

BOARD OF BEHAVIORAL SCIENCES
INITIAL STATEMENT OF REASONS

Hearing Date: No hearing has been scheduled for the proposed action.

Subject Matter of Proposed Regulations: Continuing Education and Additional Coursework

Section(s) Affected: California Code of Regulations (CCR), Title 16, Division 18, 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; and repeal sections 1810.1, 1810.2, 1887.4, 1887.7, 1887.8, 1887.9, 1887.10, 1887.11, and 1887.15.

Background and Statement of the Problem:

The Board of Behavioral Sciences (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.

Current law specifies the requirements pertaining to ongoing continuing education (CE) for the board's licensees, as well as one-time additional training courses required prior to registration or licensure. These requirements help ensure that the board's licensees are knowledgeable, appropriately and continuously educated, and professionally competent to provide mental health services to the public.

In 2015, the CE requirements were subject to a complete overhaul, which did away with direct board approval of CE providers. This resulted in a transition period for those who held a board-approved CE provider number, which has now ended. This has now resulted in outdated CE provider requirements.

Requirements pertaining to the additional training courses required prior to registration or licensure have become outdated and inconsistent with content requirements for similar coursework that must be provided within a qualifying degree program as specified in Business and Professions Code (BPC) sections 4980.36, 4980.81, 4999.33 and 4999.62. The additional training requirements specified in regulation need to be revised so that they are consistent with these BPC sections so that all licensees will

have similar levels of knowledge on these important topics.

The proposed regulatory changes address multiple articles within CCR, Title 16, Division 18¹, which set forth the CE and additional coursework regulations for the different license types, including Article 1, General Provisions (sections 1807, 1807.2, 1810, 1810.1, 1810.2, and 1810.5) and Article 8, CE Requirements for Marriage and Family Therapists, Licensed Clinical Social Workers, Licensed Educational Psychologists, and Licensed Professional Clinical Counselors (16 CCR sections 1887, 1887.1, 1887.2, 1887.3, 1887.4, 1887.4.0, 1887.4.1, 1887.4.2, 1887.4.3, 1887.7, 1887.8, 1887.9, 1887.10, 1887.11, 1887.11.0 and 1887.15).

Specific Changes: Purpose, Factual Basis/Rationale, and Anticipated Benefits:

The following proposed changes to Title 16, Division 18 of the CCR are listed in order by section.

A. AMEND SECTION 1807. HUMAN SEXUALITY TRAINING.

1807: Update outdated statutory references, make grammatical changes, and update reference citations.

1807(b): Update course content requirements for consistency with BPC sections 4980.36, 4980.81, 4999.33 and 4999.62, and include updated terminology.

1807(c): Strike requirements for acceptable training providers, and move those requirements to a new, separate section (proposed § 1810.5) applicable to all coursework specified in Title 16, Division 18, Article 1, General Provisions (Article 1).

Purpose, Factual Basis/Rationale and Anticipated Benefits:

Human sexuality course content requirements have not been updated since 1987. Recently updated statutes requiring this course as part of LMFT or LPCC degree programs (BPC §§ 4980.36(d)(2)(H) and 4999.33(d)(7)), use updated language consistent with current mental health practices detailed in the *Diagnostic and Statistical Manual of Mental Disorders* (5th ed; DSM-5; American Psychiatric Association, 2013), an industry reference for the classification of mental disorders that contains common language and standard criteria. This section has been revised in light of the statutory language.

Subdivision (c) is proposed to be stricken as the requirements for acceptable training providers for all training courses specified in Article 1 are now listed in section 1810.5. This change streamlines, creates consistency, provides equity in the requirements, and provides clarity for applicants who are trying to determine

¹ All CCR references are to Title 16, Division 18

acceptable providers. Reference citations have been modified due to being outdated, irrelevant, or due to changes in statute.

This proposal modernizes, streamlines, and provides consistency in the board's regulations, and will help protect the public by helping to ensure licensees' competency in current mental health practices.

B. AMEND § 1807.2. CHILD ABUSE ASSESSMENT TRAINING REQUIREMENTS.

1807.2: Update the section heading for consistency with the content of the section's text. Make grammatical and clarifying changes, strike unnecessary or outdated language, and update authority and reference citations.

1807.2(b), (c), (d): Strike requirements for acceptable training providers, and move those requirements to a new, separate section (proposed § 1810.5) applicable to all coursework specified in Article 1.

1807.2(e): Require training to be completed within five years prior to license application or renewal, rather than any time after January 1, 1983.

1807.2(f): Strike outdated language pertaining to licensed educational psychologist license renewal.

Purpose, Factual Basis/Rationale and Anticipated Benefits:

In addition to making grammatical changes and striking outdated language, the proposed amendments clarify that completion of training in child abuse assessment and reporting is required for LEPs applying for a first-time renewal of their license, consistent with the board's intended interpretation of this regulation.

Subsections (a) through (d) are proposed to be stricken as the acceptable training providers for all coursework specified in Article 1 are now listed in section 1810.5. This change streamlines, creates consistency, provides equity in the requirements, and provides clarity for applicants who are trying to determine acceptable providers.

The proposed language also requires the training to be completed within the five years prior to the date of license application or renewal, which helps to ensure that applicants and current LEP licensees have knowledge of current methods, processes, and laws related to child abuse assessment and reporting.

