

2022 Guideline Change Summary

Behavioral Health Executive Council

Many BHEC code changes involved minor tweaks to administrative processes and fees. Code 882.50 states that the council will reduce the number of CEU audits from 10% to 5% each month. Code 882.37 brings the Council rules in compliance with broader Texas legislation regarding the prohibition of vaccine passports. Code 882.70 changes the emergency licensing process from a 30 day expiration date to an expiration date matching the length of emergency declarations. Code 884.4 changes the procedure regarding court ordered therapy complaints, requiring the complainant to wait until a licensee's appointment has expired or terminated.

Licensed Professional Counselors

Most of the LPC code amendments since November of 2021 involve changes to the wordings of various licensing codes involving academic requirements, experience requirements, and the licensing of those with criminal convictions. Code 681.41 removes the immediacy requirement formerly placed on those who learn about exaggerated or false claims made by another. Code 681.2 changed the definition of independent practice to providing services without supervision, allowing LPC Associates to operate their own practice. Most significantly, codes 681.91 and 681.93 further change the code regarding LPC associates owning their own practice and add a clarification that supervisors are accountable for just the counseling activities of those they supervise.

Licensed Marriage and Family Therapists

Code 801.205 allows the LMFT Board to make exceptions to prerequisite requirements during a declared state of emergency (such as the pandemic). Code 801.206 also added requirements for licensing those with criminal convictions, a change that was added to other board codes as well.

Social Workers

The most important change to the social work code is the removal of a board pre-approved supervision plan for social workers. Non-clinical hours can count towards the 3000 hour practice amount, as long as at least 4 hours is spent toward clinical social work per week. Code 781.312 was also changed so that social workers no longer have to report employment changes to the board.

Texas Behavioral Health Executive Council Rule Changes **from November 2020-February 2022**

881.21. Petition for Rulemaking (amended)

Amended: February 9, 2021; September 19, 2021

Description: “(f) The term "interested person" as used in this rule, shall have the same meaning as that assigned by §2001.021(d) [~~§201.021(d)~~] of the Government Code. Additionally, a person who submits a petition under this rule must affirm that they qualify as an interested person in the petition. Petitions which do not contain such an affirmation may be denied” (46 TexReg 3697).

Rule Change: The amended rule corrects a typo when the first amendment was made.

881.33. Family Leave Pool

Adopted to be effective: February 27, 2022

Description: “(a) The Council hereby establishes a family leave pool to provide eligible employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement, and to care for themselves or family members suffering from serious illness, including pandemic-related illnesses or complications caused by a pandemic.

(b) The Council's family leave pool shall be administered by the Executive Director in accordance with Chapter 661 of the Government Code and the Texas Human Resources Statutes Inventory manual published by the Texas State Auditor's Office.

(c) The Executive Director shall develop and prescribe procedures for the operation of the family leave pool and include such procedures in the Council's personnel manual.

Rule Change: “The new rule is necessary to implement H.B. 2063, 87th Leg., R.S. (2021), which codified new Subchapter A-1 of Chapter 661 of the Government Code. These new statutes require state agencies to adopt rules to develop a program where agency employees can voluntarily transfer sick or vacation leave earned by the employee to a family leave pool, and eligible employees can apply for leave under this pool.”

882.11. Applicants with Foreign Degrees (amended)

Amended: September 19, 2021

Description: “(c) Foreign degree evaluations must be conducted by a foreign degree evaluation service that is a member of the National Association of Credential Evaluation Services(NACES) **or the Association of International Credential Evaluators, Inc. (AICE)**. Alternatively, the Council will accept foreign degree evaluations from the National Register of Health Service Psychologists for persons applying under Chapter 501 of the Occupations Code and the International Social Work Degree Recognition and Evaluation Service for persons applying under Chapter 505 of the Occupations Code”

Rule Change: This rule expanded the number of acceptable foreign degree evaluation services who conduct foreign degree evaluations to include members of the Association of International Credential Evaluators, Inc.

882.21. License Statuses (amended)

Amended: June 1, 2021

Description:” (b) Inactive Status. (1) A licensee with an unrestricted active license may elect inactive status through the Council's online licensing system. A licensee who elects inactive status must ~~return the licensee's current renewal certificate for the license to the Council, and~~ pay the associated fee. (46 TexReg 1181)

Rule Change: BHEC no longer prints and mails renewal permits. Because of this, there is not a certificate to return if the licensee is changing to inactive status.

(Continued) 882.21. License Statuses

Amended: February 27, 2022

Description: (6) An inactive license may be reactivated at any time by applying for [~~submitting a written request to return to~~] active status through the online licensing system [~~to the Council's office~~]. When reactivating a license, a licensee must pay the renewal fee associated with the license. A license that has been reactivated is subject to the standard renewal schedule and requirements, including renewal and late fees. Notwithstanding the foregoing, a license that is reactivated within 60 days of its renewal date will be considered as having met all renewal requirements and will be renewed for the next renewal period.

Rule Change: “The amended rule is necessary to reflect the change in process whereby requests to reactivate a license must now be submitted through the online licensing system.”

882.37 COVID-19 Vaccine Passports Prohibited

Adopted to be effective: February 27, 2022

Description: (a) In this rule, COVID-19 has the same meaning assigned by 161.0085 of the Health and Safety Code

(b) a licensee shall not require an individual to provide any documentation certifying the individual's COVID-19 vaccination or post-transmission recovery on entry to gain access to, or to receive service from the licensee or the licensee's practice.

(c) Notwithstanding subsection (b) of this section, licensees may implement COVID-19 screening and infection control protocols in accordance with state and federal law to protect public health.

(d) This rule shall not operate or be construed to interfere with an individual's right to access the individual's personal health information under federal law.

Rule Change: “The new rule is needed to implement S.B. 968, 87th Leg., R.S. (2021), which codifies new Section 161.0085 of the Health and Safety Code. This new statute requires state agencies to ensure compliance with this statute and may require compliance as a condition for licensure.”

*”Summary of comments against the rule. Commenters opposed this rule because they felt it took away a licensee's right to decide how to enact their own safety protocols. Some commenters believed licensed behavioral health professionals should be allowed to act in the interest of public health by requiring patients to be vaccinated, and one commenter opined that the protocols the rule allows are vague. While other comments opposed this rule because they believe it mandates people to get a COVID vaccine.”

882.50. Continuing Education and Audits (amended)

Amended: June 1, 2021

Description: “(1) Random audits. Each month, 5% ~~{10%}~~ of the licensees will be selected by an automated process for an audit of the licensee's compliance with the agency's continuing education requirements. The agency will notify a licensee of the audit. Upon receipt of an audit notification, a licensee must submit continuing education documentation through the agency's online licensing system, or by ~~{fax,}~~ email, or regular mail before a license will be renewed” (46 TexReg 1184)

Rule Change: This rule reduced the monthly amount of licensees that are selected for continuing education audit from 10% to 5%.

882.60. Special Provisions Applying to Military Service Members, Veterans and Spouses (amended)

Amended: February 27, 2022

Description: (f) Each member board may develop and maintain alternate methods for a military service member, military veteran, or military spouse to demonstrate competency in meeting the requirements for obtaining a license, including receiving appropriate credit for training, education, and professional experience.

Rule Change: “The amended rule is necessary to reflect recent changes to Section 55.004 of the Occupations Code following passage of H.B. 139, 87th Leg., R.S. (2021).”

