

# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 13. CULTURAL RESOURCES

### PART 2. TEXAS HISTORICAL COMMISSION

#### CHAPTER 16. HISTORIC SITES

##### 13 TAC §16.3

The Texas Historical Commission (Commission) adopts amendments to §16.3 of Title 13, Part 2, Chapter 16 of the Texas Administrative Code, relating to Historic Sites. The amendments are adopted with changes to the proposed text as published in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5082) as part of the Commission's overall effort to clarify language in order to implement necessary updates, additions and changes to more precisely reflect the procedures of the historic sites division. The amended rule will be republished.

The rule amends the current two-phase process and creates a three-phase process within the updated State Historic Sites Historic Properties Collection Plan for the evaluation of a historic property. The amendments provide the criteria to be used in preliminary staff evaluations and defines a process to more effectively evaluate properties and contain costs.

There were no comments received during the posting period.

Section 16.3 of Chapter 16 (Title 13, Part II of the Texas Administrative Code), relating to Historic Sites, is adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §442.072(c), which allows the commission to enter into agreements; and Texas Government Code §§442.101(a), 442.101(b), and 442.101(c), which allow the Commission to adopt policies and procedures by rule to contract for services necessary to carry out its responsibilities regarding historic sites.

Texas Government Code §§442.072(c), 442.101(a), 442.101(b), 442.101(c), and 442.106 allow the commission to contract for services, and specifically for concessions, necessary to carry out its responsibilities regarding historic sites. No other statutes, articles, or codes are affected by this amendment.

§16.3. *Addition of Historic Sites to the Texas Historical Commission Historic Sites Program.*

(a) Criteria. The addition of new Historic Sites will follow the "State Historic Sites Historic Properties Collection Plan" in a three-step process as posted on the Texas Historical Commission's (Commission) website at [thc.texas.gov](http://thc.texas.gov) detailing themes and subthemes in Texas history, site assessment, operational and managerial evaluations processes and the following criteria:

(1) The property must have recognized statewide or national significance based on the standards of the National Register of Historic Places.

(2) The property should be able to provide interpretation of a significant theme or event of Texas history that is not fully represented by the Commission's existing historic sites or other historic sites accessible to the public. The Commission will strive to maintain a geographic, cultural and thematic balance in its program.

(3) The property should have exceptional integrity of location (including surrounding environment), design, material, setting, feeling, and association.

(4) The property should have appropriate collections (objects, manuscript material, artifacts) associated with the historic site or necessary artifacts related to the site's history and period of significance should be identified and available.

(5) The property must be appropriate for use as an interpretive museum or historic site, have high potential to attract and accommodate diverse and new audiences, and be accessible to travelers as well as to the local community.

(6) The property must be available without restrictions that would limit the Commission's options for preservation and interpretation as a historic site (for example, a life estate retained by the grantor, restrictions against future sale or conveyance, or limits on alterations deemed appropriate by the Commission). The Commission encourages the use of easements or other restrictions to ensure the preservation of historic sites.

(7) Financial resources must be available or assured, including an endowment fund where appropriate, or sources of funding must be identified in a comprehensive funding plan to ensure the restoration, interpretation, development, long term operation and preservation of the site.

(8) The property must have the potential for strong supporting partnerships including community support.

(b) Evaluation Process. To evaluate the site against these criteria, the Commission will follow a three-step process as follows.

(1) In phase one, staff will determine if the property should be recommended to be added to the Commission's portfolio of State Historic Sites. The preliminary evaluation will briefly address the following issues:

(A) Where is the property located?

(B) What is the current condition of the property?

(C) What improvements would need to be made to meet THC standards for visitor access, experience, and safety?

(D) What is the importance of the property in Texas and/or American History?

(E) What is the estimation of the property's value, strategically, operationally and culturally?

(F) Are there resources such as artifact collections or endowment that accompany the property?

(G) Are there resources available to adequately interpret the property's themes and stories to the public?

(H) Are the necessary resources available to preserve and care for the property's physical infrastructure and collections?

(I) Does THC have the financial and FTE resources to operate the property?

(J) What is the property's potential for the generation of sustainable visitation and revenue?

(2) Phase 2. If the property is recommended for additional study, a staff committee will be assigned to conduct a preliminary review of the property with reference to criteria noted in subsection (a) of this section. The committee will make a recommendation to the Commission whether to proceed with the development of a historic site management plan in phase three of the evaluation process.

(3) Staff will obtain and use the following information in phase two:

(A) A description of the property, including land, structures and other features.

(B) A preliminary inventory of collections and equipment.

(C) A statement of significance or reference to its designation on the National Register of Historic Places/National Historic Landmark and an evaluation of the site's integrity.

(D) A statement from the current owner indicating a willingness to transfer the real and relevant personal property and the terms and conditions for such a transfer.

(E) Needed and available funding for development costs and continuing operational costs.

(F) Letters of support from interested parties, including an indication of willingness to create an appropriate support group.

(G) A statement identifying how the property would support the educational mission of the Historic Sites Program to serve a broad and diverse audience.

(H) A preliminary estimate of the visitation and costs for development and operation of the site.

(4) Phase 3. Upon positive action by the Commission on the recommendation noted in paragraph (2) of this subsection, the staff will prepare or have prepared a management plan in phase three for the site's evaluation including:

(A) Evaluation of the site, including but not limited to buildings, support facilities, infrastructure (including roads, trails, utility service/water and sewer systems), landscape features, and collections.

(B) Required staffing and services for operation of the site, including ongoing costs of preservation, operation, maintenance and marketing.

(C) Preservation and facility development needs.

(D) Costs and timeline for making the property available to the public.

(E) Required staffing and consultant services for development of the site.

(F) Projected audience/annual visitation, sources of funding to support programming including community partnerships, potential earned revenue, philanthropic and endowment.

(5) The management plan will be reviewed by a panel of experts including an independent Texas historian, museum professional, and expert in heritage tourism and their recommendation will be taken into consideration by the Commission to determine whether the property should be accepted.

(6) The decision to accept a site is within the sole discretion of the Commission, including determining whether acceptance of a property that meets all technical criteria is in the best interest of the State.

(c) A property that is adjacent to an existing THC State Historic Site that will enhance the preservation, protection or interpretation of the existing site, or a property that is needed to support the operations of the state historic site as a program support facility, may be acquired by purchase or donation by action of the Commission on recommendation of the Executive Director, without the evaluation process described in subsection (b) of this section.

(d) A right of way or easement required to allow for installation or connection of necessary utilities at a THC State Historic Site between regular meetings of the Commission may be approved by the Executive Director with the approval of the Chairman. This action will be ratified at the next meeting of the Commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 2, 2020.

TRD-202004580

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: November 22, 2020

Proposal publication date: July 24, 2020

For further information, please call: (512) 463-7948



## CHAPTER 21. HISTORY PROGRAMS

### SUBCHAPTER B. OFFICIAL TEXAS HISTORICAL MARKER PROGRAM

#### 13 TAC §21.6

The Texas Historical Commission (Commission) adopts amendments to 13 TAC §21.6, related to Recorded Texas Historic Landmarks (RTHL) designation. These amendments add detailed language to define conditions of and which buildings, structures, or objects on a property apply to the Recorded Texas Historic Landmarks (RTHL) designation. The amendments also define when a RTHL designation is recorded and becomes effective. The amendments are adopted without changes to the proposed text, as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4873). The rule will not be republished.

The amendments to §21.6 add detailed language to define conditions of and which buildings, structures, or objects on a prop-

erty apply to the Recorded Texas Historic Landmarks (RTHL) designation. The amendments also define when a RTHL designation is recorded and becomes effective.

These amendments are adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §442.006(h), which requires the Commission to adopt rules for the historical marker program; and Texas Government Code §442.006(d), which establishes Recorded Texas Historic Landmark designation requirements.

No other statutes, articles, or codes are affected by these amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 2, 2020.

TRD-202004581

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: November 22, 2020

Proposal publication date: July 17, 2020

For further information, please call: (512) 463-6100



## CHAPTER 22. CEMETERIES

### 13 TAC §22.4

The Texas Historical Commission (Commission) adopts amendments to §22.4, related to Cemeteries. These amendments remove duplicative language regarding how the Commission assesses verification of the existence of a cemetery. The amendments are adopted without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4875). The rule will not be republished.

These amendments are adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission and Texas Government Code §442.017(d), which allows for the adoption of rules necessary to identify and preserve abandoned cemeteries.

No other statutes, articles, or codes are affected by these amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 2, 2020.

TRD-202004582

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: November 22, 2020

Proposal publication date: July 17, 2020

For further information, please call: (512) 463-6100



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 129. STUDENT ATTENDANCE

##### SUBCHAPTER AA. COMMISSIONER'S RULES

###### 19 TAC §129.1025

The Texas Education Agency (TEA) adopts an amendment to §129.1025, concerning student attendance. The amendment is adopted without changes to the proposed text as published in the August 28, 2020 issue of the *Texas Register* (45 TexReg 6013) and will not be republished. The amendment adopts by reference the *2020-2021 Student Attendance Accounting Handbook*. Although changes were not made to the text of §129.1025, the handbook adopted by reference in the rule includes changes to Sections 3 and 5 at adoption.

**REASONED JUSTIFICATION:** TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update 19 TAC §129.1025 to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the FSP eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes Foundation School Program (FSP) resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website. A supplement, if necessary, is also published on the TEA website.

The amendment to 19 TAC §129.1025 adopts by reference the student attendance accounting handbook for the 2020-2021 school year. The adopted handbook is available on the TEA website at <https://tea.texas.gov/finance-and-grants/financial-compliance/student-attendance-accounting-handbook>.

Significant changes to the *2020-2021 Student Attendance Accounting Handbook* include the following.

###### *Section 1, Overview*

Language was added to recognize the authority of the commissioner to waive requirements for average daily attendance (ADA) and specify the necessity for a local education agency to meet the prerequisites for receipt of such a waiver.

###### *Section 2, Audit Requirements*

Texas Education Code (TEC), Chapter 48, specifically §48.270, establishes the requirements for violation of presenting reports

that contain false information. TEC, §44.008, authorizes the commissioner to require audit reports to be submitted for review and analysis. TEC, §44.010, allows for the review of budget, fiscal, and audit reports to determine whether all legal requirements have been met. The following changes implement reporting for audit requirements to account for attendance and funding.

Language was added to include additional requirements for reporting eligible days and other reporting elements that pertain to attendance data reported in the Student Detail Reports, Campus Summary Reports, and District Summary Reports.

Language was added to include documentation to support a student's economically disadvantaged status as required documentation to be submitted in the event of an audit.

### *Section 3, General Attendance Requirements*

TEC, §25.081, and Chapter 48, specifically §48.005, establish the general parameters for attendance and school operation. The following changes implement reporting requirements for attendance and funding.

Language was added to specify that official attendance can be taken by a paraprofessional who meets educational aide certification requirements.

Language was added to state that the attendance data reported in the Texas Student Data System Public Education Information Management System (TSDS PEIMS) for students who attend magnet programs or magnet campuses must be reported for the campus that provides half-day or full-day instruction and also state that attendance must not be reported for a student's home campus if the student receives instruction at a different campus that houses the magnet program. For campuses that house multiple programs, such as a magnet program, attendance is counted for all students on the campus.

In response to public comment, language was added to Section 3 at adoption to clarify the selection of an alternative official attendance-taking time.

### *Section 4, Special Education*

TEC, Chapter 48, specifically §48.102, authorizes funding for special education in certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following change implements reporting for special education to account for attendance and funding.

Language was revised to define/clarify specific report names/titles used to report student data to TSDS PEIMS.

### *Section 5, Career and Technical Education (CTE)*

TEC, Chapter 48, including §48.106, authorizes funding for CTE in certain circumstances. TEC, Chapter 29, Subchapter F, establishes general parameters for CTE programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes implement reporting for CTE to account for attendance and funding.

Language was added to state that students in Grades 7-12 are eligible for CTE contact hours when enrolled in a course referenced by 19 TAC Chapter 127, Subchapter B, or 19 TAC Chapter 130 that grants high school credit.

Language was added to state that school districts may receive state weighted funding for all CTE innovative courses approved by TEA for students in Grades 7-12.

Language was added to state that a district is eligible to receive funding in the amount of \$50 for each student full-time equivalent (FTE) enrolled in two or more advanced CTE courses, identified as Level 3 or Level 4 in a statewide CTE program of study, for a total of three or more credits.

Language was revised to clarify that the CTE contact hours must not be claimed when a student receiving CTE services is placed in a disciplinary setting.