Authority and reference citations have been changed due to being outdated, irrelevant, or unnecessary, and other reference citations have been updated due to a statutory change or being newly identified as a relevant reference.

This board anticipates that the public and its licensees will benefit from improved clarity and consistency in the board's regulations and that these changes will help ensure licensee competency in the critical obligations of the board's licensees to assess, properly identify, and report child abuse.

C. AMEND AND RENUMBER § 1810 to 1807.3. ALCOHOLISM AND OTHER CHEMICAL SUBSTANCE DEPENDENCY TRAINING.

1807.3: Renumber section, make grammatical and clarifying changes, strike unnecessary or outdated language, and update authority and reference citations.

1807.3(a): Update outdated statutory references, update required course content to include substance abuse training, and modify terminology relating to the client.

1807.3(b), (c) and (e): Strike language pertaining to acceptable training providers, and move those requirements to a new, separate section (proposed § 1810.5) applicable to all coursework specified in Article 1.

1807.3(d) (now (b)): Clarify that the training is required for first-time license renewal only (as opposed to being an ongoing requirement).

Purpose, Factual Basis/Rationale and Anticipated Benefits:

Clarifying that the training is required only for first-time renewal of an LEP license creates consistency with the board's intended interpretation of this regulation, as opposed to it being an ongoing requirement. Subdivision (b) is proposed to be stricken as the acceptable training providers for all coursework specified in Article 1 are now listed in section 1810.5. This change streamlines, creates consistency, provides equity in the requirements, and provides clarity for applicants who are trying to determine acceptable providers.

Adding the topic of substance abuse clarifies that this content (as opposed to only substance dependency) must be covered throughout the course, as "abusing" a substance is not the same as being "dependent" on a substance. Requiring the course to define substance abuse, and to address the medical aspects and the major treatment approaches is necessary to help ensure licensee competence when encountering a client struggling with substance abuse.

Changing the label "abuser" to "client" avoids the use of a stigmatizing term for the affected individual. Authority and reference citations have been changed due to being outdated or unnecessary, or due to a change in the numbering of the statute. The board anticipates that the public and its licensees will benefit from improved clarity and consistency in the board's regulations and that these changes will help ensure licensees are competent and appropriately trained in substance dependency and substance abuse topics.

D. REPEAL § 1810.1. CALIFORNIA LAW AND ETHICS TRAINING; ACCEPTABLE EDUCATION PROVIDERS.

REPEAL § 1810.2. CRISIS OR TRAUMA COUNSELING TRAINING.

Purpose, Factual Basis/Rationale and Anticipated Benefits:

The proposed amendments fully repeal sections 1810.1 and 1810.2, both of which pertain solely to defining acceptable providers for the California Law and Ethics training required by BPC sections 4980.80 and 4999.32, and Crisis or Trauma Counseling training required by BPC section 4999.32. Currently, the list of acceptable training providers is somewhat different for each course listed in Article 1. The acceptable training providers for all coursework listed in Article 1 are now provided in section 1810.5. This change streamlines, creates consistency, provides equity in the requirements, and provides clarity for applicants who are trying to determine acceptable providers.

E. ADD § 1810.5. ACCEPTABLE TRAINING PROVIDERS.

1810.5 (a): Requires the courses listed to be taken from providers specified in subsection (b).

1810.5 (b): Specifies acceptable course providers.

Purpose, Factual Basis/Rationale and Anticipated Benefits:

This proposed new section specifies acceptable training providers for all courses listed in Article 1 of the board's regulations. Currently, the provider requirements are delineated in each course's respective section of the regulations and differ somewhat from one course to another. These differences create confusion for applicants and the training providers. The requirements for acceptable providers have been made consistent and streamlined into three types of providers: accredited institutions, approved institutions, and continuing education (CE) providers accepted by the board. These three types of providers mirror the training providers accepted for coursework required in various sections of the board's statutes, as well as for post-licensure continuing education requirements.

This change will no longer allow for acceptance of a human sexuality course (as required by section 1807.2), or a child abuse assessment and reporting course (as required by section 1807.3), that has been taken from a government entity or licensed health facility unless that entity is a board-accepted CE provider. This will help to ensure the quality of courses and alleviate confusion about acceptable training providers.

This proposal streamlines and provides clarity and equity in the board's requirements for acceptable training providers for all required coursework.

Applicants and training providers will benefit from clear, uniform standards, accessible in a stand-alone section of the regulations.

F. AMEND § 1887. DEFINITIONS.

1887(a): Clarify that a CE course may be provided in person or online, and make grammatical changes.

1887(c): Strike the definition of “initial renewal period.”

1887(d): Clarify the definition of “renewal period.”

1887 (e): Make a grammatical change.

Authority Citations: Update section numbers.

Purpose, Factual Basis/Rationale and Anticipated Benefits:

Clarifying that a CE course may be in person or online is consistent with the board’s intended interpretation of subsection (a). The definition of “initial renewal period” in subsection (c) is no longer necessary. It had been necessary because subsection (a) of section 1887.2 (now proposed to be stricken) set the initial CE requirement for new licensees at half the normal 36-hour requirement, since the initial renewal period was often shorter than the standard license renewal period of 24 months.

