

# **Texas State Board of Examiners of Marriage and Family Therapists**

## ***BOARD MEETING BY VIDEOCONFERENCE***

Friday, July 23, 2021, 8:30 a.m.  
333 Guadalupe, Suite 3-900  
Austin, Texas 78701

Due to Governor Greg Abbott's March 13, 2020, proclamation of a state of disaster affecting all counties in Texas due to the Coronavirus (COVID-19) and the Governor's March 16, 2020, suspension of certain provisions of the Texas Open Meetings Act, this meeting of the Texas State Board of Examiners of Marriage and Family Therapists (Board) will be held by videoconference, as authorized under Texas Government Code §551.127. There will be no physical meeting location open to the public so long as the disaster declaration is in effect.

**Members of the public will have access and a means to participate in this meeting with two-way communication by entering the URL address [HTTPS://US02WEB.ZOOM.US/J/83045783778](https://us02web.zoom.us/j/83045783778) into their web browser or by calling**

**+1 346 248 7799 US (Houston)**

**+1 669 900 9128 US (San Jose)**

**+1 253 215 8782 US (Tacoma)**

**+1 301 715 8592 US (Germantown)**

**+1 312 626 6799 US (Chicago)**

**+1 646 558 8656 US (New York)**

**and entering meeting ID: 830 4578 3778.**

**An electronic copy of the agenda and any meeting materials will be available at <https://www.bhec.texas.gov/texas-state-board-of-examiners-of-marriage-and-family-therapists/important-dates/index.html> before the meeting. A recording of the meeting will be available after the meeting is adjourned. To obtain a recording, please email your request to [open.records@bhec.texas.gov](mailto:open.records@bhec.texas.gov).**

FOR THOSE WHO WISH TO PROVIDE PUBLIC COMMENT: When the public comment agenda item is announced, if you have joined the meeting by computer, please use the “raise hand” feature to indicate you would like to provide a public comment. Those who raise a hand will then be unmuted to give public comment. After all those who raised a hand have been given an opportunity to provide public comment, staff will call upon and unmute those who have joined the meeting by telephone. When providing public comment, please identify yourself and whether you are speaking individually or on behalf of an organization. All public comments will be limited to 3 minutes, unless otherwise directed by the presiding officer. In lieu of providing public comment during the meeting, before the meeting you may submit written public comments via email to [general@bhec.texas.gov](mailto:general@bhec.texas.gov) with subject line “MFT Public Comment – ATTN Board Administrator.” Any written public comment received is submitted to the Board members for their consideration during the meeting, but is not read aloud.

In the event Governor Greg Abbott's March 13, 2020, disaster declaration is not renewed or expires before July 23, 2021, then pursuant to Texas Government Code, §551.127, notice is hereby given that one or more Board members may appear at the scheduled meeting via videoconference, but the presiding officer will be physically present at the above-noticed location. This location will be open to the public only in the event the March 13 disaster declaration is not renewed.

Please note that the Board may request input during the meeting from any interested parties or members of the public during its discussion of an agenda item.

If you are planning to attend this meeting and need auxiliary aids, services or materials in an alternate format, please contact the Board at least 5 working days before the meeting date. PHONE: (512) 305-7700, EMAIL: [general@bhec.texas.gov](mailto:general@bhec.texas.gov), TTY/RELAY TEXAS: 711 or 1- 800-RELAY TX.

The Board may go into Executive Session to deliberate any item listed on this agenda if authorized under Texas Open Meetings Act, Government Code, Chapter 551.

The Board may discuss and take action concerning any matter on the agenda and in a different order from what it appears herein.

## **AGENDA**

(Merchant, Bartee, Elder, Francis, Husband-Thompson, Parrish, Scoma, Smith, Stoglin)

1. Call meeting to order.
2. Approval of minutes of the April 16, 2021, videoconference Board meetings.
3. Board review and possible action regarding appeals of application for licensure denials, including Jonathan Malley, Dena Roberts.
4. Board review and possible action regarding agreed orders to be executed by the Board.
5. Board review and possible action regarding contested cases from the State Office of Administrative Hearings (SOAH).
6. Report of agreed orders executed by the Council's Executive Director.
7. Report of cases dismissed by the Council's Executive Director.
8. Status report of quarterly enforcement case activities.
9. Report of compliance with agreed orders.
10. Report from Committee Chairs per Title 22 of the Texas Administrative Code, §801.11(f):
  - A. Report from Ethics Committee Chair Rev. Dr. Scoma.
  - B. Report from Licensing Standards Committee Chair Dr. Merchant.
  - C. Report from Outreach Committee Chair Dr. Merchant.
  - D. Report from Professional Development Committee Chair Mrs. Husband-Thompson.
  - E. Report from Rules Committee Chair Mr. Francis.
11. Discussion and possible action regarding jurisprudence exam:
  - A. Discussion and possible action concerning the quarterly summary from the Texas State Board of Examiners of Marriage and Family Therapists' Jurisprudence Exam vendor.
  - B. Discussion and possible action related to changes in the Board's Jurisprudence Exam.
12. Discussion and possible action concerning recommendation to the Texas Behavioral Health Executive Council (Executive Council) of proposed rule changes to align with statute, 3 Texas Occupations Code, §502.254 *License Examination*, and streamline exam approval process in 22 Texas Administrative Code (22 TAC):
  - A. §801.2 *Definitions* of LMFT and LMFT Associate; and
  - B. §801.74 *Application to Take Licensure Examination*.
13. Discussion and possible action regarding public comment on proposed rule (published in the June 18, 2021 *Texas Register* [46 TexReg 3694] and recommendation to the Executive Council concerning adoption of 22 TAC, §801.205 regarding *Remedy for Incomplete License Requirements*.
14. Report and update regarding Attorney General opinion regarding Executive Council's authority to adopt rules to impose disciplinary action for certain discriminatory conduct by licensees.
15. Executive Director Report and update, including unit organization and staffing, application and complaint process initiatives, and general information regarding the routine functioning of the program.
16. Report from the Board Chair concerning current challenges and accomplishments; lawsuits; interaction with stakeholders, state officials, and staff; committee appointments and functions; workload of Board members; conferences; and general information regarding the routine functioning of the Board.

17. Report from the Board's Delegates to the Texas Behavioral Health Executive Council regarding the activities of the Executive Council.
18. Report from the Board Administrator concerning operations, organization, and staffing; workload processing and statistical information; status of rulemaking; customer service accomplishments, inquiries, and challenges; media, legislative, and stakeholder contacts and concerns; special projects; and general information regarding the routine functioning of the program.
19. Discussion and possible action regarding future priorities and activities of the Board.
20. Public Comment.
21. Announcements and comments not requiring Board action, such as statements regarding conferences and other recent or upcoming events.
22. Adjournment.

This meeting is open to the public. No reservations are required and there is no cost to attend this meeting.

CONTACT: Sarah Faszholz, Board Administrator  
Texas State Board of Examiners of Marriage and Family Therapists  
general@bhec.texas.gov

**22 Cases Dismissed by Staff**

1. 2021-00169 – General Therapy	Insufficient Evidence
2. 1062-17-0060 – General Administrative	Insufficient Evidence
3. 1062-20-0005 – General Administrative	Lack of Jurisdiction
4. 1062-20-0011 – General Therapy	Lack of Jurisdiction
5. 1062-20-0017 – General Administrative	Insufficient Evidence
6. 1062-19-0013 – General Therapy	Insufficient Evidence
7. 1062-19-0060 – General Administrative	Reinstatement Denied
8. 1062-18-0032 – General Administrative	Lack of Jurisdiction
9. 1062-17-0027 – General Therapy	Insufficient Evidence
10. 2020-00141 – Sexual Misconduct	Insufficient Evidence
11. 2021-00079 – Sexual Misconduct	Insufficient Evidence
12. 2021-00261 – General Administrative	Insufficient Evidence
13. 1062-18-0022 – General Therapy	Warning Letter
14. 1062-20-0029 – General Therapy	Insufficient Evidence
15. 1062-20-0030 – General Therapy	Insufficient Evidence
16. 1062-18-0056 – Cease and Desist	Insufficient Evidence
17. 1062-20-0024 – Cease and Desist	Insufficient Evidence
18. 2021-00257 – General Therapy	Duplicate/Opened in Error
19. 1062-19-0037 – Miscellaneous	Insufficient Evidence
20. 1062-19-0038 – General Administrative	Insufficient Evidence
21. 1062-20-0041 – General Forensic	Insufficient Evidence

# **3rd QUARTER PERFORMANCE MEASURES**

## **FISCAL YEAR 2021**

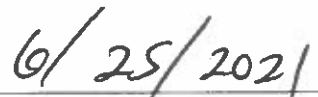
Submitted to the  
Governor's Office of Budget and Planning  
and the Legislative Budget Board

by

# **Texas Behavioral Health Executive Council**

**June 25, 2021**

  
Executive Director

  
Date

Efficiency/Output Measures with Cover Page and Update Explanation  
86th Regular Session, Performance Reporting  
Automated Budget and Evaluation System of Texas (ABEST)

6/25/2021 2:30:38PM

Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
-----------------------	----------------	----------------	-------------	-----------------------------	--------------

Output Measures

1-1-1 LICENSING

1 # NEW LICENSEES ISSUED

Quarter 1	600.00	1,789.00	1,789.00	298.17 % *	120.00 - 180.00
-----------	--------	----------	----------	------------	-----------------

Explanation of Variance: FACTORS CAUSING THE VARIANCE

The performance for this measure for the first quarter of FY 2021 exceeds its target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will issue 7,000 new licenses. Using this target, during this quarter the Council would have met this measure by issuing 1,789 new licenses, or 26% of the target.

\* Varies by 5% or more from target.

Efficiency/Output Measures with Cover Page and Update Explanation  
86th Regular Session, Performance Reporting  
Automated Budget and Evaluation System of Texas (ABEST)

6/25/2021 2:30:38PM

Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
<b>Output Measures</b>					
1 # NEW LICENSEES ISSUED					
Quarter 2	600.00	1,997.00	3,786.00	631.00 % *	270.00 - 330.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the second quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will issue 7,000 new licenses. Using this target, the Council would have met this measure by issuing 3,786 new licenses total year to date, or 54% of the target.

\* Varies by 5% or more from target.

Efficiency/Output Measures with Cover Page and Update Explanation  
86th Regular Session, Performance Reporting  
Automated Budget and Evaluation System of Texas (ABEST)

6/25/2021 2:30:38PM

Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
-----------------------	----------------	----------------	-------------	-----------------------------	--------------

**Output Measures**

**1 # NEW LICENSEES ISSUED**

<b>Quarter 3</b>	600.00	2,648.00	6,434.00	1,072.33 % *	420.00 - 480.00
------------------	--------	----------	----------	--------------	-----------------

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the third quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will issue 7,800 new licenses. Using this target, the Council would have exceeded this measure by issuing 6,434 new licenses total year to date, or 82% of the target.

**2 # LICENSE RENEWALS**

\* Varies by 5% or more from target.



Efficiency/Output Measures with Cover Page and Update Explanation  
86th Regular Session, Performance Reporting  
Automated Budget and Evaluation System of Texas (ABEST)

6/25/2021 2:30:38PM

Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
<b>Output Measures</b>					
2 # LICENSE RENEWALS					
Quarter 1	8,800.00	8,907.00	8,907.00	101.22 % *	1,760.00 - 2,640.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE

The performance for this measure for the first quarter of FY 2021 exceeds its target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will renew 40,000 licenses. Using this target, during this quarter the Council would have met this measure by renewing 8,907 new licenses, or 23% of the target.

\* Varies by 5% or more from target.

**Efficiency/Output Measures with Cover Page and Update Explanation**  
86th Regular Session, Performance Reporting  
Automated Budget and Evaluation System of Texas (ABEST)

6/25/2021 2:30:38PM

Agency code: 510      Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
<b>Output Measures</b>					
2 # LICENSE RENEWALS					
Quarter 2	8,800.00	6,750.00	15,657.00	177.92 % *	3,960.00 - 4,840.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the second quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will renew 40,000 licenses. Using this target, the agency would have fallen short of this measure by renewing 15,657 licenses to date, or 40% of the target.

\* Varies by 5% or more from target.

Efficiency/Output Measures with Cover Page and Update Explanation  
86th Regular Session, Performance Reporting  
Automated Budget and Evaluation System of Texas (ABEST)

6/25/2021 2:30:38PM

Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
<b>Output Measures</b>					
2 # LICENSE RENEWALS					
Quarter 3	8,800.00	7,421.00	23,078.00	262.25 % *	6,160.00 - 7,040.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the third quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will renew 42,000 licenses. Using this target, the agency would have fallen short of this measure by renewing 23,078 licenses to date, or 55% of the target. The Council will monitor this target to determine if it is too high, and make adjustments during the next LAR.

2-1-1 ENFORCEMENT

1 COMPLAINTS RESOLVED

\* Varies by 5% or more from target.

Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
<b>Output Measures</b>					
1 COMPLAINTS RESOLVED					
Quarter 1	130.00	104.00	104.00	80.00 % *	26.00 - 39.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE

The performance for this measure for the first quarter of FY 2021 exceeds its target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

## HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will resolve 800 complaints. Using this target, during this quarter the Council would not have met this measure by resolving 104 complaints, or 13%. The Council's investigators are still in a training state, trying to learn the statutes and rules of all four regulatory programs. However, the number of complaints resolved during the last month of this quarter has significantly increased to 71 from the 12 that were resolved during the first month of the quarter. Additionally, there are 1,379 complaints pending, 200 of which the investigation has been completed and sent to the legal division for review.

\* Varies by 5% or more from target.

Efficiency/Output Measures with Cover Page and Update Explanation  
86th Regular Session, Performance Reporting  
Automated Budget and Evaluation System of Texas (ABEST)

6/25/2021 2:30:38PM

Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
<b>Output Measures</b>					
1 COMPLAINTS RESOLVED					
Quarter 2	130.00	120.00	224.00	172.31 % *	58.50 - 71.50

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the second quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will resolve 800 complaints. Using this target, the Council would not have met this measure by resolving 224 complaints year to date, or 28% of the target. The Council's investigators and attorneys are still in a training state, trying to learn the statutes and rules of all four regulatory programs. Additionally, the Council is still trying to fill four vacant investigator positions. As of the end of this quarter, there are 1,339 complaints pending, 220 of which have since been closed and 145 of which the investigation has been completed and sent to the legal division for review.

\* Varies by 5% or more from target.

**Efficiency/Output Measures with Cover Page and Update Explanation**  
 86th Regular Session, Performance Reporting  
 Automated Budget and Evaluation System of Texas (ABEST)

6/25/2021 2:30:38PM

Agency code: 510                      Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
<b>Output Measures</b>					
1 COMPLAINTS RESOLVED					
Quarter 3	130.00	635.00	859.00	660.77 % *	91.00 - 104.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the third quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will resolve 1000 complaints. Using this target, the Council would have exceeded this measure by resolving 859 complaints year to date, or 86% of the target. The Council's investigators and attorneys are still in a training state, trying to learn the statutes and rules of all four regulatory programs. As of the end of this quarter, there are 801 complaints pending, 38 of which have since been closed and 84 of which the investigation has been completed and sent to the legal division for review.

**Efficiency Measures**

2-1-1 ENFORCEMENT

1 AVG TIME/COMPLAINT RESOLUTION

\* Varies by 5% or more from target.

**Efficiency/Output Measures with Cover Page and Update Explanation**  
 86th Regular Session, Performance Reporting  
 Automated Budget and Evaluation System of Texas (ABEST)

6/25/2021 2:30:38PM

Agency code: 510

Agency name: **Behavioral Health Executive Council**

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
<b>Efficiency Measures</b>					
1 AVG TIME/COMPLAINT RESOLUTION					
Quarter 1	275.00	1,190.00	1,190.00	432.73 % *	261.25 - 288.75

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the first quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected an average complaint resolution time of 800 days. Using this target, during this quarter the Council would not have met this measure with an average complaint resolution time of 1,190 days, or 149%. The Council's investigators are still in a training state, trying to learn the statutes and rules of all four regulatory programs. Additionally, there were over 1,300 pending complaints that transferred over from HHSC, some of which dated back to FY 2008. This backlog will take time to clear, and will inevitably cause a higher average complaint resolution time than originally anticipated.

\* Varies by 5% or more from target.

Efficiency/Output Measures with Cover Page and Update Explanation  
86th Regular Session, Performance Reporting  
Automated Budget and Evaluation System of Texas (ABEST)

6/25/2021 2:30:38PM

Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
-----------------------	----------------	----------------	-------------	-----------------------------	--------------

Efficiency Measures

1 AVG TIME/COMPLAINT RESOLUTION

Quarter 2	275.00	1,147.00	1,167.00	424.36 % *	261.25 - 288.75
-----------	--------	----------	----------	------------	-----------------

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the second quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected an average complaint resolution time of 800 days. Using this target, during this quarter the Council would not have met this measure with an average complaint resolution time of 1,167 days, or 146% of the target. The Council's investigators and attorneys are still in a training state, trying to learn the statutes and rules of all four regulatory programs. Additionally, there were over 1,300 pending complaints that transferred over from HHSC, some of which dated back to FY 2008. This backlog will take time to clear, and will inevitably cause a higher average complaint resolution time than originally anticipated.

Quarter 3	275.00	837.00	922.00	335.27 % *	261.25 - 288.75
-----------	--------	--------	--------	------------	-----------------

Explanation of Variance: In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected an average complaint resolution time of 750 days. Using this target, during this quarter the Council would not have met this measure with an average complaint resolution time of 837 days, or 112% of the target. However, this performance is a decrease of the previous performance of 1,147 days. The Council's investigators and attorneys are still in a training state, trying to learn the statutes and rules of all four regulatory programs. Additionally, there were over 1,300 pending complaints that transferred over from HHSC, some of which dated back to FY 2008. This backlog will take time to clear, and will inevitably cause a higher average complaint resolution time than originally anticipated.

\* Varies by 5% or more from target.



**TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL**  
**3rd QUARTER MEASURES**  
**FY 2021**

Number of New Licenses Renewed (from thpc24)

LSSP	471
LIC	632
LPA	104
LPC	2866
MFTA	36
MFT	405
LBSW	394
LMSW	1281
LCSW	1221
AP	11

Total 7421

Number of Licenses Issued (from thpc24)

LPA	10
LIC	126
LSSP	47
LPCA	581
LPC	146
LPC Upgrade	572
MFTA	60
MFT	46
MFT Upgrade	50
LBSW	35
LMSW	462
LCSW	179
AMEC Upgrade	3
LMSW Upgrade	32
LCSW Upgrade	281
TEMP SW	18

Total 2648

**TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL**  
**2nd QUARTER MEASURES**  
**FY 2021**

Number of Complaints Resolved (from BO report)

LP	64
LSSP	1
LPC	432
MFT	32
SW	106
Total	635

Percent of Complaint Resolved Within Six Months (from BO report)

1 <sup>st</sup> Qtr	5/104 =	5%
2 <sup>nd</sup> Qtr	9/120 =	8%
3 <sup>rd</sup> Qtr	85/635 =	14%
4 <sup>th</sup> Qtr		
YTD	99/859 =	12%

Percent of Complaints Resolved resulting in Disciplinary Action (from BO report)

1 <sup>st</sup> Qtr	33/104 =	33%
2 <sup>nd</sup> Qtr	29/120 =	25%
3 <sup>rd</sup> Qtr	58/635 =	10%
4 <sup>th</sup> Qtr		
YTD	120/859 =	14%

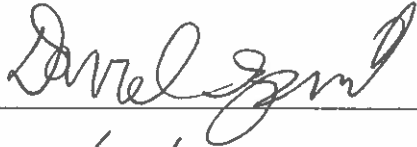
Average Time for Complaint Resolution (from BO report)

1 <sup>st</sup> Qtr	123,751 days to resolve 104 complaints =	1,189.91 days
2 <sup>nd</sup> Qtr	137,604 days to resolve 120 complaints =	1,146.70 days
3 <sup>rd</sup> Qtr	530,849 days to resolve 635 complaints =	836.99 days
4 <sup>th</sup> Qtr		
YTD	792,204 days to resolve 859 complaints =	922.24 days

Average Time for Application Processing (from BO report) (**Bold averages only**)

1 <sup>st</sup> Qtr	122,710 days to process 1,590 applications =	77.18 days
2 <sup>nd</sup> Qtr	149,768 days to process 1,576 applications =	95.03 days
3 <sup>rd</sup> Qtr	151,827 days to process 1,986 applications =	76.45 days
4 <sup>th</sup> Qtr		
YTD	424,305 days to process 5,152 applications =	82.36 days

Calculations reviewed by:



Date:

6/11/21

<b>LPA Initial</b>	<b>614 days to process 22 applications =</b>	<b>27.91</b>
LPA Final	1,926 days to process 11 applications =	175.09
Old LIC Final	15,060 days to process 21 applications =	717.15
<b>LIC Initial</b>	<b>3,520 days to process 105 applications =</b>	<b>33.53</b>
LIC Final	13,818 days to process 112 applications =	123.38
<b>LSSP</b>	<b>947 days to process 32 applications =</b>	<b>29.60</b>
LSSP Final	4,981 days to process 15 applications =	332.07
<b>LPC Initial</b>	<b>15,282 days to process 146 applications =</b>	<b>104.68</b>
<b>LPCA Initial</b>	<b>39,594 days to process 582 applications =</b>	<b>68.03</b>
<b>LPC Upgrade</b>	<b>7,287 days to process 572 applications =</b>	<b>12.74</b>
<b>MFTA Exam</b>	<b>8,253 days to process 52 applications =</b>	<b>158.72</b>
MFT License	4,887 days to process 46 applications =	106.24
MFTA License	4,711 days to process 60 applications =	78.52
<b>MFTA Upgrade</b>	<b>2,594 days to process 50 applications =</b>	<b>51.88</b>
<b>SW Exam</b>	<b>38,746 days to process 137 applications =</b>	<b>282.82</b>
SW License	60,333 days to process 407 applications =	148.24
<b>SW OOS License</b>	<b>33,939 days to process 269 applications =</b>	<b>126.17</b>
SW Upgrade	41,494 days to process 316 applications =	131.31
<b>Temp SW License</b>	<b>1,051 days to process 19 applications =</b>	<b>55.32</b>

- Those in **BOLD** are the applications we have more control over (i.e. we are not waiting for them to take and pass a national exam).

**TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL**  
**ANNUAL MEASURES**  
**FY 2021**

Number of Jurisdictional Complaints Received (from BO report)	90
Number of Complaints Pending (from BO report)	806
Closed	38
Investigation Completed	84
Under Investigation	684

Percent of Licensees With No Recent Violations

Total	74 disciplinary actions
Less duplicates	-9 duplicates

Total unduplicated	65 disciplinary actions
--------------------	-------------------------

Number of individuals licensed as of 8/31/2020: 8793

$$8793 - 65 = 8728$$

$$8728/8793 = 99.26\%$$


Recidivism Rate

Individuals with disciplinary actions FY 18 – FY 20	65
Individuals with 2 or more disciplinary actions	9

$$9/65 = 13.85\%$$

Calculation Reviewed by:

Date:

  
\_\_\_\_\_  
6/11/21  
\_\_\_\_\_

**PERFORMANCE MEASURES  
FISCAL YEAR 2021**

OUTPUT	Target	1st	2nd	3rd	4th	YTD	YTD %	
# of New Lic. Issued	600	1789	1997	2648		6434	1072%	Y
# of Lic. Renewed	8800	8907	6750	7421		23078	262%	Y
# of Complaints Resolved	130	104	120	635		859	661%	Y
<b>EFFICIENCY</b>								
Ave. Time for Comp. Resolution	275	1190	1147	837		922	335%	N
Ave. Time for License Issuance		78	95	76		82		
<b>OUTCOME</b>								
% of Lic. who Renew Online	92%						0%	Y
% of Lic. w/no Recent Violations	99%						0%	
% of Comp. Resulting in Disp. Action		33%	25%	10%		14%		
% of Comp. Resolved w/ 6 mths	40%	5%	8%	14%		12%	30%	N
<b>EXPLANATORY</b>								
Total # of Individuals Licensed								
Jurisdictional Comp. Rec.	120	109	97	90		296	247%	Y
# of Disciplinary Actions						0		
# of Licensees								
# of Licenses								

**LAR Target**

OUTPUT	LAR	1st	2nd	3rd	4th	YTD	YTD %	
# of New Lic. Issued	7800	1789	1997	2648		6434	82%	Y
# of Lic. Renewed	42000	8907	6750	7421		23078	55%	N
# of Complaints Resolved	1000	104	120	635		859	86%	Y
<b>EFFICIENCY</b>								
Ave. Time for Comp. Resolution	750	1190	1147	837		922	123%	N
Ave. Time for License Issuance	60	78	95	76		82	137%	N
<b>OUTCOME</b>								
% of Lic. w/no Recent Violations	95%						0%	
% of Comp. Resulting in Disp. Action		33%	25%	10%		14%		
% of Comp. Resolved w/ 6 mths	15%	5%	8%	14%		12%	80%	N
<b>EXPLANATORY</b>								
Total # of Individuals Licensed								
Jurisdictional Comp. Rec.	600	109	97	90		296	49%	N
# of Disciplinary Actions		33	29	58		120		
# of Licensees								
# of Licenses								

[<<Prev Rule](#)[Next Rule>>](#)

# Texas Administrative Code

[TITLE 22](#)

EXAMINING BOARDS

[PART 35](#)

TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

[CHAPTER 801](#)

LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

[SUBCHAPTER C](#)

APPLICATIONS AND LICENSING

[RULE §801.143](#)

Supervisor Requirements

(a) To apply for supervisor status, an LMFT in good standing must submit an application and applicable fee as well as documentation of the following:

(1) completion of at least 3,000 hours of LMFT practice over a minimum of 3 years; and

(A) successful completion of a 3-semester-hour, graduate course in marriage and family therapy supervision from an accredited institution; or

(B) a 40-hour continuing education course in clinical supervision; or

(2) designation as an approved supervisor or supervisor candidate by the American Association for Marriage and Family Therapy (AAMFT).

(b) A supervisor may not be employed by the person he or she is supervising.

(c) A supervisor may not be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to the person whom he or she is supervising.

(d) Within 60 days of the initiation of supervision, a supervisor must process and maintain a complete supervision file on the LMFT Associate. The supervision file must include:

(1) a photocopy of the submitted Supervisory Agreement Form;

(2) proof of council approval of the Supervisory Agreement Form;

(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.

(i) 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.

(j) 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.

(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.

(l) Supervision of an LMFT Associate without being currently approved as a supervisor is grounds for disciplinary action.

(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.

---

**Source Note:** The provisions of this §801.143 adopted to be effective October 5, 2020, 45 TexReg 7028

[List of Titles](#)

[Back to List](#)

[HOME](#)

[TEXAS REGISTER](#)

[TEXAS ADMINISTRATIVE CODE](#)

[OPEN MEETINGS](#)



[<<Prev Rule](#)[Next Rule>>](#)

## Texas Administrative Code

<u>TITLE 22</u>	EXAMINING BOARDS
<u>PART 35</u>	TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS
<u>CHAPTER 801</u>	LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS
<u>SUBCHAPTER A</u>	GENERAL PROVISIONS
<u>RULE §801.2</u>	Definitions

---

The following words and terms, when used in this chapter, have the following meanings unless the context indicates otherwise.

(1) Accredited institutions or programs--An institution of higher education accredited by a regionally accrediting agency recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education.

(2) Act--Texas Occupations Code, Chapter 502, the Licensed Marriage and Family Therapist Act.

(3) Board--The Texas State Board of Examiners of Marriage and Family Therapists.

(4) Client--An individual, family, couple, group, or organization who receives or has received services from a person identified as a marriage and family therapist who is either licensed by the council or unlicensed.

(5) Council--The Texas Behavioral Health Executive Council.

(6) Council Act--Texas Occupations Code, Chapter 507, concerning the Texas Behavioral Health Executive Council.

(7) Council rules--22 Texas Administrative Code, Chapters 801 and 881 to 885.

(8) Endorsement--The process whereby the council reviews licensing requirements that a license applicant completed while under the jurisdiction of an out-of-state marriage and family therapy regulatory board. The council may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(9) Executive director--the executive director for the Texas Behavioral Health Executive Council.

(10) Family system--An open, on-going, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, and life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health and temperament) and its socio-cultural and historic position in its larger environment.

(11) Group supervision--Supervision that involves a minimum of three and no more than six marriage and family therapy supervisees or LMFT Associates in a clinical setting during the supervision hour.

(12) Individual supervision--Supervision of no more than two marriage and family therapy supervisees or LMFT Associates in a clinical setting during the supervision hour.

(13) Jurisprudence exam--An online learning experience based on the Act, the Council Act, and council rules, and other state laws and rules relating to the practice of marriage and family therapy.

(14) License--A marriage and family therapist license, a marriage and family therapist associate license, a provisional marriage and family therapist license, or a provisional marriage and family therapist associate license.

(15) Licensed marriage and family therapist (LMFT)--A qualified individual licensed by the council to provide marriage and family therapy for compensation.

(16) Licensed marriage and family therapist associate (LMFT Associate)--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.

(17) Licensee--Any person licensed by the council.

(18) Licensure examination--The national licensure examination administered by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) or the State of California marriage and family therapy licensure examination.

(19) Marriage and family therapy--The rendering of professional therapeutic services to clients, singly or in groups, and involves the professional application of family systems theories and techniques in the delivery of therapeutic services to those persons. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction or processes.

(20) Month--A calendar month.

(21) Person--An individual, corporation, partnership, or other legal entity.

(22) Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination or legally recognizable religious denomination or legally recognizable religious organization and other individuals participating with them in pastoral counseling if:

(A) the therapy activities are within the scope of the performance of regular or specialized ministerial duties and are performed under the auspices of sponsorship of an established and legally recognized church, denomination or sect, or an integrated auxiliary of a church as defined in 26 CFR §1.6033-2(h) (relating to Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980));

(B) the individual providing the service remains accountable to the established authority of that church, denomination, sect, or integrated auxiliary; and

(C) the person does not use the title of or hold himself or herself out as a licensed marriage and family therapist.

(23) Supervision--

(A) Supervision for licensure--The guidance or management in the provision of clinical services by a marriage and family therapy supervisee or LMFT Associate, which must be conducted for at least one supervision hour each week, except for good cause shown.

(B) Supervision, Council-ordered--For the oversight and rehabilitation in the provision of clinical services by a licensee under a Council Order, defined by the Order and the Council-Ordered Supervision Plan, and must be conducted as specified in the Council Order and Supervision Plan (generally in face-to-face, one-on-one sessions).

(24) Supervision hour--50 minutes.

(25) Supervisor--An LMFT with supervisor status meeting the requirements set out in §801.143 of this title (relating to Supervisor Requirements). The appropriate council-approved terminology to use in reference to a Supervisor is: "Supervisor," "Licensed Marriage and Family Therapist Supervisor," "LMFT-S" or "LMFT Supervisor." Other terminology or abbreviations may not be used.

(26) Technology-assisted services--Providing therapy or supervision with technologies and devices for electronic communication and information exchange between a licensee in one location and a client or supervisee in another location.

(27) Therapist--A person who holds a license issued by the council.

(28) Waiver--The suspension of educational, professional, or examination requirements for an applicant who meets licensing requirements under special conditions.

---

**Source Note:** The provisions of this §801.2 adopted to be effective April 20, 1994, 19 TexReg 2386; amended to be effective November 22, 1996, 21 TexReg 11588; amended to be effective September 20, 1998, 23 TexReg 9343; amended to be effective May 11, 2000, 25 TexReg 3961; amended to be effective April 11, 2001, 26 TexReg 2713; amended to be effective November 27, 2002, 27 TexReg 10924; amended to be effective July 2, 2006, 31 TexReg 5111; amended to be effective May 18, 2008, 33 TexReg 3758; amended to be effective March 31, 2013, 38 TexReg 1982; amended to be effective November 23, 2014, 39 TexReg 9011; amended to be effective March 26, 2017, 42 TexReg 1253; amended to be effective March 7, 2019, 44 TexReg 1131; amended to be effective October 5, 2020, 45 TexReg 7021

[List of Titles](#)[Back to List](#)[HOME](#)[TEXAS REGISTER](#)[TEXAS ADMINISTRATIVE CODE](#)[OPEN MEETINGS](#)



[<<Prev Rule](#)[Next Rule>>](#)

# Texas Administrative Code

[TITLE 22](#)

EXAMINING BOARDS

[PART 41](#)

TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

[CHAPTER 881](#)

GENERAL PROVISIONS

[SUBCHAPTER A](#)

GENERAL PROVISIONS

[RULE §881.2](#)

Definitions

(a) The following definitions are generally applicable throughout the agency's rules and policies:

(1) The term "ALJ" as used herein shall refer to an administrative law judge employed by SOAH.

(2) The terms "Chapter 501," "Chapter 502," "Chapter 503," "Chapter 505," and "Chapter 507" as used herein shall refer to the corresponding chapter in the Occupations Code.

(3) The term "Executive Council" or "Council" as used herein shall refer to the Texas Behavioral Health Executive Council (BHEC).

(4) The term "member board" as used herein shall refer to:

(A) The Texas State Board of Examiners of Marriage and Family Therapists (TSBEMFT);

(B) The Texas State Board of Examiners of Professional Counselors (TSBEPC);

(C) The Texas State Board of Examiners of Psychologists (TSBEP); or

(D) The Texas State Board of Social Worker Examiners (TSBSWE).

(5) The term "PFD" as used herein shall refer to a proposal for decision issued by an ALJ.

(6) The terms "professional development" and "continuing education" as used herein have the same meaning.

(7) The term "SOAH" as used herein shall refer to the State Office of Administrative Hearings.

(8) The term "TAC" as used herein shall refer to the Texas Administrative Code.

(b) The following definitions apply only to those rules specific to the regulation of the practice of marriage and family therapy:

(1) "LMFT" refers to a licensed marriage and family therapist and has the same meaning as assigned by §502.002 of the Occupations Code.

(2) "LMFT Associate" refers to a licensed marriage and family therapist associate and has the same meaning as assigned by §502.002 of the Occupations Code.

(c) The following definitions apply only to those rules specific to the regulation of the practice of professional counseling:

(1) "LPC" refers to a licensed professional counselor and has the same meaning as assigned by §503.002 of

the Occupations Code.

(2) "LPC Associate" refers to an individual licensed as a professional counselor associate under §503.308 of the Occupations Code.

(d) The following definitions apply only to those rules specific to the regulation of the practice of psychology:

(1) "LPA" or "Psychological Associate" refers to an individual licensed as a psychological associate under §501.259 of the Occupations Code.

(2) "LSSP" refers to an individual licensed as a specialist in school psychology under §501.260 of the Occupations Code.

(3) "Provisionally licensed psychologist" or "provisional licensee" means an individual licensed as a psychologist with provisional status under §501.253 of the Occupations Code.

(4) "PSYPACT" refers to the Psychology Interjurisdictional Compact found in Chapter 501, Subchapter L of the Occupations Code.

(e) The following definitions apply only to those rules specific to the regulation of the practice of social work:

(1) "LBSW" refers to a licensed baccalaureate social worker and has the same meaning as assigned by §505.002 of the Occupations Code.

(2) "LCSW" refers to a licensed clinical social worker and has the same meaning as assigned by §505.002 of the Occupations Code.

(3) "LMSW" refers to a licensed master social worker and has the same meaning as assigned by §505.002 of the Occupations Code.

(4) "LMSW-AP" refers to an individual licensed as a master social worker with the advanced practitioner specialty recognition.

---

**Source Note:** The provisions of this §881.2 adopted to be effective September 1, 2020, 45 TexReg 4751

[List of Titles](#)

[Back to List](#)

[HOME](#)

[TEXAS REGISTER](#)

[TEXAS ADMINISTRATIVE CODE](#)

[OPEN MEETINGS](#)

Sec. 502.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas State Board of Examiners of Marriage and Family Therapists.

(2) "Executive council" means the Texas Behavioral Health Executive Council.

(3) Repealed by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(34), eff. September 1, 2019.

(4) "Licensed marriage and family therapist" means a person who offers marriage and family therapy for compensation.

(5) "Licensed marriage and family therapist associate" means an individual who offers to provide marriage and family therapy for compensation under the supervision of a supervisor approved by the executive council.

(6) "Marriage and family therapy" means providing professional therapy services to individuals, families, or married couples, alone or in groups, that involve applying family systems theories and techniques. The term includes the evaluation, diagnostic assessment, and remediation of mental, cognitive, affective, behavioral, or relational dysfunction, disease, or disorder in the context of marriage or family systems and may include the use of the Diagnostic and Statistical Manual of Mental Disorders and the International Classification of Diseases. The practice of marriage and family therapy does not constitute the practice of medicine and does not include prescribing medication, treating a physical disease, or providing any service outside the scope of practice of a licensed marriage and family therapist or a licensed marriage and family therapist associate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.252(a), eff. Sept. 1, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 1, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 501 (H.B. 2818), Sec. 1, eff. June 9, 2017.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.029, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(1), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(34), eff. September 1, 2019.



[<<Prev Rule](#)[Next Rule>>](#)

## Texas Administrative Code

[TITLE 22](#)

EXAMINING BOARDS

[PART 41](#)

TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

[CHAPTER 881](#)

GENERAL PROVISIONS

[SUBCHAPTER A](#)

GENERAL PROVISIONS

[RULE §881.10](#)

Conflict Between Other Laws and Council Rules

(a) In the event of a conflict between a Council rule and the state or federal constitution, a state or federal statute, or a rule, guideline, or requirement promulgated by a federal office or agency, the state or federal law, guideline, or requirement shall control.

(b) In the event of a conflict between a rule in 22 TAC Part 41 and Parts 21, 30, 34, and 35; the rules in Part 41 shall prevail.

**Source Note:** The provisions of this §881.10 adopted to be effective September 1, 2020, 45 TexReg 4751

[List of Titles](#)[Back to List](#)[HOME](#)[TEXAS REGISTER](#)[TEXAS ADMINISTRATIVE CODE](#)[OPEN MEETINGS](#)

Rule: 801.2. Definitions

Action: Proposed Amendment

Comment: The proposed amendment 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).

801.2. Definitions. The following words and terms, when used in this chapter, have the following meanings unless the context indicates otherwise.

- (1) Accredited institutions or programs--An institution of higher education accredited by a regionally accrediting agency recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education.
- (2) Act--Texas Occupations Code, Chapter 502, the Licensed Marriage and Family Therapist Act.
- (3) Board--The Texas State Board of Examiners of Marriage and Family Therapists.
- (4) Client--An individual, family, couple, group, or organization who receives or has received services from a person identified as a marriage and family therapist who is either licensed by the council or unlicensed.
- (5) Council--The Texas Behavioral Health Executive Council.
- (6) Council Act--Texas Occupations Code, Chapter 507, concerning the Texas Behavioral Health Executive Council.
- (7) Council rules--22 Texas Administrative Code, Chapters 801 and 881 to 885.
- (8) Endorsement--The process whereby the council reviews licensing requirements that a license applicant completed while under the jurisdiction of an out-of-state marriage and family therapy regulatory board. The council may accept, deny or grant partial credit for requirements completed in a different jurisdiction.
- (9) Executive director--the executive director for the Texas Behavioral Health Executive Council.



- (10) Family system--An open, on-going, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, and life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health and temperament) and its socio-cultural and historic position in its larger environment.
- (11) Group supervision--Supervision that involves a minimum of three and no more than six marriage and family therapy supervisees or LMFT Associates in a clinical setting during the supervision hour.
- (12) Individual supervision--Supervision of no more than two marriage and family therapy supervisees or LMFT Associates in a clinical setting during the supervision hour.
- (13) Jurisprudence exam--An online learning experience based on the Act, the Council Act, and council rules, and other state laws and rules relating to the practice of marriage and family therapy.
- (14) License--A marriage and family therapist license, a marriage and family therapist associate license, a provisional marriage and family therapist license, or a provisional marriage and family therapist associate license.
- (15) Licensed marriage and family therapist (LMFT)--Has the same meaning as assigned by §502.002 of the Occupations Code ~~A qualified individual licensed by the council to provide marriage and family therapy for compensation.~~
- (16) Licensed marriage and family therapist associate (LMFT Associate)--Has the same meaning as assigned by §502.002 of the Occupations Code ~~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.
- (17) Licensee--Any person licensed by the council.
- (18) Licensure examination--The national licensure examination administered by the Association of Marital and Family Therapy

Regulatory Boards (AMFTRB) or the State of California marriage and family therapy licensure examination.

- (19) Marriage and family therapy--The rendering of professional therapeutic services to clients, singly or in groups, and involves the professional application of family systems theories and techniques in the delivery of therapeutic services to those persons. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction or processes.
- (20) Month--A calendar month.
- (21) Person--An individual, corporation, partnership, or other legal entity.
- (22) Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination or legally recognizable religious denomination or legally recognizable religious organization and other individuals participating with them in pastoral counseling if:
  - (A) the therapy activities are within the scope of the performance of regular or specialized ministerial duties and are performed under the auspices of sponsorship of an established and legally recognized church, denomination or sect, or an integrated auxiliary of a church as defined in 26 CFR §1.6033-2(h) (relating to Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980));
  - (B) the individual providing the service remains accountable to the established authority of that church, denomination, sect, or integrated auxiliary; and
  - (C) the person does not use the title of or hold himself or herself out as a licensed marriage and family therapist.
- (23) Supervision--
  - (A) Supervision for licensure--The guidance or management in the provision of clinical services by a marriage and family therapy supervisee or LMFT Associate, which must be conducted for at least one supervision hour each week, except for good cause shown.

- (B) Supervision, Council-ordered--For the oversight and rehabilitation in the provision of clinical services by a licensee under a Council Order, defined by the Order and the Council-Ordered Supervision Plan, and must be conducted as specified in the Council Order and Supervision Plan (generally in face-to-face, one-on-one sessions).
- (24) Supervision hour--50 minutes.
- (25) Supervisor--An LMFT with supervisor status meeting the requirements set out in §801.143 of this title (relating to Supervisor Requirements). The appropriate council-approved terminology to use in reference to a Supervisor is: "Supervisor," "Licensed Marriage and Family Therapist Supervisor," "LMFT-S" or "LMFT Supervisor." Other terminology or abbreviations may not be used.
- (26) Technology-assisted services--Providing therapy or supervision with technologies and devices for electronic communication and information exchange between a licensee in one location and a client or supervisee in another location.
- (27) Therapist--A person who holds a license issued by the council.
- (28) Waiver--The suspension of educational, professional, or examination requirements for an applicant who meets licensing requirements under special conditions

Rule: 801.74. Application to Take Licensure Examination

Action: Proposed Amendment

Comment: The proposed amendment is intended to streamline the application process for the approval and registration for licensure examinations resulting in anticipated greater agency efficiencies.

801.74. Application to Take Licensure Examination. 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 General 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 family 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.~~

July 23, 2021 Board Meeting

Public Comment received for proposed rule [§801.205 Remedy for Incomplete License Requirements](#), published 6/18/2021

---

**From:** Felicia Holloway <REDACTED>  
**Sent:** Friday, June 18, 2021 10:21 AM  
**To:** rules <rules@bhec.texas.gov>  
**Subject:** Proposed rule comment

Hello,

I would like to comment on the proposed rule to consider applications of associates who were impacted by disaster.

I work for a nonprofit agency in which most of my counselors are associates. During the pandemic, we did not have the resources to clean and sanitize our facility frequently and it was difficult to even access cleaning products and PPE, so we made the decision to provide virtual counseling only for most of 2020. I believe this was the case for many agencies in the DFW area. I believe it is imperative that this rule is implemented so associates are not penalized for something out of their control. Also, by not allowing all of their telehealth hours to be counted towards their internship hours, BHEC is slowing the process of good quality counselors becoming fully licensed which impacts the counselors' financially, our field and community access to quality mental health services.

Best regards,  
Dr. Felicia J. Holloway, PhD, LPC-S, LMFT-S  
817-692-2230

---

**From:** Andrea Jackson <REDACTED>  
**Sent:** Friday, June 18, 2021 2:03 PM  
**To:** rules <rules@bhec.texas.gov>  
**Subject:** Public Comment: Regarding 22 TAC §801.205 Remedy for Incomplete License Requirements

Hi, Brenda,

This email is in **SUPPORT** of allowing the MFT board to make changes to Title 22 of the Texas Administrative Code (22 TAC), §801.205 *Remedy for Incomplete License Requirements* to allow the MFT Board to make exception for an applicant who has difficulty fulfilling certain licensing requirements due to a declared disaster.

Thank you,  
Beth  
A. Beth Jackson, M.S., LMFT-Associate  
Peace Lane Therapy  
[peacelanetherapy.com](http://peacelanetherapy.com)  
Personal text REDACTED  
REDACTED  
Pronouns: she/her/hers  
Supervised by Nicole Vargas, PhD, LMFT-S

July 23, 2021 Board Meeting

Public Comment received for proposed rule [§801.205 Remedy for Incomplete License Requirements](#), published 6/18/2021

---

**From:** Sally Ann Driver <REDACTED>  
**Sent:** Wednesday, June 23, 2021 2:31 PM  
**To:** rules <rules@bhec.texas.gov>  
**Subject:** 500hrs telehealth waiver

To Whom it May Concern,

I am writing in strong opposition to enforcing the cap of 500 hours on direct hours obtained via telehealth for MFTs due to the COVID-19 pandemic. Many practices and agencies stopped providing in-person therapy based on Governor Abbot's stay-at-home order as well as due to the needs of their clients, many of whom fall into high-risk populations. Furthermore, many clinicians may have personal health conditions or care for individuals with conditions that would be complicated if they were to contract COVID-19 and by not allowing them to accrue hours via telehealth we are asking them to place themselves and/or their family members at risk and clinicians should not have to choose between their career and the wellbeing of themselves and their family.

Do we really want to make becoming fully licensed more difficult when there is a shortage of licensees in Texas? Do we really want to add to the financial burden of paying for additional supervision to obtain more direct in-person hours? Also, for clients who have elected to continue with telehealth are we saying that we are going to ignore their wishes requiring them to receive in-person therapy because the associates need the in-person hours?

Please consider the hardship BHEC is creating for associates as well as clients by enforcing the cap of 500 telehealth hours especially as we all emerge from a global pandemic. Additionally, this cap is only imposed on MFTs which given the shortage of mental health providers seems ridiculous.