Language was added to state that for districts providing block schedules, the classroom component must address all the Texas Essential Knowledge and Skills (TEKS) for the course. The new language also states that the training site will provide students with a variety of learning experiences that will give them the broadest possible understanding of the business industry.

Language was added to the special instructions for districts operating block schedules that in a practicum instructional arrangement, related classroom instruction must average one class period per week during the school year.

The entire Section 5.9, Career and Technical Education for Disabled (CTED) Courses, was deleted.

In response to public comment, language was added to Section 5 at adoption to include district consideration for student and teacher safety, and functional use of space when determining the number of students to enroll in a course.

### *Section 6, Bilingual/English as a Second Language (ESL)*

TEC, Chapter 48, specifically §48.105, authorizes funding for bilingual or special language programs in certain circumstances. TEC, Chapter 29, Subchapter B, establishes general parameters for bilingual and special language programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes implement reporting for bilingual and special language programs to account for attendance and funding.

Language was added to state that in cases where a parent indicates more than one language in the Home Language Survey (HLS), it is the district's responsibility to contact the parent and explain to the parent that the question is asking which language is used in the home most of the time and seek clarification in a language the parent understands.

Language was added to state that the parent may request a correction on the HLS only if the student has not yet been assessed for English proficiency.

Language was added to state that if the sending district cannot find the original HLS, a new HLS should not be administered if there is sufficient Language Proficiency Assessment Committee (LPAC) documentation, such as Texas English Language Proficiency Assessment System (TELPAS) scores and/or TSDS PEIMS data, from the sending district that shows the student was identified as an English learner.

Language was added to clarify that eligible students who are no longer being served in the program must be assessed annually in the TELPAS until the student meets reclassification criteria.

### *Section 7, Prekindergarten (Pre-K)*

TEC, Chapter 29, Subchapter E, establishes special general parameters for prekindergarten programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for prekindergarten to account for attendance and funding.

Language was added to specify that if a child is automatically eligible for a four-year-old prekindergarten program due to being eligible and enrolled in a three-year-old prekindergarten program, a district should still ensure the child is appropriately coded as economically disadvantaged or identified as limited English proficient (LEP).

Language was added to specify that a uniform definition has been established for "homeless children and youth" and "homeless child" as used in the prekindergarten statute that is aligned with the criteria found in 42 U.S.C., §1143a, within the TEC.

#### *Section 9, Pregnancy-Related Services (PRS)*

TEC, Chapter 48, including §42.152, authorizes funding under certain circumstances for students who are pregnant. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for PRS to account for attendance and funding.

Language was added to state that a special education student who qualifies for PRS may also receive homebound instruction on campus if the district has an approved on-campus instruction waiver. In such an instance, the Admission, Review, and Dismissal (ARD) committee would change the student's coding to reflect homebound setting, even though the student would be served on campus.

#### *Section 11, Nontraditional Programs*

TEC, Chapter 29, Subchapter A, establishes special general parameters for nontraditional programs. TEC, Chapter 42, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for nontraditional programs to account for attendance and funding.

Language was revised to clarify that the rules for Early College High School (ECHS); Pathways in Technology Early College High School (P-TECH); and Texas Science, Technology, Engineering, and Mathematics (T-STEM) programs prohibit requiring a student enrolled in an ECHS course for high school graduation credit to pay for tuition, fees, or required textbooks.

Language was added to state that for funding purposes, the Optional Flexible School Day Program attendance for a student for a 12-consecutive-month school year cannot exceed the equivalent of one student in ADA with perfect attendance.

Language was added to state that each online dropout recovery education program course is considered 60 minutes of daily classroom time for purposes of the two-through-four-hour rule.

Language was added to state that TEA determines ADA eligibility using course completion data. If a student did not complete an online dropout recovery education program course, TEA will make adjustments to the student's ADA eligibility and resulting

adjustments to the district's FSP funding will be made in the following school year.

#### *Section 12, Virtual, Remote, and Electronic Instruction*

TEC, Chapter 30A, establishes the general parameters for the Texas Virtual School Network (TXVSN). TEC, §30A.153, authorizes funding for the TXVSN for the FSP under certain circumstances. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes implement reporting for the TXVSN to account for attendance and funding.

Language was added to clarify the definition of *successful completion* as completion of the TXVSN semester course and demonstrated academic proficiency with a passing grade sufficient to earn credit for the online semester course and that course credit for high school graduation may be earned only if the student received a grade that is the equivalent of 70 on a scale of 100 based upon the essential knowledge and skills for each course.

Language was added to include live audio/video streaming as examples of technology that may be used to provide remote instruction that is not delivered through the TXVSN.

Language was revised to state that for computing CTE contact hours relating to on-campus online classes not provided through the TXVSN, a student must be regularly scheduled for and attending the online state-approved technology application course in cybersecurity included in the cybersecurity pathway.

Language was revised to clarify that for self-paced computer courses, a certified teacher must be present for the duration of the instructional period and for the duration of the course.

#### *Glossary*

The definition of *homeless students* was revised to include the uniform definition in TEC.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 28, 2020, and ended September 28, 2020. Following is a summary of the public comments received and corresponding responses.

#### *Section 3 - General Attendance*

Comment: A school district employee requested that an example be added to describe that a student's home district may provide remote homebound instruction to the student while the student is in a hospital in another district or city. The commenter stated that the example should indicate that the student's home district and the district that the hospital is located in would agree which district provides the student instruction. The commenter also stated that doing so will allow a student to remain enrolled in the home district without having to enroll and then unenroll when returning to the home district.

Agency Response: The agency agrees that the home district may provide instruction to a student from the district who is hospitalized outside of the home district. At adoption, Section 3 of the 2020-2021 SAAH has been updated to include an example for students who receive instruction and are hospitalized in another district/city outside of the home district during the student's hospital stay.

Comment: Three school district employees requested that rule language be added for young adults ages 18-21 (18+) participating in transition programs for students who receive special education services to be able to count at least 20 work hours

per week for funding purposes. The commenters stated that the hours the young adults work do not coincide with the traditional school schedule of Monday through Friday, 8:00 a.m. to 3:00 p.m. and consideration should be given to the young adults participating in the program who work evenings and weekends. The commenters stated that in Section 3.2.2 of 2020-2021 SAAH, the funding requirements for full- and half-day funding do not recognize that students in 18+ programs may not participate in work-based learning for 2-4 hours each day to be considered half- or full-funding eligible; however, students may accumulate up to 20 hours per week in work-based learning opportunities and should generate funding based on cumulative and not daily instruction opportunities. The commenters also recommended that districts that offer 18+ transition programs for students who receive special education services should be able to count a cumulative total of up to 20 hours within a school week for funding eligibility.

Agency Response: The agency disagrees that additional rule language should be added for funding purposes. The 2020-2021 SAAH includes language that allows students participating in an 18+ transition program to generate full-day or half-day funding for work-based learning opportunities that count toward the 2 through 4-hour rule. Specifically, Section 3.2.2, Funding Eligibility #3, of the 2020-2021 SAAH states that to be eligible to generate FSP funding, a student must participate in work-based learning opportunities for at least two hours (half-day attendance) or at least four hours (full-day attendance). Work-based learning opportunities include internships, externships, apprenticeships, and mentorships. (This is not an exhaustive list of work-based learning opportunities.) The funding allowability is for students who participate in a work-based learning opportunity during regular school hours.

Comment: A school district employee requested that Section 3.6.2 of the 2020-2021 SAAH be clarified to indicate the difference between selecting the official attendance-taking time and the alternative attendance.

Agency Response: The agency agrees and has modified Section 3.6.2 of the 2020-2021 SAAH at adoption to include terminology to differentiate selection of the official attendance-taking time and the alternative attendance taking time.

#### *Section 5 - Career and Technical Education (CTE)*

Comment: A school district employee requested that language be added to Section 5.3.1 that addresses the safety and space considerations for the number enrolled in a CTE course.

Agency Response: The agency agrees. At adoption, language was added in Section 5.3.1 of the 2020-2021 SAAH to state that, in determining the number of students to enroll in any course, districts must consider the subject to be taught, the teaching methodology to be used, safety of students and teachers, functional use of available space, and any need for individual instruction.

Comment: A school district employee commented that examples in 5.12.4, 5.12.6, and 5.12.8 are missing the length of time for the class period. Specifically, the commenter stated the examples are missing the time for the assigned code V1 and that the code should be added to the example.

Agency Response: The agency agrees. At adoption, the examples in 5.12.4, 5.12.6, and 5.12.8 of the 2020-2021 SAAH were modified to refer to the V codes table in Section 5.5, CTE Codes,

that lists the average minutes per day for CTE courses and the corresponding CTE codes.

Comment: Twelve school district employees and three individuals commented in opposition to removing information related to CTED courses. One of the commenters additionally stated that while they understand the importance of providing the least restrictive environment for all students, there are some educational settings and situations where a CTED class is the best option. One commenter stated that removing CTED would impact many students who cannot be served in mainstream classrooms due to physical limitations. One commenter stated that students served in CTED courses learn real life skills they could use on a job site and in a home setting. Another commenter stated that the proposed change would affect the commenter's district disproportionately because it has a high number of special education students enrolled in a CTED program.

Agency Response: The agency disagrees that references to the CTED courses should remain. The CTED course codes were eliminated several years ago. All students must have access to all of the curriculum in the least restrictive environment. A student should be placed in appropriate CTE courses with accommodations or modifications to provide the most appropriate instructional setting based on the needs of the student determined by the admission, review, and dismissal committee.

Comment: A school district employee commented that example 14 in Section 5.12.14 should be deleted because it is covered elsewhere in the 2020-2021 SAAH.

Agency Response: The agency disagrees and has maintained language as proposed. The example in 5.12.14 and other examples in the 2020-2021 SAAH are provided to assist districts and charter schools with an understanding of various scenarios they may encounter.

Comment: A school district employee commented that the requirements for Career Preparation in Section 5.7.1 of 2020-2021 SAAH should be the same as for Practicum courses in 5.7.2. The commenter further stated that the classroom requirement should not be one hour per day for Career Preparation and a combination for practicum courses. Also, the representative commented that Career Preparation courses and practicum courses should be a combination of two hours per day for two credits and three hours per day for three credits.

Agency Response: The agency disagrees that the requirements for Career Preparation and Practicums should be changed and has maintained the 1-hour-per-day classroom instruction requirement for Career Preparation courses. The Career Preparation courses provide opportunities for students to participate in a work-based learning experience that combines classroom instruction with business and industry employment experiences (paid or unpaid). The goal is to prepare students with a variety of skills for a changing workplace. The work-based learning experience may not always be aligned to the student's program of study. One hour of classroom instruction is required per day (on average) to develop general employability skills over the period of the school year.

#### *Section 6 - Bilingual/English as a Second Language (ESL)*

Comment: A school district employee commented that Section 6.2.1 of the 2020-2021 SAAH states that parents can request a change in the HLS and omits the two-week enrollment requirement for the HLS.

