



GOVERNOR GREG ABBOTT

To: Gloria Canseco, Presiding Officer
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: July 7, 2022

Subject: Proposed Title 22 Texas Administrative Code Section 781.501 (RCD Rule Review #2022-004) and Proposed Title 22 Texas Administrative Code Section 801.261 (RCD Rule Review #2022-005)

I. Syllabus

The Texas Behavioral Health Executive Council (“council”) proposed new 22 TAC §§781.501 and 801.261, which update and consolidate the continuing education requirements for social work and marriage and family therapy licensees, respectively.¹ The council submitted the proposed rules to the Regulatory Compliance Division (“division”) for review on June 3, 2022. The division invited public comments on the proposed rules for a period ending July 1, 2022, but received no comments. Based on the following analysis, the division has determined that the proposed rules are consistent with state policy, and, thus, proposed new §§781.501 and 801.261 are 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

¹ 47 Tex. Reg. 2088 (2022) (to be codified at 22 TAC §781.501) (proposed Apr. 22, 2022) (Tex. Behavioral Health Exec. Council); 47 Tex. Reg. 2098 (2022) (to be codified at 22 TAC §801.261) (proposed Apr. 22, 2022) (Tex. Behavioral Health Exec. Council); Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §781.501), at 2 (on file with the Regulatory Compliance Division of the Office of the Governor); Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §801.261), at 2 (on file with the Regulatory Compliance Division of the Office of the Governor).

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.² 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.³

The specific amendments to the continuing education programs for social work and marriage and family therapy licensees in proposed new §§781.501 and 801.261 originated with the council’s Standardization Committee.⁴ 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.⁵ The Standardization Committee developed the draft continuing education rules that became proposed new §§781.501 and 801.261, and the social work and marriage and family therapy boards voted to propose the rules to the council at their January meetings.⁶ The council then approved the rules for proposal, and they were published in the April 22, 2022, issue of the *Texas Register*.⁷

Proposed new §781.501 consolidates the current continuing education requirements for social work licensees found in 22 TAC §§781.508-781.510 and 781.514 into a single rule, while proposed new §801.261 similarly consolidates the current continuing education requirements for

² Acts of 2019, 86th Leg., R.S., ch. 768 (H.B. 1501).

³ Texas Behavioral Health Executive Council, *Agency Mission and Philosophy*, <https://www.bhec.texas.gov> (last visited July 1, 2022).

⁴ Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §781.501), at 4; Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §801.261), at 4.

⁵ Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §781.501), at 2; Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §801.261), 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.

⁶ Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §781.501), at 4; Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §801.261), at 4; Texas State Board of Social Worker Examiners, *Minutes of January 7, 2022 Board Meeting*, <https://www.bhec.texas.gov/wp-content/uploads/2022/04/Jan-7-2022-SW-Board-Minutes.pdf> (Jan. 7, 2022), at 2; Texas State Board of Examiners of Marriage and Family Therapists, *Minutes of January 21, 2022 Board Meeting*, <https://www.bhec.texas.gov/wp-content/uploads/2022/04/January-21-2022-MFT-Board-Minutes.pdf> (Jan. 21, 2022), at 3.

⁷ Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §781.501), at 4; Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §801.261), at 4. Because they are continuing education rules, proposed new 22 TAC §§781.501 and 801.261 were required to be proposed to the council by the member boards, pursuant to Sections 502.1515(1) (C), 505.2015(1)(C), and 507.153(a)(1)(C), Texas Occupations Code.

marriage and family therapy licensees found in 22 TAC §§801.263, 801.264, and 801.266.⁸ The nearly identical proposed rules establish the amount and type of continuing education hours that social work and marriage and family therapy licensees must complete each license renewal period and provide guidance on acceptable continuing education activities. They also contain a 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 rules.⁹ 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 §§781.501 and 801.261 as affecting market competition.¹⁰ 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 rules' impact on market competition pursuant to Section 57.105(d), Texas Occupations Code, the council submitted them to the division for review.¹¹

A. The division finds that proposed new §§781.501(a)-(d) and 801.261(a)-(d) are consistent with state policy.

To begin, proposed new §§781.501(a) and (b) and 801.261(a) and (b) establish minimum and special continuing education hour requirements for social work and marriage and family therapy licensees. As under current rules, social work licensees and licensed marriage and family therapists must complete 30 hours of continuing education during each two-year license renewal period, six of which must be in ethics; licensed marriage and family therapist associates must complete 15 hours of continuing education during that same period, six of which must be in ethics.¹² Proposed new §§781.501(a) and 801.261(a) add to these requirements that three of the hours must be in cultural diversity or competency, and

