[, or by requesting the form from the Property and Casualty Lines Office, MC 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas, 78714-9104]~~. TDI adopts by reference the water damage repair certificate form (PC327 WDR1) that an inspector must use, subject to the provisions of this subchapter and Insurance Code Chapter 544. Persons using the form should confirm that they are using the most recent online version before giving a copy to the property owner.

(8) TDI has information about inspectors who may have the knowledge and experience in water damage remediation to inspect and certify the proper remediation of an appliance-related claim. A list of inspectors can be obtained from TDI's website or by requesting it from the TDI Property and Casualty Lines Office.

(e) - (f) (No change.)

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SUBCHAPTER K. CERTIFICATION OF CREDITABLE COVERAGE

28 TAC §21.1101, §21.1110

STATUTORY AUTHORITY. TDI proposes amendments to §21.1101 and §21.1110 under Insurance Code §§845.004, 846.005, and 36.001.

Insurance Code §845.004 provides that the Commissioner adopt rules necessary to implement Insurance Code Chapter 845, Subchapter A - D.

Insurance Code §846.005 provides that the Commissioner may adopt rules necessary to augment and implement Insurance Code Chapter 846.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.1101 implements Insurance Code §1205.002 and §1205.004. Section 21.1110 implements Insurance Code §1205.002 and §1357.056.

§21.1101. *Definitions.*

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

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

(4) Commissioner--The Commissioner ~~[commissioner]~~ of Insurance ~~[insurance of the State of Texas]~~.

(5) Creditable coverage--

(A) An individual's coverage is creditable if the coverage is provided under:

(i) a self-funded or self-insured employee welfare benefit plan that provides health benefits and that is established in accordance with the Employee Retirement Income Security Act of 1974 (29 U.S.C. [USC] Section 1001 et seq.);

(ii) - (iii) (No change.)

(iv) Part A or Part B of Title XVIII of the Social Security Act (42 U.S.C. [USC] Section 1395c et seq.);

(v) Title XIX of the Social Security Act (42 U.S.C. [USC] Section 1396 et seq.), other than coverage consisting solely of benefits under Section 1928 of that Act (42 U.S.C. [USC] Section 1396s);

(vi) Chapter 55 of Title 10, United States Code (10 U.S.C. [USC] Section 1071 et seq.);

(vii) - (viii) (No change.)

(ix) a health plan offered under Chapter 89 of Title 5, United States Code (5 U.S.C. [USC] Section 8901 et seq.);

(x) (No change.)

(xi) a health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C. [USC] Section 2504(e)); and

(xii) (No change.)

(B) Creditable coverage does not include:

(i) - (v) (No change.)

(vi) credit-only insurance;

(vii) - (viii) (No change.)

(ix) if offered separately, coverage that provides limited-scope dental or vision benefits;

(x) if offered separately, long-term care coverage or benefits, nursing home care coverage or benefits, home health care coverage or benefits, community-based care coverage or benefits, or any combination of those coverages or benefits;

(xi) - (xiii) (No change.)

(xiv) Medicare supplemental health insurance as defined under Section 1882(g)(1), Social Security Act (42 U.S.C. [USC] Section 1395ss), coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code (10 U.S.C. [USC] Section 1071 et seq.), and similar supplemental coverage provided under a group plan, but only if such insurance or coverages are provided under a separate policy, certificate, or contract of insurance.

(6) Health benefit plan--A plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(A) an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(i) (No change.)

(ii) a group hospital service corporation operating under Insurance Code[;] Chapter 842 [20];

(iii) a fraternal benefit society operating under Insurance Code[;] Chapter 885 [40];

(iv) a stipulated premium insurance company operating under Insurance Code[;] Chapter 884 [22]; or

(v) (No change.)

(B) to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. [USC] Section 1001 et seq.), a plan that is offered by:

(i) a multiple employer welfare arrangement as defined by Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C. [USC] Section 1002), and operating under Insurance Code Chapter 846 [; Article 3-95-1 et seq.]; or

(ii) (No change.)

(C) a plan issued by any other entity not licensed under the Insurance Code or another insurance law of this state that contracts directly for health care services on a risk-sharing basis, including an entity that contracts for health care services on a capitation basis.

(7) (No change.)

(8) HMO--Any person governed by the Texas Health Maintenance Organization Act, Insurance Code[;] Chapter 843 [20A], including:

(A) a person defined as a health maintenance organization under Insurance Code §843.002 [Section 2 of the Texas Health Maintenance Organization Act];

(B) an approved nonprofit health corporation that is certified under Occupations Code Chapter 162 [Section 5.01(a); Medical Practice Act, Article 4495b, Texas Civil Statutes], and that holds a certificate of authority issued by the Commissioner [commissioner] under Insurance Code Chapter 844 [; Article 21-52F];

(C) a statewide rural health care system under Insurance Code §845.052 and §845.054 [; Article 20C.05]; or

(D) a nonprofit corporation created and operated by a community center under Chapter 534, Subchapter C, Health and Safety Code.

(9) Issuer of a health benefit plan--An insurance company[;] a group hospital service corporation operating under Insurance Code[;] Chapter 842, [20;] a fraternal benefit society operating under Insurance Code[;] Chapter 885, [40;] a stipulated premium insurance company operating under Insurance Code[;] Chapter 884, [22;] a Lloyd's plan operating under Insurance Code[;] Chapter 941, [48;] a reciprocal or interinsurance exchange operating under Insurance Code[;] Chapter 942, [49;] or an HMO that issues a health benefit plan.

(10) - (12) (No change.)

(13) Qualified beneficiary--As defined in Section 4980B(g)(1) of the Internal Revenue Code (26 U.S.C. [USC] Section 4980B(g)(1)).

[(14) Risk pool--The Texas Health Insurance Risk Pool established under Insurance Code, Article 3-77, or other similar arrangements in other states.]

(14) [(15)] Short-term limited duration insurance--Health insurance coverage provided under a contract with an issuer that has an expiration date specified in the contract (taking into account any extensions that may be elected by the policyholder without the issuer's consent) that is within 12 months of the date the contract becomes effective.

(15) [(16)] Waiting period--A period of time established by an employer that must pass before an individual who is a potential enrollee in a health benefit plan is eligible to be covered for benefits. If

an employee or dependent enrolls as a late enrollee, any period before such late enrollment is not a waiting period. If an individual seeks and obtains coverage in the individual market, any period after the date the individual files a substantially complete application for coverage and before the first day of coverage is a waiting period.

§21.1110. *Form CCC.*

(a) Form CCC relating to Insurance Code §1205.002 and §1357.056 [~~Article 21.52G~~] for certification and disclosure of coverage under a health benefit plan is included in subsection (b) of this section in its entirety and has been filed with the Office of the Secretary of State. [~~The figure can be obtained from the Texas Department of Insurance Life/Health Group, MC 106-1As, P.O. Box 149104, Austin, Texas 78711-2030.~~]

(b) (No change.)

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SUBCHAPTER L. MEDICAL CHILD SUPPORT, UNFAIR PRACTICES

28 TAC §§21.2001, 21.2006, 21.2010, 21.2011

STATUTORY AUTHORITY. TDI proposes amendments to §§21.2001, 21.2006, 21.2010, and 21.2011 under Insurance Code §§541.401, 846.005, 1301.007, 1355.258, 1504.002, 1701.060, and 36.001.

Insurance Code §541.401 provides that the Commissioner may adopt rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

Insurance Code §846.005 provides that the Commissioner may adopt rules necessary to augment and implement Insurance Code Chapter 846.

Insurance Code §1301.007 provides that the Commissioner adopt rules necessary to implement Insurance Code Chapter 1301.

Insurance Code §1355.258 provides that the Commissioner adopt rules necessary to implement Insurance Code Chapter 1355, Subchapter F.

Insurance Code §1504.002 provides that the Commissioner adopt rules necessary to implement Insurance Code Chapter 1504, including rules that define acts that constitute unfair or deceptive practices under Insurance Code Chapter 541, Subchapter I.

Insurance Code §1701.060 provides that the Commissioner may adopt rules necessary to implement the purposes of Insurance Code Chapter 1701.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.2001 implements Insurance Code §1504.002. Section 21.2006 implements Insurance Code §1504.002 and §1504.054. Section 21.2010 implements Insurance Code §1504.052. Section 21.2011 implements Insurance Code §1504.002 and §1504.003.

§21.2001. *Definitions.*

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

(1) Actuarial assumptions-- [-] The value of a parameter, or other choice, having an impact on an estimate of a future cost or other actuarial item under evaluation.

(2) Actuarially equivalent-- [-] Producing equal actuarial present value, determined as of a given date with each value based on the same set of actuarial assumptions.

(3) Actuarial present value-- [-] The value of an amount or series of amounts payable or receivable at various times, determined as of a given date by the application of a particular set of actuarial assumptions.

(4) Child-- [-]

(A) - (B) (No change.)

(5) Child support agency-- [-] As defined in [the] Family Code[;] §101.004.

(6) Custodial parent-- [-]

(A) - (B) (No change.)

(7) Health insurer-- [-] Any insurance company, stipulated premium company, fraternal benefit society, group hospital service corporation, or HMO that delivers or issues for delivery an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an evidence of coverage that provides benefits for medical or surgical expenses incurred as a result of an accident or sickness.

