

**Office of the Governor Regulatory
Compliance Division**

**Rule Submission Memorandum Template
Updated October 9, 2020**

To: Erin Bennett, Regulatory Compliance Division Director

From: Darrel Spinks, Executive Director, Texas Behavioral Health Executive Council

Date: June 3, 2022

Subject: Rule 801.261, Requirements for Continuing Education

Note: This memorandum, the proposed rule, and any amendments should be submitted to the Regulatory Compliance Division as a single, combined PDF.

The Texas Behavioral Health Executive Council has proposed new rule 22 Texas Administrative Code Section 801.261, as published in the April 22, 2022, issue of the *Texas Register*. The proposed rule may affect market competition and is submitted to the Regulatory Compliance Division for review. The PDF version of the preamble and text of the proposed rule as published in the *Texas Register*, and the language of any amendments to the proposed rule that the Texas Behavioral Health Executive Council intends to adopt, are attached to this memorandum.

Include if Applicable: The Texas Behavioral Health Executive Council requests an expedited review of the proposed rule based on the following circumstances: Pursuant to Gov't. Code Sec. 2001.027 a proposed rule must be withdrawn if it is not adopted within six months of publication. The proposed rule was published in the April 22, 2022, issue of the *Texas Register* so it must be withdrawn if not adopted before October 21, 2022. The Executive Council's next regularly scheduled meetings are on August 23, 2022, and then on October 25, 2022. Therefore the Executive Council must take action on this proposed rule at its August 23rd meeting. Additionally, this rule originated from the Texas State Board of Examiners of Marriage and Family Therapists, so it must first be reviewed by the Board and recommended to the Executive Council before it can be adopted. The next regularly scheduled meetings for the Board are on July 22, 2022, and then October 21, 2022. Therefore the Board must take action on this proposed rule at its July 22nd meeting, so an expedited review is requested to accommodate the necessary timing for adoption.

To facilitate the Regulatory Compliance Division's review of the proposed rule, the Texas Behavioral Health Executive Council provides answers to the following questions.

1. Briefly describe the proposed rule.

The proposed rule pertains to the continuing education requirements for Marriage and Family Therapy licensees.

2. What is the purpose of the proposed rule?

The proposed new rule consolidates all the continuing education requirements contained in multiple rules, 801.263 - 801.266, into one single rule. Additionally, this rule adds and changes some of the requirements for each renewal cycle. For example, LMFTs will now be required to complete three hours of cultural diversity or competency, licensees with supervisor status must now complete six hours in supervision as opposed to three hours previously, the jurisprudence exam will become optional for licensees with supervisor status as opposed to mandatory and all licensees who take the exam can claim one hour of ethics credit, and lastly, licensees can now claim up to one hour of self-study continuing education credit.

3. Describe any relevant factual background to the proposed rule and the impetus for the state agency to consider rulemaking.

The Executive Council created a Standardization Committee with the goal of identifying areas where the underlying behavioral health boards have similarities. Once certain areas were identified the Standardization Committee would work to draft model rules for those areas in the hope of standardizing some of those requirements across all the professions. The intent of this standardization effort is to create greater efficiencies in agency processes as well as clearer requirements for all licensees. For example, there are some individuals that hold licenses from more than one Board, so keeping up with the numerous different rules and requirements can be burdensome on both the licensee and agency staff. The Standardization Committee consists of four Executive Council Members, one from each underlying Board, and members of the public, e.g. representatives from professional associations, licensees, and members of the public familiar with these professions.

One of the first areas identified by the Standardization Committee was continuing education. A draft of a single replacement rule was discussed for each of the four Boards. While there was general agreement regarding the framework of the rule, some details for the rule were specific to each Board. For example, the number of hours required for each renewal cycle is currently different for each Board: professional counseling is 24 hours, marriage and family therapy is 30 hours, psychology is 40 hours, and social work is 30 hours;

and the proposed rule kept these same requirements. What this proposed rule does is standardize the requirements for which hours or courses will count towards these required hours. Several years in the past some of these Boards, but not all, would preapprove continuing education providers, as a mechanism to ensure the requisite standards for continuing education were met. After the Sunset Commission's review of these Boards a management action recommended reform of the rules pertaining to approving continuing education providers, and subsequently such rule requirements were repealed and the Boards no longer approve continuing education providers. As a means of vetting the providers of continuing education, but not moving back to the repealed system of the agency reviewing and approving providers, the Standardization Committee reviewed and accepted an alternative approach that is currently in the Psychology Board's rules. The Psychology Board's rule pertaining to continuing education requires licensees to obtain at least fifty percent of their continuing education from an approved provider. Per current 22 Tex. Admin Code Sec. 463.35(f), an approved provider is:

national, regional, state, or local psychological associations; public school districts; regional service centers for public school districts; state or federal agencies; or psychology programs, or counseling centers which host accredited psychology training programs, at regionally accredited institutions of higher education; and other formally organized groups providing professional development that is directly related to the practice of psychology.

