

**TITLE 16: BOARD OF BEHAVIORAL SCIENCES
NOTICE OF PROPOSED CHANGES**

**Subject Matter of Proposed Regulations:
*Supervision-Related Requirements***

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
March 23, 2020

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 March 23, 2020, or must be received by the Board at the hearing.

The Board, upon its own motion or at the insistence 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 section 4990.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 4980.03, 4980.35, 4980.40, 4980.42, 4980.43, 4980.43.1, 4980.43.3, 4980.43.4, 4980.43.5, 4980.44, 4980.45, 4980.60, 4980.72, 4980.74, 4996.17, 4996.18, 4996.20, 4996.23, 4996.23.1, 4996.23.2, 4996.23.3, 4999.12, 4999.20, 4999.32, 4999.33, 4999.46, 4999.46.1, 4999.46.2, 4999.46.3, 4999.46.4, 4999.46.5, 4999.48, 4999.50, 4999.60, and 4999.61 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/POLICY STATEMENT OVERVIEW

The Board of Behavioral Sciences (Board) licenses and regulates Licensed Marriage and Family Therapists (LMFTs), 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. The Board also sets forth certain requirements for Marriage and Family Therapist Trainees and Professional Clinical Counselor Trainees.

- Existing law:
 - Specifies the number and types of supervised experience hours required for licensure and sets forth parameters regarding those hours (BPC §§4980.43, 4996.23 and 4999.46, and Title 16, California Code of Regulations (16CCR) §§1820 and 1833).
 - Specifies the requirements pertaining to supervision of individuals gaining hours of experience toward licensure, including:
 - Supervisor qualifications (BPC §§4980.03(g), 4996.20(a) and 4999.12(h), and 16CCR §§1821, 1833.1, 1870 and 1874).
 - Supervisor responsibilities and acceptable supervision practices (BPC §§4980.43.1, 4980.43.3, 4980.43.5, 4996.20(b), 4996.21, 4996.23.2, 4999.46.1, 4999.46.3 and 4999.46.5, and 16CCR §§1821, 1833.1 and 1870).
 - Direct supervisor contact (BPC §§4980.43.2, 4996.23.1 and 4999.46.2).
 - Required documentation pertaining to supervision (BPC §§4980.43.4, 4996.23.3 and 4999.46.4, and 16CCR §§ 1820(e)(4), 1821(b), 1822, 1833(e), 1833.1(a) and 1870(a)).

This proposal would do the following:

- Make technical, nonsubstantive and clarifying changes.
- Create consistency in supervisor requirements and responsibilities among the three substantially equivalent license types.
- Set standards for documentation when a supervisor is deceased or becomes incapacitated prior to signing off on an applicant's supervised experience.
- Require supervisors to notify the Board that they are supervising and that they meet the qualifications to supervise.

- Require supervisors and supervisees to complete and sign a supervision agreement.
- Codify how completed experience hours shall be verified to the Board.
- Require supervisors to monitor for and address dynamics that could lead to ineffective supervision.
- Address requirements pertaining to temporary substitute supervisors.
- Provide for flexibility in supervisor ongoing training requirements by allowing for certain continuing professional development activities to count.
- Set forth parameters for situations where an individual gaining supervised experience has been placed in an agency by a temporary staffing agency.
- Allow licensees who hold an approved supervisor certification from one of several specified entities to be exempt from certain supervisor qualifications.
- Clarify requirements pertaining to supervision of experience gained outside of California and allow for flexibility in the supervisor’s license title.
- Clarify who can supervise the experience required with couples, families or children that is necessary for an LPCC to obtain the “couples and families” specialty designation.

There is not an existing federal regulation or statute comparable to this proposal, as the Board’s license types are regulated at the state level.

