

## TITLE 16: BOARD OF BEHAVIORAL SCIENCES

### NOTICE OF PROPOSED CHANGES

#### Amend Title 16 California Code of Regulations, Division 18 – Continuing Education and Additional Coursework Sections

**Subject Matter of Proposed Regulations:** Continuing Education and Additional Coursework

**Sections Affected:** Add section 1810.5; Amend sections 1807, 1807.2, 1810, 1887, 1887.1, 1887.2, 1887.3, 1887.4.0, 1887.4.1, 1887.4.2, 1887.4.3 and 1887.11.0; Repeal sections 1810.1, 1810.2, 1887.4, 1887.7, 1887.8, 1887.9, 1887.10, 1887.11 and 1887.15 of Division 18 of Title 16 of the California Code of Regulations.

**NOTICE IS HEREBY GIVEN** that the Board of Behavioral Sciences (board) is proposing to take the action described in the Informative Digest/Policy Statement Overview.

#### **Public Hearing**

The board has not scheduled a public hearing on this proposed action. The board will, however, hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under Contact Person in this notice.

#### **Comment Period**

Any person interested may present statements or arguments relevant to the action proposed in writing. 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 at its office no later than **Monday, December 27, 2021**, or at the public hearing, if applicable.

#### **Availability of Modifications**

The board may, after considering all timely and relevant comments, adopt the proposed regulations substantially as described in this notice, or may modify the proposed regulations 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 the 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 4980.60 and 4990.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 25, 28, 29, 32, 4980.36, 4980.41, 4980.54, 4980.72, 4980.78, 4980.81, 4982, 4984.8, 4984.41, 4989.34, 4989.44, 4989.45, 4989.54, 4992.3, 4996.2, 4996.17.1, 4996.17.2, 4996.22, 4997, 4997.1, 4999.32, 4999.33, 4999.60, 4999.62, 4999.76, 4999.90, 4999.112 and 4999.113 of the BPC; and sections 12926 and 12944 of the Government Code, the board is considering changes to Division 18 of Title 16 of the California Code of Regulations as described in this Notice.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The board licenses and regulates Licensed Marriage and Family Therapists (LMFTs), Licensed Educational Psychologists (LEPs), Licensed Clinical Social Workers (LCSWs), and Licensed Professional Clinical Counselors (LPCCs).

The board also registers and regulates individuals gaining supervised experience toward meeting the requirements for licensure. This includes registered Associate Marriage and Family Therapists (AMFTs), Associate Professional Clinical Counselors (APCCs) and Associate Clinical Social Workers (ASWs), and applicants pending registration.

- Existing law:
  - Specifies the additional training required for licensure and sets forth course content, number of hours, acceptable providers, and other related requirements:
    - BPC sections 25, 28, 29, 4980.36, 4980.41, 4980.72, 4980.78, 4980.81, 4996.2, 4996.17.1 and 4996.17.2; and
    - Title 16, California Code of Regulations (16 CCR) sections 1807, 1807.2, 1810, 1810.1 and 1810.2.
  - Specifies the continuing education (CE) requirements for licensees, including course requirements, CE requirements for license renewal, exceptions from CE requirements, and acceptable providers:
    - BPC sections 4980.54, 4989.34, 4996.22 and 4999.76.
    - 16 CCR sections 1887, 1887.1, 1887.2, 1887.3 and 1887.4.0.
  - Specifies the board-approved providers and the requirements and responsibilities of CE providers (16 CCR sections 1887.4.3, 1887.7, 1887.8, 1887.9, 1887.10, 1887.11 and 1887.11.0).
  - Specifies the board-recognized CE provider approval agencies and sets forth CE approval agency responsibilities (16 CCR sections 1887.4.1 and 1887.4.2).

- Specifies the transition period pertaining to the overarching CE changes made in 2015 (16 CCR section 1887.15).

The CE requirements underwent a complete overhaul in 2015 with a corresponding transition period which recently ended. As such the current CE requirements in regulation are outdated and require revision.

This proposal will:

- Update content requirements for human sexuality, child abuse assessment and reporting, and alcoholism and other chemical substance dependency training, and create consistency in the required qualifications for training providers.
- Clarify that a CE course may be provided in person or online.
- Clarify that individuals who hold more than one license may apply the same CE courses to both licenses if the subject matter relates to each license's scope of practice.
- Strike the 18-hour CE exception for initial renewal periods and strike the definition of "initial renewal period".
- Clarify that a licensee granted retired status is exempt from CE.
- Rename CE "exceptions" to "temporary waivers" (CE waiver) and "exemptions."
- Modify CE waiver criteria for licensees impacted by their own health condition, reduce the amount of detail required in regards to health information, and require documentation of income (or lack thereof) during the period of disability.
- Modify CE waiver criteria for licensees who are the primary caregiver of an immediate family member with a physical or mental disability.
- No longer allow CE waivers for being absent from California due to military service or residing in another country.
- Clarify that a licensee whose request for CE waiver is denied must fully comply with CE if renewing in an active status.
- Require licensees who are granted a CE waiver to complete six hours of CE in law and ethics.
- Update CE waiver forms incorporated by reference for consistency with the proposed updated requirements and for clarity.
- Include a release of protected health information (PHI) to be signed by the family member when a licensee is requesting a CE waiver due to being that family member's primary caregiver.