882.61 Special Licensing Provisions for Military Spouses. (amended)

Amended: February 27, 2022

Description: (a) A military spouse shall be issued a license to practice marriage and family therapy, professional counseling, ~~{practice}~~ psychology, or social work if the person meets each of the following requirements:

(4) the spouse submits proof of residency in this state (e.g. copy of a permanent change of station order) and a copy of the spouse's military identification card; and

(b) The Council shall determine substantial equivalency based upon the determinations made by the member boards under [~~subsection~~] §882.60(d) of this chapter (relating to Special Provisions Applying to Military Service Members, Veterans, and Spouses).

Rule Change: “The amended rule is necessary to correct a typographical error and reflect recent changes to Section 55.004 of the Occupations Code following passage of H.B. 139, 87th Leg., R.S. (2021).”

882.70 Emergency Temporary License

Adopted to be effective: February 27, 2022

Description: (b) An emergency temporary license issued pursuant to this rule will expire [~~thirty (30) days after issuance or~~] upon termination of the suspension or state of disaster, whichever occurs first.

~~[(f) An emergency temporary license may be renewed in thirty (30) day increments if the disaster declaration has not expired or been terminated. To renew a license, an individual must submit a renewal application on a board approved form on or before the license expiration date.]~~

(g) [~~(h)~~] There is no fee associated with the application[;] or issuance[; ~~or renewal~~] of an emergency temporary license.

Rule Change: “The amended rule removes the requirement that individuals that hold an emergency temporary license issued by this agency must renew such a license within 30 days or it will expire. Under the amended rule, once an emergency temporary license has been issued it remains active until the disaster declaration has been terminated or the suspension of statutes or rules that allowed for the issuance of the emergency temporary license have been lifted.”

883.1. Renewal of a License (amended)

Amended: November 21, 2021

Description: (c) Licensees must pay all applicable renewal or ~~and~~ late renewal fees, indicate compliance with any continuing education requirements, and comply with any other requests for information or requirements contained within the online renewal system as a prerequisite for renewal of a license.

Rule Change: This requires licensees to only pay a late renewal fee for late renewals, instead of a late fee in addition to the standard renewal fee.

884.4 Special Requirements for Complaints Alleging Violations Related to Court-ordered Therapy or Parenting Facilitator Services.

Adopted to be effective: February 27, 2022

Description: (a) A person who seeks to file a complaint alleging a statutory or rule violation arising out of or related to court ordered therapy or parenting facilitator services must, in addition to submitting a Council-approved complaint form, comply with the requirements of this rule when filing a complaint.

(b) A complaint may not be filed while the licensee is under appointment to provide therapy or parenting facilitator services. A complaint received by the Council while the licensee is appointed will be dismissed by staff as premature but may be resubmitted as a new complaint after the appointment is concluded or terminated.

(c) A complaint will be considered timely filed if brought within the time period specified by the general rule governing time-liness of complaints or within one year of the appointment being concluded or terminated, whichever is greater.

(d) A complaint must include each of the following:

(1) Documentation reflecting the licensee's appointment in the case. A copy of a court order, docket sheet, or transcript from the proceedings or a letter from an attorney involved in the case will meet the requirements of this rule;

(2) a copy of any documents provided by the licensee describing the costs, nature, or limitations of the services to be provided, or a statement that no such documents were provided;

(3) an attestation that the licensee's appointment in the case has been concluded or terminated. A letter from an attorney involved in the case will also meet the requirements of this rule.

(e) A complaint that does not substantially comply with sub-section (d) of this section shall be dismissed by agency staff. A complaint may be held open for no more than 30 days following notice to the complainant regarding any such deficiency, after which, agency staff shall dismiss the complaint if the deficiency is not cured.

Rule Change: “The new rule is intended to address the procedural requirements for the filing and adjudication of complaints relating to court-ordered therapy or parenting facilitator services. Under this rule, a complainant must wait to bring a complaint to the agency until the licensee's appointment has expired or been terminated. This ensures that complaints are not used as a litigation tactic and that the agency does not interfere or conflict with a court's inherent power to regulate its own proceedings. Additionally, the new rule expressly preserves a complainant's right to file a complaint once a licensee is no longer under appointment even if the general limitations period has expired.”

*Summary of comments for the rule. A commenter generally supports the rule and opined that as written it will help more situation that it will hurt. But the commenter believes the rule leave the door open for abuse by some unethical practitioners, because if a judge or the attorneys for a case do not take action or know to take action regarding unethical conduct by a licensee then those licensees may be able to abuse the system and their clients for a long time. The commenter recommended amending the rule to limit the individual, or individual's agents, receiving the court order services from filing a complaint while the court appointment is still active. The commenter's goal in this proposed change was to allow other licensees to file a complaint while the court appointment is still active because other licensees will be more aware of the standards being violated and they could possibly address unethical abuse better.

885.1. Executive Council Fees (amended)

Amended: February 9, 2021; September 19, 2021

Description: (c) Late fees. **(Not applicable to Inactive Status)** (1) If the person's license has been expired (i.e., delinquent) for 90 days or less, the person may renew the license by paying to the Council a fee in an amount equal to one and one-half times the base renewal fee. (2) If the person's license has been expired **(i.e., delinquent)** for more than 90 days but less than one year, the person may renew the license by paying to the Council a fee in an amount equal to two times the base renewal fee. (3) If the person's license has expired **(i.e., delinquent)** for one year or more, the person may not renew the license; however, the person may apply for reinstatement of the license.

Rule Change: This rule clarifies that late fees are not applicable to licenses on inactive status. It also clarifies that the period of time to be a delinquent license status.

885.1 Executive Council Fees

Adopted to be effective: February 27, 2022

Description: (b) The Executive Council adopts the following chart of fees: Figure: 22 TAC 885.1 [Figure: 22 TAC 885.1]

Rule Change: “The amended rule is intended to clarify and correct the Texas.gov fee required for some of the license applications, and criminal history evaluations. This fee is required by law, is paid to a different state agency, and is only expected to increase by about \$3.00 to \$10.00 per application. The fee is necessary because these applications are transitioning from traditional paper applications to an online process which is expected to increase agency efficiencies and make the application process easier for applicants. Additionally, this amended rule combines the fees for an initial LMFT Associate application with the fee for the initial licensure, but the result is the same fee.”

LPC Rule Changes from November 2020-February 2022

681.2. Definitions

Adopted to be effective: February 27, 2022

Description:

(3) Art therapy--A form of counseling [~~human service profession~~] in which clients [~~facilitated by the art therapist,~~] use art media, the creative process, and the resulting artwork to explore their feelings, reconcile emotional conflicts, foster self-awareness, manage behavior, develop social skills, improve reality orientation, reduce anxiety and increase self-esteem.

(13) Independent practice--The practice of providing professional counseling services to a client without the supervision of an LPC-S.

(19) [(18)] LPC Associate--Licensed Professional Counselor Associate. A person who holds an LPC Associate license to practice counseling only under a [~~board~~] Council-approved supervisor and not as an independent practitioner.

Rule Change: “The amendment to §681.2 is intended to provide clarity to the definition of art therapy and correct a typographical error. The amended rule also provides a definition for the term independent practice, which is defined as the practice of providing professional counseling services to a client without the supervision of an LPC-S.”

*The Feb 18th edition of the *Texas Register* also includes an extended discussion regarding the pros and cons of associates owning their own practices. Public comments regarding the potential downfalls of said policy include: the lack of business training provided to associates, the need to focus on clinical skills in early practice as opposed to running a business, a lack of supervisory oversight, the harm that business failure will cause to the public, a lack of affordable counseling due to associates raising their fees, and added burdens to licensed supervisors. Public comments highlighting the benefits of the policy change include: a potential increase in independent practices in rural areas, a greater sense of parity between counselors and other mental health practitioners, a decrease in financial exploitation of associates, and increased financial freedom overall. The board considered many of the risks presented by the public to be speculative in nature. Additionally, the board believes that sufficient accountability is in place within the existing ethical codes.

