

Title 25. HEALTH SERVICES  
Part 1. DEPARTMENT OF STATE HEALTH SERVICES  
Chapter 140. Health Professions Regulation  
Subchapter I. Licensed Chemical Dependency Counselors  
Amendments §§140.400-140.423  
Repeals §§140.424-140.431  
New §§140.424-140.432

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§140.400 - 140.423, the repeal of §§140.424 - 140.431 and new §§140.424 - 140.432, concerning the licensing and regulation of chemical dependency counselors.

BACKGROUND AND PURPOSE

The amendments, repeals, and new rules implement the provisions of House Bill (HB) 3145, 82nd Legislature, Regular Session, 2011, which amends Occupations Code, Chapter 504, and Health and Safety Code, Chapter 467. HB 3145 provides for funding of peer assistance programs and related administrative costs of the department through a mandatory surcharge on license fees; modifies the criminal history standards for certain offenses; eliminates the oral examination from the requirements for licensure; and adds certain categories to the exemptions from licensure. The proposal also implements the provisions of Senate Bill 1733, 82nd Legislature, Regular Session, 2011, amending Occupations Code, Chapter 55, and relating to the occupational licensing of spouses of members of the military on active duty.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 140.400 - 140.431 have been reviewed and the department has determined that the reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

The amendment to the definition of “qualified credentialed counselor” in renumbered §140.400(38) clarifies that the limitations of the rule definition are coextensive with the limitations imposed by the practitioner’s license. Additionally, the new definition of “counseling-related field” in §140.400(18) provides a more definite meaning for the term, as used in §140.408 (relating to Requirements for LCDC Licensure).

The amendment to §140.401 aligns the section with HB 3145 by adding licensure exemptions for certain certified criminal justice professionals.

The amendments to §§140.402, 140.404 - 140.407, 140.409 - 140.411, 140.415, 140.416, 140.418, 140.419, and 140.421 improve clarity and incorporate updated licensing processes. In

addition, amendments to §§140.405, 140.409 - 140.411, 140.413 - 140.417, and 140.420 correct internal rule references based upon amendments to the title of §140.423, and the renumbering of portions of existing rule §140.423 and existing rules §§140.424 - 140.431 in proposed new rules §§140.424 - 140.432.

The amendment to §140.403(a) implements the provisions of HB 3145 for a license surcharge to fund approved peer assistance programs for chemical dependency counselors. The initial licensure fee for licensed chemical dependency counselors increases from \$75 to \$85 and the renewal fee for licensed chemical dependency counselors increases to \$125 biennially, instead of \$115 biennially. Also, §140.403(e) is revised to include the website for application processing to [texas.gov](http://texas.gov).

The amendment proposed to §140.408 relating to the possession of an associate's or more advanced degree is consistent with statutory language concerning eligibility requirements in Occupations Code, §504.152 and the elimination of the requirement of an oral examination implements a statutory change to §504.152 adopted under HB 3145.

The amendment to §140.412 eliminates the reference to a multi-part examination to reflect HB 3145's elimination of the requirement of an oral examination for licensure.

The amendments to §140.413 are proposed to improve clarity concerning re-registration after a counselor intern registration expires without the applicant having met licensure requirements, and to reflect HB 3145's elimination of the requirement of an oral examination.

The amendments to §140.414 update processes for an applicant's submission of fingerprints to the department and amend the language relating to degree requirements for licensure through reciprocity consistent with the changes proposed for LCDC licensure in §140.408.

The amendment to §140.417 establishes procedures for the licensing of spouses of active duty military members to implement SB 1733.

The amendments to §140.420 improve clarity and implement changes made by HB 3145 to Occupations Code, §504.1525(b), allowing for exceptions to criminal history standards for other types of license applicants who have successfully completed a peer assistance program, and to address department funding of approved peer assistance programs.

The amendment to §140.422 reflects HB 3145's elimination of the oral examination.

The amendment to §140.423 improves clarity by separating ethics and private practice standards into separate rule provisions.

New §140.424 improves readability and rule delineation by separating LCDC private practice standards from professional and ethical standards and to incorporate more specifically reference to compliance with applicable security standards for electronic health information.

The repeal of existing §§140.424 - 140.431 and new §§140.424 - 140.432 are proposed to renumber portions of existing rule §140.423 and existing §§140.424 - 140.431 as a result of the separate rule created for private practice standards. New §§140.425, 140.426, 140.428, and 140.431 correct internal rule references based upon the renumbering.

In addition, new §140.426 proposes to modify the language in existing §140.425 to improve clarity and reconcile an inconsistency under existing rules with language in proposed new §140.430 concerning procedures in the case of a Respondent's failure to appear for a scheduled hearing at the State Office of Administrative Hearings (SOAH). New §140.429 adds language to impose a two-year waiting period for reapplication after the department accepts the voluntary surrender of a license under that section. New §140.430 proposes to update a citation to SOAH rules that have been renumbered since the rules in this subchapter were last reviewed. New §140.431 proposes to update criminal history standards, consistent with the changes made by HB 3145.

#### FISCAL NOTE

Kathryn Perkins, Assistant Commissioner for Regulatory Services, has determined that for each year of the first five years the sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed. The effect on state government will be an increase in revenue to the state of \$23,000 the first fiscal year and \$23,000 each year for fiscal years two through five. This is due to the additional surcharge to be imposed on licensing fees to fund approved peer assistance programs for chemical dependency counselors. The revenue increase will be offset by contract payments to fund one or more approved peer assistance programs. Implementation of the proposed sections will not result in any fiscal implications for local governments.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there will be no adverse economic effect on small business or micro-businesses. This determination was made because the economic costs imposed by the proposed amendments and new rules are to individual licensees, but do not impose any new requirements on businesses.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are anticipated economic costs to persons who are required to comply with the sections as proposed. Each applicant will be required to remit an additional \$10 to obtain an initial license. The current initial licensure fee is \$75, and the proposed initial licensure fee is \$85. Also, each licensed chemical dependency counselor will be required to remit an additional \$10 every two years in order to renew the counselor's license. The current biennial renewal fee is \$115 and the proposed biennial renewal fee is \$125. There is no anticipated negative impact on local employment.

## PUBLIC BENEFIT

In addition, Ms. Perkins has determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to generate funding for peer assistance programs for licensed chemical dependency counselors and to protect and promote public health, safety, and welfare by regulating licensed chemical dependency counselors, counselor interns, certified clinical supervisors and clinical training institutions.

## REGULATORY ANALYSIS

The department has determined that this proposal is not a “major environmental rule” as defined by Government Code, §2001.0225. “Major environmental rule” is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposed amendments, repeals, and new rules do not have the specific intent of protecting the environment or reducing risks to human health from environmental exposure.

## TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments, repeals, and new rules do not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and therefore do not constitute a taking under Government Code, §2007.043.

## PUBLIC COMMENT

Comments on the proposal may be submitted to Stewart Myrick, Program Director, Licensed Chemical Dependency Counselor Program, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6605, or by email to [lcde@dshs.state.tx.us](mailto:lcde@dshs.state.tx.us). When emailing comments, please indicate “Comments on Proposed Rules” in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

## LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies’ authority to adopt.

## STATUTORY AUTHORITY

The amendments, new rules, and repeals are authorized by Occupations Code, §504.051, which authorizes rulemaking necessary to carry out the duties established under Occupations Code, Chapter 504, the establishment of standards of conduct and ethics for Chapter 504 licensees, and the establishment of additional criteria that the executive commissioner determines necessary, in addition to the minimum criteria established under Health and Safety Code, Chapter 467, for peer assistance programs for chemical dependency counselors; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The amendments, new rules, and repeals affect the Occupations Code, Chapter 504; Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

### Sections for repeal

§140.424. Complaint and Investigation Procedures.

§140.425. Disciplinary Actions.

§140.426. Administrative Penalties.

§140.427. Informal Disposition.

§140.428. Voluntary Surrender of License, Certification, or Registration In Response to a Complaint.

§140.429. Procedures for Contested Cases.

§140.430. Criminal History Standards.

§140.431. Request for Criminal History Evaluation Letter.

Legend: (Proposed Amendment(s))

Single Underline = Proposed new language

[Print and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

§140.400. Definitions. Notwithstanding the provisions of §441.101 of this title (relating to Definitions), the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (17) (No change.)

(18) Counseling-related field--A mental health discipline utilizing human development, psychotherapeutic, and mental health principles including, but not limited to, psychology, psychiatry, social work, marriage and family therapy, and counseling and guidance. Non-counseling related fields include, but are not limited to, sociology, education, administration, dance therapy and theology.

(19) [(18)] Counselor--A licensed chemical dependency counselor.

(20) [(19)] Counselor Intern (CI or intern)--A person seeking a license as a chemical dependency counselor who is registered with the department and pursuing a course of training in chemical dependency counseling at a registered clinical training institution or under the supervision of a certified clinical supervisor.

