



GOVERNOR GREG ABBOTT

To: Gloria Canseco, Presiding Officer
Darrel Spinks, Executive Director
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Texas Behavioral Health Executive Council

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

Date: November 9, 2022

Subject: Proposed Title 22 Texas Administrative Code Section 463.35 (RCD Rule Review #2022-011)

I. Syllabus

The Texas Behavioral Health Executive Council (“council”) proposed new 22 TAC §463.35, which updates the professional development requirements for psychological licensees.¹ The council submitted the proposed rule to the Regulatory Compliance Division (“division”) for review on October 7, 2022.² The division invited public comments on the proposed rule for a period ending November 7, 2022, 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 §463.35 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, the Texas State Board of Examiners of Marriage and Family Therapists, the Texas State Board of Examiners of Professional Counselors, 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 substantive regulation of their respective professions.³ In service of the council’s mission to ensure that behavioral health services and social work practice are provided by qualified and

¹ 47 Tex. Reg. 6554 (2022) (to be codified at 22 TAC §463.35) (proposed Oct. 7, 2022) (Tex. Behavioral Health Exec. Council).

² Rule Submission Memorandum from the Texas Behavioral Health Executive Council (Oct. 7, 2022) (22 TAC §463.35) (on file with the Regulatory Compliance Division of the Office of the Governor).

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

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.⁴ It is noted that while the other license types regulated by the council use the term “continuing education,” the psychology board uses the term “professional development.”⁵

The specific amendments to the professional development program for psychological licensees in proposed new §463.35 originated with the council’s Standardization Committee.⁶ 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.⁷ The Standardization Committee developed the draft continuing education rule that became proposed new §463.35, and the psychology board voted to propose the rule to the council at their August meeting.⁸ The council then approved the rule for proposal, and it was published in the October 7, 2022, issue of the *Texas Register*.⁹ Under the same rulemaking process, the council recently proposed, and the division approved, similar continuing education rules for social work and marriage and family therapy licensees.¹⁰

Proposed new §463.35 replaces existing §463.35 and establishes the amount and type of professional development hours that psychological licensees must complete each license renewal period and provides guidance on acceptable professional development activities.¹¹ The proposal also broadens an existing requirement that licensees must obtain at least fifty percent of any professional development offered by a provider from an expanded list of provider types.¹²

⁴ Texas Behavioral Health Executive Council, *Agency Mission and Philosophy*, <https://www.bhec.texas.gov> (last visited Oct. 24, 2022).

⁵ Rule Submission Memorandum from the Texas Behavioral Health Executive Council (Oct. 7, 2022) (22 TAC §463.35), at 2.

⁶ *Id.* at 4.

⁷ *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.

⁸ *Id.* at 4; Texas State Board of Examiners of Psychologists, *Video Recording of August 18, 2022, Board Meeting*, <https://www.youtube.com/watch?v=hHF3GUNzqL8> (Aug. 18, 2022), at 1:58:30.

⁹ Rule Submission Memorandum from the Texas Behavioral Health Executive Council (Oct. 7, 2022) (22 TAC §463.35), at 5. Because this is a continuing education rule, proposed new 22 TAC §463.35 was required to be proposed to the council by the psychology board, pursuant to Sections 501.1515(1)(C) and 507.153(a)(1)(C), Texas Occupations Code.

¹⁰ 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). 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 §463.35 closely follows the analysis contained in its determination letter approving proposed new 22 TAC §§781.501 and 801.261.

¹¹ Rule Submission Memorandum from the Texas Behavioral Health Executive Council (Oct. 7, 2022) (22 TAC §463.35), at 1-2.

¹² *Id.* at 3.

Because this requirement has the potential to limit the amount of professional development offered by solo or independent providers, the council identified proposed new §463.35 as affecting market competition.¹³ In addition, any limitation on the acceptable types of and means of obtaining professional development 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 professional development. Thus, because of the proposed rule's impact on market competition pursuant to Section 57.105(d), Texas Occupations Code, the council submitted it to the division for review.¹⁴

A. The division finds that proposed new §463.35(a)-(c) is consistent with state policy.

To begin, proposed new §463.35(a)(1) establishes minimum professional development hour requirements for psychological licensees. It closely follows current §463.35(a), which requires psychological licensees to complete 40 hours of professional development during each license renewal period, six of which must be in ethics, and six of which must be in cultural diversity. Proposed new §463.35(a)(2) allows licensees to carry forward to the next license renewal period up to ten additional accrued professional development hours. And, proposed new §463.35(b) and (c) are comprised of lists, similar to those contained in current rule, of acceptable ethics and cultural diversity or competency hours. Most of proposed new §463.35(a)-(c) reflects current professional development requirements while making it easier for licensees to obtain professional development with the addition of the option to accrue rollover hours. Moreover, the council has afforded licensees maximum flexibility in determining the content of hours that qualify as ethics or cultural diversity or competency hours; even the wide range of acceptable hours in proposed new §463.35(b) and (c) are illustrative and not exhaustive. These provisions are also aligned with the continuing education programs for social work and marriage and family therapy licensees.¹⁵

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. Because the proposed rule's hour requirements will further licensee competency, particularly in certain pre-existing priority areas determined by the psychology board, and in a manner that minimizes their impact on the ability of licensees to obtain professional development, proposed new §463.35(a)-(c) is a reasonable exercise of the council's authority and is consistent with state policy.