Previously, the board issued initial licenses that expired anywhere from 13 months to 24 months from the date of issuance, using the applicant’s birth month to determine the expiration date. For example, if an individual’s birth month was December, and the individual met all requirements for licensure in June of 2022, the license would expire December 31, 2023. Once the board’s new applicant tracking system came online, it provided an opportunity to streamline that longstanding process and provide all new licensees with a standard 24-month initial renewal period.

The current definition of “renewal period” in subsection (d) is unclear because the “effective date of the license” is not printed on the license or described elsewhere. The proposed changes ensure uniformity and clarity of the renewal period and ensure that new licensees complete the same minimum amount of CE as individuals who have held a license for a longer period of time. Authority citations have been updated due to being outdated or unnecessary.

This proposal updates, clarifies, and provides equity in the board’s regulations, and will help protect the public by ensuring a new licensee’s competency through completion of the same minimum amount of CE as individuals who have been licensed for a longer period of time.

G. AMEND § 1887.1. LICENSE RENEWAL REQUIREMENTS.

1887.1: Update the section's title to more clearly reflect the content of the section, make grammatical changes, and update authority and reference citations.

1887.1(c): Clarify that individuals who hold more than one license with the board may apply the same CE course to both licenses if the subject matter is relevant to each license's scope of practice.

Purpose, Factual Basis/Rationale and Anticipated Benefits:

Individuals who hold more than one license with the board often contact the board to ask if they may apply the same CE courses to both licenses. The vast majority of CE courses for mental health professionals offered by board-accepted CE providers are applicable to multiple licenses since the scopes of practice are so similar. This change is consistent with the board's intended interpretation of the CE regulations and provides clarity for individuals who hold more than one license and are seeking to fulfill their CE obligations. It also eliminates the cost and time associated with taking duplicative CE. Authority and reference citations have been modified due to being outdated or unnecessary, or due to a change in the numbering of the statute, or added after having been identified as relevant.

H. AMEND § 1887.2. EXCEPTIONS FROM CONTINUING EDUCATION REQUIREMENTS.

1887.2: Rename CE "exceptions" or "reasonable accommodation" for CE as "temporary CE waivers" (CE waiver), update the section's title to more clearly reflect the content of the section, make grammatical changes, and update authority and reference citations.

1887.2(a): Strike the 18-hour CE exception for initial renewal periods.

1887.2(b) (now (a)): Clarify that a licensee granted retired status is exempt from CE.

1887.2(c) (now (b)): Update the title and number of the form incorporated by reference, and strike text being moved to subsection (f).

1887.2(c)(1) (now (c), (c)(1) and (c)(2)):

1. Clarify that the disability must have occurred during the licensee's current renewal period (the two-year period just prior to the upcoming license expiration date).

2. Strike text allowing an exception if the licensee was absent from California due to military service for one or more years during the renewal period.
3. Strike text allowing an exception if the licensee resided in another country for one or more years during the renewal period.
4. Update CE waiver criteria for a licensee who had a physical or mental disability or medical condition for at least one year during the renewal period as follows:
 - Strike a reference to “reasonable accommodation” and section 12926 of the Government Code.
 - Move text regarding the licensee serving as a primary caregiver for an immediate family member to subsection (c)(2).
 - Set forth the limitations that the licensee’s condition must have created to qualify for a CE waiver, including a specified drop in earned income.
 - Clarify the categories of earnings that count as earned income and include a reference to the Social Security Act.
5. Update CE waiver criteria for a licensee who was the primary caregiver for an immediate family member as follows:
 - Define “total physical or mental disability” as the family member being both unable to work and unable to perform activities of daily living without substantial assistance.

1887.2(c)(2) (now (d)): Clarify that verification is required for a licensee’s or immediate family member’s condition, and require the licensee’s family member to sign a written authorization for a release of their protected health information (PHI) when the licensee is requesting a waiver due to having been the family member’s primary caregiver.

1887.2(c)(3) (now (e)): Require the licensee to provide proof of all income earned from work activity during the period of the licensee’s disability, or evidence that the licensee did not earn any income from work activity.

1887.2(d) (now (f)): Move text from subsection (c) and clarify that a licensee whose request for CE waiver is denied must fully comply with CE if renewing in an active status. Clarify that a CE waiver is valid for the current renewal period only.

1887.2(e) (now (g)): Require licensees who are granted a CE waiver to complete the six hours of CE in law and ethics as required by section 1887.3(d) (now (c)), regardless of whether or not they were granted a CE waiver.

Forms Incorporated by Reference

Update forms incorporated by reference as follows:

Form 37A-635: "Request for Temporary Continuing Education Waiver – Licensee Application".

- Make grammatical changes.
- Make changes for clarity and for consistency with the proposed revised requirements, including renaming a CE exception as a temporary CE waiver.
- Add a section titled "Instructions and Information" that contains information previously on the back of forms 37A-635 and 37A-636, and synthesizes, streamlines, and updates that information.
- Provide information about time frames for submission and processing below the title of the form.
- Emphasize that the law and ethics CE course cannot be waived.
- Provide information about who qualifies for a CE waiver.
- Update and expand the instructions on how to request a CE waiver, including the forms and documentation required.
- Strike the section that provides the actual text of the exception/waiver regulation and replace it with a reference to that section of the regulations.
- Streamline text and remove the example under the heading "Exceptions Cannot be Granted Before the Fact".
- Retitle the section titled "Renewal Application," update the text in that section, and move the information about what to do if the licensee's request is denied to another section, where it is also expanded upon.
- Add a section about what the licensee should do if their waiver is approved.
- Update the Notice of Collection of Personal Information.
- Add information under the form title about the reason for request, the form required, and processing time frames.
- Strike the "For Office Use Only" box.
- Split the form into separate sections, with Part 1 indicating the form fields, Part 2 pertaining to the licensee's own condition and Part 3 pertaining to a family member's condition.
- Revise the form fields in Part 1 to request an email address, streamline the request for both business and residence telephone numbers into requesting just one telephone number, strike the request for social security number, and request current license expiration date rather than the renewal period.