681.41. General Ethical Requirements.

Amended: November 21, 2021

Description: (d) A licensee must make reasonable efforts to discourage others whom the licensee does not control from making misrepresentations; exaggerated or false claims; or false, deceptive, or fraudulent statements about the licensee's practice, services, qualifications, associations, or activities. If a licensee learns of a misrepresentation; exaggerated or false claim; or false, deceptive, or fraudulent statement made by another, the licensee must take [~~immediate and~~] reasonable action to correct the statement” (46 TexReg 3682)

Rule Change: Removed the immediacy requirement

Licensees will take reasonable action to report a misrepresentation; exaggerated or false claim; or false deceptive or fraudulent statement.

681.72. Required Application Materials.

Amended: November 21, 2021

Description: The following clause was removed from rule 681.71 “[~~(f) Licensure requirements that either match or exceed Texas requirements are considered to be substantially equivalent.~~]”

Rule Change: Removed the considered to be substantially equivalent and replaced with must be substantially equivalent. Applicants must submit all material and a determination made that the current license is substantially equivalent.

681.73. Application for Art Therapy Specialty Designation.

Amended: November 21, 2021

Description: The council added the following underlined words to “(b) The Council will accept an individual course from an art therapy program accredited through the American Art Therapy Association (or its successor) as satisfying the education requirements set out in §681.82 of this title (relating to Academic Requirements) if not less than 75% of the course content is substantially equivalent to the content of a course required in §681.83 of this title (relating to Academic Course Content)” (46 TexReg 3687)

Rule Change: “The amended rule is necessary because the agency has received information that the American Art Therapy Association is being replaced as an accrediting body. This amended rule will allow the agency to rely upon accreditation by its successor” (46 TexReg 7785)

681.82. Academic Requirements.

Amended: November 21, 2021

Description: “§681.82. Academic Requirements.

(a) Persons applying for licensure must have a graduate degree in counseling or a counseling-related field of:

(1) at least 48 semester hours of coursework in a counseling or counseling-related field for applicants who began the qualifying program before August 1, 2017; and

(2) at least 60 semester hours of coursework in a counseling or counseling-related field for applicants who began the qualifying program on or after August 1, 2017.

(b) An applicant who holds a graduate degree in a counseling related field must have an official transcript documenting satisfaction of the requirements described in §681.83 of this title (relating to Academic Course Content).

(c) An applicant who has held a full active LPC in good standing issued by a United States jurisdiction for at least two (2) years immediately preceding the date the application was received

will be~~is~~ deemed to have met all academic and experience requirements, including the practicum, if the applicant can demonstrate 3,000 hours of supervised experience and has completed at least 48 semester hours of coursework in a graduate degree program in a counseling or a counseling-related field, with 300 clock hours of supervised practicum.”

Rule Change: When applying for a Texas license after having held a full license in another state for 2 years, the applicant has to be able to demonstrate 3,000 hours of supervised experience and has completed at least 48 semester hours of coursework in a graduate degree program in a counseling or a counseling-related field, with 300 clock hours of supervised practicum.

681.91 LPC Associate License

Adopted to be effective: February 27, 2022

(d) An LPC Associate may practice counseling only as part of his or her internship and only under the supervision of a Licensed Professional Counselor Supervisor (LPC-S). The LPC Associate shall ~~[may]~~ not engage in independent practice. ~~[own an independent professional counseling practice.]~~

(j) The possession, access, retention, control, maintenance, and destruction of client records is the responsibility of the person or entity that employs or contracts with the LPC Associate, or in those cases where the LPC Associate is self-employed, the responsibility of the LPC-Associate. ~~[An LPC Associate does not own client records; they are the property of the agency, organization, or LPC-S.]~~

~~[(l) An LPC Associate must not accept direct payment for services from a client.]~~

(m) ~~[(n)]~~The LPC Associate must not represent himself or her-self as an independent practitioner. The LPC Associate's name must be followed by a statement such as "supervised by (name of supervisor)" or a statement of similar effect, together with the name of the supervisor. This disclosure must appear on all marketing materials, billing documents, and practice related forms and documents where the LPC Associate's name appears, ~~[advertisements, billings, and announcements, including but not limited to]~~ websites and intake documents.

Rule Change: “The amended rule still requires an LPC-Associate to only practice professional counseling under the supervision of an LPC-S, but the amended rule no longer prohibits LPC-Associates from owning their own business or accepting direct payment. The amended rule will allow for the supervision arrangements between an LPC-Associate and LPC-S to be one of a direct employee, independent contractor, or any other legal arrangement the parties agree to. The amended rule also clarifies how LPCAssociates must represent themselves, and which licensee is responsible for the retention and maintenance of client records”

*The Feb 18th edition of the *Texas Register* also includes an extended discussion regarding the pros and cons of associates owning their own practices. Public comments regarding the potential downfalls of said policy include: the lack of business training provided to associates, the need to focus on clinical skills in early practice as opposed to running a business, a lack of supervisory oversight, the harm that business failure will cause to the public, a lack of affordable counseling

due to associates raising their fees, and added burdens to licensed supervisors. Public comments highlighting the benefits of the policy change include: a potential increase in independent practices in rural areas, a greater sense of parity between counselors and other mental health practitioners, a decrease in financial exploitation of associates, and increased financial freedom overall. The board considered many of the risks presented by the public to be speculative in nature. Additionally, the board believes that sufficient accountability is in place within the existing ethical codes.

681.92. Experience Requirements.

Adopted to be effective: February 9, 2021

Description:

“(a) All applicants for LPC licensure must complete supervised experience acceptable to the Council of 3,000 clock-hours under a Council-approved supervisor.

(1) All internships physically occurring in Texas must be completed under the supervision of a Council-approved supervisor.

(2) For all internships physically completed in a jurisdiction other than Texas, the supervisor must be a person licensed or certified by that jurisdiction in a profession that provides counseling and who has the academic training and experience to supervise the counseling services offered by the Associate. The applicant must provide documentation acceptable to the Council regarding the supervisor's qualifications.

(b) The supervised experience must include at least 1,500 clock-hours of direct client counseling contact. Only actual time spent counseling may be counted.

(c) An LPC Associate may not complete the required 3,000 clock-hours of supervised experience in less than 18 months.

(d) The experience must consist primarily of the provision of direct counseling services within a professional relationship to clients by using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life.

(e) The LPC Associate must receive direct supervision consisting of a minimum of four (4) hours per month of supervision in individual (up to two Associates or group (three or more) settings while the Associate is engaged in counseling unless an extended leave of one month or more is approved in writing by the Council approved supervisor. No more than 50% of the total hours of supervision may be received in group supervision.

(f) An LPC Associate may have up to two (2) supervisors at one time.” (45 TexReg 8706)

Rule Change: “The adopted repeal of the rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers.”

681.93 Supervisor Requirements

Adopted to be effective: February 27, 2022

(B) a copy of the LPC Associate's online license verification [~~wall certificate~~] noting the dates of issuance and expiration;

(G) a record of acknowledgement that the supervisee is self-employed, if applicable.

