

PRACTICE OF OUT-OF-STATE COUNSELORS DURING A DISASTER

**Prepared By: Office of General Counsel, Texas Department of State Health Services
April 24, 2006**

ISSUE: Can a person who holds a license in another state provide counseling services in response to a disaster in Texas without a Texas license?

ANSWER: Yes, but only under certain circumstances specified by law as outlined below.

DISCUSSION: Under the Emergency Management Assistance Compact (EMAC) Health & Safety Code 778.001, if Texas requests disaster assistance and if a person holds a license, certification or permit issued by another state that is a party to EMAC, that person will be deemed licensed in Texas, subject to any further limitations prescribed by the Governor. Texas must also request assistance from that state for that particular type of licensed service for this to apply. See Govt. Code §418.171 for provisions in undeclared emergency or disaster or absent a request for assistance. If EMAC does not apply, the laws governing DSHS licensing of chemical dependency counselors (LCDC) provide for an exemption from licensing if the out-of-state professional is authorized to perform the service in another jurisdiction *and* the service is performed for fewer than 30 days in a calendar year. Occ Code 504.002. The service does not have to be in response to a disaster. If performed for longer than 30 days, this exemption does not apply, nor does it apply to other counseling professions. In the event of a disaster, DSHS uses an expedited provisional license/reciprocity process for occupations within its jurisdiction: Social Workers -Occ Code ch. 505, 22 TAC 781, Professional Counselors-Occ Code ch. 503, 22 TAC 681, Marriage & Family Therapists-Occ Code ch. 502, 22 TAC 801 and LCDC-Occ Code ch. 504, 25 TAC 450.

Although statutory exemptions exist for persons employed in “federal institutions” (ch. 504) or by a “federal agency” (chs.502, 503) if employed to perform that type of counseling (ch. 503) and the “activity” is within the scope of their employment (chs. 502, 503, 504), it is not recommended that “intermittent federal employees” or “federalized” employees under 42 USC 300hh-11(d)(1) engaged in disaster response be treated as meeting the Texas statutory exemptions from licensure for persons employed by a federal agency or institution. Instead, these professionals will need to qualify under: the 30-day exemption; expedited procedures for reciprocity or provisional licenses for out-of-state licensees or other applicable licensing statutes and rules; or pursuant to EMAC or Tex. Govt. Code § 418.171.

WAIVER OF LAW OR RULES: In the most recent disaster(s), DSHS has been able to assist out of state professionals in quickly achieving licensure through reciprocity or provisional licensing, needing only to waive basic procedural elements such as application documentation. Once a disaster is declared, if these laws or rules hinder disaster response, the Governor may suspend some or all of the above provisions.

CONTACT: Lisa D. Hernandez, 458-7111, extension 6587, Room M-527