Agency Response: The agency disagrees and has maintained language as proposed. Section 6.2.1 of the 2020-2021 SAAH does not refer to parents requesting a change to the HLS or a two-week enrollment requirement for the HLS. Instead, Section 6.2 #1, provides that parents may request a correction to the HLS only if the child has not been assessed for English proficiency and that the procedures must be completed within four weeks of a student's initial enrollment in a Texas public school.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.055(b)(35), which states that the commissioner shall perform duties in connection with the Foundation School Program (FSP) as prescribed by the TEC, Chapter 48; TEC, §25.081, as amended by HB 3, 86th Texas Legislature, 2019, which states that for each school year, each school district must operate for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses, for students. TEC, §25.081(d), authorizes the commissioner to adopt rules to implement the section. TEC, §25.081(g), states that a school district may not provide student instruction on Memorial Day but that if a school district would be required to provide student instruction on Memorial Day to compensate for minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the number of minutes required under TEC, §25.081(a); TEC, §25.0812, which states that school districts may not schedule the last day of school for students before May 15; TEC, §25.087, which requires that a school district excuse a student who is 17 years of age or older from attending school to pursue enlistment in a branch of the armed services of the United States or the Texas National Guard, provided that (1) the district may not excuse for this purpose more than four days of school during the period the student is enrolled in high school; and (2) the district verifies the student's activities related to pursuing enlistment in a branch of the armed services or the Texas National Guard. The statute requires each school district to adopt procedures to verify a student's activities as described by TEC, §25.087(b-5); TEC, §29.0822, which enables a school district to provide a program under this section that meets the needs of students described by TEC, §29.0822(a), for a school district that meets application requirements, including allowing a student to enroll in a dropout recovery program in which courses are conducted online. TEC, §29.0822, authorizes the commissioner to adopt rules for the administration of the section; TEC, §30A.153, as amended by HB 3, 86th Texas Legislature, 2019, which states that, subject to the limitation imposed under the TEC, §30A.153(a-1), a school district or open-enrollment charter school in which a student is enrolled is entitled to funding under the TEC, Chapter 48, or in accordance with the terms of a charter granted under the TEC, §12.101, for the student's enrollment in an electronic course offered through the state virtual school network in the same manner that the district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course. TEC, §30A.153(d), authorizes the commissioner to adopt rules necessary to implement the section, including rules regarding student attendance accounting; TEC, §48.004, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that the commissioner shall adopt rules, take action, and require reports consistent with the TEC, Chapter 48, as necessary to implement and administer the FSP; TEC, §48.005, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that average daily

attendance (ADA) is the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under the TEC, §25.081(a), divided by the minimum number of days of instruction. TEC, §48.005(m), authorizes the commissioner to adopt rules necessary to implement the section; TEC, §48.102, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that for each student in average daily attendance in a special education program under the TEC, Chapter 29, Subchapter A, in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.15. For each full-time equivalent student in average daily attendance in a special education program under the TEC, Chapter 29, Subchapter A, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to its instructional arrangement; TEC, §48.103, as added by HB 3, 86th Texas Legislature, 2019, which states that for each student that a district serves who has been identified as having dyslexia or a related disorder, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 or a greater amount provided by appropriation; TEC, §48.104, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that for each student who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.2 or, if the student is educationally disadvantaged, 0.275. For each full-time equivalent student who is in a remedial and support program under TEC, §29.081, because the student is pregnant, a district is entitled to an annual allotment equal to the basic allotment multiplied 2.41; TEC, §48.105, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that for each student in average daily attendance in a bilingual education or special language program under the TEC, Chapter 29, Subchapter B, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1 or 0.15 if the student is in a bilingual education program using a dual language immersion/one-way or two-way program model, and for students not described in subdivision (1), 0.05 if the student is in bilingual education program using a dual language immersion/two-way program model; TEC, §48.106, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which states that for each full-time equivalent student in average daily attendance in an approved career and technology education program in Grades 7-12 or in career and technology education programs, a district is entitled to an annual allotment equal to the basic allotment multiplied by a weight of 1.35 and \$50 for each student that is enrolled in two or more advanced career and technology classes for a total of three or more credits; a campus designated as a P-TECH school under TEC, §29.556; or a campus that is a member of the New Tech Network and that focuses on project-based learning and work-based education; and TEC, §48.108, as added by HB 3, 86th Texas Legislature, 2019, which states that for each student in average daily attendance in kindergarten through third grade, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 if the student is educationally disadvantaged or a student of limited English proficiency, as defined by TEC, §29.052, and in bilingual education or special language program under TEC, Chapter 29, Subchapter B.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.055(b)(35); 25.081, as amended by HB 3, 86th Texas Legislature, 2019; 25.0812; 25.087; 29.0822; and 30A.153, 48.004, 48.005, 48.102, 48.103, 48.104, 48.105, 48.106, and 48.108, as added or transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 29, 2020.

TRD-202004528

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: November 18, 2020

Proposal publication date: August 28, 2020

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



## TITLE 22. EXAMINING BOARDS

### PART 10. TEXAS FUNERAL SERVICE COMMISSION

#### CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

##### SUBCHAPTER A. LICENSING

###### 22 TAC §203.8

The Texas Funeral Service Commission (Commission) adopts amendments to §203.8(g), relating to the number of in person continuing education hours that need to be completed by the time of license renewal. The amended section is adopted without changes to the proposed text as published in the September 18, 2020, issue of the *Texas Register* (45 TexReg 6570). The rule will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION: The adopted amendments/peal to Chapter 203, Subchapter A are necessary to comply with statutory changes made during the 86th Legislative Session in HB 1540, as directed by the Texas Sunset Advisory Commission, or as requested by stakeholders to clarify the rules. The adopted amendments also address challenges arising from the COVID-19 pandemic by removing the requirement of in-person continuing education requirements and only requiring 16 hours of continuing education units (CEU).

PUBLIC COMMENTS: There have been no comments submitted regarding this adoption.

CHANGES TO PUBLISHED TEXT: The amended section is adopted, in part, to correct the details of the number of specific CEU that are required to be completed for license renewal, with regard to the modality of the CEU hours. Since the onset of the COVID-19 health crisis, in-person continuing education hours cannot be completed without risk to the presenter and the participants. Therefore, it is the position of the Commission

to remove the in-person continuing education hour requirement and only require a total of 16 hours of CEU be completed prior to a license renewal. This adoption has no impact on the requirements presented in §203.8(f).

STATUTORY AUTHORITY: This proposal is made pursuant to (1) Texas Occupations Code §651.152, which authorizes the Commission to adopt rules considered necessary for carrying out the Commission's work; (2) Texas Occupations Code §651.2, which authorizes the Commission to renew licenses; (3) Texas Occupations Code §§651.255-651.256, which outline exams required to be licensed as a funeral director or embalmer; (4) Texas Occupations Code §651.259, which authorizes the Commission to reciprocate licenses from other states; (5) Texas Occupations Code §651.265, which authorizes the Commission to renew licenses in active/inactive status; (6) Texas Occupations Code §651.266, which authorizes the Commission to adopt rules related to continuing education; (7) Texas Occupations Code §651.3045, which authorizes the Commission to offer education waivers to certain applicants; and (8) Texas Occupations Code Chapter 55, which outlines requirements for occupational licensing of military members, veterans and spouses.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 2, 2020.

TRD-202004570

Glenn A. Bower

Executive Director

Texas Funeral Service Commission

Effective date: November 22, 2020

Proposal publication date: September 18, 2020

For further information, please call: (512) 936-2469



###### 22 TAC §203.16

The Texas Funeral Service Commission (Commission) adopts amendments to §203.16, relating to Consequences of Criminal Convictions. The amended section is adopted without changes to the proposed text as published in the September 18, 2020, issue of the *Texas Register* (45 TexReg 6572). The rule will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION: The amended section is adopted, in part, to bring the rule in alignment with Texas Occupation Code §53.021. The Texas State Auditor Office and the Office of the Attorney General have placed requirements on all the state agencies to bring their rules in alignment with Occupations Code §53.021 so that the individual agency rules do not conflict or contradict the state code.

PUBLIC COMMENTS: There have been no comments submitted regarding this adoption.

STATUTORY AUTHORITY: This proposal is made pursuant to (1) Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, (2) Texas Occupations Code Chapter 53, which outlines how a licensing agency may review criminal backgrounds of applicants and li-



censees in accordance with changes made when the 86th Texas Legislature enacted HB 1342 and SB 1217; and (3) the authority of the Commission to issue licenses pursuant to Texas Occupations Code §§651.251-253.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 2, 2020.

TRD-202004573

Glenn A. Bower

Executive Director

Texas Funeral Service Commission

Effective date: November 22, 2020

Proposal publication date: September 18, 2020

For further information, please call: (512) 936-2469



## PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

### CHAPTER 361. ADMINISTRATION

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 22 TAC §361.6

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 Texas Administrative Code §361.6 without changes to the proposed text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4474).

##### REASONED JUSTIFICATION

The board sets license fees in amounts that are reasonable and necessary to cover the cost of administering Texas Occupations Code Chapter 1301. The amendment to §361.6, concerning fees, is in response to a need to remove barriers for those who may wish to establish a plumbing business. Fees for Journeyman and Master Plumber licenses in Texas are significantly lower than the national average. The Responsible Master Plumber endorsement is in addition to the cost of a Master Plumber license and establishes that a Master Plumber holds the required insurance and license to contract and offer to perform plumbing work for the general public.

##### PUBLIC COMMENT

The Board published the proposed amendments to 22 Texas Administrative Code §361.6 in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4474). No comments were received. A public hearing in accordance with Texas Government Code §2001.029 was not required.

##### STATEMENT OF AUTHORITY

Amended §361.6 is adopted under the authority of §1301.251(2) of the Texas Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce chapter 1301 of the Occupations Code (Plumbing License Law) and under the authority of, and to implement Plumbing License Law §1301.253, concerning fees. This adoption affects the Plumbing License Law.

No other statute is affected by the adoption of this rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 29, 2020.

TRD-202004527

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Effective date: November 18, 2020

Proposal publication date: July 24, 2020

For further information, please call: (512) 936-5200



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

### CHAPTER 681. PROFESSIONAL COUNSELORS

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 22 TAC §§681.2, 681.4, 681.5, 681.9, 681.11

The Texas Behavioral Health Executive Council adopts amended §§681.2, 681.4, 681.5, 681.9, and 681.11, relating to General Provisions. Sections 681.4, 681.5, 681.9, and 681.11 are adopted without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4876) and will not be republished. In response to public comments requesting the definition for Recognized Religious Practitioner not be repealed, §681.2 is being changed and adopted as republished below.

##### Reasoned Justification.

The amended rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

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 amended rules are the definitions for the rules in Chapter 681 and pertain to the general operations for the Texas State Board of Examiners of Professional Counselors; the rules also incorporate changes necessary to implement H.B. 1501. Therefore, these rules are 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 the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may adopt these rules.

List of interested groups or associations against the rule.

American Art Therapy Association - §681.2(9)

Texas Association of Psychological Associates - §681.2(18)

Texas Counseling Association - §681.2(19)

Summary of comments against the rule.

A commenter recommends including art therapy in the definition for counseling-related field in §681.2(9) for consistency and clarity.

Commenters expressed their disapproval of the change of the term LPC Intern to LPC Associate, as listed in §681.2(18), pertaining to definitions, and reflected elsewhere throughout these rules. Commenters felt the term associate would be misleading or confusing, and felt the term intern was more accurate.

Commenters requested the definition for Recognized Religious Practitioner not be repealed from §681.2. A commenter opined that this definition was important because it provided notice that in order for individuals to meet this exemption, in their provision of counseling related support, they need to be affiliated with a legally recognized religious organization. Commenters also felt retaining this definition would maintain consistency with other rules.

A commenter questioned why §681.2 retained the definition for the Board when, as the commenter opined, the Executive Council has replaced it.

A commenter was concerned that changing the requirement that a consent for services must be signed, to it must be executed, would cause confusion in §681.2.

A commenter opined that removing the requirement for a quorum and the use of Robert's Rules of Order when the Board took action in §681.4 was not a good thing, and the commenter believes that it removes some due process.

List of interested groups or associations for the rule.

Texas Counseling Association - §681.2(18)

Summary of comments for the rule.

Commenters expressed their support for the change of the term LPC Intern to LPC Associate, as listed in §681.2, pertaining to definitions, and reflected elsewhere throughout these rules. Commenters felt the term associate will be more accurately reflect an individual's skills and qualifications to practice.

Agency Response.

The Executive Council declines to include art therapy in the definition for counseling-related field in §681.2(9) because art therapy is already defined in §681.2(3).

The Executive Council believes LPC Associate will more accurately reflect an individual's skills and qualifications to practice, and therefore will proceed with adopting the change in §681.2(18), and all other corresponding rules where this term is used.

The Executive Council agrees there will be a benefit to keeping the definition for Recognized Religious Practitioner listed in §681.2(19), and agrees not to repeal the definition. The Executive Council also acknowledges that §801.2(22) contains an almost identical definition, so keeping the definition will also be helpful for clarity and consistency.

The Executive Council declines to delete the definition of the Board in §681.2(4) because the Board still exists and was not replaced as the commenter asserts.

The Executive Council declines to change the term executed back to signed in §684.2(7), pertaining to consent form. This amendment was discussed at the Board's July 9, 2020, public meeting, and the intent of this change was to make this definition clearer. The Executive Council agrees that this change provides greater clarity and therefore adopts this rule without any changes.

The Executive Council declines to make any changes to §681.4, pertaining to transaction of official business. A quorum of Board members is still required by this rule, as well as by other applicable Texas statutes. Additionally, the Board is not required to adopt Robert's Rules of Order and sees no benefit in doing so, therefore the Executive Council declines to amend this rule as requested.

Statutory Authority.

The rules are adopted 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 adopts these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are 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 adopts these rules 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 these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt these rules.

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

§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 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 adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004558

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



**22 TAC §§681.10, 681.12 - 681.17**

The Texas Behavioral Health Executive Council adopts the repeal of §§681.10, 681.12 - 681.17, relating to the Board, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4879). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

**Reasoned Justification.**

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists,

professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

Texas Counseling Association - §681.13 and §681.16

Summary of comments against the rule.

