

SUBJECT: Establishing the Texas Behavioral Health Executive Council

COMMITTEE: Public Health — favorable, without amendment

VOTE: 8 ayes — S. Thompson, Wray, Allison, Frank, Lucio, Ortega, Sheffield, Zedler

2 nays — Coleman, Price

1 absent — Guerra

WITNESSES: For — Miriam Nisenbaum, NASW Texas Chapter; Jeanene Smith, Texas Association for Marriage and Family Therapists; Stephanie Sokolosky, Texas Association for Psychological Associates; Ashley Arnold, Stephanie Barbre, and Cassandra Hulse, Texas Association of School Psychologists; Elizabeth Dossman and Jan Friese, Texas Counseling Association; Mitra Kermani; (*Registered, but did not testify*: Chris Masey, Coalition of Texans with Disabilities; Alyssa Thomason, Doctors for Change; Lindsay Lanagan, Legacy Community Health; Annalee Gulley, Mental Health America of Greater Houston; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Will Francis, National Association of Social Workers-Texas Chapter; Josette Saxton, Texans Care for Children; Katey Villalin, Texas Association for Marriage and Family Therapist; Claudia Ghio, Texas Association of Psychological Associates; Reginald Smith, Texas Criminal Justice Coalition; Kathy Rider, Texas Society for Clinical Social Work; and seven individuals)

Against — Jennifer Rockett, Brazos Valley Psychology Association, Nexus Psychology, PLLC, Texas Psychological Association; David Hill, Capitol Area Psychological Association; Elle Lockart, Fort Worth Area Psychological Association; Frances Douglas, Bonny Gardner, John Godfrey, and Carol Grothues, Texas Psychological Association; Cynthia Fincher; Rowland Folensbee; Corinne Zupanick; (*Registered, but did not testify*: Susan C Houchins, Capitol Area Psychological Association; Kay Allensworth, Thomas Kremer, and William Holden, Texas Psychological Association; Gail Brothers; Jo Vendl; Elise Yenne)

On — Robert Romig, Sunset Advisory Commission; Anthony Scoma, Texas State Board of Examiners of Marriage and Family Therapists; (*Registered, but did not testify*: Kristi Jordan and Tim Speer, Health and Human Services Commission; Christopher Taylor, Texas State Board of Examiners of Professional Counselors; Tim Branaman, Ronald Palomares, and Darrel Spinks, Texas State Board of Examiners of Psychologists)

BACKGROUND: The Texas State Board of Examiners of Psychologists was established to protect the public by ensuring psychological services are provided by qualified practitioners who adhere to certain standards. To achieve its mission, the board:

- adopts rules on the licensure requirements for psychological services in Texas;
- issues and renews licenses for psychologists, psychological associates, and licensed specialists in school psychology; and
- enforces violations of statute and board rules by investigating complaints and taking disciplinary actions.

The Texas State Board of Examiners of Marriage and Family Therapists, Texas State Board of Examiners of Professional Counselors, and Texas State Board of Social Worker Examiners were created to protect public health and safety by regulating their respective professions. To achieve this mission, each board issues and renews licenses, investigates and enforces violations of board rules, and takes disciplinary action when necessary. These boards are not independent agencies; instead, they are administratively attached to the Health and Human Services Commission (HHSC).

Governing structure. Texas' four behavioral health boards that regulate psychologists, marriage and family therapists, professional counselors, and social workers are each composed of nine governor-appointed members. On each board, some members represent the public while others must hold certain licenses.

Staffing. In fiscal 2017, 14 staff were employed by the Psychologist Board. Currently, HHSC assigns about 40 staff to perform all licensing and administrative functions for the state boards of counselors, social workers, and marriage and family therapists, but only 29 of those positions are filled.

Funding. In fiscal 2017, the state boards of social workers, counselors, and marriage and family therapists operated on a combined budget of about \$1.7 million and collected about \$3.2 million in licensing and other fees. The state board of psychologists operated on a budget of about \$935,000 and generated about \$1.8 million in revenue, primarily from licensing and other fees, in fiscal 2017.

The behavioral health boards last underwent Sunset review during the 2016-2017 review cycle by the 85th Legislature. These boards would be discontinued on September 1, 2019, unless continued in statute.