(8) Insurer-- [-]

(A) (No change.)

(B) a governmental entity subject to:

(i) Insurance Code, Articles 3.51-1, [~~3.51-2;~~ 3.51-4, or 3.51-5 [~~or 3.51-5A~~]; or

(ii) [~~Section 1, Chapter 123, Acts of the 60th Legislature, 1967 (the) Insurance Code Chapter 1578~~ [~~Article 3.51-3~~]; Local Government Code, Chapter 177; or Insurance Code §1355.151 or §1364.101;

(C) a multiple employer welfare arrangement, as that term is defined by [the] Insurance Code §§846.001, 846.002, 846.202, and 846.251 [~~Article 3.95-1~~]; or

(D) a health insurer that issues coverage for a group health plan, as defined by the Employee Retirement Income Security Act of 1974, §607(1) (29 U.S.C. [USC]§1167).

(9) Medical assistance-- [-] Medical assistance under the state Medicaid program.

(10) Medical support order-- [-] A court or administrative judgment, decree, or order whether temporary, final, or subject to modification for the benefit of a child that provides for health coverage of the child.

(11) Policy-- [-] Includes an individual, blanket, or franchise insurance agreement or contract, a certificate issued under a group policy, a group hospital service contract, or evidence of coverage issued by a health maintenance organization.

(12) Qualified actuary-- [-] An actuary who is either:

(A) - (B) (No change.)

§21.2006. *Notice of Availability of Continuation or Conversion Coverage.*

(a) For the purpose of providing notification to the custodial parent under Insurance Codes §1504.054 [Article 3-96-5] and §21.2008 of this title (relating to Information Provided by an Insurer), the custodial parent must [shall] notify the insurer of any change of address. If no such change of address is submitted by the custodial parent to the insurer, then the insurer must [shall] comply with the provisions of Insurance Code §1504.054 [Article 3-96-5] and §21.2008 of this title (relating to Information Provided by an Insurer) regarding notification to the custodial parent if such notice is sent to the last known address of the custodial parent.

(b) The insurer must [shall] enroll or continue enrollment of the child on application of a parent of the child, a child support agency, or the child over 18 years of age.

§21.2010. *Prohibition on Service Area Restrictions.*

(a) With respect to a child who lives outside the insurer's service area but inside the United States whose coverage under the policy is required by a medical support order, an insurer must [shall] either:

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

(b) If the policy contains preferred provider provisions for the purposes of offering a network of preferred providers as defined in [the] Insurance Code Chapter 1301 [Article 3-70-3C], and the insurer does not provide coverage under subsection (a)(2) of this section, reimbursement for services for a child who is the subject of a medical support order and lives outside the insurer's service area must [shall] be provided at the preferred provider level of benefits.

(c) If the insurer provides coverage under subsection (a)(2) of this section, the coverage must [shall] include benefits identical to, greater than, or comparable to those provided to other dependent children covered by the policy under which coverage is required by a medical support order.

(d) If the coverage is provided under subsection (a)(2) of this section, the insurer must [shall] submit a certification to the Texas Department of Insurance. The certification must [shall] be filed with the Texas Department of Insurance, Life and Health Division by email to MCQA@tdi.texas.gov [Life/Health/HMO Intake Unit, Mail Code 406-1E, Texas Department of Insurance, P.O. Box 149104 Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701], signed by an officer of the insurer and include:

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

(3) the name of the HMO or indemnity carrier with which the insurer has contracted to provide coverage to children who are the subject of a medical support order and a statement, if applicable, that the HMO or indemnity carrier has filed the applicable forms providing the coverage as required by Insurance Code Chapter 1701, and Insurance Code §1504.002 and §1504.052 [Articles 3-42 and 3-96-8] or §11.301 of this title (relating to Filing Requirements [for HMOs]);

(4) (No change.)

(5) if the coverage is not identical, the certification must [shall] also be signed by a qualified actuary or an officer of the insurer who attests that the coverage provided is at least actuarially equivalent to or greater than the coverage provided to other dependent children under the policy under which coverage is required by a medical support order. The determination of actuarial equivalence of the coverages must [shall] take into account plan design (e.g., copayments, coinsurance, deductibles, etc.) and scope of benefits. The certification must [shall] identify any other variables considered in the analysis relating to the actuarial equivalence of the coverages.

§21.2011. *Unfair or Deceptive Practices.*

(a) A violation of §21.2002 of this title (relating to Prohibition Against Denial of Enrollment), §21.2003 of this title (relating to Requirements Concerning Adopted Children or Children Placed for Adoption), §21.2004 of this title (relating to Enrollment of Child Who Is the Subject of a Medical Support Order), §21.2005 of this title (relating to Prohibition on Cancellation or Nonrenewal), §21.2009 of this title (relating to Submission and Payment of Claims), and §21.2010 of this title (relating to Prohibition on Service Area Restrictions) is [shall be] considered an unfair or deceptive practice and will [shall] subject the insurer to the penalties provided in [the] Insurance Code Chapter 541 [; Article 21-21] and other applicable [application] provisions of the Insurance Code.

(b) A violation of §21.2006 of this title (relating to Notice of Availability of Continuation of Conversion Coverage), §21.2007 of this title (relating to Assignment of Medical Support Rights to State Agency), and §21.2008 of this title (relating to Information Provided by an Insurer) subjects [shall subject] the insurer to the penalties provided in [the] Insurance Code Chapter 82 [; Article 1-10; §7] and other applicable provisions of the Insurance Code.

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SUBCHAPTER M. MANDATORY BENEFIT NOTICE REQUIREMENTS

28 TAC §21.2106

STATUTORY AUTHORITY. TDI proposes §21.2106 under Insurance Code §§1370.004, 1251.008, 843.151, and 36.001.

Insurance Code §1370.004 provides that health benefit plan issuers must provide written notice of coverage required under Insurance Code Chapter 1370 to each woman 18 year of age or older enrolled in the plan in accordance with rules adopted by the Commissioner.

Insurance Code §1251.008 provides that the Commissioner may adopt rules necessary to administer Insurance Code Chapter 1251.

Insurance Code §843.151 provides that the Commissioner may adopt rules as necessary and proper to implement Insurance Code Chapter 1271.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.2106 implements Insurance Code §1370.004. Section 21.2106 implements Insurance Code §§1357.056, 1362.004, 1363.004, 1366.058, and 1357.006.

§21.2106. *Forms.*

(a) The forms identified in §21.2103 of this title (relating to Mandatory Benefit Notices) are included in subsection (b) of this section in their entirety. The forms can be obtained from the [Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, or from the] TDI website, www.tdi.texas.gov.

(b) (No change.)

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SUBCHAPTER N. LIFE INSURANCE ILLUSTRATIONS

28 TAC §§21.2202, 21.2204, 21.2212

STATUTORY AUTHORITY. TDI proposes amendments to §§21.2202, 21.2204, and 21.2212 under Insurance Code §§541.401, 543.001, and 36.001.

Insurance Code §541.401 provides that the Commissioner may adopt rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

Insurance Code §543.001 provides that the Commissioner may adopt rules as provided by Chapter 541, Subchapter I, to ensure life insurance companies do not circulate statements that misrepresent the terms, benefits, or dividends received on a life insurance policy or certificate.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.2202 implements Insurance Code §543.001. Section 21.2204 implements Insurance Code §541.401. Section 21.2212 implements Insurance Code §§543.001, 541.051, 541.052, and 541.057.

§21.2202. *Authority.*

This subchapter [Subchapter] is issued based upon the authority granted the Commissioner [commissioner] under [the] Insurance Code §543.001; Chapter 541, Subchapter J; and §36.001 [; Article 21.21 §13 and Article 1.03A].

§21.2204. *Definitions.*

For the purposes of this subchapter [Subchapter], the following terms [in this section shall] have the following meanings [placed opposite them] unless the explicit wording of a section or portion of a section directs [shall] otherwise [direct].

(1) - (8) (No change.)

(9) Illustration--a presentation or depiction used in the solicitation or sale of a life insurance policy that includes non-guaranteed elements of a policy of life insurance over a period of years and includes but is not limited to the three types defined in subparagraphs (A) - (C) of this paragraph.

(A) (No change.)

(B) Supplemental illustration--an illustration furnished in addition to a basic illustration that meets the applicable requirements of this subchapter [Subchapter], and that may be presented in a format differing from the basic illustration, but may only depict a scale of non-guaranteed elements that is permitted in a basic illustration.

(C) (No change.)

(10) - (11) (No change.)

(12) Insurer--a life insurance company as defined by [the] Insurance Code §841.001 and §982.001 [; Article 3-01 §(1)]; a fraternal benefit society as defined by [the] Insurance Code §§885.051 and §885.052 [; Article 10-01 §§(a) and (b)]; a Mutual Life Insurance Company as defined by [the] Insurance Code Chapter 882 [; Article 11-01]; or a Stipulated Premium Insurance Company as defined by [the] Insurance Code Chapter 884 [; Article 22-01].

(13) Lapse-supported illustration--an illustration of a policy form failing the test of self-supporting as defined in this subchapter [Subchapter], under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five years and 100% policy persistency thereafter.

(14) Minimum assumed expenses--the minimum expenses that may be used in the calculation of the disciplined current scale for a policy form. The insurer may choose to designate each year the method of determining assumed expenses for all policy forms from:

(A) - (B) (No change.)