(21) [(20)] CSAT--Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, United States Department of Health and Human Services.

(22) [(21)] Diagnostic and Statistical Manual of Mental Disorders (DSM)--The Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. Any reference to DSM shall constitute a reference to the most recent edition published.

(23) [(22)] Department--The Department of State Health Services.

(24) [(23)] Exploitation--The illegal or improper use of a client, or the client's resources, for monetary or personal benefit, profit, or gain by a counselor, counselor intern, or applicant for counselor licensure, or any other act or omission classified as exploitation by Texas law including, but not limited to, Texas Family Code, §261.001 and Texas Human Resources Code, §48.002. Exploitation includes, but is not limited to, sexual exploitation, as defined herein.

(25) [(24)] Graduate--An individual who has successfully completed, or been exempted from, as applicable, the 270 hours of education, 300 hour practicum, and 4,000 hours of supervised work experience and who is still registered with the department as a counselor intern.

(26) [(25)] Hearing--Administrative Hearing.

(27) [(26)] Indecent Exposure--Exposure by a chemical dependency counselor, counselor intern, certified clinical supervisor, applicant for any such license, or personnel of a clinical training institution or other licensee, of the individual's anus or any part of the individual's genitals, knowing a client is present; or compulsion or encouragement by a chemical dependency counselor, counselor intern, certified clinical supervisor, applicant for any such license, or personnel of a clinical training institution or other licensee, for a client to expose the client's anus or any part of the client's genitals.

(28) [(27)] Knowledge, Skills, and Attitudes (KSAs)--The knowledge, skills, and attitudes of addictions counseling as defined by CSAT Technical Assistance Publication (TAP 21) "Addictions Counseling Competencies: the Knowledge, Skills, and Attitudes of Professional Practice."

(29) [(28)] License--Unless otherwise specified explicitly or by the context, any form of licensure issued under this subchapter, including a CI registration, CCS certification, CTI registration, or licensed chemical dependency counselor license.

(30) [(29)] Licensed Chemical Dependency Counselor (LCDC)--A counselor licensed by the department, pursuant to Texas Occupations Code, Chapter 504, to engage in the practice of chemical dependency counseling.

(31) [(30)] Licensee--Unless otherwise specified explicitly or by the context, any holder of a license issued under this subchapter, including the holder of a CI registration, CCS certification, CTI registration, or LCDC license.

(32) [(31)] Neglect--A negligent act or omission by a counselor, applicant for counselor licensure, counselor intern, certified clinical supervisor, clinical training institution, or personnel of any such person that causes or may cause death, physical injury, or substantial emotional harm to a participant or client. Examples of neglect include, but are not limited to:

- (A) failure to provide adequate nutrition, clothing, or health care;
- (B) failure to provide a safe environment free from abuse;
- (C) failure to maintain adequate numbers of appropriately trained staff;
- (D) failure to establish or carry out an appropriate individualized treatment plan;

and

(E) any other act or omission classified as neglect by the Texas law including, but not limited to, Texas Family Code, §261.001 and Texas Human Resources Code, §48.002.

(33) [(32)] Peer Assistance Program--A [a] program approved by the department pursuant to Texas Occupations Code, §504.057 (relating to Approval of Peer Assistance Programs).

(34) [(33)] Person--An [an] individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(35) [(34)] Practice of Chemical Dependency Counseling--Providing or offering to provide chemical dependency counseling services involving the application of the principles, methods, and procedures of the chemical dependency counseling profession, as defined by the practice dimensions and competencies identified and described in the CSAT Technical Assistance Publication (TAP 21) "Addictions Counseling Competencies: the Knowledge, Skills, and Attitudes of Professional Practice."

(36) [(35)] Prevention--A proactive process that uses multiple strategies to preclude the illegal use of alcohol, tobacco and other drugs and to foster safe, healthy, drug-free environments.

(37) [(36)] Private Practice--The individual practice of a private, licensed chemical dependency counselor who personally renders individual or group services within the scope of the LCDC's license and in the LCDC's offices. To qualify to be engaged in private practice, the individual LCDC must not hold him/herself out as an organized program, or a part thereof, that provides counseling or treatment. This definition does not prohibit the sharing of office space or administrative support staff.

(38) [(37)] Qualified Credentialed Counselor (QCC)--A licensed chemical dependency counselor or one of the practitioners listed below, if the practitioner [who] is licensed and in good standing in the State of Texas, and, in performing any activity as a QCC, [to the extent that such individual] is acting within the authorized scope of the individual's license[, including]:

- (A) licensed professional counselor (LPC);
- (B) licensed [clinical] social worker [(LCSW)];
- (C) licensed marriage and family therapist (LMFT);
- (D) licensed psychologist;
- (E) licensed physician;
- (F) licensed physician's assistant;
- (G) certified addictions registered nurse (CARN); or

(H) advanced practice nurse recognized by the Board of Nurse Examiners as a clinical nurse specialist or practitioner with a specialty in psychiatric-mental health nursing.

(39) [(38)] Referral--The process of identifying appropriate services and providing the information and assistance needed to access them.

(40) [(39)] Rules--An agency statement of general applicability, including a state rule or federal regulation, that implements or prescribes law or policy by defining general standards of conduct, rights, or obligations of persons, or describes the procedure or practice requirements that prescribe the manner in which public business before an agency may be initiated, scheduled, or conducted, or interprets or clarifies law or agency policy. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the agency that does not affect private rights or procedures. Any reference to a rule shall mean the rule then in effect and as amended, unless otherwise specified.

(41) [(40)] Screening--The process through which qualified staff, client, and available significant others, as appropriate, determine the most appropriate initial course of action, given the individual's needs and characteristics and the available resources within the community. In a treatment program, screening includes determining whether an individual is appropriate and eligible for admission to a particular program.

(42) [(41)] Services--Substance abuse services.

(43) [(42)] Sexual contact--Any intentional touching, or request to be allowed to touch, by a chemical dependency counselor, counselor intern, certified clinical supervisor, applicant for any such license, or personnel of a clinical training institution or other licensee, including touching through clothing, of the anus, breast, or any part of the genitals of a client; any intentional touching of any part of the body of a client, or request to be allowed to touch, including touching through clothing, with the anus, breast, or any part of the genitals of a chemical dependency counselor, counselor intern, certified clinical supervisor, applicant for any such license, or personnel of a clinical training institution or other licensee; or any compulsion or encouragement by a chemical dependency counselor, counselor intern, certified clinical supervisor, clinical training institution, applicant for any such license, or personnel of such licensee, for a client to engage in touching through clothing, of the anus, breast, or any part of the genitals of another individual, or for a client to touch any part of the body of another individual with the anus, breast, or any part of the client's genitals.

(44) [(43)] Sexual Exploitation--A pattern, practice, or scheme of conduct by a chemical dependency counselor, counselor intern, certified clinical supervisor, clinical training institution, applicant for any such license, or personnel of any such person, that involves a client and can reasonably be construed as being for the purpose of sexual arousal or gratification or sexual abuse. It may include, without limitation, sexual contact, a request for sexual contact, or a representation that sexual contact or exploitation is consistent with, a part of, or a condition of receiving services. It is not a defense to sexual exploitation of a client if it occurs:

(A) with the actual or perceived consent of the client;

(B) outside of the delivery of services;

(C) off of the premises used for the delivery of substance abuse services; or

(D) after the client has stopped receiving services, where the conduct occurs within two years of when the client stopped receiving services.

(45) [(44)] State Office of Administrative Hearings (SOAH)--The agency to which contested cases are referred by the department.

(46) [(45)] Substance Abuse--A maladaptive pattern of substance use leading to clinically significant impairment or distress, as defined by the most recently published version of the DSM.

(47) [(46)] Substance Abuse Education--A planned, structured presentation of information provided by qualified staff, related to substance abuse or substance dependence, allowing for discussion of the material presented, and relevant to the client's goals.

(48) [(47)] Substance Abuse Services (Services)--A comprehensive term intended to describe activities undertaken to address any substance-related disorder as well as education and prevention activities. The term includes, without limitation, the provision of screening, assessment, referral, chemical dependency treatment, and chemical dependency counseling.

(49) [(48)] Treatment Plan--An individualized, written plan developed and implemented through a collaborative process between qualified personnel and the client and reflecting and identifying desired treatment outcomes and the strategies for achieving them. At a minimum, the treatment plan addresses the identified substance use disorder(s), as well as issues related to treatment progress, including relationships with family and significant others, employment, education, spirituality, health concerns, and legal needs.

(50) [(49)] Unethical Conduct--Conduct prohibited by the ethical standards adopted by state or national professional organizations or by rules established by a profession's state licensing agency.

§140.401. License Required.

(a) (No change.)

(b) The following individuals are exempt from LCDC licensure requirements when they offer or provide chemical dependency counseling services within the scope of their authorized duties and scope of practice:

(1) - (4) (No change.)

