



GOVERNOR GREG ABBOTT

To: Gloria Canseco, Chair  
Darrel Spinks, Executive Director  
Patrick Hyde, General Counsel  
Texas Behavioral Health Executive Council

From: Caleb Gunnels, Counsel  
Regulatory Compliance Division, Office of the Governor

Date: January 18, 2023

Subject: Proposed Title 22 Texas Administrative Code Sections 681.140 (RCD Rule Review #2022-013)

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**I. Syllabus**

The Texas Behavioral Health Executive Council (“council”) proposed new 22 TAC §681.140, which updates and consolidates the continuing education requirements for licensed professional counselors (“LPCs”).<sup>1</sup> The council submitted the proposed rule to the Regulatory Compliance Division (“division”) for review on December 16, 2022.<sup>2</sup> The division invited public comments on the proposed rule for a period ending January 16, 2023, but received no comments. Based on the following analysis, the division has determined that the proposed rule is consistent with state policy, and, thus, proposed new §681.140 is approved by the division and may be finally adopted and implemented.

**II. Analysis**

The council was created in 2019 by the passage of House Bill 1501 during the 86th Regular Legislative Session. That bill transferred the licensing and regulatory functions of the Texas State Board of Social Worker Examiners (“social work board”), the Texas State Board of Examiners of Marriage and Family Therapists (“marriage and family therapy board”), the Texas State Board of Examiners of Professional Counselors (“professional counseling board”), and the Texas State Board of Examiners of Psychologists (“psychology board”) to the new council, but retained those boards as member boards charged with initiating and participating in the

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<sup>1</sup> 47 Tex. Reg. 8226 (2022) (to be codified at 22 TAC §681.140) (proposed Dec. 16, 2022) (Tex. Behavioral Health Exec. Council).

<sup>2</sup> Rule Submission Memorandum from the Texas Behavioral Health Executive Council (Dec. 16, 2022) (22 TAC §681.140) (on file with the Regulatory Compliance Division of the Office of the Governor).

substantive regulation of their respective professions.<sup>3</sup> In service of the council's mission to ensure that behavioral health services and social work practice are provided by qualified and competent practitioners who adhere to established professional standards, House Bill 1501 enacted Section 507.157, Texas Occupations Code, which imbues the council with broad authority to recognize, prepare, or administer required continuing education programs for all of its licensees.<sup>4</sup>

The specific amendments to the continuing education programs for LPCs in proposed new §681.140 originated with the council's Standardization Committee.<sup>5</sup> This committee was established by the council to identify areas where the member boards have similarities and to prepare standardized model rules in order to promote greater efficiencies in agency processes and clearer requirements for all licensees.<sup>6</sup> The Standardization Committee developed the draft continuing education rule that became proposed new §681.140, and the professional counseling board voted to propose the rule to the council.<sup>7</sup> Next, the council approved the rule for proposal, and it was published in the December 16, 2022, issue of the *Texas Register*.<sup>8</sup> Under the same rulemaking process, the council recently proposed, and the division approved, similar continuing education and professional development rules for social work, marriage and family therapy, and psychological licensees.<sup>9</sup>

Proposed new §681.140 consolidates the current continuing education requirements for LPCs found in 22 TAC §§681.141 – 681.145 into a single rule.<sup>10</sup> The proposed new rule establishes the amount and type of continuing education hours that LPCs must complete each license renewal period and provides guidance on acceptable continuing education activities. It also contains a

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<sup>3</sup> Acts of 2019, 86th Leg., R.S., ch. 768 (H.B. 1501).

<sup>4</sup> Texas Behavioral Health Executive Council, *Agency Mission and Philosophy*, <https://www.bhec.texas.gov> (last visited Jan. 6, 2023).

<sup>5</sup> Rule Submission Memorandum from the Texas Behavioral Health Executive Council (Dec. 16, 2022) (22 TAC §681.140), at 2.

<sup>6</sup> *Id.* at 2. The Standardization Committee consists of four council members, one from each member board, and members of the public, e.g. representatives from professional associations, licensees, and members of the public familiar with the professions.

<sup>7</sup> *Id.* at 5.

<sup>8</sup> *Id.* Because this is a continuing education rule, proposed new 22 TAC §681.140 was required to be proposed to the council by the professional counseling board, pursuant to Sections 503.2015(1)(C) and 507.153(a)(1)(C), Texas Occupations Code.

<sup>9</sup> Regulatory Compliance Division Determination Letter and Addendum for Proposed Title 22 Texas Administrative Code Sections 781.501 (RCD Rule Review #2022-004) and 801.261 (RCD Rule Review #2022-005) (Aug. 18, 2022) (on file with the Regulatory Compliance Division of the Office of the Governor); Regulatory Compliance Division Determination Letter for Proposed Title 22 Texas Administrative Code Section 463.35 (RCD Rule Review #2022-011) (Nov. 9, 2022) (on file with the Regulatory Compliance Division of the Office of the Governor). Given the statutory similarities between the member boards and the broad authority granted to the council to promulgate rules related to continuing education requirements, the division's analysis of proposed new 22 TAC §681.140 closely follows the analyses contained in its determination letters approving proposed new 22 TAC §§781.501, 801.261, and 463.35.

