



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 Sections 882.23-882.27 (RCD Rule Review #2020-010)

I. Preface

The Texas Behavioral Health Executive Council (“council”) proposed new 22 TAC §882.23, which generally requires an individual to be licensed in order to practice psychology, marriage and family therapy, professional counseling, or social work, and new 22 TAC §§882.24-882.27, which contain some exceptions for activities and services that do not require licensure.¹ The council submitted the proposed rules to the Regulatory Compliance Division (“division”) for review on May 1, 2020. The division invited public comments on the proposed rules for a 30-day period ending June 5, 2020, but received no comments.

II. Analysis

The council proposed new §§882.23-882.27 in response to House Bill 1501, 86th 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 (“member boards”) to the new council. Proposed §882.23 prohibits individuals from engaging in or representing that they are engaging in the practice of psychology, marriage and family therapy, professional counseling, or social work unless they are licensed or otherwise authorized to engage in the disciplines by law. Proposed §§882.24-882.27 exempt certain activities and services from the council’s jurisdiction and licensure, and proposed §882.26(b) and (c) specify the criteria that must be met in order for the activity or service of a post-doctoral fellow or resident in psychology to be exempt from the council’s jurisdiction. The current rules

¹ 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. 2655 (2020) (to be codified at 22 TAC §§882.23-882.27) (proposed April 24, 2020) (Tex. Behavioral Health Exec. Council).

for the council's member boards contain similar provisions, but proposed §§882.23-882.27 reflect the council's assumption of licensing authority under Section 507.151, Texas Occupations Code.²

The council submitted proposed §§882.23-882.27 to the division because the proposed rules' licensure requirements create barriers 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.³ However, the licensure requirements in §882.23 are clearly established in state statute. Section 501.251, Texas Occupations Code, requires licensure for individuals to practice psychology; Section 502.251 requires the same for marriage and family therapy; Section 503.301, for professional counseling; and Section 505.351, for social work. Moreover, the exceptions in §882.24, §882.25, §882.26(a), and §882.27 themselves refer to the exceptions in statute of certain activities and services from the respective professions' licensing acts. Because Section 507.151 limits the council's administration and enforcement duties to that chapter and the chapters that make up the member boards' licensing acts, it necessarily follows that any activities and services not subject to those chapters are outside of the council's jurisdiction. Thus, proposed §882.23, §882.24, §882.25, §882.26(a), and §882.27 are consistent with state policy as established in state statute.

Proposed §882.26(b) specifies that a post-doctoral fellow or resident in psychology is exempt from the council's jurisdiction if the individual is enrolled in a formal post-doctoral program, practices as part of the program and under qualified supervision, and is designated by a title that indicates the individual's training status, in alignment with Section 501.004(a)(2). Furthermore, the program must be accredited by the American Psychological Association ("APA"), belong to the Association of Psychology Postdoctoral and Internship Centers ("APPIC"), or be substantially equivalent to such a program by meeting the criteria in proposed §882.26(c). Proposed §882.26(b) and (c) mirror current 22 TAC §461.10(c) and (d), which, according to the council, were adopted to provide clarity about what constitutes the post-doctoral "course of study" in Section 501.004(a)(2)(A), as such programs often take place outside of a university or other higher education setting.⁴ By recognizing APA, APPIC, and substantially equivalent programs, the rules provide clarity while maintaining flexibility with regard to the programs through which an individual may be exempt from licensure. Thus, because proposed §882.26(b) and (c) merely reflect and clarify a statutory exemption to the Psychologists' Licensing Act and exempt that activity or service from the council's jurisdiction pursuant to Section 507.151, the provisions are consistent with state policy as established in state statute.

² For example, 22 TAC §461.10 (2018) and 22 TAC §801.58(c) (2019) require an individual to be licensed in order to practice psychology and marriage and family therapy, respectively, unless subject to a statutory exemption.

³ Rule Submission Memorandum from the Texas Behavioral Health Executive Council (May 1, 2020), at 3.

⁴ Agency Response to Request for Additional Information (June 3, 2020), at 2 (on file with the Regulatory Compliance Division of the Office of the Governor).

III. Determination

Because the division has determined that proposed §§882.23-882.27 are consistent with state policy, the proposed rules are approved by the division and may be finally adopted.