

Title 22. EXAMINING BOARDS

Part XXX. Texas State Board of Examiners of Professional Counselors

Chapter 681. Professional Counselors.

New Subchapter N. Parent Coordination and Parent Facilitation

New §§681.251-681.252

Proposed Preamble

The Texas State Board of Examiners of Professional Counselors (board) proposes new §681.251 and §681.252 concerning the licensing and regulation of professional counselors who serve as parent coordinator and parent facilitator.

Sections 681.251 and 681.252 are proposed to comply with House Bill 1012, 81st Legislature, 2009, codified as Family Code, Chapter 153. The proposed sections address parent coordination and parent facilitation. Parent coordinators and parent facilitation are persons appointed by the court to aid the parties and the court in resolving parenting issues, within the limits of the court order of appointment. Parent coordinators are appointed in high conflict situations and report to the court only whether parent coordination should continue. Parent facilitators may deal with similar issues as a parent coordinator, but may report to the court recommendations regarding particular issues between the parties, but not recommendations regarding custody or visitation.

SECTION-BY-SECTION SUMMARY

Section 681.251 is proposed to define the duties and responsibilities of a parent coordinator and establish certain prohibitions and requirements for a licensed professional counselor who serves as a parent coordinator.

Section 681.252 is proposed to define the duties and responsibilities of a parent facilitator and establish certain prohibitions and requirements for a licensed professional counselor who serves as a parent facilitator.

FISCAL NOTE

Bobbe Alexander, Executive Director, has determined that for each year of the first five years the sections are in effect, there will not be a fiscal impact to state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Alexander has also determined that there will be no economic costs to small businesses or micro-businesses. This was determined by interpretation of the rules that these entities will not be required to alter their business practices to comply with the sections as proposed. The rules relate to individuals who are licensed as professional counselors.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Ms. Alexander has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to effectively regulate the practice of counseling in Texas, which will protect and promote public health, safety, and welfare, and to ensure that statutory directives are carried out.

REGULATORY ANALYSIS

The board 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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The board has determined that the proposal does 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, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Bobbe Alexander, Executive Director, State Board of Examiners of Professional Counselors, Department of State Health Services, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347 or by email to lpc@dshs.state.tx.us. When emailing comments, please indicate “Comments on Proposed Rules” in the email subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The new rules are authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board’s duties; and Family Code, Chapter 153, which contains law concerning a parenting coordinator and facilitator.

The new rules affect Occupations Code, Chapter 503; and Family Code, Chapter 153.

Subchapter N. Parent Coordination and Parent Facilitation.

§681.251. Parent Coordination.

(a) In accordance with the Family Code, §153.601(3), “parenting coordinator” means an impartial third party:

(1) who, regardless of the title by which the person is designated by the court, performs any function described in Family Code, §153.606, in a suit; and

(2) who:

(A) is appointed under Family Code, Chapter 153, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion or on a motion or agreement of the parties to assist parties in resolving parenting issues through confidential procedures; and

(B) is not appointed under another statute or a rule of civil procedure.

(b) A licensee who serves as a parent coordinator is not acting under the authority of a license issued by the board and is not engaged in the practice of professional counseling. The services provided by the licensee who serves as a parent coordinator are not within the jurisdiction of the board, but rather the jurisdiction of the appointing court.

(c) A licensee who serves as a parent coordinator has a duty to provide the information in subsection (b) of this section to the parties to the suit.

(d) Records of a licensee serving as a parenting coordinator are confidential under Civil Practice and Remedies Code, §154.073. Licensees serving as a confidential parenting coordinator shall comply with the Civil Practice and Remedies Code, Chapter 154, relating to the release of information.

(e) A licensee shall not provide professional counseling services to any person while simultaneously providing parent coordination services. This section shall not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

§681.252. Parent Facilitation.

(a) In accordance with House Bill 1012, 81st Legislature, 2009, and Family Code, Chapter 153, this section establishes the practice standards for licensees who desire to serve as parenting facilitators.