(C) a generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the National Association of Insurance Commissioners or by the Commissioner [commissioner]. Marginal expenses may be used only if greater than a generally recognized expense table. If no generally recognized expense table is approved, fully allocated expenses must be used.

(15) - (21) (No change.)

§21.2212. *Penalties.*

Any violation of this subchapter constitutes [subsection shall constitute] a misrepresentation of the terms of an issued and unissued policy in violation of [the] Insurance Code [; Chapter 541, Subchapter B, [Article 21.21 §4(1) and (2)]] and to be a misrepresentation of the terms, benefits, and advantages of a policy within the meaning of [the] Insurance Code §543.001 [; Article 21-20]. Violations of this subchapter

[subsection shall] subject the insurer and agent to the penalties provided in [the] Insurance Code Chapter 541 [; Article 21-21] and other applicable provisions of the Insurance Code.

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SUBCHAPTER Q. COMPLAINT RECORDS TO BE MAINTAINED

28 TAC §21.2501

STATUTORY AUTHORITY. TDI proposes §21.2501 under Insurance Code §541.401 and §36.001.

Insurance Code §541.401 provides that the Commissioner may adopt and enforce rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.2501 implements Insurance Code §542.005.

§21.2501. Applicability and Purpose.

This subchapter applies to all insurers as defined in §21.2502 of this title (relating to Definitions). The purpose of this subchapter is to prescribe the minimum information required to be maintained in the complaint record of an insurer, to provide a recommended format for the maintenance of such a record by insurers, and to require presentation of such information at the time of examination of insurers or upon other request for complaint record information by the department. Complaint record maintenance provisions of this subchapter apply to all complaints of an insurer not specifically excepted by this subchapter, including complaints relating to the claims settlement practices of an insurer.

(1) This subchapter does not apply to complaints received and maintained by Health Maintenance Organizations. [The] Insurance Code Chapter 843, Subchapter G [; Article 20A-12], as amended, as well as §11.205 of this title (relating to Additional Documents to be [To Be] Available for Review [During Examinations]), expressly and specifically provide for complaint record maintenance by HMOs.

(2) This subchapter does not apply to the complaints received by an insurer in its capacity as a utilization review agent. Complaint record maintenance and reporting for such complaints are addressed in §19.1705 [§19-1716] of this title (relating to Complaints and Information).

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SUBCHAPTER R. DIABETES

28 TAC §§21.2601, 21.2604, 21.2606

STATUTORY AUTHORITY. TDI proposes amendments to §§21.2601, 21.2604, and 21.2606 under Insurance Code §1358.057 and §36.001.

Insurance Code §1358.057 provides that the Commissioner adopt rules necessary to implement Insurance Code Chapter 1358, Subchapter B.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Sections 21.2601 and 21.2604 implement Insurance Code §1358.004. Section 21.2606 implements Insurance Code §1358.055.

§21.2601. Definitions.

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

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

(3) Diabetes--Diabetes mellitus. A chronic disorder of glucose metabolism that can be characterized by an elevated blood glucose level. The terms "diabetes" and "diabetes mellitus" are synonymous.

(4) Diabetes equipment--The term "diabetes equipment" includes items defined in Insurance Code §1358.051 and §1358.056 [Article 21-53 G §§1(4) and 5], and §21.2605 of this title (relating to Diabetes Equipment and Supplies).

(5) Diabetes supplies--The term "diabetes supplies" includes items defined in Insurance Code §1358.051 and §1358.056 [Article 21-53 G §§1(2) and 5], and §21.2605 of this title.

(6) (No change.)

(7) Health benefit plan--A health benefit plan, for purposes of this subchapter, means:

(A) a plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(i) an individual, group, blanket, or franchise insurance policy or insurance agreement;[:] a group hospital service contract;[:] or an individual or group evidence of coverage that is offered by:

(I) (No change.)

(II) a group hospital service corporation operating under [Chapter 20 of the Texas] Insurance Code Chapter 842;

(III) a fraternal benefit society operating under [Chapter 40 of the Texas] Insurance Code Chapter 885;

(IV) a stipulated premium insurance company operating under [Chapter 22 of the] Insurance Code Chapter 884;

(V) a reciprocal exchange operating under [Chapter 49 of the] Texas Insurance Code Chapter 942; or

(VI) a health maintenance organization (HMO) operating under Insurance Code Chapter 843 [the Texas Health Maintenance Organization Act (Chapter 20A, Texas Insurance Code)];

(ii) to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. [USC] §1002), a health benefit plan that is offered by a multiple employer welfare arrangement as defined by §3, Employee Retirement Income Security Act of 1974 (29 U.S.C. [USC] §1002) that holds a certificate of authority under Insurance Code Chapter 846 [Article 3.95-2]; or

(iii) notwithstanding [§172.014,] Local Government Code §172.014, or any other law, health and accident coverage provided by a risk pool created under [Chapter 472,] Local Government Code Chapter 172.

(B) A plan offered by an approved nonprofit health corporation that is certified under Texas Occupation Code §162.001(b) [§5.01(a), Medical Practice Act], and that holds a certificate of authority issued by the Commissioner [commissioner] under Insurance Code Chapter 844 [Article 21.52F].

(C) A health benefit plan is not:

(i) (No change.)

(ii) a small employer plan written under [Chapter 26 of the] Insurance Code Chapter 1501;

(iii) a Medicare supplemental policy as defined by §1882(g)(1), Social Security Act (42 U.S.C. [USC] §1395 ss);

(iv) a plan that is designed to supplement benefits provided under a program established by the Department of Defense pursuant to Chapter 55 of Title 10, United States Code (10 U.S.C. §1071 [USC Section 4071] et seq.);

(v) - (vi) (No change.)

(vii) a long-term care policy, including a nursing home fixed indemnity policy, unless the Commissioner [commissioner] determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by subparagraph (A) of this paragraph.

(8) (No change.)

(9) Nutrition counseling--As defined in [§701.002 of the Texas] Occupations Code §701.002.

(10) - (11) (No change.)

§21.2604. *Minimum Standards for Benefits for Persons with Diabetes, Requirement for Periodic Assessment of Physician and Organizational Compliance.*

(a) Health benefit plans provided by HMOs must [shall] provide coverage for the services in paragraphs (1) through (7) of this subsection and must [shall] contract with providers that agree to comply with the minimum practice standards outlined in subsection (b) of this section. Services to be covered include:

(1) (No change.)

(2) immunizations required by Insurance Code Chapter 1367, Subchapter B [Article 21.53F], Coverage for Childhood Immunizations;

(3) - (7) (No change.)

(b) HMOs must [shall] contract with providers who, at a minimum, provide care that complies with subsection (a) of this section that includes:

(1) for all insureds:

(A) - (C) (No change.)

(D) annually the following:

(i) - (iv) (No change.)

(v) for insureds under 18 [eighteen] years of age, a referral for a retinal camera examination to be performed by an ophthalmologist or therapeutic optometrist.

(2) For treatment of an insured 65 [sixty-five] years of age and over or an insured with complications affecting two or more body systems:

(A) - (B) (No change.)

(3) (No change.)

(4) For insureds with Type 1 Diabetes:

(A) - (B) (No change.)

(C) ongoing [on-going] management, which includes quarterly office visits, at which evaluation includes:

(i) - (x) (No change.)

(xi) results of home glucose self-monitoring;

(xii) - (xvi) (No change.)

(xvii) reevaluation of short- and long-term self-management goals;

(xviii) - (xix) (No change.)

(xx) counseling for high-risk behaviors; and

(xvi) for insureds under 18 [eighteen] years of age, growth assessment.

(c) Health plans provided by HMOs must [shall] periodically assess physician and organizational compliance with the minimum practice standards contained in subsection (b) of this section.

(d) Health benefit plans provided by entities other than HMOs must [shall] provide coverage at a minimum for:

(1) (No change.)

(2) immunizations required by Insurance Code Chapter 1367, Subchapter B [Article 21.53F], Coverage for Childhood Immunizations;

(3) - (7) (No change.)

§21.2606. *Diabetes Self-Management Training.*

(a) A health benefit plan must [shall] provide diabetes self-management training or coverage for diabetes self-management training for which a physician or practitioner has written an order, including a written order of a practitioner practicing under protocols jointly developed with a physician, to each insured or the caretaker of the insured in accordance with the standards contained in Insurance Code §1358.054 [Article 21.53G, Sec. 4(b) and (e)].

(b) A person may not provide a component of diabetes self-management training under subsection (a) of this section unless the subject matter of the component is within the scope of the person's practice and the person meets the education requirements as determined by the person's licensing agency in consultation with the Commissioner [eommissioner] of Public Health [health].

(c) Self-management training should [shall] include the development of an individualized management plan that is created for and in collaboration with the insured and that meets the requirements of the minimum standards for benefits in accordance with §21.2604 of this title (relating to Minimum Standards for Benefits for Persons with Diabetes).

(d) Nutrition counseling and instructions on the proper use of diabetes equipment and supplies must [shall] be provided or covered as part of the training.

(e) Diabetes self-management training must [shall] be provided, or coverage for diabetes self-management training must [shall] be provided to an insured or a caretaker, upon the following occurrences relating to an insured, provided that any training involving the administration of medications must comply with the applicable delegation rules from the appropriate licensing agency:

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

(f) An HMO must [shall] provide oversight of its diabetes self-management training program on an ongoing basis to ensure compliance with this section.

