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Texas Behavioral Health Executive Council Proposed Rules (45 TexReg 2640)

Comments submitted by Jan Friese, Executive Director, Texas Counseling Association
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The Texas Counseling Association (TCA) respectfully submits the following comments on the proposed rules for the Texas Behavioral Health Executive Council (BHEC) as published on April 24, 2020 in 45TexReg2640.

Managing the creation of new rules for a new agency while amending the rules of the member boards housed there is a monumental task. TCA thanks the members and staff of BHEC and the individual boards for their hard work and due diligence.

TCA respectfully requests – in addition to the comments submitted through the Behavioral Health Coalition – consideration of the following amendments. These proposals address what we expect is the unintentional omission of rules regarding non-discrimination, as well as the opportunity for engagement by the member boards on petitions for rulemaking related to licensure, scope of practice, standards of care and ethical practice, as well as CE requirements.

Impartiality and Non-discrimination: Add a new Section 881.14

Three of the four member boards' rules (§681.13(a); §781.312(a); §801.15(a)) include specific language that prohibits discrimination by those boards in licensing and disciplinary decisions. Section 881.5 of the proposed BHEC rules addresses the process for impartiality and the disclosure of potential conflicts of interest in matters that come before the Council. The proposed rules do not include language to specifically address non-discrimination. The non-discrimination language is being removed from the member boards' rules making its inclusion here essential.

TCA recommends a new §881.14 be added to Subchapter A – General Provisions as follows:

§881.14. Impartiality and Non-discrimination

(a)The Council will make decisions in the discharge of its statutory authority without regard to person's age, race, religion, ethnicity, sex, gender, affectional orientation, disability, national origin, or genetic information.

(b) A person needing accommodations under the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) in order to access BHEC board services must request reasonable accommodations in writing and may be required to provide verification of the person's disability and recommendations for appropriate accommodations from a medical, mental health, rehabilitation, or educational professional or specialist qualified to make such recommendations.

Petition for Rulemaking – Amend §881.21(c)

Proposed rule changes for each member board removes the opportunity to submit rulemaking petitions directly to them. Petitions for rulemaking will instead be processed through BHEC. Given that only member boards can adopt rules on license qualification, scope of practice, standards of care, ethical practices and CE requirements,

TCA recommends that petitions for rulemaking relating to those specific items be referred to the appropriate member board for review and consideration prior to any final action by the Council.

TCA recommends an amendment to §881.21(c) as follows

§881.21.Petition for Rulemaking.

(a) Any interested person may petition for rulemaking in accordance with §2001.021 of the Government Code by submitting to the Council a written request for the adoption of a rule or rule change. The written request must contain a return mailing address for the agency's response.

(b) The written request must, at a minimum, set forth or identify the rule the petitioner wants the Council to adopt or change, reasons why the petitioner believes the requested rulemaking is necessary, and include a copy of the proposed rule or any proposed changes with deletions crossed through and additions underlined. Additionally, the written request must affirmatively show that the requestor qualifies as an interested person under this rule. Requests which do not affirmatively show that the requestor qualifies as an interested person under this rule may be denied.

(c) The written request should also address the economic cost to persons required to comply with the rule, the effects of the rule on small or micro-businesses or rural communities, and the impact the rule would have on local employment or economies, if such information can be derived from available sources without undue cost or burden.

(d) Petitions for rulemaking that relate to qualifications for licensure, scope of practice, standards of care, ethical practices or CE requirements will be forwarded by the Executive Director to the appropriate member board for review and consideration. The Council will respond to a written request for adoption of a rule from an interested person in accordance with §2001.021 of the Government Code.

(e) The term "interested person" as used in this rule, shall have the same meaning as that assigned by §2001.021(d) of the Government Code. Additionally, a person who submits a petition under this rule must affirm that they qualify as an interested person in the petition. Petitions which do not contain such an affirmation may be denied.

Thank you for your hard work and consideration of these comments. TCA welcomes the opportunity to work with you for a successful launch of this innovative agency.