(5) students who are participating in a practicum that meets the requirements as set forth in §140.407 of this title (relating to Practicum Standards) as part of a supervised course of clinical training at a regionally accredited institution of higher education or a career school or college, as long as they do not hold themselves out as, or use any name, title, or designation that

implies licensure as a chemical dependency counselor or registration under this subchapter as a counselor intern; or [.]

(6) provides chemical dependency counseling through a program or in a facility that receives funding from the Texas Department of Criminal Justice and who is credentialed as:

(A) a certified criminal justice addictions professional by the International Certification and Reciprocity Consortium; or

(B) having certified criminal justice professional applicant status issued by the Texas Certification Board of Addiction Professionals.

(c) - (d) (No change.)

#### §140.402. Scope of Practice.

(a) An LCDC is authorized [licensed] to provide chemical dependency counseling services involving the application of the principles, methods, and procedures of the chemical dependency profession as defined by the profession's ethical standards and the KSAs as defined in §140.400 of this title (relating to Definitions). The license does not qualify an individual to provide services outside this scope of practice.

(b) (No change.)

#### §140.403. Fees.

(a) The schedule of fees is:

(1) (No change.)

(2) initial LCDC licensure fee--\$75, plus a surcharge of \$10 to fund one or more approved peer assistance programs and administrative costs of the department related to peer assistance programs;

(3) LCDC renewal and renewal application fee--\$115, plus a surcharge of \$10 to fund one or more approved peer assistance programs and administrative costs of the department related to peer assistance programs, in addition to any fees assessed under subsection (e) of this section:

(A) - (B) (No change.)

(4) - (9) (No change.)

(b) - (d) (No change.)

(e) For all new and renewal applications, the department is authorized to collect subscription and convenience fees in amounts determined by the Texas Online Authority to recover costs associated with new and renewal application processing through [texas.gov](http://texas.gov) [Texas Online]. The fees may be paid with a credit card when applying for or renewing a license online.

§140.404. LCDC Licensure Application Standards and Counselor Intern Registration.

(a) Every individual seeking LCDC licensure shall apply for registration as a counselor intern and initiate the licensure application process with the department by submitting the following items in a form acceptable to the department:

(1) - (3) (No change.)

(4) two sets of fingerprints completed according to department instructions [on cards issued by the department]; and

(5) (No change.)

(b) - (i) (No change.)

§140.405. Requirements for Counselor Intern Registration.

(a) To be eligible for counselor intern registration under this subchapter, an individual must:

(1) - (2) (No change.)

(3) successfully complete 270 classroom hours, or 18 semester hours (or 27 quarter hours), of chemical dependency curricula as described in §140.406 of this title (relating to Standards for 270 Educational Hours);

(4) (No change.)

(5) pass the criminal history standards described in §140.431 [§140.430] of this title (relating to Criminal History Standards);

(6) sign a written agreement to abide by the ethical standards contained in §140.423 of this title (relating to Professional and Ethical Standards for all License Holders); and

(7) (No change.)

(b) Applicants holding at least a baccalaureate degree in chemical dependency counseling, sociology, psychology, or a major approved by the department as one related to human behavior and development [or any other degree approved by the department] are exempt from the 270 hours of education and the 300 hour practicum. The applicant must submit an official college transcript, [with the official seal of the college and the signature of the registrar.

Degree programs approved by the department include baccalaureate, masters, or doctoral degrees with a course of study in human behavior/development and service delivery.]

§140.406. Standards for 270 Educational Hours.

(a) At least 135 clock hours (nine semester hours) of the education [hours] must be specific to substance use disorders and their treatment. The remaining 135 clock hours may be specific or related to chemical dependency counseling. Related education hours may include courses in psychology, [upper division] sociology, counseling, mental health, behavioral science, psychiatric nursing, ethics, and rehabilitation counseling.

(b) (No change.)

[(c) Continuing education and extended learning courses offered by institutions of higher education are not acceptable unless the curriculum follows the Workforce Education Course Manual and meets the standards equivalent to a credit course.]

(c) [(d)] Educational hours obtained at a career school or college must follow the curriculum for Transdisciplinary Foundations outlined in the KSAs:

- (1) Understanding Addiction;
- (2) Treatment Knowledge;
- (3) Application to Practice; and
- (4) Professional Readiness.

(d) [(e)] The department will not accept hours unless documented with a passing grade on an official transcript from the school. The applicant shall submit additional information requested by the department if needed to verify the content of a course.

§140.407. Practicum Standards.

(a) The practicum shall be completed under the administration of a career school [or college] or an accredited institution of higher education.

(b) - (f) (No change.)

§140.408. Requirements for LCDC Licensure.

(a) To be eligible for, and to complete an initial application for, a chemical dependency counselor license under this subchapter, an individual must:

- (1) - (2) (No change.)

(3) hold an associate degree or more advanced degree [with a course of study in human behavior/development and service delivery], with the exception of those LCDCs who are renewing an existing license; [:]

[(A) those applicants who were registered as a counselor intern based upon an application submitted to the department by September 1, 2004; and]

[(B) those LCDCs who are renewing an existing license.]

(4) - (6) (No change.)

[(7) pass an oral chemical dependency counselor examination approved by the department;]

(7) [(8)] submit two letters of recommendation from LCDCs;

(8) [(9)] submit written assurance that the individual has access to an approved peer assistance program. The department may waive this requirement if the department determines, based upon information submitted by the applicant sufficient to support the determination, that a peer assistance program is not reasonably available to the individual; and

(9) [(10)] pay the initial LCDC licensure fee.

(b) The department may waive the 4,000 hours of supervised work experience for individuals who hold a masters or doctoral degree in social work or [, or a masters or doctoral degree in] a counseling-related field, and have [with] 48 semester hours of graduate-level courses. [Counseling-related degrees shall be reviewed on a case-by-case basis.] An applicant for waiver shall submit an official college transcript with the official seal of the college and the signature of the registrar, and any other related documentation requested by the department.

#### §140.409. Standards for Supervised Work Experience.

(a) - (b) (No change.)

(c) Work experience must be documented on the department's supervised work experience documentation form and signed by a CTI coordinator or a CCS.

(1) All hours included in the documented supervised work experience must be performed within the KSA dimensions and in compliance with the Professional and Ethical Standards set forth in §140.423 of this title (relating to Professional and Ethical Standards for all License Holders).

(2) (No change.)

(d) Out-of-state supervised work experience will be accepted only if the following conditions are met.

(1) - (3) (No change.)

(e) - (h) (No change.)

§140.410. Clinical Training Institution (CTI) Registration.

(a) - (b) (No change.)

(c) The registration shall expire on the second anniversary of the date of issue. [The approval is valid for two years.] The CTI shall apply to renew the registration [reapply] every two years by submitting a completed application form. The department may mail a courtesy notice, but it is the program's responsibility to apply in a timely manner [reapply at least 45 days before the expiration date].

(d) The CTI shall notify the department in writing within 30 days of the following changes:

(1) - (2) (No change.)

(3) closure of the CTI. The CTI shall return its registration with its notice of closure. Closure of the CTI and/or surrender of a CTI's registration in response to a complaint shall be deemed to be the result of formal disciplinary action, as described in §140.429 [§140.428] of this title (relating to Voluntary Surrender of License, Certification, or Registration In Response to a Complaint).

§140.411. Certified Clinical Supervisor (CCS) Certification Requirements.

(a) To become a certified clinical supervisor, an individual shall:

(1) - (5) (No change.)

(6) submit two sets of fingerprints completed according to department instructions, if the individual has not previously submitted fingerprints for the purposes of licensure under this subchapter, and pass the criminal history standards described in §140.431 [§140.430] of this title (relating to Criminal History Standards);

(7) (No change.)

(8) pay the application and certification fee.

(b) - (c) (No change.)

§140.412. LCDC Licensure Examination.

(a) - (b) (No change.)

(c) An applicant may only take [each portion of] the examination four times, and all testing must be completed within five years from the date of registration.

§140.413. Counselor Intern Registration Expiration. A counselor intern's registration will expire if an applicant fails the LCDC licensure examination a fourth time or if an applicant does not complete one or more of the requirements for licensure as set forth in §140.408 of this title (relating to Requirements for LCDC Licensure) within five years from the date of registration, whichever date is earlier. In either case, the department will not issue a license. To re-register as a counselor intern after expiration of a counselor intern's registration, the individual must meet the requirements for subsequent registration set forth in this section. [If an applicant does not complete one or more of the requirements for licensure as set forth in §140.408 of this title (relating to Requirements for LCDC Licensure) within five years from the date of registration, the registration will expire and the department will not issue a license.]

(1) An applicant [individual] whose registration has expired [application to become an LCDC has been finally denied is no longer registered as a graduate or counselor intern and] cannot offer or provide chemical dependency counseling services or represent himself or herself as a CI or graduate CI.

