

BOARD OF BEHAVIORAL SCIENCES INITIAL STATEMENT OF REASONS

Hearing Date: July 13, 2010

Subject Matter of Proposed Regulations: License Professional Clinical Counselors & LEP CE

Section(s) Affected: Amend Sections 1800, 1802, 1803, 1804, 1805, 1805.1, 1806, 1807, 1807.2, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1816.1, 1816.2, 1816.3, 1816.4, 1816.5, 1816.6, 1816.7, 1819.1, 1833.1, 1833.2, 1850.6, 1850.7, 1870, 1870.1, 1874, 1877, 1880, 1881, 1886, 1886.10, 1886.20, 1886.30, 1886.40, 1886.50, 1886.60, 1886.70, 1886.80, 1887, 1887.1, 1887.2, 1887.3, 1887.4, 1887.5, 1887.6, 1887.7, 1887.8, 1887.9, 1887.10, 1887.11, 1887.12, 1887.13, 1887.14, and 1888 of Division 18 of Title 16 of the California Code of Regulations. Add Sections 1810.1, 1810.2, 1816.8 1820, 1820.5, 1821, and 1822 to Division 18 of Title 16 of the California Code of Regulations.

Specific Purpose of each adoption, amendment, or repeal:

Business and Professions Code (BPC) Section 4990.20 authorizes the Board of Behavioral Sciences (BBS) to adopt rules and regulations as necessary to administer and enforce the provisions of the Chapters of the Business and Professions Code for which it is responsible. On October 11, 2009 the Governor approved Senate Bill (SB) 788 (Wyland), which created Chapter 16 (Licensed Professional Clinical Counselors) in Division 2 of the BPC and mandated the BBS implement the provisions of the new chapter. BPC Section 4999.30 prohibits any person in the State of California from practicing or advertising the performance of professional clinical counseling services without a license issued by the BBS. Furthermore, BPC Section 4999.80 mandates the BBS enforce laws designed to protect the public from incompetent, unethical or unprofessional practitioners, investigate complaints concerning the conduct of any licensed professional clinical counselor, and take disciplinary action against licenses issued as enumerated in rules and regulations of the BBS.

Division 18 of Title 16 of the California Code of Regulations (CCR) includes numerous sections relating to education requirements, supervised experience requirements, fees, administrative actions, and disciplinary guidelines of BBS-regulated licensees and registrants.

The purpose of these regulations is to revise existing regulations to incorporate licensed professional clinical counselor requirements and fees referenced in various sections of Chapter 16 of Division 2 of the BPC. These revisions will also modify the document titled "Board of Behavioral Sciences Disciplinary Guidelines (Rev. November 2008)" referenced in CCR Section 1888 (Division 18 of Title 16). Additionally, these revisions will correct numerous erroneous authority citations and references to existing regulations that were not updated upon the Governor's approval of SB 1475 (Figueroa) on September 29, 2006 and update references to new forms and revisions to previously incorporated forms.

Also, The BBS administers and enforces the provisions of the Educational Psychology Act ("Act" -- BPC sections 4989.10 and following). BPC section 4989.34 of that Act requires licensed educational psychologists (LEP) to certify completion of approved continuing education (CE), in or relevant to, educational psychology and authorizes the BBS to establish "exceptions" for LEPs from CE requirements for "good cause" as determined by the BBS. Further, Section 4989.34 authorizes the BBS to establish, by regulation, a procedure for approving providers of LEP CE courses and to set minimum standards for those CE course providers.

Current law does not specify requirements for BBS-approved CE courses for LEPs, set license renewal requirements relative to CE for LEPs, or establish a procedure for the BBS to grant exceptions to those requirements. Current law also does not create a procedure for the approval of providers of LEP CE courses or set minimum standards for those CE course providers. This proposal would establish those requirements and procedures.

This rulemaking also proposes changes to the CE exception process for all licensees, in order to bring this section and the BBS' forms into compliance with both the Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA). Other clarifying and technical changes are also proposed to the BBS' CE regulations.