⁸ Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §781.501), at 2; Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §801.261), at 2. The council has proposed the repeal of 22 TAC §§781.508-781.510 and 781.514 and 22 TAC §§801.263, 801.264, and 801.266 concurrent with the proposal of new 22 TAC §§781.501 and 801.261. 47 Tex. Reg. 2090 (2022) (repeal of 22 TAC §§781.508-781.510 and 781.514) (proposed Apr. 22, 2022) (Tex. Behavioral Health Exec. Council); 47 Tex. Reg. 2100 (2022) (repeal of 22 TAC §§801.263, 801.264, and 801.266) (proposed Apr. 22, 2022) (Tex. Behavioral Health Exec. Council).

⁹ Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §781.501), at 3; Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §801.261), at 3; Agency Response to Second Request for Additional Information (June 23, 2022), at 1-2 (on file with the Regulatory Compliance Division of the Office of the Governor). The existing psychology board rule after which proposed new 22 TAC §§781.501(f) and 801.261(f) are modeled is 22 TAC §463.35.

¹⁰ Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §781.501), at 5-6; Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §801.261), at 5-6.

¹¹ *Id.*

¹² 22 TAC §§781.508(a) and (b) and 801.263 contain the current 30-hour and 15-hour minimum continuing education requirements as well as the six-hour ethics requirement.

proposed new §§781.501(b)(1) and 801.261(b)(1) increase the number of hours that a licensee with supervisory status must complete in supervision from three to six.¹³ Proposed new §§781.501(c) and (d) and 801.261(c) and (d) contain identical lists of acceptable ethics and cultural diversity or competency hours.

According to council staff, the addition of cultural diversity or competency hours comes from the recognition in the State Health Plan that the state's mental health provider workforce does not reflect the state's growing diversity and the corresponding need for culturally competent mental health care.¹⁴ And, the increase in supervision hours reflects the high degree of importance that the council ascribes to the role of supervisors and is being done to help ensure supervisors provide appropriate supervision.¹⁵ These changes will also better align the continuing education programs for social work and marriage and family therapy licensees with the program for psychology licensees, which requires six hours of continuing education in cultural diversity, and the program for professional counseling licensees, which requires six hours in supervision.¹⁶

Importantly, the new cultural diversity or competency hours and increased supervision hours may all count toward the 30-hour and 15-hour minimum requirements 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 maximum flexibility in determining the content of hours that qualify as supervision, ethics, and cultural diversity or competency hours; even the wide range of acceptable hours in proposed new §§781.501(c) and (d) and 801.261(c) and (d) are illustrative but not exhaustive. 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 rules' new hour requirements will further licensee competency in priority areas determined by the state and council and in a manner that minimizes their impact on the ability of licensees to obtain continuing education, proposed

¹³ 22 TAC §§781.404(b)(4) and 801.143(h)(1) contain the current three-hour supervision requirement. The council has proposed the repeal of these provisions concurrent with the proposal of new 22 TAC §§781.501 and 801.261. 47 Tex. Reg. 2085 (2022) (amendment to 22 TAC §781.404) (proposed Apr. 22, 2022) (Tex. Behavioral Health Exec. Council); 47 Tex. Reg. 2096 (2022) (amendment to 22 TAC §801.143) (proposed Apr. 22, 2022) (Tex. Behavioral Health Exec. Council).

¹⁴ Texas State Board of Examiners of Marriage and Family Therapists, *Video Recording of January 21, 2022 Board Meeting*, <https://www.youtube.com/watch?v=zm6Of64MKqE> (Jan. 21, 2022), at 1:29:36; Statewide Health Coordinating Council, *2021-2022 Update to the Texas State Health Plan*, at 47, available at <https://www.dshs.state.tx.us/legislative/2021-Reports/2021-2022-Update-Texas-State-Health-Plan.pdf> (last visited July 6, 2022). The Texas State Health Plan is produced by the Texas Statewide Health Coordinating Council to make recommendations to the governor and the legislature to ensure the availability of health care services and facilities to all Texans. Texas Department of State Health Services, *Texas Statewide Health Coordinating Council*, <https://www.dshs.texas.gov/chs/shcc> (last visited July 6, 2022).

¹⁵ Agency Response to Request for Additional Information (June 21, 2022), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor).

¹⁶ 22 TAC §463.35(a) requires six cultural diversity hours for psychology licensees, and 22 TAC §681.141(c) requires professional counseling licensees with supervisory status to complete six hours in supervision.

new §§781.501(a)-(d) and 801.261(a)-(d) are a reasonable exercise of the council's authority in Section 507.157 and consistent with state policy.