Sincerely,  
Sally Ann Driver, M.S., LMFT-Associate, NCC, LPC-Associate  
Supervised by Faith K. Ray, M.S., MFT-S/LPC-S

---

**From:** Jalia Henry <REDACTED>  
**Sent:** Thursday, June 24, 2021 11:20 AM  
**To:** rules <rules@bhec.texas.gov>  
**Subject:** Public comment for supervision hours

I support the continuance of virtual supervision hours being counted. The agency I work for has been remote since March 2020 and we are not going back to the office anytime soon. I fear what will happen with licensing time, financial stipulations and potential health risk if these hours are not permitted.

Best,  
Jalia Henry | Mental Health Clinician | LMFT-A  
Veteran and Military Families Mental Health Program

*July 23, 2021 Board Meeting*

Public Comment received for proposed rule [§801.205 Remedy for Incomplete License Requirements](#), published 6/18/2021

# Easter Seals Greater Houston

REDACTED | [www.eastersealshouston.org](http://www.eastersealshouston.org)

Cell REDACTED | Office 713.838.9050 | Fax 713.838.9098

4888 Loop Central Drive, Suite 200 | Houston, TX 77081

Follow us on [Facebook](#), [Instagram](#) and [Twitter](#)



Celebrating Summer Safely through Family and Virtual Camp! Help ensure children with disabilities have a barrier free summer and parents of children with disabilities receive caregiving relief. **Donate Today! #NationalCampingMonth**

This e-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521 and is legally privileged. The information contained in this E-mail is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee of agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately permanently delete it from your computer, destroy all copies, and notify us by telephone at 713-838-9050.

**From:** Marina Stanton <REDACTED>

**Sent:** Friday, July 9, 2021 2:10 PM

**To:** rules <rules@bhec.texas.gov>

**Cc:** Nicole[REDACTED]

**Subject:** MFT call for comments regarding 22 TAC §801.205

Hello Ms. Skiff,

This email is regarding the call for comments 22 TAC Chapter 801 in the Texas Register, which states: “*Remedy for Incomplete License Requirements* to allow the MFT Board to make exception for an applicant who has difficulty fulfilling certain licensing requirements due to a declared disaster.” I had a question about what kinds of things they will give exceptions for based on the example given. Is this specific call for comments also regarding the limit of 500 technology assisted service hours? Or will that be discussed at another time?

The example given was regarding exceptions given for “difficulty meeting the in person supervised experience hours during COVID-19 because some supervisors are only allowing telehealth services during the COVID-19 pandemic.” I was confused about this example, as my understanding was that this rule had been recently changed under 801.142 (i)? I believe it now

Public Comment received for proposed rule [§801.205 Remedy for Incomplete License Requirements](#), published 6/18/2021

states that: “At least 100 hours must be individual supervision; and (ii) no more than 50 hours may be provided by telephonic services, but there is no limit for hours by lived video.” When I last checked the forms for the MFT board, it appeared that this change had not been reflected on the supervised experience forms, as they ask, “Of the total supervision hours, how many were provided via telephone or other electronic media?” but does not differentiate between telehealth and telephone supervision.

Professionally, as a therapist with a highly specialized practice, having the option to choose supervisors based on specialty and expertise rather than propinquity has been a huge blessing. I am located in the DFW area. I found a wonderful supervisor in Mathis Kennington, who specialized in couples and sex therapy, located in Austin. He was my supervisor from September 2020 till February 2021. I am grateful for the opportunity to be supervised by him, which would not have been afforded without technology assisted means.

My current supervisor, Dr. Nicole Van Ness, is also located within the DFW area, but would require a lengthy commute to see her in person. I have grown immensely from her tutelage via telehealth video, and have seen little to no difference in the quality of supervision between in person and technology assisted means. But technology has allowed me to find these more specialized supervisors where I otherwise may not have been able to.

My understanding was that the potential change to the limit of 500 TAS hours would be discussed at the most recent MFT board meeting on April 16, 2021. As Jason Martin commented during the public comments, he expressed concern that the council would bring more legal options regarding LMFT Associates counting additional TAS hours, which he understood was to be on the agenda for that day.

Ultimately, I am concerned about the discussion regarding the “Remedy for Incomplete License requirements” rather than a discussion specifically around the rule requiring no more than 500 technology assisted hours. I believe that providing services through teletherapy is ultimately safer for my own health and my clients’ health. I am conflicted over that safety and concern for clients’ health and the health of my family verses prioritizing meeting the requirements of the board for licensure and meeting in person to ensure that my hours would “count.” In short, I don’t want to prioritize my own need to accrue a certain kind of hours over the health and well-being of my clients.

My story is a bit different than most: I have a master’s degree in marriage and family therapy, and one in clinical psychology, and started working towards licensure in Marriage and Family Therapy in 2010. A second degree, and two kids later, I started my private practice almost entirely through telehealth in September 2020, during the Covid-19 pandemic. I also became licensed as a Marriage and Family Therapy Associate in Texas at that time. Since then, I have seen approximately 10 to 15 clients per week via simple practice telehealth. I have loved telehealth, as have my clients. I specialize in seeing couples. They have loved the convenience associated with being able to see a therapist in the middle of their work day, without additional disruptions to their schedule for travel time, childcare, etc.



Public Comment received for proposed rule [§801.205 Remedy for Incomplete License Requirements](#), published 6/18/2021

In May, I realized that I had 350 direct client contact hours, accrued since September 2020, primarily via technology assisted means. Based on the current limit of 500 technology assisted therapy hours, I determined to start transitioning my caseload to in person, with the understanding that the board would not make the decision whether or not to repeal or change the rule regarding the limit of 500 technology assisted hours until August. I have acquired an office space, and started seeing clients in person earlier this week, following all recommended health and safety guidelines.

When discussing the transition with my clients, although many of them are local, the response was that they would love to “meet me” in person, but would prefer to continue via teletherapy. I don’t blame them. While in the state of Texas generally, life is getting back to normal, many clients are embracing the opportunity for teletherapy.

While things have “gotten back to normal” in many places in Texas, many of my clients are still concerned about the Delta variant and the possible resurgence of Covid-19 as we head into the cold and flu season. Many licensed therapists are choosing to continue their practices entirely online.

While I understand that there are costs and benefits associated with technology assisted therapy, I strongly believe that the benefits to both the client and therapist highly outweigh the drawbacks. We live in a world where a therapist can now choose to have an entirely online practice, provided they do not have an associate license, that is. Prior to Covid, there was not the demand, nor the evidence that clients would prefer teletherapy versus in person therapy. Now, the overwhelming feedback is positive for teletherapy, and I believe that as therapists, many will choose not to go back to seeing clients entirely in person.

Shouldn’t the therapist, who can currently decide if they want to have a private practice or not, also decide the modality with which they prefer to see clients? Especially as it is related to the health of their clients, their families, and the therapist themselves?

I appreciate your willingness to accept our feedback!

Best,  
Marina Stanton

--

Texas State Board of Examiners of Marriage and Family Therapists

*July 23, 2021 Board Meeting*

Public Comment received for proposed rule [§801.205 Remedy for Incomplete License Requirements](#), published 6/18/2021



## Marina Stanton

Texas LMFT-Associate #203827

Supervised by Dr Nicole Van Ness, LMFT-S

469-278-4380

5500 Democracy Drive, Suite 140

Plano, TX 75024

Telehealth available throughout Texas

[ReviveRelationshipCounseling.com](http://ReviveRelationshipCounseling.com)

**Confidentiality Notice:** This email message is covered by the Electronic Communications Privacy Act, 18 U.S.C. Section 2510-2521 and is legally privileged. Unauthorized use, view, disclosure or distribution is prohibited. If you are not the intended recipient, please contact sender at (469)278-4380 or by reply email, and destroy all copies of the original message. Thank you.

Unless it specifically so states, this communication does not reflect an intention by the sender or the sender's client or principal to conduct a transaction or make any agreement by electronic means. Unless it specifically so states, nothing contained in this message or in any attachment shall satisfy the requirements for a writing, and nothing contained herein shall constitute a contract or electronic signature under the Electronic Signatures in Global and National Commerce Act, any version of the Uniform Electronic Transactions Act, or any other statute governing electronic transactions. In addition, by responding to this email, you consent to engage in communication by email.

Rule: 801.205. Remedy for Incomplete License Requirements

Action: Adopted New Rule

Comment: The adopted new rule is necessary to allow the LMFT Board to make exceptions for applicants that have difficulty fulfilling certain licensing requirements due to a declared disaster. For example, some LMFT Associate have 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 will grant the LMFT Board some flexibility in approving these future applications for an LMFT.

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.



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 14, 2021

Mr. Darrel D. Spinks  
Executive Director  
Texas Behavioral Health Executive Council  
333 Guadalupe, Suite 3-900  
Austin, Texas 78701

**Opinion No. KP-0372**

Re: Authority of the Behavioral Health Executive Council to adopt a rule prohibiting certain discriminatory conduct by licensed social workers (RQ-0391-KP)

Dear Mr. Spinks:

You ask about the authority of the Behavioral Health Executive Council (“the Council”) to adopt a rule prohibiting discriminatory actions relating to disability, sexual orientation, and gender identity and expression by licensed social workers regulated by the Council.<sup>1</sup>

**I. The Legislature directed the Council to take disciplinary action against license holders for only certain types of discriminatory conduct.**

The Council oversees four separate entities related to the provision of psychology and counseling services: (1) the Texas State Board of Examiners of Marriage and Family Therapists; (2) the Texas State Board of Examiners of Professional Counselors; (3) the Texas State Board of Examiners of Psychologists; and (4) the Texas State Board of Social Worker Examiners. *See* TEX. OCC. CODE § 507.151(a) (requiring the Council to administer and enforce chapters related to each profession). The Legislature authorized the Council to “adopt and enforce rules” and to “establish standards of conduct and ethics for license holders” under its jurisdiction. *Id.* § 505.201(a)(1)–(2).

With regard to the practice of social work, the Legislature directed the Council to take disciplinary action against license holders who refuse “to perform an act or service within the scope of the license holder’s license solely because of the recipient’s age, sex, race, religion, national origin, color, or political affiliation.” *Id.* § 505.451(13). The Council adopted the following rule with respect to social workers:

---

<sup>1</sup>Letter from Mr. Darrel D. Spinks, Exec. Dir., Tex. Behavioral Health Exec. Council, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Dec. 14, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0391KP.pdf> (“Request Letter”).

A social worker must observe and comply with the code of conduct and standards of practice set forth in this subchapter. Any violation of the code of conduct or standards of practice will constitute unethical conduct or conduct that discredits or tends to discredit the profession of social work and is grounds for disciplinary action.

- (1) A social worker shall not refuse to perform any act or service for which the person is licensed solely on the basis of a client's age; gender; race; color; religion; national origin; disability; sexual orientation; gender identity and expression; or political affiliation.

22 TEX. ADMIN. CODE § 781.301(1).

The Council's rule prohibiting social workers from discrimination changes the term "sex" to "gender" and adds three categories of discrimination not expressly included by the Legislature in subsection 505.451(13): discrimination based on disability, sexual orientation, and gender identity.<sup>2</sup> *Compare id.*, with TEX. OCC. CODE § 505.451(13). You ask whether the Council has statutory authority to adopt this rule in its regulation of social workers. Request Letter at 1.

## **II. The Council lacks authority to discipline licensees for discrimination beyond what the Legislature authorized it to address.**

As a state administrative agency, the Council is a creature of the Legislature and has no inherent authority. *See Pub. Util. Comm'n of Tex. v. City Pub. Serv. Bd. of San Antonio*, 53 S.W.3d 310, 316 (Tex. 2001). When the Legislature authorizes an agency to adopt rules, the agency "may adopt only such rules as are authorized by and consistent with its statutory authority." *Pruett v. Harris Cnty. Bail Bond Bd.*, 249 S.W.3d 447, 452 (Tex. 2008). Important to your question, an agency rule may not impose "additional burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions." *Tex. State Bd. of Exam'rs of Marriage & Fam. Therapists v. Tex. Med. Ass'n*, 511 S.W.3d 28, 33 (Tex. 2017). The Legislature "chooses a statute's language with care, including each word chosen for a purpose, while purposely omitting words not chosen." *Cadena Comercial USA Corp. v. Tex. Alcoholic Beverage Comm'n*, 518 S.W.3d 318, 325–26 (Tex. 2017) (quotation marks omitted). State agencies must take the statutes as they find them and refrain from rewriting the Legislature's text. *Id.* at 326.

Subsection 505.451(13) identifies the obligation the Legislature placed on the Council to take disciplinary action for discrimination by social workers. TEX. OCC. CODE § 505.451(13). No provisions in either chapter 505 ("Social Workers") or chapter 507 ("Texas Behavioral Health Executive Council") address gender, disability, sexual orientation, or gender identity

---

<sup>2</sup>The common understanding of the term "sex" is "one of the two divisions of organic esp. human beings respectively designated male or female." WEBSTER'S THIRD NEW INT'L DICT. 2081 (2002). In contrast, the term "gender" is commonly defined as "any of two or more subclasses within a grammatical class of a language (such as noun, pronoun, adjective, verb) that are partly arbitrary but also partly based on distinguishable characteristics such as . . . sex (as masculine, feminine, or neuter) and that determine agreement with and selection of other words or grammatical forms." *Id.* at 944.

discrimination by a social worker. By contrast, in other circumstances, the Legislature expressly authorized regulatory agencies to take disciplinary action for disability discrimination. *See, e.g., id.* § 1101.652(b)(32) (authorizing the Real Estate Commission to discipline a real estate broker who “discriminates against an owner, potential buyer, landlord, or potential tenant on the basis of . . . disability”). “When the Legislature uses a word or phrase in one part of a statute but excludes it from another, the term should not be implied where it has been excluded.” *Cadena Comercial USA Corp.*, 518 S.W.3d at 329.

Thus, the Council’s attempt to rewrite the Legislature’s chosen language by changing the term “sex” to “gender” and to prohibit discrimination on the basis of disability, sexual orientation, or gender identity and expression by adopting a rule and authorizing itself to take disciplinary action for such conduct exceeds the authority granted to it by the Legislature and imposes additional restrictions in excess of the relevant statutory provisions. Because the Council exceeded its statutory authority in adopting the rule, a court would likely conclude the rule is invalid to the extent of that excess.

### **III. State law does not prohibit discrimination based on sexual orientation or gender identity.**

Protected classes are created by statute or a constitutional provision. *See, e.g.,* TEX. CONST. art. I, § 3a (“Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin.”); TEX. LABOR CODE § 21.051 (prohibiting employment discrimination on the basis of race, color, disability, religion, sex, national origin, or age); *Flores v. State*, 904 S.W.2d 129, 130 (Tex. Crim. App. 1995) (explaining that race or national origin discrimination is prohibited by provisions in the U.S. and Texas constitutions).

No Texas statute prohibits discrimination based on sexual orientation or gender identity and expression. If the Legislature intends otherwise, it may expressly amend statutes to so provide. While the U.S. Supreme Court, in *Bostock v. Clayton County*, construed federal law to prohibit discrimination based on sexual orientation or gender identity in the employment context, the Court expressly limited its decision to the statutory language of Title VII. 140 S. Ct. 1731, 1753 (2020) (“The employers worry that our decision will sweep beyond Title VII to other federal or state laws that prohibit sex discrimination . . . . But none of these other laws are before us; we have not had the benefit of adversarial testing about the meaning of their terms, and we do not prejudge any such question today.”).<sup>3</sup> The factual scenarios at issue in that case involved employers firing employees on the basis of their sexual orientation, as distinguished from the scenarios at issue here, where the Council seeks to compel its licensees to affirmatively provide services to individuals without consideration of sexual orientation or gender identity. Furthermore, the Court in *Bostock* expressly distinguished statutes that, like subsection 505.451(13), prohibit discrimination “solely” because of an individual’s sex. *Id.* at 1739, 1753. Thus, the rule in *Bostock* cannot be applied to extend the Council’s authority to take disciplinary action against license

---

<sup>3</sup>“The role of an Attorney General opinion is to assess how a court would likely rule on a legal question in light of prior court decisions.” Tex. Att’y Gen. Op. No. KP-0158 (2017) at 2; *see* Tex. Att’y Gen. Op. No. GA-1087 (2014) at 3. Nothing in this opinion should be construed as opining on the holding of the *Bostock* decision or its underlying analysis or persuasiveness.

holders. *Cf. Pelcha v. MW Bancorp, Inc.*, 988 F.3d 318, 324 (6th Cir. 2021) (“[T]he rule in *Bostock* extends no further than Title VII and does not stretch to the ADEA.”).

**IV. The sexual orientation and gender identity discrimination the Council seeks to prohibit through its rule may, in particular instances, be constitutionally protected under the Free Exercise Clause.**

The First Amendment of the U.S. Constitution provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .” U.S. CONST. amend. I. The Free Exercise Clause has been applied to the States through the Fourteenth Amendment. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). In addition, the Texas Constitution provides: “No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion. . . .” TEX. CONST. art. I, § 6. Some courts have opined that article I, section 6 of the Texas Constitution “provides greater protections for the free exercise of one’s religion than does the federal constitution.” *Ex parte Herrera*, No. 05-14-00598-CR, 2014 WL 4207153, at \*4 (Tex. App.—Dallas Aug. 26, 2014, no pet.) (mem. op.) (citing *Howell v. State*, 723 S.W.2d 755, 758 (Tex. App.—Texarkana 1986, no writ)).

Both state and federal law protect religious organizations and persons as they seek to fulfill the principles central to their faiths. *See, e.g., Burwell v. Hobby Lobby Stores*, 573 U.S. 682, 694–95 (2014). The U.S. Supreme Court has emphasized that “religious and philosophical objections to gay marriage are protected views and in some instances protected forms of expression.” *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1727 (2018).

Consistent with these constitutional protections, the U.S. Supreme Court concluded in *Masterpiece Cakeshop* that “the government, if it is to respect the Constitution’s guarantee of free exercise, cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices.” *Masterpiece Cakeshop, Ltd.*, 138 S. Ct. at 1731 (citing *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993)).<sup>4</sup> The sexual orientation and gender identity discrimination the Council seeks to prohibit through its rule may, in particular instances, be a constitutionally protected exercise of religion. *See generally Ward v. Polite*, 667 F.3d 727, 730 (6th Cir. 2012) (reversing summary judgment against a student who declined to provide counseling to a gay client because affirming same-sex relationships contradicted her religious

---

<sup>4</sup>The defendant in *Masterpiece Cakeshop* also asserted a claim that the Colorado Civil Rights Commission infringed upon his freedom of speech when it ruled that he violated the Colorado Anti-Discrimination Act by refusing to bake a wedding cake for a gay couple. *See Masterpiece Cakeshop, Ltd.*, 138 S. Ct. at 1723. The Court decided the case on free exercise grounds and left for another day the free speech concerns surrounding the issue. *See id.* (“Whatever the confluence of speech and free exercise principles might be in some cases, the Colorado Civil Rights Commission’s consideration of this case was inconsistent with the State’s obligation of religious neutrality.”). However, a social worker disciplined for voicing controversial viewpoints regarding sexual orientation or gender identity may also have a claim under the First Amendment right to free speech as well. *See Meriwether v. Hartop*, 992 F.3d 492, 511–12 (6th Cir. 2021) (holding that a university violated a professor’s right to free speech when it disciplined the professor for refusing to identify a student using the student’s preferred pronouns).

beliefs). A rule prohibiting that exercise of religion conflicts with the longstanding constitutional protection for an individual's most deeply held religious beliefs.

**V. While a social worker may not discriminate based on disability in contravention of state and federal law, the Council lacks statutory authority to discipline a licensee for discrimination based on disability.**

The Legislature has promulgated laws to prohibit discrimination against the disabled. Texas law provides that “[p]ersons with disabilities have the same right as persons without disabilities to the full use and enjoyment of any public facility in the state.” TEX. HUM. RES. CODE § 121.003(a). “No person with a disability may be denied admittance to any public facility in the state because of the person’s disability.” *Id.* § 121.003(c). Persons who discriminate against an individual based on a disability in violation of section 121.003 may incur both criminal and civil penalties. *Id.* § 121.004.<sup>5</sup>

However, the Legislature did not give the Council authority to discipline social workers for disability discrimination. If the Legislature intends otherwise, it may expressly amend the statute to so provide. The Council’s power to adopt rules is limited to what is authorized by and consistent with its statutory authority. *Pruett*, 249 S.W.3d at 452. Thus, while a social worker may not discriminate based on disability in contravention of state and federal law, the Council lacks statutory authority to discipline a licensee for discrimination based on disability.

---

<sup>5</sup>The federal Americans with Disabilities Act (“ADA”) also prohibits discrimination on the basis of disability in certain circumstances:

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

42 U.S.C. § 12182(a). The ADA establishes a civil action for injunctive relief for a person subject to discrimination on the basis of disability in violation of that Act. *Id.* §§ 12188(a), 2000a-3. Whether a legal claim exists for disability discrimination under either state or federal law will depend on the particular facts of each case. But the law generally prohibits disability discrimination and provides actions to enjoin the discriminatory conduct.



## S U M M A R Y

The Legislature authorized the Behavioral Health Executive Council to take disciplinary action against social workers who refuse to perform an act or service within the scope of their licenses solely because of the recipient's age, sex, race, religion, national origin, color, or political affiliation. The Council adopted a rule changing the word "sex" to "gender" and authorizing disciplinary action for refusal of service based on disability, sexual orientation, and gender identity and expression. In doing so, the Council exceeded the authority granted to it by the Legislature by rewriting the language chosen by the Legislature and imposing additional restrictions in excess of the relevant statutory provisions. A court would likely conclude that the rule is invalid to the extent that it is inconsistent with and exceeds the Council's statutory authority.

No Texas statute prohibits discrimination based on sexual orientation or gender identity or expression, and the U.S. Supreme Court has emphasized that religious and philosophical objections to categories of sexual orientation are protected views and in some instances protected forms of expression under the First Amendment. If the Legislature intends otherwise, it may expressly amend the statute to so provide. A Council rule prohibiting that expression conflicts with the longstanding constitutional protection for an individual's free exercise of religion.

While a social worker may not discriminate based on disability in contravention of state and federal law, the Council lacks statutory authority to discipline a licensee for discrimination based on disability.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is fluid and cursive, with the first name "Ken" and last name "Paxton" clearly distinguishable.

KEN PAXTON  
Attorney General of Texas

BRENT E. WEBSTER  
First Assistant Attorney General

LESLEY FRENCH  
Chief of Staff

MURTAZA F. SUTARWALLA  
Deputy Attorney General for Legal Counsel

AARON F. REITZ  
Deputy Attorney General for Legal Strategy

VIRGINIA K. HOELSCHER  
Chair, Opinion Committee

---

**From:** Luce, Whitney <REDACTED>  
**Sent:** Monday, July 5, 2021 3:12 PM  
**To:** Darrel Spinks <REDACTED>  
**Subject:** SW Code of Conduct

Dear Mr. Spinks,

I write to you on behalf of the Texas Field Educators Consortium. As field education leaders from Schools of Social Work across Texas, we meet monthly to support one another and to educate each other about changes and trends in social work field education.