A prior rulemaking package was noticed with the Office of Administrative Law and published in the regulatory notice register on October 30, 2009 relating to the following Sections of this proposal: 1807, 1807.2, 1810, 1819.1, 1887, 1887.1, 1887.2, 1887.3, 1887.4, 1887.5, 1887.6, 1887.7, 1887.8, 1887.9, 1887.10, 1887.11, 1887.12, 1887.13, and 1887.14. The language included in the previous rulemaking package, Notice File Number Z-2009-1019-01, relating to required continuing education for LEPs has been incorporated into this proposed rulemaking, with the following changes:

1. Extension of the implementation date from January 1, 2011 to January 1, 2012; and,
2. Deletion of the requirement for LEPs to take the following specific CE courses:
 - a. Human Sexuality
 - b. Spousal/Partner Abuse Training
 - c. Aging and Long-term Care
 - d. AIDS/HIV Training

Due to the passage of SB 788 which, beginning January 1, 2011, requires the BBS to establish, license and regulate professional clinical counselors, it is necessary to develop regulations to implement those LPCC related statutes immediately. Implementation of SB 788 requires the Board to include LPCCs in all current, relevant regulations, including those relating to continuing education. In order to ensure that all BBS licensees complete statutorily mandated continuing education it is therefore necessary to include both LEP and LPCC continuing education requirements in one rulemaking package.

Specifically, the regulation would incorporate amendments to Division 18 of Title 16 of the CCR as follows:

Replacement of Errant References and Addition of LPCC BPC Section References

- Replace errant references to BPC sections 4990.1, 4990.8, 4990.11, 4990.13, 4990.14, and 4986.80. SB 1475, Chapter 659, Statutes of 2006 repealed and recast law relating to BBS administration and Licensed Educational Psychologist licensure requirements and moved the previous content in the above code sections to BPC Sections 4990, 4990.04, 4990.08, 4990.12, 4990.20, and 4989.68, respectively. Delete errant references to BPC sections 4996.20 and 4996.21 relating to experience requirements for Licensed Clinical Social Workers. SB 819, Chapter 308, Statutes of 2009 repealed BPC section 4996.20 and 4996.21. Replace reference to BPC section 4996.20 and 4996.21 with reference to BPC section 4996.23 (SB 724, Chapter 728, Statutes of 2001), which is the most recent and only existing reference to requirements previously described in BPC Section 4996.20. The purpose of this proposed change is to make the CCR sections mentioned above consistent with these current statutes.
- Add references to BPC sections 4999.20, 4999.24, 4999.30, 4999.32, 4999.33, 4999.42, 4999.44, 4999.45, 4999.46, 4999.50, 4999.52, 4999.54, 4999.58, 4999.60, 4999.76, 4999.90, 4999.104, 4999.112, 4999.120. SB 788, Chapter 619, Statutes of 2009 created Division 2, Chapter 16 and all BPC sections therein.
- Add references to BPC sections 4989.10, 4989.12, 4989.14, 4989.20, 4989.22, 4989.24, 4989.26, 4989.28, 4989.34, 4996.2, and 4996.22. The purpose of this proposed change is to update references to relevant code sections.
- Replace errant references to the Bureau of Private Postsecondary and Vocational Education and Education Code sections 94900 and 94901. The correct agency name is now the Bureau for Private Postsecondary Education and the appropriate Education Code sections are 94887 and 94802.

Addition of LPCC Language in Existing Regulations

- Add grounds for abandonment of applications for LPCC jurisprudence and ethics examination, the examination required in BPC section 4999.54(b)(2), and the examination required in 4999.52(c)(5). The one-year requirement to sit for any of these examinations is consistent with requirements for existing license types referenced in the same section (Section 1806).
- Add title of professional clinical counselor and reference to BPC section 4999.32, which requires applicants complete a human sexuality course (Section 1807).
- Add title of professional clinical counselor. BPC section 4999.32 requires applicants to complete coursework in child abuse assessment and reporting (Section 1807.2).
- Add reference to BPC section 4999.32 (Section 1810).
- Add LPCC license type and language referring to advertisements of unlicensed professional clinical counselor interns (Section 1811).