While proposed new §§781.501(a)-(d) and 801.261(a)-(d) mirror one another for the most part, proposed new §801.261(b)(2) and (3) additionally require that marriage and family therapy licensees with supervisory status biennially take and pass the jurisprudence examination and that marriage and family therapy licensees who provide telehealth services complete two hours of continuing education in technology-assisted services during each license renewal period. These requirements are already found in current 22 TAC §§801.143(h)(2) and 801.58(d).¹⁷ Given the council's clear statutory authority over continuing education and these proposed provisions' support for the ongoing competency of licensees, they are also consistent with state policy.¹⁸

B. The division finds that proposed new §§781.501(f) and 801.261(f) are also consistent with state policy.

Proposed new §§781.501(f) and 801.261(f) are identical and require that social work and marriage and family therapy licensees 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.¹⁹ 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.²⁰ Moreover, facilitating some level of review or oversight over provider-offered continued education in proposed new §§781.501(f) and 801.261(f) appears in line with some of the other types of activities for which licensees may claim continuing education credit in existing 22 TAC §§781.514 and 801.266 and proposed new §§781.501(h) and 801.261(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

¹⁷ The council has proposed the repeal of these provisions concurrent with the proposal of new 22 TAC §§781.501 and 801.261. 47 Tex. Reg. 2094 (2022) (amendment to 22 TAC §801.58) (proposed Apr. 22, 2022) (Tex. Behavioral Health Exec. Council); 47 Tex. Reg. 2096 (2022) (amendment to 22 TAC §801.143) (proposed Apr. 22, 2022) (Tex. Behavioral Health Exec. Council).

¹⁸ The division previously approved the requirement in 22 TAC §801.58(d) that marriage and family therapy licensees who provide telehealth services complete two hours of continuing education in technology-assisted services during each license renewal period. Regulatory Compliance Division Determination Letter for Proposed Title 22 Texas Administrative Code Section 801.58 (RCD Rule Review #2020-016) (Aug. 13, 2020) (on file with the Regulatory Compliance Division of the Office of the Governor).

¹⁹ Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §781.501), at 5; Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §801.261), at 5.

²⁰ *Id.*

tends to involve some level of peer review or participant feedback regarding the material or training offered.

While the council has received comments expressing concerns about these proposed provisions' potential to limit the amount of continuing education offered by solo or independent providers who do not affiliate with the entities listed in proposed new §§781.501(f) and 801.261(f), the council has crafted the proposed provisions 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.²¹ 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.²² While the proposed list likely covers many current providers, proposed new §§781.501(f)(6) and 801.261(f)(6) also allow solo or independent providers to become part of the list if they are approved or endorsed by one of the entities listed in §§781.501(f)(1)-(5) and 801.261(f)(1)-(5). 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 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 Sections 505.404 and 502.303, Texas Occupations Code, which contained more detailed continuing education requirements and tasked the boards with developing a process to evaluate and approve all continuing education courses.²³ Given the removal of more prescriptive requirements for how the council is to promote quality continuing education, the council has decided to do so 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 of or review 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 §§781.501(f) and 801.261(f) are also consistent with state policy.

²¹ Administrative Record for Proposed 22 TAC §781.501 (RCD Rule Review #2022-004), Public comments (submitted June 3, 2022) (on file with the Regulatory Compliance Division of the Office of the Governor); Administrative Record for Proposed 22 TAC §801.261 (RCD Rule Review #2022-005), Public comments (submitted June 3, 2022) (on file with the Regulatory Compliance Division of the Office of the Governor).

²² Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §781.501), at 3; Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §801.261), at 3; Agency Response to Second Request for Additional Information (June 23, 2022), at 1.

²³ Section 505.404, 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); Section 502.203, 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).

C. The division finds that proposed new §§781.501(h) and 801.261(h) are consistent with state policy, too.

Proposed new §§781.501(h) and 801.261(h) identify activities that social work and marriage and family therapy licensees may complete in order to claim continuing education credit in lieu of receiving training or education from a continuing education provider. The proposed provisions are identical and their lists of acceptable activities include 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, and self-study. Licensees are capped at claiming five hours of credit for presenting, authoring, and teaching or attending a course and one hour for the jurisprudence examination, human trafficking prevention course, and self-study.