(g) Health benefit plans provided by entities other than HMOs must [shall] disclose in the plan how to access providers or benefits described in subsection (a) of this section.

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SUBCHAPTER S. ASSOCIATION PLANS

22 TAC §21.2702

STATUTORY AUTHORITY. TDI proposes amendments to §21.2702 under Insurance Code §§843.151, 1115.005, 1251.0008, and 36.001.

Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement Insurance Code Chapter 843.

Insurance Code §1115.005 provides that the Commissioner may adopt reasonable rules to accomplish and enforce the purpose of Chapter 1115.

Insurance Code §1251.008 provides that the Commissioner may adopt rules necessary to administer Insurance Code Chapter 1251.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.2702 implements Insurance Code §§1108.002, 1115.001, 1131.060(a) and (b), 1251.004, 1251.052(a) and (b), 1251.054 and 1251.108.

§21.2702. Definitions.

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

(1) (No change.)

(2) Bona Fide Association--An association that, in addition to meeting the requirements of an association in paragraphs (1)(A) and (C) of this subsection:

(A) (No change.)

(B) does not condition membership in the association on any health-status-related factor relating to an individual (including the individual eligible for membership or a dependent of the individual eligible for membership, if dependent coverage is offered);

(C) makes coverage under a health benefit plan offered through the association available to all members, regardless of any health-status-related factor relating to the members (or dependents eligible for coverage through a member, if dependent coverage is offered); and

(D) (No change.)

(3) - (5) (No change.)

(6) HMO--A health maintenance organization as defined in [the] Insurance Code §843.002 [Article 20A.02(m)].

(7) Health benefit plan--A group insurance policy, a certificate issued under a group policy, a group hospital service contract, or a group subscriber contract or evidence of coverage issued by a health carrier that provides benefits for health care benefits or services. The term does not include the following plans of coverage:

(A) (No change.)

(B) Only if the benefits are provided under a separate policy or contract of insurance or evidence of coverage:

(i) - (vi) (No change.)

(vii) coverage supplemental to the coverage provided under Chapter 55, Title 10 of the United States Code (also known [know] as CHAMPUS supplemental programs);

(viii) - (ix) (No change.)

(8) Health carrier--Any entity authorized under the Texas Insurance Code or another insurance law of this state that provides health benefit plans in this state, including an insurance company; a group hospital service corporation operating under Insurance Code[;] Chapter 842 [20]; a stipulated premium insurance company operating under Insurance Code[;] Chapter 884 [22]; an approved nonprofit health corporation that is certified under Occupations Code Chapter 162 [Section 5.01(a); Medical Practice Act (Article 4495b; Vernon's Texas Civil Statutes)] and that holds a certificate of authority issued by the Commissioner [eommissioner] under Insurance Code Chapter 844 [; Article 21.52F], or an HMO.

(9) Health-status-related factor--Any of the following in relation to an individual:

(A) - (F) (No change.)

(G) evidence of insurability, including conditions arising out of acts of domestic violence, including family violence as defined by [the] Insurance Code Chapter 544, Subchapter D [Article 21.21-5]; or

(H) (No change.)

(10) (No change.)

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SUBCHAPTER T. SUBMISSION OF CLEAN CLAIMS

28 TAC §21.2819

STATUTORY AUTHORITY. TDI proposes amendments to §21.2819 under Insurance Code §§843.336, 1301.007 and 36.001.

Insurance Code §843.336 provides that the Commissioner may adopt rules that specify the information that must be entered on the claim form for a claim to be a clean claim.

Insurance Code §1301.007 provides that the Commissioner may adopt rules necessary to implement Chapter 1301 relating to preferred provider benefit plans, including the prompt payment of claims.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.2819 implements Insurance Code §843.337 and §1301.102.

§21.2819. *Catastrophic Event.*

(a) (No change.)

(b) Within 10 days after the entity returns to normal business operations, the entity must send a certification of the catastrophic event to the [Life Health and HMO Intake Team,] Texas Department of Insurance by email to promptpay@tdi.texas.gov. [P.O. Box 149104, Mail Code 406-1E, Austin, Texas 78714-9104.] The certification must:

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

(c) (No change.)

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SUBCHAPTER U. ARRANGEMENTS BETWEEN INDEMNITY CARRIERS AND HMOS FOR POINT-OF-SERVICE COVERAGE

28 TAC §21.2901, §21.2902

STATUTORY AUTHORITY. TDI proposes amendments to §21.2901 and §21.2902 under Insurance Code §§843.151, 1201.006, 1251.008, 1273.005, 1301.007, 1701.060, 4201.003, and 36.001.

Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement Insurance Code Chapters 843; 1452, Subchapter A; 1507, Subchapter B; 222; 251; and 258 as applicable to health maintenance organizations; and Insurance Code Chapters 1271 and 1272.

Insurance Code §1201.006 provides that the Commissioner may adopt rules necessary to implement the purposes and provisions of Insurance Code Chapter 1201.

Insurance Code §1251.008 provides that the Commissioner may adopt rules necessary to administer Insurance Code Chapter 1251.

Insurance Code §1273.005 provides that the Commissioner may adopt rules to implement Chapter 1273, Subchapter A.

Insurance Code §1301.007 provides that the Commissioner adopt rules necessary to implement Insurance Code Chapter 1301 and to ensure reasonable accessibility and availability of preferred provider services to residents of this state.

Insurance Code §1701.060 provides that the Commissioner may adopt rules necessary to implement the purpose of Insurance Code Chapter 1701.

Insurance Code §4201.003 provides that the Commissioner may adopt rules to implement Chapter 4201.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.2901 implements Insurance Code §843.337. Section 21.2902 implements Insurance Code §§843.106, 843.107, and 843.108.

§21.2901. *Definitions.*

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

(1) Corresponding benefits--Benefits provided under the indemnity portion of a point-of-service (POS) plan, as defined in Insurance Code §1273.001 and §843.108 [Articles 3-64(a)(4) and 20A.02(bb)of the Code], that conform to the nature and kind of coverage provided to an enrollee under the HMO portion of a point-of-service plan.

(2) - (11) (No change.)

§21.2902. Arrangements between Indemnity Carriers and HMOs to Provide Coverage.

(a) Written agreement between the HMO and the indemnity carrier. A POS plan offered under this subchapter must be evidenced by a written agreement between the HMO and indemnity carrier that must be filed with the department as a plan document and must [shall] provide the following:

(1) the identity of each entity, including the HMO, the indemnity carrier, or any third-party administrator (TPA) that will administer the coverages offered under the POS plan;

(2) - (3) (No change.)

(4) the HMO's network of providers and, if the POS indemnity coverage includes preferred provider benefits, as allowed by Insurance Code Chapter 1301 [Article 3.70-3C of the Code] and applicable rules, the indemnity carrier's list of preferred providers, which may [shall] not be identical; and[;]

(5) the respective premium rates for the POS HMO coverage and for the POS indemnity coverage must [shall] be derived separately by the HMO and the indemnity carrier and must [shall] be separately identified in each POS plan contract; however, the agreement may provide that for a POS plan offered by the entities under this subchapter:

(A) - (B) (No change.)

(C) the entity delegated to collect the premium will [shall] then disburse the appropriate premium to the other party or parties;

(6) - (7) (No change.)

(8) neither entity may [shall] use the other to perform functions or duties that are its own responsibility by law or rule, including but not limited to[;] making all reports and filings required by law or rule;

(9) the entities may delegate those functions or duties permitted by law or rule to be delegated to another party to perform, including but not limited to contracting with providers, administering claims, and conducting grievance procedures, provided that the delegating entity remains [shall remain] responsible for ensuring that all delegated functions are [shall be] conducted in compliance with all applicable laws and rules;

(10) the agreement between the indemnity carrier and the HMO may not be canceled or terminated until the coverage for each enrollee in a POS plan issued by both the indemnity carrier and HMO is terminated or canceled according [pursuant] to the provisions of this subchapter; and

(11) (No change.)

(b) Basic requirements. In addition to complying with all of the requirements listed in subsection (a) of this section, a contract creating a POS blended contract plan and contracts that together create a POS dual contracts plan must provide the following:

(1) enrollees may [shall] not be required to first use either the POS indemnity coverage or POS HMO coverage;

(2) if the premiums necessary to maintain both the POS HMO coverage and the POS indemnity coverage are not paid, both coverages will [shall] be cancelled simultaneously, and any premium the enrollee has remitted to maintain coverage will [shall] be returned to the enrollee;

(3) (No change.)

(4) corresponding coverage for a POS plan must include the following:

(A) all mandatory benefit offers required by the Insurance Code that are accepted or rejected by the purchaser must also be accepted or rejected in the same manner with respect to both the POS HMO and the POS indemnity coverage;

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

(5) if medically necessary covered services, benefits, and supplies are not available through the HMO's participating physicians or providers, the HMO is not relieved of its obligation to provide out-of-network services under Insurance Code Chapter 1271 [Article 20A.09 of the Code] on the basis that the same services are available to an enrollee through POS indemnity coverage; and

(6) (No change.)

(c) POS blended contracts. Contracts for POS blended contract plans must:

(1) - (5) (No change.)