DIGEST:

HB 1501 would establish the Texas Behavioral Health Executive Council, transfer certain functions from four behavioral health boards to the executive council, and amend each board's licensure and enforcement processes. The council would be subject to the Texas Sunset Act and would be discontinued on September 1, 2031, unless continued in statute.

The bill also would adopt the Psychology Interjurisdictional Compact.

Texas Behavioral Health Executive Council. HB 1501 would establish the Texas Behavioral Health Executive Council (BHEC) by consolidating the Texas State Board of Examiners of Marriage and Family Therapists, Texas State Board of Examiners of Professional Counselors, and Texas State Board of Social Worker Examiners with the Texas State Board of Examiners of Psychologists.

Transfer of authority to BHEC. HB 1501 would transfer to the BHEC the authority to administer examinations, issue licenses, set fees, and take disciplinary action against individuals who violated rules or provisions

from the boards regulating psychologists, marriage and family therapists, licensed professional counselors, and social workers.

Membership. The executive council would consist of nine members. By December 1, 2019, each of the four boards whose functions were transferred to the council would have to appoint to the council one licensed professional board member and one public board member. The governor would appoint one public member to serve as the presiding officer of the council.

Terms. The member appointed by the governor would serve a six-year term. The remaining council members would serve two-year terms, with four members' terms expiring February 1 of each year.

Meetings, training, and staff. The executive council would be required to hold at least two regular meetings each year. All appointed members would have to complete training on the council's programs, functions, and rulemaking authority, among other areas. Members would be required to complete this training by August 31, 2020.

The executive council would be required to employ an executive director and other personnel as needed to administer certain functions. The council would have to hire an executive director by April 1, 2020.

Rulemaking authority. Rules regarding licensure qualifications, scope of practice, continuing education requirements, and a sanction schedule for violations could not be adopted by the council unless those rules had been proposed by the applicable board for the profession. The executive council would retain authority for final adoption of all rules and would be responsible for ensuring compliance with all laws regarding the rulemaking process.

Fees. The executive council would have to set fees that would cover the council's costs and costs associated with administering statutes governing psychologists, marriage and family therapists, counselors, and social workers. Those fees would include fees for licenses issued by the council,

license renewals, examinations, and any other program administered by the council for which a fee was authorized.

Other provisions. Under the bill, the executive council would be required to:

- conduct fingerprint background checks for all license applicants;
- check a national database for disciplinary actions in other states against an individual before issuing a license or renewal to the individual;
- establish a process in which complaints were received and resolved in a timely manner;
- solicit input from each professional board for complaints regarding standards of care or ethical practice;
- recognize, prepare, or administer continuing education programs for license holders;
- grant a hearing to a license holder in front of the State Office of Administrative Hearings before imposing a sanction;
- develop a system to monitor a license holder's compliance with applicable laws and council rules; and
- release examination results and issue certain license renewals according to procedures established in the bill.

HB 1501 would allow the council to administer certain penalties and would establish procedures for conducting hearings and court proceedings. The council could take disciplinary action against license holders or applicants if they violated certain rules or provisions.

Changes in licensing requirements.

Psychology. Under HB 1501, applicants for a license to practice psychology would apply to the BHEC. The bill would remove the separate provisional license and create a single license application and would authorize the council to grant provisional status to certain applicants for full licensure. An applicant's supervised experience from a doctoral program could count towards the two-year supervised experience

requirement. The bill also would eliminate the authority to conduct oral exams for psychologist applicants.

The council could issue terms of a remedial plan to resolve complaint investigations.

Marriage and family therapists. The bill would remove the requirement that applicants for a license to practice marriage and family therapy have at least 750 hours of experience providing direct clinical services to couples or families. Instead, applicants would have to complete a minimum number of hours providing these services as required by executive council rule.

Board training. The bill would update each board's required training for current and new members to include information about the scope of and limitations on each board's rulemaking authority. Existing board members would have to complete training not previously completed by December 1, 2019. The executive director of the executive council would be required to annually create and distribute copies of each board's training manual to the board's members.