(b) In accordance with Family Code, §153.601(3-a), a “parenting facilitator” means an impartial third party:

(1) who, regardless of the title by which the person is designated by the court, performs any function described by Family Code, §153.6061, in a suit; and

(2) who:

(A) is appointed under Family Code, Chapter 153, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion or on a motion or agreement of the parties to assist parties in resolving parenting issues through procedures that are not confidential; and

(B) is not appointed under another statute or a rule of civil procedure.

(c) Notwithstanding any other provision of this chapter, licensees who desire to serve as parent facilitators shall comply with all applicable requirements of the Family Code, Chapter 153, and this section. Licensees shall also comply with all requirements of this chapter unless a provision is clearly inconsistent with the Family Code, Chapter 153, or this section.

(d) In accordance with Family Code, §153.6102(e), a licensee serving as a parenting facilitator shall not provide other professional counseling services to any person while simultaneously providing parent facilitation services. This section shall not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

(e) In accordance with Family Code, §153.6101(b)(1), a licensed professional counselor intern shall not serve as a parent facilitator.

(f) A licensee serving as a parenting facilitator utilizes child-focused alternative dispute resolution processes, assists parents in implementing their parenting plan by facilitating the resolution of disputes in a timely manner, educates parents about children's needs, and engages in other activities as referenced in Family Code, Chapter 153.

(g) A licensee serving as a parent facilitator shall assist the parties involved in reducing harmful conflict and in promoting the best interests of the children.

(h) A licensee serving as a parenting facilitator functions in four primary areas in providing services.

(1) Conflict management function --The primary role of the parenting facilitator is to assist the parties to work out disagreements regarding the children to minimize conflict. To assist the parents in reducing conflict, the parenting facilitator may monitor the electronic or written exchanges of parent communications and suggest productive forms of communication that limit conflict between the parents.

(2) Assessment function --A parenting facilitator shall review applicable court orders, including protective orders, social studies, and other relevant records to analyze the impasses and issues as brought forth by the parties.

(3) Educational function--A parenting facilitator shall educate the parties about child development, divorce, the impact of parental behavior on children, parenting skills, and communication and conflict resolution skills.

(4) Coordination/case management function--A parenting facilitator shall work with the professionals and systems involved with the family (for example, mental health, health care, social

services, education, or legal) as well as with extended family, stepparents, and significant others as necessary.

(i) A licensee serving as a parent facilitator shall be alert to the reasonable suspicion of acts of domestic violence directed at a parent, a current partner, or children. The parent facilitator shall adhere to protection orders, if any, and take reasonable measures to ensure the safety of the participants, the children and the parent facilitator, while understanding that even with appropriate precautions a guarantee that no harm will occur can be neither stated nor implied.

(j) In order to protect the parties and children in domestic violence cases involving power, control and coercion, a parenting facilitator shall tailor the techniques used so as to avoid offering the opportunity for further coercion.

(k) A licensee serving as a parent facilitator shall be alert to the reasonable suspicion of substance abuse by parents or children, as well as mental health impairment of a parent or child.

(l) A licensee serving as a parenting facilitator shall not provide legal advice.

(m) A licensee serving as a parenting facilitator shall serve by written agreement of the parties and/or formal order of the court.

(n) A licensee serving as a parenting facilitator shall not initiate providing services until the licensee has received and reviewed the fully executed and filed court order or the signed agreement of the parties.

(o) A licensee serving as a parenting facilitator shall maintain impartiality in the process of parenting facilitation. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.

(p) A licensee serving as a parenting facilitator:

(1) shall terminate or withdraw services if the licensee determines the licensee cannot act in an impartial or objective manner;

(2) shall not give or accept a gift, favor, loan or other item of value from any party having an interest in the parenting facilitation process;

(3) shall not coerce or improperly influence any party to make a decision;

(4) shall not intentionally or knowingly misrepresent or omit any material fact, law, or circumstance in the parenting facilitator process; and

(5) shall not accept any engagement, provide any service, or perform any act outside the role of parenting facilitation that would compromise the facilitator's integrity or impartiality in the parenting facilitation process.

(q) A licensee serving as a parenting facilitator may make referrals to other professionals to work with the family, but shall avoid actual or apparent conflicts of interest by referrals. No commissions,

rebates, or similar remuneration shall be given or received by a licensee for parenting facilitation or other professional referrals.