The Texas Field Educators Consortium (TFEC) contacts you to defend our Social Work Code of Conduct in its current form and to advocate for the Code of Conduct to remain unchanged to retain the antidiscrimination protections as they are currently written. The Attorney General's June 14, 2021 opinion asserting that the language regarding anti-discrimination in the Code to include disability, sexual orientation and gender identity is too far reaching undermines the values of the social work profession and goes against the right of the Texas State Board of Social Work Examiners (TSBSWE) to maintain the Social Work Code of Conduct and to pass any proposed changes through the Behavioral Health Executive Council (BHEC). According to 505.2015 of the Texas Occupations Code, "The board shall propose to the executive council... the scope of practice of and standards of care and ethical practice for social work."

The Code of Conduct found in the social work rules is directly based on language from [the social work Code of Ethics](#), which serves as the basis for every social work Code of Conduct and Code of Ethics in every state and territory in the country. The Code of Conduct rules prohibiting discrimination based on disability, sexual orientation, gender identity and gender expression still apply to all licensed social workers and the Board maintains the authority to investigate complaints of discrimination. In addition, The Code of Conduct already allows a social worker the opportunity to decline to provide services to a client based on the professional experience of the provider: "A social worker shall only offer those services that are within his or her professional competency, and shall provide services within accepted professional standards of practice, appropriate to the client's needs."

Removing non-discrimination protections for persons with a disability or who identify as LGBTQ+ in any way from the Code of Conduct sends the message to potential clients that they may be denied vital services. This is not only incongruent with the values of the social work profession, the social work Code of Ethics and the Code of Conduct, it is also dangerous. Current studies ([Mental Health of America](#), [Kaiser family Foundation](#), [Texas Tribune](#)) indicate that the stress related to COVID and social unrest in this country has greatly increased the need for services. In a time when Texans need a wide variety of mental health and other social work services, any deterrent to someone seeking care from a social worker could result in drastic consequences.

Regarding language pertaining to anti-discrimination regarding disability, the Attorney General Opinion indicates that statutory language in other areas prohibits discrimination against a person

with a disability, but then states that the TSBSWE cannot take disciplinary action against a person for this discrimination. This means that, should discrimination occur, an individual with a disability would need to utilize the court system to seek redress before the board could act. This could be a year's long process during which the social worker would remain in practice. Therefore, this change could also prove dangerous for Texans.

As a group of social work educators committed to training competent and ethical social workers committed to service, we ask the BHEC to consider the importance of maintaining the Social Work Code of Conduct in its current form, despite the Attorney General's recently issued opinion on the matter. It is our hope that the needs and rights of Texans seeking social work services, as well as the integrity of the social work profession, would compel you to advocate for the Social Work Code of Conduct to maintain its current antidiscrimination protections.

Thank you for your time and consideration.

Respectfully,

Whitney Luce, Co-Chair Texas Field Educators Consortium on behalf of the members of TFEC

**Whitney Luce, LMSW**

Director of Field Education & Senior Lecturer

Diana R. Garland School of Social Work, Baylor University

(254)744-7163

pronouns: she/her/hers

The views and opinions expressed in this message are my own and do not necessarily reflect the views and opinions of Baylor University or its Board of Regents.

---

**From:** Katie Mitten <[REDACTED](#)>  
**Sent:** Wednesday, July 7, 2021 8:36 PM  
**To:** general <[general@bhec.texas.gov](mailto:general@bhec.texas.gov)>  
**Subject:** SW Public Comment – ATTN Board Administrator

July 9, 2021

SUBJECT: SW Public Comment – ATTN Board Administrator

Texas State Board of Social Board Examiners and the Behavioral Health Executive Council,

Please accept this letter as written public comment regarding the Texas Attorney General's recent nonbinding opinion regarding the Texas Social Work Code of Conduct (agenda item #18 for July 9<sup>th</sup> meeting).

I am asking the Texas State Board of Social Work Examiners (TSBSWE) retain the non-discrimination protections in the Code of Conduct as currently written, and that all non-discrimination protections remain included for disability, sexual orientation, gender identity and gender expression. I also ask that the Board maintain the authority to investigate complaints of discrimination.

I am a proud Licensed Master Social Worker in Texas and am asking that you stand with social workers and uphold our principles and ideals and fight any attempts to change our Code of Conduct to allow for discrimination.

Thank you,  
Katie Mitten, LMSW  
Austin, TX  
817-727-6405

ATTACHMENT: 1 page

July 9, 2021

SUBJECT: SW Public Comment – ATTN Board Administrator

Texas State Board of Social Board Examiners and the Behavioral Health Executive Council,

Please accept this letter as written public comment regarding the Texas Attorney General's recent nonbinding opinion regarding the Texas Social Work Code of Conduct (agenda item #18 for July 9<sup>th</sup> meeting).

I am asking the Texas State Board of Social Work Examiners (TSBSWE) retain the non-discrimination protections in the Code of Conduct as currently written, and that all non-discrimination protections remain included for disability, sexual orientation, gender identity and gender expression. I also ask that the Board maintain the authority to investigate complaints of discrimination.

I am a proud Licensed Master Social Worker in Texas and am asking that you stand with social workers and uphold our principles and ideals and fight any attempts to change our Code of Conduct to allow for discrimination.

Thank you,  
Katie Mitten, LMSW  
Austin, TX  
817-727-6405

---

**From:** Samantha Lopez <[REDACTED](#)> on behalf of Donna Howard <[REDACTED](#)>  
**Sent:** Wednesday, July 7, 2021 9:38 PM  
**To:** general <[general@bhec.texas.gov](mailto:general@bhec.texas.gov)>  
**Cc:** Mary Brewer <[REDACTED](#)>  
**Subject:** FW: Txleger update for 07/07/2021

Hello,

Please see attached.

Donna Howard

ATTACHMENT: 2 Pages



## DONNA HOWARD

STATE REPRESENTATIVE

DISTRICT 48

July 17, 2021

Darrel D. Spinks  
Executive Director  
Texas Behavioral Health Executive Council

Gloria Canseco  
Presiding Officer  
Texas Behavioral Health Executive Council

Brian Brumley  
Presiding Officer  
Texas State Board of Social Worker Examiners

Dear Mr. Spinks, Ms. Canseco, and Mr. Brumley:

It has come to my attention that Attorney General Paxton recently issued a non-binding legal opinion at the request of the Texas State Board of Social Work Examiners (TSBSWE) on the “authority of the Behavioral Health Executive Council to adopt a rule prohibiting certain discriminatory conduct by licensed social workers”. The opinion stated that the Texas Behavioral Health Executive Council (BHEC) lacked the authority to discipline social workers who discriminate based on disability, and that in certain instances, discrimination on the basis of sexual orientation and gender identity may be protected under the Free Exercise Clause. The OAG’s opinion appears to suggest that discrimination on the basis of gender identity, sexual orientation, and disability is permissible, stating that TSBSWE does have the authority to remove prohibitions on discrimination. I respectfully request that the TSBSWE retain the non-discrimination protections in the Code of Conduct as currently written.

In the recent case of *Bostock v. Clayton County*, the Supreme Court ruled that the interpretation of Title VII of the Civil Rights Act of 1964- which makes it illegal to discriminate based on sex, race, religion, or national origin- also encompasses the prohibition of discrimination on the basis of sexual orientation and gender identity. The Court held that “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.” Since gender identity and sexual orientation are protected under Title VII, it should follow that denying a client services based on these factors is discriminatory and should be prohibited.

Social workers serve in critical roles for supporting vulnerable populations in Texas. It is well established that individuals with disabilities and members of the LGBTQ+ community face



discrimination. Members of the LGBTQ+ community<sup>1</sup> and persons with disabilities<sup>2</sup> are at a higher risk for substance abuse, suicide, and mental health challenges. Both groups are also more likely to live in poverty<sup>3</sup> and be victims of violent crime<sup>4</sup>.

The COVID-19 pandemic exacerbated the challenges that social workers are key in addressing as millions of people experienced job loss, food insecurity, and the loss of loved ones to the virus. Social workers are critical to supporting Texas's recovery from the pandemic -- it is crucial this important work is not limited by allowing for the exclusion of LGBTQ+ Texans and Texans with disabilities from being served by social workers.

Removing these protections will allow Texans to be denied vital services and may discourage populations who need assistance the most from seeking it out. Discrimination on the basis of disability, sexual orientation, or gender identity violates established national standards and the core values of social work. The OAG's opinion is non-binding, and TSBSWE retains the power to set the ethical standards and practices for Texas social workers. I strongly encourage the State Board to reject such discriminatory practices and keep the current protections in place. Thank you for your urgent attention to this matter.

Sincerely,



Donna Howard  
State Representative, House District 48

---

<sup>1</sup> Johns MM, Lowry R, Rasberry CN, et al. Violence Victimization, Substance Use, and Suicide Risk Among Sexual Minority High School Students — United States, 2015–2017. *MMWR Morb Mortal Wkly Rep* 2018;67:1211–1215. DOI: <http://dx.doi.org/10.15585/mmwr.mm6743a4external icon>.

<sup>2</sup> Cree RA, Okoro CA, Zack MM, Carbone E. Frequent Mental Distress Among Adults, by Disability Status, Disability Type, and Selected Characteristics — United States, 2018. *MMWR Morb Mortal Wkly Rep* 2020;69:1238–1243. DOI: <http://dx.doi.org/10.15585/mmwr.mm6936a2external icon>.

<sup>3</sup> Badgett, M. L., Choi, S. K., & Wilson, B. D. (2019). *LGBT poverty in the United States*. Los Angeles, CA: The Williams Institute and American Foundation for Suicide.

<sup>4</sup> Bureau of Justice Statistics. *Crimes Against Persons with Disabilities, 2009-2015 Statistical Tables* (U.S. Department of Justice, 2017), <https://www.bjs.gov/content/pub/pdf/capd0913st.pdf>

**SW Public Comment –ATTN Board Administrator -Item 18**

Katherine Regis <REDACTED>

Fri 7/9/2021 4:16 PM

To: general <general@bhec.texas.gov>

Dear Behavioral Health Executive Council,

I support TSBSWE and BHEC maintaining nondiscrimination protections for the LGBTQ+ community and those living with disabilities.

LGBTQ+ Texans and those living with disabilities already face increased discrimination in all aspects of their lives -according to a Center for American Progress study, in 2020 alone, 1 in 3 LGBTQ individuals and 3 in 5 transgender individuals experienced discrimination. Protections for these marginalized communities are particularly necessary when it comes to the basic needs services that social workers provide.

You have the statutory authority to set the ethical standards for the social work profession and so can keep any non-discrimination protections you choose. It is your duty to safeguard foundational social work principles and help practitioners live out the Social Work Professional Oath which promises service to humanity and social justice. Your authority should guide the practice of this noble profession to be done so with conscience, integrity, and dignity which are consistent with its values, ethical principles, and ethical standards.

That's why I know that you will not adhere to the non-binding AG opinion to allow discrimination against LGBTQ+ people and people with disabilities. Any repeal of existing nondiscrimination protections in the Code of Conduct would be a betrayal of the Social Work Professional Oath and prevent countless people from access services they need because of fear of discrimination.

2021 has been brutal for LGBTQ+ Texans and their loved ones, who fought over 30 anti-LGBTQ+ bills in the Texas legislative session, a record number for Texas and the most in any state session this year. Removing non-discrimination protections in the social worker's Code of Conduct now would only serve to double-down on the message that LGBTQ+ people are not welcome in Texas.

Sincerely,

Katherine Regis

426 Oleander St Lake Jackson, TX 77566-5715

REDACTED

**SW Public Comment – ATTN Board Administrator - Item 18**

Andrea Iken Tennison <REDACTED>

Fri 7/9/2021 4:15 PM

To: general <general@bhec.texas.gov>

Dear Behavioral Health Executive Council,

I support TSBSWE and BHEC maintaining nondiscrimination protections for the LGBTQ+ community and those living with disabilities.

LGBTQ+ Americans and those living with disabilities already face increased discrimination in all aspects of their lives - according to a Center for American Progress study, in 2020 alone, 1 in 3 LGBTQ individuals and 3 in 5 transgender individuals experienced discrimination. Protections for these marginalized communities are particularly necessary when it comes to the basic needs services that social workers provide.

You have the statutory authority to set the ethical standards for the social work profession and so can keep any non-discrimination protections you choose. It is your duty to safeguard foundational social work principles and help practitioners live out the Social Work Professional Oath which promises service to humanity and social justice. Your authority should guide the practice of this noble profession to be done so with conscience, integrity, and dignity which are consistent with its values, ethical principles, and ethical standards.

That's why I know that you will not adhere to the non-binding AG opinion to allow discrimination against LGBTQ+ people and people with disabilities. Any repeal of existing nondiscrimination protections in the Code of Conduct would be a betrayal of the Social Work Professional Oath and prevent countless people from access services they need because of fear of discrimination.

2021 has been brutal for LGBTQ+ Texans and their loved ones, who fought over 30 anti-LGBTQ+ bills in the Texas legislative session, a record number for Texas and the most in any state session this year. Removing non-discrimination protections in the social worker's Code of Conduct now would only serve to double-down on the message that LGBTQ+ people are not welcome in Texas.

Sincerely,

Dr. Andrea Iken Tennison

18822 Surreywood San Antonio, TX 78258-4458

REDACTED

**SW Public Comment – ATTN Board Administrator - Item 18**

Emily Alpert <REDACTED>

Fri 7/9/2021 4:15 PM

To: general <general@bhec.texas.gov>

Dear Behavioral Health Executive Council,

I support TSBSWE and BHEC maintaining nondiscrimination protections for the LGBTQ+ community and those living with disabilities.

LGBTQ+ Americans and those living with disabilities already face increased discrimination in all aspects of their lives - according to a Center for American Progress study, in 2020 alone, 1 in 3 LGBTQ individuals and 3 in 5 transgender individuals experienced discrimination. Protections for these marginalized communities are particularly necessary when it comes to the basic needs services that social workers provide.

You have the statutory authority to set the ethical standards for the social work profession and so can keep any non-discrimination protections you choose. It is your duty to safeguard foundational social work principles and help practitioners live out the Social Work Professional Oath which promises service to humanity and social justice. Your authority should guide the practice of this noble profession to be done so with conscience, integrity, and dignity which are consistent with its values, ethical principles, and ethical standards.

That's why I know that you will not adhere to the non-binding AG opinion to allow discrimination against LGBTQ+ people and people with disabilities. Any repeal of existing nondiscrimination protections in the Code of Conduct would be a betrayal of the Social Work Professional Oath and prevent countless people from access services they need because of fear of discrimination.

2021 has been brutal for LGBTQ+ Texans and their loved ones, who fought over 30 anti-LGBTQ+ bills in the Texas legislative session, a record number for Texas and the most in any state session this year. Removing non-discrimination protections in the social worker's Code of Conduct now would only serve to double-down on the message that LGBTQ+ people are not welcome in Texas.

Sincerely,

Emily Alpert

45 Holly Ln Brownsville, TX 78520-8320

REDACTED

**SW Public Comment – ATTN Board Administrator - Item 18**

Lisa Stone <REDACTED>

Fri 7/9/2021 4:15 PM

To: general <general@bhec.texas.gov>

Dear Behavioral Health Executive Council,

I support TSBSWE and BHEC maintaining nondiscrimination protections for the LGBTQ+ community and those living with disabilities.

LGBTQ+ Americans and those living with disabilities already face increased discrimination in all aspects of their lives - according to a Center for American Progress study, in 2020 alone, 1 in 3 LGBTQ individuals and 3 in 5 transgender individuals experienced discrimination. Protections for these marginalized communities are particularly necessary when it comes to the basic needs services that social workers provide.

You have the statutory authority to set the ethical standards for the social work profession and so can keep any non-discrimination protections you choose. It is your duty to safeguard foundational social work principles and help practitioners live out the Social Work Professional Oath which promises service to humanity and social justice. Your authority should guide the practice of this noble profession to be done so with conscience, integrity, and dignity which are consistent with its values, ethical principles, and ethical standards.

That's why I know that you will not adhere to the non-binding AG opinion to allow discrimination against LGBTQ+ people and people with disabilities. Any repeal of existing nondiscrimination protections in the Code of Conduct would be a betrayal of the Social Work Professional Oath and prevent countless people from access services they need because of fear of discrimination.

2021 has been brutal for LGBTQ+ Texans and their loved ones, who fought over 30 anti-LGBTQ+ bills in the Texas legislative session, a record number for Texas and the most in any state session this year. Removing non-discrimination protections in the social worker's Code of Conduct now would only serve to double-down on the message that LGBTQ+ people are not welcome in Texas.

Sincerely,

Ms. Lisa Stone

8902 Birdwood Ct Houston, TX 77096-2107

REDACTED

**SW Public Comment –ATTN Board Administrator -Item 18**

Kelly Clark <REDACTED>

Fri 7/9/2021 4:13 PM

To: general <general@bhec.texas.gov>

Dear Behavioral Health Executive Council,

I support TSBSWE and BHEC maintaining nondiscrimination protections for the LGBTQ+ community and those living with disabilities.

LGBTQ+ Americans and those living with disabilities already face increased discrimination in all aspects of their lives -according to a Center for American Progress study, in 2020 alone, 1 in 3 LGBTQ individuals and 3 in 5 transgender individuals experienced discrimination. Protections for these marginalized communities are particularly necessary when it comes to the basic needs services that social workers provide.

You have the statutory authority to set the ethical standards for the social work profession and so can keep any non-discrimination protections you choose. It is your duty to safeguard foundational social work principles and help practitioners live out the Social Work Professional Oath which promises service to humanity and social justice. Your authority should guide the practice of this noble profession to be done so with conscience, integrity, and dignity which are consistent with its values, ethical principles, and ethical standards.

That's why I know that you will not adhere to the non-binding AG opinion to allow discrimination against LGBTQ+ people and people with disabilities. Any repeal of existing nondiscrimination protections in the Code of Conduct would be a betrayal of the Social Work Professional Oath and prevent countless people from access services they need because of fear of discrimination.

2021 has been brutal for LGBTQ+ Texans and their loved ones, who fought over 30 anti-LGBTQ+ bills in the Texas legislative session, a record number for Texas and the most in any state session this year. Removing non-discrimination protections in the social worker's Code of Conduct now would only serve to double-down on the message that LGBTQ+ people are not welcome in Texas.

Sincerely,

Mr. Kelly Clark

1302 Warbler Dr Kerrville, TX 78028-2955

REDACTED

**SW Public Comment – ATTN Board Administrator - Item 18****Mark Roberts <REDACTED>**

Fri 7/9/2021 4:12 PM

**To:** general <general@bhec.texas.gov>

Dear Behavioral Health Executive Council,

I support TSBSWE and BHEC maintaining nondiscrimination protections for the LGBTQ+ community and those living with disabilities.

LGBTQ+ Americans and those living with disabilities already face increased discrimination in all aspects of their lives - according to a Center for American Progress study, in 2020 alone, 1 in 3 LGBTQ individuals and 3 in 5 transgender individuals experienced discrimination. Protections for these marginalized communities are particularly necessary when it comes to the basic needs services that social workers provide.

You have the statutory authority to set the ethical standards for the social work profession and so can keep any non-discrimination protections you choose. It is your duty to safeguard foundational social work principles and help practitioners live out the Social Work Professional Oath which promises service to humanity and social justice. Your authority should guide the practice of this noble profession to be done so with conscience, integrity, and dignity which are consistent with its values, ethical principles, and ethical standards.

That's why I know that you will not adhere to the non-binding AG opinion to allow discrimination against LGBTQ+ people and people with disabilities. Any repeal of existing nondiscrimination protections in the Code of Conduct would be a betrayal of the Social Work Professional Oath and prevent countless people from access services they need because of fear of discrimination.

2021 has been brutal for LGBTQ+ Texans and their loved ones, who fought over 30 anti-LGBTQ+ bills in the Texas legislative session, a record number for Texas and the most in any state session this year. Removing non-discrimination protections in the social worker's Code of Conduct now would only serve to double-down on the message that LGBTQ+ people are not welcome in Texas.

Sincerely,

Mr. Mark Roberts

2131 Tree Ln Kingwood, TX 77339-1737

REDACTED

## SW Public Comment – ATTN Board Administrator - Item 18

Stuart Newberg <REDACTED>

Fri 7/9/2021 4:12 PM

To: general <general@bhec.texas.gov>

Dear Behavioral Health Executive Council,

I support TSBSWE and BHEC maintaining nondiscrimination protections for the LGBTQ+ community and those living with disabilities.

LGBTQ+ Americans and those living with disabilities already face increased discrimination in all aspects of their lives - according to a Center for American Progress study, in 2020 alone, 1 in 3 LGBTQ individuals and 3 in 5 transgender individuals experienced discrimination. Protections for these marginalized communities are particularly necessary when it comes to the basic needs services that social workers provide.

You have the statutory authority to set the ethical standards for the social work profession and so can keep any non-discrimination protections you choose. It is your duty to safeguard foundational social work principles and help practitioners live out the Social Work Professional Oath which promises service to humanity and social justice. Your authority should guide the practice of this noble profession to be done so with conscience, integrity, and dignity which are consistent with its values, ethical principles, and ethical standards.

That's why I know that you will not adhere to the non-binding AG opinion to allow discrimination against LGBTQ+ people and people with disabilities. Any repeal of existing nondiscrimination protections in the Code of Conduct would be a betrayal of the Social Work Professional Oath and prevent countless people from access services they need because of fear of discrimination.

2021 has been brutal for LGBTQ+ Texans and their loved ones, who fought over 30 anti-LGBTQ+ bills in the Texas legislative session, a record number for Texas and the most in any state session this year. Removing non-discrimination protections in the social worker's Code of Conduct now would only serve to double-down on the message that LGBTQ+ people are not welcome in Texas.

Sincerely,

Mr. Stuart Newberg

7928 W Rim Dr Austin, TX 78731-1242

REDACTED



**SW Public Comment – ATTN Board Administrator - Item 18**

Jerome Tarnopol <REDACTED>

Fri 7/9/2021 4:11 PM

To: general <general@bhec.texas.gov>

Dear Behavioral Health Executive Council,

I support TSBSWE and BHEC maintaining nondiscrimination protections for the LGBTQ+ community and those living with disabilities.

LGBTQ+ Americans and those living with disabilities already face increased discrimination in all aspects of their lives - according to a Center for American Progress study, in 2020 alone, 1 in 3 LGBTQ individuals and 3 in 5 transgender individuals experienced discrimination. Protections for these marginalized communities are particularly necessary when it comes to the basic needs services that social workers provide.

You have the statutory authority to set the ethical standards for the social work profession and so can keep any non-discrimination protections you choose. It is your duty to safeguard foundational social work principles and help practitioners live out the Social Work Professional Oath which promises service to humanity and social justice. Your authority should guide the practice of this noble profession to be done so with conscience, integrity, and dignity which are consistent with its values, ethical principles, and ethical standards.

That's why I know that you will not adhere to the non-binding AG opinion to allow discrimination against LGBTQ+ people and people with disabilities. Any repeal of existing nondiscrimination protections in the Code of Conduct would be a betrayal of the Social Work Professional Oath and prevent countless people from access services they need because of fear of discrimination.

2021 has been brutal for LGBTQ+ Texans and their loved ones, who fought over 30 anti-LGBTQ+ bills in the Texas legislative session, a record number for Texas and the most in any state session this year. Removing non-discrimination protections in the social worker's Code of Conduct now would only serve to double-down on the message that LGBTQ+ people are not welcome in Texas.