(6) disclose all coinsurance required for POS indemnity coverage, which must [shall] never exceed 50% of the total amount to be covered;

(7) (No change.)

(8) disclose all precertification requirements for POS indemnity coverage under the plan including any penalties for failing to comply with any precertification or cost containment provisions, provided that any such penalties do [shall] not reduce benefits by more than 50% in the aggregate;

(9) disclose how the enrollee may complain about a denial of coverage and appeal an adverse determination rendered concerning the coverage under the POS plan and disclose any rights the enrollee may have to an independent review of an adverse determination under Insurance Code Chapter 4201 [Article 21.58A of the Code];

(10) POS indemnity coverage issued to a group must [shall] contain provisions that comply with Insurance Code §§1251.111 - 1251.116 [Article 3.51-6 Sec. (1)(d)(2)(vii) - (xiii) of the Code]; and

(11) POS indemnity coverage issued to an individual must [shall] contain provisions that comply with Insurance Code §§1201.111 - 1201.217 [Article 3.70-3(A)(5) - (11) of the Code].

(d) POS dual contracts. Contracts comprising a POS dual contract plan must comply with the following:

(1) The contract issued by the indemnity carrier must [shall] comply with all applicable requirements for indemnity carriers and must [shall]:

(A) - (B) (No change.)

(C) disclose all applicable copayments and coinsurance, which must [shall] never exceed 50% of the total amount to be covered;

(D) (No change.)

(E) disclose all precertification requirements for POS indemnity coverage under the plan, including any penalties for failing to comply with any precertification or cost containment provisions, provided that any such penalties must [shall] not reduce benefits more than 50% in the aggregate;

(F) disclose how the enrollee may complain about a denial of coverage and appeal an adverse determination rendered concerning the coverage under the POS indemnity coverage and disclose

any rights the enrollee may have to an independent review of an adverse determination under Insurance Code Chapter 4201 [Article 21.58A of the Code], if applicable;

(G) POS indemnity coverage issued to a group must [shall] contain provisions that comply with Insurance Code §§1251.111 - 1251.116 [Article 3.51-6 See (1)(d)(2)(vii) - (xiii) of the Code];

(H) POS indemnity coverage issued to an individual must [shall] contain provisions that comply with Insurance Code §§1201.111 - 1201.217 [Article 3.70-3(A)(5) - (11) of the Code].

(2) The contract issued by the HMO must [shall] comply with all requirements for an HMO evidence of coverage and must [shall]:

(A) - (C) (No change.)

(e) Filings. All plan documents for a POS plan offered under this subchapter must [shall] be submitted to the department [Filings Intake Division] in accordance with:

(1) Insurance Code Chapter 1271 [Article 20A.09 of the Code] and Chapter 11 of this title (relating to Health Maintenance Organizations), including the filing fee requirements; and

(2) Insurance Code Chapter 1701 [Article 3.4 of the Code] and Chapter 3, Subchapter A, of this title (relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings [Filing of Policy Forms, Riders, Amendments, Endorsements for Life, Accident, and Health Insurance and Annuities]), including the filing fee requirements.

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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James Person

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6584



SUBCHAPTER X. EVALUATION OF NETWORK PHYSICIANS AND PROVIDERS

28 TAC §21.3201

STATUTORY AUTHORITY. TDI proposes amendments to §21.3201 under Insurance Code §1452.052 and §36.001.

Insurance Code §1452.052 provides that the Commissioner adopt a standardized verification of credentials form for physicians, advanced practice nurses, and physician assistants.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.3201 implements Insurance Code §1452.051 and §1452.052.

§21.3201. *Texas Standardized Credentialing Application for Physicians, Advanced Practice Nurses, and Physician Assistants.*

(a) Purpose and applicability [Applicability]. The purpose of this section is to identify the standardized credentialing application form required by [the] Insurance Code §1452.052 [Article 21.58D]. Hospitals, health maintenance organizations, preferred provider benefit plans, and preferred provider organizations are required to use this form for credentialing and recredentialing of physicians, advanced practice nurses, and physician assistants.

(b) Definitions. The following words and terms when used in this section [shall] have the following meanings.[:]

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

(4) Health maintenance organization--A health maintenance organization as that term is defined by [the] Insurance Code §843.002(14).

(5) Hospital--A licensed public or private institution as defined by Health and Safety Code Chapter 241[; Health and Safety Code,] and any hospital owned or operated by state government.

(6) (No change.)

(7) Physician assistant--A person who holds a license issued under Occupations Code Chapter 204[; Occupations Code].

(8) Preferred provider benefit plan--A plan issued by an insurer under [the] Insurance Code Chapter 1301 [Article 3.70-3C].

(9) Preferred provider organization--An organization contracting with an insurer issuing a preferred provider benefit plan under [the] Insurance Code Chapter 1301 [Article 3.70-3C,] for the purpose of providing a network of preferred providers.

(10) (No change.)

(c) Texas Standardized Credentialing Application. The Texas Standardized Credentialing Application must [shall] be used by all hospitals, health maintenance organizations, preferred provider benefit plan insurers, and preferred provider organizations for credentialing and recredentialing of physicians, advanced practice nurses, and physician assistants.

(d) (No change.)

(e) Availability. This form may be obtained on the department's website [Department's Web site] at www.tdi.texas.gov [www.tdi.state.tx.us or from the Texas Department of Insurance, Quality Assurance Section, HMO Division, Mail Code 103-6A, P.O. Box 149104, Austin, Texas 78714-9104; or by calling 1-800-599-SHOP (1476); in Austin, 305-7211]. Reproduction of this form without any changes is allowed.

(f) (No change.)

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

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James Person

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SUBCHAPTER Y. UNFAIR DISCRIMINATION IN COMPENSATION FOR WOMEN'S HEALTH CARE

28 TAC §§21.3302, 21.3303, 21.3305

STATUTORY AUTHORITY. TDI proposes amendments to §§21.3302, 21.3303, and 21.3305 under Senate Bill 8, 77th Legislature (2001) (SB 8) and §36.001.

The enacting language of SB 8, which enacted the article that was codified as Insurance Code Chapter 1454 effective April 1, 2005, provides that the department may adopt rules necessary to implement the act.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.3302 implements Insurance Code Chapter 1454. Section 21.3303 implements Insurance Code §1454.002. Section 21.3305 implements Insurance Code §§1454.106, 1454.107, and 1454.108.

§21.3302. *Definitions.*

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

(1) Issuer--Those entities that offer a health benefit plan as identified in Insurance Code §1454.002 [Article 21.53N §2(1-8)].

(2) - (3) (No change.)

§21.3303. *Applicability.*

This subchapter applies to issuers that provide coverage for reproductive health or reproductive oncology services for women and applies to health benefit plans as described in Insurance Code §1454.002 [Article 21.53N §2] that are delivered, issued for delivery, or renewed on or after January 1, 2002.

§21.3305. *Complaints.*

(a) A complaint against an issuer filed with the Texas Department of Insurance for alleged violations of Insurance Code §1454.051 [Article 21.53N §3] must [shall] include:

(1) a description of the alleged violation under Insurance Code §1454.051 [Article 21.53N];

(2) (No change.)

(3) the physician's or provider's name, if different from [than] the complainant;

(4) - (6) (No change.)

(b) Within 10 days of receipt of a complaint, the department will determine whether [if] all the information in subsection (a) of this section has been received.

(c) If all the information identified in subsection (a) of this section is included in the complaint:

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

(3) the 120-day time period in Insurance Code §1454.107 [Article 21.53N §4(e)] will commence.

(d) (No change.)

(e) If the department believes that the information received by the department under subsection (a) of this section substantiates

the alleged unfair discrimination in compensation as contemplated in Insurance Code Chapter 1454 [Article 21.53N of the Insurance Code] and this subchapter, action will be taken in accordance with Insurance Code Chapter 1454, Subchapter C [Article 21.53N §4 of the Insurance 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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James Person

General Counsel

Texas Department of Insurance

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SUBCHAPTER CC. ELECTRONIC HEALTH CARE TRANSACTIONS

28 TAC §21.3701

STATUTORY AUTHORITY. TDI proposes amendments to §21.3701 under Insurance Code §1213.006 and §36.001.

Insurance Code §1213.006 provides that the Commissioner may adopt rules necessary to implement the requirements for electronic health care transactions found in Chapter 1213.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.3701 implements Insurance Code Chapter 1213.

§21.3701. *Electronic Claims Filing Requirements.*

(a) The purpose of this section is to implement Insurance Code Chapter 1213 [Article 21.52Z of the Insurance Code]. This section applies to a contract between an issuer of a health benefit plan and a health care professional or health care facility (hereinafter referred to as "physicians or providers").

(b) Consistent with Insurance Code Chapter 1213 [Article 21.52Z] and this section, the issuer of a health benefit plan may, by contract, require physicians and providers to electronically submit the following:

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

(c) (No change.)

(d) A contract between the issuer of a health benefit plan and a physician or provider that requires electronic submission of any information described in subsection (b) of this section must [shall] include a provision stating that in the event of a systems failure[;] or a catastrophic event as defined in §21.2802 [§21.2803] of this title (relating to Definitions)[;] that substantially interferes with the business operations of the physician or provider, the physician or provider may submit non-electronic claims in accordance with the requirements in this subchapter and for the number of calendar days during which substantial interference with business operations occurs as of the date of the catastrophic event or systems failure. A physician or provider must [shall] provide written notice of the physician's or provider's intent to submit

non-electronic claims to the issuer of the health benefit plan within five calendar days of the catastrophic event or systems failure.