(b) Both the LPC-Associate and the supervising LPC-S are fully responsible for the professional counseling activities of the LPC-Associate. The LPC-S may be subject to disciplinary action for violations that relate only to the professional practice of counseling committed by the LPC-Associate which the LPC-S knew about or due to the oversight nature of the supervisory relationship should have known about. [~~The full professional responsibility for the counseling activities of the LPC Associate rests with the LPC Associate's approved supervisor(s). If the LPC Associate receives disciplinary action by the Council, the supervisor may also be subject to disciplinary action.~~]

Rule Change: “The Council is no longer mailing renewal permits; verification of licensure status is done online. The amended rule will reduce regulatory burden by allowing the supervisor to print and keep a copy of the online license verification in lieu of a wall certificate. Additionally, the amended rule requires a supervisor to keep a written record acknowledging the supervisee is self-employed, if applicable. And the amended rule clarifies the liability assumed for a supervisee by a supervisor; both are responsible for the professional counseling activities of an LPC-Associate but an LPC-S may be subject to disciplinary action for violations that relate only to the professional practice of counseling committed by the LPC-Associate which the LPC-S knew about or due to the oversight nature of the supervisory relationship should have known about”

681.114. Licensing of Military Service Members, Military Veterans, and Military Spouses

Amended: November 21, 2021

Description:

(b) Substantial Equivalency Determination. In accordance with §55.004 of the Occupations Code, the licensing requirements for a license to practice professional counseling in another jurisdiction will be considered substantially equivalent to Texas' requirements if the following criteria are met:

(1) the applicant has been fully licensed to practice professional counseling for the two years immediately preceding the date the application is received; and

(2) has no disciplinary history.

~~[(b) Licensing requirements that either match or exceed Texas requirements are considered substantially equivalent.]~~

(c) If an applicant has been fully licensed to practice professional counseling in another United States jurisdiction for less than two years immediately preceding the date the application is received, and has no disciplinary history, staff may grant 125 hours of credit for every month of independent professional counseling practice toward any deficit in experience requirements.

~~(d) [(e)]~~ For an application submitted by a verified military service member or military veteran, the applicant must receive credit towards any licensing requirements, except an examination requirement, for verified military service, training, or education that the Council determines is

relevant to the licensing requirements. ~~], unless he or she holds a restricted license issued by another jurisdiction or has a criminal history for which adverse licensure action is authorized by law.]~~

Rule Change: For military service members, veterans, and spouses who have held a full license less than 2 years in another state, they are not required to meet the application requirement of having to be able to demonstrate 3,000 hours of supervised experience, completed at least 48 semester hours of coursework in a graduate degree program in a counseling or a counseling-related field, and 300 clock hours of supervised practicum. This rule allows them to earn 125 hours of credit to be offered for every month they held their full license in good standing towards a deficit in experience requirements.

681.164. Licensing of Persons with Criminal Convictions.

Adopted to be effective: February 9, 2021

Description:

The following felonies and misdemeanors directly relate to the duties and responsibilities of a licensee:

- (1) offenses listed in Article 42A.054 of the Code of Criminal Procedure;
- (2) a sexually violent offense, as defined by Article 62.001 of the Code of Criminal Procedure;
- (3) any felony offense wherein the judgment reflects an affirmative finding regarding the use or exhibition of a deadly weapon;
- (4) any criminal violation of Chapter 503 (Licensed Professional Counselor Act) of the Occupations Code;
- (5) any criminal violation of Chapter 35 (Insurance Fraud) or Chapter 35A (Medicaid Fraud) of the Penal Code;
- (6) any criminal violation involving a federal health care program, including 42 USC 1320a-7b (Criminal penalties for acts involving Federal health care programs);
- (7) any offense involving the failure to report abuse or neglect;
- (8) any state or federal offense not otherwise listed herein, committed by a licensee while engaged in the practice of professional counseling;
- (9) any criminal violation of 22.041 (abandoning or endangering a child) of the Penal Code;
- (10) any criminal violation of 21.15 (invasive visual recording) of the Penal Code;
- (11) any criminal violation of 43.26 (possession of child pornography) of the Penal Code;
- (12) any criminal violation of 22.04 (injury to a child, elderly individual, or disabled individual) of the Penal Code;
- (13) three or more drug or alcohol related convictions within the last 10 years, evidencing possible addiction that will have an effect on the licensee's ability to provide competent services;
and
- (14) any attempt, solicitation, or conspiracy to commit an offense listed herein.

Rule Change: “The new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers.”

LMFT Rule Changes from November 2020-February 2022

801.204. Licensing of Military Service Members, Military Veterans, and Military Spouses (new)

Adopted to be effective: February 9, 2021

Description:

801.204. Licensing of Military Service Members, Military Veterans, and Military Spouses.

(a) An applicant for licensure under this section must comply with Council 882.60 of this title (relating to Special Provisions Applying to Military Service Members, Veterans, and Spouses).

(b) Licensed by another United States jurisdiction.

(1) If an applicant has been licensed as an LMFT in another United States jurisdiction for the two years immediately preceding the date the application is received, and has no disciplinary history, the academic (including the internship) and experience requirements shall be considered met.

(2) If an applicant has been licensed as an LMFT in another United States jurisdiction for less than two years immediately preceding the date the application is received, and has no disciplinary history, staff may grant one month of credit for every two months of independent marriage and family therapy practice toward any deficit in the academic internship or experience requirements.

(c) Upon request, an applicant must provide acceptable proof of current licensure issued by another jurisdiction. Upon request, the applicant must provide proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.

(d) For an application for a license submitted by a verified military service member or military veteran, the applicant will receive credit towards any licensing or apprenticeship requirements, except an examination requirement, for verified military service, training, or education relevant to the occupation, unless he or she holds a restricted license issued by another jurisdiction or if he or she has a disqualifying criminal history as described by the Act, the Council Act, or Council rules.

Justification: “The new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers.”

801.205. Remedy for Incomplete License Requirements (amended)

Adopted to be effective: September 19, 2021

Description: 801.205. Remedy for Incomplete License Requirements.

(a) An applicant who does not meet all of the prerequisites for a particular license under Chapter 502 of the Occupations Code, may petition the Council for a waiver or modification of the prerequisite(s). An applicant may not petition for the waiver or modification of the degree required for the particular license sought or passage of the requisite examinations.

(b) The Council may waive or modify a prerequisite for obtaining a license under Chapter 502 of the Occupations Code, subject to subsection (a) of this section, if:

(1) the prerequisite is not mandated by federal law, the state constitution or statute, or 22 TAC Part 41 (relating to Texas Behavioral Health Executive Council); and

(2) the failure or inability to meet the prerequisite was due to a disaster declared under Chapter 418 of the Government Code or under similar authority in another jurisdiction.

(c) The Council may approve or deny a petition under this rule, and in the case of approval, may condition the approval on reasonable terms and conditions designed to ensure the applicant's education, training, and experience provide reasonable assurance that the applicant has the knowledge and skills necessary for entry-level practice under the license sought.

Justification: This rule allows the Texas State Board of Examiners of Marriage and Family Therapists to make exceptions for applicants that have difficulty fulfilling certain licensing requirements due to a declared disaster. For example, some LMFT Associates expressed difficulty in meeting the required in-person supervised experience hours because, due to the COVID-19 pandemic, some supervisors or employers are only allowing telehealth services. The new rule grants the Board flexibility in approving these future applications for the full LMFT license.