Commenters requested §681.13, pertaining to impartiality and non-discrimination for Board determinations, not be repealed. Commenters opined that even though other laws would prohibit the Board from failing to be impartial or non-discriminatory, the commenters felt it would be beneficial to retain this rule.

Commenters requested §681.16, pertaining to petition for adoption of a rule, not be repealed. Commenters opined that keeping this rule will allow such petitions to be submitted directly to the Board, instead of first through the Executive Council.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The Executive Council declines to retain §681.13. The Executive Council has already adopted a rule that addresses Council and Board member recusals, if one cannot be impartial, see §881.5.

And the Executive Council has already adopted and posted its Compact with Texans which states the agency's commitment to non-discrimination and reasonable accommodations.

The Executive Council declines to retain §681.16. The Executive Council has already adopted a rule that addresses petitions for rulemaking, see §881.21. Additionally, the Executive Council has already proposed an amendment to §881.21 which states that agency staff will submit to the appropriate member board for review and consideration petitions for rulemaking which involves any matters set forth in §507.153(a) of the Tex. Occ. Code.

Statutory Authority.

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

In accordance with §503.2015 of the Tex. Occ. Code, the Texas State Board of Examiners of Professional Counselors previously

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004544

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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

◆ ◆ ◆

## SUBCHAPTER B. AUTHORIZED COUNSELING METHODS AND PRACTICES

### 22 TAC §681.31

The Texas Behavioral Health Executive Council adopts the repeal of §681.31, relating to authorized counseling methods and practices, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4880). The rule will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well

as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

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

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004545

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



## SUBCHAPTER B. RULES OF PRACTICE

### 22 TAC §§681.31, 681.41 - 681.47, 681.49 - 681.53

The Texas Behavioral Health Executive Council adopts new §§681.31, 681.41 - 681.47, and 681.49 - 681.53, relating to Rules of Practice. Sections 681.31, 681.42 - 681.47, and 681.49 - 681.53 are adopted without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4881) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §681.41 is being changed and adopted as republished below.

Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

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 new rules pertain to the scope of practice, standards of care, and ethical practice for professional counselors; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are 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 the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may adopt these rules.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter requested §681.31 be amended to include EMDR as a counseling method.

A commenter requested §681.41 be amended to include what the Board will do when unlicensed practice is reported, that the rule is too vague regarding a licensee's duty to make reasonable attempts to remove misleading information, that the duty to update the informed consent with a client should also require a client's signature, and that employees of an agency should be required to maintain records the same as other licensees.

A commenter requested §681.41, pertaining to general ethical requirements, be amended to include prohibitions against licensees discriminating against clients. The commenter opines that it is imperative that the citizens of Texas know that their LPC will not discriminate in the provision of their services.

A commenter wondered about having to list the supervisor's address on the supervisee's cards and marketing. Presumably this comment concerns §§681.41(e) and 681.49.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter appreciated the changes made to the required time period for the retention of records, the commenter opined that this will better match HIPAA requirements. Presumably this comment concerns §681.41(r). The commenter also stated that having the supervisor's name in a different font style or size should be fine as long as it is not 6 point font or smaller, which is the commenter's understanding. Presumably this comment concerns §681.49(h).

Agency Response.

The Executive Council declines to amend §681.31 to specifically list EMDR as a counseling method. The rule is not intended to be an exhaustive list of all counseling methods, techniques, and modalities; and at this time there is not a need to add to the list of examples in this rule.

The Executive Council declines to amend §681.41 as requested. The Executive Council will process complaints filed in accordance with its rules, see §§884.10 - 884.12, and it is unnecessary to list the same in §681.41. The Executive Council does not agree that the rule is too vague in its requirements for licensees to take reasonable action to address misleading information. What a reasonable action will be would have to be determined on a case-by-case basis, depending upon the facts of each scenario, and it would not be possible to create an exhaustive list of all reasonable actions a licensee could or should take given the wide variety of factual scenarios a licensee could encounter regarding misleading information. The Executive Council declines to add any additional requirements to §681.41 that would require additional signatures to a new or amended consent form when changes are made. The rule already requires an informed consent to be executed by the client, and the licensee must then provide written notification of any changes, but the Executive Council does not see then need to require the consent form to be executed again each time a change has to be made. The Executive Council declines to make any changes regarding record maintenance for employees of agencies in §681.41. The employers of licensees would, in all likelihood, be covered by other state and federal laws regarding the maintenance of records and licensees are still required to create appropriate records regarding their services. When a client receives ser-

vices from an agency, such as a hospital, they will typically then return to that agency for their records instead of reaching out to all the individual licensees the client may have seen at the agency, or hospital. Requiring a licensee employed by a hospital to maintain their own set of records would be duplicative and unnecessary.

The Executive Council declines to amend §681.41 to add prohibitions against discriminatory conduct as requested. The current proposal does not address the issues the commenter requests added to the rule, therefore adding any such change would be a substantive change requiring re-proposal. Chapter 503 of the Tex. Occ. Code is the Licensed Professional Counselor Act. This Act, as well as Chapter 507 of the Tex. Occ. Code, grants the Executive Council the legal authority to adopt rules pertaining to LPCs. The Executive Council does not have the legal authority to adopt beyond the scope and authority of these statutes. At this time, it is not clear that the Executive Council has the legal authority to adopt rules as the commenter has requested, therefore the agency must decline, at this time, to amend the rule as requested. Current §882.36 requires licensees to comply with all state and federal laws affecting a licensee's practice. Therefore if a licensee violates the Civil Rights Act, the Americans with Disabilities Act, or any other such law prohibiting discrimination then a licensee could be cited for violating §882.36.

Per §681.41(e) a supervisor's address must be listed in an informed consent, but §681.49(h), pertaining to advertising, does not require a supervisee's marketing to list the supervisor's address, it only requires the supervisor's name to be listed. The Executive Council makes no changes to these rules, it appears the commenter's question and concern about having to list the supervisor's address on the supervisee's cards and marketing has already been addressed.

The Executive Council appreciates the commenters supportive comments for the changes to §681.41(r) regarding the required time period for the retention of records, this was done to align with other rules; and the Executive Council appreciates the commenter's support for repealing the restrictions on font size and style when listing a supervisor and supervisee, per §681.49(h).

Statutory Authority.

The rules are adopted 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 adopts these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code, the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are 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 adopts these rules 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 these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt these rules.

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

*§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 adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004559



Darrel D. Spinks  
Executive Director  
Texas State Board of Examiners of Professional Counselors  
Effective date: November 19, 2020  
Proposal publication date: July 17, 2020  
For further information, please call: (512) 305-7706



## SUBCHAPTER C. CODE OF ETHICS

### 22 TAC §§681.41 - 681.51

The Texas Behavioral Health Executive Council adopts the repeal of §§681.41 - 681.51, relating to code of ethics, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4891). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

#### Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

A commenter wondered if there could be some other requirement than having to list a licensee's full legal name on marketing materials to protect the privacy of licensees. Presumably this comment concerns §681.48.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The Executive Council is adopting the repeal of §681.48, but licensees are still required, per §882.30, to display their license which will have their full name listed. Additionally, any informed consent must include the licensee's name, per §681.2(7). While the Executive Council believes the privacy of licensees is important, the agency also believes it is important that clients know who they are receiving services from, and so a client can file a complaint against a licensee if needed. Therefore, the Executive Council declines to make any rule changes that the commenter is requesting.

Statutory Authority.

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

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004546

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



## SUBCHAPTER C. APPLICATION AND LICENSING

### 22 TAC §§681.71 - 681.73, 681.81 - 681.83, 681.91, 681.93, 681.101, 681.114, 681.141 - 681.143, 681.145, 681.147

The Texas Behavioral Health Executive Council adopts new §§681.71 - 681.73, 681.81 - 681.83, 681.91, 681.93, 681.101,

681.114, 681.141 - 681.143, 681.145, and 681.147, relating to Application and Licensing. Sections 681.71 - 681.73, 681.82, 681.91, 681.93, 681.101, 681.114, 681.141 - 681.143, 681.145, and 681.147 are adopted without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4892) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §681.81 and §681.83 are being changed and adopted as republished below.

#### Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

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 new rules pertain to the qualifications necessary to obtain a license and continuing education requirements for professional counselors; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are 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 the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may adopt these rules.

#### List of interested groups or associations against the rule.

American Art Therapy Association - §§681.73(b), 681.82(c), and 681.83(b)

#### Summary of comments against the rule.

Commenters pointed out that the American Art Therapy Association is in the process of phasing out its approval process for graduate art therapy educational programs, and the Accreditation Council for Art Therapy Education is taking its place; so the commenters request a change or update to §681.73(b).

A commenter requested changes to §681.82(c) to add language to clarify that a professional art therapy license in good standing issued by another jurisdiction will also be deemed as having met all academic requirements if the state license requires a graduate degree from an approved/accredited art therapy program that is substantially equivalent to §681.82 or if it meets the requirements of §681.73.

A commenter requested changes to §681.83(c) to clarify that the additional coursework requirement in that subsection would not apply to applicants holding graduate degrees from approved/accredited degree programs in art therapy.

A commenter opined that §681.91(d) is being interpreted to require LPC-As to be W-2 employees of an LPC-S, and not allowing LPC-As to be independent contractors.

#### List of interested groups or associations for the rule.

None.

#### Summary of comments for the rule.

None.

#### Agency Response.

The Executive Council appreciates the comments regarding §681.73(b) and may initiate rule making proceedings in the future; but since the American Art Therapy Association is still in the process of phasing out its approval of graduate art therapy educational programs the Executive Council declines to make any changes to this rule at this time.

The Executive Council declines to make the requested changes to §681.82(c) and §681.83(c). Art therapy is a specialty designation for a person who holds a license as a professional counselor, see §503.303 of the Tex. Occ. Code. Therefore one must first qualify for an LPC before an art therapy designation can be granted, and therefore by statute the requested revisions to the rules cannot be made.

The Executive Council declines to make any changes to §681.91(d). The only change made from the prior version of §681.91(d) was changing the word intern to associate. No new prohibit against the use of independent contractors was added to this rule. The specific prohibition the commenter opines about is not specifically listed or contained in §681.91(d), therefore no change is needed.

#### Statutory Authority.

The rules are adopted 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 adopts these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are 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 adopts these rules 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 these rules to the

Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt these rules.

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

*§681.81. General Academic Requirements.*

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

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

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

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

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

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

*§681.83. Academic Course Content.*

(a) An applicant who holds a graduate degree in counseling from an accredited school is presumed to have satisfied the academic course content requirements described in this section.

(b) An applicant who holds a graduate degree in a counseling-related field must complete at least one course in each of the following areas:

(1) normal human growth and development - the process and stages of human intellectual, physical, social, and emotional development from prenatal origins through adulthood;

(2) abnormal human behavior - the principles of understanding dysfunction in human behavior or social disorganization;

(3) appraisal or assessment techniques - the principles, concepts, and procedures of systematic appraisal or assessment of an individual's attitudes, aptitudes, achievements, interests, and personal characteristics, which may include the use of both non-testing approaches and test instruments;

(4) counseling theories - the major theories of professional counseling;

(5) counseling methods or techniques - the methods or techniques used to provide counseling treatment intervention including:

(A) counseling individuals; and

(B) the theory and types of groups, including dynamics and the methods of practice with groups;

(6) research - the methods of research which may include the study of statistics or a thesis project;

(7) life style and career development - the theories of vocational choice, career choice and life style, sources of occupational and educational information, and career decision-making processes;

(8) social, cultural, and family issues - the studies of change, ethnic groups, gender studies, family systems, urban and rural societies, population patterns, cultural patterns, and differing life styles;

(9) professional orientation - the objectives of professional organizations, codes of ethics, legal aspects of practice, standards of preparation, and the role identity of persons providing direct counseling treatment intervention; and

(10) practicum (internship) - supervised practicum experience primarily counseling in nature which includes:

(A) At least 300 clock-hours, of which at least 100 hours must be direct client counseling.

(B) Academic credit or other acknowledgment of the practicum/internship must appear on the applicant's official graduate transcript.

(c) The remaining courses needed to meet the 48/60 graduate semester hour requirement must be counseling-related course work in areas directly supporting the development of an applicant's professional counseling skills and must be courses related primarily to professional counseling.

(d) As of August 1, 2017, the following courses must be taken in addition to those outlined in subsection (b) of this section, to meet the 60 semester hour requirement:

(1) addictions counseling; to include, but not limited to, gambling, sexual, eating, alcohol, or drug;

(2) an additional course in counselor ethics; to include records management, an overview of business/family law and professional practice, and the study of current Council rules;

(3) couples, marriage, or family counseling; and

(4) a course in psychopathology to include such content as criteria of psychiatric diagnosis, use of the current Diagnostic and Statistical Manual of Mental Disorders and the theories of psychopathology. The course should also include the basic knowledge of types of psychopharmacological medications.

