

**TITLE 16 DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF BEHAVIORAL SCIENCES
NOTICE OF PROPOSED CHANGES IN THE REGULATIONS**

**CONTINUING EDUCATION REQUIREMENTS: LICENSED EDUCATIONAL
PSYCHOLOGISTS, EXCEPTIONS FROM AND PROVIDERS**

NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs, 1625 North Market Blvd., El Dorado Room, Sacramento CA 95834 at 9:00 a.m., on Thursday, December 17, 2009. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board of Behavioral Sciences (Board) at its office not later than 5:00 p.m. on December 14, 2009, or must be received by the Board at the hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 4990.16, 4990.18, and 4990.20 of the Business and Professions Code (BPC), and to implement, interpret, or make specific Sections 25, 28, 4980.395, 4980.54, 4980.57, 4989.34, 4996.22, and 4996.26 of the BPC, the Board is considering amending Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The Board of Behavioral Sciences administers and enforces the provisions of the Educational Psychology Act ("Act" -- Business and Professions Code (BPC) sections 4989.10 and following). BPC section 4989.34 of that Act requires licensed educational psychologists ("LEP"s) to certify completion of approved continuing education (CE) in, or relevant to, educational psychology and authorizes the Board to establish "exceptions" for LEPs from CE requirements for "good cause" as determined by the Board. Further, Section 4989.34 authorizes the Board 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 Board-approved CE courses for LEPs, set license renewal requirements relative to CE for LEPs, or establish a procedure for the Board 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 Board's 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 Board's CE regulations.

Amend Section 1807 – Human Sexuality Training

Section 1807 specifies the requirements for human sexuality training required of marriage and family therapists (MFTs) and licensed clinical social workers (LCSWs).

The proposed regulation would require a licensed educational psychologist (LEP) to complete human sexuality training prior to applying for his or her first license renewal on or after January 1, 2011.

Amend Section 1807.2 – Child Abuse Assessment Training Requirements

Section 1807.2 sets forth the requirements for child abuse assessment and reporting training for MFTs and LCSWs.

The proposed regulation would require a LEP, in addition to meeting all other requirements for licensure, to complete child abuse assessment and reporting training prior to applying for his or her first license renewal on or after January 1, 2011. This proposal would also clarify that in addition to meeting all other requirements for licensure, MFTs and LCSWs must have completed coursework and training in child abuse assessment prior to licensure.

Amend Section 1810 – Alcoholism and Other Chemical substance Dependency Training

Section 1810 sets forth the requirements for substance abuse training for MFTs and LCSWs.

The proposed regulation would require a LEP who renews his or her license after January 1, 2011 to complete at least fifteen (15) hours of instruction and training in alcoholism and other chemical substance dependency in ten (10) specific course content areas. In addition, the proposal would require the training and coursework received by the LEP to be obtained from an accredited or approved educational institution, a governmental entity, a licensed health facility or a CE provider approved by the Board.

Amend Section 1819.1 – Continuing Education Provider Fees

Section 1819.1 sets the fee for CE provider applications at two hundred dollars (\$200).

The proposed regulation would require the same application fee from providers who offer LEP CE courses.

Amend Title of Article 8 - Continuing Education Requirements for Marriage and Family Therapists and Licensed Clinical Social Workers

The proposed regulation would add the phrase “and Licensed Educational Psychologists” to the Title of Article 8.

Amend Section 1887 - Definitions

Section 1887 sets forth the definitions for a continuing education (CE) course, self-study course, provider, and renewal period.

The Board is proposing clarifying language and a new definition for the “initial” renewal period.

Amend Section 1887.1 – License Renewal Requirements

BPC section 4989.34 requires a 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. Section 1887.1 specifies the license renewal requirements for MFTs and LCSWs pertaining to CE. The proposed regulation would do all of the following:

- Require that, unless an exception to CE is granted, LEPs must certify in writing that he or she has completed thirty-six (36) hours of CE credit.

- Require a LEP be subject to disciplinary action if the licensee falsifies or makes material misrepresentations of fact relating to the completion of CE.
- Specify a timeline for licensees to meet the proposed LEP CE requirements. LEPs renewing January 1, 2011 through December 31, 2011 would be required to complete 18 units of CE prior to renewal. On or after January 1, 2012, all LEPs would be required to complete 36 units of CE prior to renewal.

Amend Section 1887.2 - Exceptions from Continuing Education Requirements

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, providing protection from discrimination. The FEHA is made applicable to the Board and other state licensing agencies through Government Code section 12944, subdivision (b). FEHA contains broad definitions of physical disability, mental disability and medical condition.