(e) A contract between the issuer of a health benefit plan and a physician or provider that requires electronic submission of the information described in subsection (b) of this section must [shall] include a provision allowing for a waiver of the electronic submission requirements in any of the following circumstances:

(1) (No change.)

(2) The operation of small physician and provider practices. This exception applies to those physicians and providers with fewer than 10 [ten] full-time-equivalent employees, consistent with 42 C.F.R. §424.32(d)(1)(viii).

(3) - (4) (No change.)

(f) (No change.)

(g) Upon receipt of a request for a waiver from a physician or provider, the issuer of a health benefit plan must [shall], within 14 calendar days, issue or deny a waiver.

(h) A waiver or denial of a waiver must be issued in writing to the requesting physician or provider. A written waiver must [shall] contain any restrictions, conditions, or limitations related to the waiver. A written denial of a request for a waiver or the issuance of a qualified or conditional waiver must [shall] include the reason for the denial or any restrictions, conditions, or limitations, and notice of the physician's or provider's right to appeal the determination to the department [Texas Department of Insurance].

(i) A physician or provider that is denied a waiver of the electronic submission requirements[,] or granted a waiver with restrictions, conditions, or limitations, may, within 14 calendar days of receipt, appeal the waiver determination. The request for appeal and accompanying documentation must [shall] be sent to the Director of MCQA [Deputy Commissioner, HMO Division], MC-LH-MCQA, P.O. Box 12030 [449104], Austin, Texas 78711-2030 [78714-9104] and to the issuer of the health benefit plan. The information must [shall] include:

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

(j) Upon receipt of notice of a request for appeal under this section, an issuer of a health benefit plan must [shall], within 14 calendar days, submit to the department [Deputy Commissioner of the HMO Division] and to the physician or provider:

(1) (No change.)

(2) any additional information necessary for the determination of the appeal.

(k) The department [Deputy Commissioner of the HMO Division] may request additional information from either party and may request the parties to appear at a hearing. Either party may choose to attend a hearing conducted at the department or participate in a hearing via telephone.

(l) Upon receipt of all information required by subsections (i) and (j) of this section, the Director of Managed Care Quality Assurance will [Deputy Commissioner of the HMO Division shall] issue a determination within 14 calendar days of the later of the receipt of all necessary information or the conclusion of the hearing.

(m) Either party may request a hearing before the Deputy Commissioner of Life and Health [Senior Associate Commissioner of the Life, Health and Licensing Program] for reconsideration of the Director of the Managed Care Quality Assurance Office's [Deputy Commissioner of the HMO Division's] determination. Either party may choose to attend a hearing conducted at the department or partic-

ipate in a hearing via telephone. A request for reconsideration must be received by the Chief Clerk [Senior Associate Commissioner] at MC-GC-CCO, P.O. Box 12030 [449104], Austin, Texas 78711-2030 [78714-9104] within 14 calendar days of receiving notice of the appeal determination.

(n) - (p) (No change.)

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

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James Person

General Counsel

Texas Department of Insurance

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SUBCHAPTER DD. ELIGIBILITY STATEMENTS

28 TAC §21.3802

STATUTORY AUTHORITY. TDI proposes amendments to §21.3802 under Insurance Code §1274.004 and §36.001.

Insurance Code §1274.004 provides that the Commissioner adopt rules necessary to implement Chapter 1274.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.3802 implements Insurance Code §1274.001.

§21.3802. *Definitions.*

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

(1) - (5) (No change.)

(6) Physician--

(A) (No change.)

(B) a professional association organized under the Texas Professional Association Law [Act] (Business Organizations Code Chapters 301 and 302 [Articles 1528f, Vernon's Texas Civil Statutes]);

(C) (No change.)

(D) a medical school or medical and dental unit, as defined or described by Education Code §§61.003, 61.501, or 74.601[, Education Code], that employs or contracts with physicians to teach or provide medical services or employs physicians and contracts with physicians in a practice plan; or

(E) (No change.)

(7) (No change.)

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

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James Person

General Counsel

Texas Department of Insurance

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SUBCHAPTER GG. HEALTH CARE QUALITY ASSURANCE PRESUMED COMPLIANCE

28 TAC §21.4105

STATUTORY AUTHORITY. TDI proposes amendments to §21.4105 under Insurance Code §847.007 and §36.001.

Insurance Code §847.007 provides that the Commissioner may by rule determine the application of compliance with national accreditation requirements by a delegated entity, delegated third party, or utilization review agent to compliance by the health benefit plan issuer that contracts with the delegated entity, delegated third party, or agent.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.4105 implements Insurance Code §847.005.

§21.4105. Department Monitoring and Analysis of National Accreditation Organization Standards.

(a) Analysis of standards. The department will compare statutory and regulatory requirements of the department for health benefit plan issuers with the standards of national accreditation organizations. The standards of national accreditation organizations that are the same as, substantially similar to, or more stringent than the department's [department] statutory and regulatory requirements will be identified and used to determine the presumption of compliance of health benefit plan issuers.

(b) Monitoring schedule. The department will [shall], at least annually, monitor and analyze updates and amendments made to accreditation standards by national accreditation organizations to ensure that those standards remain the same as, substantially similar to, or more stringent than the statutory and regulatory requirements of the department.

(c) Posting of standards. The department will post a table on its [internet] website that contains a summary of its comparison of national accreditation organization standards with the statutory and regulatory requirements of the department and indicates which portions of the examination process the department will presume compliance for accredited entities. The presumed compliance table listing the summary of the comparison of national accreditation standards and department statutory and regulatory requirements may be obtained from:

(1) the department's [Department's internet] website at[www.tdi.texas.gov] [www.tdi.state.tx.us]; or

(2) the Financial Regulation [Health and WC Network Certification and QA] Division, MC-FRD [Mail Code 103-6A], Texas Department of Insurance, P.O. Box 12030 [149104], Austin, Texas 78711-2030 [78714-9104].

(d) Updates to standards. The department will update the table of standards posted on its [internet] website on at least an annual basis, as necessary, to reflect changes made to national accreditation organization standards.

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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James Person

General Counsel

Texas Department of Insurance

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER A. ADMINISTRATION

40 TAC §700.104, §700.106

The Department of Family and Protective Services (DFPS), proposes the repeal of §700.104 and §700.106 in Title 40, Texas Administrative Code (TAC), Chapter 700, Subchapter A, relating to Administration.

BACKGROUND AND PURPOSE

The purpose of the repeals are to update the rules concerning DFPS records to reflect DFPS's current policy and practice of creating and maintaining records, including the central registry, as many of the rules are outdated. These amendments include updates to rule sections concerning what DFPS considers confidential case records, how long DFPS retains records and the process for retaining records, and how an individual can access confidential case records and public records. The changes also include consolidating the rules regarding DFPS records and the central registry into one chapter as currently both, Chapters 700 and 702 address records and the central registry. Finally, the rule changes also include clarifying for the public and DFPS staff when DFPS will maintain records past the retention schedule pursuant to the mandates in Government Code §441.186, including for litigation holds, and how DFPS uses and handles such records. While the changes appear far reaching, they do not result in any changes to the DFPS records retention schedules, do not increase the amount of time DFPS maintains records, do not change the persons and entities DFPS currently releases records to pursuant to state and federal law, and do not change the process for requesting or releasing records.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §700.104 is being deleted and its contents are being incorporated into current rule §702.251 of this title (relating to What is the Central Registry?). The purpose of this consolidation is to ensure that the rules concerning the Central

Registry are contained within the same chapter and subchapter of DFPS rules.

The proposed repeal of §700.106 is being deleted and its contents are being incorporated into current rule §702.201 of this title (relating to What types of records are maintained by the Department of Family and Protective Services?). The purpose of this consolidation is to ensure that the rules concerning DFPS records creation, retention, and destruction are contained within the same chapter and subchapter of DFPS rules.

FISCAL NOTE

David Kinsey, Chief Financial Officer of DFPS, has determined that for each year of the first five years that the repeals will be in effect, there will not be fiscal implications to state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined that during the first five years that the proposed rules will be in effect:

- (1) the proposed repeals will not create a government program;
- (2) implementation of the proposed repeals will not affect the number of employee positions);
- (3) implementation of the proposed repeals will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed repeals will not affect fees paid to the agency;
- (5) the proposed repeals will not create a new regulation;
- (6) the proposed repeals will not expand, limit, or repeal an existing regulation;
- (7) the proposed repeals will not change the number of individuals subject to the rule; and
- (8) the proposed repeals will not affect the state's economy.

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

Mr. Kinsey has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The proposed repeals do not apply to small or micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Pursuant to subsection (c)(7) of Texas Government Code §2001.0045, the statute does not apply to a rule that is adopted by the Department of Family and Protective Services.

PUBLIC BENEFIT

Tiffany Roper, General Counsel of DFPS, has determined that for each year of the first five years the repeals are in effect, the public will benefit from having greater clarity because the DFPS records and the central registry will be within the same chapter and subchapter.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT

DFPS 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 Government Code, §2007.043.

