



GOVERNOR GREG ABBOTT

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

From: Erin Bennett, Director  
Regulatory Compliance Division, Office of the Governor

Date: June 15, 2020

Subject: Proposed Title 22 Texas Administrative Code Section 885.1 (RCD Rule Review #2020-011)

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**I. Preface**

The Texas Behavioral Health Executive Council (“council”) proposed new 22 TAC §885.1, which addresses the council’s fees.<sup>1</sup> The council submitted the proposed rule to the Regulatory Compliance Division (“division”) for review on May 1, 2020. The division invited public comments on the proposed rule for a 30-day period ending June 5, 2020, and received one comment expressing concern regarding the fees charged to psychologists under the proposed rule’s fee structure.

**II. Analysis**

The council proposed new §885.1 in response to House Bill 1501, 86<sup>th</sup> Legislature, Regular Session (2019), which created the council and transferred the licensing and regulatory functions of the psychology, marriage and family therapy, professional counseling, and social work boards to the new council. Proposed §885.1 establishes the fee types and amounts collected by the council. The council submitted proposed §885.1 to the division because the proposed rule’s licensure application and renewal fees create a barrier to the provision of behavioral health services and reduce competition for those services, and, therefore, they affect market competition pursuant to Sections 57.105(d)(1) and (2), Texas Occupations Code.<sup>2</sup>

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<sup>1</sup> Rule Submission Memorandum from the Texas Behavioral Health Executive Council (May 1, 2020), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor). 45 Tex. Reg. 2685 (2020) (to be codified at 22 TAC §885.1) (proposed April 24, 2020) (Tex. Behavioral Health Exec. Council).

<sup>2</sup> Rule Submission Memorandum from the Texas Behavioral Health Executive Council (May 1, 2020), at 3.

Although the fees in proposed §885.1 affect market competition, the council's authority to set and collect fees is clearly established in state statute. Proposed §885.1(a)(3) and (4) require the council to collect fees with licensure applications, renewals, and, in the case of Subdivision (a)(4), examinations in order to fund the Office of Patient Protection and to recover costs associated with processing through Texas.gov. As identified in the proposed rule, Section 101.307, Texas Occupations Code, requires the member agencies of the Health Professions Council, including the council pursuant to Section 101.002, to charge \$5 for applications and \$1 for each year of the renewal period for renewals in order to fund the Office of Patient Protection. And, Section 2054.252(g), Texas Government Code, requires licensing entities to charge an amount, up to \$5 for annual licenses and \$10 for biennial licenses, to cover the costs of the subscription fee imposed on the entity for participation in the Texas.gov project under that section. As illustrated in proposed §885.1(b), the council observes these statutory fee amount requirements and maximums when setting its licensure fees.

Proposed §885.1(b) consists of a fee chart that sets application, renewal, and examination fees for each of the license types issued by the council as well as miscellaneous fees charged by the council. This provision is consistent with Section 507.154, Texas Occupations Code, which directs the council to set fees for licenses issued by the council, license renewals and late renewals, examinations, and any other programs or activities administered by the council for which fees are allowed. In developing these fees, the council began with the current fees charged by the council's member boards, then standardized and increased some of the fees to the extent necessary to generate the amount required by the General Appropriations Act.<sup>3</sup> Among the changes, most of the initial licensure fees are increasing by \$20; the supervisor status application and renewal fees are being standardized to \$50; many of the renewal fees are increasing to \$135; and the miscellaneous fees being charged by the various member boards are now uniform.<sup>4</sup> Although the application and renewal fees in proposed §885.1 vary across license types, the council has acted consistent with Section 507.154 which only requires that the fees be in amounts "reasonable and necessary" to cover the council's costs in administering Chapter 507 and its member boards' licensing acts.

In addition to being included in the chart in proposed §885.1(b), proposed §885.1(c) also sets the renewal fee at one and one-half times the base renewal fee for a licensee whose license has been expired for up to 90 days and two times the base renewal fee for a licensee whose license has been expired for more than 90 days but less than one year. Furthermore, proposed §885.1(c) requires an individual to apply for reinstatement if the individual's license has been expired for one year or more. This provision aligns with Section 507.255, which contains the same enhanced

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<sup>3</sup> *Id.* at 2. Administrative Record for Proposed 22 TAC §885.1 (RCD Rule Review #2020-011), *Email Re: Methodology for BHEC Fee Calculations* (submitted June 1, 2020) (on file with the Regulatory Compliance Division of the Office of the Governor). Rider 18.11, page IX-88, Acts of 2019, 86th Leg., R.S., ch. 1353 (H.B. 1) requires the council to assess or increase fees sufficient to generate \$6,017,084 during Fiscal Year 2021 in order to receive the council's appropriation for that fiscal year. The council used this target amount as well as data on the number of licenses issued and renewed per year in order to develop the fees ultimately proposed in new §885.1(b).

<sup>4</sup> Rule Submission Memorandum from the Texas Behavioral Health Executive Council (May 1, 2020), at 2.

renewal fees for expired licenses and prohibits the renewal of a license that has been expired for one year or more. Proposed §885.1(d) adopts by reference the rules developed by the Office of the Attorney General regarding charges for providing copies of public information requested from the council under Chapter 552, Government Code. As identified in the proposed rule, this provision is consistent with Section 552.262, which requires the use of the Attorney General's rules by state agencies. Finally, proposed §885.1(e) waives licensing and examination fees for certain military service members, veterans, and spouses pursuant to Section 55.009, Texas Occupations Code. Thus, all of the fees and charges included in proposed §885.1 are consistent with state policy as established in state statute.

### **III. Determination**

Because the division has determined that proposed §885.1 is consistent with state policy, the proposed rule is approved by the division and may be finally adopted.