- Repeal the outdated requirement that LMFTs and LCSWs who began graduate study prior to January 1, 1986 take a CE course in alcohol and other chemical substance dependency during their first renewal period.
- Clarify that a course on law and ethics designed specifically to meet supervisor training requirements cannot be accepted toward meeting the six-hour law and ethics course required of all licensees each for renewal period, but does count toward the overall 36-hour CE requirement.
- Specify that licensees may fulfill a maximum of 18 hours of the 36-hour CE requirement by teaching CE courses during a single renewal period for a board-accepted provider.
- Allow a licensee who completes a board occupational analysis survey to be credited with six hours of CE.
- Clarify that in order for a licensee's participation in a professional organization's law and ethics review committee to be credited, it must be with a mental health professional organization.
- Specify the types of documentation of completion necessary for certain activities allowed for CE credit and the length of retention required.
- Repeal outdated regulations pertaining to the board's former CE program.
- Clarify CE course content requirements.
- Clarify that professional associations are the only type of organization that may be recognized by the board as a CE provider.
- Make grammatical and other nonsubstantive changes.

### **ANTICIPATED BENEFITS OF PROPOSAL**

This proposal is expected to result in the following benefits:

- Update, streamline and provide clarity and consistency in the board's CE regulations.
- Help protect consumers by ensuring that CE course content meets professional standards.
- Provide clearly defined and straightforward criteria to qualify for a CE waiver.
- Limit the scope and help ensure privacy of the PHI of a licensee applying for a CE waiver (or if a caregiver of a family member, the family member's information).
- Help licensees better understand the CE waiver application process and what to do once the board provides an approval or denial.

- Provide increased consumer protection by requiring licensees who have been granted a CE waiver to complete a 6-hour law and ethics course.
- Provide increased consumer protection by encouraging licensees who teach courses for CE credit, to obtain CE on topics in addition to the courses taught, and ensure that the course taught meets the same requirements as a board-accepted CE course.
- Make it easier to determine quickly whether an entity is a board-recognized provider and avoid requests for board recognition from unqualified organizations.

## **CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS**

During the process of developing these regulations and amendments, the board conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

## **FORMS INCORPORATED BY REFERENCE**

The following documents have been incorporated by reference into section 1887.2:

- *Form 37A-635: “Request for Temporary Continuing Education Waiver – Licensee Application”* [Revised (OAL to insert effective date)].
- *Form 37A-636: “Request for Temporary Continuing Education Waiver – Verification of Disability or Medical Condition”* [Revised (OAL to insert effective date)].

## **FISCAL IMPACT ESTIMATES**

### **Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:**

The proposal is not anticipated to increase workload or costs to the state, as the changes are designed to simply provide clarity in the board's regulations and streamline the regulations and associated processes.

**Nondiscretionary Costs/Savings to Local Agencies:** None

**Local Mandate:** None

**Cost to Any Local Agency or School District for Which Government Code Section 17500 to 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 business, including the ability of California businesses to compete with businesses in other states, because it only affects licensees and providers within the state of California.

Cost Impact on Representative Private Person or Business: The cost impact that a representative regulated person or business will incur in reasonable compliance with the proposed action is \$180. This is because this proposal requires 18 hours of CE for certain licensees, which they were not previously required to complete. The average cost for one hour of CE is \$10.

Impact on Jobs/New Businesses: The board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Effect on Housing Costs: None

## **EFFECT ON SMALL BUSINESS**

The board has determined that the proposed regulations will affect small businesses because this proposal requires 18 hours of CE for certain licensees, which they were not previously required to complete.

## **RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The board has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses. This initial determination is based on the following facts:

- **Analysis of creation/elimination of jobs:** This proposal is not anticipated to create or eliminate any jobs within California as the majority of the proposed amendments are for the purpose of clarifying, streamlining, or creating consistency in the board's regulations. Other proposed amendments increase the amount of CE to be completed by certain licensees and, though this may increase revenue for CE providers, it is not likely to be enough to create new jobs, except for potentially new CE providers that enter the CE marketplace due to the added CE requirement.
- **Analysis of creation/elimination of businesses.** This proposal will not create or eliminate any businesses in California for the reasons described above.
- **Analysis of expansion of business:** This proposal will not expand any businesses in California for the reasons described above, except for potentially new CE providers that enter the CE marketplace due to the added CE requirement.

- **Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:** This regulatory proposal will help protect consumers by helping to ensure that licensees remain competent to practice by timely completing the clearly defined CE requirements. The proposal will have no effect on worker safety or the State's environment.

As part of its Economic Impact Analysis, the board has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services, and that it will not eliminate any jobs or occupations. As stated above, this proposal does not impact multiple industries.

### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), 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 proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments with respect to the alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

### **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**

Copies of the exact language of the proposed regulations, any document incorporated by reference, the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing, if one is held, or upon request from the person designated in the Notice under Contact Person or by accessing the board's website at [https://www.bbs.ca.gov/about/law\\_reg.html](https://www.bbs.ca.gov/about/law_reg.html).

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

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the 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 below or by accessing the website listed below.

**CONTACT PERSON**

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

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The backup contact person is:

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**Website Access:** Materials regarding this proposal can be found on the board's website at [https://www.bbs.ca.gov/about/law\\_reg.html](https://www.bbs.ca.gov/about/law_reg.html).