<sup>10</sup> Rule Submission Memorandum from the Texas Behavioral Health Executive Council (Dec. 16, 2022) (22 TAC §681.140), at 1-2.

new requirement, based on an existing psychology board rule, that a licensee obtain at least fifty percent of any continuing education offered by a provider from certain kinds of organizations and entities listed in the proposed new rule.<sup>11</sup> Because this new requirement has the potential to limit the amount of continuing education offered by solo or independent providers, the council identified proposed new §681.140 as affecting market competition.<sup>12</sup> In addition, any limitation on the acceptable types of and means of obtaining continuing education may generally affect market competition by functioning as both a barrier to participation in the profession and as a driver of decreases in availability and increases in costs of continuing education. Thus, because of the proposed new rule's impact on market competition pursuant to Section 57.105(d), Texas Occupations Code, the council submitted it to the division for review.<sup>13</sup>

**A. The division finds that proposed new §681.140(a)-(d) is consistent with state policy.**

To begin, proposed new §681.140(a) and (b) establishes minimum and special continuing education hour requirements for LPCs. As under current rules, LPCs must complete 24 hours of continuing education during each two-year license renewal period, but proposed new §681.140(a)(1) increases the current four-hour ethics requirement to six hours.<sup>14</sup> It also adds to these requirements that licensees complete three continuing education hours in cultural diversity or competency. Proposed new §681.140(a)(2) expands the current rule to allow licensees to carry forward to the next license renewal period up to ten additional accrued continuing education hours. Proposed new §681.140(b)(1) maintains the requirement that licensees with supervisory status complete six hours of continuing education in supervision, but now allows such hours to count towards the 24-hour minimum requirement instead of in addition to those required hours. And, proposed new §681.140(b)(2) requires licensees to complete the jurisprudence examination each renewal period, and allows one hour of ethics to be claimed for passing the exam.

Importantly, the new cultural diversity or competency hours and increased ethics hours may all count towards the 24-hour minimum requirement and will not increase the number of continuing education hours that a licensee must presently complete during each license renewal period. Additionally, the council has afforded licensees clarity and maximum flexibility in determining the content of activities that qualify for ethics and cultural diversity or competency hours. Proposed new §681.140(c) and (d) establish broad lists of acceptable cultural diversity, competency, or ethics activities, which are illustrative and not exhaustive. These provisions also similarly align with the continuing education programs for social work and marriage and family therapy licensees as well as the professional development programs for psychologists.<sup>15</sup> As mentioned earlier, Section 507.157, Texas Occupations Code, grants the council broad authority to recognize, prepare, or administer mandatory continuing education programs for its licensees.

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<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* at 6.

<sup>13</sup> *Id.*

<sup>14</sup> 22 TAC §681.141(b) contains the current 24-hour minimum continuing education requirement.

<sup>15</sup> 22 TAC §§781.501 (a), (c), and (d), 801.261(a), (c), and (d), and 463.35(a) establish similar continuing education or professional development requirements, including acceptable ethics and cultural diversity or competency hours.

The proposed rule's new hour requirements will further licensee competency in priority areas determined by the professional counseling board, and in a manner that minimizes their impact on the ability of licensees to obtain continuing education. As such, proposed new §681.140(a)-(d) is a reasonable exercise of the council's authority and is consistent with state policy.

**B. The division finds that proposed new §681.140(f) is consistent with state policy.**

Proposed new §681.140(f) requires LPCs to obtain at least fifty percent of any continuing education offered by a provider from a broad list of certain kinds of organizations and entities or providers approved or endorsed by such organizations and entities. According to the council, this requirement is intended to make sure that at least some of the continuing education that licensees receive is from sources that have a level of organization and oversight available to ensure the quality of the coursework provided.<sup>16</sup> This requirement will alleviate the risk that licensees receive all of their continuing education from one individual or single source provider that has never been reviewed, edited, or vetted by any other individual or organization.<sup>17</sup> Moreover, facilitating some level of review or oversight over provider-offered continuing education in proposed new §681.140(f) appears in line with some of the other types of activities for which licensees may claim continuing education credit for in proposed new §681.140(h), including preparing and giving a presentation, authoring a book or peer reviewed article, and teaching or attending a graduate level course. Each of these activities tend to involve some level of peer review or participant feedback regarding the material or training offered.

The council has crafted the proposed provision in a manner that balances the promotion of quality coursework through oversight with the preservation of flexibility for licensees to take and offer a wide range of continuing education courses. The council modeled the proposed list of providers after a similar list utilized by the psychology board, but expanded that list to be more encompassing through the inclusion of additional entities, such as religious or charitable organizations devoted to improving the mental or behavioral health of individuals, licensees with supervisor status, and hospitals or hospital systems.<sup>18</sup> And, while the proposed list likely covers many current providers, proposed new §681.140(f)(8) also allows solo or independent providers to become part of the list if they are approved or endorsed by one of the entities listed in §681.140(f)(1)-(7). Even if a solo or independent provider chooses not to pursue an approval or endorsement, licensees may still receive up to fifty percent of their continuing education from such a provider.