- Make the following changes in Part 2:
 - Strike the request for a detailed description of the condition and an explanation of how the condition limits life activities.
 - Strike the requirement for the licensee to have a “total” disability to qualify for an exception.
 - Request limited, basic information about the nature of a licensee’s health condition, including:
 - Whether the condition substantially limited the licensee’s ability to perform life activities for at least one year during the current renewal cycle; and
 - Whether the condition caused earned income to drop below the “substantial gainful activity” (SGA) amount for the non-blind during that year as set by the United States Social Security Administration (SSA).
 - Specify the required attachments, including proof of all income earned from work activity during the period of disability, or evidence that no income was earned from work activity.
 - Strike the question about the type of accommodation being requested.
 - Strike the question about how another accommodation would allow the licensee to comply with CE.
- On Part 3, request the family member’s name, the relationship, the nature of the condition and its impact, whether the licensee was the primary caregiver for at least one year during the current renewal cycle, and add the required authorization to release PHI.
- Add a certification above the signature line stating that the licensee was unable to complete CE due to one of the reasons listed in section 1887.2.
- Strike the sentence about renewal form certification.
- Strike the information on the back of the form, most of which was moved to the form instructions and revised.

Form 37A-636: “Request for Temporary Continuing Education Waiver – Verification of Disability or Medical Condition”:

- Make grammatical changes.
- Make changes for clarity and for consistency with the proposed revised requirements, including renaming a CE exception as a temporary CE waiver.
- Add information about processing time.
- Strike the “For Office Use Only” box.
- Revise the form fields in Part 1 to request an email address, streamline the

request for both business and residence telephone numbers into requesting just one telephone number, strike the request for social security number, and request current license expiration date rather than the renewal period.

- Request the name of the immediate family member.
- Split the remainder of the form into Part 2 and Part 3, with Part 2 pertaining to the licensee's own condition, and Part 3 pertaining to a licensee's family member's condition.
- Make the following changes in Part 2 (Health - Self):
 - Strike the question requesting a detailed description and explanation of how the condition limited major life activities including the licensee's ability to complete CE.
 - Add questions about the nature of the licensee's condition, its impact, the time frame that the condition began, and if applicable, when it ended.
 - Strike the question pertaining to limitations on the licensee's ability to work in their licensed capacity.
 - Add an information and signature section to be completed by the attending physician or psychologist.
- Make the following changes in Part 3 (Health – Licensee's Immediate Family Member):
 - Provide instruction on which parts of the form must be completed by the attending physician or psychologist, and which part must be completed by the licensee's family member.
 - Add questions requesting the family member's name, diagnosis, whether it limited the family member's ability to work and perform activities of daily living, the time frame that the condition began, and if applicable, when it ended.
 - Add a section for the family member's written authorization to release PHI for the purpose of the request for CE waiver.
- Strike text about providing false information and strike the requirement for the licensee's (applicant) signature.
- Move and revise the Notice of Collection of Personal Information.
- Strike the remaining text on the back of the form, most of which was revised and moved to the "Instructions and Information" section of form 37A-635.

Purpose, Factual Basis/Rationale and Anticipated Benefits:

1887.2: Renaming CE “exceptions” or “reasonable accommodations” as “temporary waivers” better describes the regulation’s purpose and will help licensees gain a better understanding of what they are requesting. Other changes will improve readability and clarity. The changes protect consumers by ensuring CE waivers are temporary, are granted under limited circumstances, and that licensees achieve and maintain competency through timely completion of required CE. Authority and reference citations have been changed due to being outdated, irrelevant or unnecessary, and other reference citations have been updated due to a statutory change or being newly identified as a relevant reference.

1887.2(a): The 18-hour CE exception for a new licensee’s initial renewal period (half of the regular 36-hour requirement) is no longer necessary because initial renewal periods are now two years long for all licensees – previously the period could be as short as 13 months, as the expiration date was based on an individual’s birth month. This change will establish uniformity in the CE requirements for licensees and help ensure licensee competency through timely completion of required training.

1887.2(b) (now (a)): Clarifying that a licensee on retired status is exempt from CE will codify the board’s intended interpretation of the regulation and is consistent with statute (BPC sections 4984.41, 4989.45, 4997.1 and 4999.113).

1887.2(c) (now (b)): Clarifying that a CE exception is a temporary waiver as opposed to a blanket exception is necessary because licensees often believe that an exception is permanent. Striking references to “reasonable accommodation” is necessary for clarity because the regulation provides for only two options – either a CE waiver for one renewal period, or denial of the CE waiver request. Currently the form lists completion of CE via “self-study” as a reasonable accommodation and as an alternative to a waiver. However, the definition of “self-study” (formerly in section 1887(b)) was repealed effective January 1, 2015 as it was deemed no longer necessary due to the abundant availability of CE online.

