

TITLE 16: BOARD OF BEHAVIORAL SCIENCES

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:

Board of Behavioral Sciences
1625 N. Market Blvd.
El Dorado Room, Suite 220
Sacramento, CA 95834
February 16, 2016
10:00am – 11:00 am

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 not later than 5:00 p.m. on February 15, 2016, 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 4980.34, 4980.60, 4990.18, and 4990.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific Sections 4980.397, 4980.50, 4989.22, 4992.05, 4992.1, 4999.52, and 4999.53 of the BPC, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations as described in this Notice.

INFORMATIVE DIGEST

The Board of Behavioral Sciences (Board) licenses four types of mental health professionals: marriage and family therapists (LMFTs), educational psychologists (LEPs), clinical social workers (LCSWs), and professional clinical counselors (LPCCs). All applicants for licensure with the Board must take one or more examinations to demonstrate professional competence, in order to be granted a license.

The Board does not currently offer any type of special examination accommodations for its examinees who speak English as a Second Language (ESL applicants). Numerous applicants for licensure have expressed to the Board that because English is their second language, they struggle to complete the Board's exams in the time allowed because it takes them extra time to interpret the exam questions.

The State of California has a diverse population of consumers seeking mental health services, speaking a wide variety of languages. Therefore, the Board believes it is essential to have a population of licensed mental health professionals who speak languages other than English, in order to serve these non-English speaking populations. To help meet this need, this regulatory proposal would allow the Board to grant additional time-and-a-half (1.5x) on Board-administered exams to an ESL applicant, if the applicant met specific criteria demonstrating limited English proficiency.

The regulatory proposal is as follows:

Add Section 1805.2: Additional Examination Time: English as a Second Language

This proposed section outlines three different ways an ESL applicant may qualify for time-and-a-half (1.5x) on a Board-administered examination. The applicant must submit a request for additional exam time that states under that penalty of perjury that English is his or her second language, and provide one of the following:

1. A Test of English as a Foreign Language, Internet Based Test (TOEFL-iBT) Certification Score of 85 or Below:

The TOEFL-iBT test measures English language proficiency. The TOEFL test is recognized by more than 9,000 colleges, universities and agencies in more than 130 countries.

To qualify for extra examination time, this test must have been taken within the previous two years prior to application. The reasoning for this timeframe is that Educational Testing Service (ETS) only keeps scores in its system for two years.

Deciding what TOEFL score represents limited English proficiency is somewhat arbitrary, and universities vary widely on what scores they accept. The TOEFL score of 85 or below was chosen by the Board for a couple of reasons. First, the Board examined the scoring system for the TOEFL, as well as a chart from an ETS report titled "Test and Score Data Summary for TOEFL Internet-Based and Paper-Based Tests" (ETS, 2007). The chart shows percentile ranks for TOEFL iBT scores of examinees who took the TOEFL in order to become licensed to practice their professions. The mean score was 84, which would be in the 40th percentile.

Second, the Board reviewed recent ESL accommodation regulations that were recently approved for the Psychology Board. The Psychology Board had also chosen a score of 85 or below as demonstrating limited English proficiency.

2. Documentation from the Qualifying Master's Degree Program that it had Granted Additional Examination Time or Other Allowance due to English as a Second Language:

In this circumstance, if the applicant's qualifying Master's degree program had granted the applicant additional examination time or another allowance due to speaking English as a second language, then the Board may grant the additional examination time.

3. Documentation of a Foreign Qualifying Master's Degree that was Presented Primarily in a Language other than English:

In this circumstance, the Board may grant the additional exam time if the applicant's qualifying Master's degree program was from an educational institution outside of the United States, and if coursework was presented primarily in a language other than English.

For two of the Board's license types (LCSWs and LPCCs), one of the two required exams is a national exam instead of a Board-administered exam. Although both of the national exam entities currently allow accommodations, their policies on extra time are not under direct control of the Board. Therefore, the proposed language states that allowance of the extra-time option for a required national exam is subject to availability from the exam-administering entity.

Policy Statement Overview: The objective of this proposal is to ensure that consumers in the State of California have a diverse population of mental health professionals who speak a variety of languages. The population of the state is very culturally diverse, and many consumers who speak other languages have difficulty finding a mental health professional who can speak their language. This proposal allows otherwise qualified mental health practitioners who are applying for licensure, who are having difficulty passing the Board's exams due to a language barrier, the opportunity to have extra time to interpret the exam. If this assists these applicants with passing the exam, the population of non-English speaking licensees may increase. Public protection is maintained, because the applicants still must demonstrate knowledge of the material that is on the exams.

CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, the Board of Behavioral Sciences has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent or incompatible with existing state regulations.

FORMS INCORPORATED BY REFERENCE

No forms have been incorporated by reference.

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 fiscal impact of this proposal will be minor and absorbable.

This is based on the following:

- The Board expects approximately 100 applicants per year will qualify for the ESL extra examination time.

- The company that administers the Board's examinations charges the Board an extra sitting fee per applicant of \$8 per hour.
- The Board's longest exam is 4 hours. If an applicant qualifies for extra time (time-and-a-half), he/she would get an additional 2 hours to take the exam.
- Some of the Board's applicants are required to take 2 Board-administered exams (depending on the license type they are applying for). To be conservative, the Board is assuming that each applicant will take 2 exams.