801.206. Licensing of Persons with Criminal Convictions (new)

Adopted to be effective: February 9, 2021

Description:

801.206. Licensing of Persons with Criminal Convictions.

The following felonies and misdemeanors directly relate to the duties and responsibilities of a licensee:

(1) offenses listed in Articles 42A.054 of the Code of Criminal Procedure;

(2) a sexually violent offense, as defined by Article 62.001 of the Code of Criminal Procedure;

(3) any felony offense wherein the judgment reflects an affirmative finding regarding the use or exhibition of a deadly weapon;

(4) any criminal violation of Chapter 502 (Licensed Marriage and Family Therapist Act of the Occupations Code);

(5) any criminal violation of Chapter 35 (Insurance Fraud)

or Chapter 35A Medicaid Fraud) of the Penal Code;
(6) any criminal violation involving a federal health care program, including 42 USC 130a-7b (Criminal penalties for acts involving Federal health care programs);
(7) any offense involving the failure to report abuse or neglect;
(8) any state or federal offense not otherwise listed herein, committed by a licensee while engaged in the practice of marriage and family therapy;
(9) any criminal violation of 22.041 (Abandoning or Endangering a Child) of the Penal Code;
(10) any criminal violation of 21.15 (Invasive Visual Recording) of the Penal Code;
(11) any criminal violation of 43.26 (Possession of Child Pornography) of the Penal Code;
(12) any criminal violations of 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual) of the Penal Code;
(13) three or more drug or alcohol related convictions within the last 10 years, evidencing possible addiction that will have an effect on the licensee's ability to provide competent services; and
(14) any attempt, solicitation, or conspiracy to commit an offense listed herein.

Rule Change: “The new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers.”

801.305. Schedule of Sanctions (amended)

Amended: February 9, 2021

Description: “Overview and Explanation of the Proposed Rule. The proposed amendment is being made so the schedule of sanctions better aligns with 801.302, regarding severity level and sanction guide. Any action listed on the schedule of sanctions as a warning letter or conditional letter of agreement is being amended to a Level 5 Reprimand. Warning letters and conditional letters of agreement do not involve a formal disciplinary action and are now covered by 801.303, regarding other actions. Typographical corrections are also being proposed; such as an action was listed as a Level 3 Administrative Penalty, but Administrative Penalty is not one of the severity levels listed in 801.302, this action should be listed as a Level 3 Suspension” (45 TexReg 8830).

Justification: “The rule amendment is being adopted so the schedule of sanctions better aligns with §801.302, regarding severity level and sanction guide. Any action listed on the schedule of sanctions as a warning letter or conditional letter of agreement has been amended to a Level 5 Reprimand. Warning letters and conditional letters of agreement do not involve a formal disciplinary action and are now covered by §801.303, regarding other actions.

801.2 Definitions

Adopted to be effective: February 27, 2022

(15) Licensed marriage and family therapist (LMFT) – As defined in 502.002 of the Occupations Code, a person who offers marriage and family therapy for compensation. [~~A qualified individual licensed by the council to provide marriage and family therapy for compensation.~~]

(16) Licensed marriage and family therapist associate (LMFT Associate) – as defined in 502.002 of the Occupations Code, an individual who offers to provide marriage and family therapy for compensation under the supervision of a supervisor approved by the executive council. [~~A qualified individual licensed by the council to provide marriage and family therapy for compensation under the supervision of a council approved supervisor.~~] The appropriate council-approved terms to refer to an LMFT Associate are: “Licensed Marriage and Family Therapist Associate” or “LMFT Associate.” Other terminology or abbreviations like “LMFT A” are not council-approved and may not be used.

Rule Change: The amended rule aligns the definition for LMFT and LMFT Associate with the statutory definition in §502.002 of the Occupations Code, as well as the Executive Council's rule 22 Texas Administrative Code §881.2(b).

801.74 Application to Take Licensure Examination

Adopted to be effective: February 27, 2022

An applicant must submit a complete application to sit for examination as prescribed by the Council.

~~{(1) all requirements in council rules, 22 Texas Administrative Code, 882.1 and 882.2 (concerning Application Process and Genral Application File Requirements)}~~

~~{(2) in lieu of an official transcript as required in council rules, a letter from a college or university official stating the applicant is in good academic standing and has completed or is enrolled in a graduate internship in marriage and famliy therapy or an equivalent internship may be submitted to approve the applicant to sit for licensure examination, but the applicant must still submit an official transcript before the license may be issued}~~

~~{(3) a copy of government issued picture identification (i.e. driver's license, passport); and~~

~~{(4) an Examination Security Information Acknowledgement Form}~~

Rule Change: The amended rule is intended to streamline the application process for the approval and registration for licensure examinations resulting in anticipated greater agency efficiencies.

Social Work Rules Changes from November 2020-February 2022

781.312. Licensees and the Council (amended)

Amended: June 1, 2021

Description: Any person licensed as a social worker is bound by the provisions of the Act and this chapter and Council rules and statutes. A social worker shall report alleged misrepresentations or violations of this chapter to the Council.

Previous Rule:

(a) Any person licensed as a social worker is bound by the provisions of the Act and this chapter and Council rules and statutes.

(b) A social worker shall report alleged misrepresentations or violations of this chapter to the Council.

~~[(c) The licensee shall report any and all employment setting changes to the Council within 30 days.]~~

Rule Change: Licensees are no longer required to report any and all employment setting changes to the Executive Council.

781.803. Severity Levels (amended)

Amended: June 1, 2021

Description: The following are severity levels for the schedule of sanctions.

(1) Level One--Revocation of license. These violations evidence the licensee's intentional or gross misconduct, cause or pose a high degree of harm to the public, and/or require severe punishment to deter the licensee, or other licensees. The fact that a license is ordered revoked does not necessarily mean the licensee can never regain licensure. The Council may also impose an administrative penalty of not less than \$250 or more than \$5,000 for each Level One violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a financial penalty.

(2) Level Two--Extended suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but require suspension of licensure for a period of not less than one year. The Council may also impose an administrative penalty of not less than \$250 or more than \$4,000 for each Level Two violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(3) Level Three--Moderate suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level Two violations, but require suspension of licensure for some period of time. The Council may also impose an administrative penalty of not less than \$250 or more than \$3,000 for each Level Three violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(4) Level Four--Probated suspension of license. These violations do not involve enough harm, misconduct, or need for deterrence to warrant suspension of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. The Council may also impose an administrative penalty of not less than \$250 or more than \$2,000 for each Level 129 Four violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(5) Level Five--Reprimand. These violations involve minor misconduct not directly involving the health, safety or welfare of the particular member of the public at issue. The Council may also impose an administrative penalty of not less than \$250 or more than \$1,000 for each Level Five violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(4) Level Four--Probated suspension of license. These violations do not involve enough harm, misconduct, or need for deterrence to warrant suspension of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. ~~Possible probationary terms are set out as in §781.806 of this title (relating to Probation) and may be ordered as appropriate.~~ The Council may also impose an administrative of not less than \$250 or more than \$2,000 for each Level Four violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

Rule Change: Former §781.806 has now been repealed; therefore, the reference to this rule found in §781.803(4) is unnecessary and this adopted amendment removes all references to this repealed rule.

781.805. Schedule of Sanctions (amended)

Amended: June 1, 2021

Description: The following standard sanctions shall apply to violations of the Act and these rules. The prior rule had included the sanctions for the failure to report any and all employment setting changes to the Council within 30 days. Previously included in rule 781.312, which was amended as well.

Rule Change: Reporting employment is no longer required. Therefore, this rule was removed.