1887.2(c)(1) (now (c), (c)(1) and (c)(2)): An exception for licensees absent from California due to military service is no longer necessary as BPC § 114.3 exempts active duty military from CE. An exception for licensees residing in another country is no longer necessary because the licensee can either take online CE courses or renew in an inactive status. Amending the waiver criteria for a licensee who had disability or medical condition, including removal of the requirement for the licensee to have had a “total” mental and/or physical disability (per the forms incorporated by reference), will allow licensees who are impacted by a health condition, yet able to work a limited number of hours, to qualify for a CE waiver. The changes also clarify the conditions and levels of severity that qualify for a waiver, and simplify the information required from the evaluating physician or psychologist providing verification of the health condition.

Requiring the licensee to provide income information to be compared with the Substantial Gainful Activity (SGA) amount for non-blind individuals as defined by the SSA will support the necessity of a CE waiver in the absence of greater information about the health condition, and provides a clear standard that is updated yearly by the SSA in accordance with changes in the national average wage index. For example, the SGA amount for the non-blind for 2020 is \$1,260 monthly. It will also reduce the amount of descriptive information to be provided about the licensee's condition, which helps to protect the licensee's PHI. The SGA was selected as the standard, as a search turned up no other appropriate alternatives on which to base such a standard.

Updating the CE waiver criteria for a licensee who was the primary caregiver for an immediate family member with a clear definition of a total physical or mental disability will help to clarify the conditions and levels of severity that qualify for a waiver. The prior regulatory language required a total disability but did not provide a definition. A definition helps to simplify the information required from the evaluating physician or psychologist providing verification of the health condition.

1887.2(c)(2) (now (d)): Clarifying that a verification of the condition is required for the licensee or the family member is necessary because the law currently does not specify for whom the verification must be provided. Verification of the family member's condition will necessarily include personally identifiable information (PII) and PHI. In order for the licensee to submit this information and for the board to accept, review, retain this information, the family member must provide written consent. Requiring a copy of the family member's written authorization for the physician or psychologist to release PHI complies with HIPAA and other relevant privacy laws.

1887.2(c)(3) (now (e)): Requiring the licensee to provide proof of all income earned from work activity during the period of the licensee's disability, or evidence that the licensee did not earn any income from work activity will demonstrate that the licensee met the requirements of subsection (c)(1).

1887.2(d) (now (f)): Clarifying that a licensee whose request for CE waiver is denied must fully comply with CE if renewing in an active status will help a licensee understand what is required if their CE waiver request is denied. Clarifying that a CE waiver is valid for the current renewal period only will help licensees understand that the waiver is not permanent.

1887.2(e) (now (g)): Requiring licensees who are granted a waiver to complete six hours of CE in law and ethics prior to renewal is necessary for consumer protection because the licensee is allowed to continue practicing after being granted a waiver. The licensee has the option to renew with an inactive status until the course is completed.

Forms Incorporated by Reference

Updating forms incorporated by reference is necessary for consistency with the proposed updated requirements and for clarity. The changes protect consumers by ensuring CE waivers are temporary, are granted under limited circumstances, and that licensees achieve and maintain competency through timely completion of required CE.

Form 37A-635: "Request for Temporary Continuing Education Waiver – Licensee Application"

The changes clarify the application process and CE waiver requirements, which in turn will help licensees better understand and more easily comply with these requirements. Moving and combining the information and instructions previously located on the back side of forms 37A-635 and 37A-636 will help licensees better understand the CE waiver request process and requirements, and what to do after notification of the board's decision.

In addition:

- Changing the processing time from 30 business days to 30 calendar days reflects the board's current practice and anticipated future practice.
- Striking the "For Office Use Only" box has no regulatory effect on the licensee.
- Requiring a general telephone number, as opposed to business and residence telephone numbers streamlines the form and still provides adequate contact information.
- Requesting an email address will assist in communicating with the licensee.
- Striking the social security number (SSN) helps to protect the licensee's SSN and is not necessary for processing the application.
- Striking the request for a detailed description of the condition and resulting limitations and replacing it with limited, basic questions about the condition will help to maintain privacy of PHI.
- Asking whether the condition substantially limited the licensee's ability to perform life activities for at least one year during the current renewal cycle will help the licensee understand the CE waiver criteria.
- Asking whether the condition caused earned income to drop below the SGA will assist in determining severity in lieu of detailed information about the condition. This provides a clear and unambiguous qualifying standard and accommodates a condition that may allow the licensee to work some hours but not do much else.
- Requiring proof of all income earned from work activity during the period of disability, or evidence that no income was earned from work activity will demonstrate the licensee's ability to meet waiver criteria.

- Adding a section specific to a family member’s health condition is necessary because the qualifying criteria for a licensee’s own health condition is different than for a family member’s condition where the licensee is a caregiver.
- Requiring the family member’s name is necessary to ensure it matches the physician or psychologist verification.
- Requiring the relationship to the family member is necessary to determine whether the person is a qualifying family member.
- Requiring information about the nature of the family member’s condition, including the ability to work and perform activities of daily living without substantial assistance, and whether the licensee was the primary caregiver, is necessary in order to ensure that the waiver criteria has been met.
- Adding a certification above the signature line that states the licensee was unable to complete the CE due to one of the reasons listed in 16 CCR section 1887.2 will help to emphasize that the requirements of the regulation must be met in order to qualify, and will discourage frivolous requests for CE waivers.
- The sentence pertaining to the renewal form certification is unnecessary, as this information is on the renewal form itself.