BPC Sections 4980.54(e), 4989.34(e) and 4996.22(c) permit the Board to establish exceptions to CE requirements for MFTs, LEPs and LCSWs for “good cause” as determined by the Board. Section 1887.2 specifies the circumstances under which the board will exempt MFTs and LCSWs from the CE requirements, including reduced hours required during a licensee’s initial renewal period, no hours required for inactive licensees, military service outside of California, living out of the country, or reasonable accommodation of a disability. The proposed regulation would do all of the following:

- Make a technical clarifying change to subsection (a), specifying that a licensee must complete at least 18 hours of CE prior to a new licensee’s initial renewal, rather than the full thirty-six (36) hours.
- In subsection (b), exempt LEPs who renew their licenses beginning January 1, 2011 and through December 31, 2011 from the full thirty-six (36)-hour CE requirement and instead require eighteen (18) hours of CE prior to license renewal.
- In subsection (c), exempt inactive LEPs from the CE requirements. The purpose of this change is to implement BPC 4989.34(e) which allows the Board to establish exceptions to CE requirements for “good cause,” as determined by the Board.
- In subsection (d):
 - Specify that a request for exception includes a request for a reasonable accommodation.
 - Permit a licensee to submit a request for exception on a form incorporated by reference entitled “Request for Continuing Education Exception – Licensee Application” Form No. 1800 37A-635 (Revised 2/09).
 - Require the request for CE exception to be submitted to the Board at least sixty (60) days prior to the expiration date of the license.
 - Specify that an approved request for exception or accommodation is valid for one renewal period.
 - Allow the Board to grant a reasonable accommodation for completion of CE if, for at least one year during the previous license renewal period, the licensee or immediate family member had a physical or mental disability or medical condition as defined in FEHA, that impacted his or her ability to complete CE.
 - Qualifies the disability or medical condition of a domestic partner for the granting of a

- reasonable accommodation, where the licensee is the primary caregiver. This is consistent with California law that states that domestic partners shall have the same rights and benefits as granted upon spouses (Family Code section 297.5).
- Require licensees to submit, along with the request for reasonable accommodation, a form demonstrating evidence of a disability or medical condition and how it impacts the licensee's ability to complete the CE. This form would be incorporated by reference and entitled, "Request for Continuing Education Exception – Verification of Disability or Medical Condition" Form no. 1800 37A – 636 (New 02/09).
 - Amend "Request for Continuing Education Exception – Licensee Application", Form No. 1800 37A-635 (Revised 02/09) as follows:
 - Make technical changes and other revisions consistent with proposed changes to Section 1887.2 of this proposal.
 - Amend Part 2 of the Application to require the applicant to explain the disability or medical condition and not the attending physician or psychologist.
 - Replace language requiring an explanation of how the disability "interferes" with one or more major life activities with language requiring an explanation of how the disability or medical condition "limits" one or more major life activities.
 - Delete language requiring reporting of dates and details regarding the disability and replace it with a requirement that the applicant submit a completed form from his or her health care provider entitled "Request for Continuing Education Exception – Verification of Disability or Medical Condition," Form No. 1800 37A-636 (New 02/09).
 - Add a question regarding the type of accommodation being requested.
 - Add accommodation options and provide the applicant an opportunity to request specific accommodations.
 - Add a notice of possible violation for falsely certifying completion of CE.
 - Add a notice regarding the collection and the use of personal information provided on the application.
 - Add a statement permitting submission of written statements from a physician in lieu of completing the form, provided certain conditions are met.
 - Specify that the request for exception must be received at least sixty (60) days prior to the expiration date of the license.
 - Adds "Request for Continuing Education Exception – Verification of Disability or Medical Condition", Form 1800 37A-636 (New 02/09) that provides the following:
 - Part 1 – Requires the applicant to disclose name, business telephone, residence telephone, address of record, Social Security number, license number, renewal period requesting exception for, and the reason for the exception request.
 - Part 2 – Requires the applicant's physician or psychologist to complete a series of questions regarding the disability or medical condition and provide an explanation of how the disability or medical condition limits one or more major life activities.
 - Require both the applicant and the health care provider to certify their statements under penalty of perjury.
 - Provide a notice regarding collection and use of personal information given on the application.
 - Specify that the form must be received at least sixty (60) days prior to the licensee's expiration date.
 - Provide a copy of the request for exception regulation text.
 - Describe how to request an exception from the CE requirements.
 - Describe limitations on and requirements for granting exceptions.
 - Describe anticipated time frames for processing exception requests and specify that the exception request should be submitted prior to submission of the renewal application.