Therefore, the Board is estimating the following annual fiscal impact:

100 applicants x 2 extra exam hours x \$8 per extra exam hour x 2 exams taken per applicant = \$3,200 additional cost to the Board per year

This calculation is also shown in Attachment A of the STD 399.

If applicants choose to take the TOEFL-iBT test to meet the requirements, they will incur some costs. In California, the cost to the applicant to take the TOEFL-iBT test is \$190, plus a \$19 fee to have ETS send the score to the Board.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 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 business, including the ability of California businesses to compete with businesses in other states. The allowance of qualifying applicants who speak English as a Second Language to be granted extra time on their licensing examinations will not have a negative impact on California businesses. It only affects California businesses indirectly (and not in a negative manner), in that they may later have a better opportunity to hire a bilingual licensed mental health practitioner.

Cost Impact on Representative Private Person or Business: The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action are very minor. The Board estimates that approximately 100 applicants per year will seek the ESL extra exam time. If these applicants choose to qualify by showing a foreign degree taught in a language other than English, or by showing an ESL accommodation in their Master's degree program, the cost they incur should be very minimal as the school will only need to mail the Board proof of the accommodation or foreign degree.

If the applicant chooses to qualify for the extra exam time by taking the TOEFL-iBT test, and they do not already have a valid score from within the last two years, they will incur a cost of \$209 (\$190 to take the test, and \$19 for the testing entity to send the Board the score).

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. Allowing extra exam time for ESL applicants may make some of those applicants more likely to pass the exams. This could benefit businesses who are seeking to employ mental health professionals who speak other languages, because it could increase the client bases of those businesses.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

These proposed regulations will not negatively impact a business that is owned by a Board licensee or that employs Board licensees. Allowing extra exam time for ESL applicants may make some of those applicants more likely to pass the exams. If a business has a large client base that speaks a language other than English, and if the proposed ESL extra exam time helps a candidate that speaks this language other than English to pass the exam, the business could benefit from an increased client base if they hire this mental health professional once he or she is licensed.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Board has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the proposed regulation does not create any new requirements for potential licensees, and on following facts:

- **Analysis of creation/elimination of jobs:** This regulatory proposal will not eliminate any jobs, and will potentially create a positive impact to the creation of jobs by increasing the number of licensed mental health professionals. If it makes some ESL applicants more likely to pass their exams and become licensed, then they may practice as licensed professionals. This may increase the client base for companies or practitioners in areas that lack bilingual mental health professionals, if they are able to hire a licensee who speaks a language spoken by the client base.
- **Analysis of creation/elimination of businesses.** No businesses will be eliminated as a result of this proposal. Potential creation of business is expected if ESL applicants are passing the exam and becoming licensed.
- **Analysis of expansion of business:** As noted above, this proposal may lead to some expansion of business. If there are more bilingual mental health professionals available for a business to hire, those businesses may gain an increased bilingual client base.
- **Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:** The Board has determined these regulations may benefit California consumers of mental health services. If the extra examination time reduces barriers to licensure for potential licensees who speak English

as a second language, the population of these licensees will increase. This will benefit non-English speaking consumers of mental health services, because there is a shortage of mental health practitioners who speak foreign languages. This proposal will not affect 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 it will not eliminate any jobs or occupations. This proposal does not impact multiple industries.

Occupations/Businesses Impacted: Allowing extra exam time for ESL applicants may make some of those applicants more likely to pass the Board's licensing exams, if the time allotted to interpret and take the exam has been a barrier to licensure for them. These applicants may be more likely to become licensed, allowing an occupation for them, and increasing the client base for businesses seeking to hire mental health practitioners who speak a language other than English.

Reporting Requirements: The proposed regulations do not impose any reporting requirements on licensees or the public.

Business Reporting Requirement: The proposed regulations do not impose any reporting requirements on businesses.

Comparable Federal Regulations: None

Benefits: This proposal may benefit non-English speaking residents of California who are consumers of mental health services. It is often difficult for these consumers to find a mental health practitioner who speaks their native language. If the extra examination time reduces barriers to licensure for potential licensees who speak English as a second language, the population of these licensees will increase.

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 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. The alternatives considered were as follows:

1. Not adopt the regulations. This alternative was rejected because the Board believes that the diverse population in California needs mental health practitioners that speak a wide variety of languages in order to meet the population's mental health needs. The Board believes that offering ESL applicants extra examination time will help some non-English speakers become licensed, while still ensuring that they are qualified practitioners.
2. Adopt the regulations. The Board determined that this alternative is the most feasible. It helps non-English speakers by ensuring they have enough time to interpret the questions on the examination, and it upholds public protection because it ensures their knowledge of

the mental health profession is still being tested.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the 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 and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in the Notice under Contact Person or by accessing the Board's website, www.bbs.ca.gov.

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:

Name: Rosanne Helms
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The backup contact person is:

Name: Christy Berger
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Website Access: Materials regarding this proposal can be found at www.bbs.ca.gov.