781.102. Definitions (amended)

Amended: February 4, 2021

Description: The proposed amended rule, in conjunction with other rule amendments published in this edition of the Texas Register, will no longer require the preapproval of a supervision plan in order to accrue supervised experience required for the issuance of a license as a clinical social worker (LCSW) or for independent practice recognition for a baccalaureate social worker (LBSW) or a master social worker (LMSW). Supervised experience will still be required, at the same requisite level that is currently in place, but documentation of the required supervised experience will now only be submitted to the Executive Council when the applicant is applying

for either the LCSW or independent practice recognition. The Executive Council anticipates the proposed amendment will address the backlog of applications and expedite future applications received.

LMSW-AP--Licensed Master Social Worker with the Advanced Practitioner specialty recognition for non-clinical practice. This specialty recognition will no longer be conferred after September 1, 2017. Licensees under a ~~Council-approved~~ supervision plan for this specialty recognition before September 1, 2017 will be permitted to complete supervision and examination for this specialty recognition.

Clinical supervision of a Licensed Master Social Worker, who is providing clinical services and is under a ~~Council-approved~~ supervision plan to fulfill supervision requirements for achieving the LCSW; a Licensed Clinical Social Worker who is a Council-approved supervisor delivers this supervision;

Rule Change: There is no longer a preapproval requirement of a supervision plan in order to accrue supervised experience required for the issuance of a license as a clinical social worker (LCSW) or for independent practice recognition for a baccalaureate social worker (LBSW) or a master social worker (LMSW). The same number of hours of supervised experience will still be required, but documentation of the required supervised experience will now only be submitted to the Executive Council when the applicant is applying for either the LCSW or independent practice recognition.

781.302. Practice of Social Work (amended)

Amended: February 4, 2021

Description: Practice of Master's Social Work--Applying social work theory, knowledge, methods and ethics and the professional use of self to restore or enhance social, psychosocial, or bio-psychosocial functioning of individuals, couples, families, groups, organizations and communities. An LMSW may practice clinical social work in an agency employment setting under clinical supervision, under a ~~Council-approved~~ supervision plan, or under contract with an agency when under a ~~Council-approved~~ clinical supervision plan. Master's Social Work practice may include applying specialized knowledge and advanced practice skills in assessment, treatment, planning, implementation and evaluation, case management, mediation, counseling, supportive counseling, direct practice, information and referral, supervision, consultation, education, research, advocacy, community organization and developing, implementing and administering policies, programs and activities. An LMSW may engage in Baccalaureate Social Work practice.

A licensee who is not recognized for independent practice or who is not under a ~~Council-approved~~ non-clinical supervision plan must not engage in any independent practice that falls within the definition of social work practice in §781.102 of this title (relating to Definitions) without being licensed and recognized by the Council, unless the person is licensed in another profession and acting solely within the scope of that license. If the person is practicing professionally under another license, the person may not use the titles "licensed clinical social worker," "licensed master social worker," "licensed social worker," or "licensed

baccalaureate social worker," or any other title or initials that imply social work licensure unless one holds the appropriate license or independent practice recognition.

An LBSW or LMSW who is not recognized for independent practice may practice for remuneration in a direct employment or agency setting but may not work independently, bill directly to patients or bill directly to third party payers, unless the LBSW or LMSW is under a formal ~~Council-approved~~ supervision plan.

Rule Change: The preapproval of a supervision plan is no longer required. Therefore, Council Approved had to be removed from this rule.

781.401. Qualifications for Licensure (amended)

Amended: February 4, 2021

Description: LCSW Licensure. The following education and experience is required for licensure as designated. If an applicant for a license has held a substantially equivalent license in good standing in another jurisdiction for one year immediately preceding the date of application, the applicant will be deemed to have met the experience requirement under this chapter.

Has had 3000 hours of ~~Council-approved~~ supervised professional clinical experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. ~~Supervised Council-approved-supervised~~ professional experience must comply with §781.404 of this title (relating to Recognition as a Council-approved Supervisor and the Supervision Process) and all other applicable laws and rules.

Has had a minimum of 100 hours of ~~Council-approved~~ supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. Supervised experience must have occurred within the five calendar years immediately preceding the date of LCSW application. If the social worker completed supervision in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification of supervision.

LMSW-AP (Advanced Practitioner)

While fully licensed as a social worker, has had 3000 hours of ~~Council-approved~~ supervised professional non-clinical social work experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. Supervised ~~Council-approved supervised~~ professional experience must comply with §781.404 of this title and all other applicable laws and rules.

Has had a minimum of 100 hours of ~~Council-approved~~ supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. Supervised experience must have occurred within the five calendar years immediately preceding the date of LMSW-AP application. If supervision was completed in another jurisdiction, the social worker must have the

supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification of supervision.

Independent Non-clinical Practice.

While fully licensed as a social worker has had 3000 hours of Council-approved supervised full-time social work experience over a minimum two-year period, but within a maximum five-year period or its equivalent if the experience was completed in another state. ~~Supervised Council-approved supervised~~ professional experience must comply with §781.404 of this title and all other applicable laws and rules.

Has had a minimum of 100 hours of ~~Council-approved~~ supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. Supervised experience must have occurred within the 5 calendar years immediately preceding the date of application for IPR specialty recognition. If supervision was completed in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification.

Rule Change: The amended rule implements a Board policy and simplifies the requirements for gaining supervised experience. The Texas State Board of Social Worker Examiners has a policy that allows hours accrued in non-clinical settings to be used to satisfy the requirements for an LCSW if the applicant works at least 4 hours per week providing clinical social work. This amended rule seeks to implement this policy into the rules. Additionally, this amended rule is intended to streamline the rule by removing obsolete language. For example, an LMSW-AP is no longer issued therefore the rule language pertaining to the experience required to obtain one is no longer needed.

781.402. Clinical Supervision for LCSW and Non-Clinical Supervision for Independent Practice recognition (amended)

Amended: February 4, 2021

Description: To accrue supervised clinical experience required for the issuance of a LCSW:
(1) an LMSW shall complete a supervision plan form prescribed by the Council, or a form with substantially equivalent information, and signed by both the LMSW and the Council-approved clinical supervisor;
(2) the Council-approved clinical supervisor shall keep a supervision file on the LMSW that includes the supervision plan, list of locations where the LMSW provides supervised clinical services, and a log of clinical experience and supervision earned by the LMSW;
(3) the Council-approved clinical supervisor shall submit a completed and signed supervision verification form prescribed by the Council when the LMSW submits an application for re-categorization; and

(4) the LMSW shall submit an application for re-categorization of his or her licensure to LCSW upon fulfillment of the supervision requirements.

~~(b) An LMSW who plans to apply for the LCSW must:~~

~~(1) within 30 days of initiating supervision, submit to the Council one clinical supervisory plan for each location of practice for approval by the Council or its designee;~~

~~(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead. In order for a plan to be approved, the position description or other relevant documentation must demonstrate that the duties of the position are clinical as defined in this chapter;~~

~~(3) submit a separate supervision verification form for each location of practice to the Council for approval within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend that the supervisee is eligible to examine for LCSW, the supervisor must indicate such on the clinical supervision verification form and provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification submitted by the supervisee;~~

~~(4) submit a new supervisory plan within 30 days of changing supervisors or practice location; and~~

~~(5) submit an application for re-categorizing his/her licensure to Licensed Clinical Social Worker.~~

(d) To accrue supervised experience required for an LBSW or an LMSW to apply for Independent Practice Recognition the LBSW or LMSW shall:

(1) complete a supervision plan form prescribed by the Council, or a form with substantially equivalent information, and signed by both the LBSW or LMSW and the Council-approved supervisor;

(2) the Council-approved supervisor shall keep a supervision file on the LBSW or LMSW that includes the supervision plan, list of locations where the LBSW or LMSW provides supervised services, and a log of experience and supervision earned by the LBSW or LMSW;

(3) the Council-approved supervisor shall submit a completed and signed supervision verification form prescribed by the Council when the LBSW or LMSW submits an application for Independent Practice Recognition; and

(4) submit an application for Independent Practice Recognition upon fulfillment of the supervision requirements.