Amend Section 1887.3 – Continuing Education Course Requirements

Section 1887.3 sets forth specific CE course requirements for MFTs and LCSWs, which includes a limit on the amount of coursework that can be earned through self-study; permits a licensee who teaches a course to claim credit for the course once per renewal period; prohibits a licensee from claiming the same course more than once during a renewal period; and prohibits a licensee who takes CE as a condition of probation from applying the course toward license-required CE. This section also requires licensees to take courses in substance abuse, HIV and AIDS, and law and ethics. The proposed regulation would do all of the following:

- Require LEPs to complete at least fifteen (15) contact hours of coursework in spousal or partner abuse assessment, detection and intervention strategies and same gender abuse dynamics during his or her first renewal on or after January 1, 2011.
- Require LEPs to complete a three-hour CE course in aging and long-term care during his or her first renewal period on or after January 1, 2011. The course would include the biological, social and psychological aspects of aging.
- Require LEPs, beginning January 1, 2011 and through December 31, 2011, to complete at least 18 hours of CE prior to his or her license renewal. On or after January 1, 2012, all LEPs would be required to complete 36 units of CE prior to biennial renewal.
- Clarify that a licensee must take 36 units of CE during each renewal period pursuant to BPC sections 4980.54, 4989.34 and 4996.22.
- Remove a reference to BPC section 29 in subdivision (b) of this Section.
- Clarify that the 36-hour coursework requirement occurs during each renewal period and includes a minimum of six (6) hours of content in law and ethics.

Amend Section 1887.4 – Continuing Education Course Content

Section 1887.4 requires CE providers to ensure that course content is relevant to the practice of MFTs and LCSWS and related to direct or indirect care of clients. BPC section 4989.34(c) specifies that CE training, education and coursework for LEPs shall incorporate aspects of the discipline that are fundamental to the understanding or practice of educational psychology.

The proposed regulation would require CE course content for LEPs to be relevant to the practice of educational psychology and meet the requirements of BPC Section 4989.34. Course content for LEPs would also have to be related to direct or indirect patient/client care, including covering specialty areas of therapy and pragmatic aspects of clinical practice.

Amend Section 1887.5 – Hours of Continuing Education Credit

Section 1887.5 defines the equivalencies between hours and units of CE credit for MFTs and LCSWs. For purposes of counting CE credit, one hour of instruction is equal to one hour of CE credit. One academic quarter unit is equal to ten (10) hours of CE credit and one academic semester unit is equal to fifteen (15) hours of CE credit.

The proposed regulation would apply current regulations for MFTs and LCSWs related to the method of counting hours of CE credit for other Board licensees to LEPs.

Amend Section 1887.6 - Continuing Education Providers

Section 1887.6 specifies from whom a LCSW or MFT can take a CE course, including an accredited or approved postsecondary institution or a board-approved provider. BPC section 4989.34 authorizes the Board to establish, by regulation, a procedure for approving providers of LEP CE courses and to set minimum standards for those CE course providers

The proposed regulation would require LEPs to take CE from an accredited or approved school or board-approved provider as required by BPC section 4989.34.

Amend Section 1887.7 – Board-Approved Providers

Section 1887.7 sets forth the qualifications for an applicant to become a board-approved CE provider for LCSWs and MFTs, including submission of an application and fees. This section also sets forth the terms of renewal of a CE provider approval and change of ownership, specifies that an approval is not transferable, and prohibits a CE provider from presenting a course for credit when the provider's approval is expired.

The Board is proposing minor language clean up to refine the regulation by removing outdated or unnecessary language and by adding technical language for clarity. The Board also proposes to apply its current procedure for approving MFT and LCSW CE providers to LEP CE providers.

This proposal would additionally revise the form incorporated by reference "Continuing Education (CE) Provider Application", Form No. 1800 37A-633 (revised 02/09) as follows:

- Make technical revisions to the form's header for consistency with other Board forms.
- Specify the application fee at \$200.
- Delete requirements for disclosure of prior license status with the Department of Consumer Affairs (DCA) and replace it with a requirement for disclosure of prior application history to the Board for CE provider approval.
- Require an explanation of how each course relates to the scope of practice for LCSWs, LEPs or MFTs.
- Notify applicants of the 6 to 8 weeks processing time for the application.
- Make grammatical or other technical changes to the Application instructions, including updating addresses and phone contact information.
- Provide disclosures to the applicant in the Application's instructions regarding the collection and use of information disclosed.

Amend Section 1887.8 – Revocation and Denial of Board-Approved Provider Status

Section 1887.8 specifies the grounds for revocation or denial of a MFT or LCSW CE provider approval, including a substantially related misdemeanor or felony conviction, failure to comply with licensing-related laws (if also a board licensee), or making material misrepresentation of fact in information submitted to the board. This section also provides the parameters for when a board decides to revoke or deny its approval of a provider and sets forth the terms of a CE appeals committee.

