



GOVERNOR GREG ABBOTT

To: Gloria Canseco, Chair  
Darrel Spinks, Executive Director  
Patrick Hyde, General Counsel  
Texas Behavioral Health Executive Council

From: Erin Bennett, Director  
Regulatory Compliance Division, Office of the Governor

Date: June 15, 2020

Subject: Proposed Title 22 Texas Administrative Code Section 882.12 (RCD Rule Review #2020-009)

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**I. Preface**

The Texas Behavioral Health Executive Council (“council”) proposed new 22 TAC §882.12, which directs the council to deny licensure to certain individuals for failure to pay child support.<sup>1</sup> The council submitted the proposed rule to the Regulatory Compliance Division (“division”) for review on May 1, 2020. The division invited public comments on the proposed rule for a 30-day period ending June 5, 2020, but received no comments.

**II. Analysis**

The council proposed new §882.12 in response to House Bill 1501, 86<sup>th</sup> Legislature, Regular Session (2019), which created the council and transferred the licensing and regulatory functions of the psychology, marriage and family therapy, professional counseling, and social work boards (“member boards”) to the new council. Proposed §882.12 requires the council to refuse to issue a license to an individual if requested by a child support agency because the individual has failed to pay child support for six months or more. The proposed rule also allows the council to charge such an individual a fee equal to the application fee to cover the administrative costs attributable to the refusal. While the current rules for the council’s member boards contain similar provisions, proposed §882.12 applies the limitation on issuing licenses to the council pursuant to

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<sup>1</sup> Rule Submission Memorandum from the Texas Behavioral Health Executive Council (May 1, 2020), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor). 45 Tex. Reg. 2652 (2020) (to be codified at 22 TAC §882.12) (proposed April 24, 2020) (Tex. Behavioral Health Exec. Council).

the council's assumption of licensing authority under Section 507.151, Texas Occupations Code.<sup>2</sup>

The council submitted proposed §882.12 to the division because the proposed rule creates a barrier to licensure for certain individuals who have failed to pay child support and could reduce competition for services provided by council licensees due to these individuals' exclusion.<sup>3</sup> Consequently, the council asserts that the proposed rule affects market competition pursuant to Sections 57.105(d)(1) and (2), Texas Occupations Code.<sup>4</sup> However, Section 232.0135(a), Texas Family Code, specifically allows a child support agency to request that a licensing authority refuse to issue or renew a license for an individual who has failed to pay child support for six months or more. Section 232.0135(b) requires a licensing authority who receives such a request to refuse to issue or renew the individual's license until notified otherwise by the child support agency. And, Section 232.014 permits a licensing authority to charge an individual a fee for the denial of a license in accordance with Section 232.0135 in an amount sufficient to recover the administrative costs incurred by the licensing authority under that chapter. Because the entirety of proposed §882.12 mirrors these provisions of Chapter 232, the proposed rule is consistent with state policy as established in state statute.

### **III. Determination**

Because the division has determined that proposed §882.12 is consistent with state policy, the proposed rule is approved by the division and may be finally adopted.

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<sup>2</sup> For example, 22 TAC §469.12(i) (2008) and 22 TAC §681.169(i) (2019) require the Texas State Board of Examiners of Psychologists and the Texas State Board of Examiners of Professional Counselors, respectively, to refuse to renew an individual's license on receiving notification from a child support agency that the individual has failed to pay child support.

<sup>3</sup> Rule Submission Memorandum from the Texas Behavioral Health Executive Council (May 1, 2020), at 3.

<sup>4</sup> *Id.*