Sincerely,

Mr. Jerome Tarnopol

10807 Moonlight Dr Houston, TX 77096-6225

REDACTED

## SW Public Comment – ATTN Board Administrator - Item 18

Annaliese Cothron <REDACTED>

Fri 7/9/2021 4:10 PM

To: general <general@bhec.texas.gov>

Dear Behavioral Health Executive Council,

I support TSBSWE and BHEC maintaining nondiscrimination protections for the LGBTQ+ community and those living with disabilities.

LGBTQ+ Americans and those living with disabilities already face increased discrimination in all aspects of their lives - according to a Center for American Progress study, in 2020 alone, 1 in 3 LGBTQ individuals and 3 in 5 transgender individuals experienced discrimination. Protections for these marginalized communities are particularly necessary when it comes to the basic needs services that social workers provide.

You have the statutory authority to set the ethical standards for the social work profession and so can keep any non-discrimination protections you choose. It is your duty to safeguard foundational social work principles and help practitioners live out the Social Work Professional Oath which promises service to humanity and social justice. Your authority should guide the practice of this noble profession to be done so with conscience, integrity, and dignity which are consistent with its values, ethical principles, and ethical standards.

That's why I know that you will not adhere to the non-binding AG opinion to allow discrimination against LGBTQ+ people and people with disabilities. Any repeal of existing nondiscrimination protections in the Code of Conduct would be a betrayal of the Social Work Professional Oath and prevent countless people from access services they need because of fear of discrimination.

2021 has been brutal for LGBTQ+ Texans and their loved ones, who fought over 30 anti-LGBTQ+ bills in the Texas legislative session, a record number for Texas and the most in any state session this year. Removing non-discrimination protections in the social worker's Code of Conduct now would only serve to double-down on the message that LGBTQ+ people are not welcome in Texas.

Sincerely,

Dr. Annaliese Cothron

6519 Wagner Way San Antonio, TX 78256-2005

REDACTED

**SW Public Comment – ATTN Board Administrator - Item 18**

Guy Hayes <REDACTED>

Fri 7/9/2021 4:10 PM

To: general <general@bhec.texas.gov>

Dear Behavioral Health Executive Council,

I support TSBSWE and BHEC maintaining nondiscrimination protections for the LGBTQ+ community and those living with disabilities.

LGBTQ+ Americans and those living with disabilities already face increased discrimination in all aspects of their lives - according to a Center for American Progress study, in 2020 alone, 1 in 3 LGBTQ individuals and 3 in 5 transgender individuals experienced discrimination. Protections for these marginalized communities are particularly necessary when it comes to the basic needs services that social workers provide.

You have the statutory authority to set the ethical standards for the social work profession and so can keep any non-discrimination protections you choose. It is your duty to safeguard foundational social work principles and help practitioners live out the Social Work Professional Oath which promises service to humanity and social justice. Your authority should guide the practice of this noble profession to be done so with conscience, integrity, and dignity which are consistent with its values, ethical principles, and ethical standards.

That's why I know that you will not adhere to the non-binding AG opinion to allow discrimination against LGBTQ+ people and people with disabilities. Any repeal of existing nondiscrimination protections in the Code of Conduct would be a betrayal of the Social Work Professional Oath and prevent countless people from access services they need because of fear of discrimination.

2021 has been brutal for LGBTQ+ Texans and their loved ones, who fought over 30 anti-LGBTQ+ bills in the Texas legislative session, a record number for Texas and the most in any state session this year. Removing non-discrimination protections in the social worker's Code of Conduct now would only serve to double-down on the message that LGBTQ+ people are not welcome in Texas.

Sincerely,

Mr. Guy Hayes

27602 County Road 3744 Splendora, TX 77372-4293

REDACTED

**SW Public Comment – ATTN Board Administrator - Item 18**

Aubrey Crookston <REDACTED>

Fri 7/9/2021 4:09 PM

To: general <general@bhec.texas.gov>

Dear Behavioral Health Executive Council,

I support TSBSWE and BHEC maintaining nondiscrimination protections for the LGBTQ+ community and those living with disabilities.

LGBTQ+ Americans and those living with disabilities already face increased discrimination in all aspects of their lives - according to a Center for American Progress study, in 2020 alone, 1 in 3 LGBTQ individuals and 3 in 5 transgender individuals experienced discrimination. Protections for these marginalized communities are particularly necessary when it comes to the basic needs services that social workers provide.

You have the statutory authority to set the ethical standards for the social work profession and so can keep any non-discrimination protections you choose. It is your duty to safeguard foundational social work principles and help practitioners live out the Social Work Professional Oath which promises service to humanity and social justice. Your authority should guide the practice of this noble profession to be done so with conscience, integrity, and dignity which are consistent with its values, ethical principles, and ethical standards.

That's why I know that you will not adhere to the non-binding AG opinion to allow discrimination against LGBTQ+ people and people with disabilities. Any repeal of existing nondiscrimination protections in the Code of Conduct would be a betrayal of the Social Work Professional Oath and prevent countless people from access services they need because of fear of discrimination.

2021 has been brutal for LGBTQ+ Texans and their loved ones, who fought over 30 anti-LGBTQ+ bills in the Texas legislative session, a record number for Texas and the most in any state session this year. Removing non-discrimination protections in the social worker's Code of Conduct now would only serve to double-down on the message that LGBTQ+ people are not welcome in Texas.

Sincerely,

Aubrey Crookston

208 Weston Dr Fate, TX 75189-4379

REDACTED

**SW Public Comment – ATTN Board Administrator - Item 18****Sheri Allen <REDACTED>**

Fri 7/9/2021 4:08 PM

**To:** general <general@bhec.texas.gov>

Dear Behavioral Health Executive Council,

I support TSBSWE and BHEC maintaining nondiscrimination protections for the LGBTQ+ community and those living with disabilities.

LGBTQ+ Americans and those living with disabilities already face increased discrimination in all aspects of their lives - according to a Center for American Progress study, in 2020 alone, 1 in 3 LGBTQ individuals and 3 in 5 transgender individuals experienced discrimination. Protections for these marginalized communities are particularly necessary when it comes to the basic needs services that social workers provide.

You have the statutory authority to set the ethical standards for the social work profession and so can keep any non-discrimination protections you choose. It is your duty to safeguard foundational social work principles and help practitioners live out the Social Work Professional Oath which promises service to humanity and social justice. Your authority should guide the practice of this noble profession to be done so with conscience, integrity, and dignity which are consistent with its values, ethical principles, and ethical standards.

That's why I know that you will not adhere to the non-binding AG opinion to allow discrimination against LGBTQ+ people and people with disabilities. Any repeal of existing nondiscrimination protections in the Code of Conduct would be a betrayal of the Social Work Professional Oath and prevent countless people from access services they need because of fear of discrimination.

2021 has been brutal for LGBTQ+ Texans and their loved ones, who fought over 30 anti-LGBTQ+ bills in the Texas legislative session, a record number for Texas and the most in any state session this year. Removing non-discrimination protections in the social worker's Code of Conduct now would only serve to double-down on the message that LGBTQ+ people are not welcome in Texas.

Sincerely,

Sheri Allen

2504 Cockrell Ave Ft Worth, TX 76109-1116

REDACTED

## SW Public Comment – ATTN Board Administrator - Item 18

Scott Elliff <REDACTED>

Fri 7/9/2021 4:08 PM

To: general <general@bhec.texas.gov>

Dear Behavioral Health Executive Council,

I support TSBSWE and BHEC maintaining nondiscrimination protections for the LGBTQ+ community and those living with disabilities.

LGBTQ+ Americans and those living with disabilities already face increased discrimination in all aspects of their lives - according to a Center for American Progress study, in 2020 alone, 1 in 3 LGBTQ individuals and 3 in 5 transgender individuals experienced discrimination. Protections for these marginalized communities are particularly necessary when it comes to the basic needs services that social workers provide.

You have the statutory authority to set the ethical standards for the social work profession and so can keep any non-discrimination protections you choose. It is your duty to safeguard foundational social work principles and help practitioners live out the Social Work Professional Oath which promises service to humanity and social justice. Your authority should guide the practice of this noble profession to be done so with conscience, integrity, and dignity which are consistent with its values, ethical principles, and ethical standards.

That's why I know that you will not adhere to the non-binding AG opinion to allow discrimination against LGBTQ+ people and people with disabilities. Any repeal of existing nondiscrimination protections in the Code of Conduct would be a betrayal of the Social Work Professional Oath and prevent countless people from access services they need because of fear of discrimination.

2021 has been brutal for LGBTQ+ Texans and their loved ones, who fought over 30 anti-LGBTQ+ bills in the Texas legislative session, a record number for Texas and the most in any state session this year. Removing non-discrimination protections in the social worker's Code of Conduct now would only serve to double-down on the message that LGBTQ+ people are not welcome in Texas.

Sincerely,

Dr. Scott Elliff

929 Driftwood Pl Corpus Christi, TX 78411-2225

REDACTED

## SW Public Comment –ATTN Board Administrator -Item 18

Jim McElroy <REDACTED>

Fri 7/9/2021 4:08 PM

To: general <general@bhec.texas.gov>

Dear Behavioral Health Executive Council,

I support TSBSWE and BHEC maintaining nondiscrimination protections for the LGBTQ+ community and those living with disabilities.

LGBTQ+ Americans and those living with disabilities already face increased discrimination in all aspects of their lives - according to a Center for American Progress study, in 2020 alone, 1 in 3 LGBTQ individuals and 3 in 5 transgender individuals experienced discrimination. Protections for these marginalized communities are particularly necessary when it comes to the basic needs services that social workers provide.

You have the statutory authority to set the ethical standards for the social work profession and so can keep any non-discrimination protections you choose. It is your duty to safeguard foundational social work principles and help practitioners live out the Social Work Professional Oath which promises service to humanity and social justice. Your authority should guide the practice of this noble profession to be done so with conscience, integrity, and dignity which are consistent with its values, ethical principles, and ethical standards.

That's why I know that you will not adhere to the non-binding AG opinion to allow discrimination against LGBTQ+ people and people with disabilities. Any repeal of existing nondiscrimination protections in the Code of Conduct would be a betrayal of the Social Work Professional Oath and prevent countless people from access services they need because of fear of discrimination.

2021 has been brutal for LGBTQ+ Texans and their loved ones, who fought over 30 anti-LGBTQ+ bills in the Texas legislative session, a record number for Texas and the most in any state session this year. Removing non-discrimination protections in the social worker's Code of Conduct now would only serve to double-down on the message that LGBTQ+ people are not welcome in Texas.

Sincerely,

Mr. Jim McElroy

2106 Cullen Ave Apt 212 Austin, TX 78757-2538

REDACTED

**SW Public Comment – ATTN Board Administrator - Item 18**

Renae Delucia <REDACTED>

Fri 7/9/2021 4:08 PM

To: general <general@bhec.texas.gov>

Dear Behavioral Health Executive Council,

I support TSBSWE and BHEC maintaining nondiscrimination protections for the LGBTQ+ community and those living with disabilities.

As a licensed LPA in Texas this issue is very dear to me.

LGBTQ+ Americans and those living with disabilities already face increased discrimination in all aspects of their lives - according to a Center for American Progress study, in 2020 alone, 1 in 3 LGBTQ individuals and 3 in 5 transgender individuals experienced discrimination. Protections for these marginalized communities are particularly necessary when it comes to the basic needs services that social workers provide.

You have the statutory authority to set the ethical standards for the social work profession and so can keep any non-discrimination protections you choose. It is your duty to safeguard foundational social work principles and help practitioners live out the Social Work Professional Oath which promises service to humanity and social justice. Your authority should guide the practice of this noble profession to be done so with conscience, integrity, and dignity which are consistent with its values, ethical principles, and ethical standards.

That's why I know that you will not adhere to the non-binding AG opinion to allow discrimination against LGBTQ+ people and people with disabilities. Any repeal of existing nondiscrimination protections in the Code of Conduct would be a betrayal of the Social Work Professional Oath and prevent countless people from access services they need because of fear of discrimination.

2021 has been brutal for LGBTQ+ Texans and their loved ones, who fought over 30 anti-LGBTQ+ bills in the Texas legislative session, a record number for Texas and the most in any state session this year. Removing non-discrimination protections in the social worker's Code of Conduct now would only serve to double-down on the message that LGBTQ+ people are not welcome in Texas.

Sincerely,

Ms. Renae Delucia

2001 Westheimer Rd Apt 548 Houston, TX 77098-1654

REDACTED



**SW Public Comment – ATTN Board Administrator - Item 18**

Stephanie Cruz <REDACTED>

Fri 7/9/2021 4:05 PM

To: general <general@bhec.texas.gov>

Dear Behavioral Health Executive Council,

I support TSBSWE and BHEC maintaining nondiscrimination protections for the LGBTQ+ community and those living with disabilities.

LGBTQ+ Americans and those living with disabilities already face increased discrimination in all aspects of their lives - according to a Center for American Progress study, in 2020 alone, 1 in 3 LGBTQ individuals and 3 in 5 transgender individuals experienced discrimination. Protections for these marginalized communities are particularly necessary when it comes to the basic needs services that social workers provide.

You have the statutory authority to set the ethical standards for the social work profession and so can keep any non-discrimination protections you choose. It is your duty to safeguard foundational social work principles and help practitioners live out the Social Work Professional Oath which promises service to humanity and social justice. Your authority should guide the practice of this noble profession to be done so with conscience, integrity, and dignity which are consistent with its values, ethical principles, and ethical standards.

That's why I know that you will not adhere to the non-binding AG opinion to allow discrimination against LGBTQ+ people and people with disabilities. Any repeal of existing nondiscrimination protections in the Code of Conduct would be a betrayal of the Social Work Professional Oath and prevent countless people from access services they need because of fear of discrimination.

2021 has been brutal for LGBTQ+ Texans and their loved ones, who fought over 30 anti-LGBTQ+ bills in the Texas legislative session, a record number for Texas and the most in any state session this year. Removing non-discrimination protections in the social worker's Code of Conduct now would only serve to double-down on the message that LGBTQ+ people are not welcome in Texas.

Sincerely,

Ms Stephanie Cruz

2918 6th St Bay City, TX 77414-5402

REDACTED

## SW Public Comment – ATTN Board Administrator - Item 18

Amy Weappa <REDACTED>

Fri 7/9/2021 4:05 PM

To: general <general@bhec.texas.gov>

Dear Behavioral Health Executive Council,

I support TSBSWE and BHEC maintaining nondiscrimination protections for the LGBTQ+ community and those living with disabilities.

LGBTQ+ Americans and those living with disabilities already face increased discrimination in all aspects of their lives - according to a Center for American Progress study, in 2020 alone, 1 in 3 LGBTQ individuals and 3 in 5 transgender individuals experienced discrimination. Protections for these marginalized communities are particularly necessary when it comes to the basic needs services that social workers provide.

You have the statutory authority to set the ethical standards for the social work profession and so can keep any non-discrimination protections you choose. It is your duty to safeguard foundational social work principles and help practitioners live out the Social Work Professional Oath which promises service to humanity and social justice. Your authority should guide the practice of this noble profession to be done so with conscience, integrity, and dignity which are consistent with its values, ethical principles, and ethical standards.

That's why I know that you will not adhere to the non-binding AG opinion to allow discrimination against LGBTQ+ people and people with disabilities. Any repeal of existing nondiscrimination protections in the Code of Conduct would be a betrayal of the Social Work Professional Oath and prevent countless people from access services they need because of fear of discrimination.

2021 has been brutal for LGBTQ+ Texans and their loved ones, who fought over 30 anti-LGBTQ+ bills in the Texas legislative session, a record number for Texas and the most in any state session this year. Removing non-discrimination protections in the social worker's Code of Conduct now would only serve to double-down on the message that LGBTQ+ people are not welcome in Texas.

Sincerely,

Ms. Amy Weappa

813 W Mary St Austin, TX 78704-4139

REDACTED

## SW Public Comment –ATTN Board Administrator -Item 18

Marc Lionetti <REDACTED>

Fri 7/9/2021 4:05 PM

To: general <general@bhec.texas.gov>

Dear Behavioral Health Executive Council,

I support TSBSWE and BHEC maintaining nondiscrimination protections for the LGBTQ+ community and those living with disabilities.

LGBTQ+ Americans and those living with disabilities already face increased discrimination in all aspects of their lives -according to a Center for American Progress study, in 2020 alone, 1 in 3 LGBTQ individuals and 3 in 5 transgender individuals experienced discrimination. Protections for these marginalized communities are particularly necessary when it comes to the basic needs services that social workers provide.

You have the statutory authority to set the ethical standards for the social work profession and so can keep any non-discrimination protections you choose. It is your duty to safeguard foundational social work principles and help practitioners live out the Social Work Professional Oath which promises service to humanity and social justice. Your authority should guide the practice of this noble profession to be done so with conscience, integrity, and dignity which are consistent with its values, ethical principles, and ethical standards.

That's why I know that you will not adhere to the non-binding AG opinion to allow discrimination against LGBTQ+ people and people with disabilities. Any repeal of existing nondiscrimination protections in the Code of Conduct would be a betrayal of the Social Work Professional Oath and prevent countless people from access services they need because of fear of discrimination.

2021 has been brutal for LGBTQ+ Texans and their loved ones, who fought over 30 anti-LGBTQ+ bills in the Texas legislative session, a record number for Texas and the most in any state session this year. Removing non-discrimination protections in the social worker's Code of Conduct now would only serve to double-down on the message that LGBTQ+ people are not welcome in Texas.

Sincerely,

Mr. Marc Lionetti

2200 Dickson Dr Austin, TX 78704-3962

REDACTED

## SW Public Comment –ATTN Board Administrator -Item 18

Ryan Wilson <REDACTED>

Fri 7/9/2021 4:04 PM

To: general <general@bhec.texas.gov>

Dear Behavioral Health Executive Council,

I support TSBSWE and BHEC maintaining nondiscrimination protections for the LGBTQ+ community and those living with disabilities.

LGBTQ+ Americans and those living with disabilities already face increased discrimination in all aspects of their lives -according to a Center for American Progress study, in 2020 alone, 1 in 3 LGBTQ individuals and 3 in 5 transgender individuals experienced discrimination. Protections for these marginalized communities are particularly necessary when it comes to the basic needs services that social workers provide.

You have the statutory authority to set the ethical standards for the social work profession and so can keep any non-discrimination protections you choose. It is your duty to safeguard foundational social work principles and help practitioners live out the Social Work Professional Oath which promises service to humanity and social justice. Your authority should guide the practice of this noble profession to be done so with conscience, integrity, and dignity which are consistent with its values, ethical principles, and ethical standards.

That's why I know that you will not adhere to the non-binding AG opinion to allow discrimination against LGBTQ+ people and people with disabilities. Any repeal of existing nondiscrimination protections in the Code of Conduct would be a betrayal of the Social Work Professional Oath and prevent countless people from access services they need because of fear of discrimination.

2021 has been brutal for LGBTQ+ Texans and their loved ones, who fought over 30 anti-LGBTQ+ bills in the Texas legislative session, a record number for Texas and the most in any state session this year. Removing non-discrimination protections in the social worker's Code of Conduct now would only serve to double-down on the message that LGBTQ+ people are not welcome in Texas.

Sincerely,

Ryan Wilson

4001 Fannin St Apt 4504 Houston, TX 77004-4083

REDACTED

**Senator Judith Zaffirini**

**Statement for National Social Workers Association, re: Code of Conduct**

July 6, 2021

"Anti-discriminatory provisions in the Code of Conduct for Social Workers are essential for persons with disabilities and members of the LGBTQ+ community. Removing these protections could result in their being denied mental health and other services from social workers.

"I join the Texas Chapter of the National Association of Social Workers in requesting that the Texas State Board of Social Work Examiners and the Behavioral Health Executive Council retain their authority to draft ethical rules and standards of social work practices, including non-discrimination protections. Inclusive policies encourage more persons to seek help and enhance equal access to care for all."

---

**From:** Horton, Colleen L <REDACTED>  
**Sent:** Friday, July 9, 2021 1:26 PM  
**To:** general <[general@bhec.texas.gov](mailto:general@bhec.texas.gov)>  
**Subject:** TSBSWE July 9th Meeting/Public Comments

Attached please find comments respectfully submitted by the Hogg Foundation for Mental Health. We appreciate your consideration.

Thank you,  
Colleen

**Colleen Horton, MPAff**  
Director of Policy  
Hogg Foundation for Mental Health  
The University of Texas at Austin  
3001 Lake Austin Blvd., 4<sup>th</sup> Floor  
Austin, TX 78703  
512/740-5891  
[REDACTED](#)  
Pronouns: she/her/hers





JULY 2021

The Hogg Foundation for Mental Health applauds the decision of the Behavioral Health Executive Council in keeping the original social work Code of Conduct in place, retaining the anti-discrimination protections for disability, sexual orientation, gender identity, and gender expression. In light of the Attorney General's nonbinding opinion, we now urge the Texas State Board of Social Work Examiners to continue protecting the Code of Conduct as currently written and maintain the integrity and principles of what it means to be a social worker. The foundation believes the attorney general's opinion is unfortunate, disappointing, and if considered, would completely take Texas in the wrong direction. Anti-discrimination language must remain a key part of the Code of Conduct.

Health inequities and disparities, including mental health, have been all too apparent over the last year. Consideration of removing these protections would unfortunately add to those inequities at a time when Texas should be working to rectify them. We support and admire the dedication of to keep these protections in place in order to uphold the mission of core values of social workers. As the preamble of the NASW Code of Ethics states, "the primary mission of the social work profession is to enhance human well-being and help meet the basic human needs of all people, with particular attention to the needs and empowerment of people who are vulnerable, oppressed, and living in poverty." This undeniably includes individuals with disabilities and the LGBTQ+ community.

Removing non-discrimination protections for persons with a disability or who identify as LGBTQ+ in any way from the Code of Conduct sends the wrong message to individuals that they can be denied care based on who they are. This is incredibly dangerous and does not align with social worker ethics. Studies indicate that the stress related to COVID and social unrest in this country has greatly increased the need for services and support. In a time when Texans greatly need an array of mental health and other social work services, any deterrent to someone seeking care from a social worker could result in harmful or even deadly consequences.

Thank you for allowing me to provide these comments. We are hopeful that you will continue efforts to maintain social workers' core values of service, social justice, dignity and worth of the person, importance of human relationships, integrity, and competence.

**Submitted by: Colleen Horton, MPAff, Director of Policy, REDACTED**

---



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 17, 2020

Mr. Darrel D. Spinks  
Executive Director  
Texas Behavioral Health Executive Council  
333 Guadalupe, Suite 3-900  
Austin, Texas 78701

**Via E-Mail**

Re: Authority of the Behavioral Health Executive Council to adopt a rule prohibiting certain discriminatory conduct by licensed social workers (RQ-0391-KP)

Dear Mr. Spinks:

We received your request for an attorney general opinion and have designated it as Request No. 0391-KP. Section 402.042 of the Government Code provides that the Attorney General shall issue an opinion not later than the 180th day after the date that an opinion request is received, unless before that deadline the Attorney General notifies the requesting person in writing that the opinion will be delayed. TEX. GOV'T CODE § 402.042(c)(2). We received your request on December 14, 2020, setting a due date for your opinion of June 14, 2021.