~~(d) An LBSW or an LMSW who plans to apply for the Independent Practice Recognition must:~~

~~(1) submit one supervisory plan to the Council for each location of practice for approval by the Council or its designee within 30 days of initiating supervision;~~

~~(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the LBSW or LMSW intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the LBSW or LMSW in the setting;~~

~~(3) submit a separate supervision verification form for each practice location to the Council within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does~~

~~not recommend that the supervisee is eligible for independent practice recognition, the supervisor must provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification that the supervisee submits; and~~
~~(4) submit a new supervisory plan within 30 days of changing supervisors or practice location.---~~

(f) This rule shall apply to all pending applications, supervision plans awaiting review or previously approved, as well as all future applications filed with the Council.

Rule Change: The preapproval of a supervision plan is no longer required. Therefore, Council Approved had to be removed from this rule.

781.403. Independent Practice Recognition (Non-Clinical) (amended)

Amended: February 4, 2021

Description: (a) An LBSW or LMSW who seeks to obtain ~~Council approval~~ for the specialty recognition of independent non-clinical practice shall meet requirements and parameters set by the Council in §781.401 of this title (relating to Qualifications for Licensure).

(g) An LBSW or LMSW may practice independently when the LMSW or LBSW holds the independent practice specialty recognition, or when under a supervision plan for independent practice but the Council-approved supervisor is still responsible for the acts or omissions of the supervisee while providing services under the supervision plan ~~that has been approved by the Council~~

Rule Change: The preapproval of a supervision plan is no longer required. Therefore, Council Approved had to be removed from this rule.

781.404. Recognition as a Council-approved Supervisor and the Supervision Process (amended)

Amended: February 4, 2021

Description: (b) A person who wishes to be a Council-approved supervisor must file an application and pay the applicable fee.

(3) clinical supervision of a Licensed Master Social Worker, who is providing clinical services and is under a ~~Council-approved~~ supervision plan to fulfill supervision requirements for achieving the LCSW; a Licensed Clinical Social Worker who is a Council-approved supervisor delivers this supervision;

(10) A Council-approved supervisor who wishes to provide any form of supervision ~~Council-approved~~ or Council-ordered supervision must comply with the following:

(D) Before entering into a supervisory plan agreement, the supervisor shall be aware of all conditions of exchange with the clients served by her or his supervisee. The supervisor shall not provide supervision if the supervisee is practicing outside the authorized scope of the license. If

the supervisor believes that a social worker is practicing outside the scope of the license, the supervisor shall make a report to the Council.

(Q) All Council-approved supervisors shall have taken a Council-approved supervision training course by January 1, 2014 in order to renew Council-approved supervisor status. The Council recognizes that many licensees have had little, if any, formal education about supervision theories, strategies, problem-solving, and accountability, particularly LBSWs who may supervise licensees toward the IPR. Though some supervisors have functioned as employment supervisors for some time and have acquired practical knowledge, their practical supervision skills may be focused in one practice area, and may not include current skills in various supervision methods or familiarity with emerging supervisory theories, strategies, and regulations. Therefore, the Council values high-quality, contemporary, multi-modality supervision training to ensure that all supervisors have refreshed their supervisory skills and knowledge in order to help supervisees practice safely and effectively.

(D) The Council considers supervision toward licensure or specialty recognition to be supervision which promotes professional growth. Therefore, all supervision formats must encourage clear, accurate communication between the supervisor and the supervisee, including case-based communication that meets standards for confidentiality. Though the Council favors supervision formats in which the supervisor and supervisee are in the same geographical place for a substantial part of the supervision time, the Council also recognizes that some current and future technology, such as using reliable, technologically-secure computer cameras and microphones, can allow personal face-to-face, though remote, interaction, and can support professional growth. Supervision formats must be clearly described in the supervision plan, explaining how the supervision strategies and methods of delivery meet the supervisee's professional growth needs and ensure that confidentiality is protected. ~~The plan must be approved by the Council.~~

(H) ~~Supervised Council-approved supervised~~ professional experience required for towards licensure must comply with §781.401 of this title (relating to Qualifications for Licensure) and §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition) of this title and all other applicable laws and rules.

~~(e) A licensee who submits one of the following: a Clinical Supervision Plan, a Non-Clinical Supervision Plan, or a Council-Ordered Supervision Plan, to the Council for approval, shall receive a written response from the Council of either approval or deficiency related to the plan. If no written response is received by the licensee within four weeks of submission of the plan, it is the responsibility of the licensee who has submitted the plan to follow-up with the Council office related to receipt and/or status of the plan within 60 days of submission. If written approval or deficiency is sent to the last known address of the licensee, a Council response related to acceptance of the plan shall be considered to have been sent. Supervision and supervised experience hours are not acceptable to meet minimum requirements towards licensure or specialty recognition or to satisfy the terms of a Council order if not accrued under a Council-approved plan without explicit authorization from the Council.—~~

Rule Change: The amended rule clarifies and simplifies the requirements for gaining supervised experience. The amended rule simplifies the requirements that supervision shall occur in proportion to the number of actual hours worked for the required 3,000 hours of supervised experience for licensure as an LCSW or towards specialty recognition in independent practice (IPR). Additionally, this proposed amendment is intended to streamline the rule by removing obsolete language. For example, an LMSW-AP is no longer issued therefore the rule language pertaining to the experience required to obtain one is no longer needed.

781.406. Required Documentation of Qualifications for Licensure (amended)

Amended: February 4, 2021

Description: (1) An applicant's experience for licensure or for specialty recognition must meet the requirements of §781.401 of this title (relating to Qualifications for Licensure), §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for ~~LMSW-AP~~ and Independent Practice Recognition), and §781.404 of this title (relating to Recognition as a Council-approved Supervisor and the Supervision Process). The applicant must document the names and addresses of supervisors; beginning and ending dates of supervision; job description; and average number of hours of social work activity per week. The applicant must further document the appropriate supervision plan and verification form, ~~both approved by the Council, for each practice location. If any elements described in the supervision plan change, including but not limited to work hours, full- or part-time work status, location of supervision, or name of supervisor, the applicant must submit the appropriate verification form within 30 days of the change or supervision termination. The applicant must submit a new, complete supervision plan for Council approval within 30 days of beginning the new supervision agreement~~

Rule Change: The preapproval of a supervision plan is no longer required. Therefore, Council Approved had to be removed from this rule.