Form 37A-636: “Request for Temporary Continuing Education Waiver – Verification of Disability or Medical Condition”

The changes clarify the request process and CE waiver requirements, which in turn will help licensees, as well as the physician or psychologist performing the verification, better understand and more easily comply with the regulatory requirements. Separating the form into separate parts for a licensee’s health condition and for the immediate family member’s health condition is necessary because the criteria for qualifying differs depending on whether it is the licensee’s own condition, or the family member for whom the licensee is a caregiver.

In addition:

- Striking the “For Office Use Only” box has no regulatory effect on the licensee.
- Requiring a general telephone number, as opposed to business and residence telephone numbers streamlines the form and still provides adequate contact information.
- Requesting an email address will assist in communicating with the licensee.
- Striking the social security number (SSN) helps to protect the licensee’s SSN and is not necessary for processing this application.
- Striking the questions about whether the licensee was limited in working in their licensed capacity and requesting a description and explanation of “how” the condition limited major life activities, and replacing them with basic questions

about the condition, its length and “whether” it limited the individual’s ability to perform life activities reduces the amount of PHI disclosed while still eliciting adequate information to determine whether the condition meets the CE waiver requirements. In addition, health professionals rarely completed these questions fully or correctly.

- Requiring the family member’s name is necessary to ensure it matches the family member listed on the licensee application.
- Requiring information about the nature of the family member’s condition, their ability to work and perform activities of daily living, and whether the licensee was the primary caregiver is necessary in order to ensure that the waiver criteria has been met.
- The requirement to provide a copy of the family member’s written authorization for the physician or psychologist to release PHI complies with HIPAA and other relevant privacy laws.
- Striking the text about the consequences of providing false information is necessary because the physician or psychologist completing this form is not under the Board of Behavioral Sciences’ jurisdiction.
- Removing the signature of the licensee is proposed because this form is primarily for the physician or psychologist to complete, and the licensee is already required to sign the accompanying form (Form #37A-635).

I. AMEND § 1887.3. CONTINUING EDUCATION COURSE REQUIREMENTS

1887.3: Make grammatical changes and update authority citations.

1887.3(b): Delete the 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.

1887.3(d) (now (c)): Clarify that the board will not credit law and ethics coursework completed to meet supervisor training requirements towards the 6-hour CE law and ethics course requirement, but specify that the course will count toward the thirty-six (36) hours of CE required overall each renewal period.

1887.3(d) (new): Text moved from subsection (f) and now specifies that the same course may not be claimed more than once per license type.

1887.3(e): Specify that a course taught for a board-accepted CE provider may be claimed for a maximum of 18 hours in that renewal period.

1887.3(f): Text moved to subsection (d).

1887.3(h), (i) and (j) (now (g), (h) and (i)): Clarify that “board” means the Board of Behavioral Sciences, and change “may be awarded” to “shall be credited with”.

1887.3 (j): Allow a licensee who completes a board occupational analysis survey to be credited with up to six hours of CE.

1887.3 (k): Clarify that in order for a licensee’s participation in a professional organization’s law and ethics review committee to be credited toward CE, it must be with a mental health professional organization. Change “may be awarded” to “shall be credited with”.

1887.3 (l): Specify the types of documentation of completion necessary for the activities specified in subsections (g) through (k), and require the records to be retained for at least two years and provided to the board if the licensee were the subject of a CE audit.

Purpose, Factual Basis/Rationale and Anticipated Benefits:

1887.3: This proposal will update and provide clarity and consistency in the board’s regulations and will provide for consumer protection by helping to ensure licensee competency through timely completion of clearly defined CE requirements. Authority citations have been changed due to being outdated or irrelevant.

1887.3(b): This requirement is no longer necessary for LMFT and LCSW licensees because applicants for LMFT and LCSW licensure must meet the alcohol and other chemical substance dependency and substance abuse course requirement prior to license issuance per BPC sections 4980.36, 4980.41 and 4996.2.

1887.3(d) (now (c)): LMFT and LPCC supervisors are required to take 6 hours of supervisor training each renewal period, and all licensees must take 6 hours of CE on the topics of law and ethics every renewal period. Current regulations are unclear as to whether one 6-hour course in law and ethics for supervisors can meet both of these requirements. The board’s intended interpretation is that it must be two six-hour courses, both of which may count toward the licensee’s overall 36-hour CE requirement. This will help to ensure a licensee’s competence in law and ethics and in supervising individuals working toward licensure.

1887.3(d) (new): Specifying that the same course may not be claimed more than once “per license type” helps to clarify that a course may count toward more than one license type if applicable to each license’s scope of practice, while the same exact course taken twice during a single renewal period may only be counted once toward any license. For example, a licensee who holds both a LCSW and LMFT

license takes a 6-hour course on law and ethics for mental health professionals. That single 6-hour course may be counted toward both licenses. However, if a licensee takes the same exact 6-hour law and ethics course twice during the same renewal period, they may only count that course once. This is also in alignment with subsection (c) of section 1887.1.