The proposed new continuing education rule was modeled after this standard and expanded upon this list of approved providers. Proposed 22 Tex. Admin. Code Sec. 801.261(f) states:

Licensees must obtain at least fifty percent of their continuing education hours from one or more of the following providers: (1) an international, national, regional, state, or local association of medical, mental, or behavioral health professionals; (2) public school districts, charter schools, or education service centers; (3) city, county, state, or federal governmental entities; (4) an institution of higher education accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education; (5) religious or charitable organizations devoted to improving the mental or behavioral health of individuals; or (6) any provider approved or endorsed by a provider listed herein.

This rule was published for comment and the comment period closed on May 22, 2022. Two comments were received that voiced concerns regarding this

proposed new marriage and family therapy continuing education rule. Additionally, the LPC Board voted and approved a similar rule to be sent to the Executive Council for review and possible publication in the *Texas Register*. Upon the LPC Board's approval but prior to publication this agency received several comments regarding this approved provider list, which either opposed it or requested additional providers be added to the list. These comments raised a potential issue, by the agency only accepting up to fifty percent of the required continuing education hours from providers not on the rule's approved provider list that could have a possible anticompetitive effect because those on the list are able to offer more services, e.g. acceptable hours, to licensees.

4. Describe the legal authority for the proposed rule.
 - a. Is the proposed rule specifically required or authorized by state statute? If so, list the statute(s).

Yes, see Sections 502.1515(1)(C), 507.153(1)(C), and 507.157 of the Occupations Code.

- b. Is the proposed rule within the scope of the state agency's general authority to regulate in a given occupation or industry? If so, describe how the proposed rule is within the scope, and reference the applicable state statute(s).

Yes, the Executive Council regulates the professions of marriage and family therapy, professional counseling, psychology, and social work. Specifically, the Executive Council, in conjunction with the underlying Boards, has specific statutory authority requiring this agency to adopt continuing education requirements for licensees to maintain their licenses.

5. Describe the process that the state agency followed in developing the proposed rule, including any public hearings held, public comments invited, studies conducted, and data collected or analyzed.

As discussed above, the proposed rule is a product of the Executive Council's Standardization Committee which involved discussion and collaboration from agency staff, members of the public, stakeholders or members of associations, licensees, and Council/Board Members. Once the Standardization Committee recommended the rule it was brought before each Board for consideration and approval at a public meeting. Once approved by the Board it was forwarded to the Council for consideration and approval at a public meeting, and once the Council approved the draft rule it was published in the *Texas Register* for formal public comment.

6. Describe the harm that the proposed rule is intended to address and how the proposed rule will address the harm.

Generally speaking, the harm the entire rule is intended to address is to ensure that licensees remain educated and competent in the subject matter they are licensed to practice. Specifically, the part of the rule that may have anticompetitive effects is intended to ensure that the continuing education licensees are receiving is coming from sources that have a level of organization and oversight that ensures the quality of coursework provided; such as, institutions of higher education accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation.

7. Do any less restrictive alternatives to the proposed rule exist for addressing the same harm? If so, include a comparison of the proposed rule to the alternatives and a justification for not pursuing a less restrictive alternative. If no less restrictive alternatives exist, explain why.

There are possibly less restrictive alternatives that could be considered, such as including other individuals in the approved provider list as the LPC rule commenters requested. But including all licensees and other licensed professionals, such as attorneys, to align with these comments will potentially frustrate the purpose for this part of the rule. To allow licensees to receive all, and not just fifty percent, of their required continuing education from one individual licensee or attorney would mean all of that education would come from a single source that was not reviewed, edited, vetted, or the like by any other source or individual. Therefore, the verification of the quality of such continuing education would be difficult to determine.

8. Indicate how the proposed rule affects market competition (See Section 57.105(d), Texas Occupations Code).
 - It creates a barrier to market participation in the state.
 - It results in higher prices or reduced competition for a product or service provided by or to a license holder in the state.
 - It both creates a barrier to market participation in the state and results in higher prices or reduced competition for a product or service provided by or to a license holder in the state.
9. Describe the specific impact that the proposed rule will have on market competition and how that effect is consistent with state policy as established by the Legislature in state statute.