(2) An individual whose CI registration has expired under this section may reapply for CI registration and licensure only after completing 12 [24] semester hours or 18 quarter hours of course work [ , pre-approved by the department,] at a career school or college or an accredited institution of higher education. The coursework must be related to chemical dependency counseling, psychology, sociology, counseling, mental health, behavioral science, psychiatric nursing, ethics, or rehabilitation counseling. The new application [ , which must be submitted within five years of the date of expiration of the individual's CI registration,] shall not be considered complete without an official college transcript documenting the required course work [coursework], a subsequent registration application form with the other items required under §140.404 of this title (relating to LCDC Licensure Application Standards and Counselor Intern Registration), and the initial LCDC application and background investigation fee. In addition, the applicant must pass the criminal history standards described in §140.431 of this title (relating to Criminal History Standards) at the time of re-registration and is subject to the applicable requirements of the following subparagraphs:

(A) if an individual whose CI registration has expired applies to re-register within five years of the date of expiration of the individual's CI registration and the department grants the new application for CI registration, the individual must complete only the requirements for licensure that were not fulfilled during the individual's previous period of registration, and may take the examination an additional three times, if needed. The outstanding requirements for licensure must be completed within three years of the new date of registration. During this period, the applicant may provide chemical dependency counseling services as a counselor intern in accordance with the supervision requirements of this subchapter.

(B) if an individual applies for re-registration as a CI more than five years after the individual's CI registration expired and the department grants the new application for CI

registration, the applicant must complete all requirements of §140.408 of this title (relating to Requirements for LCDC licensure) during the new period of registration to become licensed, except that the applicant may rely on a qualifying degree obtained prior to the period of registration.

[(3) If the department grants the new application for CI registration and permits the individual to reapply for LCDC licensure under the preceding paragraph, the individual must complete the remaining requirements for licensure and may take the failed portion(s) of the examination only an additional three times. The provisions in §140.408(a)(3)(A) of this title shall not apply. The outstanding requirements for licensure must be completed within three years of the new date of registration. During this period, the applicant may provide chemical dependency counseling services as a counselor intern in accordance with the supervision requirements of this subchapter.]

#### §140.414. LCDC Licensure Through Reciprocity.

(a) An individual licensed or certified in another state as a chemical dependency counselor may apply for licensure as an LCDC through reciprocity by submitting:

(1) - (2) (No change.)

(3) two sets of fingerprints completed according to department instructions [on cards issued by the department];

(4) - (7) (No change.)

(8) an official transcript showing that the individual holds an associate degree or more advanced degree, [with a course of study in human behavior/development and service delivery.]

(b) The applicant shall meet the criminal history standards described in §140.431 [§140.430] of this title (relating to Criminal History Standards).

(c) - (d) (No change.)

#### §140.415. Issuing Licenses.

(a) Absent action by the department against the applicant under §140.426 [§140.425] of this title (relating to Disciplinary Actions), the department will issue the applicable form of license under this subchapter when the applicant has met all requirements and paid all required fees [any required fee] for the license.

(b) - (h) (No change.)

(i) A licensee may at any time voluntarily offer to relinquish his or her license for any reason, without compulsion.

(1) - (2) (No change.)

(3) If a complaint is pending, the procedures for acceptance of a license surrender are set out in §140.429 [§140.428] of this title (relating to Voluntary Surrender of License, Certification, or Registration In Response to a Complaint).

(4) (No change.)

§140.416. LCDC License Expiration, Renewal, and Continuing Education Requirements.

(a) (No change.)

(b) To renew a license, the LCDC shall:

(1) - (2) (No change.)

(3) meet the criminal history standards described in §140.431 [§140.430] of this title (relating to Criminal History Standards); and

(4) (No change.)

(c) (No change.)

(d) If the LCDC's license has been expired for 90 days or less, the person may renew the license by paying to the department a fee in an amount specified in §140.403 of this title (relating to Fees). [equal to one and one-half times the required renewal fee.]

(e) If the LCDC's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the department a fee in an amount specified in §140.403 of this title. [equal to two times the required renewal fee.]

(f) - (m) (No change.)

§140.417. Active Military Members and Military Spouses. [Duty]

(a) If an LCDC, CI, or CCS fails to timely renew his or her license because the licensee is called to or is on active duty with the armed forces of the United States, or ordered by proper authority to active duty, outside the state of Texas, the licensee or the licensee's authorized representative may request an additional amount of time, equal to the total amount of time on active duty, for the licensee to complete any continuing education or other renewal requirements. A written request for an extension of time to complete renewal requirements under this section must be received by the department by no later than 60 days after the licensee is discharged from active duty, but, whenever possible, shall be submitted before the commencement of active duty or the scheduled expiration of the applicable license.

(1) If the request is made by the licensee's authorized representative, the request shall include a copy of the appropriate power of attorney or written evidence of a spousal relationship.

(2) The written request shall include a copy of the official transfer orders of the licensee or other official military documentation showing that the licensee is called to or on active duty. The licensee shall also provide documentation of the date of discharge from active duty, either with the written request or upon discharge, whichever is later.

(3) If a timely request is made in accordance with this section, the department will exempt the licensee from payment of the late renewal fee.

(4) The written request shall include a current address and telephone number for the licensee or the licensee's authorized representative.

(5) A person eligible for an extension of time to complete renewal requirements under this section for a license issued under this subchapter may not provide services to which the applicable license under this subchapter applies after the regularly scheduled expiration of that person's license until such time, if any, as the licensee completes renewal of the license in accordance with this subsection.

(b) The spouse of a person serving on active duty as a member of the armed forces of the United States who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if another basis for denial does not otherwise exist under §140.426 of this title (relating to Disciplinary Actions) or §140.431 (relating to Criminal History Standards) of this title.

(c) The spouse of a person serving on active duty as a member of the armed forces of the United States who holds a current license or certification to practice chemical dependency counseling in another state that has substantially equivalent licensing requirements may apply for licensure as an LCDC in accordance with §140.414 of this title (relating to LCDC Licensure Through Reciprocity).

§140.418. Continuing Education Standards.

(a) - (c) (No change.)

(d) The [For LCDCs who live out of state, the] department may [will] accept continuing education hours approved by other state or federal agencies or organizations, subject to the department's review and approval.

(e) - (h) (No change.)

§140.419. Inactive Status.

(a) An LCDC may request to have his or her license placed on inactive status by submitting a written request and paying the inactive status fee before the license expires. Inactive status shall not be granted unless the license is current and in good standing.

(b) - (e) (No change.)

#### §140.420. Peer Assistance Programs.

(a) The department may issue or renew, as applicable, a [an LCDC] license, registration or certification to an individual convicted or placed on community supervision in any jurisdiction for a drug or alcohol offense described in §140.431 of this title [§140.430] (relating to Criminal History Standards) if the department determines that the applicant has successfully completed participation in an approved peer assistance program.

(b) A peer assistance program [Peer assistance programs] shall identify, assist, and monitor participating LCDCs whose ability to perform a professional service is impaired or likely to be impaired by abuse of or dependency on drugs or alcohol, so that the individuals may return to safe practice. An LCDC who meet the standard for participation shall be referred to in this section as an “impaired professional.” A peer assistance program shall offer [Peer assistance programs offer] support and assistance with [and have] a rehabilitative emphasis rather than a disciplinary emphasis.

(c) To become an approved peer assistance program, a professional association shall:

(1) - (2) (No change.)

(3) meet the minimum criteria established for peer assistance programs under Texas Health and Safety Code, Chapter 467 and Chapter 451 of this title, as well as any additional criteria set forth in this section and in Texas Occupations Code, §504.057 for peer assistance programs for LCDCs. An approved [Each] peer assistance program will remain subject to and comply with these provisions once approved. In the event of direct conflict between any of the provisions, the provisions of Texas Occupations Code, §504.057 and this section shall govern.

(d) A peer assistance program may seek department funding for its program by responding to a department solicitation relating to peer assistance programs established under Texas Occupations Code, §504.057. A peer assistance program must be approved by the department to be eligible to contract with the department for funding of its program. Approval of the peer assistance program shall expire on the second anniversary of the date of approval. To renew the approval status, a professional association shall submit the materials as outlined in subsection (c) of this section.

(e) - (h) (No change.)

#### §140.421. Standards for the Training and Supervision of Counselor Interns.

(a) - (f) (No change.)

(g) The CTI or CCS shall use the department's counselor intern evaluation forms [KSA evaluation tool] to structure the intern's 4,000 hours of supervised work experience. The CI's supervising QCC, under the oversight and monitoring of the CTI coordinator, shall perform the CTI's responsibilities in the following paragraphs of this subsection.

(1) - (5) (No change.)

(h) - (s) (No change.)

#### §140.422. Direct Supervision of Interns.

(a) - (e) (No change.)

(f) An individual who has successfully completed the [verbal and written portions of the] licensing examination may be supervised in accordance with Level III standards set forth in subsection (g) of this section, but is still required to complete 4,000 hours of supervised work experience before achieving graduate status in the absence of a waiver under §140.408 of this title (relating to Requirements for LCDC Licensure).