(e) Passing the National Counselor Exam or National Clinical Mental Health Counselor Exam does not guarantee that Texas state licensure requirements have been satisfied.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004560

Darrel D. Spinks  
Executive Director  
Texas State Board of Examiners of Professional Counselors  
Effective date: November 19, 2020  
Proposal publication date: July 17, 2020  
For further information, please call: (512) 305-7706



## SUBCHAPTER D. APPLICATION PROCEDURES

### 22 TAC §§681.71 - 681.73

The Texas Behavioral Health Executive Council adopts the repeal of §§681.71 - 681.73, relating to application procedures, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4898). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

#### Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules; therefore, the repeal of these rules is necessary to implement H.B. 1501.

#### List of interested groups or associations against the rule repeal.

None.

#### Summary of comments against the rule.

None

#### List of interested groups or associations for the rule.

None.

#### Summary of comments for the rule.

None.

#### Agency Response.

None.

#### Statutory Authority.

The repeal is adopted 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 adopts this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt rules nec-

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004547

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



## SUBCHAPTER D. SCHEDULE OF SANCTIONS

### 22 TAC §§681.201, 681.203 - 681.205

The Texas Behavioral Health Executive Council adopts new §§681.201 and 681.203 - 681.205, relating to Schedule of Sanctions. Sections 681.201, 681.204, and 681.205 are adopted without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4900). These rules will not be republished. Section 681.203 is adopted with changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4900) due to a grammatical error. This rule will be republished.

#### Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council

to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

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 new rules pertain to a schedule of sanctions for professional counselors; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are 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 the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may adopt these rules.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter asked where does the \$5,000 fine in §681.203 go? The commenter requested that the fine be used for a victim compensation for treatment.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

Typically, administrative penalties that are collected by a state agency are paid to the State of Texas. Section 503.407 of the Tex. Occ. Code allows the Executive Council to order a license holder to pay a refund to consumers, but there is no statutory authority for this agency to create a victims' compensation fund for treatment. Therefore the Executive Council declines to amend the rule as requested.

Statutory Authority.

The rules are adopted 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 adopts these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code, the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are 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 adopts these rules 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 these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt these rules.

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

*§681.203. Severity Levels for the Schedule of Sanctions.*

(a) The following are the severity levels for the schedule of sanctions:

(1) Level One--revocation of license. These violations evidence intentional or gross misconduct on the part of the licensee and/or cause or pose a high degree of harm to the public and/or require severe punishment as a deterrent to the licensee, or other licensees. The fact that a license is ordered revoked does not necessarily mean the licensee can never regain licensure.

(2) Level Two--extended suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but may require termination of licensure for a period of not less than one year.

(3) Level Three--moderate suspension of license. These violations are less serious than Level Two violations, but may require termination of licensure for a period of time less than a year.

(4) Level Four--probated suspension of license. These violations do not involve enough harm, misconduct, or need for deterrence to warrant termination of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Probationary terms may be ordered as appropriate.

(5) Level Five--reprimand. These violations involve inadvertent or relatively minor misconduct and/or rule violations.

(b) Licensees who are in violation of a Council rule in this chapter may be subject to an administrative penalty of up to \$5,000 per violation, per day of occurrence, and/or be required to refund all or a portion of the fees received from a consumer.

(c) Supervisors who are in violation of a Council rule in this chapter may be subject to an administrative penalty of up to \$5,000 per violation, per day of occurrence, and/or be required to refund all or a portion of the fees received by the supervisor to his or her LPC Associate(s).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004561

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



## SUBCHAPTER E. ACADEMIC REQUIREMENTS FOR LICENSURE

### 22 TAC §§681.81 - 681.83

The Texas Behavioral Health Executive Council adopts the repeal of §§681.81 - 681.83, relating to academic requirements for licensure, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4902). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

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

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004548

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



## SUBCHAPTER F. EXPERIENCE REQUIREMENTS FOR LICENSURE

### 22 TAC §§681.91, §681.93

The Texas Behavioral Health Executive Council adopts the repeal of §681.91 and §681.93, relating to experience requirements for licensure, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4903). The repealed rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

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

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

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

to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this repeal.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004549

Darrel D. Spinks

Texas State Board of Examiners of Professional Counselors

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



## SUBCHAPTER G. LICENSURE EXAMINATIONS

### 22 TAC §§681.101 - 681.103

The Texas Behavioral Health Executive Council adopts the repeal of §§681.101 - 681.103, relating to licensure examinations, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4904). The repealed rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

#### Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

A commenter is concerned that the repeal of §681.103 will place limits on the amount of times an applicant can retake an examination for licensure.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The Executive Council declines to retain this rule or make the commenter's requested changes. Rule §681.103 must be repealed because it has already been replaced by rule §882.6, regarding limitation on number of examination attempts. While rule §882.6 does state an application will be denied if an examination is failed three times, the rule allows for applicants to reapply to take the examination but to do so a detailed study plan designed to address the known or suspected areas of deficiency is required and must be approved by the relevant member board.

Statutory Authority.

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

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004550

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



## SUBCHAPTER H. LICENSING

### 22 TAC §§681.111 - 681.114

The Texas Behavioral Health Executive Council adopts the repeal of §§681.111 - 681.114, relating to licensing, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4905). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

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



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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004551  
Darrel D. Spinks  
Executive Director  
Texas State Board of Examiners of Professional Counselors  
Effective date: November 19, 2020  
Proposal publication date: July 17, 2020  
For further information, please call: (512) 305-7706



## SUBCHAPTER I. REGULAR LICENSE RENEWAL; INACTIVE AND RETIREMENT STATUS

### 22 TAC §§681.121, 681.123 - 681.126

The Texas Behavioral Health Executive Council adopts the repeal of §§681.121, 681.123 - 681.126, relating to regular license renewal; inactive and retirement status, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4907). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

#### Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers.

Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

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

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

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

Lastly, the Executive Council adopts this repeal under the authority found in §2001.004 of the Tex. Gov't Code, which requires

state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004552

Darrel D. Spinks  
Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



## SUBCHAPTER J. CONTINUING EDUCATION REQUIREMENTS

### 22 TAC §§681.141 - 681.143, 681.145 - 681.147

The Texas Behavioral Health Executive Council adopts the repeal of §§681.141 - 681.143 and 681.145 - 681.147, relating to continuing education requirements, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4908). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

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

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004553

Darrel D. Spinks  
Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



## SUBCHAPTER K. COMPLAINTS AND VIOLATIONS

### 22 TAC §§681.161, 681.162, 681.164 - 681.172

The Texas Behavioral Health Executive Council adopts the repeal of §§681.161, 681.162, and 681.164 - 681.172, relating to

complaints and violations, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4909). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

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

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004554

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



## SUBCHAPTER L. FORMAL HEARINGS

### 22 TAC §§681.181, 681.182, 681.184

The Texas Behavioral Health Executive Council adopts the repeal of §§681.181, 681.182, and 681.184, relating to formal hearings, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4911). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

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

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004555

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



## SUBCHAPTER M. SCHEDULE OF SANCTIONS

### 22 TAC §§681.201 - 681.204

The Texas Behavioral Health Executive Council adopts the repeal of §§681.201 - 681.204, relating to schedule of sanctions, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4912). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

Texas Counseling Association - §681.202

Summary of comments against the rule.

Commenters recommend retaining §681.202, pertaining to relevant factors which are considered when assessing a rule violation. Commenters believed that this rule should be retained for clarity in the sanctioning process, and believes this information should be available to licensees and the general public since both can benefit for this information.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The Executive Council declines to retain §681.202. The Executive Council has already adopted a rule that addresses the same issues and subject matter that this prior rule dealt with, see §884.20 pertaining to disciplinary guidelines which applies to all rule violations.

Statutory Authority.

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

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004556

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



## SUBCHAPTER N. PARENTING COORDINATION AND FACILITATION AND CHILD CUSTODY AND ADOPTION EVALUATIONS

22 TAC §§681.251 - 681.253

The Texas Behavioral Health Executive Council adopts the repeal of §§681.251 - 681.253, relating to parenting coordination and facilitation and child custody and adoption evaluations, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4913). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

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

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004557

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



## CHAPTER 781. SOCIAL WORKER LICENSURE

### SUBCHAPTER A. GENERAL PROVISIONS

#### 22 TAC §§781.101, 781.102, 781.202, 781.203, 781.205 - 781.209

The Texas Behavioral Health Executive Council adopts amended §781.101 and §781.102 and new §§781.202 - 781.203, and §§781.205 - 781.209, relating to General Provisions. Sections 781.101, 781.102, 781.202, 781.203, and 781.205 - 781.209 are adopted without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4915). The rules will not be republished.

#### Reasoned Justification.

The amended and new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

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 amended and new rules are the definitions for the rules in Chapter 781 and pertain to the general operations for the Texas State Board of Social Worker Examiners; the rules also incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt these rules.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rules are adopted 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 adopts these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts these rules 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 these rules to the Executive Council. Therefore, the Executive Council has com-

plied with Chapters 505 and 507 of the Texas Occupations Code and may adopt these rules.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004537

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



## SUBCHAPTER B. CODE OF CONDUCT AND PROFESSIONAL STANDARDS OF PRACTICE

### 22 TAC §§781.201 - 781.223

The Texas Behavioral Health Executive Council adopts the repeal of §§781.201 - 781.223, relating to code of conduct and professional standards of practice, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4919). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

#### Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

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

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this repeal.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004530

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



## SUBCHAPTER B. RULES OF PRACTICE

### 22 TAC §§781.301 - 781.313, 781.316 - 781.323

The Texas Behavioral Health Executive Council adopts new rules §§781.301 - 781.313 and 781.316 - 781.323, relating to Rules of Practice. Sections 781.301 - 781.303, 781.306 - 781.311, 781.313, and 781.316 - 781.323 are adopted without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4921) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §§781.304, 781.305, and 781.312 are being changed and adopted as republished below.

Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

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 new rules pertain to the scope of practice, standards of care, and ethical practice for social workers; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt these rules.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rules are adopted 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 adopts these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are specifically authorized by §505.2015 of the Tex. Occ. Code, which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts these rules 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 these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt these rules.

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

§781.304. *Relationships with Clients.*

(a) A social worker shall inform in writing a prospective client about the nature of the professional relationship, which can include but is not limited to office procedures, after-hours coverage, services provided, fees, and arrangements for payment.

(b) The social worker shall not give or receive a commission, rebate, or any other form of remuneration for referring clients. A licensee shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting clients or patronage for or from any health care professional. In accordance with the provisions of the Act, §505.451, a licensee is subject to disciplinary action if the licensee directly or indirectly offers to pay or agrees to accept remuneration to or from any person for securing or soliciting a client or patronage. Payment of credentialing or other fees to insurance companies or other third party payers to be part of an approved provider list shall not be considered as a violation of this chapter.

(c) A social worker shall not enter into a business relationship with a client. This rule does not prohibit a professional social work relationship with a client, as described in this subchapter.

(d) A social worker shall not engage in activities that seek to primarily meet the social worker's personal needs or personal gain instead of the needs of the client.

(e) A social worker shall be responsible for setting and maintaining professional boundaries.

(f) A social worker shall keep accurate records of services to include, but not be limited to, dates of services, types of services, progress or case notes and billing information for a minimum of seven years after the date of termination of services for an adult client or



five years beyond the age of 18 years of age for a minor, whichever is greater.

(g) A social worker shall bill clients or third parties for only those services actually rendered or as agreed to by mutual written understanding.

(h) A licensee shall not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the effectiveness of the licensee's services; the licensee's qualifications, capabilities, background, training, experience, education, professional affiliations, fees, products, or publications; the type, effectiveness, qualifications, and products or services offered by an organization or agency; or the practice or field of social work.

(i) If the licensee learns that false, misleading, deceptive, fraudulent or exaggerated statements about the services, qualifications, or products have been made, the licensee shall take reasonable steps to correct the inappropriate claims, prevent their reoccurrence, and report the incident to the Council.

(j) A licensee shall provide social work intervention only in the context of a professional relationship.

(k) Electronic practice may be used judiciously as part of the social work process and the supervision process. Social workers engaging in electronic practice, providing services to clients located in the State of Texas, must be licensed in Texas and adhere to provisions of this chapter.

(l) The licensee shall not provide social work services or intervention to previous or current family members; personal friends; educational or business associates; or individuals whose welfare might be jeopardized by a dual or multiple relationship.