The proposed regulation would apply the current procedures and standards for MFT and LCSW CE providers to LEP CE providers.

Amend Section 1887.9 – Course Advertisements

Section 1887.9 specifies requirements for MFT or LCSW CE course advertisements, including that the information published is accurate and contain minimum disclosures.

The proposed regulation would require the same standards for providers of LEP CE.

Amend Section 1887.10 – Course Instructor Qualifications

Section 1887.10 sets forth MFT or LCSW CE minimum course instructor qualifications and requires a healing arts licensee who is restricted pursuant to a disciplinary action to notify all CE providers for whom he or she provides instruction.

The proposed regulation would apply the current standards for MFT and LCSW CE course instructors to LEP CE course instructors.

Amend Section 1887.11 – Records of Course Completion

Section 1887.11 requires MFT or LCSW CE providers to issue a record of course completion in a specified form and containing mandated items of disclosure, to the licensee.

The proposed regulation would require the same of LEP CE providers.

Amend Section 1887.12 – Licensee and Provider Course Records

Section 1887.12 sets forth requirements for maintenance of course records for MFT and LCSW licensees (two years) and CE providers (four years). This section also permits the board to audit the course records of a provider.

The proposed regulation would apply the current procedures and standards for MFT and LCSW CE providers to LEP CE providers.

Amend Section 1887.13 – Renewal of Expired Approval

Section 1887.13 sets forth the requirements for a LCSW or MFT CE provider approval renewal, and requires delinquent providers to submit a letter to the board stating that no courses were presented while the approval was expired, or, if a course was provided while the approval was expired, that participants were notified of such and that the CE hours will not be disallowed by the board if the provider renews within one (1) year after expiration.

The proposed regulation would apply the current procedures and standards for MFT and LCSW CE providers to LEP CE providers.

Amend Section 1887.14 – Time Limit for Renewal of Approval After Expiration; New Approval

Section 1887.14 sets forth the time limit for renewal of a MFT or LCSW CE provider approval after expiration and the requirements for a new approval.

This proposed regulatory change would apply the current procedures and standards for MFT and LCSW providers to LEP CE course providers.

Forms Incorporated by Reference

This proposed rulemaking also makes changes to two forms incorporated by reference that are currently used by the Board related to CE:

- Section 1887.2: “Request for Continuing Education Exception – Licensee Application”, Form 1800 37A-635 (Revised 02/09).
- Section 1887.7: “Continuing Education (CE) Provider Application”, Form 1800 37A-633 (Revised 02/09)

Additionally, a new form is being added by reference to Section 1887.2(d)(2), “Request for Continuing Education Exception – Verification of Disability or Medical Condition”, Form 1800 37A-636 (New 02/09).

FISCAL IMPACT ESTIMATES

Local Mandate: None

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination: 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 who want to provide CE courses to LEPs at \$200 initially (application fee) and \$200 every two years thereafter (renewal fee).

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal would create job and business opportunities for those who want to provide CE to LEPs. Otherwise, this proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impacts on Representative Private Persons or Businesses:

CE costs an average of \$5 per unit. LEPs will be required to complete 18 units per year for an average cost of \$90 per person per year. For LEPs who have a disability or medical condition and want to apply for an exception to CE, there would be an approximate \$300 cost related to an evaluation or forms completion by a physician or psychologist. Finally, those who wish to provide CE to LEPs and are not currently approved by the Board as a CE provider will have an initial application cost of \$200 and \$200 renewal fee every two years.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would have a minor impact on small businesses. The implementation of a CE program for LEPs would have a minimal impact on a small business. The board estimates that 767 LEPs own a small business and it would cost \$90 per year to comply. Additionally, there would be a minor impact on small businesses who wish to offer CE to LEPs (those that are not already registered with the board as a CE provider). The costs to these small businesses is \$200 to apply and \$200 to renew every two years.

The changes to the board's CE exception regulation could present a minimal cost impact to the approximately 85 small businesses per year owned by MFTs, LCSWs or LEPs with a disability or medical condition who apply for an exception to CE. The cost would be approximately \$300 for a physician or psychologist to evaluate the licensee and/or complete paperwork for the board's records.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be 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 proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the hearing provided for in this Notice.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL AND AVAILABILITY OF MODIFIED TEXT

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Contact Person listed above.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the Contact Person named below.

You may obtain a copy of the Final Statement of Reasons, once it has been prepared, by making a written request to the Contact Person named above (or by accessing the Web site listed below).

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

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If the regulations adopted by the Board differ from and are substantially related to the action proposed, the text of the proposed regulations with changes clearly indicated will be made available to the public for 15 days prior to the date of adoption.

WEBSITE ACCESS

Materials regarding this proposal can be found at www.bbs.ca.gov.