



GOVERNOR GREG ABBOTT

To: Frank Denton, Chair
Lisa Hill, Executive Director
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Texas State Board of Plumbing Examiners

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

Date: September 14, 2022

Subject: Proposed Title 22 Texas Administrative Code Sections 365.19-365.22 (RCD Rule Review #2022-008)

I. Syllabus

In August 2021, the Texas State Board of Plumbing Examiners (“board”) filed an intent to review 22 TAC Chapter 365 pursuant to Section 2001.039, Texas Government Code.¹ That chapter includes §§365.19-365.21, which contain requirements for providers and instructors of continuing professional education (“CPE”), and §365.22, which addresses licensing procedures for military spouses. As authorized in Section 57.106(g), Texas Occupations Code, the Regulatory Compliance Division (“division”) initiated a review of these rules. In July 2022, the board proposed amendments to the four rules, updating the provider and instructor requirements for the courses and training programs mandatory for the renewal of a license, endorsement, or registration and expanding §365.22 to also address licensing procedures for military service members and veterans.² The board subsequently submitted the proposed rules to the division for review on July 25, 2022.³ The division invited public comments on the proposed rules for a period ending on August 25, 2022 and received no comments.

Based on the following analysis, the division has determined that the proposed rules are consistent with state policy, and, thus, proposed §§365.19-365.22 are approved by the division and may be finally adopted and implemented.

¹ 46 Tex. Reg. 4861 (2021) (notice of intent to review 22 TAC ch. 365) (published Aug. 6, 2021) (Tex. State Bd. Plumbing Exam’rs.).

² 47 Tex. Reg. 3875 (2022) (to be codified at 22 TAC §§365.19-365.22) (proposed July 8, 2022) (Tex. State Bd. Plumbing Exam’rs.).

³ Rule Submission Memorandum from the Texas State Board of Plumbing Examiners (July 25, 2022) (22 TAC §§365.19-365.22) (on file with the Regulatory Compliance Division of the Office of the Governor).

II. Analysis

Following changes to Chapter 1301, Texas Occupations Code, by House Bill 636 during the 87th Regular Legislative Session, the board has proposed rulemaking to update requirements related to the provision and instruction of CPE and training programs, as well as to eliminate overly proscriptive rules.⁴ And, to better facilitate the directives in Chapter 55, Texas Occupations Code, the board has proposed expanding its military licensing rule to include military service members and military veterans.⁵ Given that conditions for licensure, including requirements for renewal and limitations on eligibility, can create barriers to ongoing market participation and may increase the cost of compliance for licensees, proposed §§365.19-365.22 may affect competition pursuant to Section 57.105(d)(1) and (2), Texas Occupations Code.

A. The requirements for course and training program providers in proposed §365.19 are consistent with state policy.

Section 1301.404(a)(1) and (2), Texas Occupations Code, broadly instruct the board to promulgate rules establishing the minimum curriculum standards for CPE programs and courses offered to license and endorsement holders as well as the minimum qualifications for instructors of such programs and courses. Additionally, Section 1301.404(c)(1) grants the board's executive director the authority to approve CPE programs or courses that meet the board's standards. Section 1301.405(a-1)(1) and (2), Texas Occupations Code, contain identical directives for the adoption of rules setting minimum curriculum standards and instructor qualifications for the training programs that registrants must complete each renewal cycle. And, Section 1301.405(a-2)(1) allows the executive director to approve such training programs. Proposed §365.19(a) and (b) simply reiterate these requirements by allowing course providers to offer courses or training programs taught by instructors approved by the executive director. Further, proposed §365.19(c) and (d) are intended to offer additional flexibility for providers through eliminating overly prescriptive delivery and format requirements as recommended by the Texas Sunset Advisory Commission, and only mandating that the instructional portion of courses and training programs be presented in at least one-hour segments and prohibiting advertising during those segments.⁶ And, proposed §365.19(e)-(h) remove the current rule's prescriptive requirements for providers to prepare and submit quarterly reports to the board, while maintaining basic notice requirements related to course offerings, course cancellations, and the provision of course completion certificates. Elimination of such requirements offers additional flexibility for course providers and potentially lowers administrative costs. Ultimately, because proposed §365.19 is a reasonable application of the broad authority granted to the board to establish the minimum

⁴ Rule Submission Memorandum from the Texas State Board of Plumbing Examiners (July 25, 2022) (22 TAC §§365.19-365.22), at 2.