B. The division finds that proposed new §463.35(e) is also consistent with state policy.

Proposed new §463.35(e) follows current §463.35(c), which has existed in some form for over thirty years, and requires psychological licensees to obtain at least fifty percent of any

¹³ *Id.* at 5.

¹⁴ *Id.*

¹⁵ 22 TAC §781.501 (a), (c), and (d) and 801.261(a), (c), and (d) establish similar continuing education requirements, including acceptable ethics and cultural diversity or competency hours.

professional development offered by a provider from a broad, and expanded, list of certain kinds of organizations and entities or providers approved or endorsed by such organizations and entities.¹⁶ According to the council, this requirement is intended to make sure that at least some of the professional development that licensees receive is from sources that have a level of organization and oversight available to ensure the quality of the coursework provided.¹⁷ Likewise, the requirement alleviates the risk that licensees receive all of their professional development from one individual or single source provider that has never been reviewed, edited, or vetted by any other individual or organization.¹⁸

The proposed expansion of this longstanding provision balances the promotion of quality coursework through oversight with the preservation of flexibility for licensees to take and offer a wide range of professional development courses. While the proposed list encompasses the types of providers from which licensees must currently obtain at least fifty percent of their professional development, including psychological associations, educational institutions, and government entities, it also adds some new provider types, such as religious and charitable organizations, and allows solo or independent providers to become part of the list if they are approved or endorsed by one of the provider types included in the list. And, 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 professional development 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. Proposed new §463.35(e) updates the psychology board's longstanding means of promoting quality professional development in a manner that increases inclusivity and flexibility for providers and licensees. This is a reasonable exercise of the council's broad authority, and, thus, proposed new §463.35(e) is consistent with state policy.

C. The division finds that proposed new §463.35(g) is consistent with state policy, too.

Proposed new §463.35(g) identifies activities that psychological licensees may complete to claim professional development credit in lieu of receiving training or education from a professional development provider. The proposed list of acceptable activities includes passing the jurisprudence examination, 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, self-study, and providing supervision to supervisees delivering psychological services to individuals residing in a rural mental health discipline Health Professional Shortage Area ("HPSA"). Licensees are capped at claiming five hours of credit for presenting, authoring, and teaching or attending a course and one hour for the

¹⁶ Rule Submission Memorandum from the Texas Behavioral Health Executive Council (Oct. 7, 2022) (22 TAC §463.35), at 5.

¹⁷ *Id.*

¹⁸ *Id.*

jurisprudence examination, human trafficking prevention course, and self-study. Licensees may also claim up to twenty hours of credit for providing supervision to supervisees in a rural mental health discipline HPSA.

This proposed provision generally retains the acceptable activities in current §463.35(e) and (g) and expands the list to include passing the jurisprudence examination, completing a human trafficking prevention course, self-study, and providing supervision in a rural mental health discipline HPSA as an effort to incentivize and reward the delivery of supervised services in underserved areas.¹⁹ Whereas current §463.35(e)(4) and (g)(4) permits professional development credit for authoring or editing a wide range of publication types, proposed new §463.35(g)(3) allows credit only for authoring a book or peer reviewed article. Proposed new §463.35(g) also reduces the credit hour caps for teaching and attending graduate courses, presenting, and authoring to five hours.

In undertaking this rulemaking, the council intended to align the professional development requirements for psychological licensees with those for its other licensees.²⁰ 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.²¹ As such, proposed new §463.35(g) mirrors the same credit hour caps adopted under 22 TAC §§781.501(h) and 801.261(h). These are reasonable aims and well within the council's broad authority in Section 507.157, Texas Occupations Code, to design and make changes to its continuing education programs as it sees fit. Consequently, proposed new §463.35(g) is also consistent with state policy.

D. The division finds that the remaining provisions of proposed new §463.35 are consistent with state policy.

Finally, proposed new §§463.35(d), (f), (h), and (i) place general parameters on acceptable professional development for psychological licensees, explain how professional development hours will be counted, and establish recordkeeping requirements regarding completed professional development. The proposed provisions also make the council the final arbiter on whether professional development relates to the practice of psychology and state that it is not council policy to pre-evaluate or pre-approve professional development providers or hours. Because each of these proposed provisions will assist with the council's administration of its professional development programs and provide notice to licensees of the council's expectations and practices with regard to professional development, they all support the

¹⁹ *Id.* at 2.

²⁰ *Id.*

²¹ 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).

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 §463.35 is approved by the division and may proceed to final adoption and implementation.