(g) - (i) (No change.)

#### §140.423. Professional and Ethical Standards for all License Holders.

[(a) This subsection applies to counseling records of a LCDC's private practice. Documentation of professional services rendered in another setting shall be created and maintained in accordance with any legal requirements for documentation applicable to the particular setting in which they were provided.]

[(1) The counselor shall establish and maintain a record for every client at the time of initial service delivery. The client record shall include:]

[(A) client identifying information;]

[(B) assessment results, including a statement of the client's problems and/or diagnosis;]

[(C) plan of care;]

[(D) documentation of all services provided, including date, duration, and method of delivery; and]

[(E) a description of the client's status at the time services are discontinued.]

received.]

[(2) The counselor shall maintain a record of all charges billed and all payments

manner.]

[(3) All entries shall be permanent, legible, accurate, and completed in a timely

electronic records shall be by a digital authentication key.]

[(4) All documents and entries shall be dated and authenticated. Authentication of

with a single line, dated, and initialed by the counselor.]

[(5) When it is necessary to correct a record, the error shall be marked through

Electronic client information shall be protected to the same degree as paper records and shall have a reliable backup system.]

[(6) The counselor shall protect all client records and other client-identifying information from destruction, loss, tampering, and unauthorized access, use or disclosure.

Confidentiality of Alcohol and Drug Abuse Patient Records).]

[(7) The counselor shall comply with all applicable state and federal laws relating to confidentiality, including the requirements of Texas Health and Safety Code, Chapter 611 (relating to Mental Health Records) and Code of Federal Regulations, Title 42, Part 2 (relating to Confidentiality of Alcohol and Drug Abuse Patient Records).]

Right to Mental Health Record).]

[(8) The counselor shall not deny clients access to the content of their records except as provided by law, including Texas Health and Safety Code, §611.0045 (relating to

clients shall be kept for at least five years after the client becomes eighteen years of age.]

[(9) Client records shall be kept for at least five years. Records of adolescent

telephone to provide chemical dependency counseling services.]

[(b) This subsection applies to an LCDC in private practice using the internet or

[(1) The counselor must reside in and perform the services from Texas.]

the location of the client.]

[(2) The department maintains its authority to regulate the counselor regardless of

counselor's practice.]

[(3) The counselor is subject to the applicable laws of other states and countries where the client may reside or receive services by electronic means. Such laws may limit the

as applicable.]

[(4) The counselor's provision of services by electronic medium must comply with Code of Federal Regulations, Title 42, Part 2 (relating to Confidentiality of Alcohol and Drug Abuse Patient Records), Texas Health and Safety Code, Chapter 611 (relating to Mental Health Records), and the Health Insurance Portability and Accountability Act of 1996 (HIPAA),

[(5) The counselor must be able to verify the identification of the client and ensure the client's appropriate age.]

[(6) If a counselor uses the Internet as the electronic means by which counseling is provided or transfers data through the Internet, the counselor must comply with the following:]

[(A) data may only be transferred using at least a 128-encryption;]

[(B) e-mail communication is restricted relating to client information and documentation; and]

[(C) the counselor must provide technical backup for system problems by providing a phone number to the client to call for technical support and a contingency plan for the client when a technical problem occurs.]

[(7) The counselor must provide services using audio or video in real time.]

[(8) The counselor must provide a description of all services offered to the client in writing and describe who is appropriate for the services. The description must include:]

[(A) a grievance procedure and provide a link to the department for filing a complaint when using the Internet and the toll-free number for the department when counseling by telephone;]

[(B) the counselor's credentials, education level, and training;]

[(C) a link to the licensure verification page when using the Internet and the toll-free number for the department when counseling by telephone;]

[(D) the difference between electronic counseling and traditional counseling; and]

[(E) the potential risk regarding clinical issues, security and confidentiality.]

[(9) Services may only be offered by licensed chemical dependency counselors.]

[(10) The counselor must provide an emergency contact person and phone number and emergency procedures to the client in writing.]

[(c) This subsection applies to any person licensed, certified, or registered under this subchapter.]

(a) [(1)] A licensee shall not discriminate against any client or other person on the basis of gender, race, religion, age, national origin, disability, sexual orientation, or economic condition.

(b) [(2)] A licensee shall maintain objectivity, integrity, and the highest standards in providing services to the client.

(c) [(3)] A licensee shall:

(1) [(A)] in addition to complying with any other applicable reporting requirements, promptly report to the department any suspected, alleged, or substantiated incidents of abuse, neglect, or exploitation committed by oneself or another licensee under this subchapter;

(2) [(B)] unless otherwise prohibited by law, promptly report to the department violations of Texas Occupations Code, Chapter 504 (relating to Chemical Dependency Counselors), or rules adopted under the Act, including violations of this subchapter by oneself or another licensee;

(3) [(C)] recognize the limitations of the licensee's ability and shall not offer services outside the licensee's scope of practice or licensure or use techniques that exceed the person's license authorization or professional competence; [. In the course of treating the substance abuse/dependence issues of a client, the licensee may independently address family issues, co-occurring mental health issues and physical and sexual abuse issues of a client if the counselor demonstrates:]

[i] 45 hours of education in each area; and]

[ii] 2,000 hours of clinically supervised post-licensure work experience by a qualified professional;] and

(4) [(D)] make every effort to prevent the practice of chemical dependency counseling by unqualified or unauthorized persons.

(d) [(4)] A licensee shall not engage in the practice of chemical dependency counseling if impaired by, intoxicated by, or under the influence of chemicals, including alcohol.

(e) [(5)] A licensee shall uphold the law and refrain from unprofessional and unethical conduct. In so doing, the licensee shall:

(1) [(A)] comply with all applicable laws, regulations, and orders;

(2) [(B)] not make any claim, directly or by implication, that the person possesses professional qualifications, licensure, or affiliations that the person does not possess;

(3) [(C)] include, as applicable, their current credentials when signing all professional documents;

(4) [(D)] not mislead or deceive the public or any person; and

(5) [(E)] refrain from any act that might tend to discredit the license or profession.

(f) [(6)] A licensee shall:

(1) [(A)] report information fairly, professionally, and accurately to clients, other professionals, the department, and the general public;

(2) [(B)] maintain complete, accurate, and appropriate documentation of services provided;

(3) [(C)] not submit or cause or allow to be submitted to a client or third party payer a bill for services that were not provided or were improper, unreasonable, or medically or clinically unnecessary, with the exception of a missed appointment for which notice has been given that a charge will be assessed, and as permitted by law concerning third party billing; and

(4) [(D)] provide responsible and objective training and supervision to interns and subordinates under the LCDC, CCS, or CTI's supervision. This includes properly documenting supervision and work experience and providing supervisory documentation needed for licensure.

(g) [(7)] In any publication, a licensee shall give written credit to all persons or works that have contributed to or directly influenced the publication.

(h) [(8)] Licensees shall respect a client's dignity, and shall not engage in, or permit their employees or supervisees to engage in, any action that may injure the welfare of any client or person to whom the licensee is providing services. The licensee shall:

(1) [(A)] make every effort to provide access to treatment, including advising clients about resources and services, taking into account the financial constraints of the client;

(2) [(B)] remain loyal and professionally responsible to the client at all times, disclose the counselor's ethical code of standards, and inform the client of the counselor's loyalties and responsibilities;

(3) [(C)] not engage in any activity that could be considered a professional conflict, and shall immediately remove oneself from such a conflict if one occurs;

(4) [(D)] terminate any professional relationship or counseling services that are not beneficial, or are in any way detrimental to the client;

(5) [(E)] always act in the best interest of the client;

(6) [(F)] not abuse, neglect, or exploit a client;

(7) [(G)] not engage in a sexual, personal, or business relationship with a client or a member of the client's immediate family (including any client receiving services from the licensee's employer) for at least two years after the client's services end;

(8) [(H)] not request a client to divulge confidential information that is not necessary and appropriate for the services being provided;

(9) [(I)] not offer or provide chemical dependency counseling, supervision, or related services, nor meet with a client, in settings or locations which are inappropriate, harmful to the client or others, or which would tend to discredit the profession of chemical dependency counseling; and

(10) [(J)] refrain from using any method or engaging in any conduct that could be considered coercive or degrading to the client or another, including, without limitation, threats, negative labeling, or attempts to provoke shame or humiliation.

(i) [(9)] A licensee shall protect the privacy of all clients and shall not disclose confidential information without express written consent, except as permitted by law. The licensee shall remain knowledgeable of and obey all state and federal laws and regulations relating to confidentiality of chemical dependency treatment records, and shall:

(1) [(A)] inform the client, and obtain the client's consent, before tape-recording the client or allowing another person to observe or monitor the client;

(2) [(B)] ensure the security of client records;

(3) [(C)] not discuss or divulge information obtained in clinical or consulting relationships except in appropriate settings and for professional purposes which clearly relate to the case, to the extent authorized by law;

(4) [(D)] avoid invasion of the privacy of the client;

(5) [(E)] provide the client his/her rights regarding confidentiality, in writing, as part of informing the client in any areas likely to affect the client's confidentiality; and

(6) [(F)] ensure the data requested from other parties is limited to information that is necessary and appropriate to the services being provided and is accessible only to appropriate parties.