Texas Behavioral Health Incubation Task Force. The bill would establish the Texas Behavioral Health Incubation Task Force to assist in the establishment of and transfer of regulatory programs to the executive council. The task force would provide guidance to the council and transferring entities on certain matters, including the council's administrative structure, seeking input from interested parties throughout the transfer, and the efficient transfer of necessary data.

The task force would be composed of:

- the executive commissioner of HHSC or the commissioner's designee;
- the executive director of the Texas Department of Licensing and Regulation or the director's designee;
- the executive director of the Texas State Board of Examiners of

Psychologists; and

- one representative from each board that regulated marriage and family therapists, professional counselors, and social workers.

Other provisions. HB 1501 would require the Texas Behavioral Health Executive Council to participate in certain electronic reporting and information systems regarding a license holder's information and licensing transactions.

The bill also would require the executive council and transferring entities to adopt a transition plan as soon as practicable after the bill's effective date. The transfer of each regulatory program would have to be completed on or before August 31, 2020.

Psychology Interjurisdictional Compact. The bill also would adopt the Psychology Interjurisdictional Compact (PSYPACT), which would regulate the practice of telepsychology and temporary, in-person practice of psychology across state boundaries.

Definitions. The bill would define certain terms, including the following:

- "Psychology Interjurisdictional Compact Commission" would mean the national administration of which all compact states were members;
- "compact state" would mean a state, the District of Columbia, or a U.S. territory that had enacted the PSYPACT;
- "distant state" would mean the compact state where a psychologist was physically present (not through the use of telecommunications technologies), to provide temporary in-person, face-to-face psychological services;
- "home state" would mean a compact state where a psychologist was licensed to practice psychology;
- "receiving state" would mean a compact state where the client or patient was physically located when the telepsychological services were delivered;
- "telepsychology" would mean the provision of psychological

- services using telecommunication technologies; and
- "temporary in-person, face-to-face practice" would mean a practice where a psychologist was physically present (not through the use of telecommunications technologies), in the distant state to provide for the practice of psychology for 30 days within a calendar year and based on notification to the distant state.

The PSYPACT would:

- require compact states to recognize licensed psychologists' right to practice telepsychology and temporary face-to-face psychology in other compact states if the psychologist met certain qualifications;
- allow psychologists to practice interjurisdictional telepsychology and temporary face-to-face psychology if the compact state met certain criteria as specified in the bill;
- allow a psychologist to hold multiple compact state licenses at the same time;
- permits home, distant, and receiving states to take adverse action against a psychologist's license and right to practice interjurisdictional telepsychology and in-person psychology;
- create the Psychology Interjurisdictional Compact Commission, which would coordinate the administration of the compact and to which each member state would appoint one voting representative;
- require the Psychology Interjurisdictional Compact Commission to develop and maintain a system containing licensure and disciplinary action information on all psychologists under the compact's applicability and require each compact state to submit uniform data to the database;
- prohibit the commission from adopting rules that altered the scope of practice of psychology; and
- establish rulemaking procedures for the compact.

Effective dates. The PSYPACT would take effect on the date the compact was enacted in the seventh state.

HB 1501 would take effect September 1, 2019, and would apply to certain

applications for licensure submitted on or after that date.

**SUPPORTERS
SAY:**

HB 1501 would protect and promote the public health of Texans by consolidating boards that regulate psychology, marriage and family therapy, professional counseling, and social work to form one regulatory agency called the Texas Behavioral Health Executive Council.

Texas Behavioral Health Executive Council (BHEC). The boards that regulate marriage and family therapists, counselors, and social workers currently are not effectively regulated, putting vulnerable Texans at risk. The administrative attachment of these boards to the Health and Human Services Commission (HHSC) impairs their ability to function efficiently, and the boards are mired in unreasonable bureaucracy. Consolidating these boards with the board of psychologists, a well-run independent agency, would improve regulation and increase operational efficiencies by allowing for a greater alignment in functions and processes, economies of scale, and better resource management.

Creating an executive council to more efficiently regulate these professions also would lead to greater responsiveness of the boards and council to license applicants and licensed professionals. Complaint processes at the boards can take years to resolve under the current system, frustrating professionals and endangering the public. Merging the boards into the BHEC would improve services for professionals and behavioral health care consumers while better protecting Texans from potentially harmful practitioners.