PUBLIC COMMENT

Comments and questions on this proposal must be submitted within 30 days of publication of the proposal in the *Texas Register*. Electronic comments and questions may be submitted to Policy Attorney, Katharine McLaughlin at Katharine.McLaughlin@dfps.state.tx.us. Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services 20R05, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

STATUTORY AUTHORITY

The repeals are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

The repeals implement Texas Family Code § 261.002 and Texas Government Code §§ 441.183-441.189.

No other statutes, articles, or codes are affected by the proposed rules.

§700.104. *Child Abuse and Neglect Central Registry.*

§700.106. *Retention and Destruction of Case Information.*

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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TRD-202102214

Tiffany Roper

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3397



CHAPTER 702. GENERAL ADMINISTRATION

The Department of Family and Protective Services (DFPS), proposes amendments to §§702.201, 702.213, 702.221, 702.251, 702.255 702.257; new §§702.203, 702.205, 702.207, 702.209, 702.211; and repeals of §§702.205, 702.209, 702.217, 702.223 and 702.253 in Title 40, Texas Administrative Code (TAC), Chapter 702, relating to General Administration.

BACKGROUND AND PURPOSE

The purpose of the proposed changes is to update the rules concerning DFPS records to reflect DFPS's current policy and practice of creating and maintaining records, including the central registry, as many of the rules are outdated. These amendments include updates to rule sections concerning what DFPS considers confidential case records, how long DFPS retains records

and the process for retaining records, and how an individual can access confidential case records and public records. The changes also include consolidating the rules regarding DFPS records and the central registry into one chapter as currently Chapters 700 and 702 address records and the central registry. Finally, the rule changes also include clarifying for the public and DFPS staff when DFPS will maintain records past the retention schedule pursuant to the mandates in Government Code §441.186, including for litigation holds, and how DFPS uses and handles such records. While the changes appear far reaching, they do not result in any changes to the DFPS records retention schedules, do not increase the amount of time DFPS maintains records, do not change the persons and entities DFPS currently releases records to pursuant to state and federal law, and do not change the process for requesting or releasing records.

SECTION-BY-SECTION SUMMARY

Proposed amendments to §702.201 primarily consist of incorporating content concerning the purpose of confidential case records from subsection (a) of §700.106 (relating to Retention and Destruction of Case Information), which is being proposed for repeal.

Proposed new §702.203: (1) explains that DFPS maintains both paper and electronic case records and further explains how the records are stored; and (2) incorporates content regarding recordings made at child advocacy centers from subsection (c) of §700.106 (relating to Retention and Destruction of Case Information), which is being proposed for repeal.

Section 702.205 (relating to Does PRS make information available on the public Internet) is being deleted, because when this rule was first written the internet was not as widely used or easy to navigate as it is now. Therefore, a rule explaining to the public information that can be found on the DFPS public website is now unnecessary. A new §702.205 is being proposed. New §702.205 incorporates content from subsections (b), (d), (e), and (f) of §700.106 (relating to Retention and Destruction of Case Information), which is being proposed for deletion. The new rule includes the following: (1) information on maintaining and destroying electronic and physical case records in accordance with the Records Retention Schedule available on the DFPS website; (2) how a retention period for case records can be extended pursuant to Texas Government Code §441.187 and if DFPS opens a new case involving a party from a former closed case that has not been destroyed; and (3) use of case information by DFPS that is part of a case for which the retention period has been extended.

Proposed new §702.207 incorporates content from the following rules which are being proposed for repeal: §702.213 (relating to How can a member of the public obtain information or copies of records that are not on the PRS web site?) and §702.217 (relating to Where should the Information Request Form be submitted) with minor updates to reflect the current process for requesting confidential case records.

Section 702.209 is being deleted and its contents are being incorporated into new §702.211 (relating to Does the Department of Family and Protective Services make information available on the public Internet). A new §702.209 is being proposed. New §702.209 incorporates the content of §702.223 (relating to How does the department prioritize fulfilling requests for copies of confidential client records that require redaction prior to their release?), which is being proposed for repeal, with minor, non-substantive edits.

Proposed amendments to §702.213 consist of clarifying the process to request DFPS public information as specified in Government Code §552.234.

Section 702.217 is being deleted as the information concerning storage of and request for client records is outdated and inaccurate. Relevant content regarding requesting confidential client records is being incorporated into new §702.207 (relating to How can a person request confidential case records?).

Proposed amendments to §702.221 consist of minor edits, including updating agency names and TAC references and deleting outdated information about the cost for obtaining DFPS brochures and publications.

Section 702.223 is being deleted and its contents are being incorporated into new §702.209 (relating to How does the Department of Family and Protective Services prioritize fulfilling requests for copies of confidential client records that require redaction prior to their release?) with minor, non-substantive edits so that all rules concerning confidential case records are sequentially located in Chapter 702.

Proposed amendments to §702.251 include: (1) incorporating the content from §700.104 (relating to Child Abuse and Neglect Central Registry) and §702.253 (relating to What information does the Central Registry include?), which are being proposed for repeal; (2) updating the rule to explain that the Central Registry includes the names of persons alleged to be the perpetrator of child abuse or neglect in an ongoing investigation being conducted by DFPS; and (3) updating the rule to reflect the current agency structure, including removing reference to the Child Care Licensing division which was transferred from DFPS to the Health and Human Services Commission in September 2017.

Section 702.253 is being deleted and the content in the rule concerning the types of abuse and neglect investigations that result in a person's name being placed on the Central Registry is being combined with current §702.251 (relating to What is the Central Registry?).

Proposed amendments to §702.255 include: (1) deleting information regarding the records retention schedule as that information is already addressed in current §702.201 (relating to What types of records are maintained by the Department of Family and Protective Services); and (2) clarifying that when an investigation results in a "Confirmed" or "Reason To Believe," the finding remains in the Central Registry in accordance with the records retention schedule.

Proposed amendments to §702.257 consist of minor, non-substantive edits.

FISCAL NOTE

David Kinsey, Chief Financial Officer of DFPS, has determined that for each year of the first five years that the sections will be in effect, there will not be fiscal implications to state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined that during the first five years that the proposed rules will be in effect:

- (1) the proposed rules will not create a government program;
- (2) implementation of the proposed rules will not affect the number of employee positions;

(3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rules will not affect fees paid to the agency;

(5) the proposed rules will create a new regulation; new rules are being added to Chapter 702, Subchapter B and C, that further clarify DFPS's record creation and maintenance process.

(6) the proposed rules will repeal existing regulations to the extent that the rules concerning records and the central registry in Chapter 700, Subchapter A, are being repealed and the content from those rules is being incorporated into existing rules in Chapter 702, Subchapters B and C. In addition, the updates to Chapter 702, Subchapters B and C, includes combining content from similar rules, and deleting duplicative rules.

(7) the proposed rules will not change the number of individuals subject to the rule; and

(8) the proposed rules will not affect the state's economy.

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

Mr. Kinsey has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The proposed repeals do not apply to small or micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Pursuant to subsection (c)(7) of Texas Government Code §2001.0045, the statute does not apply to a rule that is adopted by the Department of Family and Protective Services.

PUBLIC BENEFIT

Tiffany Roper, General Counsel of DFPS, has determined that for each year of the first five years the rules are in effect, the public will be better informed regarding the current policy and practices of DFPS records management, including how DFPS maintains different types of records and how the public can request copies of those records. The public will also have a better understanding of the purpose of the DFPS Central Registry and the information contained in the Central Registry.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT

DFPS 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 Government Code, §2007.043.

PUBLIC COMMENT

Comments and questions on this proposal must be submitted within 30 days of publication of the proposal in the *Texas Register*. Electronic comments and questions may be submitted to Policy Attorney, Katharine McLaughlin at Katharine.McLaugh-

lin@dfps.state.tx.us. Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services 20R05, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

SUBCHAPTER B. AGENCY RECORDS AND INFORMATION

40 TAC §§702.201, 702.203, 702.205, 702.207, 702.209, 702.211, 702.213, 702.221

STATUTORY AUTHORITY

The new and amended sections are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

The proposed new and amended sections implement Texas Family Code §261.002 and Texas Government Code §§441.183-441.189.

No other statutes, articles, or codes are affected by the proposed rules.

§702.201. What types of records are maintained by the Department of Family and Protective Services [PRS]?

(a) The Department of Family and Protective Services (DFPS) [PRS] maintains records relating to our general administrative functions, including personnel records, financial records, policy and procedure manuals, and agency performance measurements. These records, referred to as "Administrative Records," are generally available to the public and may be requested under the Texas Public Information Act in Chapter 552, Texas Government Code[; Chapter 552, the Texas Public Information Act].

(b) DFPS [PRS] also maintains confidential records on clients DFPS is or was involved with, including records developed in an abuse and neglect investigation and/or in providing services as the result of an investigation, in order to meet state and federal accountability requirements, as applicable [relating to the clients served by our programs]. These records, referred to as "Case Records," are generally not available to the public, although they may be available to individuals [individual clients], government agencies, and others, as provided by state and federal laws and DFPS [PRS] rules. Rules [Additional rules] concerning confidential case [client] records specific to each DFPS program can [may] be found in Chapters 700, 705, and 707 [the chapters] of this part [specifically relating to the Child Protective Services, Adult Protective Services, and the Child-Care Licensing programs].