(m) The licensee shall not accept from or give to a client any gift with a value in excess of \$25. If the licensee's employer prohibits giving or receiving gifts, the licensee shall comply with the employer's policy.

(n) The licensee or relatives to the fourth degree of consanguinity or affinity of the licensee may not intentionally borrow or lend money or items of value to clients or relatives to the fourth degree of consanguinity or affinity of clients.

(o) The licensee shall take reasonable precautions to protect individuals from physical or emotional harm resulting from interaction within individual and group settings.

(p) A licensee shall not promote the licensee's personal or business activities that are unrelated to the current professional relationship.

(q) A licensee shall set and maintain professional boundaries, avoiding dual or multiple relationships with clients. If a dual or multiple relationship develops, the social worker is responsible for ensuring the client is safe.

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

#### *§781.305. Sexual Misconduct.*

##### (a) Definitions.

(1) Sexual contact--Any touching or behavior that can be construed as sexual in nature or as defined by the Texas Penal Code, §21.01, relating to assault.

(2) Therapeutic deception--A licensee's act or statement representing that sexual contact or sexual exploitation between the

licensee and a client or client group is a valid part of the treatment process.

(3) Sexual exploitation--A pattern, practice or scheme of exploitation, which may include, but is not limited to, sexual contact with a client.

(b) A licensee shall not engage in sexual contact or sexual exploitation with a client or former client; a supervisee of the licensee; or a student at an educational institution at which the licensee provides professional or educational services.

(c) A licensee shall not practice therapeutic deception of a client or former client.

(d) It is not a defense to a disciplinary action under subsections (a) - (c) of this section, if the person was no longer emotionally dependent on the licensee when the sexual exploitation began, the sexual contact occurred, or the therapeutic deception occurred. It is also not a defense that the licensee terminated services with the person before the date the sexual exploitation began, the sexual contact occurred or the therapeutic deception occurred.

(e) It is not a defense to a disciplinary action under subsections (a) - (c) of this section, if the sexual contact, sexual exploitation, or therapeutic deception with the person occurred with the client's consent; outside appointments with the client; or off the premises the licensee used for appointments with the client.

(f) A licensee shall report sexual misconduct in accordance with Texas Civil Practice and Remedies Code, Chapter 81, relating to sexual exploitation by a mental health services provider. If a licensee has reasonable cause to suspect that a client has been the victim of sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, the licensee shall report the alleged conduct not later than the 30th day after the date the licensee became aware of the conduct or the allegations to:

(1) the prosecuting attorney in the county in which the alleged sexual exploitation, sexual contact or therapeutic deception occurred; and

(2) the Council if the conduct involves a licensee and any other state licensing agency which licenses the mental health services provider.

(3) Before making a report under this subsection, the licensee shall inform the alleged victim of the licensee's duty to report and shall determine if the alleged victim wants to remain anonymous.

(4) A report under this subsection shall contain information necessary to identify the licensee; identify the alleged victim, unless the alleged victim has requested anonymity; express suspicion that sexual exploitation, sexual contact, or therapeutic deception occurred; and provide the alleged perpetrator's name.

(g) The following may constitute sexual exploitation if done for sexual arousal, sexual gratification, or sexual abuse of either the social worker or a person who is receiving or has received the licensee's professional services as a social worker:

(1) sexual harassment, sexual solicitation, physical advances, verbal or nonverbal conduct that is sexual in nature;

(2) any behavior, gestures, comments, or expressions which may reasonably be interpreted as inappropriately seductive or sexual, including making sexual comments about a person's body or making sexually demeaning comments about an individual's sexual orientation, or making comments about potential sexual performance

except when the comment is pertinent to issues of sexual function or dysfunction in counseling;

(3) initiating conversation about the licensee's sexual problems, preferences, or fantasies; or requesting details of sexual history or sexual likes and dislikes when those details are not necessary for counseling;

(4) kissing or fondling, or making any other deliberate or repeated comments, gestures, or physical acts of a sexual nature, even if they are not sexually intimate;

(5) making a request to date;

(6) exposing genitals, anus or breasts; or

(7) encouraging another person to masturbate in the licensee's presence; or the licensee masturbating in front of another person.

§781.312. *Licensees and the Council.*

(a) Any person licensed as a social worker is bound by the provisions of the Act and this chapter and Council rules and statutes.

(b) A social worker shall report alleged misrepresentations or violations of this chapter to the Council.

(c) The licensee shall report any and all employment setting changes to the Council within 30 days.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004538

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



## SUBCHAPTER C. THE BOARD

### 22 TAC §§781.301 - 781.317

The Texas Behavioral Health Executive Council adopts the repeal of §781.301 - 781.317, relating to the Board, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4930) and will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

#### Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules; therefore, the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

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

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this repeal.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 29, 2020.

TRD-202004531

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: November 18, 2020

Proposal publication date: July 17, 2020

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



## SUBCHAPTER C. APPLICATION AND LICENSING

### 22 TAC §§781.401 - 781.406, 781.411, 781.412, 781.414, 781.418, 781.419, 781.508 - 781.510, 781.514

The Texas Behavioral Health Executive Council adopts new §§781.401 - 781.406, 781.411, 781.412, 781.414, 781.418, 781.419, 781.508 - 781.510, and 781.514, relating to Application and Licensing. Sections 781.402, 781.403, 781.405, 781.406, 781.412, 781.414, 781.418, 781.419, 781.508 - 781.510, and 781.514 are adopted without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4931) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §§781.401, 781.404, and 781.411 are being changed and adopted as republished below.

#### Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

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 new rules pertain to the qualifications necessary to obtain a license and continuing education requirements for social workers; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt these rules.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rules are adopted 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 adopts these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are specifically authorized by §505.2015 of the Tex. Occ. Code, which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts these rules 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 these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt these rules.

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

#### §781.401. *Qualifications for Licensure.*

(a) Licensure. The following education and experience is required for licensure as designated. If an applicant for a license has held a substantially equivalent license in good standing in another jurisdiction for one year immediately preceding the date of application, the applicant will be deemed to have met the experience requirement under this chapter.

- (1) Licensed Clinical Social Worker (LCSW).

(A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited institution of higher learning acceptable to the Council, and has documentation in the form of a university transcript of successfully completing a field placement in social work.

(B) Has had 3000 hours of Council-approved supervised professional clinical experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. Council-approved supervised professional experience must comply with §781.404 of this title (relating to Recognition as a Council-approved Supervisor and the Supervision Process) and all other applicable laws and rules.

(C) Has had a minimum of 100 hours of Council-approved supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. Supervised experience must have occurred within the five calendar years immediately preceding the date of LCSW application. If the social worker completed supervision in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification of supervision.

(D) Has passed the Clinical examination administered nationally by ASWB.

(2) Licensed Master Social Worker (LMSW).

(A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited university, and has documentation in the form of a university transcript of successfully completing a field placement in social work.

(B) Has passed the Master's examination administered nationally by ASWB.

(3) Licensed Baccalaureate Social Worker (LBSW).

(A) Has been conferred a baccalaureate degree in social work from a CSWE accredited social work program.

(B) Has passed the Bachelors examination administered nationally by ASWB.

(b) Specialty Recognition. The following education and experience is required for specialty recognitions.

(1) Licensed Master Social Worker-Advanced Practitioner (LMSW-AP).

(A) Is currently licensed in the State of Texas or meets the current requirements for licensure as an LMSW.

(B) While fully licensed as a social worker, has had 3000 hours of Council-approved supervised professional non-clinical social work experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. Council-approved supervised professional experience must comply with §781.404 of this title and all other applicable laws and rules.

(C) Has had a minimum of 100 hours of Council-approved supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. Supervised experience must have occurred within the five calendar years immediately preceding the date of LMSW-AP application. If supervision was completed in another jurisdiction, the social worker must have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification of supervision.

(D) Has passed the Advanced Generalist examination administered nationally by the ASWB.

(2) Independent Non-clinical Practice.

(A) Is currently licensed in the State of Texas as an LBSW or LMSW.

(B) While fully licensed as a social worker has had 3000 hours of Council-approved supervised full-time social work experience over a minimum two-year period, but within a maximum five-year period or its equivalent if the experience was completed in another state. Council-approved supervised professional experience must comply with §781.404 of this title and all other applicable laws and rules.

(C) Has had a minimum of 100 hours of Council-approved supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. Supervised experience must have occurred within the 5 calendar years immediately preceding the date of application for IPR specialty recognition. If supervision was completed in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification.

(c) Applicants for a license must complete the Council's jurisprudence examination and submit proof of completion at the time of application.

§781.404. *Recognition as a Council-approved Supervisor and the Supervision Process.*

(a) Types of supervision include:

(1) administrative or work-related supervision of an employee, contractor or volunteer that is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(2) clinical supervision of a Licensed Master Social Worker in a setting in which the LMSW is providing clinical services; the supervision may be provided by a Licensed Professional Counselor, Licensed Psychologist, Licensed Marriage and Family Therapist, Licensed Clinical Social Worker or Psychiatrist. This supervision is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(3) clinical supervision of a Licensed Master Social Worker, who is providing clinical services and is under a Council-approved supervision plan to fulfill supervision requirements for achieving the LCSW; a Licensed Clinical Social Worker who is a Council-approved supervisor delivers this supervision;

(4) non-clinical supervision of a Licensed Master Social Worker or Licensed Baccalaureate Social Worker who is providing non-clinical social work service toward qualifications for independent non-clinical practice recognition; this supervision is delivered by a Council-approved supervisor;

(5) non-clinical supervision of a Licensed Master Social Worker who is providing non-clinical social work service toward qualifications for the LMSW-AP; this supervision is delivered by a Council-approved supervisor; or

(6) Council-ordered supervision of a licensee by a Council-approved supervisor pursuant to a disciplinary order or as a condition of new or continued licensure.

(b) A person who wishes to be a Council-approved supervisor must file an application and pay the applicable fee.

(1) A Council-approved supervisor must be actively licensed in good standing by the Council as an LBSW, an LMSW, an LCSW, or be recognized as an Advanced Practitioner (LMSW-AP), or hold the equivalent social work license in another jurisdiction. The person applying for Council-approved status must have practiced at his/her category of licensure for two years. The Council-approved supervisor shall supervise only those supervisees who provide services that fall within the supervisor's own competency.

(2) The Council-approved supervisor is responsible for the social work services provided within the supervisory plan.

(3) The Council-approved supervisor must have completed a supervisor's training program acceptable to the Council.

(4) The Council-approved supervisor must complete three hours of continuing education every biennium in supervision theory, skills, strategies, and/or evaluation.

(5) The Council-approved supervisor must designate at each license renewal that he/she wishes to continue Council-approved supervisor status.

(6) The Council-approved supervisor must submit required documentation and fees to the Council.

(7) When a licensee is designated Council-approved supervisor, he or she may perform the following supervisory functions.

(A) An LCSW may supervise clinical experience toward the LCSW license, non-clinical experience toward the Advanced Practitioner specialty recognition, non-clinical experience toward the Independent Practice Recognition (non-clinical), and Council-ordered probated suspension;

(B) An LMSW-AP may supervise non-clinical experience toward the Advanced Practitioner specialty recognition; non-clinical experience toward the non-clinical Independent Practice Recognition; and Council-ordered probated suspension for non-clinical practitioners;

(C) An LMSW with the Independent Practice Recognition (non-clinical) who is a Council-approved supervisor may supervise an LBSW's or LMSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW or LMSW (non-clinical) under Council-ordered probated suspension;

(D) An LBSW with the non-clinical Independent Practice Recognition who is a Council-approved supervisor may supervise: an LBSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW under Council-ordered probated suspension.

(8) The approved supervisor must renew the approved supervisor status in conjunction with the biennial license renewal. The approved supervisor may surrender supervisory status by documenting the choice on the appropriate Council renewal form and subtracting the supervisory renewal fee from the renewal payment. If a licensee who has surrendered supervisory status desires to regain supervisory status, the licensee must reapply and meet the current requirements for approved supervisor status.

(9) A supervisor must maintain the qualifications described in this section while he or she is providing supervision.

(10) A Council-approved supervisor who wishes to provide any form of Council-approved or Council-ordered supervision must comply with the following:

(A) The supervisor is obligated to keep legible, accurate, complete, signed supervision notes and must be able to produce

such documentation for the Council if requested. The notes shall document the content, duration, and date of each supervision session.

(B) A social worker may contract for supervision with written approval of the employing agency. A copy of the approval must accompany the supervisory plan submitted to the Council.

(C) A Council-approved supervisor may not charge or collect a fee or anything of value from his or her employee or contract employee for the supervision services provided to the employee or contract employee.