Executive council members would receive extensive training on the programs, functions, and rules that the council would administer, which would prepare them to effectively carry out the council's mission.

By transferring some authority from the boards to BHEC, HB 1501 would streamline the licensure process, remove subjective licensure criteria, and align enforcement processes with other occupational licensing boards. Each board would retain responsibility for proposing rules for its

respective profession regarding qualification for licenses, scope of practice and standard of care, continuing education, and a schedule of sanctions for violations. Removing the licensing fee floor in statute would improve fee management authority by ensuring the fees fully fund needed operations while also being fair to licensees.

Oral exam and post-doctoral supervision. The bill would remove an unnecessary requirement for licensure by eliminating the subjective oral exam applicants for a psychologist license currently are required to take. The oral exam offers minimal value in assessing applicants' competency, particularly as many candidates have already completed the 3,500 hours of supervised work experience required for the license.

Applicants for a psychologist license also are required to complete a one-year doctoral internship during their degree program and have one year of post-doctoral supervised experience. Allowing psychologists to count doctoral supervised internship hours that are received as part of an accredited degree program toward the post-doctoral supervision year would provide flexibility, expedite licensure, and could help address the mental health care provider shortage in Texas. The board would retain authority to adopt rules on the nature of the supervised experience that would count toward the two-year requirement to become a licensed psychologist.

Psychological Interjurisdictional Compact. Adopting the Psychological Interjurisdictional Compact (PSYPACT) would improve consumers' access to care by facilitating the practice of telepsychology and temporary in-person practice of psychology across state lines. The PSYPACT would provide better continuity of care and more flexible hours for patients who relocate to other member states.

Adopting the PSYPACT also would increase licensure reciprocity and psychologists' mobility within the profession and would help address the mental health provider shortage in Texas. Texas licensees do not always receive the same opportunities to practice in other states that Texas provides to out-of-state licensees. Instead, to practice in another state,

Texas psychologists must obtain and pay for dual-licensure or move to the state in which they wish to practice. PSYPACT would enable Texas psychologists to practice in other compact states while still residing and working in Texas.

OPPONENTS
SAY:

HB 1501 would increase inefficiencies in regulating behavioral health care professionals, potentially leaving Texans at risk.

Texas Behavioral Health Executive Council (BHEC). Establishing the Texas Behavioral Health Executive Council would create more bureaucracy, which could diminish efficiency in regulating the behavioral health professions. Creating the council also would require the consolidation of boards that oversee a wide range of professions, which could lead to a one-size-fits-all approach to regulation that would be inappropriate and ineffective.

The Texas State Board of Examiners of Psychologists already is a well-functioning agency and should be excluded from consolidation. Further, psychologists licensed by the board are doctoral-level professionals, and it would be inappropriate to consolidate the board with other professions that do not require the same level of education.

Limiting boards' representation on the council to only one licensed member each could lead to misunderstandings among council members who do not possess advanced degrees or training. Transferring the authority to set licensing fees from each board to the council could increase fees for applicants and licensed professionals.

Oral exam and post-doctoral supervision. The bill would diminish licensing standards for doctorate-level psychologists by eliminating the oral exam.

Changing the post-doctoral supervised experience requirement could reduce licensure mobility within the profession as most states continue to require post-doctoral experience before a person can become a licensed

psychologist. The state's universities and training programs also could be unable to meet the potential increased demand of individuals seeking to acquire all of their supervised experience through training programs. While many students receive more than one year (1,750 hours) of supervised experience as part of their doctoral program, the quality of the candidates' experience varies widely. Individuals would most likely need to continue seeking supervised experience in a post-doctoral setting to hone their skills.

**OTHER
OPPONENTS
SAY:**

HB 1501 should allow a person representing school psychologists to serve on the Texas Behavioral Health Executive Council. This would ensure equitable representation for all professions that the council regulated.

NOTES:

According to the Legislative Budget Board, HB 1501 would have an estimated negative net fiscal impact of \$135,200 in general revenue related funds through the biennium ending August 31, 2021.