1887.3(e): Limiting the amount of CE that may be fulfilled by teaching courses to a maximum of 18 hours out of the overall requirement of 36 hours each renewal period is necessary because licensees may count the same class with the same content taught each renewal period, and that same course could fulfill the licensee's entire CE requirement on an ongoing basis. This limit will encourage the licensee to take CE on topics different than the course(s) taught. Specifying that the course taught must be for a board-accepted provider helps to ensure that the course meets the standards for a board-accepted CE course.

1887.3(h), (i) and (j) (now (g), (h) and (i)): Changing "awarded" to "credited with" is a more accurate reflection of the board's role. The board is not a provider who awards CE, but the board does allow specified activities to be credited toward CE. Changing "may" to "shall" more accurately reflects that the board automatically credits CE for these activities.

1887.3 (j): Allowing a licensee who completes a board occupational analysis survey to be credited with six hours of CE reflects the value of this activity and may help encourage more licensees to participate. Such surveys are performed approximately every seven years.

1887.3 (k): Specifying that a licensee's participation in a professional organization's law and ethics review committee must be with a mental health professional organization reflects the board's intended interpretation of this section and ensures that the activity is pertinent to a mental health professional's license. Changing "awarded" to "credited with" is a more accurate reflection of the board's role. The board is not a provider who awards CE, but the board does allow specified activities to be credited toward CE. Changing "may" to "shall" more accurately reflects that the board automatically credits CE for these activities.

1887.3 (l): Specifying the types of documentation of completion necessary for the activities specified in subsections (g) through (k), and the length of time for the licensee to retain the documentation provides a clear standard for what is needed for the licensee to pass a CE audit.

- J. REPEAL § 1887.4. CONTINUING EDUCATION COURSE CONTENT.**
- REPEAL § 1887.7. BOARD-APPROVED PROVIDERS.**
- REPEAL § 1887.8. REVOCATION AND DENIAL OF BOARD-APPROVED PROVIDER STATUS.**
- REPEAL § 1887.9. COURSE ADVERTISEMENTS.**
- REPEAL § 1887.10. COURSE INSTRUCTOR QUALIFICATIONS.**
- REPEAL § 1887.11. RECORDS OF COURSE COMPLETION.**
- REPEAL § 1887.15. TRANSITION PERIOD FOR CONTINUING EDUCATION PROGRAM.**

Purpose, Factual Basis/Rationale and Anticipated Benefits:

The proposed amendments repeal outdated regulations pertaining to the board's former CE program which required the board to approve and oversee individual CE providers. This proposal will update and provide clarity and consistency in the board's regulations.

The board's CE regulations saw major changes take effect on January 1, 2015 via regulatory action number 2014-0807-02S. One of the changes was removing the board's role of directly approving and overseeing individual CE providers and assigning that responsibility to designated CE approval agencies. A transition period was provided for in section 1887.15, with that period ending when the board's approval of CE providers had expired. Since all board approvals have now expired, the sections pertaining to board-approved providers and the transition period need to be repealed. This board anticipates that the public and its licensees will benefit from improved clarity and consistency in the board's regulations.

K. AMEND §§ 1887.4.0. CONTINUING EDUCATION COURSE CONTENT.

Purpose, Factual Basis/Rationale and Anticipated Benefits:

The proposed amendments require CE course content to be "based upon a methodological, theoretical, research, or practice knowledge base," which is consistent with statutes pertaining to CE (BPC sections 4980.54, 4989.34, 4996.22 and 4999.76). In addition, the proposal clarifies that courses must be supported by evidence-based practice, be consistent with current standards of care, be consistent with ethical, legal, statutory and regulatory standards, and must either demonstrate credibility through support from practices, standards and research, or be directly related to certain standards of the professions.

The proposal also clarifies and streamlines language pertaining to course credibility, relationship to the professions' standards, and educational goals and objectives. Lastly, the language also requires a syllabus containing a general outline of the main points of each topic in the course. These changes help to ensure consumer protection by requiring CE courses taken by licensees to meet professional standards for mental health providers.

Stakeholders have reported that course providers struggle to understand the specific meaning of the current language in this section and have pointed out that some of the language is redundant. The revisions provide clarity, greater specificity, and eliminate areas that are redundant, where possible. Striking duplicative language achieves the nonduplication standard of the Administrative Procedure Act (*Government Code section 11349(f); Title 1, California Code of Regulations, section 12*). Authority citations have been changed due to being outdated or unnecessary. By clarifying and streamlining the language, this proposal will alleviate any concern from stakeholders that course providers struggle to understand the specific meaning of this section, improve CE provider and licensee understanding of the course requirements, and help CE providers ensure courses meet all necessary qualifications.

L. AMEND § 1887.4.1. BOARD-RECOGNIZED APPROVAL AGENCIES.

Purpose, Factual Basis/Rationale and Anticipated Benefits:

The proposed amendments alphabetize the list of board-recognized approval agencies, which will improve readability of the board's regulations, and allow licensees and the public to quickly determine whether an entity is a board-recognized approval agency.

M. AMEND § 1887.4.2. APPROVAL AGENCY RESPONSIBILITIES.

Purpose, Factual Basis/Rationale and Anticipated Benefits:

The proposed amendments clean up the numbering and correct citation format, thereby providing clarity and consistency in the board's regulations. The proposed changes will make it easier for licensees and the public to read the regulation.