ANTICIPATED BENEFITS OF PROPOSAL

This proposal is expected to result in the following benefits:

- Provide clarity and consistency in the Board’s regulations, and promote consistency in the laws between three substantially equivalent professions.
- Help protect consumers by strengthening requirements that help to ensure competent and effective supervision and facilitate supervisee development and competency.
- Help protect the safety of the supervisee and protect supervisees from losing experience hours.
- Address supervisor shortages, expand job prospects for out-of-state licensees upon licensure in California and improve portability of experience hours from another state to California.

- Allow the Board to target communications with supervisors, and simplify and streamline a substitute supervisor's responsibilities.

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 effect associated with this proposal was addressed through a legislative Budget Change Proposal (BCP), which was approved for Fiscal Year (FY) 2019-2020. The BCP was based on costs and workload identified in the fiscal analysis for Assembly Bill (AB) 93 (Chapter 743, Statutes of 2018), which included the following estimates:

- \$82,000 in FY 2019-2020 and \$74,000 annually thereafter to fund a 1.0 management services technician (MST) to handle the new workload for data entry to document compliance with the proposed supervisor self-assessment. It was estimated that the regulations would be approved around January 2020, at which time the MST position would need to be established.
- Minor and absorbable enforcement workload increase related to ensuring the new supervision requirements are being met.
- Minor and absorbable costs for the Department of Consumer Affairs' Office of Information Services for executing technical functions related to these changes.

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.

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 would result from the following:

This proposal increases the initial supervisor training required from 6 hours to 15 hours (a 9-hour increase) for LMFTs and LPCCs. A survey of three supervisor training course providers found an average cost of \$76.05 for 9 hours of continuing education (CE). There are no new costs for LCSWs as current regulations already require a 15-hour initial supervisor training.

The proposal also newly implements 6 hours of continuing professional development (CPD) for supervisors, for all three license types, every two years while supervising. However, there will be no additional costs for LMFTs and LPCCs, as these professions already have a 6-hour ongoing supervisor training requirement, and the new options for CPD do not typically have associated costs.

LCSW supervisors currently do not have an ongoing training requirement. However, there would also be no cost to LCSWs. The new 6-hour CPD requirement would allow for CE courses to fulfill the requirement. CE courses for supervisors would count toward the 36 hours of CE that is currently required for all LCSWs every two years per BPC §4996.22(a)(1). In addition, the other options for CPD do not typically have associated costs.

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.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would affect small businesses. Many of the Board's licensees either own or work for a small business, and would need ensure that the business, as well as their supervisors and supervisees, comply with the new requirements. The proposal would benefit small businesses by providing clarity, consistency and flexibility in the Board's laws. Small businesses would also benefit from consistency in supervision requirements among substantially equivalent professions, as well as flexibility in supervisor qualifications and training requirements.

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 following facts:

- **Analysis of creation/elimination of jobs:** This proposal will not create or eliminate any jobs within California. The vast majority of the proposed amendments are for the purpose of clarifying, streamlining, or creating consistency or flexibility. The proposed amendments that are more substantial in nature simply impose new minor training requirements for supervisors every two years, new one-time paperwork requirements, and new yearly supervisee evaluations.
- **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.
- **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 who are receiving mental health treatment from an individual who is not yet licensed by setting standards that lead to proper and effective supervision of the unlicensed individual. Requiring supervisors to create written procedures to assist in handling crises and emergencies will help protect the safety of both the supervisee and consumers. The proposal will have no effect on 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 will not eliminate any jobs or occupations. This proposal does not impact multiple industries.

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.

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 at 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: Christy Berger
Address: 1625 N. Market Blvd., Suite S-200
Sacramento, CA 95834
Telephone No.: (916) 574-7817
Fax No.: (916) 574-8625
E-Mail Address: Christy.Berger@dca.ca.gov

The backup contact person is:

Name: Rosanne Helms
Address: 1625 N. Market Blvd., Suite S-200
Sacramento, CA 95834
Telephone No.: (916) 574-7897
Fax No.: (916) 574-8625
E-Mail Address: Rosanne.Helms@dca.ca.gov

Website Access: Materials regarding this proposal can be found on the Board's website at https://www.bbs.ca.gov/about/law_reg.html.