As previously discussed, Section 507.157, Texas Occupations Code, grants the council broad authority to recognize, prepare, or administer required continuing education programs for its licensees. Contemporaneous with its enactment, the legislature repealed former Section 503.356, Texas Occupations Code, which contained more detailed continuing education requirements and

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<sup>16</sup> Rule Submission Memorandum from the Texas Behavioral Health Executive Council (Dec. 16, 2022) (22 TAC §681.140), at 5.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 3.

tasked the professional counseling board with developing a process to evaluate and approve all continuing education courses.<sup>19</sup> While the repeal removed more prescriptive requirements for how the council is to promote quality continuing education, the council has now decided to promote course quality by setting up continuing education programs wherein at least some continuing education must be delivered through or in affiliation with organizations and entities that may exercise some oversight or review of the material or training. This is a reasonable exercise of the council's broad authority, especially when coupled with the inclusivity and flexibility for providers and licensees built into the requirement, and, thus, proposed new §681.140(f) is also consistent with state policy.

**C. The division finds that proposed new §681.140(h) is consistent with state policy.**

Proposed new §681.140(h) identifies activities that LPCs may complete in order to claim continuing education credit in lieu of receiving training or education from a continuing education provider. The proposed provision's list of acceptable activities includes preparing and giving a presentation, authoring a book or peer reviewed article, teaching or attending a graduate level course, completing a human trafficking prevention course, and self-study. Licensees are capped at claiming five hours of credit for presenting, authoring, and teaching or attending a graduate-level course, one hour for completing a human trafficking prevention course, and one hour for self-study. Under current 22 TAC §681.145(b), credit is not allowed for teaching in a program that is part of a licensee's employment. However, proposed new §681.140(h)(1) and (3) expand the rule to allow credit for preparing and presenting at a continuing education activity or for teaching a graduate level course. Proposed new §681.140(h)(3) alters the allowance of continuing education credit under current §681.145(c) for completing relevant academic work with a passing grade, to allowing credit for attending a graduate-level course.

In undertaking this rulemaking, the council intended to standardize the continuing education requirements for LPCs with those of its other licensees.<sup>20</sup> In developing the recent continuing education rules for social work and marriage and family therapy licensees, the council made the decision to reduce the allowable hours for some activities to reflect, in the council's view, a more appropriate cap and to promote licensees receiving continuing education from multiple sources, which has the potential to enhance and expand licensees' perspectives on their practices.<sup>21</sup> As such, the council mirrored the same credit hour caps adopted under 22 TAC §§781.501(h), 801.261(h), and in proposed new §463.35(g), which were approved by the division. The council now does the same for LPCs in proposed new §681.140(h). These are reasonable aims and well within the council's broad authority in Section 507.157, Texas Occupations Code, to design and

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<sup>19</sup> Section 503.356, Texas Occupations Code, *added by* Acts of 1999, 76th Leg., R.S., ch. 388 (H.B. 3155), *and repealed by* Acts of 2019, 86th Leg., R.S., ch. 768 (H.B. 1501).

<sup>20</sup> Rule Submission Memorandum from the Texas Behavioral Health Executive Council (Dec. 16, 2022) (22 TAC §681.140), at 2.

<sup>21</sup> Agency Response to Request for Additional Information Regarding RCD Rule Reviews #2022-004 and #2022-005 (June 21, 2022), at 3-4 (on file with the Regulatory Compliance Division of the Office of the Governor).

make changes to its continuing education programs as it sees fit. Consequently, proposed new §681.140(h) is consistent with state policy.

**D. The division finds that the remaining provisions of proposed new §681.140 are consistent with state policy.**

Finally, proposed new §681.140(e), (g), (i), (j), and (k) place general parameters on acceptable continuing education for LPCs, explain how continuing education hours will be counted, and establish recordkeeping requirements regarding completed continuing education. The proposed provisions also make the council the final arbiter on whether continuing education relates to the practice of professional counseling and state that it is not council policy to pre-evaluate or pre-approve continuing education providers or hours. Lastly, proposed new §681.140(k) delays the effective date of proposed new §681.140(f) to January 1, 2024, to allow additional time for licensees to comply with the requirements of that subsection.<sup>22</sup> Because each of these proposed new provisions will assist with the council's administration of its continuing education programs and provide notice to licensees of the council's expectations and practices with regard to continuing education, they all support the council's authority in Section 507.157, Texas Occupations Code, and are, thus, consistent with state policy.

**III. Determination**

Based on the above analysis, proposed new §681.140 is approved by the division and may proceed to final adoption and implementation.

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<sup>22</sup> Rule Submission Memorandum from the Texas Behavioral Health Executive Council (Dec. 16, 2022) (22 TAC §681.140), at 6-7.