As indicated in the LPC rule comments, there are some licensees that are solo practitioners and they provide, as part of their business, continuing education courses to other licensees. The rule will no longer allow licensees to receive all of

their continuing education from these types of providers, this agency will only count up to fifty percent of these types of course credits towards the total required hours. By not allowing these types of providers, e.g. individual licensees and/or solo practice providers, to provide all of the required continuing education then it could put these types of providers at a disadvantage when compared to those on the approved list, such as universities. If these types of providers can no longer be a one stop shop for all of a licensee's continuing education needs then it could reduce the competition for the types of providers in the market place, or it could increase costs because it will require these type of providers to be reviewed and approved or endorsed by an approved provider, such as a university or professional association, which in turn could result in increased costs to the consumer licensees.

10. Does the proposed rule relate to a question that is the subject of an opinion request pending before the Office of the Attorney General? Does the proposed rule relate to an opinion previously issued by the Office of the Attorney General?

No.

11. Does the proposed rule relate to a matter on which there is pending litigation or a final court order?

No.

12. Is there anything else that the state agency would like the Regulatory Compliance Division to know about the proposed rule?

No.

Note: In addition to this memorandum and its required attachments, the state agency must provide copies of the state agency's administrative records regarding the proposed rule, including any information or comments that the state agency received from the public regarding the proposed rule. A state agency is not required to submit any privileged or confidential information to the Regulatory Compliance Division.

(3) a record of all locations at which the LMFT Associate will practice;

(4) a dated and signed record of each supervision conference with the LMFT Associate's total number of hours of supervised experience, direct client contact hours, and direct client contact hours with couples or families accumulated up to the date of the conference; and

(5) a copy of any written plan for remediation of the LMFT Associate.

(e) Within 30 days of the termination of supervision, a supervisor must submit written notification to the council.

(f) Both the LMFT Associate and the council-approved supervisor are fully responsible for the marriage and family therapy activities of the LMFT Associate.

(1) The supervisor must ensure the LMFT Associate knows and adheres to all statutes and rules that govern the practice of marriage and family therapy.

(2) A supervisor must maintain objective, professional judgment; a dual relationship between the supervisor and the LMFT Associate is prohibited.

(3) A supervisor may not supervise more than 12 persons at one time.

(4) If a supervisor determines the LMFT Associate may not have the therapeutic skills or competence to practice marriage and family therapy under an LMFT license, the supervisor must develop and implement a written plan for remediation of the LMFT Associate.

(5) A supervisor must timely submit accurate documentation of supervised experience.

(g) Supervisor status expires with the LMFT license.

~~[(h) To maintain council approval, a supervisor must successfully complete the following continuing education each renewal period:]~~

~~[(1) at least three hours of clinical supervision continuing education; and]~~

~~[(2) the jurisprudence exam.]~~

~~[(h) [(+)] A supervisor who fails to meet all requirements for licensure renewal may not advertise or represent himself or herself as a supervisor in any manner.~~

~~[(i) [(+)] A supervisor whose license status is other than "current, active" is no longer an approved supervisor. Supervised clinical experience hours accumulated under that person's supervision after the date his or her license status changed from "current, active" or after removal of the supervisor designation will not count as acceptable hours unless approved by the council.~~

~~[(j) [(k)] A supervisor who becomes subject to a council disciplinary order is no longer an approved supervisor. The person must:~~

~~(1) inform each LMFT Associate of the council disciplinary order;~~

~~(2) refund all supervisory fees received after date the council disciplinary order was ratified to the LMFT Associate who paid the fees; and~~

~~(3) assist each LMFT Associate in finding alternate supervision.~~

~~[(k) [(h)] Supervision of an LMFT Associate without being currently approved as a supervisor is grounds for disciplinary action.~~

~~[(l) [(m)] The LMFT Associate may compensate the supervisor for time spent in supervision if the supervision is not part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 11, 2022.

TRD-202201310

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: May 22, 2022

For further information, please call: (512) 305-7706



22 TAC §801.261

The Texas Behavioral Health Executive Council proposes new §801.261, relating to Requirements for Continuing Education.

Overview and Explanation of the Proposed Rule. This proposed new rule consolidates all the continuing education requirements contained in multiple rules into this single rule. Additionally, this rule adds and changes some of the requirements for each renewal cycle. For example, LMFTs will now be required to complete three hours of cultural diversity or competency, licensees with supervisor status must now complete six hours in supervision as opposed to three hours previously, the jurisprudence exam will become optional for licensees with supervisor status as opposed to mandatory and all licensee who take the exam can claim one hour of ethics credit, and lastly licensees can now claim up to one hour of self-study continuing education credit.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on May 22, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized

by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.261. Requirements for Continuing Education.