N. AMEND § 1887.4.3. CONTINUING EDUCATION PROVIDER RESPONSIBILITIES.

Purpose, Factual Basis/Rationale and Anticipated Benefits:

The proposed amendments to the section's title clarify that this section also lists acceptable CE providers. The text changes: (1) clarify that professional associations are the only type of organization that may be recognized by the board as an acceptable CE provider; (2) alphabetize the list of board-recognized CE providers; and (3) make technical and nonsubstantive changes.

Clarifying the type of qualifying organizations that may be considered for board approval will avoid requests from unqualified organizations. Clarifying the section's title and alphabetizing the approved entities will improve readability of the board's regulations. The proposed changes provide clarity in the board's regulations and make it easier to determine quickly whether an entity is an acceptable CE provider.

O. AMEND § 1887.11.0. RECORDS OF COURSE COMPLETION.

Purpose, Factual Basis/Rationale and Anticipated Benefits:

The proposed amendments make grammatical changes, clean up the numbering, and correct the citation format, thereby providing clarity and consistency in the board's regulations.

Underlying Data

- Board meeting minutes – November 22, 2019
- Substantial Gainful Activity information – United States Social Security Administration (<https://www.ssa.gov/oact/cola/sqa.html>)

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. Most of the proposed amendments are minor in nature and 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. This may positively impact businesses that provide CE and result in minor costs to individual licensed psychotherapists.

Economic Impact Assessment/Analysis

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. 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.
- **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. The proposal will have no effect on worker safety or the State’s environment because they do not impact worker safety or the State’s environment.
- **Estimated Costs:** The initial costs for an individual is \$180. This was determined as follows:

CE Waivers

The proposal would change the amount of CE that can be waived due to disability from 36 hours to 30 hours. Only those who are granted a waiver of CE (an average of 17 individuals per year, over the last three years) would be affected. There is no cost associated with this component.

18-hour CE Increase: Teaching Courses and Initial Renewal Periods

1. *Teaching Courses*

This proposal decreases the amount of CE credit that can be obtained by a licensee who uses teaching to fulfill CE from 36 hours to 18 hours. This would result in licensees who use teaching to fulfill all or most CE hours having to complete up to 18 hours of CE courses each two-year renewal cycle.

Staff estimates that 3% of licensees use teaching to fulfill all of their CE hours during each two-year renewal period based on past experience when conducting CE audits. The board’s population of licensees with an “active” status as of November 1, 2019 is 68,914. At 3%, 2,067 licensees could be impacted by this portion of the proposal.

2. *Initial Renewal Periods*

This proposal would increase the amount of CE required for new licensees during their initial renewal period from 18 hours to 36 hours. The law currently requires half of the normal 36-hour CE requirement in the initial renewal period because the first renewal period could be as short as one year (subsequent renewal periods are two years). Due to recent policy changes, all initial renewal periods are now a full two years which has proven to be an adequate amount of time to complete the 36-hour CE requirement. The board issues an average of 5,896 new licenses each fiscal year.

3. *Estimated Costs for 1 and 2 Above*

Staff surveyed 3 CE providers and found that the cost for CE averages \$10 per hour.

| CE Provider | Cost for CE on an hourly basis |
|----------------|--------------------------------|
| Aspira CE | \$8/hour |
| CE4Less | \$6/hour |
| NetCE | \$15/hour |
| Average | \$10/hour |

For item 1 above (no longer exempts 18 hours of CE for teaching courses), the initial cost for an individual is \$180 every two years. The annual ongoing cost is \$90 per year. The total statewide lifetime costs that individuals may incur to comply with this portion of the regulation proposal totals \$1,860,300 ($\$90 \times 2,067 \text{ licensees} \times 10 \text{ years}$).

For item 2 above (requires 36 hours of CE instead of 18 hours for new licensees in the initial renewal period), the cost for an individual is \$180. The annual ongoing cost is \$90 per year. The total statewide lifetime costs that individuals may incur to comply with this portion of the proposal totals \$5,306,400 ($5,896 \times \$90 \times 10 \text{ years}$).

The total statewide lifetime costs that individuals may incur to comply with this regulation proposal in its entirety totals \$7,166,700.

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. This proposal does not impact multiple industries. This proposal only affects board licensees and providers of continuing education within the state of California.

Fiscal Impact Assessment

The regulations are not anticipated to increase workload or costs to the state. While the regulations are anticipated to result in fewer CE waivers issued per year, the board expects to receive and process the same number (as current levels) of CE waivers applications per year. As a result, there is no reduction in workload or costs related to receiving, analyzing, and issuing/denying CE waivers per year.

The board notes, the amendments to increase CE credit requirements, as specified, will not result in additional CE workload or costs because staff are trained to review and evaluate a licensee's fulfillment of CE requirements. As a result, increasing the number of required credits has no impact on board workload or costs.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

The board has made an initial determination 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 for the following reasons:
 - The law would remain outdated, inconsistent and unclear in certain areas.
 - There would continue to be confusion or a lack of understanding about certain aspects of the law and how to comply with the law.
 - The opportunity to enhance consumer protection would be lost.
 - The CE Exception request forms would continue to lack clarity.

2. Adopt the regulations. The board determined that this alternative is the most feasible because it would provide clarity and consistency in the board's regulations, reduce confusion and assist with greater understanding of the regulations and how to comply with them, enhance consumer protection and protect personal health information.