(j) [(10)] A licensee shall inform the client about all relevant and important aspects of the professional relationship between the client and the licensee, and shall:

(1) [(A)] in the case of clients who are not their own consenters, inform the client's parent(s) or legal guardian(s) of circumstances that might influence the professional relationship;

(2) [(B)] not enter into a professional relationship with members of the counselor's family, close friends or associates, or others whose welfare might be jeopardized in any way by such relationship;

(3) [(C)] not establish a personal relationship with any client (including any individual receiving services from the licensee's employer) for at least two years after the client's services end;

(4) [(D)] neither engage in any type or form of romantic or sexual behavior with a client (including any individual receiving services from the licensee's employer) for at least two years after the client's services end nor accept as a client anyone with whom they have engaged in romantic or sexual behavior; and

(5) [(E)] not exploit relationships with clients for personal gain.

(k) [(11)] A licensee shall treat other professionals with respect, courtesy, and fairness, and shall:

(1) [(A)] refrain from providing or offering professional services to a client who is receiving chemical dependency treatment and/or counseling services from another professional, except with the knowledge of the other professional and the consent of the client, until treatment and/or counseling services with the other professional ends;

(2) [(B)] cooperate with the department, professional peer review groups or programs, and professional ethics committees or associations, and promptly supply all requested or relevant information, unless prohibited by law; and

(3) [(C)] ensure that the person's actions in no way exploit relationships with supervisees, employees, students, research participants or volunteers.

(1) [(12)] Prior to providing treatment and/or counseling or substance abuse services, a licensee shall inform the client of the licensee's fee schedule and establish financial arrangements with a client. The counselor shall not:

(1) [(A)] charge exorbitant or unreasonable fees for any service;

(2) [(B)] pay or receive any commission, consideration, or benefit of any kind related to the referral of a client for services;

(3) [(C)] use the client relationship for the purpose of personal gain, or profit, except for the normal, usual charge for services provided; or

(4) [(D)] accept a private professional fee or any gift or gratuity from a client if the client's services are paid for by another funding source, or if the client is receiving treatment from a facility where the licensee provides services (unless all parties agree to the arrangement in writing).

Legend: (Proposed New Rules)  
Regular Print = Proposed new language

§140.424. Standards for Private Practice.

(a) This subsection applies to counseling records of an LCDC's private practice. Documentation of professional services rendered in another setting shall be created and maintained in accordance with any legal requirements for documentation applicable to the particular setting in which they were provided.

(1) The counselor shall establish and maintain a record for every client at the time of initial service delivery. The client record shall include:

- (A) client identifying information;
- (B) assessment results, including a statement of the client's problems and/or diagnosis;
- (C) plan of care;
- (D) documentation of all services provided, including date, duration, and method of delivery; and
- (E) a description of the client's status at the time services are discontinued.

(2) The counselor shall maintain a record of all charges billed and all payments received.

(3) All entries shall be permanent, legible, accurate, and completed in a timely manner.

(4) All documents and entries shall be dated and authenticated. Authentication of electronic records shall be by a digital authentication key.

(5) When it is necessary to correct a record, the error shall be marked through with a single line, dated, and initialed by the counselor.

(6) The counselor shall protect all client records and other client-identifying information from destruction, loss, tampering, and unauthorized access, use or disclosure.

Electronic client information shall be protected to the same degree as paper records and in accordance with applicable law and accepted security standards for electronic health records prevailing at the time, and shall have a reliable backup system.

(7) The counselor shall comply with all applicable state and federal laws relating to confidentiality, including the requirements of Texas Health and Safety Code, Chapter 611 (relating to Mental Health Records) and Code of Federal Regulations, Title 42, Part 2 (relating to Confidentiality of Alcohol and Drug Abuse Patient Records).

(8) The counselor shall not deny clients access to the content of their records except as provided by law, including Texas Health and Safety Code, §611.0045 (relating to Right to Mental Health Record).

(9) Client records shall be kept for at least five years. Records of adolescent clients shall be kept for at least five years after the client becomes eighteen years of age.

(b) This subsection applies to an LCDC in private practice using the internet or telephone to provide chemical dependency counseling services.

(1) The counselor must reside in and perform the services from Texas.

(2) The department maintains its authority to regulate the counselor regardless of the location of the client.

(3) The counselor is subject to the applicable laws of other states and countries where the client may reside or receive services by electronic means, including any laws limiting the counselor's practice.

(4) The counselor's provision of services by electronic medium must comply with applicable law and accepted security standards at the time, including, as applicable, Code of Federal Regulations, Title 42, Part 2 (relating to Confidentiality of Alcohol and Drug Abuse Patient Records), Texas Health and Safety Code, Chapter 611 (relating to Mental Health Records), and the Health Insurance Portability and Accountability Act of 1996 (HIPAA)(P.L. 104-191), and Health Information Technology for Economic and Clinical Health Act (HITECH Act), Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (Feb. 17, 2009), and their implementing regulations, including 45 Code of Federal Regulations Parts 160 (relating to General Administrative Requirements), 164 (relating to Security and Privacy), and 170 (Health Information Technology Standards, Implementation Specifications, And Certification Criteria And Certification Programs For Health Information Technology).

(5) The counselor must be able to verify the identification of the client and ensure the client's appropriate age.

(6) If a counselor uses the Internet as the electronic means by which counseling is provided or transfers client or other protected health information through the Internet, the counselor must comply with the following:

(A) counseling, client, and other protected health information may only be transferred using encryption that meets or exceeds the Security Standards for the Protection of Electronic Protected Health Information under 45 Code of Federal Regulations Part 164, Subpart C, that are in effect at the time;

(B) e-mail communication containing counseling, client, and/or other protected health information is subject to the restrictions set forth in subparagraph (A) of this subsection; and

(C) the counselor must provide technical backup for system problems by providing a phone number to the client to call for technical support and a contingency plan for the client when a technical problem occurs.

(7) The counselor must provide services that utilize audio or video in real time.

(8) The counselor must provide a description of all services offered to the client in writing and describe who is appropriate for the services. The description must include:

(A) a grievance procedure and provide a link to department information for filing a complaint when using the Internet and the toll-free number for the department when counseling by telephone;

(B) the counselor's credentials, education level, and training;

(C) a link to the licensure verification page when using the Internet and the toll-free number for the department when counseling by telephone;

(D) the difference between electronic counseling and traditional counseling; and

(E) the potential risk regarding clinical issues, security and confidentiality.

(9) Services may only be offered by licensed chemical dependency counselors.

(10) The counselor must provide an emergency contact person and phone number and emergency procedures to the client in writing.

#### §140.425. Complaint and Investigation Procedures.

(a) The provisions of this section shall apply to complaints against a licensee under this subchapter, notwithstanding the provisions of §442.102 of this title (relating to Complaints and Investigations).

(b) A person wishing to report an alleged violation of the Act or this subchapter may file a complaint with the department. All complaints shall be in writing and under oath.

(c) Upon receipt of a complaint, the department will send an acknowledgment letter to the complainant, together with the department's policies and procedures pertaining to complaint investigation and resolution. The department may accept an anonymous complaint if there is sufficient information for the investigation.

(d) The department will document, evaluate, prioritize, and investigate complaints based on the seriousness of the alleged violation and the level of client or participant risk, and will make any report to another agency required by law.

(e) Prior to or during an investigation, the department will request a response from the licensee or person against whom a complaint has been filed, and provide the department's policies and procedures pertaining to complaint investigation and resolution. The licensee or person against whom an alleged violation has been filed shall respond within 15 working days of receipt of the department's request.

(f) Pursuant to a department investigation regarding an alleged violation of the Act or this subchapter, a licensee shall produce records, documents and other evidence related to the license, registration, or approval to the department, upon request, unless otherwise prohibited by law. A licensee shall not interfere with the department's access to clients, witnesses or other parties.

(g) If it is determined that the matters alleged in the complaint are non-jurisdictional, or if the matters alleged in the complaint would not constitute a violation of the Act or this subchapter, the department may close the complaint and give written notice of the closure to the person against whom the complaint was filed and the complainant.

(h) The department may refer complaints outside its jurisdiction, or also within the jurisdiction of another licensing program within the department or of another agency, to the appropriate program or agency for action, as permitted by law.

(i) The department, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person against whom the complaint was made of the status of the complaint, unless the notice would jeopardize an undercover investigation.