- Add the annual renewal fee for professional clinical counselor interns (\$100), the biennial active renewal fee for licensed professional clinical counselors (\$175), and the annual renewal fee for licenses issued pursuant to BPC section 4999.54(a)(1) (\$150). BPC section 4999.120 authorizes charging fees for these renewals. The amounts do not exceed the cap specified in BPC section 4999.120 (Section 1816).
- Add the LPCC initial license issuance fee (\$200) and the professional clinical counselor intern registration fee (\$100). BPC section 4999.120 authorizes charging fees for initial license issuance. The amounts do not exceed the cap specified in BPC section 4999.120 (Section 1816.1).
- Add the LPCC jurisprudence and ethics examination fee (\$100), the LPCC examination fee (\$100) for the examination required by BPC section 4999.54(b), and the fee for the LPCC written examination (\$150). BPC section 4999.120 authorizes charging fees for examinations. The amounts do not exceed the cap specified in BPC section 4999.120 (Section 1816.2).
- Add the LPCC examination eligibility fee (\$180). BPC section 4999.120 authorizes charging a fee for examination eligibility. The amount does not exceed the cap specified in BPC section 4999.120 (Section 1816.4).
- Add LPCC biennial inactive renewal fee (\$87.50) and inactive renewal fee for licenses issued pursuant to BPC section 4999.54(a)(1)(\$75). BPC section 4999.112 mandates setting an inactive fee that is half of the active license renewal fee. (Section 1816.6)
- Add the delinquency fee for LPCC license (\$87.50) and the delinquency fee for a license issued pursuant to BPC section 4999.54(a)(1)(\$75). BPC section 4999.104 authorizes the BBS to collect a delinquency fee. The delinquency fee for all other BBS license types is half of the active license renewal fee. (Section 1816.7)
- Add the application fee (\$180) for LPCC licensure pursuant to BPC section 4999.54. BPC section 4999.120 authorizes charging a fee for applications for licensure. The amount does not exceed the cap specified in BPC section 4999.120 (Section 1816.8).
- Add the updated revision date to the “Responsibility Statement for Supervisors of a Marriage and Family Therapist Trainee or Intern” form (3/10), the title of licensed professional clinical counselors and professional clinical counselor intern, and reference to BPC section 4999.76 (Section 1833.1). The changes to this section will also require a change to the form “Responsibility Statement for Supervisors of a Marriage and Family Therapist Trainee or Intern.” The necessary changes include the following:
 - Update the letterhead;
 - Update the form revision date (3/10);
 - Add the license title “Licensed Professional Clinical Counselor” under item number one on the form; and,
 - Add the registration title “professional clinical counselor intern” under item number three on the form.

- Add professional clinical counselor license type (Section 1833.2).
- Update revision date of “Responsibility Statement for Supervisors of an Associate Clinical Social Worker” form (Section 1870). The form incorporated by reference in this section will also need to be changed due to changes to Section 1874. The necessary changes include the following:
 - Update the form revision date (3/10);
 - Add the license title “Licensed Professional Clinical Counselor” under item number one on the form; and,
 - Add a reference to “LPCCs” under the asterisk.
- Add the title of licensed professional clinical counselor (Section 1874).
- Add the title of licensed professional clinical counselor (Section 1880).
- Add the title of licensed professional clinical counselor and professional clinical counselor intern (Section 1886).
- Add language referencing Chapter 16 of the BPC (Section 1886.40).
- Add the title of licensed professional clinical counselor (Article 8).
- Add a reference to BPC section 4999.76 and 4999.90(b) (Section 1887.1).
- Make several grammatical and non-substantive changes (Section 1887.3).
- Add the title of professional clinical counselors and a reference to BPC section 4999.76 (Section 1887.4).
- Add reference to BPC section 4999.76(d) (Section 1887.6).
- Update revision date of “Continuing Education Provider Application” (rev 3/10) (Section 1887.7). The changes to the form “Continuing Education Provider Application,” which is incorporated by reference in Section 1887.7, follow:
 - Update the letterhead;
 - Update the form revision date (3/10);
 - Update address of BBS on instructions page;
 - Replace item number five in the current version with a question asking the applicant if he or she has ever applied to be a CE provider before; and,
 - Make several non-substantive grammatical changes to the instructions page.
- Add reference to Chapter 16 of the BPC (Section 1887.8).
- Add reference to LPCCs (Section 1887.9).