⁵ *Id.*

⁶ *Id.*; Sunset Advisory Commission Staff Report with Final Results: Texas State Board of Plumbing Examiners, *Issue 2* (2019), at 27, available at

<https://www.sunset.texas.gov/public/uploads/files/reports/Texas%20State%20Board%20of%20%20Plumbing%20Examiners%20Staff%20Report%20with%20Final%20Results.pdf>.

curriculum standards for CPE programs and courses under Section 1301.404(a)(1) and renewal training programs under Section 1301.405(a-1)(1), it is a valid exercise of the board's authority and is consistent with state policy.

B. The requirements for course instructors in proposed §365.20 are consistent with state policy.

Section 1301.404(a)(2) grants the board broad authority to establish the minimum qualifications for instructors of CPE programs and courses, and Section 1301.405(a-1)(2) does the same for instructors of renewal training programs. And, Sections 1301.404(c)(2) and 1301.405(a-2)(2) grant the board's executive director authority to approve instructors who meet the minimum standards established by the board. Proposed §365.20(a) and (b) generally follow statute by requiring that course instructors hold a current board-issued license, be in good standing, and hold the relevant endorsement to teach courses related to the endorsement held. The proposal eliminates the current rule's additional training requirements imposed on course instructors. In doing so, the board seeks to ensure that license and endorsement holders and registrants receive competent instruction from instructors who have at least met the minimum qualifications of licensure or of the endorsement for which they are seeking to teach.⁷ And, proposed §365.20(c) facilitates the board's authority to review and approve course instructors through requiring instructors to submit a complete application and an application fee to the board. Lastly, proposed §365.20(d) and (e) help ensure the quality and administration of courses and training programs by requiring instructors to follow the applicable laws and standards of conduct for licensees and registrants and to report licensees' completion of a course, and allowing the board to monitor instructors for quality of instruction and compliance. Given that statute grants the board broad authority to establish the minimum qualifications for instructors of courses and training programs, and to approve qualified instructors, proposed §365.20 is a reasonable exercise of such authority and is consistent with state policy.

C. The requirements for CPE and training programs for the Medical Gas Piping Installation Endorsement in proposed §365.21 are consistent with state policy.

Similar to proposed §365.19, proposed §365.21 sets the minimum curriculum standards for CPE programs for licensees who hold a Medical Gas Piping Endorsement ("MGPE"), and also reiterates the minimum qualifications for instructors who teach a medical gas CPE course as proposed in §365.20. Consistent with Section 1301.404(a)(1), proposed §365.21(a)-(c) establish the curriculum standards and authorized course materials for medical gas CPE courses. The proposed provisions make the current rule more flexible by authorizing MGPE holders to complete a national certification in lieu of completing the two hours of CPE required to renew the endorsement. The board intends to lower regulatory burdens and costs imposed on licensees by providing an alternate option to completing CPE while also eliminating the requirement that

⁷ Rule Submission Memorandum from the Texas State Board of Plumbing Examiners (July 25, 2022) (22 TAC §§365.19-365.22), at 4.

licensees purchase a bound, physical copy of the NFPA 99.⁸ Next, proposed §365.21(d) is consistent with 1301.404(c)(1) by authorizing only approved course providers to provide medical gas CPE courses. Likewise, proposed §365.21(e) simply reiterates proposed §365.20(a) and (b), and is consistent with Section 1301.404(c)(2) by authorizing only approved instructors to teach medical gas CPE courses. Lastly, proposed §365.21(f) reasonably retains the curriculum standard that medical gas CPE courses be offered as a single-day, “hands-on” course to account for the heightened complexities and safety risks associated with medical gas piping which necessitate some level of classroom instruction.⁹ Furthermore, limiting medical gas CPE courses to a single day lowers the potential costs and burdens otherwise imposed on licensees if required to attend multiple courses. Thus, the requirements setting the minimum MGPE curriculum standards and the minimum qualifications for instructors who teach medical gas CPE courses as set forth in proposed §365.21 is a reasonable exercise of the board’s statutory authority and is consistent with state policy.

D. The licensing procedures for military service members, military veterans, and military spouses in proposed §365.22 are consistent with state policy.

Chapter 55, Texas Occupations Code establishes the general provisions related to licensing for military service members, military veterans, and military spouses. Proposed §365.22 simply reiterates the requirements of Chapter 55 and expands the current rule beyond military spouses to include military service members and military veterans as required by statute. Because proposed §365.22 generally follows the requirements laid out in statute and further facilitates the participation of military service members, military veterans, and military spouses in the market, the proposal is a reasonable exercise of the board’s authority and is consistent with state policy.

III. Determination

Based on the above analysis, proposed §§365.19-365.22 are approved by the division and may proceed to final adoption and implementation.

⁸ *Id.* at 3-4.

⁹ Agency Response to Request for Additional Information (Sept. 13, 2022), at 1 and 3 (on file with the Regulatory Compliance Division of the Office of the Governor).