(D) Before entering into a supervisory agreement, the supervisor shall be aware of all conditions of exchange with the clients served by her or his supervisee. The supervisor shall not provide supervision if the supervisee is practicing outside the authorized scope of the license. If the supervisor believes that a social worker is practicing outside the scope of the license, the supervisor shall make a report to the Council.

(E) A supervisor shall not be employed by or under the employment supervision of the person who he or she is supervising.

(F) A supervisor may not supervise an individual who is related within the second degree of affinity or consanguinity.

(G) A supervisee must have a clearly defined job description and responsibilities.

(H) A supervisee who provides client services for payment or reimbursement shall submit billing to the client or third-party payers which clearly indicates the services provided and who provided the services, and specifying the supervisee's licensure category and the fact that the licensee is under supervision.

(I) If either the supervisor or supervisee has an expired license or a license that is revoked or suspended during supervision, supervision hours accumulated during that time will be accepted only if the licensee appeals to and receives approval from the Council.

(J) A licensee must be a current Council-approved supervisor in order to provide professional development supervision toward licensure or specialty recognition, or to provide Council-ordered supervision to a licensee. Providing supervision without having met all requirements for current, valid Council-approved supervisor status may be grounds for disciplinary action against the supervisor.

(K) The supervisor shall ensure that the supervisee knows and adheres to Subchapter B, Rules of Practice, of this Chapter.

(L) The supervisor and supervisee shall avoid forming any relationship with each other that impairs the objective, professional judgment and prudent, ethical behavior of either.

(M) Should a supervisor become subject to a Council disciplinary order, that person is no longer a Council-approved supervisor and must so inform all supervisees, helping them to find alternate supervision. The person may reapply for Council-approved supervisor status by meeting the terms of the disciplinary order and having their license in good standing, in addition to submitting an application for Council-approved supervisor, and proof of completion of a 40-hour Council-approved supervisor training course, taken no earlier than the date of execution of the Council order.

(N) The Council may deny, revoke, or suspend Council-approved supervisory status for violation of the Act or rules. Continuing to supervise after the Council has denied, revoked, or suspended Council-approved supervisor status, or after the supervisor's supervisory status expires, may be grounds for disciplinary action against the supervisor.

(O) If a supervisor's Council-approved status is expired, suspended, or revoked, the supervisor shall refund all supervisory fees the supervisee paid after the date the supervisor ceased to be Council-approved.

(P) A supervisor is responsible for developing a well-conceptualized supervision plan with the supervisee, and for updating that plan whenever there is a change in agency of employment, job function, goals for supervision, or method by which supervision is provided.

(Q) All Council-approved supervisors shall have taken a Council-approved supervision training course by January 1, 2014 in order to renew Council-approved supervisor status.

(11) A Council-approved supervisor who wishes to provide supervision towards licensure as an LCSW or towards specialty recognition in Independent Practice (IPR) or Advanced Practitioner (LMSW-AP), which is supervision for professional growth, must comply with the following:

(A) Supervision toward licensure or specialty recognition may occur in one-on-one sessions, in group sessions, or in a combination of one-on-one and group sessions. Session may transpire in the same geographic location, or via audio, web technology or other electronic supervision techniques that comply with HIPAA and Texas Health and Safety Code, Chapter 611, and/or other applicable state or federal statutes or rules.

(B) Supervision groups shall have no fewer than two members and no more than six.

(C) Supervision shall occur in proportion to the number of actual hours worked, with a base line of one hour of supervision for every 40 hours worked. If the supervisee works full-time, supervision shall occur on average at least twice a month and for no less than four hours per month; if the supervisee works part-time (at least 20 hours per week), supervision shall occur on average at least once a month and no less than two hours per month. Supervisory sessions shall last at least one hour and no more than two hours per session. No more than 10 hours of supervision may be counted in any one month, or 30-day period, as appropriate, towards satisfying minimum requirements for licensure or specialty recognition.

(D) The Council considers supervision toward licensure or specialty recognition to be supervision which promotes professional growth. Therefore, all supervision formats must encourage clear, accurate communication between the supervisor and the supervisee, including case-based communication that meets standards for confidentiality. Though the Council favors supervision formats in which the supervisor and supervisee are in the same geographical place for a substantial part of the supervision time, the Council also recognizes that some current and future technology, such as using reliable, technologically-secure computer cameras and microphones, can allow personal face-to-face, though remote, interaction, and can support professional growth. Supervision formats must be clearly described in the supervision plan, explaining how the supervision strategies and methods of delivery meet the supervisee's professional growth needs and ensure that confidentiality is protected. The plan must be approved by the Council.

(E) Supervision toward licensure or specialty recognition must extend over a full 3000 hours over a period of not less than 24 full months and a period of not more than 48 full months for LCSW or LMSW-AP or not more than 60 full months for Independent Practice Recognition (IPR). Even if the individual completes the minimum of 3000 hours of supervised experience and minimum of 100 hours of supervision prior to 24 months from the start date of supervision, super-

vision which meets the Council's minimum requirements shall extend to a minimum of 24 full months. A month is a 30-day period or the length of the actual calendar month, whichever is longer.

(F) The supervisor and the supervisee bear professional responsibility for the supervisee's professional activities.

(G) If the supervisor determines that the supervisee lacks the professional skills and competence to practice social work under a regular license, the supervisor shall develop and implement a written remediation plan for the supervisee.

(H) Council-approved supervised professional experience towards licensure must comply with §781.401 of this title (relating to Qualifications for Licensure) and §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition) of this title and all other applicable laws and rules.

(12) A Council-approved supervisor who wishes to provide supervision required as a result of a Council order must comply with this title, all other applicable laws and rules, and/or the following.

(A) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:

(i) submit one supervisory plan for each practice location to the Council for approval by the Council or its designee within 30 days of initiating supervision;

(ii) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;

(iii) ensure that the supervisor submits reports to the Council on a schedule determined by the Council. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and

(iv) notify the Council immediately if there is a disruption in the supervisory relationship or change in practice location and submit a new supervisory plan within 30 days of the break or change in practice location.

(B) The supervisor who agrees to provide Council-ordered supervision of a licensee who is under Council disciplinary action must understand the Council order and follow the supervision stipulations outlined in the order. The supervisor must address with the licensee those professional behaviors that led to Council discipline, and must help to remediate those concerns while assisting the licensee to develop strategies to avoid repeating illegal, substandard, or unethical behaviors.

(C) Council-ordered and mandated supervision timeframes are specified in the Council order.

(c) A licensee who submits one of the following: a Clinical Supervision Plan, a Non-Clinical Supervision Plan, or a Council-Ordered Supervision Plan, to the Council for approval, shall receive a written

response from the Council of either approval or deficiency related to the plan. If no written response is received by the licensee within four weeks of submission of the plan, it is the responsibility of the licensee who has submitted the plan to follow-up with the Council office related to receipt and/or status of the plan within 60 days of submission. If written approval or deficiency is sent to the last known address of the licensee, a Council response related to acceptance of the plan shall be considered to have been sent. Supervision and supervised experience hours are not acceptable to meet minimum requirements towards licensure or specialty recognition or to satisfy the terms of a Council order if not accrued under a Council-approved plan without explicit authorization from the Council.

*§781.411. Temporary License.*

(a) Prior to examination, a licensure applicant may obtain a temporary social work license as long as the applicant meets all the requirements, except the licensing examination, for the license category the applicant seeks.

(b) A person holding a temporary license must take the designated examination within six months of issuance of the temporary license.

(c) The temporary license is valid until the licensee attempts the appropriate examination or the end of the six-month issuance of the temporary license.

(d) A person holding a temporary license must display the license at the licensee's place of business and must use the appropriate licensed title or initials followed by the word "Temporary" in all professional use of the licensee's name.

(e) Should the applicant take and fail the examination, the temporary license is no longer valid. The applicant must immediately cease and desist from using the temporary license and title, and return the license certificate and certificate card to the Council.

(f) Should the applicant pass the examination, the Council will issue the license or specialty recognition. A temporary license holder who has passed the licensing examination continues to be temporarily licensed until the Council issues a regular license or the temporary license expires.

(g) A person who failed the examination and is without a valid temporary license may retake the examination under §781.412 of this title (relating to Examination Requirement).

(h) A temporary license will not be granted to an applicant who has held a temporary license for the same license category previously within his/her lifetime.

(i) An applicant for LCSW or specialty recognition is not eligible for a temporary or provisional license.

(j) Applicants requesting a temporary license must submit the application form and fee required by the Council.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004539

Darrel D. Spinks  
Executive Director  
Texas State Board of Social Worker Examiners  
Effective date: November 19, 2020  
Proposal publication date: July 17, 2020  
For further information, please call: (512) 305-7706



## SUBCHAPTER D. LICENSES AND LICENSING PROCESS

### 22 TAC §§781.401 - 781.419

The Texas Behavioral Health Executive Council adopts the repeal of §§781.401-781.419, relating to licenses and licensing process, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4939) and will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

#### Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules; therefore, the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The repeal is adopted 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 adopts this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules nec-

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

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this repeal.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004532

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



## SUBCHAPTER D. SCHEDULE OF SANCTIONS

### 22 TAC §§781.801, 781.803 - 781.805

The Texas Behavioral Health Executive Council adopts new §§781.801 and 781.803 - 781.805, relating to Schedule of Sanctions. Sections 781.801 and 781.804 are adopted without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4941) and will not be republished. In response to non-substantive changes being requested by the Office of the Texas Governor, §781.803 and §781.805 are being changed and adopted as republished below.

Reasoned Justification.

The new rules are needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional coun-

selors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

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 new rules pertain to a schedule of sanctions for social workers; and incorporate changes necessary to implement H.B. 1501. Therefore, these rules are covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt these rules.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rules are adopted 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 adopts these rules pursuant to the authority found in §507.152 of the Tex. Occ. Code, which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code, the Board previously voted and, by a majority, approved to propose the adoption of these rules to the Executive Council. The rules are specifically authorized by §505.2015 of the Tex. Occ. Code, which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.



The Executive Council also adopts these rules 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 these rules to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt these rules.

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

*§781.803. Severity Levels.*

The following are severity levels for the schedule of sanctions:

(1) Level One--Revocation of license. These violations evidence the licensee's intentional or gross misconduct, cause or pose a high degree of harm to the public, and/or require severe punishment to deter the licensee, or other licensees. The fact that a license is ordered revoked does not necessarily mean the licensee can never regain licensure. The Council may also impose an administrative penalty of not less than \$250 or more than \$5,000 for each Level One violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a financial penalty.

(2) Level Two--Extended suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but require suspension of licensure for a period of not less than one year. The Council may also impose an administrative penalty of not less than \$250 or more than \$4,000 for each Level Two violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(3) Level Three--Moderate suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level Two violations, but require suspension of licensure for some period of time. The Council may also impose an administrative penalty of not less than \$250 or more than \$3,000 for each Level Three violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(4) Level Four--Probated suspension of license. These violations do not involve enough harm, misconduct, or need for deterrence to warrant suspension of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Possible probationary terms are set out as in §781.806 of this title (relating to Probation) and may be ordered as appropriate. The Council may also impose an administrative penalty of not less than \$250 or more than \$2,000 for each Level Four violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(5) Level Five--Reprimand. These violations involve minor misconduct not directly involving the health, safety or welfare of the particular member of the public at issue. The Council may also impose an administrative penalty of not less than \$250 or more than \$1,000 for each Level Five violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

*§781.805. Schedule of Sanctions.*

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

Figure: 22 TAC §781.805

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 29, 2020.

TRD-202004540

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: November 18, 2020

Proposal publication date: July 17, 2020

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



## SUBCHAPTER E. LICENSE RENEWAL AND CONTINUING EDUCATION

### 22 TAC §§781.501 - 781.517

The Texas Behavioral Health Executive Council adopts the repeal of §§781.501 - 781.517, relating to licensing renewal and continuing education, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4943). The rules will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

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

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this repeal.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004533

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



## SUBCHAPTER F. COMPLAINTS AND VIOLATIONS

### 22 TAC §§781.601 - 781.610

The Texas Behavioral Health Executive Council adopts the repeal of §§781.601 - 781.610, relating to complaints and violations, without changes as published in the July 17, 2020, issue

of the *Texas Register* (45 TexReg 4944). The adopted repeals will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

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

In accordance with §505.2015 of the Tex. Occ. Code, the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications neces-

sary 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 to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this repeal.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004534

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



## SUBCHAPTER G. FORMAL HEARINGS

### 22 TAC §§781.701 - 781.704

The Texas Behavioral Health Executive Council adopts the repeal of §§781.701 - 781.704, relating to formal hearings, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4946). The repeals will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

#### Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

List of interested groups or associations against the rule repeal.