By copy of this letter we are notifying those listed below of your request and asking them to submit briefing on your questions if they have a special interest or expertise in the subject matter. If you are aware of other interested parties, please forward this request for briefing to them or let us know, so that we may notify them as soon as possible. We ask that the briefs be submitted by January 15, 2021, to ensure that this office will have adequate time to review and consider arguments relevant to the request from all interested parties. Briefs may be submitted by e-mail to [opinion.committee@oag.texas.gov](mailto:opinion.committee@oag.texas.gov). Please note that briefs and other correspondence are subject to the Public Information Act.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Virginia K. Hoelscher  
Chair, Opinion Committee

VKH/som



Attachment: Request No. 0391-KP

cc: Ms. Karen Ray, Chief Counsel, Texas Department of Health and Human Services  
Mr. Jonathan Miles, General Counsel, Texas Department of Health and Human Services  
The Honorable José Menéndez, Texas State Senate  
The Honorable Jessica González, Texas House of Representatives  
The Honorable Mary González, Chair, Texas House of Representatives LGBTQ Caucus  
Mr. Will Francis, LMSW, Executive Director, National Association of Social Workers  
Texas  
Ms. Alison Mohr Boleware, LMSW, Government Relations Director, National  
Association of Social Workers Texas  
Ms. Lacy Compton, M.A., Association Manager, Texas Association for Marriage and  
Family Therapy  
Texas Association of Psychological Associates  
Ms. Stephanie Barbre, President, Texas Association of School Psychologists  
Ms. Jan Friese, Executive Director, Texas Counseling Association  
Ms. Jessica Magee, Executive Director, Texas Psychological Association  
Mr. Jonathan M. Saenz, President, Texas Values  
Ms. Johanna Meade, General Counsel Division, Office of the Governor

# TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL



## MEMBERS OF THE COUNCIL

Gloria Z. Canseco, M.A., Chair

Kenneth Bateman, Ed.D.

John K. Bielamowicz

Timothy M. Brown, M.S.W.

Susan Fletcher, Ph.D.

George Francis, IV, M.B.A.

Steven Hallbauer

Ben Morris, M.Ed.

Christopher Taylor, Ph.D.

Darrel D. Spinks  
Executive Director

**RECEIVED**

By Opinion Committee at 5:00 pm, Dec 14, 2020

**RQ-0391-KP**

**FILE# ML-48915-20**

**I.D.# 48915**

December 14, 2020

VIA EMAIL TO [OPINION.COMMITTEE@OAG.TEXAS.GOV](mailto:OPINION.COMMITTEE@OAG.TEXAS.GOV)

The Honorable Ken Paxton  
Attorney General of Texas  
Attn: Opinions Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

Dear Mr. Paxton:

The Texas Behavioral Health Executive Council (hereinafter referred to as “the Council”) respectfully requests a Texas Attorney General Opinion regarding the statutory authority to adopt 22 Tex. Admin. Code Sec. 781.301(1), and any other similar rules prohibiting discriminatory misconduct by other licensees regulated by the Council. Put another way, why does the Council not have the statutory authority to adopt a code of conduct rule prohibiting discrimination by social workers, as well as other similar ethical rules prohibiting discriminatory practices by psychologists, professional counselors, or marriage and family therapists?

Although the discrimination prohibition for social workers found in 22 Tex. Admin. Code Sec. 781.301(1) has existed in a rule in some shape or form since January of 2011, it was previously in 22 Tex. Admin. Code Sec. 781.201(a)(1); it has been suggested that this rule exceeds the Council’s statutory authority. While the Council believes this rule is within its authority to adopt, the Council seeks the Office of the Attorney General’s assistance to clarify any potential misunderstanding regarding the matter.

The relevant portions of the rule and statutes involved are set out below.

### Copy of the Rule in Question

22 Tex. Admin. Code Sec. 781.301. CODE OF CONDUCT. A social worker must observe and comply with the code of conduct and standards of practice set forth in this subchapter. Any violation of the code of conduct or standards of practice will constitute unethical conduct or conduct that discredits or tends to discredit the profession of social work and is grounds for disciplinary action.

---

333 Guadalupe, Suite 3-900, Austin, Texas 78701

(Phone) 512-305-7700, [www.bhec.texas.gov](http://www.bhec.texas.gov)

*The Texas Behavioral Health Executive Council is an equal opportunity employer and does not discriminate on the basis of race, color, religion, national origin, age, sex, disability or sexual orientation.*

(1) A social worker shall not refuse to perform any act or service for which the person is licensed solely on the basis of a client's age; gender; race; color; religion; national origin; disability; sexual orientation; gender identity and expression; or political affiliation.

#### **Relevant Statutes Pertaining to Council Rulemaking Authority**

Tex. Occ. Code Sec. 507.152. GENERAL RULEMAKING AUTHORITY. The executive council shall adopt rules as necessary to perform its duties and implement this chapter.

Tex. Occ. Code Sec. 507.153. LIMITATION REGARDING CERTAIN RULES. (a) Unless the rule has been proposed by the applicable board for the profession, the executive council may not adopt under this chapter or Chapter 501, 502, 503, or 505:

- (1) a rule regarding:
  - (B) the scope of practice of and standards of care and ethical practice for the profession[.]

#### **Relevant Statutes Pertaining to the Practice of Social Work**

Tex. Occ. Code Sec. 505.004. NONDISCRIMINATORY ACTIONS AND DECISIONS. An action taken or a decision made under this chapter, including an action or a decision relating to a license application, examination, regulation, or disciplinary proceeding, shall be taken or made without regard to sex, race, religion, national origin, color, or political affiliation.

Tex. Occ. Code Sec. 505.201. GENERAL RULEMAKING AND ENFORCEMENT AUTHORITY OF EXECUTIVE COUNCIL. (a) The executive council may:

- (1) adopt and enforce rules necessary to perform the executive council's duties under this chapter;
  - (2) establish standards of conduct and ethics for license holders; and
  - (3) ensure strict compliance with and enforcement of this chapter.
- (b) The executive council by rule may define a term not defined under Section 505.002 if a definition is necessary to administer or enforce this chapter.

Tex. Occ. Code Sec. 505.2015. BOARD DUTIES. The board shall propose to the executive council:

- (1) rules regarding:
  - (B) the scope of practice of and standards of care and ethical practice for social work[.]

Tex. Occ. Code Sec. 505.451. GROUNDS FOR DISCIPLINARY ACTION. The executive council shall take disciplinary action under Subchapter G, Chapter 507, against a person for:

- (13) refusing to perform an act or service within the scope of the license holder's license solely because of the recipient's age, sex, race, religion, national origin, color, or political affiliation[.]

#### **Relevant Statutes Pertaining to the Practice of Psychology**

Tex. Occ. Code Sec. 501.151. GENERAL POWERS AND DUTIES OF EXECUTIVE COUNCIL.

- (c) The executive council shall adopt and publish a code of ethics under this chapter.

Tex. Occ. Code Sec. 501.1515. BOARD DUTIES. The board shall propose to the executive council:

(1) rules regarding:

(B) the scope of practice of and standards of care and ethical practice for psychology[.]

#### **Relevant Statutes Pertaining to the Practice of Marriage and Family Therapy**

Tex. Occ. Code Sec. 502.151. GENERAL POWERS AND DUTIES OF EXECUTIVE COUNCIL. The executive council shall:

(2) adopt a code of professional ethics for license holders.

Tex. Occ. Code Sec. 502.1515. BOARD DUTIES. The board shall propose to the executive council:

(1) rules regarding:

(B) the scope of practice of and standards of care and ethical practice for marriage and family therapy[.]

#### **Relevant Statutes Pertaining to the Practice of Professional Counseling**

Tex. Occ. Code Sec. 503.201. GENERAL POWERS AND DUTIES OF EXECUTIVE COUNCIL. (a) The executive council shall:

(3) adopt and publish a code of ethics[.]

Tex. Occ. Code Sec. 503.2015. BOARD DUTIES. The board shall propose to the executive council:

(1) rules regarding:

(B) the scope of practice of and standards of care and ethical practice for professional counseling[.]

#### **Background**

H.B. 3155, 76<sup>th</sup> Leg., R.S. (1999) codified Sec. 505.451(13); and, except for the role of the Texas State Board of Social Worker Examiners (“Social Worker Board”) being substituted for the Council in 2019 by H.B. 1501, it substantively remains the same to this day. From the plain language of this statute it is clear the Legislature intended to prohibit discriminatory practices by social workers; the statute states that the Council shall take disciplinary action against a person for “refusing to perform an act or service within the scope of the license holder's license solely because of the recipient's age, sex, race, religion, national origin, color, or political affiliation[.]” Former Sec. 505.201 allowed the Social Worker Board to adopt rules as well as establish standards of conduct and ethics for license holders.

Effective January 27, 2011, the Social Worker Board amended 22 Tex. Admin. Code Sec. 781.201(a)(1) to prohibit a social worker from refusing to provide services based solely on the recipient's age, gender, race, color, religion, national origin, disability, sexual orientation, or political affiliation, see 36 Tex. Reg. 242 (January 21, 2011). Effective March 28, 2013, the Social Worker Board further amended 22 Tex. Admin. Code Sec. 781.201(a)(1) to also include gender identity and expression to the list of prohibited discrimination, see 38 Tex. Reg. 1980 (March 22, 2013).

H.B. 1501, 86<sup>th</sup> Leg., R.S. (2019) created the Texas Behavioral Health Executive Council and authorized the Council to regulate, administer, and adopt rules for the practice of marriage and family therapy, professional counseling, psychology, and social work. Certain rules, such as the scope of practice of and standards of care and ethical practice for a profession, must first be proposed to the Council by the underlying professional board.

22 Tex. Admin. Code Sec. 781.201(a)(1) has recently been readopted as 22 Tex. Admin. Code Sec. 781.301(1) by the Council, to conform with the new regulatory structure created by H.B. 1501. The issue that has been raised to the Council is that the rule should match the statute, otherwise the rule exceeds the agency's rulemaking authority. Those that question the Council's rulemaking authority believe that Sec. 505.451(13) provides an exhaustive list, and if the Legislature intended to include other categories of prohibited discrimination, then it would have included them in the statute.

### Discussion

A state administrative agency has only those powers that the Legislature expressly confers upon it or that are implied to carry out the express functions or duties given or imposed by statute. *Texas Workers' Comp. Comm'n v. Patient Advocates of Tex.*, 136 S.W.3d 643, 652 (Tex. 2004); *Pub. Util. Comm'n v. City Pub. Serv. Bd.*, 53 S.W.3d 310, 315-16 (Tex. 2001). In construing a statute, a state administrative agency or court's objective is to determine and give effect to the Legislature's intent first by looking to the statute's plain and common meaning. *Albertson's, Inc. v. Sinclair*, 984 S.W.2d 958, 960 (Tex. 1999).

Texas courts recognize that the Legislature "intends an agency created to centralize expertise in a certain regulatory area be given a large degree of latitude in the methods it uses to accomplish its regulation function." *City of Garland v. Public Util. Comm'n of Tex.*, 165 S.W.3d 814, 819 (Tex. App.—Austin 2005, pet. denied). When conferring a power upon an agency, the Legislature also "impliedly intends that the agency have whatever powers are reasonably necessary to fulfill its express functions or duties, and the Legislature is not required to include every specific detail or anticipate all unforeseen circumstances when enacting an agency's authorizing statute." *Texas Orthopaedic Ass'n v. Texas State Bd. of Podiatric Med. Exam'rs*, 254 S.W.3d 714, 719 (Tex. App.—Austin 2008, pet. denied).

The plain language of the Occupations Code sections listed above states that the Council, in conjunction with each underlying board, shall adopt a code of ethics. Therefore, the Legislature delegated the authority to develop and adopt rules concerning the ethical practice of social workers, and other licensees regulated by the Council. The Legislature clearly intended to prohibit social workers from discriminating against a recipient of social work services on the basis of age, sex, race, religion, national origin, color, or political affiliation. The Council asserts that including disability, sexual orientation, and gender identity and expression to this list comports with the Legislature's intent.

National associations often develop and publish model rules or codes of ethics. While such model rules do not create a legal basis for a Texas state agency to promulgate and adopt rules, they are often instructive for regulatory agency rulemaking. To that end, the National Association of Social Workers has issued a code of ethics as a guide to the everyday professional conduct of social workers. Section 4.02 of those model rules, regarding discrimination, states: "[s]ocial workers should not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, ethnicity, national origin, color, sex, sexual orientation, gender identity or expression, age, marital status, political belief, religion, immigration status, or mental or physical ability." The Social Worker Board is not the only agency to use model rules as a guide for rulemaking. The Texas State Bar has based rules on American Bar Association Model Rules of

Professional Conduct; see Ethics Opinion No. 653, January 2016, which discusses Rule 4.02(a) being based on Model Rule 4.2. It is worth noting that other national associations for psychologists, counselors, and marriage and family therapists have also promulgated similar model codes of ethics that prohibits discrimination.<sup>1</sup>

Social workers are utilized in various settings throughout the State of Texas. One such setting is in hospitals; social workers are often employed by hospitals as case managers to ensure patients continue to receive the necessary care, services, equipment, or the like during a hospital stay and when discharged. It is not uncommon for disabled persons to be admitted and discharged from hospitals. The legislative intent of Sec. 505.451(13) is clearly focused on prohibiting and preventing discriminatory conduct. It would be counterproductive and counterintuitive to not prohibit social workers from discriminating against disabled persons since disabled Texans may not receive necessary care or services provided by social workers. Therefore including "disability" in 22 Tex. Admin. Code Sec. 781.301(1) would not only appear logical, but also comport with the legislative intent of Sec. 505.451(13).

The contrary viewpoint would assert that Sec. 505.451(13) lists age, sex, race, religion, national origin, color, or political affiliation; but does not list disability. Those that question the underlying authority of the rule assert that when the Legislature provides a list it is intended to be exclusive, not inclusive, so additional categories should not be added in rulemaking. While it can be true that the Legislature can and does sometimes provide an exclusive list in statutes, the Council does not believe that is the case here. For example, Sec. 505.004 prohibits an action or decision made under Chapter 505, such as one relating to a license application, examination, regulation, or disciplinary proceeding, from being taken or made on the basis of sex, race, religion, national origin, color, or political affiliation. While this statute appears very similar to Sec. 505.451(13) noticeably absent from this list, which is in the later statute, is "age." The Council does not interpret the omission of the term "age" from Sec. 505.004 to then authorize the agency to use age as a basis for making a decision or taking an action in a licensing application, disciplinary proceeding, or the like. Instead, the Council interprets the legislative intent of Sec. 505.004 to require actions or decisions in licensing applications or disciplinary proceedings to be based on facts and law rather than on the basis of irrelevant or potentially discriminatory factors such as sex, religion, race, or any other such category - which could include age. The overarching principle in Sec. 505.004, that the agency should not conduct discriminatory practices, is the same found in Sec. 505.451(13), that licensees should not discriminate against clients.

Additionally, the plain language of Sec. 505.451(13) does not appear to restrict or limit the categories of prohibited discrimination since the language does not include any limiting statements, such as "limited to." Conversely, the statute does not include language that broadens these enumerated categories, such as

---

<sup>1</sup> American Psychological Association code of ethics, section 3.01, states: "[i]n their work-related activities, psychologists do not engage in unfair discrimination based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, socioeconomic status, or any basis proscribed by law." American Counseling Association code of ethics, section C.5., states: "Counselors do not condone or engage in discrimination against prospective or current clients, students, employees, supervisees, or research participants based on age, culture, disability, ethnicity, race, religion/spirituality, gender, gender identity, sexual orientation, marital/ partnership status, language preference, socioeconomic status, immigration status, or any basis proscribed by law." American Association for Marriage and Family Therapy code of ethics, section 1.1, states: "[m]arriage and family therapists provide professional assistance to persons without discrimination on the basis of race, age, ethnicity, socioeconomic status, disability, gender, health status, religion, national origin, sexual orientation, gender identity or relationship status."

“including, but not limited to.” The statute plainly states the prohibited discrimination categories and is ambiguous as to whether the Legislature intended this to be an exclusive list or a starting point. The Council believes the resolution to any such ambiguity in the statutory language requires the Council to look to the statute’s intent and that any categories logically related to the statute’s intent were intended for inclusion by the Legislature.

Turning to the inclusion of the terms “sexual orientation” and “gender identity and expression” in the rule, the term “sex” that is included in Sec. 505.451(13) can be and has been interpreted to mean more than just a synonym for gender. In an employment law context, the U.S. Supreme Court has interpreted the term “sex” to include not only male and female gender, but to also include gay or transgender. See *Bostock v. Clayton County, Georgia*, No. 17-1618 (S. Ct. June 15, 2020). The court held an employer who fires an individual merely for being gay or transgender violates Title VII. Title VII makes it “unlawful . . . for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual . . . because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. §2000e–2(a)(1). Because discrimination on the basis of homosexuality or transgender status requires an employer to intentionally treat individual employees differently because of their sex, an employer who intentionally penalizes an employee for being homosexual or transgender also violates Title VII. Because of caselaw precedent, the Council reasonably believes the term “sex” in Sec. 505.451(13) is intended to include the categories listed in 22 Tex. Admin. Code Sec. 781.301(1) of gender, sexual orientation, and gender identity and expression.

Even if one believes the term “sex” is not intended to include gender, sexual orientation, and gender identity and expression, why would including sexual orientation and gender identity and expression not accord with the intent of the Legislature or be permissible within the scope of the Legislature’s delegation of powers for the Council to adopt a code of ethics? As discussed above regarding the inclusion of disability, the general objective of the statute is to prohibit discrimination so that Texans may have access to the necessary services social workers provided, and the inclusion of sexual orientation and gender identity and expression works towards this objective. If the Office of the Attorney General states that the reason a category cannot be added to the rule is because the statute does not explicitly state or include it, then would the other Boards for counseling, psychology, and marriage and family therapy be within their statutory authority to adopt a similar rule with these same categories since Chapters 501, 502, and 503 of the Occupations Code do not contain such a list?

The Council does not believe the prohibited discrimination enumerated by Sec. 505.451(13) is without limitation. S.B. 138, 76<sup>th</sup> Leg., R.S. (1999), codified Chapter 110 of the Civil Practices and Remedies Code which pertains to government restrictions on the free exercise of religion. This legislation was enacted during the same legislative session that Sec. 505.451(13) was first codified. The Code Construction Act would presume that the Legislature intended the entirety of both statutes to be effective. Specifically, Sec. 110.002(c) states, “[t]his chapter applies to each law of this state unless the law is expressly made exempt from the application of this chapter by reference to this chapter.” Chapter 505 was not made exempt, so Chapter 110 applies. Sec. 110.003(a) states, “[s]ubject to Subsection (b), a government agency may not substantially burden a person’s free exercise of religion.” Sec. 505.451(13), and the rule, does not conflict with Chapter 110 because subsection (b) of Sec. 110.003 may apply but, more importantly, because both the statute and rule contain the following limiting language “solely because of” and “solely on the basis of” respectively. A licensee may not discriminate based solely on one of the enumerated categories, but a person may freely exercise religion; so if a licensee denies services based upon a sincerely held religious belief then the licensee would not be denying services based solely on one of the enumerated categories but

based upon a licensee's free exercise of religion. Therefore Sec. 505.451(13), and the rule, does not conflict with Chapter 110 of the Civil Practices and Remedies Code.

The Council recognizes that the Office of the Attorney General has filed an amicus brief in a case currently pending before the U.S. Supreme Court that may be related to this matter, *Fulton v. City of Philadelphia*, No. 19-123, and a decision in that case may impact this request for an opinion. In summary, the brief discusses the delicate balance that must be struck in the law between the protection of religious freedoms and protections against discrimination. The Council believes a related question is posed here, and believes it has achieved a thoughtful and informed delicate balance between Sec. 505.451(13) and Chapter 110.

It is the Council's understanding that to establish a rule's facial invalidity, one must show that the rule: (1) contravenes specific statutory language; (2) runs counter to the general objectives of the underlying Act; or (3) imposes additional burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions. See *Texas Bd. of Chiropractic Exam'rs v. Texas Med. Ass'n*, 375 S.W.3d 464, 474 (Tex. App.—Austin 2012, pet. denied); *City of Garland v. Public Util. Comm'n of Tex.*, 165 S.W.3d 814, 819 (Tex. App.—Austin 2005, pet. denied).

As discussed, the rule does not conflict with any specific statutory language and the rule is the agency's effort to comply with the general objects of Chapter 505; thus, the Council does not believe it is facially invalid under either of these first two factors. While the rule does impose additional burdens, conditions, or restrictions on licensees than those stated in the statute, they are consistent with legislative objectives and intent of Chapter 505, as well as Sec. 505.451(13). Therefore the rule cannot be facially invalid, and the Council respectfully requests on opinion confirming or clarifying its statutory authority to adopt the current rule.

#### **Affected or Interested Groups or Parties**

Lastly, the Council has identified the following persons or groups likely to be interested in the opinion.

National Association of Social Workers Texas  
810 W. 11<sup>th</sup> Street  
Austin, Texas 78701

Texas Counseling Association  
1210 San Antonio St., Ste. 200  
Austin, Texas 78701

Texas Psychological Association  
1464 E. Whitestone Blvd., Ste. 401  
Cedar Park, Texas 78613

Texas Association of Psychological Associates  
P.O. Box 601374  
Dallas, Texas 75360

Texas Association of School Psychologists  
P.O. Box 141023  
Austin, Texas 78714

Sen. José Menéndez  
P.O. Box 12068  
Austin, Texas 78711

Texas House LGBTQ Caucus  
Rep. Mary González, Chair  
P.O. Box 2910  
Austin, Texas 76768

Texas Association for Marriage and Family  
Therapy  
3305 Steck Ave., Ste. 200  
Austin, Texas 78757



Rep. Jessica Gonzáles  
P.O. Box 2910  
Austin, Texas 76768

Texas Values  
900 Congress, Ste. L115  
Austin, Texas 78701

The Council appreciates your review of this matter and looks forward to your opinion. If additional information is required, please contact Patrick Hyde, the Council's General Counsel, at (512) 305-7700.

Respectfully,



Darrel D. Spinks  
Executive Director  
Texas Behavioral Health Executive Council

January 15, 2021

*Via Email to [opinion.committee@oag.texas.gov](mailto:opinion.committee@oag.texas.gov)*

Mr. Ken Paxton  
Attorney General of Texas  
Office of the Attorney General  
300 W. 15th Street  
Austin, TX 78701

Ms. Virginia K. Hoelscher  
Chair, Opinion Committee  
Office of the Attorney General  
300 W. 15th Street  
Austin, TX 78701

**Re: Request No. 0391-KP  
File # ML-48915-20  
I.D. # 48915  
Authority of the Behavioral Health Executive Council to adopt a rule  
prohibiting certain discriminatory conduct by licensed social workers.**

Dear Attorney General Paxton and Chair Hoelscher:

The undersigned write on behalf of Lambda Legal Defense and Education Fund, Inc. and its South-Central Office located in Dallas, Texas (“Lambda Legal”) in response to your request for briefing on the questions submitted by Mr. Darrel D. Spinks, Executive Director of the Texas Behavioral Health Executive Council (“BHEC”), from organizations with a “special interest or expertise in the subject matter” at issue in Request No. 0391-KP.