Addition of New LPCC Sections Relating to Work Experience, Supervision and Education

- Add Section 1810.1 (California Law and Ethics Training; Acceptable Education Providers), which clarifies from what entities LPCC applicants and marriage and family therapy out-of-state applicants may obtain required coursework.
- Add Section 1810.2 (Crisis or Trauma Counseling Training), which clarifies from what entities LPCC applicants may obtain required coursework.
- Add Section 1820 (Experience), which defines the term supervision, clinical mental health setting, and community mental health setting. In addition, Section 1820 sets forth the conditions under which supervision can be credited.
- Add Section 1820.5 (Experience Working Directly with Couples, Families, or Children), which clarifies means of acquiring the required supervised experience needed in order for LPCCs to qualify to assess and treat couples and families.
- Add Section 1821 (Requirements for Supervisors), which sets forth the qualifications licensed mental health professionals must possess prior to supervising a professional clinical counselor intern.
- Add Section 1822 (Supervisory Plan), which requires supervisors of professional clinical counselor interns complete a Supervisory Plan. The changes to the form Supervisory Plan, which is incorporated by reference, follow:
 - Add the titles professional clinical counselor interns and Professional Clinical Counselor to the introductory paragraph;
 - Add references to BPC sections 4996.23(a) and 4999.12(h) to the introductory paragraph;
 - Add reference to Section 1822 to the introductory paragraph;
 - Replace references to “Associate Clinical Social Worker,” “Associate,” and “ASW” with “registrant” and “registration” in introductory paragraph and headings;
 - Replace “licensure” with “examination eligibility” in the introductory paragraph;
 - Add “Community Mental Health Facility” to the list of Employment Settings;
 - Update the letterhead; and,
 - Update the form revision date (3/10).

Addition of LPCC Language to Disciplinary Guidelines

- Update revision date for “Board of Behavioral Sciences Disciplinary Guidelines” (Section 1888).
- Add references to BPC Section 4999.90 subsections (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), and (z), BPC section 4990.38, and BPC section 728 to “Penalty Guidelines.”
- Add reference to LPCCs to “Education” and “Law and Ethics Course” under “Optional

Terms and Conditions of Probation.”

- Add reference to BPC section 4999.32 and 4999.33 to “Law and Ethics” under “Optional Terms and Conditions of Probation.” Add reference to BPC section 4999.20 to “Residing of Practicing Out-of-State” and “Failure to Practice – California Resident” under “Optional Terms and Conditions of Probation.”
- Add reference to professional clinical counselor to “Reinstatement/Reduction of Penalty Hearings.”
- Add reference to BPC section 4990.38 to “Residing or Practicing Out-of-State” under “Optional Terms and Conditions of Probation.”

Clean-up Due to Revised Forms and Previously Repealed or Moved BPC Sections

- Add reference to BPC section 4996.2, which is the BPC section requiring the Human Sexuality training for clinical social workers (Section 1807).
- Update revision date (3/10) of Supervisory Plan (Section 1870.1). The changes to the Supervisory Plan, which is incorporated by reference in Section 1870.1, follow:
 - Add the titles professional clinical counselor interns and Professional Clinical Counselor to the introductory paragraph;
 - Add references to BPC sections 4996.23(a) and 4999.12(h) to the introductory paragraph;
 - Add reference to Section 1822 to the introductory paragraph;
 - Replace references to “Associate Clinical Social Worker,” “Associate,” and “ASW” with “registrant” and “registration” in introductory paragraph and headings;
 - Replace “licensure” with “examination eligibility” in the introductory paragraph;
 - Add “Community Mental Health Facility” to the list of Employment Settings;
 - Update the letterhead; and,
 - Update the form revision date (3/10).
- Add language referring to marriage and family therapists. All other types of licensed mental health professionals are referenced in the code section (Section 1880).
- Add language referring to BPC Chapter 13.5. All other chapters pertaining to BBS issued licenses are listed (Section 1886.40).
- Change language to refer to 4980.44(c) and 4996.18(h). The current references are erroneous (Section 1811).