(c) A complete listing of the types of records maintained by DFPS [PRS] may be found in the DFPS [PRS] Records Retention Schedule[; available on the PRS public web site]. The Schedule can be found on DFPS's public website.

§702.203. How does the Department of Family and Protective Services maintain confidential case records?

(a) The Department of Family and Protective Services (DFPS) maintains paper and electronic case records. Electronic case records are primarily maintained in DFPS's electronic case management system of records, called Information Management Protecting Adults and Children in Texas (IMPACT). Electronic records are also maintained in other systems as needed.

(b) As part of our case records, we may also maintain recordings made at child advocacy centers during the course of investigations

if we are the owner of the recordings pursuant to Texas Family Code, §264.408(d) or when the child advocacy center provides us a copy of the recordings for our case records.

(c) Physical files may be stored in the DFPS regional office handling the case while the case is active or open. When physical records are inactive or closed, they are transferred to DFPS's Records Management Group (RMG). DFPS's Records Management Officer determines the most appropriate way to retain them until their retention period is met. Physical records may be retained in their original format and stored at state facilities or with a third-party vendor or they may be converted to digital images for electronic filing.

§702.205. How long does the Department of Family and Protective Services retain confidential case records?

(a) Physical case records and case records and information in DFPS's electronic case management system entitled Information Management Protecting Adults and Children in Texas (IMPACT) and other electronic systems are generally retained and destroyed in accordance with the Department of Family and Protective Services' (DFPS) Records Retention Schedule. The Schedule can be found on DFPS's public website. The retention period of a record is calculated from the time the case is closed. When the retention period has expired, DFPS permanently removes the case information from any electronic storage, including IMPACT, and destroys any paper case record in a manner that protects confidentiality.

(b) Notwithstanding subsection (a) of this section, the retention period for a DFPS record may be extended for the following reasons:

(1) Pursuant to Texas Government Code §441.187, if a litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the record is initiated before the retention period for the record expires, DFPS may not destroy the record until the completion of the action and resolution of all issues that arise from the action, even if the retention period for the record expires during that period. If an action or activity involving the record is initiated, the retention period for that record is extended for the amount of time that the action or activity is in process.

(2) If DFPS opens a new case on a party to an older closed case that has not been destroyed pursuant to DFPS's retention schedule, DFPS may merge or relate the cases. Merged cases may be reclassified and extended to coincide with the retention period of the case with the latest retention period. For purposes of this section, merge means combining two or more separate cases into one case.

(c) If the retention period for a case record is extended as provided in subsections (b) of this section, DFPS may use the information in the case record as necessary to make case related decisions, assess risk of abuse or neglect, or for any other purpose for as long as DFPS retains the case record.

§702.207. How can you request confidential case records?

If you are entitled to confidential case records, you can request the records in the following ways:

(1) For the quickest response, submit your request for client records electronically through the Department of Family and Protective Services' (DFPS) website.

(2) You also may submit a written request by mail. Written requests must be made on a DFPS Information Request Form and mailed to the DFPS Records Management Group at Y-937, P.O. Box 149030, Austin, TX, 78714-9030 with a copy of your photo identification. The forms can be found on the DFPS website.

§702.209. How does the Department of Family and Protective Services prioritize fulfilling requests for copies of confidential client records that require redaction prior to their release?

(a) The Department of Family and Protective Services (DFPS) fulfills requests for client records in the following priority order, from highest to lowest priority ranking:

(1) Records provided in response to a subpoena or court order that has been properly served on DFPS;

(2) Records provided in response to discovery in a lawsuit to which DFPS is a party;

(3) Records provided to a prospective adoptive family before an adoption may be consummated;

(4) Records provided to a party or the administrative law judge in an Employee Misconduct Registry administrative hearing;

(5) Records provided to a party or the administrative law judge in a hearing conducted by the State Office of Administrative Hearings;

(6) Records provided to a duly authorized person documenting the results of a school investigation as required by §261.406, Texas Family Code;

(7) Records provided to a party in an administrative review of investigative findings that is conducted by DFPS;

(8) Records provided to an adult who was previously in the conservatorship of DFPS if the request is for a copy of such adult's own "case record" as defined by §264.0145, Texas Family Code; and

(9) Records provided to all other requestors entitled to receive the requested records, which are fulfilled in the order they are received.

(b) Notwithstanding subsection (a) of this section, DFPS reserves the right to expedite any request for records when we determine that a delay in fulfilling the request may:

(1) jeopardize the health or safety of any person;

(2) cause any person to suffer undue hardship; or

(3) result in DFPS's failure to meet a mandatory deadline for production of the requested records as imposed by a court or administrative tribunal.

(c) Additional information on who is entitled to receive confidential client records is provided in the following chapters in Title 40, Texas Administrative Code:

(1) Chapter 700 of this title (relating to Child Protective Services);

(2) Chapter 705 of this title (relating to Adult Protective Services); and

(3) Chapter 707 of this title (relating to Child Protective Investigations).

§702.213. How can a member of the public obtain information or copies of administrative records that are not on the Department of Family and Protective Services [PRS] web site?

Requests for copies of administrative records as defined in §702.201(a) in this subchapter (relating to What types of records are maintained by the Department of Family and Protective Services?" must [generally] be submitted following the instructions on the DFPS public website, Open Records Policy. A written request may also be hand delivered to the DFPS headquarters office or mailed to the mailing address found

on the DFPS public website. [in writing, along with proof of identification, unless the request is for a copy of a PRS brochure or publication specifically designed for public distribution. To ensure that all necessary information is included with your request, you may be asked to complete a PRS Information Request Form. A copy of this form may be downloaded from the PRS public web site or requested from any PRS office.]

§702.221. *Is there a charge for copies of the Department of Family and Protective Services [PRS] records?*

Yes. The Department of Family and Protective Services (DFPS) [PRS] charges a fee to cover the costs of providing copies of its records[, other than PRS brochures and publications specifically designed for public distribution at no cost]. Fees are calculated according to rules adopted by the Office of the Attorney General [Services Commission, located in 1 TAC Chapter 11, Subchapter C (relating to Cost of Copies of Public Information)]. We may, at our discretion, waive charges if we determine that waiver is in the public interest or if we determine that the cost of collecting a fee exceeds the cost of providing the records.

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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Tiffany Roper

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: July 18, 2021

For further information, please call: (512) 438-3397



40 TAC §§702.205, 702.209, 702.217, 702.223

The repealed sections are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

The repealed sections implement Texas Family Code §261.002 and Texas Government Code §§441.183-441.189.

No other statutes, articles, or codes are affected by the proposed repeals.

§702.205. *Does PRS make information available on the public Internet?*

§702.209. *What is the PRS public web site address?*

§702.217. *Where should the Information Request Form be submitted?*

§702.223. *How does the department prioritize fulfilling requests for copies of confidential client records that require redaction prior to their release?*

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. CHILD ABUSE AND NEGLECT CENTRAL REGISTRY

40 TAC §§702.251, 702.255, 702.257

The amended sections are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

The proposed amended sections implement Texas Family Code §261.002 and Texas Government Code §§441.183-441.189.

No other statutes, articles, or codes are affected by the proposed rules.

§702.251. *What is the Central Registry?*

(a) The Child Abuse and Neglect Central Registry is a registry maintained by the Department of Family and Protective Services (DFPS), as required by Texas Family Code, §261.002, of substantiated [validated] cases of child abuse or neglect [that is maintained by the Department, as required by Texas Family Code, §261.002]. The Central Registry [registry] is maintained as a subset of information in the DFPS electronic case management [automated database] system entitled Information Management Protecting Adults and Children in Texas (IM-PACT).

(b) The Central Registry contains only the names of persons designated or sustained as perpetrators of child abuse or neglect by:

(1) the Child Protective Investigations division of DFPS, including Investigations, Special Investigations, and Child Care Investigations; and

(2) the Provider Investigation Program of the Health and Human Services Commission's Regulatory Services Department.

(c) The Central Registry also contains the names of persons who are alleged to be the perpetrator of child abuse or neglect in an ongoing investigation being conducted by DFPS. If at the conclusion of the investigation DFPS does not designate the person as a perpetrator of the abuse or neglect, DFPS will remove the person's name from the Central Registry.

§702.255. *How long is investigation information relating to a substantiated [validated] child abuse or neglect case retained in the Central Registry?*

Investigations that result in a "reason to believe" or "confirmed" finding are maintained in the Central Registry in accordance with the [for as long as the investigation case file is retained by the Department under the Department's] official Records Retention Schedule of the agency that conducted the investigation. When the case containing the investigation record is no longer retained, the central registry information is also deleted. [The Department's Record Retention Schedule for CPS, APS, and CCL case records can be found at: <http://www.dfps.state.tx.us/documents/about/pdf/RecordRetentionSchedule.pdf>.]

§702.257. Is the information in the Central Registry available to the general public?

No. The information stored in the Central Registry is confidential and may be released by the Department of Family and Protective Services (DFPS) only as provided by federal and state law, including DFPS [Department] rules.

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

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40 TAC §702.253

The repealed section is proposed under Human Resources Code (HRC) §40.027, which provides that the Department of

Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

The proposed repealed section implements Texas Family Code §261.002 and Texas Government Code §§441.183-441.189.

No other statutes, articles, or codes are affected by the proposed rules.

§702.253. What information does the Central Registry include?

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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