781.420. Licensing of Persons with Criminal Convictions (NEW)

Adopted to be effective: February 4, 2021

Description: Licensing of Persons with Criminal Convictions. The following felonies and misdemeanors directly relate to the duties and responsibilities of a licensee:

- (1) offenses listed in Article 42A.054 of the Code of Criminal Procedure;
- (2) a sexually violent offense, as defined by Article 62.001 of the Code of Criminal Procedure;
- (3) any felony offense wherein the judgment reflects an affirmative finding regarding the use or exhibition of a deadly weapon;
- (4) any criminal violation of Chapter 505 (Social Work Practice Act) of the Occupations Code;
- (5) any criminal violation of Chapter 35 (Insurance Fraud) or Chapter 35A (Medicaid Fraud) of the Penal Code;
- (6) any criminal violation involving a federal health care program, including 42 USC Section 1320a-7b

(Criminal penalties for acts involving Federal health care programs);
(7) any offense involving the failure to report abuse or neglect;
(8) any state or federal offense not otherwise listed herein, committed by a licensee while engaged in the practice of social work;
(9) any criminal violation of Section 22.041 (abandoning or endangering a child) of the Penal Code;
(10) any criminal violation of Section 21.15 (invasive visual recording) of the Penal Code;
(11) any criminal violation of Section 43.26 (possession of child pornography) of the Penal Code;
(12) any criminal violation of Section 22.04 (injury to a child, elderly individual, or disabled individual) of the Penal Code;
(13) three or more drug or alcohol related convictions within the last 10 years, evidencing possible addiction that will have an effect on the licensee's ability to provide competent services; and
(14) any attempt, solicitation, or conspiracy to commit an offense listed herein.

Rule Change: The new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers.

781.401 Qualifications for Licensure

Adopted to be effective: February 27, 2022

B) Has had 3000 hours of supervised professional clinical experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. Hours accrued in non-clinical settings may be used to satisfy the requirements of this rule if the applicant works at least 4 hours per week providing clinical social work as defined in 781.102 of this title (relating to definitions). [~~Supervised professional experience must comply with 781.404 of this title (relating to Recognition as a Council-approved Supervisor and the Supervision Process) and all other applicable laws and rules.~~]

(C) Has had a minimum of 100 hours of supervision, over the course of the 3000 hours of supervised experience, with a Council-approved supervisor. [~~Supervised experience must have occurred within the five calendar years immediately preceding the date of LCSW application.~~] If the social worker completed supervision in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification of supervision.

B) Specialty Recognition. The following education and experience is required for Independent non-clinical practice specialty recognitions.

~~[(1) Licensed Master Social Worker-Advanced Practitioner (LMSW-AP).]~~

~~[(A) Is currently licensed in the State of Texas or meets the current requirements for licensure as an LMSW.]~~

~~[(B) While fully licensed as a social worker, has had 3000 hours of supervised professional non-clinical social work experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. Supervised professional experience must comply with 781.404 of this title and all other applicable laws and rules.]~~

~~[(C) Has had a minimum of 100 hours of supervision, over the course of the 3000 hours of experience, with a Council approved supervisor. Supervised experience must have occurred within the five calendar years immediately preceding the date of LMSW-AP application. If supervision was completed in another jurisdiction, the social worker must have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification of supervision.]~~

~~[(D) Has passed the Advanced Generalist examination administered nationally by the ASWB.]~~

~~[(2) Independent non-clinical practice.]~~

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Justification: The amended rule implements a Board policy and simplifies the requirements for gaining supervised experience. The Texas State Board of Social Worker Examiners has a policy that allows hours accrued in non-clinical settings to be used to satisfy the requirements for an LCSW if the applicant works at least 4 hours per week providing clinical social work. This amended rule seeks to implement this policy into the rules. Additionally, this amended rule is intended to streamline the rule by removing obsolete language. For example, an LMSW-AP is no longer issued therefore the rule language pertaining to the experience required to obtain one is no longer needed.

781.404 Recognition as a Council-approved supervisor and the Supervision

Process

Adopted to be effective: February 27, 2022

~~[(5) non-clinical supervision of a Licensed Master Social Worker who is providing non-clinical social work service toward qualifications for the LMSW-AP; this supervision is delivered by a Council approved supervisor; or]~~

(A) An LCSW may supervise clinical experience toward the LCSW license, ~~[non-clinical experience toward the Advanced Practitioner specialty recognition;]~~ non-clinical experience toward the Independent Practice Recognition (non-clinical), and Council-ordered probated suspension;

(B) An LMSW-AP may supervise ~~[non-clinical experience toward the Advanced Practitioner specialty recognition;]~~ non-clinical experience toward the non-clinical Independent Practice Recognition; and Council-ordered probated suspension for non-clinical practitioners;

(C) Supervision shall occur in proportion to the number of actual hours worked for the 3,000 hours of supervised experience~~[, with a base line of one hour of supervision for every 40 hours worked].~~ ~~[If the supervisee works full-time, supervision shall occur on average at least twice a month and for no less than four hours per month; if the supervisee works part-time (at least 20 hours per week), supervision shall occur on average at least once a month and no less than two~~

~~hours per month. Supervisory sessions shall last at least one hour and no more than two hours per session.]~~ No more than 10 hours of supervision may be counted in any one month, or 30-day period, as appropriate, towards satisfying minimum requirements for licensure or specialty recognition.

(E) Supervision toward licensure or specialty recognition must extend over a full 3000 hours over a period of not less than 24 full months and a period of not more than 48 full months for LCSW ~~[or LMSW-AP]~~ or not more than 60 full months for Independent Practice Recognition (IPR). Even if the individual completes the minimum of 3000 hours of supervised experience and minimum of 100 hours of supervision prior to 24 months from the start date of supervision, supervision which meets the Council's minimum requirements shall extend to a minimum of 24 full months. ~~[A month is a 30-day period or the length of the actual calendar month, whichever is longer.]~~

Rule Change: The amended rule clarifies and simplifies the requirements for gaining supervised experience. The amended rule simplifies the requirements that supervision shall occur in proportion to the number of actual hours worked for the required 3,000 hours of supervised experience for licensure as an LCSW or towards specialty recognition in independent practice (IPR). Additionally, this proposed amendment is intended to streamline the rule by removing obsolete language. For example, an LMSW-AP is no longer issued therefore the rule language pertaining to the experience required to obtain one is no longer needed.

781.406 Required Documentation of Qualifications for Licensure

Adopted to be effective: February 27, 2022

(3) Supervised experience must have occurred within the five calendar years immediately preceding the date of an initial or upgrade application.

Rule Change: The amended rule clarifies the requirements for gaining supervised experience. The amended rule clarifies that supervised experience must have occurred within the five calendar years immediately preceding the date of an initial or upgrade application. That way if an applicant applies for reinstatement of a license, under §882.22, the application would not be an initial or upgrade application so this part of the rule would not apply.

781.412 Examination Requirement

Adopted to be effective: February 27, 2022

(B) Applicants must have received a passing score on the ASWB national examination within the two-year period preceding the date of the initial or upgrade application. The Council will not accept an exam score received more than two years prior to the date of the initial or upgrade application. ~~[When an applicant passes the examination, the individual has no more than one year from the date of the passing examination to complete the requirements for the licensure, completing all documentation and paying all fees or the passing examination score will no longer count towards licensure.]~~

~~[(e) If an applicant fails the examination on the first attempt of his/her lifetime, the individual may retake the examination no more than two additional times. An applicant who has failed the examination on the first, second, and third attempts must comply with the Council 882.6 of this title (relating to Limitation on Number of Examination Attempts).]~~

Rule Change: The amended rule clarifies and simplifies the examination requirements for applicants. The amended rule clarifies that applicants must pass the national examination with two years prior to their initial or upgrade application. Previously the rule required passage within one year of application. And if an applicant applies for reinstatement of a license, under §882.22, the amended rule clarifies that this part of the rule would not apply. The amended rule also deletes a reference to §882.6, pertaining to limitation on number of examination attempts; even though the limitation on examination attempts will still apply the reference to that rule here is duplicative and unnecessary.