Add Mandatory Continuing Education Requirements for Licensed Educational Psychologists

- Require that an LEP, in addition to meeting all other requirements for licensure, complete child abuse assessment training prior to applying for his or her first license renewal on or after January 1, 2012 (Section 1807.2).
- Require that an LEP that renews his or her license after January 1, 2012 complete at least 15 hours of instruction and training in alcoholism and other chemical substance dependency. In addition, require that the training and coursework received by the LEP be obtained from an accredited or approved educational institution, a governmental entity, a licensed health facility or a CE provider approved by the BBS (Section 1810).
- Set the application fee for CE providers that offer LEP CE courses at two hundred dollars (\$200) (Section 1819.1).
- Add the phrase “And Licensed Educational Psychologists” to the Title of Article 8, which sets forth mandatory CE requirements for all BBS licensees.
- Add a new definition to the CE requirements for Marriage and Family Therapists, Licensed Clinical Social Workers, LPCCs, and LEPs entitled “initial renewal period” (Section 1887).
- Add a reference to BPC sections 4989.34 and 4989.54 (b). Specify a timeline for licensees to meet the proposed LEP CE requirements in which licensees renewing January 1, 2012 through December 31, 2012 are required to complete a minimum of 18 units of CE. On or after January 1, 2013, all LEP licensees are required to complete a minimum of 36 units of CE prior to biennial renewal (Section 1887.1).
- Require LEPs complete six hours of training or coursework in law and ethics each renewal period. Specify a timeline for licensees to meet the proposed LEP CE requirements in which licensees renewing January 1, 2012 through December 31, 2012 are required to complete a minimum of 18 units of CE. On or after January 1, 2013, all LEP licensees are required to complete a minimum of 36 units of CE prior to biennial renewal (Section 1887.3)
- Add a reference to educational psychology and BPC Section 4989.34 (Section 1887.4).
- Add a reference to Chapter 13.5 of the BPC (Section 1887.8).
- Add language referring to LEPs (Section 1887.9).
- Add a reference to BPC Section 4989.34 (Sections 1807.2, 1810, 1819.1, 1887, 1887.1, 1887.5, 1887.6, 1887.7, 1887.8, 1887.9, 1887.10, 1887.11, 1887.12, 1887.13, and 1887.14).

Clarifications Relating to Continuing Education Exceptions and Reasonable Accommodations

- Make numerous changes to Section 1887 (Exceptions from Continuing Education Requirements). Current language allows the BBS to grant reasonable accommodations

if during the licensee's previous renewal period, the licensee or an immediate family member for whom the licensee is a primary caregiver suffered a disability. The proposed changes will:

- Add a reference to BPC section 4999.112, a form entitled "Request for Continuing Education Exception – License Application," and a form entitled "Request for Continuing Education Exception – Verification of Disability or Medical Condition;"
- Require the request for exception or accommodation be submitted at least 60 days prior to the expiration date of a license;
- Clarify the valid time period for an approved exception;
- Add the term "reasonable accommodation" in subsection (c) for consistency;
- Clarify the term disability to include physical and mental disabilities;
- Specify that a domestic partner shall be considered an immediate family member;
- Specify the time period during the previous renewal period to be one year in order to qualify for a reasonable accommodation; and,
- Deletes references to information that will now be included with the "Request for Continuing Education Exception – Verification of Disability or Medical Condition."