(r) A licensee serving as a parenting facilitator should attempt to bring about resolution of issues by agreement of the parties; however, the parenting facilitator is not acting in a formal mediation role. An effort towards resolving an issue, which may include therapeutic, mediation, education, and negotiation skills, does not disqualify a licensee from making recommendations regarding any issue that remains unresolved after efforts of facilitation.

(s) A licensee serving as a parenting facilitator shall communicate with all parties, attorneys, children, and the court in a manner which preserves the integrity of the parenting facilitation process and considers the safety of the parents and children.

(t) A licensee serving as a parenting facilitator:

(1) may meet individually or jointly with the parties, as deemed appropriate by the parenting facilitator, and may interview the children;

(2) may interview any individuals who provide services to the children to assess the children's needs and wishes; and

(3) may communicate with the parties through face-to-face meetings or electronic communication.

(u) A licensee serving as a parenting facilitator shall, prior to the beginning of the parenting facilitation process and in writing, inform the parties of:

(1) the limitations on confidentiality in the parenting facilitation process; and

(2) the basis of fees and costs and the method of payment including any fees associated with postponement, cancellation and/or nonappearance, and the parties' pro rata share of the fees and costs as determined by the court order or written agreement of the parties.

(v) Information obtained during the parenting facilitation process shall not be shared outside the parenting facilitation process except for professional purposes, as provided by court order, by written agreement of the parties, or as directed by the board.

(w) In the initial session with each party, a licensee serving as a parenting facilitator shall review the nature of the parenting facilitator's role with the parents to ensure that they understand the parenting facilitation process.

(x) A licensee serving as a parenting facilitator:

(1) shall comply with all mandatory reporting requirements, including but not limited to Family Code, Chapter 261, concerning abuse or neglect of minors;

(2) shall report to law enforcement or other authorities if they have reason to believe that any participant appears to be at serious risk to harm themselves or a third party;

(3) shall maintain records necessary to support charges for services and expenses and shall make a detailed accounting of those charges to the parties and their counsel if requested to do so;

(4) shall maintain notes regarding all communications with the parties, the children, and other persons with whom they speak about the case; and

(5) shall maintain records in a manner that is professional, legible, comprehensive, and inclusive of information and documents that relate to the parenting facilitation process and that support any recommendations made by the licensee.

(y) Records of a licensee serving as a parenting facilitator are not mental health records and are not subject to the disclosure requirements of Health and Safety Code, Chapter 611. At a minimum, records shall be maintained for the period of time described in §681.41(q) of this title (relating to General Ethical Requirements), or as otherwise directed by the court.

(z) Records of a licensee serving as a parenting facilitator shall be released on the request of either parent, as directed by the court, or as directed by the board.

(aa) Charges for parenting facilitation services shall be based upon the actual time expended by the parenting facilitator or as directed by the written agreement of the parties and/or formal order of the court.

(bb) All fees and costs shall be appropriately divided between the parties as directed by the court order of appointment and/or as noted in the parenting facilitators' written fee disclosure to the parties.

(cc) Fees may be disproportionately divided fees if one parent is disproportionately creating a need for services and if such a division is outlined in the court order of appointment and/or as noted in the parenting facilitators' written fee disclosure to the parties.

(dd) Services and activities for which a licensee serving as a parenting facilitator may charge include time spent interviewing parents, children and collateral sources of information; preparation of agreements, correspondence, and reports; review of records and correspondence; telephone and electronic communication; travel; court preparation; and appearances at hearings, depositions and meetings.

(ee) The minimum training for a licensee serving as a parent facilitator that is required by Family Code, §153.6101(b)(2), and is determined by the court is:

(1) eight hours of family violence dynamics training provided by a family violence service provider;

(2) 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court;

(3) 24 classroom hours of training in the fields of family dynamics, child development, family law; and

(4) 16 hours of training in the laws and board rules governing parent coordination and facilitation, and the multiple styles and procedures used in different models of service.

(ff) A licensee serving as a parent facilitator shall decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the licensee's skill or expertise.

(gg) Since parenting facilitation services are addressed under multiple titles in different jurisdictions nationally, acceptability of training to meet the requirements of subsection (cc) of this section is based on functional skills taught during the training rather than the use of specific titles or names.