## **Introduction**

Lambda Legal is the oldest and largest national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and everyone living with HIV (collectively as used herein “LGBT” people) through impact litigation, education and public policy work.

Lambda Legal is writing on behalf of this State's nearly 1 million lesbian, gay, bisexual, and transgender ("LGBT") Texans and the over 94,000 Texans who are living with HIV.<sup>1</sup>

Social workers provide services in nearly every institution that meet the basic needs of Texans, including but not limited to in child welfare, schools, hospitals and other health care settings, community agencies, government, colleges and universities, businesses, nursing homes, not to mention in private practice and other social service settings. Making the unrestricted provision of social work services to Texans more acute is the fact that Texas is facing a mental health provider shortage.<sup>2</sup> This shortage is exacerbated in rural areas.<sup>3</sup> Therefore, removing the explicit prohibitions against discrimination based on sexual orientation, gender identity and expression, and disability that have been in place for so long now---is simply untenable as a public health matter, as well as mistaken as a legal matter.

**1. Construing the Texas Social Work Practice Act ("Act") to require the removal of the terms sexual orientation, gender identity and expression, and disability from the rules in Chapter 781 of the Texas Administrative Code (sometimes "TAC")<sup>4</sup> appears to give social workers in Texas a new license to discriminate against certain Texans, which is the very antithesis of the definition of "social work practice" found in the TAC.**

Acting consistently with governing law and professional standards, the Social Worker Board ("Board") amended 22 TEX. ADMIN. CODE § 781.201(a)(1), (the predecessor to TEX. ADMIN. CODE § 781.301), as of January 27, 2011, to prohibit a social workers from refusing to provide services based solely on the recipient's age, gender, race, color, religion, national origin, disability, sexual orientation, or political affiliation. See 36 Tex. Reg. 242 (January 21, 2011). Two years later, the Board further amended 22 TEX. ADMIN. CODE § 781.201 (a)(1) to add gender identity and expression to the list of statuses that were protected from discrimination. See 38 Tex. Reg. 1980 (March 22, 2013).

---

<sup>1</sup> As of the end of 2018, over 94,000 Texans were living with a diagnosed HIV infection. The number of people living with HIV (PLWH) increased by 16% over the past 5 years, but this is not due to increases in the annual number of Texans getting diagnosed. See Texas Department of Health and Human Services, <https://www.dshs.texas.gov/hivstd/reports/epiprofile/sec02.shtm#:~:text=As%20of%20the%20end%20of,number%20of%20Texans%20getting%20diagnosed>.

<sup>2</sup>See generally *The Mental Health Workforce Shortage in Texas*, Texas Department of State Health Services, September 2014, available at <https://liberalarts.utexas.edu/iupra/files/pdf/Mental%20Health%20Workforce%20Shortage%20Texas.pdf>.

<sup>3</sup> See *The Mental Health Workforce Shortage in Texas*, Texas Department of State Health Services, September 2014, p. 11, <https://liberalarts.utexas.edu/iupra/files/pdf/Mental%20Health%20Workforce%20Shortage%20Texas.pdf>.

<sup>4</sup> 22 TEX. ADMIN. CODE §781.101 implements the provisions in the Social Work Practice Act (Act), Texas Occupations Code, Chapter 505, concerning the licensure and regulation of social workers.

To now require the removal of sexual orientation, gender identity and expression, and disability so that 22 TEX. ADMIN. CODE § 781.301 only includes the terms sex, race, religion, national origin, color, or political affiliation as set forth §505.004<sup>5</sup> of the Act would give social workers the very mistaken impression that they can now, for the first time in ten years, refuse to provide services to certain Texans. This will not only hurt LGBT Texans and Texans living with HIV, but it will also hurt all Texans who often need the services of a social worker when they are at their most vulnerable.

Examples include:

- a Black Lesbian in the hospital after suffering a stroke who is in need of the services the hospital social workers provide as she prepares to go home;
- the family of an LGBT senior who is unable to care for the needs of their family member without the assistance of social worker;
- a battered spouse living with HIV who is living in a shelter after leaving her abuser;
- a gay teenager considering suicide who is being physically assaulted and bullied by other students in the high school he attends; or
- a transgender Latina who is in need of job training and housing after she has been wrongfully fired from her job.

Allowing such discrimination is not only wrong under current law, but it also violates the definition of “social work practice” which requires Texas social workers to “enhance the functioning of individuals, families, groups, communities, and organizations” and to apply the “disciplined application of social work values, principles, and methods” to engage in “advocacy for vulnerable groups.” See 22 TEX. ADMIN. CODE § 781.102 (48).

## **2. LGBT Texans and LGBT Texans with Disabilities will be disproportionately harmed if the Code of Conduct is required to mirror the language in the Act.**

Texas has no explicit state law protections against discrimination based on sexual orientation or gender identity in employment, housing, or healthcare and Texas is one of only five states that provides no protections in public accommodations for nondisabled individuals.<sup>6</sup>

---

<sup>5</sup> See TEX. OCC. CODE § 505.004 addresses nondiscriminatory actions and decisions in the Act.

<sup>6</sup> See National Conference of State Legislators, available at <http://www.ncsl.org/research/labor-and-employment/-gender-and-sex-discrimination.aspx> and <https://www.lambdalegal.org/blog/20190924/history-of-lgbtq-workers-rights>. See also National Conference of State Legislators, Public Accommodation Laws, available at <https://www.ncsl.org/research/civil-and-criminal-justice/state-public-accommodation-laws.aspx>.

### ***LGBT Texans***

As of March of 2019, 4.1% of our State's population identified as LGBT, or approximately 893,350 Texans.<sup>7</sup> Of those Texans, 768,000 identify as LGB, and .66% of our population, or approximately 125,350 identify as transgender.<sup>8</sup> Prior to COVID-19, fully 26% of LGBT Texans had no health insurance, 27% were food insecure and 26% made less than \$24,000 a year.<sup>9</sup> To put these statistics in further context, as of October 2019, over 28% of LGBT Texans lived in poverty.<sup>10</sup> By December 2019, *less than three months later*--that number had increased:

“35% of LGBT Texans aged 18–44 were living in poverty, and 29% of those aged 45 or older were living in poverty. Moreover, for LGBT Texans of Color, fully 39% live in poverty.”<sup>11</sup>

### ***Transgender Texans***

For Transgender Texans and Transgender Texans of Color, who are often by far the most discriminated against and marginalized of all Texans, the situation is far worse, fully 17% of Transgender Texans are unemployed, 34% are living in poverty, and 77% do not have identity documents that match their gender.<sup>12</sup> In the last five years, more transgender people have been

---

<sup>7</sup> See *LGBT Data & Demographics*, UCLA School of Law, The Williams Institute, available at <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=48#density>. See also *Adult LGBT Population in the United States*, UCLA School of Law, The Williams Institute, available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Adult-US-Pop-Mar-2019.pdf>.

<sup>8</sup> See *Adult LGBT Population*, available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Adult-US-Pop-Mar-2019.pdf>. Forty percent of LGBT Texans are White, 39% are Latino/a, 11% are Black, and 6% identify as “other.” See *LGBT Data*, available at <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=48#density>.

<sup>9</sup>See *LGBT Data*, available at: <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=48#density>

<sup>10</sup> See *LGBT Poverty in the United States*, M. V. Lee Badgett, Soon Kyu Choi & Bianca D.M., Wilson, UCLA School of Law, The Williams Institute, Oct. 2019, available at <https://williamsinstitute.law.ucla.edu/publications/lgbt-poverty-in-the-united-states/>, p. 10-11.

<sup>11</sup> See *State Profiles of LGBT Poverty in the United States*, M. V. Lee Badgett, Soon Kyu Choi & Bianca D.M., Wilson, UCLA School of Law, The Williams Institute, Dec. 2019, available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/State-LGBT-Poverty-Dec-2019.pdf>.

<sup>12</sup> See *Texas leads the nation in transgender murders. After the latest attack, the Dallas trans community asks why. Nearly half the deaths have occurred in Dallas, with many pointing to politics as an underlying problem*, The Dallas Morning News, available at <https://www.dallasnews.com/news/2019/09/30/texas-leads-nation-transgender-murders-according-national-lgbtq-organization/>. See also *Impact*, Mallory, Brown, Russell & Sears, available at <https://williamsinstitute.law.ucla.edu/publications/impact-lgbt-discrimination-tx/>.

killed in our state than in any other state. In 2019, Texas led the nation in the number of transgender people murdered with more than one-half of such deaths occurring in Dallas, where Lambda Legal's South Central Office is located.<sup>13</sup>

### ***LGBT Seniors and LGBT Seniors living with a Disability***

According to SAGE (Services & Advocacy for LGBT Elders), which is the country's largest and oldest organization dedicated to improving the lives of LGBT older people, 41% percent of LGBT older adults report having a disability.<sup>14</sup> According to the latest CDC Surveillance Report from 2017, nearly 50 percent of people living with HIV in the United States are 50 or older. People 50 and older also accounted for 17 percent of new HIV diagnoses in 2017.<sup>15</sup> LGBT older adults are less likely than their heterosexual peers to reach out to providers, senior centers, meal programs, and other social service programs because they fear sexual orientation or gender-based discrimination and harassment. Finally, LGBT older adults experience mental and physical illness more frequently than their heterosexual counterparts.<sup>16</sup>

Given these existing barriers, it is clear that removing the explicit protections that are in place prohibiting discrimination against LGBT Texans, LGBT Texans living with HIV, and those LGBT Texans and Seniors living with a disability, will further dissuade these individuals from seeking the social work services they need.

### **3. BHEC was within its authority to adopt 22 TEX. ADMIN. CODE § 781.301 and to again include sexual orientation, gender identity and expression, and disability within the list of prohibited discrimination.**

A state agency "may only adopt such rules as are authorized by and consistent with its statutory authority."<sup>17</sup> The determinative factor as to whether a state agency exceeds its statutory authority is "whether the regulation is in harmony with the general objectives of the statute."<sup>18</sup> To determine if a rule is in harmony with the "general objectives" of the statute, courts utilize the

---

<sup>13</sup> See *Texas leads the nation*, available at <https://www.dallasnews.com/news/2019/09/30/texas-leads-nation-transgender-murders-according-national-lgbtq-organization/>

<sup>14</sup> See *The Facts on LGBT Aging*, SAGE, available at <https://www.sageusa.org/wp-content/uploads/2018/05/sageusa-the-facts-on-lgbt-aging.pdf>.

<sup>15</sup> See *Older People Living with HIV*, SAGE, available at <https://www.sageusa.org/wp-content/uploads/2019/03/older-people-living-with-hiv.pdf>.

<sup>16</sup> See *The Facts on LGBT Aging*, SAGE, available at <https://www.sageusa.org/wp-content/uploads/2018/05/sageusa-the-facts-on-lgbt-aging.pdf>.

<sup>17</sup> ATT'Y GEN. OF TEXAS, OP. NO. GA-0815 (NOV. 4, 2010) (citing *Pruett v. Harris Cnty. Bail Bond Bd.*, 249 S.W.3d 447, 452 (Tex. 2008)).

<sup>18</sup> *Id.*

canons of statutory construction.<sup>19</sup> The Code Construction Act, found in the Texas Government Code, § 311.001 *et seq.*, § 311.021, entitled “Intention in Enactment of Statutes,” states that “[i]n enacting a statute, it is presumed that: (1) compliance with the constitutions of this state and the United States is intended; (2) the entire statute is intended to be effective; (3) a just and reasonable result is intended; (4) a result feasible of execution is intended; and (5) public interest is favored over any private interest.” *Id.*

Here, it is clear that TEX. OCC. CODE § 505.004 prohibits discrimination. Under the Code Construction Act, because a just and reasonable result is intended, a prohibition on discrimination based on sexual orientation, gender identity and gender expression, and disability is in harmony with the general objectives of the statute. Further, because of the wide-ranging impact that social workers have on the services provided to the general public, it is in keeping with the Act that social workers be prohibited from discriminating against discrete and insular individuals and groups, including LGBT Texans and LGBT Texans with a disability. Finally, allowing discrimination against some Texans and those living at the intersections of LGBT identities, such as Black gay men, LGBT seniors living with a disability, or Black transgender women is not a result that is feasible of execution. For example, sanctioning a social worker for refusing to provide services to a Black gay man because the Black gay man is gay and not because he is Black will be hard to discern and impracticable to implement. Moreover, it will invite disingenuous pretexts, harmful discrimination, and potential resulting liability.

Here, the Board has the authority to implement the provisions of the Social Work Practice Act.<sup>20</sup> Under TEX. OCC. CODE § 507.103(a), BHEC cannot propose and adopt any rules by itself that (i) establish qualifications necessary for licensure; (ii) establish the scope of practice, standards of care, or ethical practice for social workers; (iii) establish continuing education requirements, or (iv) establish sanctions for violating the laws and rules applicable to social workers.<sup>21</sup> Thus, requiring the Board to make a change to its Code of Conduct for social workers does not align with the general objectives of the Act. *Id.*

In *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1737 (2020), the United States Supreme Court, interpreted the plain meaning of the term “sex” under Title VII of the Civil Rights Act of 1964, which prohibits discrimination in the workplace, to include discrimination because of sexual orientation or gender identity. The Court said that “[a]n employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.” *Id.* The *Bostock* decision clearly prohibits

---

<sup>19</sup> *Id.* (citing *Lambright v. Tex. Parks & Wildlife Dep’t*, 157 S.W.3d 499, 510 (Tex. Appl. – Austin 2005, no pet.)).

<sup>20</sup> See 22 TEX. ADMIN. CODE § 781.101.

<sup>21</sup> See TEX. OCC. CODE § 507.153.



discrimination against LGBT individuals and those at the intersections of LGBT identities, whether those intersectional identities are based on race, religion, national origin, color or sex.<sup>22</sup>

The Act similarly prohibits discrimination based on sex. Given the U.S Supreme Court's reasoning in *Bostock*, which previously had been applied by numerous lower federal courts and is equally obvious and compelling in the context of a state law, the Board was within its authority to identify additional examples of discrimination because of sex and readopt a rule in its Code of Conduct that more explicitly defined the personal characteristics subject to such discrimination.

For the reasons set forth above, BHEC and the Board adopted a rule in the Code of Conduct that was authorized and consistent with the statutory authority granted the Board and BHEC under the Act.

### **Conclusion**

Given state and federal law, the language and purpose of the Act, and the language of the Code of Conduct as well as the provision of services to “enhance the functioning of individuals, families, groups, communities, and organizations” in Texas and to advocate for those who are vulnerable, Lambda Legal joins the National Association of Social Workers, Texas Chapter and Disability Rights Texas in urging the Attorney General to ensure that social workers have the independence to practice, license and regulate their profession within the bounds of ethics and the standards of practice they determine. Here, there can be no question that the Board and BHEC had the authority to readopt 22 TEX. ADMIN. CODE §781.301 in compliance with the Act.

If you have any questions, please do not hesitate to contact Senior Attorney, Shelly L. Skeen, at (214) 219-8585, ext. 5228, or [sskeen@lambdalegal.org](mailto:sskeen@lambdalegal.org).

Sincerely,

Lambda Legal Defense and Education Fund,  
Inc., South Central Office, Dallas, Texas

By: /s/ Avery Belyeu  
Avery Belyeu (She/her)  
South Central Regional Director

By: /s/ Shelly L. Skeen  
Shelly L. Skeen (She/her)  
Senior Attorney

---

<sup>22</sup> See 42 U.S.C. § 2000e–2(a)(1).



cc: Mr. Darrel D. Spinks  
Executive Director  
Texas Behavioral Health Executive Council  
333 Guadalupe, Suite 3-900  
Austin, Texas 78701

January 13, 2021

**Via Email to [opinion.committee@OAG.Texas.Gov](mailto:opinion.committee@OAG.Texas.Gov)**

The Honorable Ken Paxton  
Attorney General of Texas  
Attn: Opinions Committee  
P.O. Box 12548  
Austin, TX 78711-2548

Regarding: Opinion Request No. 0391-KP

Dear Attorney General Paxton:

The National Association of Social Workers - Texas Chapter (NASW-TX) received an invitation from your office's Opinions Committee to submit briefing on the issues raised by the above referenced opinion request and appreciates the opportunity to do so. NASW-TX is the largest professional association representing social workers in the state, with over 5,000 members, and is committed to advancing professional social work practice and the profession. NASW-TX sets national ethical standards for social workers, promotes human rights, social and economic justice, and unimpeded access to services for all people. Our members work in a broad range of settings, including but not limited to hospitals and other health care settings, community agencies, government, academia, business, nursing homes, schools, and private practice.

In the opinion request, which was submitted by the Texas Behavioral Health Executive Council (the Council), the Council asks for confirmation that it had authority to promulgate a rule, 22 Tex. Admin. Code Section 781.301(1) (the Rule), prohibiting specified discriminatory conduct by licensed social workers. The rule, part of the Code of Conduct for social workers, provides: "A social worker shall not refuse to perform any act or service for which the person is licensed solely on the basis of the client's age; gender; race; color; religion; national origin; disability; sexual orientation; gender identity and expression; or political affiliation."

The Council notes that a concern has been raised as to whether the Rule exceeds the authority contained in the authorizing statute – which establishes a nondiscrimination provision at Tex. Occ. Code Sec. 505.451(13).<sup>1</sup> This nondiscrimination provision authorizes disciplinary action against a licensee for refusing to perform an act or service within the scope of the license holder's license solely because of the recipient's age, sex, race, religion, national origin, color, or political affiliation. The concern relates to the fact that disability, sexual orientation and gender identity and expression are not included within the nondiscrimination provision's list of prohibited bases for service denial. Accordingly, it is arguable that the statute created an exhaustive list of prohibited bases for service denial, thereby precluding the Rule from referencing other prohibited bases.

---

<sup>1</sup> The Council's opinion request provides a detailed analysis of relevant regulatory and statutory issues. We agree with that analysis and highlight below portions that we believe are particularly relevant.

We agree with the Council’s view that the Texas State Board of Social Work Examiners (the Board) was well within its authority to adopt the current Rule, which was later readopted by the Council. As the Council notes, Texas courts have clarified that regulatory agencies enjoy broad discretion in accomplishing regulatory functions and carrying out their duties. The Board’s and the Council’s rules do not need to mirror the authorizing statutes. Rather, the agencies must only ensure that the “regulation is in harmony with the general objectives of the statute.” ATT’Y GEN. OF TEXAS, OP. NO. GA-0815 (Nov. 4, 2010) (citing *Pruett v. Harris Cnty. Bail Bond Bd.*, 249 S.W.3d 447, 452 (Tex. 2008)).

It seems clear that the Legislature’s overriding intent, in delegating authority to develop and adopt rules concerning the ethical practice of social work, was to prohibit practitioners from denying service based on arbitrary and/or discriminatory factors. Accordingly, it was reasonable and necessary to include in the Rule disability, sexual orientation, and gender identity and expression as prohibited bases for service denials. That is, the Rule is in harmony with the general objectives of the statute.

Further, it was appropriate to reference sexual orientation and gender identity and expression in the Rule, given the recent Supreme Court’s decision in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020). In that case, the Court ruled that Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination on the basis of sex (among other factors), should be interpreted as also prohibiting discrimination on the basis of sexual orientation and gender identity. The Court stated that, “An individual’s homosexuality or transgender status is not relevant to employment decisions [and should be prohibited]. That’s because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.” 140 S. Ct. at 1741.<sup>2</sup>

The same reasoning should apply in the context of the Rule. That is, a denial of client services based on sexual orientation, or gender identity or expression is in essence a denial based on sex. Accordingly, the Board and the Council were authorized to promulgate a nondiscrimination provision that simply makes this interpretation clear – and did so by including sexual orientation and gender identity and expression as prohibited bases for service denials.

---

<sup>2</sup> In support of its conclusion, the Court provided the following examples:

Consider, for example, an employer with two employees, both of whom are attracted to men. The two individuals are, to the employer’s mind, materially identical in all respects, except that one is a man and the other a woman. If the employer fires the male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague. Put differently, the employer intentionally singles out an employee to fire based in part on the employee’s sex, and the affected employee’s sex is a but-for cause of his discharge. Or take an employer who fires a transgender person who was identified as a male at birth but who now identifies as a female. If the employer retains an otherwise identical employee who was identified as female at birth, the employer intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth. Again, the individual employee’s sex plays an unmistakable and impermissible role in the discharge decision.

140 S. Ct. at 1741-42.

Moreover, the Rule is consistent with the corresponding provision in the Code of Ethics of the National Association of Social Workers (NASW), section 4.02.<sup>3</sup> That section provides as follows:

Social workers should not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, ethnicity, national origin, color, sex, sexual orientation, gender identity or expression, age, marital status, political belief, religion, immigration status, or mental or physical ability.

The NASW Code of Ethics is used as a model for social work practice across the United States and worldwide. It has been incorporated in whole or part into a large number of state social work licensing laws,<sup>4</sup> and the above language clearly served as a model for the Rule. Together, the Texas Code of Conduct and its predecessor, the NASW Code of Ethics, serve as the foundation for competent, equitable practice. The two codes provide all Texas social workers with clear guidance on professional and personal expectations. Their intent is to ensure that all persons seeking services have access to a trained practitioner without limitation based on irrelevant or discriminatory factors such as sexual orientation, gender identity or expression, and disability.

The Occupations Code, Section 505.2015, empowers the Board to propose to the Council rules regarding the scope of practice of and standards of care and ethical practice for social work. This is a vital function of the Board. It is up to the Board, comprised of public and professional members, to determine the bounds of ethical practice and how social work is best defined. In addition, the stated standards of care and ethical practice allow the public to hold social workers accountable, ensuring that remedial actions can be taken against a license holder if necessary. Including disability, sexual orientation, and gender identity and expression in the Rule does not amount to overreach by the Board or the Council, but rather simply clarifies the scope of ethical practice.

Moreover, there are serious implications should a social worker be allowed to deny or terminate services based on personal views. In clinical social work, the therapeutic relationship is a deeply intimate and personal space, and it may take many sessions before a client divulges personal information about their sexual orientation, gender identity or disability. Should a social worker be permitted to end services upon learning such personal details of a client, they could do serious emotional harm to that person. The imperative to place the client's needs before the social worker's beliefs ensures that care of the client is always the primary factor in service delivery.<sup>5</sup>

At a time when Texas is already facing a mental health provider shortage,<sup>6</sup> the emphasis should be placed on increasing access to services, and not permitting practitioners to deny services based on discriminatory considerations related to disability, sexual orientation and gender identity or

---

<sup>3</sup> The Code is available at <https://www.socialworkers.org/About/Ethics/Code-of-Ethics/Code-of-Ethics-English>.

<sup>4</sup> See *History of the NASW Code of Ethics*, available at <https://www.socialworkers.org/About/Ethics/Code-of-Ethics/History>.

<sup>5</sup> Further, should language protecting persons with a disability be stripped from the Rule, a social worker may erroneously believe that they may deny services to a person with a disability, which would violate the Americans with Disabilities Act and analogous state law.

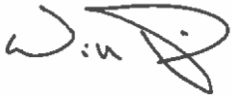
<sup>6</sup> See Texas Department of State Health Services, *The Mental Health Workforce Shortage in Texas*, available at <https://liberalarts.utexas.edu/iupra/files/pdf/Mental%20Health%20Workforce%20Shortage%20Texas.pdf>

expression. Social workers in every setting, including: child welfare, hospitals, schools, government, community centers, long term care facilities, private practice, must be ready to serve all potential clients or be held accountable for withholding help unjustly.