Factual Basis/Necessity

SB 788 created a new mental health license type in California and mandates the BBS implement the regulations of the new license. BPC Section 4990.20 authorizes the BBS to adopt rules and regulations as necessary to administer and enforce the provisions of the Chapters of the BPC for which it is responsible, which now includes Chapter 16 (Licensed Professional Clinical Counselors) of Division 2.

In order to administer and enforce the new mental health license type, the BBS must make modifications to existing regulations relating to application fees, examination fees, license renewal fees, supervision requirements, continuing education requirements, administrative actions, and disciplinary guidelines.

Furthermore, other changes to existing regulations correct erroneous BPC section references. The Governor's approval of SB 1475 (Figueroa) on September 29, 2006 moved various sections of the BPC. The authority cited and code references in numerous regulations must be updated to refer to the appropriate BPC sections. Currently, multiple regulations refer to erroneous BPC sections.

The language of several regulations also includes references to repealed BPC sections, specifically BPC section 4996.20 and 4996.21. Upon the Governor's approval of SB 819 (Yee) on October 11, 2009, these BPC sections were repealed. The only remaining BPC section referring to qualifying supervised work experience for licensed clinical social workers is BPC section 4996.23.

The BBS has made several non-substantive changes to forms relating to mandatory supervision requirements for registrants pursuing licenses as clinical social workers and marriage and family therapists. Revision dates for these forms are referenced in regulation; thus, those dates must be changed.

Changes to the sections relating to continuing education are necessary to make specific and implement the statutory mandates set forth in BPC Section 4989.34. BPC section 4989.34 requires an LEP, upon renewal of his or her license, to provide proof of not less than 36 hours of approved CE in the preceding two years. These specific regulatory changes are also necessary to allow licensees sufficient time to comply with the new CE requirements. Assuming this proposed rulemaking becomes law January 1, 2011 this provision will give licensees required to renew an LEP license January 1, 2012, through December 31, 2012 one year to complete required CE. Renewal is biennial, allowing licensees two years to complete 36 units of CE, or 18 units per year. This regulatory change takes into consideration the time limitation in completing the new requirement and therefore requires a minimum of 18 units for the first renewal occurring after January 1, 2012. (See proposed amendments to Sections 1887.1 through 1887.3.)

Beginning in 2012, this proposed rulemaking would mandate that an LEP complete specific coursework prior to his or her renewal. BPC section 4989.34(c) specifies that CE training, education and coursework shall incorporate aspects of the discipline that are fundamental to the understanding or practice of educational psychology. This proposal mandates specific coursework that is consistent with those requirements.

The scope of practice of an LEP as described in BPC Section 4989.16 includes providing psychological counseling for individuals, groups and families. In order to accomplish the statutory mandate to include course work integral to the practice of an LEP, as set forth in section 4989.34, it is necessary to require the specific coursework outlined in the proposed regulatory changes. This specific coursework is required of LCSWs and MFTs, who also are permitted to provide psychological counseling to individuals, groups and families. Additionally, it is necessary to ensure that all licensees under the jurisdiction of the BBS have comparable competencies and education with special populations and issues in order to provide the same level of consumer protection to all consumers of services from each of the BBS's licensees.

Also, this proposed rulemaking applies regulation sections related to CE to LEPs. Business and Professions Code section 4989.34 authorizes the BBS to establish, by regulation, a procedure for approving providers of LEP CE courses and to set minimum standards for those CE course providers. The BBS's current minimum standards effectively implement the CE provider approval process for other BBS licensees' CE and such implementation would help ensure consistent standards across all licensing categories. These standards include: setting CE course content (Section 1887.4), crediting hours of CE (1887.5), a process for recognizing approved providers (1887.6), setting instructor qualifications (1887.7, 1887.10), a procedure for issuing approvals (Section 1887.7), a process for disciplining or denying approvals (1887.8), minimum advertising requirements (1887.9), detailing course completion requirements (1887.11), specifying records retention requirements for the CE provider and the licensee (1887.12), setting procedures for renewal of an expired CE provider approval (1887.13), and specifying a time limit for renewal of an approval after it expires (1887.14). Changes to these sections are necessary to implement such standards and to make the BBS's current CE provider requirements applicable to those providers who wish to be approved to offer CE to LEPs.