#### §140.426. Disciplinary Actions.

(a) The provisions of this section shall apply to all types of licensees under this subchapter, notwithstanding the provisions of §442.103 of this title (relating to Procedure for Contested Cases for Counselor and Facility Licenses), and shall not limit the authority of the department to take any other action against a license, registration, or certification, or the holder of, or applicant for, a license, registration, or certification, under §140.431 of this title (relating to Criminal History Standards), or as otherwise authorized by applicable statute or rule.

(b) The department may take action as authorized under subsection (c) of this section if an applicant for, or holder of, a license, registration, or certification issued under this subchapter:

(1) violates or assists another to violate the Act, a rule under this subchapter, or an Order issued under the Act or this subchapter's rules;

(2) circumvents or attempts to circumvent the Act or a rule under this subchapter;

(3) directly or indirectly participates in a plan to evade the Act or a rule under this subchapter;

(4) has a license to practice chemical dependency counseling in another jurisdiction refused, suspended, or revoked for a reason that the department determines would constitute a violation of the Act or a rule under this subchapter;

(5) engages in false, misleading, or deceptive conduct as defined by Business and Commerce Code, §17.46;

(6) engages in conduct that discredits or tends to discredit the profession of chemical dependency counseling;

(7) directly or indirectly reveals a confidential communication made to the person by a client or recipient of services, except as required or permitted by law;

(8) refuses to perform an act or service the person is licensed to perform under this subchapter on the basis of the client's or recipient's age, sex, race, religion, national origin, color, or political affiliation; or

(9) commits an act for which liability exists under Civil Practice and Remedies Code, Chapter 81 (Relating to Sexual Exploitation By Mental Health Services Provider).

(c) Where grounds exist to take action against a person, against a license, certification, or registration issued under this subchapter, or against an applicant or holder of a license, certification, or registration issued under this subchapter, the department may:

(1) deny, refuse to issue, or refuse to renew a license, certification, or registration;

(2) revoke or suspend a license, certification, or registration;

(3) probate a suspension of a license, certification, or registration;

(4) impose an administrative penalty against a person who violates the Act or a rule under this subchapter; or

(5) issue a reprimand against the applicable license holder.

(d) The department will determine the length of the probation or suspension. If the department probates the suspension of a license, certification, or registration, the department may require the holder of the applicable license to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) complete additional educational requirements, as required by the department to address the areas of concern that are the basis of the probation.

(e) An individual whose license, registration, or certification is revoked under this subchapter is not eligible to apply for a license, registration, or certification under this subchapter for a minimum of two years after the date of revocation. The department may consider the findings that resulted in revocation and any other relevant facts in determining whether to deny the application under this section, or as otherwise permitted by law, if an otherwise complete and sufficient application for a license, registration, or certification is submitted after two years have elapsed since revocation.

(f) A voluntary surrender accepted by the department in response to a complaint under §140.429 of this title (relating to Voluntary Surrender of License, Certification, or Registration In Response to a Complaint) shall be deemed to be the result of a formal disciplinary action as provided for in that section.

(g) The department, upon determination that grounds may exist to take disciplinary action, shall issue a notice of violation notifying the respondent of the proposed action.

(1) The notice letter shall be sent via regular first-class and certified mail to the respondent's address of record.

(2) The notice shall specify:

(A) the statutes, rules, or orders allegedly violated;

(B) the factual basis of the alleged violations;

(C) the disciplinary action the department intends to take; and

(D) notice of an opportunity for a hearing to be held under the Administrative Procedure Act, Texas Government Code, Chapter 2001.

(3) If the department is proposing to assess an administrative penalty, the letter shall also inform the respondent of the amount of the proposed penalty and of the opportunity for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(4) The letter shall also include the following notices:

(A) If the respondent does not request a hearing on or before the 20th day after notice is effective, the allegations will be deemed true and the department will issue a default final order implementing the proposed action.

(B) Notice is effective three days after the date of mailing.

(h) A respondent must submit a timely written request for a hearing to avoid having the allegations in the notice letter deemed true and a default order implementing the proposed action issued by the department. The request for hearing is timely if filed with the department or postmarked on or before the 20th day after the notice is effective. If the respondent fails to timely file a request for a hearing, the factual allegations of the notice letter may be deemed true and shall form the basis of a default final order by the department making findings of fact and conclusions of law consistent with the notice of violation, and implementing the proposed action.

(i) The department shall implement a final order to suspend a license issued under this subchapter for failure to pay child support as provided by the Texas Family Code, Chapter 232.

§140.427. Administrative Penalties.

(a) The provisions of this section shall apply to administrative penalties proposed or assessed against any person for violation of the Act or a rule under this subchapter, notwithstanding the provisions of §442.104 of this title (relating to Administrative Penalties for Licensed Facilities and Counselors and Offender Education Programs).

(b) The amount of an administrative penalty shall be based on the following criteria:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation;
- (4) efforts made to correct the violation; and
- (5) any other matter that justice requires.

(c) The seriousness of a violation shall be categorized by one of the following severity levels:

(1) Level I--violations in which harm or other adverse impact to public health, safety, or welfare has actually occurred or is likely to occur and/or recur;

(2) Level II--violations that demonstrate a potential for harm or other adverse impact to public health, safety, or welfare; or

(3) Level III--violations that are not likely to substantially affect public health, safety, or welfare.

(d) The range of administrative penalties by severity levels is as follows for each violation:

(1) Level I--up to \$1000 per day;

(2) Level II--up to \$500 per day; or

(3) Level III--up to \$100 per day.

(e) Subsequent violations of the same or similar nature in the same severity level for which an administrative penalty has previously been imposed may be categorized at the next higher severity level, based upon the repeated violation. Subsequent Level I violations of the same or similar nature for which an administrative penalty has previously been imposed at the Level I severity level may be assessed a higher penalty within that severity level, up to \$1,000 per day per violation, based upon the repeated violation.

#### §140.428. Informal Disposition.

(a) At any stage of a disciplinary case, informal disposition of a complaint or contested case involving an applicant or licensee may be made through an informal conference held to determine whether the matters in controversy can be resolved without further proceedings, including by agreed order.

(b) In any case where a notice of violation has been issued proposing disciplinary action against an applicant or licensee, that person will be given the opportunity to attend an informal conference to show compliance with the law, pursuant to Texas Government Code §2001.054 (relating to Licenses), prior to a requested hearing. If the applicant or licensee fails to appear at a scheduled informal conference, the department may deem that person to have waived the right to an informal conference and may proceed to hearing.

(c) An informal conference shall be voluntary for the applicant or licensee and shall not be a prerequisite to a formal hearing.

(d) The conference shall be informal and shall not follow the procedures established in this subchapter for contested cases and formal hearings.

(e) The department will establish the time, date and place of the informal conference, and provide written notice to the licensee or applicant. Written notice will be provided no less than 10 business days prior to the date of the informal conference at the last known address of the licensee or applicant.

(f) The applicant or licensee may be represented by legal counsel at the informal conference. The department's legal counsel and appropriate staff will be present at the conference.

(g) At the conclusion of the informal conference, the department may propose an informal disposition of the complaint or contested case. The proposal may include proposed entry of an agreed order imposing any disciplinary action authorized by the Act or this subchapter. The department may also conclude that the department lacks jurisdiction; that the matter should be referred for further investigation; that the complaint should be closed without action; or that the department will proceed to a contested case hearing on the proposed action, if one has been requested by the applicant or licensee, in accordance with §140.430 of this title (relating to Procedures for Contested Cases).

(h) The licensee or applicant may either accept or reject the department's proposal at the informal conference. If the recommendations are accepted, a proposed agreed order will be forwarded to the licensee or applicant, or that person's attorney. The order will include any agreed findings of fact and conclusions of law. If the licensee or applicant fails to return the signed order within 20 days of receipt of the proposed order, or within another time frame specified or agreed to by the department, the department's proposed order will be deemed withdrawn and the department may proceed to a contested case hearing on the action originally proposed, if the applicant or licensee has requested one, or otherwise proceed with appropriate action against the applicant or licensee. The licensee or applicant will be deemed to have received the proposed agreed order three days after mailing.

#### §140.429. Voluntary Surrender of License, Certification, or Registration In Response to a Complaint.

(a) When a licensee has offered the surrender of that person's license in response to a complaint, the department will consider whether to accept the surrender of the license. A licensee will be deemed to have offered the surrender of that person's license in response to a complaint when the surrender is offered after the licensee has received notice that a complaint has been received by the department. A licensee will be deemed to have received notice that a complaint has been received by the department three days after a letter notifying the licensee is mailed by the department.

(b) Surrender of a license without the department's acceptance thereof shall not deprive the department of jurisdiction under the Act, this subchapter, or other applicable law.

(c) When the department accepts the surrender of a license offered in response to a complaint, the license surrender is deemed to be the result of a formal disciplinary action and an order shall be prepared accepting the license surrender on that basis.

(d) If the department accepts the surrender of a license offered in response to a complaint, the person is not eligible to apply for a license, registration, or certification under this subchapter for a minimum of two years after the date of acceptance of the surrender.