Thank you for your consideration of our views. This letter includes the review and approval of national NASW staff, the national NASW Committee on Lesbian, Gay, Bisexual, and Transgender Issues, the NASW-TX Committee on Lesbian, Gay, Bisexual and Transgender Issues and the NASW-TX Board of Directors.

Please do not hesitate to contact me with any questions, at 512-474-1454 (office), 512-589-9117 (cell) or [wfrancis.naswtx@socialworkers.org](mailto:wfrancis.naswtx@socialworkers.org).

Respectfully,

A handwritten signature in black ink, appearing to read 'Will Francis', with a stylized flourish at the end.

Will Francis, LMSW  
He/Him/His  
Executive Director  
National Association of Social Workers –  
Texas Chapter



---

January 14, 2021

Ms. Virginia K. Hoelscher  
Chair, Opinion Committee  
Office of Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

*Via email:*  
[opinion.committee@oag.texas.gov](mailto:opinion.committee@oag.texas.gov)

Re: Brief in Response to RQ-0391-KP: Authority of the Behavioral Health Executive Council to adopt a rule prohibiting certain discriminatory conduct by licensed social workers

Dear Ms. Hoelscher:

We, representatives of the above listed behavioral health associations, respectfully ask to be excluded from the Texas Attorney General Opinion prompted by a recent request by the Texas Behavioral Health Executive Council (BHEC).

BHEC requested an opinion on its authority to adopt codes of conduct for the professions it oversees. However, the rule in question involves interpretation of Tex. Occ. Code Sec. 505.451(13), which is a statute applicable only to social workers licensed in Texas. This particular statute does not apply to licensed professional counselors, licensed marriage and family therapists, or psychologists. Further, Rule 22 TAC 781.301(1) pertains exclusively to the social worker code of conduct. The rules related to standards of care and ethical practice for licensed professional counselors, licensed marriage and family therapists, and psychologists have already been adopted by BHEC.

Given the exclusive application of the above listed social worker statute and rule, it seems inappropriate for BHEC to request an Attorney General Opinion on codes of conduct it has already adopted—without opposition from interested parties. An analysis of the rules of the other licensed behavioral health profession boards whose codes of conduct are not in question, regardless of how broadly BHEC's request for an opinion was worded, would not be germane and would be outside the scope of the social worker issue in question.

We also bring to your attention the distinct differences between the social worker practice act and the other mental health profession boards' license acts. Specifically, adopting standards of conduct and ethics for social workers is permissive under Tex. Occ. Code Sec. 505.201. In all other professions regulated by BHEC and respective Boards, the adoption is mandatory. See Tex. Occ. Code Secs. 501.151, 502.151, and 503.201.

Brief in Response to RQ-0391-KP  
TAMFT, TPA & TCA  
January 14, 2021

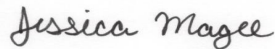
As an aside, we believe that the public interest would be served if the same courtesy extended by the Chair of the Opinion Committee in granting status as an interested party to a hyper-conservative group set on eroding protections for LGBTQ+ individuals, was also extended to at least one LGBTQ+ organization and one organization serving individuals with disabilities, as those are the groups who would have lost protections under the proposed rule.

Respectfully submitted,



---

Paul Stanford, PhD LMFT-S LCMFT, Legislative Liaison  
Texas Association of Marriage and Family Therapy  
972-841-1731  
[paul@stanfordcouplescounseling.com](mailto:paul@stanfordcouplescounseling.com)



---

Jessica Magee, Executive Director  
Texas Psychological Association  
[jessica@texaspsyc.org](mailto:jessica@texaspsyc.org)  
512-528-8400



---

Michael G. DeVoll, M.Ed., LPC-S, President  
Texas Counseling Association  
[michael@devollcounseling.com](mailto:michael@devollcounseling.com)  
832-221-9298

<b>STATUS REPORT</b> <b>Mid 3<sup>rd</sup> Quarter</b>	<b>3Q FY21</b> Mar 1, 2020 to April 26, 2021	<b>2Q FY21</b> Dec 1, 2020 to Feb 28, 2021	<b>1Q FY21</b> Sep 1, 2020 to Nov 30, 2020	<b>4Q FY20</b> Jun 1, 2020 to Aug 31, 2020
Number of Pending Complaints	<b>972</b>	1341	1379	1359
Pending Complaint per Member Board	<b>TSBEP-477</b> <b>TSBSWE- 317</b> <b>TSBEMFT-91</b> <b>TSBEP-87</b>	TSBEP-778 TSBSWE- 346 TSBEMFT-102 TSBEP-115	TSBEP-826 TSBSWE-339 TSBEMFT-106 TSBEP-108	TSBEP-846 TSBSE-316 TSBEMFT-109 TSBEP-98
Number of New Complaints Received	<b>41</b>	97	111	107
Pending Priority 1 Cases	<b>32</b>	55	105	134
Pending Priority 2 Cases	<b>81</b>	128	116	101
Pending Priority 3 Cases	<b>4</b>	7	11	9
Cases Resolved this Quarter	<b>428</b>	125	106	143
Agreed Orders Signed	<b>35</b>	28	33	20
Cases Dismissed by Staff	<b>393</b>	97	73	122
Cases Dismissed by member Boards	<b>0</b>	0	0	1
Cases Reviewed at an ISC this Quarter	<b>14</b>	21	7	10

<b>Pending Cases by Fiscal Year</b>		<b>3Q FY21</b> (as of 4/26/21)	<b>2Q FY21</b> (as of 02/28/21)	<b>1Q FY21</b> (as of 11/30/20)	<b>4Q FY20</b> (as of 08/31/20)
FY2009	3 going to SOAH	<b>3</b>	3	3	3
FY2010	2 going to SOAH	<b>2</b>	2	4	4
FY2011	1 going to SOAH	<b>1</b>	1	1	1
FY2012	1 going to SOAH	<b>2</b>	2	3	3
FY2013	1 going to SOAH	<b>3</b>	3	5	5
FY2014	4 going to SOAH	<b>6</b>	10	11	13
FY2015	3 going to SOAH	<b>12</b>	20	20	24
FY2016	10 going to SOAH	<b>22</b>	34	47	67
FY2017	9 going to SOAH	<b>50</b>	80	111	136
FY2018	9 going to SOAH	<b>92</b>	220	264	296
FY2019	8 going to SOAH	<b>241</b>	321	340	351
FY2020	3 going to SOAH	<b>363</b>	450	462	456
FY2021	0 going to SOAH	<b>175</b>	195	108	
<b>Total</b>		<b>972</b>	1341	1379	1359



<b>STATUS REPORT</b> <b>May 2021 Council Meeting</b>	<b>2Q FY21</b> Dec 1, 2020 to Feb 28, 2021	<b>1Q FY21</b> Sep 1, 2020 to Nov 30, 2020	<b>4Q FY20</b> Jun 1, 2020 to Aug 31, 2020	<b>3Q FY20</b> Mar 1, 2020 to May 31, 2020
Number of Pending Complaints	<b>1341</b>	1379	1359	
Pending Complaint per Member Board	<b>TSBEP-778</b> <b>TSBSWE- 346</b> <b>TSBEMFT-102</b> <b>TSBEP-115</b>	TSBEP-826 TSBSWE-339 TSBEMFT-106 TSBEP-108	TSBEP-846 TSBSE-316 TSBEMFT-109 TSBEP-98	
Number of New Complaints Received	<b>97</b>	111	107	
Pending Priority 1 Cases	<b>55</b>	105	134	
Pending Priority 2 Cases	<b>128</b>	116	101	
Pending Priority 3 Cases	<b>7</b>	11	9	
Cases Resolved this Quarter	<b>125</b>	106	143	
Agreed Orders Signed	<b>28</b>	33	20	
Cases Dismissed by Staff	<b>97</b>	73	122	
Cases Dismissed by member Boards	<b>0</b>	0	1	
Cases Reviewed at an ISC this Quarter	<b>21</b>	7	10	

<b>Pending Cases by Fiscal Year</b>		<b>2Q FY21</b> (as of 02/28/21)	<b>1Q FY21</b> (as of 11/30/20)	<b>4Q FY20</b> (as of 08/31/20)	<b>3Q FY0x</b> (as of 05/31/0x)
FY2009	3 going to SOAH	<b>3</b>	3	3	
FY2010	2 going to SOAH	<b>2</b>	4	4	
FY2011	1 going to SOAH	<b>1</b>	1	1	
FY2012	1 going to SOAH	<b>2</b>	3	3	
FY2013	1 going to SOAH	<b>3</b>	5	5	
FY2014	4 going to SOAH	<b>10</b>	11	13	
FY2015	3 going to SOAH	<b>20</b>	20	24	
FY2016	10 going to SOAH	<b>34</b>	47	67	
FY2017	5 going to SOAH	<b>80</b>	111	136	
FY2018	4 going to SOAH	<b>220</b>	264	296	
FY2019	5 going to SOAH	<b>321</b>	340	351	
FY2020	0 going to SOAH	<b>450</b>	462	456	
FY2021	0 going to SOAH	<b>195</b>	108		
<b>Total</b>		<b>1341</b>	1379	1359	

**TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL**  
**2nd QUARTER MEASURES**  
**FY 2021**

Number of New Licenses Renewed (from thpc24)

LSSP	392
LIC	643
LPA	91
LPC	2474
MFTA	29
MFT	323
LBSW	443
LMSW	1249
LCSW	1083
AP	23

Total 6750

Number of Licenses Issued (from thpc24)

LPA	13
LIC	192
LSSP	13
LPCA	403
LPC	58
LPC Upgrade	316
MFTA	48
MFT	29
MFT Upgrade	44
LBSW	34
LMSW	427
LCSW	135
LMSW Upgrade	28
LCSW Upgrade	219
TEMP SW	38

Total 1997

**TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL**  
**2nd QUARTER MEASURES**  
**FY 2021**

Number of Complaints Resolved (from BO report)

LP	0
LPC	106
MFT	11
SW	3

Total	120
-------	-----

Percent of Complaint Resolved Within Six Months (from BO report)

1 <sup>st</sup> Qtr	5/104 =	5%
2 <sup>nd</sup> Qtr	9/120 =	8%
3 <sup>rd</sup> Qtr		
4 <sup>th</sup> Qtr		
YTD	14/224	7%

Percent of Complaints Resolved resulting in Disciplinary Action (from BO report)

1 <sup>st</sup> Qtr	33/104 =	33%
2 <sup>nd</sup> Qtr	29/120 =	25%
3 <sup>rd</sup> Qtr		
4 <sup>th</sup> Qtr		
YTD	62/224 =	28%

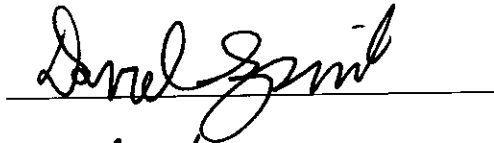
Average Time for Complaint Resolution (from BO report)

1 <sup>st</sup> Qtr	123,751 days to resolve 104 complaints = 1,189.91 days
2 <sup>nd</sup> Qtr	137,604 days to resolve 120 complaints = 1,146.70 days
3 <sup>rd</sup> Qtr	
4 <sup>th</sup> Qtr	
YTD	261,355 days to resolve 224 complaints = 1,166.77 days

Average Time for Application Processing (from BO report) (**Bold averages only**)

1 <sup>st</sup> Qtr	122,710 days to process 1,590 applications =	77.18 days
2 <sup>nd</sup> Qtr	149,768 days to process 1,576 applications =	95.03 days
3 <sup>rd</sup> Qtr		
4 <sup>th</sup> Qtr		
YTD	272,478 days to process 3,166 applications =	86.07 days

Calculations reviewed by:



Date:

3/31/21

<b>LPA Initial</b>	<b>562 days to process 15 applications =</b>	<b>37.47</b>
LPA Final	2,446 days to process 13 applications =	188.15
<b>LIC Initial</b>	<b>4,304 days to process 100 applications =</b>	<b>43.04</b>
LIC Final	13,818 days to process 112 applications =	123.38
<b>LSSP</b>	<b>369 days to process 14 applications =</b>	<b>26.36</b>
<b>LPC Initial</b>	<b>4,693 days to process 58 applications =</b>	<b>80.91</b>
<b>LPCA Initial</b>	<b>35,553 days to process 403 applications =</b>	<b>88.22</b>
<b>LPC Upgrade</b>	<b>9,002 days to process 316 applications =</b>	<b>28.49</b>
<b>MFTA Exam</b>	<b>9,767 days to process 52 applications =</b>	<b>187.83</b>
MFT License	3,167 days to process 29 applications =	109.21
MFTA License	5,598 days to process 48 applications =	116.63
<b>MFTA Upgrade</b>	<b>2,793 days to process 44 applications =</b>	<b>63.48</b>
<b>SW Exam</b>	<b>51,521 days to process 333 applications =</b>	<b>154.72</b>
SW License	80,570 days to process 393 applications =	205.01
<b>SW OOS License</b>	<b>29,803 days to process 203 applications =</b>	<b>146.81</b>
SW Upgrade	48,281 days to process 247 applications =	195.47
<b>Temp SW License</b>	<b>1,401 days to process 38 applications =</b>	<b>36.87</b>

- Those in **BOLD** are the applications we have more control over (i.e. we are not waiting for them to take and pass a national exam).

**2nd QUARTER PERFORMANCE MEASURES**  
**FISCAL YEAR 2021**

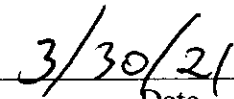
Submitted to the  
Governor's Office of Budget and Planning  
and the Legislative Budget Board

by

**TEXAS BEHAVIORAL HEALTH  
EXECUTIVE COUNCIL**

March 30, 2021

  
Executive Director

  
Date

Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
<b>Output Measures</b>					
<u>1-1-1 LICENSING</u>					
1 # NEW LICENSEES ISSUED					
Quarter 1	600.00	1,789.00	1,789.00	298.17 % *	120.00 - 180.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE

The performance for this measure for the first quarter of FY 2021 exceeds its target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

## HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will issue 7,000 new licenses. Using this target, during this quarter the Council would have met this measure by issuing 1,789 new licenses, or 26% of the target.

\* Varies by 5% or more from target.

Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
<b>Output Measures</b>					
1 # NEW LICENSEES ISSUED					
Quarter 2	600.00	1,997.00	3,786.00	631.00 % *	270.00 - 330.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the second quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

## HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will issue 7,000 new licenses. Using this target, the Council would have met this measure by issuing 3,786 new licenses total year to date, or 54% of the target.

## 2 # LICENSE RENEWALS

\* Varies by 5% or more from target.

**Efficiency/Output Measures with Cover Page and Update Explanation**  
86th Regular Session, Performance Reporting  
Automated Budget and Evaluation System of Texas (ABEST)

3/30/2021 10:41:41AM

Agency code: **510**                      Agency name: **Behavioral Health Executive Council**

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
<b>Output Measures</b>					
2 # LICENSE RENEWALS					
<b>Quarter 1</b>	8,800.00	8,907.00	8,907.00	101.22 % *	1,760.00 - 2,640.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE

The performance for this measure for the first quarter of FY 2021 exceeds its target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will renew 40,000 licenses. Using this target, during this quarter the Council would have met this measure by renewing 8,907 new licenses, or 23% of the target.

\* Varies by 5% or more from target.



Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
<b>Output Measures</b>					
2 # LICENSE RENEWALS					
Quarter 2	8,800.00	6,750.00	15,657.00	177.92 % *	3,960.00 - 4,840.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the second quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

## HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will renew 40,000 licenses. Using this target, the agency would have fallen short of this measure by renewing 15,657 licenses to date, or 40% of the target.

2-1-1 ENFORCEMENT

## 1 COMPLAINTS RESOLVED

\* Varies by 5% or more from target.

**Efficiency/Output Measures with Cover Page and Update Explanation**  
86th Regular Session, Performance Reporting  
Automated Budget and Evaluation System of Texas (ABEST)

3/30/2021 10:41:41AM

Agency code: **510**                      Agency name: **Behavioral Health Executive Council**

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
<b>Output Measures</b>					
<b>1 COMPLAINTS RESOLVED</b>					
<b>Quarter 1</b>	130.00	104.00	104.00	80.00 % *	26.00 - 39.00

Explanation of Variance: FACTORS CAUSING THE VARIANCE

The performance for this measure for the first quarter of FY 2021 exceeds its target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will resolve 800 complaints. Using this target, during this quarter the Council would not have met this measure by resolving 104 complaints, or 13%. The Council's investigators are still in a training state, trying to learn the statutes and rules of all four regulatory programs. However, the number of complaints resolved during the last month of this quarter has significantly increased to 71 from the 12 that were resolved during the first month of the quarter. Additionally, there are 1,379 complaints pending, 200 of which the investigation has been completed and sent to the legal division for review.

\* Varies by 5% or more from target.

**Efficiency/Output Measures with Cover Page and Update Explanation**  
86th Regular Session, Performance Reporting  
Automated Budget and Evaluation System of Texas (ABEST)

3/30/2021 10:41:41AM

Agency code: **510**                      Agency name: **Behavioral Health Executive Council**

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
<b>Output Measures</b>					
1 COMPLAINTS RESOLVED					
<b>Quarter 2</b>	130.00	120.00	224.00	172.31 % *	58.50 - 71.50

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the second quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected that it will resolve 800 complaints. Using this target, the Council would not have met this measure by resolving 224 complaints year to date, or 28% of the target. The Council's investigators and attorneys are still in a training state, trying to learn the statutes and rules of all four regulatory programs. Additionally, the Council is still trying to fill four vacant investigator positions. As of the end of this quarter, there are 1,339 complaints pending, 220 of which have since been closed and 145 of which the investigation has been completed and sent to the legal division for review.

**Efficiency Measures**

2-1-1 ENFORCEMENT

1 AVG TIME/COMPLAINT RESOLUTION

\* Varies by 5% or more from target.

Agency code: 510

Agency name: Behavioral Health Executive Council

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
-----------------------	----------------	----------------	-------------	-----------------------------	--------------

**Efficiency Measures****1 AVG TIME/COMPLAINT RESOLUTION**

<b>Quarter 1</b>	275.00	1,190.00	1,190.00	432.73 % *	261.25 - 288.75
------------------	--------	----------	----------	------------	-----------------

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the first quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

**HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:**

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected an average complaint resolution time of 800 days. Using this target, during this quarter the Council would not have met this measure with an average complaint resolution time of 1,190 days, or 149%. The Council's investigators are still in a training state, trying to learn the statutes and rules of all four regulatory programs. Additionally, there were over 1,300 pending complaints that transferred over from HHSC, some of which dated back to FY 2008. This backlog will take time to clear, and will inevitably cause a higher average complaint resolution time than originally anticipated.

\* Varies by 5% or more from target.

**Efficiency/Output Measures with Cover Page and Update Explanation**  
86th Regular Session, Performance Reporting  
Automated Budget and Evaluation System of Texas (ABEST)

3/30/2021 10:41:41AM

Agency code: **510**                      Agency name: **Behavioral Health Executive Council**

Type/Strategy/Measure	2021 Target	2021 Actual	2021 YTD	Percent of Annual Target	Target Range
<b>Efficiency Measures</b>					
1 AVG TIME/COMPLAINT RESOLUTION					
<b>Quarter 2</b>	275.00	1,147.00	1,167.00	424.36 % *	261.25 - 288.75

Explanation of Variance: FACTORS CAUSING THE VARIANCE:

The performance for this measure for the second quarter of FY 2021 exceeds the target. The Texas Behavioral Health Executive Council was created by the 86th Legislature effective 9/1/2019. However, regulatory authority over the four programs (psychologists, social workers, counselors, and marriage and family therapists) did not transfer to the Council until 9/1/2020. The performance measures for FY 2021 are those that were established for the psychology program only. Therefore, these targets are not representative of what the actual measures will be with the three additional programs.

HOW THE AGENCY PLANS TO DEAL WITH THE VARIANCE:

In its 2022-2023 LAR, the Council has projected targets that are representative of all four regulatory programs. For this specific measure, the Council has projected an average complaint resolution time of 800 days. Using this target, during this quarter the Council would not have met this measure with an average complaint resolution time of 1,167 days, or 146% of the target. The Council's investigators and attorneys are still in a training state, trying to learn the statutes and rules of all four regulatory programs. Additionally, there were over 1,300 pending complaints that transferred over from HHSC, some of which dated back to FY 2008. This backlog will take time to clear, and will inevitably cause a higher average complaint resolution time than originally anticipated.

\* Varies by 5% or more from target.

18. Board Administrator's Report – increase in inquiries related to technology-assisted services

I have received an increased volume of inquiries from those who hold non-Texas license and have client moving to, temporarily in, or traveling through Texas. I have replied with the following:

A Texas license is required to provide services to a client who is physically in Texas.

Neither the Texas Governor nor the Texas Board have suspended any statutory or regulatory requirement for licensure due to COVID or other declared disaster. Neither Texas law nor Texas rule allow “grace period” for a non-Texas license holder to provide services to a client who has recently moved to Texas, is temporarily in Texas, or traveling in Texas.

Please know the following Texas board rules, found in Title 22 of the Texas Administrative Code, which include but may not be limited to:

**[§801.58 Technology-Assisted Services](#)**

(a) Licensees who provide marriage and family therapy to clients or supervision to supervisees outside the State of Texas must comply with the laws and rules of this board and of the out-of-state regulatory authority.

(b) Licensees who provide treatment, consultation, and supervision using technology-assisted services must meet the same standards of appropriate practice as licensees who practice in traditional (i.e., in-person) settings.

(c) In accordance with [Texas Occupations Code, §502.251](#) (relating to License Required), a person may not practice as a marriage and family therapist unless the person holds a license under this chapter or is exempt under Texas Occupations Code, §502.004 (relating to Application of Chapter).

I have received more than a few inquiries from Texas license holders who wish to provide technology-assisted services to clients who are moving to, temporarily in, or traveling through another state. I have replied with the following:

Technology-related rules, found in Title 22 of the Texas Administrative Code (22 TAC), include but may not be limited to:

**[§882.36 Compliance with State and Federal Law](#)**

Licensees comply with all applicable state and federal laws affecting the practice of marriage and family therapy, professional counseling, psychology, or social work including, but not limited to:

(7) Occupations Code, Chapter 102, Solicitation of Patients; Chapter 104, Healing Art Practitioners; Chapter 105, Unprofessional Conduct; and Chapter 113, Mental Health Telemedicine and Telehealth Services;

**[3 TOC Chapter 113. Mental Health Telemedicine and Telehealth Services](#)**

**Sec. 113.001. Definitions.** The definitions provided by [Section 111.001](#) apply to this chapter.

**Sec. 113.002. Patient Located Outside of State.** Notwithstanding any other law, a health professional may provide a mental health service that is within the scope of the professional's license, certification, or authorization through the use of a telemedicine medical service or a telehealth service to a patient who is located outside of this state, subject to any applicable regulation of the jurisdiction in which the patient is located.

It may be helpful to note current rule:

**[§801.58 Technology-Assisted Services](#)**

(e) A licensee may not render therapy using technology-assisted services without complying with the following at the onset of each session:

(1) fully verifying the location and identity of the client, to the most reasonable extent possible;