While these proposed provisions retain many of the activities in current 22 TAC §§781.514 and 801.266, there are some notable reductions in the types of activities and the amount of credit allowed under the existing rules. With regard to social work licensees, credit will no longer be available for completing a postgraduate training program, serving as a field instructor for a social work intern, or teaching an undergraduate social work course; and, the credit hour caps for teaching and attending graduate courses, presenting, authoring, and passing the jurisprudence examination have all been reduced. And, with respect to marriage and family therapy licensees, credit will no longer be available for providing clinical supervision of a marriage and family therapy intern or licensed marriage and family therapist associate; plus, the credit hour caps for presenting and authoring have been decreased.

The council removed certain activities to prevent “double-dipping,” by which licensees may receive continuing education credit for performing their essential job functions as an instructor or supervisor, or for completing training that also counts for licensure purposes.²⁴ Likewise, the council reduced 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.²⁵ 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, these proposed provisions are also consistent with state policy.

It is worth noting that the addition of self-study as a means to obtain continuing education credit in proposed new §§781.501(h)(5) and 801.261(h)(5) generated a significant amount of concern and confusion among social work licensees, as reflected in the public comments

²⁴ Agency Response to Request for Additional Information (June 21, 2022), at 3-4.

²⁵ *Id.* at 3-5.

submitted to the council.²⁶ Many commenters expressed concern that the one-hour cap on self-study will severely limit the number of continuing education hours that a licensee may receive for attending online or pre-recorded courses.²⁷ However, the council considers self-study to be an entirely new means of obtaining continuing education credit that encompasses activities licensees can complete on their own such as reading research articles or performing independent research.²⁸ The proposed provisions will not limit or reduce the amount of online or pre-recorded courses that a licensee may complete for continuing education, and, in fact, proposed new §801.261 does not retain the 15-hour cap for licensed marriage and family therapists, and the six-hour cap for licensed marriage and family therapist associates, on continuing education delivered through non-live means which is currently found in 22 TAC §801.263(a) and (b).²⁹ Thus, this new one-hour self-study allowance actually increases licensees' options for obtaining continuing education and facilitates licensees' participation in their professional markets rather than posing a potential negative effect on market competition.

D. The division finds that the remaining provisions of proposed new §§781.501 and 801.261 are consistent with state policy.

Finally, proposed new §§781.501(e), (g), (i), and (j) and 801.261(e), (g), (i), and (j) place general parameters on acceptable continuing education for social work and marriage and family therapy licensees, 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 social work or marriage and family therapy and state that it is not council policy to pre-evaluate or pre-approve continuing education providers or hours. Because each of these proposed 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 §§781.501 and 801.261 are approved by the division and may proceed to final adoption and implementation.

²⁶Administrative Record for Proposed 22 TAC §781.501 (RCD Rule Review #2022-004), Public comments (submitted June 3, 2022).

²⁷ *Id.*

²⁸ Agency Response to Request for Additional Information (June 21, 2022), at 5; Agency Response to Second Request for Additional Information (June 23, 2022), at 2.

²⁹ Agency Response to Request for Additional Information (June 21, 2022), at 5.



GOVERNOR GREG ABBOTT

To: Gloria Canseco, Presiding Officer
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: August 18, 2022

Subject: Proposed Title 22 Texas Administrative Code Section 781.501 (RCD Rule Review #2022-004) and Proposed Title 22 Texas Administrative Code Section 801.261 (RCD Rule Review #2022-005)

Addendum

The Texas Behavioral Health Executive Council (“council”) proposed new 22 TAC §§781.501 and 801.261, which update and consolidate the continuing education requirements for social work and marriage and family therapy licensees, respectively.¹ The council submitted the proposed rules to the Regulatory Compliance Division (“division”) for review on June 3, 2022.² On July 7, 2022, the division approved the proposed rules for final adoption and implementation.³ Subsequently, the council provided the division with additional amendments to the proposed rules on July 22, 2022, which clarify certain continuing education requirements and add an additional group of providers to the list of providers from whom licensees must obtain fifty percent of their provider-offered continuing education hours.⁴

¹ 47 Tex. Reg. 2088 (2022) (to be codified at 22 TAC §781.501) (proposed Apr. 22, 2022) (Tex. Behavioral Health Exec. Council); 47 Tex. Reg. 2098 (2022) (to be codified at 22 TAC §801.261) (proposed Apr. 22, 2022) (Tex. Behavioral Health Exec. Council).

² Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §781.501) (on file with the Regulatory Compliance Division of the Office of the Governor); Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §801.261) (on file with the Regulatory Compliance Division of the Office of the Governor).

