



GOVERNOR GREG ABBOTT

To: Dr. Mark Bronson, President
Patrick Fortner, Executive Director
Christopher Burnett, General Counsel
Texas Board of Chiropractic Examiners

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

Date: May 20, 2020

Subject: Proposed Title 22 Texas Administrative Code Section 73.4 (RCD Rule Review #2020-004)

I. Preface

The Texas Board of Chiropractic Examiners (“board”) proposed new 22 TAC §73.4, which establishes qualifications for continuing education instructors.¹ The Regulatory Compliance Division (“division”) initiated a review of the proposed rule pursuant to Section 57.106(g), Texas Occupations Code, and the board submitted proposed §73.4 to the division for review on April 21, 2020. The division invited public comments on the proposed rule for a 26-day period ending May 18, 2020, but received no comments.

II. Analysis

The board proposed new §73.4 as part of an ongoing effort to rewrite its rules and clarify regulations for licensees and the public.² Since 2015, the board has required certain continuing education courses to be taught by an instructor who (1) holds a current license as a chiropractor or attorney; (2) is a member of the faculty of a chiropractic college; (3) is a qualified health care provider in the subject being taught; or (4) has substantial knowledge, skill, and ability in chiropractic practice.³ Proposed §73.4 would expand these qualifications to apply to instructors

¹ Rule Submission Memorandum from the Texas Board of Chiropractic Examiners (Apr. 21, 2020), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor). 45 Tex. Reg. 1595 (2020) (to be codified at 22 TAC §73.4) (proposed March 6, 2020) (Tex. Bd. Chiropractic Exam’rs).

² Rule Submission Memorandum from the Texas Board of Chiropractic Examiners (Apr. 21, 2020), at 1.

³ 22 TAC §73.1(c)(2)(A)(iii) (2019); *amended in part and transferred by* 40 Tex. Reg. 379 (2015) (transferred to 22 TAC §75.5) (adopted to be effective January 29, 2015); *amended in part and transferred by* 43 Tex. Reg. 6963 (2018) (transferred to 22 TAC §73.1); and *proposed in* 45 Tex. Reg. 1811 (2020) (Tex. Bd. Chiropractic Exam’rs.). Iterations of the rule prior to January 29, 2015, did not include the option to qualify by “substantial knowledge, skill, and ability in chiropractic practice.”

for all continuing education courses, which reflects the board's current practice.⁴ The division initiated a review of the proposed rule because the instructor qualifications have the potential to reduce competition for continuing education courses provided to licensees by limiting who can provide those courses, and, thus, the proposed rule affects market competition pursuant to Section 57.105(d)(2), Texas Occupations Code.

Section 201.356, Texas Occupations Code, requires the board to adopt continuing education requirements for licensees and to evaluate and approve continuing education courses. Although statute does not specifically authorize regulation of instructors, the division agrees with the board that implicit in the board's duty to evaluate and approve continuing education courses is the authority to set minimum competency standards for instructors who teach those courses.⁵ And, given the requirement in Section 201.356(a)(2) that continuing education be "in subjects relating to the practice of chiropractic," it is a reasonable exercise of this authority to ensure that all continuing education instructors can correlate their expertise to chiropractic practice as provided in proposed §73.4.

The first three categories of instructor qualifications in proposed §73.4 are relatively narrow in scope and recognize the eligibility of licensed chiropractors, attorneys, faculty, and other health care providers to offer continuing education instruction pertaining to chiropractic practice. The fourth, broader qualification that an instructor have "substantial knowledge, skill, and ability in chiropractic practice" allows the board to approve as instructors individuals with competency in other fields that affect some aspect of chiropractic practice, consistent with the language in Section 201.356(a)(2). For example, using this qualification, the board routinely approves experts in insurance billing and coding as instructors.⁶ Thus, the limitations on continuing education instructors in proposed §73.4 are not unduly prohibitive and are consistent with state policy as established in the board's governing statute.

III. Determination

Because the division has determined that proposed §73.4 is consistent with state policy, the proposed rule is approved by the division and may be finally adopted.

⁴ Agency Response to Request for Additional Information (May 1, 2020), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor).

⁵ Rule Submission Memorandum from the Texas Board of Chiropractic Examiners (Apr. 21, 2020), at 2.

⁶ Agency Response to Request for Additional Information (May 1, 2020), at 1.