§140.430. Procedures for Contested Cases.

(a) The provisions of this section shall apply to licensees under this subchapter, notwithstanding the provisions of §442.103 of this title (relating to Procedure for Contested Cases for Counselor and Facility Licenses).

(b) Where the department has issued a notice of violation that has not been resolved by informal disposition and the respondent has timely requested a hearing, the department will proceed to a hearing under the APA, Texas Government Code, Chapter 2001; SOAH Rules of Procedure, 1 Texas Administrative Code, Chapter 155; and formal hearing procedures set forth at §§1.21, 1.23, 1.25, and 1.27 of this title.

(c) The department will provide written notice of the hearing to the respondent by first class mail and certified mail, return receipt requested, at respondent's last known address as reflected in the department's address of record for the respondent. A Notice of Hearing that complies with the requirements of Texas Government Code, §2001.051 and §2001.052 (relating to Opportunity for Hearing and Participation; Notice of Hearing and Contents of Notice), and 1 Texas Administrative Code §155.401 (relating to Notice of Hearing), will be provided at least ten days before the date of the hearing. Respondent's receipt of the Notice of Hearing at least ten days before the date of the hearing will be presumed if the department mailed the Notice of Hearing at least ten days before the date of the hearing, and allowed an additional three days for mailing.

(d) If the respondent fails to appear at a scheduled SOAH hearing after being given proper notice of the hearing at respondent's last known address as reflected in the department's address of record for the respondent, the department may move for dismissal of the case from the SOAH docket, without prejudice, to allow for informal disposition of the case by default order, as provided for in §1.25 of this title (relating to Default). Based upon the respondent's failure to appear after proper notice of the hearing, the factual allegations of the notice letter may be deemed true and shall form the basis of a final default order by the department making findings of fact and conclusions of law consistent with the notice of violation, and implementing the proposed action.

(e) If a respondent makes a written request to the department for a transcript of a SOAH proceeding, the department will assess the cost of the transcript to that respondent. If there were multiple respondents to the proceeding, the department will assess the cost proportionally among those respondents requesting a transcript. Where a respondent appeals a final department decision in a contested case, the respondent shall pay the cost of preparation of the original or a certified copy of the record that is required to be sent to the reviewing court, and such charge may be assessed against respondent by the court in accordance with the Texas Rules of Civil Procedure as a court cost.

§140.431. Criminal History Standards.

(a) The department reviews the criminal history of each applicant for initial licensure, certification, and registration. Reviews are also conducted when the department receives

information that a licensee has been charged, indicted, placed on deferred adjudication, community supervision, or probation, or convicted of an offense described in subsection (d) of this section.

(b) An applicant shall disclose and provide complete information about all misdemeanor and felony charges, indictments, deferred adjudications, episodes of community supervision or probation, and convictions. Failure to make full and accurate disclosure may be grounds for application denial or disciplinary action, including revocation, against the applicant for, or holder of, a license, registration, or certification.

(c) The department obtains criminal history information from the Texas Department of Public Safety, including information from the Federal Bureau of Investigations (FBI).

(d) For purposes of this section, the department has identified the following offenses as offenses directly related to the duties and responsibilities of the licenses, certifications, and registrations issued under this subchapter, and has categorized them according to the seriousness of the offense. The provisions of this section shall not limit the authority of the department to take any other action against a license, registration, or certification, or the holder of, or applicant for, a license, registration, or certification, as otherwise authorized by applicable statute or rule.

(1) Category X includes:

- (A) capital offenses;
  - (B) sexual offenses involving a child victim;
  - (C) felony sexual offenses involving an adult victim who is a client (one or more counts);
  - (D) multiple counts of felony sexual offenses involving any adult victim;
- and
- (E) homicide 1st degree.

(2) Category I includes:

- (A) kidnapping;
- (B) arson;
- (C) homicide lesser degrees;
- (D) felony sexual offenses involving an adult victim who is not a client (single count); and
- (E) attempting to commit crimes in Category I or X.

(3) Category II includes felony offenses that are not listed separately in this section and that result in actual or potential physical harm to others and/or animals.

(4) Category III includes:

(A) class A misdemeanor alcohol and drug offenses;

(B) class A misdemeanor offenses resulting in actual or potential physical harm to others or animals;

(C) felony alcohol and drug offenses; and

(D) all other felony offenses not listed separately in this section.

(5) Category IV includes:

(A) class B misdemeanor alcohol and drug offenses; and

(B) class B misdemeanor offenses resulting in actual or potential physical harm to others or animals.

(e) Except as provided in subsection (j) of this section, the department shall deny the initial or renewal licensure, certification, or registration application of a person who has been convicted or placed on community supervision in any jurisdiction for a:

(1) category X offense during the person's lifetime;

(2) category I offense during the 15 years preceding the date of application;

(3) category II offense during the ten years preceding the date of application;

(4) category III offense during the five years preceding the date of application, unless, at the time of application, proceedings have been dismissed and the person has been discharged after having been placed on and completing community supervision following a deferred adjudication; or

(5) category IV offense during the three years preceding the date of application.

(f) The department shall deny the initial or renewal license, certification, or registration application of a person who has been found to be incapacitated by a court on the basis of a mental defect or disease.

(g) When a person's application is denied under subsection (e) or (f) of this section, the person may reapply when:

(1) the person receives a full pardon based on the person's wrongful conviction;

(2) the timeframes established in subsection (e) of this section have been met; or

(3) the person who had been found to be incapacitated is found to be no longer incapacitated, in which case the provisions of this section applicable to the status of the charge and prosecution at that time will apply.

(h) The department shall suspend a license, certification, or registration if the department receives written notice from the Texas Department of Public Safety or another law enforcement agency that the individual has been charged, indicted, placed on deferred adjudication, community supervision, or probation, or convicted of an offense described in subsections (d) and (e) of this section. The licensee will remain subject to applicable renewal requirements during the period of suspension. An application to renew any form of license suspended under this subsection will be subject to the denial and exception provisions as stated in subsection (e) of this section, to the extent applicable at the time of renewal application. If subsection (e) of this section does not apply, the applicant is otherwise eligible for renewal, and the applicant is still subject to summary suspension under this subsection, the applicable license will remain suspended under this subsection upon renewal, and until paragraph (2) of this subsection or subsection (e) of this section becomes applicable.

(1) The department shall send notice stating the grounds for summary suspension by certified mail to the license, certification, or registration holder at the address listed in the department's records. The suspension is effective three days after the date of mailing.

(2) If no other bar to licensure, certification, or registration exists at the time, the department will restore the person's license, certification, or registration upon receipt of official documentation that the charges have been dismissed or the person has been acquitted, except that, where the dismissal follows a deferred adjudication, the time frames set forth in subsection (e) of this section will apply.

(i) The department will defer action on the application of a person who has been charged or indicted for an offense described in subsection (d) of this section. If the person is convicted or placed on community supervision for the offense, subsection (e) of this section will apply. If the charges are dismissed or the person is acquitted, the application will be processed without adverse action under this section on the basis of those charges. However, the department may consider the facts and evidence underlying the charge in determining whether adverse action against the applicant might be warranted under §140.426 of this title (relating to Disciplinary Actions).

(j) Notwithstanding subsection (e) of this section, if no other bar to the applicable licensure or renewal exists at the time, the department may issue or renew, as applicable, an LCDC license, registration, or certification of a person convicted or placed on community supervision in any jurisdiction, within the timeframes set forth in subsection (e) of this section, for a drug or alcohol offense described in subsection (d) of this section, if the department

determines that the individual has successfully completed participation in a peer assistance program approved by the department.

(1) When an individual described in subsection (j) of this section successfully reaches the re-entry phase of a peer assistance program, the department may grant a temporary “re-entry approval,” with a limited term and any appropriate conditions, set in conjunction with the peer assistance program, based upon the applicant’s needs and the anticipated length of the re-entry phase of the peer assistance program for the applicant.

(2) At the end of the term of the re-entry approval, the department may extend the term if the applicant is still successfully participating in the re-entry phase of the peer assistance program, may grant the applicable initial or renewal license, registration, or certification, or renew the LCDC license if the department determines that the applicable individual has successfully completed the peer assistance program, or shall deny the license under subsection (e) of this section, if the LCDC has failed to successfully complete the peer assistance program.

(k) A person whose license, certification, or registration has been denied or suspended under this section may only appeal the action if:

(1) the person was convicted or placed on community supervision; and

(2) the appeal is based on the grounds that the timeframes defined in subsection (e) of this section have been met.

#### §140.432. Request for Criminal History Evaluation Letter.

(a) In accordance with Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person’s eligibility for a license if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and

(2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the department, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person’s potential ineligibility.

(c) The department has the same authority to investigate a request submitted under this section and the requestor’s eligibility that the department has to investigate a person applying for a license.

(d) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the department determines that the requestor is ineligible for a license, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.