This proposed rulemaking also makes changes to the CE exception process. In particular, this rulemaking makes changes to the regulation language and to the forms incorporated by reference and revises the BBS's processes for the granting of reasonable accommodations. The federal Americans with Disabilities Act (ADA) (42 U.S.C. §§ 12101 and following) and the California Fair Employment and Housing Act (FEHA) (Government Code Sections 12900-12996) are both civil rights laws enacted for individuals with disabilities. The ADA provides protections for those with disabilities from discrimination. Similarly, the FEHA was enacted to provide added protections for those individuals with disabilities in California. The FEHA is made applicable to the BBS and other state licensing agencies through Government Code section 12944, subdivision (b). FEHA contains broad definitions of physical disability, mental disability and medical condition. In passing FEHA, the legislature found and declared the following:

- The importance of the interactive process between the applicant or employee and the employer in determining a reasonable accommodation, as this requirement has been articulated by the equal Employment Opportunity Commission in its interpretive guidance of the ADA;
- The definition of physical disability and mental disability under California law requires a "limitation" upon major life activity, but do not require, as does the ADA, a "substantial limitation." According to FEHA, this distinction is intended to result in broader coverage under California law than under the federal ADA;
- That it is intended that State law be independent of the ADA; and,
- California state agencies must comply with the federal ADA and the California FEHA. (Government Code section 12926.1.)

In recognition of the foregoing, proposed changes to Section 1887.2 set forth the criteria for granting an exception to the CE requirements for MFTs, LEPs, LCSWs and LPCCs pursuant to BPC sections 4980.54, 4989.34, 4996.22, and 4999.76, consistent with FEHA. Further, this proposed rulemaking will clarify that other reasonable accommodations may be provided rather than a complete exception for persons with a disability or medical condition. This change is necessary to bring this section and the BBS's forms into compliance with both the ADA and the broader protections of FEHA. Originally, this regulatory section was adopted consistent with the ADA definition of disability. However, FEHA has since changed the definition of disability in California. FEHA requires that a mental or physical disability present a "limitation" upon a major life activity, but does not require, as does the ADA, a "substantial limitation." (Government Code section 12926.1(c); 42 U.S.C. section 12102). As a result, it is necessary to revise subdivisions (d) of this Section and add and make changes to existing forms to provide updated documents and procedures for granting reasonable accommodations as required by law.

Other regulatory changes to this Section that would help to ensure compliance with FEHA are as follows:

- In addition to disability, permit a medical condition to be considered for an exception, as defined in FEHA; and,

- Clarify that a disability may be physical or mental, as defined in Government Code section 12926.

Other changes to this Section include that the CE exception request and form must be received at least sixty (60) days prior to the expiration date of the license for the request for exception to be considered by the BBS. This is necessary to permit the BBS time to process the request before the expiration of a license and to ensure that the licensee will have time to meet the CE requirements if the exception is not approved.

Underlying Data

None

Business Impact

This proposal will not have adverse economic impact on businesses. This proposal would affect individuals who choose to pursue license as a professional clinical counselor and imposes no new fees or fee increases for current licensees of the BBS.

There would be very minor costs to businesses to comply with the CE requirements for LEPs which would cost each business approximately \$90 per year. This is based on the cost per unit of CE averaging \$5 (it ranges from free to \$10 per unit, based on a review of seven websites offering CE to MFTs and LCSWs from BBS-approved providers) at 18 units required per year. There would be minor costs to businesses that want to provide CE courses to LEPs who are not already approved by the board to offer CE to MFTs and LCSWs. These costs would be \$200 initially (application fee) and \$200 every two years thereafter (renewal fee).

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

This regulation mandates the use of specific technologies or equipment. Such mandates or prescriptive standards are required for the following reasons:

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the BBS would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.