None.

Summary of comments against the rule.

None

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

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

In accordance with §505.2015 of the Tex. Occ. Code, the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 of the Tex. Occ. Code, which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this repeal.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004535

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



## SUBCHAPTER H. SANCTION GUIDELINES

### 22 TAC §§781.801 - 781.808

The Texas Behavioral Health Executive Council adopts the repeal of §§781.801 - 781.808, relating to Sanction Guidelines, without changes as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4947). The repeals will not be republished. This adopted repeal corresponds with the adoption of new rules elsewhere in this edition of the *Texas Register*.

#### Reasoned Justification.

The adopted repeal of these rules is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

The Executive Council has adopted new rules, in this and a prior edition of the *Texas Register*, which concern the same subject matter and many of the same details and requirements found in these rules, therefore the repeal of these rules is necessary to implement H.B. 1501.

#### List of interested groups or associations against the rule repeal.

None.

#### Summary of comments against the rule.

None

#### List of interested groups or associations for the rule.

None.

#### Summary of comments for the rule.

None.

#### Agency Response.

None.

#### Statutory Authority.

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

In accordance with §505.2015 of the Tex. Occ. Code, the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to submit the adoption of this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 of the Tex. Occ. Code, which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education require-

ments for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed to adopt this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this repeal.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004536

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: November 19, 2020

Proposal publication date: July 17, 2020

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



## PART 36. COUNCIL ON SEX OFFENDER TREATMENT

### CHAPTER 810. COUNCIL ON SEX OFFENDER TREATMENT

#### SUBCHAPTER A. LICENSED SEX OFFENDER TREATMENT PROVIDERS

##### 22 TAC §810.4

The Council on Sex Offender Treatment (Council) adopts an amendment to Title 22, Texas Administrative Code, §810.4, concerning License Issuance and/or Renewal, in order to provide licensed sex offender treatment providers with the flexibility to obtain additional online continuing education hours for renewal requirements. The amendment to §810.4 is adopted without changes to the proposed text as published in the August 7, 2020, issue of the *Texas Register* (45 TexReg 5501). The rule will not be republished.

#### BACKGROUND AND JUSTIFICATION

The Council is required to adopt rules for procedures and eligibility and other requirements for renewal of a sex offender treatment provider license, including requirements related to continuing education.

At its regularly scheduled meeting on June 12, 2020, the Council approved the amendment to §810.4(7) to increase the maxi-

mum number of allowable online continuing education hours for license renewal from six hours to 12 hours. Online hours accrued to satisfy the continuing education ethics requirement do not count toward the maximum of 12 online hours.

#### COMMENTS

The 31-day comment period ended September 8, 2020.

During this period, the Council received comments regarding the proposed rule from two commenters. A summary of comments relating to the rule and Council's responses follows:

Comment: One commenter was in agreement with the rule change.

Response: No change was made as a result of this comment.

Comment: One commenter was opposed to limiting the number of online continuing education unit hours to just 12 hours. The commenter also stated that due to the current COVID-19 pandemic, it may be difficult for professionals to attend live events.

Response. The Council disagrees and declines to revise the rule in response to this comment.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Occupations Code, §110.158, which authorizes the Council to adopt rules necessary for the performance of its duties; and §110.302, which requires the Council to adopt licensing requirements for sex offender treatment providers.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 2, 2020.

TRD-202004579

Aaron Pierce, PhD, LPC, LSOTP-S  
Chair

Council on Sex Offender Treatment

Effective date: November 22, 2020

Proposal publication date: August 7, 2020

For further information, please call: (512) 231-5721



## TITLE 34. PUBLIC FINANCE

### PART 6. TEXAS MUNICIPAL RETIREMENT SYSTEM

#### CHAPTER 123. ACTUARIAL TABLES AND BENEFIT REQUIREMENTS

The Board of Trustees (Board) of the Texas Municipal Retirement System (TMRS or the System) adopts the repeal of current 34 TAC Chapter 123 (Chapter 123), relating to actuarial tables and benefit requirements, as published in the September 11, 2020, issue of the *Texas Register* (45 TexReg 6320). The repeals will not be republished.

TMRS repeals the following rules: 34 TAC §123.1, Actuarial Tables; 34 TAC §123.2, Supplemental Disability Benefits Not Reduced by Certain Increases in Base Benefit; 34 TAC §123.3,

Month of Credited Service and Year of Credited Service Defined; 34 TAC §123.4, Interest in Calculations of Benefits Based on Completed Service; 34 TAC §123.5, Requirement of Spousal Consent; 34 TAC §123.6, Retirement Benefit Calculation; 34 TAC §123.7, Authority to Make Actuarial Changes; 34 TAC §123.8, Updated Service Credit Calculations.

The Board of TMRS adopts new Chapter 123, relating to actuarial tables and benefit requirements, §§123.1 - 123.8 and §§123.10 - 123.18 without changes to the proposed text as published in the September 11, 2020, issue of the *Texas Register* (45 TexReg 6320). These rules will not be republished. Section 123.9 has been corrected to change "joint and survivor option" to "joint-and-survivor option". This rule will be republished. TMRS adopts the following rules: 34 TAC §123.1, Definitions; 34 TAC §123.2, Bona Fide Termination of Employment; 34 TAC §123.3, Return to Work; 34 TAC §123.4, Month of Credited Service and Year of Credited Service Defined; 34 TAC §123.5, Restricted Prior Service Credit; 34 TAC §123.6, Updated Service Credit Calculations; 34 TAC §123.7, Requirement of Spousal Consent; 34 TAC §123.8, Effect of Divorce; 34 TAC §123.9, Post-Retirement Contributions; 34 TAC §123.10, Payments Due on Death of Retiree or Annuitant; 34 TAC §123.11, Supplemental Disability Benefits Not Reduced by Certain Increases in Base Benefit; 34 TAC §123.12, Affidavits of Heirship for Determination of Payments Due Heirs; 34 TAC §123.13, Beneficiary Causing Death of Member or Annuitant; 34 TAC §123.14, Certain Convicted Elected Officials Ineligible for Retirement Annuity; 34 TAC §123.15, Calculation of Member Supplemental Death Benefits; 34 TAC §123.16, Retiree Supplemental Death Benefit; 34 TAC §123.17, Actuarial Tables; 34 TAC §123.18, Authority to Make Actuarial Changes.

#### BACKGROUND AND PURPOSE

New Chapter 123 is adopted to provide clarification relating to the actuarial tables and benefit requirements under existing benefit plans of TMRS, and to implement and administer certain provisions of Senate Bill 1337 (SB 1337) which was enacted by the 86th Legislature (2019), the TMRS Act (defined below), and Texas Government Code §810.003, relating to Certain Elected Officials Ineligible for Retirement Annuity. Statutes specific to TMRS are found in Title 8, Subtitle G, Chapters 851 through 855, Texas Government Code (the TMRS Act). In addition, Chapter 123 is adopted as a result of TMRS' rule review, which was conducted pursuant to Texas Government Code §2001.039.

Three new Chapter 123 rules (in new §123.17 - Actuarial Tables, §123.11 - Supplemental Disability Benefits Not Reduced by Certain Increases in Base Benefit, and §123.6 - Updated Service Credit Calculations) have been renumbered but otherwise are unchanged from prior rules. The new rules: add definitions for "compensation," "department" and "spouse" (in §123.1); clarify the requirements of bona fide termination of employment for the payment of benefits and describe consequences in the absence of a bona fide termination (in §123.2); clarify various provisions regarding return to work by a retiree, including the suspension of an annuity in certain circumstances (in §123.3); amend the current service credit rule to clarify that service credit will not be granted after termination of employment, unless reemployed by a participating municipality (in §123.4); clarify that restricted prior service credit is used when calculating vesting status of a member and allow the use of a United States Department of Defense certificate or TMRS records of previously refunded service credit to verify service in connection with applications for restricted prior service credit (in §123.5); clarify when spousal consent is not re-

quired, allow reliance on certification of marital status by a member or retiree, and modernize certain exceptions to spousal consent (in §123.7); clarify the effect of divorce with respect to TMRS participants and beneficiary designations (in §123.8); clarify how post-retirement contributions will be handled (in §123.9); clarify who is paid amounts due a deceased retiree or annuitant (in §123.10); allow the use of affidavits for the determination of heirs of a deceased retiree, deceased non-vested member and in various other circumstances and specify the requirements for such affidavits (in §123.12); clarify matters regarding when the System may pay and may not pay benefits where a member's or retiree's death was caused by another person (in §123.13); and clarify how supplemental death benefits are calculated or payable for certain circumstances (in §§123.15 and 123.16).

Additionally, to implement SB 1337, §123.18 repeals several subsections that are no longer necessary regarding authority to make actuarial changes. Further, §123.14 is adopted pursuant to the authority granted to the Board by Section 810.003(j) of the Texas Government Code relating to Certain Elected Officials Ineligible for Retirement Annuity.

No comments were received regarding the adoption of the repeal and new Chapter 123.

### 34 TAC §§123.1 - 123.8

#### STATUTORY AUTHORITY

The repeal of existing Chapter 123 is adopted under Government Code §855.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of the System and Government Code §2001.039, which grants the Board the authority to review and repeal rules after assessment of whether the reasons for initially adopting the rule continue to exist.

#### CROSS-REFERENCE TO STATUTES

Texas Government Code: §§804.051, 810.003, 851.001, 852.103, 852.104, 852.108, 852.109, 853.001, 853.305, 853.401 - 853.404, 854.002 - 854.004, 854.006, 854.104, 854.203, 854.501, 854.504, 854.603 - 854.605, 855.110, 855.402, and 855.407.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004563

Christine M. Sweeney  
Chief Legal Officer

Texas Municipal Retirement System  
Effective date: November 19, 2020

Proposal publication date: September 11, 2020

For further information, please call: (512) 225-3710



### 34 TAC §§123.1 - 123.18

#### STATUTORY AUTHORITY

New Chapter 123 is adopted pursuant to the authority granted under the following provisions of the TMRS Act or the Government Code in addition to Government Code §855.102: (i) Gov-

ernment Code §804.051, which allows the Board to adopt rules to require spousal consent for the selection of any retirement or death benefit other than a benefit payable to the spouse as beneficiary on death of the member or retiree; (ii) Government Code §810.003, which requires the Board to adopt rules and procedures to implement the ineligibility of an elected official convicted of a qualifying felony to receive a service retirement annuity from a public retirement system as set forth in the statute; (iii) Government Code §853.004, which allows the Board to adopt rules necessary or desirable to implement TMRS Act Chapter 853, Creditable Service; (iv) Government Code §854.003, which allows the Board to adopt rules necessary to comply with distributions requirements required for a qualified plan set forth in the Internal Revenue Code; (v) Government Code §854.603, which allows the Board to adopt rules to require proof of compensation and periods of employment for purposes of certain member supplemental death benefits; and (vi) Government Code §855.110, which allows the Board to adopt rules and policies relating to certain actuarial matters.

#### CROSS-REFERENCE TO STATUTES

Texas Government Code: §§804.051, 810.003, 851.001, 852.103, 852.104, 852.108, 852.109, 853.001, 853.305, 853.401 - 853.404, 854.002 - 854.004, 854.006, 854.104, 854.203, 854.501, 854.504, 854.603 - 854.605, 855.110, 855.402, and 855.407.

#### §123.9. Post-Retirement Contributions.

(a) If a contribution that would otherwise be credited to the member's individual account in the system is deposited after the member's effective retirement date for services performed before the effective retirement date, the retirement annuity shall be recalculated in accordance with this section.

(b) The following deposits shall be treated as additional accumulated contributions for purposes of recalculating the retirement annuity:

(1) employee contributions attributable to compensation for services performed while a member of the system but deposited within 2 months after the effective retirement date of the member; and

(2) employee contributions attributable to compensation for services performed while a member of the system but deposited within 2 months after the death of a deceased member.

(c) A retirement annuity subject to this section will be recalculated as of the effective retirement date by taking into account the additional accumulated contributions and the related increases in current service credit and matching credit. The recalculated retirement annuity will be based on the age of the retiree (and the age of the beneficiary in the case of a joint-and-survivor option) as of the effective retirement date.

(d) The recalculated retirement annuity is payable only prospectively beginning with the month following the month in which the retirement system receives the deposit.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2020.

TRD-202004565

Christine M. Sweeney  
Chief Legal Officer  
Texas Municipal Retirement System  
Effective date: November 19, 2020  
Proposal publication date: September 11, 2020  
For further information, please call: (512) 225-3710