³ Regulatory Compliance Division Determination Letter for Proposed Title 22 Texas Administrative Code Sections 781.501 (RCD Rule Review #2022-004) and 801.261 (RCD Rule Review #2022-005) (July 7, 2022) (on file with the Regulatory Compliance Division of the Office of the Governor).

⁴ Agency Supplement to Approved Rule Language from the Texas Behavioral Health Executive Council (July 22, 2022) (22 TAC §781.501) (on file with the Regulatory Compliance Division of the Office of the Governor); Agency Supplement to Approved Rule Language from the Texas Behavioral Health Executive Council (July 22, 2022) (22 TAC §801.261) (on file with the Regulatory Compliance Division of the Office of the Governor).

The additional amendments to proposed new §§781.501(h) and 801.261(h) clarify that the requirement that licensees obtain at least fifty percent of their continuing education hours from the list of providers in proposed new §§781.501(f) and 801.261(f) does not apply with respect to the alternative activities for which licensees may receive continuing education credit, including passing the jurisprudence examination, preparing and giving a presentation, and authoring a book or peer reviewed article. The additional amendments to proposed new §§781.501(h)(5) and 801.261(h)(5) also contain a definition of “self-study” to make clear that the term includes activities that licensees can complete on their own such as reading relevant materials but that it does not encompass the individual viewing of or listening to a continuing education program produced by a third party. An additional amendment to proposed new §781.501(h)(4) allows licensed social workers to receive continuing education credit for teaching or attending a university or college level course instead of limiting this means of obtaining credit to graduate level courses as in the initial version of the proposed rule. And, an additional amendment to proposed new §781.501(e)(1) ensures that ten hours of continuing education may roll over to the next licensure renewal period, maintaining consistency with proposed new §781.501(a)(2). As previously discussed in the division’s determination letter, Section 507.157, Texas Occupations Code, imbues the council with broad authority to recognize, prepare, or administer required continuing education programs for its licensees. That authority certainly includes the ability to clarify the operation of the council’s continuing education requirements as accomplished in the majority of the above additional amendments. Moreover, the expansion of the coursework eligible for continuing education credit in proposed new §781.501(h)(4) takes into account that a bachelor’s degree is sufficient for some social work license types as provided for in Section 505.353(b)(2), Texas Occupations Code. Thus, the supplemented versions of proposed new §§781.501(h) and 801.261(h) as well as proposed new §781.501(e)(1) are consistent with state policy.

Most significantly, the additional amendment to proposed new §781.501(f) adds social work licensees who are council-approved supervisors to the list of providers from whom licensees must obtain fifty percent of their provider-offered continuing education hours, while the additional amendment to proposed new §801.261(f) adds graduate-level licensees with supervisor status to the same list. These new amendments are intended to broaden the list of providers to include licensees who have undergone additional vetting and gained pre-approval by the council to supervise and educate associate licensees in their respective practices.⁵ As such, current 22 TAC §§781.404 and 801.143 require licensees seeking supervisor status to fulfill a list of requirements beyond those required for typical licensure, including heightened professional experience, additional continuing education hours, and application for pre-approval from the council. This extra vetting by the council of these supervisor-providers is in accord with the oversight that organizations and entities exercise over the other provider types included in the lists in proposed new §§781.501(f) and 801.261(f). It is also consistent with the council’s goal to alleviate the risk that licensees receive all of their continuing education from one individual or

⁵ Email from Patrick Hyde, General Counsel, Texas Behavioral Health Executive Council, to Erin Bennett, Director, and Caleb Gunnels, Counsel, Regulatory Compliance Division (July 22, 2022, 3:38 PM CST) (on file with the Regulatory Compliance Division of the Office of the Governor).

single source provider that has never been reviewed, edited, or vetted by any other individual or organization.⁶ Furthermore, inclusion of these supervisor-providers makes the proposed rules less restrictive by offering licensees additional opportunities to both obtain and provide continuing education. Ultimately, the additional amendments to proposed new §§781.501(f) and 801.261(f) are a reasonable exercise of the council's statutory authority over continuing education in Section 507.157, Texas Occupations Code, and are consistent with state policy.

In addition to the reasons for previously approving the proposed rules, and based on the reasoning above, proposed new §§781.501 and 801.261, with the changes submitted to the division in the supplemented versions, are consistent with the council's statutory authority. As such, the proposed rules, with the additional amendments, are approved by the division and may be finally adopted and implemented.

⁶ Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §781.501), at 5; Rule Submission Memorandum from the Texas Behavioral Health Executive Council (June 3, 2022) (22 TAC §801.261), at 5.