(a) Minimum Continuing Education Hours Required.

(1) A LMFT must complete 30 hours of continuing education during each renewal period that they hold a license. The 30 hours of continuing education must include 6 hours in ethics and 3 hours in cultural diversity or competency.

(2) A LMFT Associate must complete 15 hours of continuing education during each renewal period that they hold a license. The 15 hours of continuing education must include 6 hours in ethics and 3 hours in cultural diversity or competency.

(3) A licensee may carry forward to the next renewal period, a maximum of 10 hours accrued during the current renewal period if those hours are not needed for renewal.

(b) Special Continuing Education Requirements. The special continuing education requirements set out in this subsection may be counted toward the minimum continuing education hours required under subsection (a) of this section.

(1) A licensee with supervisory status must complete 6 hours of continuing education in supervision.

(2) A licensee with supervisory status must take and pass the jurisprudence examination. One hour of continuing education in ethics may be claimed for passing the jurisprudence examination.

(3) A licensee who provides telehealth services must complete 2 hours of continuing education in technology-assisted services.

(c) Acceptable ethics hours include, but are not limited to continuing education on:

(1) state or federal laws, including agency rules, relevant to the practice of marriage and family therapy;

(2) practice guidelines established by local, regional, state, national, or international professional organizations;

(3) training or education designed to demonstrate or affirm the ideals and responsibilities of the profession; and

(4) training or education intended to assist licensees in determining appropriate decision-making and behavior, improve consis-

tency in or enhance the professional delivery of services, and provide a minimum acceptable level of practice.

(d) Acceptable cultural diversity or competency hours include, but are not limited to continuing education regarding age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and socio-economic status.

(e) Acceptable Continuing Education Activities.

(1) All continuing education hours must have been received during the renewal period unless allowed under subsection (a)(3) of this section, and be directly related to the practice of marriage and family therapy;

(2) The Council shall make the determination as to whether the activity claimed by the licensee is directly related to the practice of marriage and family therapy;

(3) Except for hours claimed under subsection (h) of this section, all continuing education hours obtained must be designated by the provider in a letter, email, certificate, or transcript that displays the licensee's name, topic covered, date(s) of training, and hours of credit earned.

(4) Multiple instances or occurrences of a continuing education activity may not be claimed for the same renewal period.

(f) Licensees must obtain at least fifty percent of their continuing education hours from one or more of the following providers:

(1) an international, national, regional, state, or local association of medical, mental, or behavioral health professionals;

(2) public school districts, charter schools, or education service centers;

(3) city, county, state, or federal governmental entities;

(4) an institution of higher education accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education;

(5) religious or charitable organizations devoted to improving the mental or behavioral health of individuals; or

(6) any provider approved or endorsed by a provider listed herein.

(g) Licensees shall receive credit for continuing education activities according to the number of hours designated by the provider, or if no such designation, on a one-for-one basis with one credit hour for each hour spent in the continuing education activity.

(h) Licensees may claim continuing education credit for each of the following activities:

(1) Passage of the jurisprudence examination. Licensees who pass the jurisprudence examination may claim 1 hour of continuing education in ethics.

(2) Preparing and giving a presentation at a continuing education activity. The maximum number of hours that may be claimed for this activity is 5 hours.

(3) Authoring a book or peer reviewed article. The maximum number of hours that may be claimed for this activity is 5 hours.

(4) Teaching or attending a graduate level course. The maximum number of hours that may be claimed for this activity is 5 hours.

(5) Self-study. The maximum number of hours that may be claimed for this activity is 1 hour.

(6) Successful completion of a training course on human trafficking prevention described by §116.002 of the Occupations Code. Licensees who complete this training may claim 1 hour of continuing education credit.

(i) The Council does not pre-evaluate or pre-approve continuing education providers or hours.

(j) Licensees shall maintain proof of continuing education compliance for a minimum of 3 years after the applicable renewal period.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 11, 2022.

TRD-202201311

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: May 22, 2022

For further information, please call: (512) 305-7706



22 TAC §§801.263, 801.264, 801.266

The Texas Behavioral Health Executive Council proposes the repeal of §801.263, relating to Requirements for Continuing Education; §801.264, relating to Types of Acceptable Continuing Education; and §801.266, relating to Determination of Clock Hours Credits and Credit Hours Granted.

Overview and Explanation of the Proposed Rule. These rules are proposed to be repealed because these same requirements have been added to new §801.261, pertaining to requirements for continuing education, proposed elsewhere in the edition of the *Texas Register* and where all licensee continuing education requirements have been consolidated.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the proposed repeal and replace of the continuing education rules will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.