

TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL



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Executive Director

July 2, 2025

VIA EMAIL TO OPINION.COMMITTEE@OAG.TEXAS.GOV

The Honorable Ken Paxton
Attorney General of Texas
Attn: Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: Is a licensee of the Executive Council considered a “health care provider” as that term is defined in Tex. Health & Safety Code § 161.701(2) and, if so, does the provision limit any mental health care services not specifically enumerated?

Dear Mr. Paxton:

In recognition of the Legislature’s primacy in setting public policy and out of respect for the important role each member plays in that process, the Texas Behavioral Health Executive Council (“Executive Council” or “agency”) is submitting this request for clarification from your office regarding the definition of health care provider found in S.B. 14, 88th Leg., R.S. (2023). This inquiry is being made at the formal request of a member of the Texas House of Representatives, and the agency seeks to honor its role in relation to the Legislature by ensuring proper interpretation and implementation of the law.

S.B. 14 created Subchapter X pertaining to gender transitioning and gender reassignment procedures and treatments for certain children, consisting of Tex. Health & Safety Code §§ 161.701 - 161.706, as well as amending Tex. Health & Safety Code § 62.151 and Tex. Occ. Code §§ 164.052 and 164.0552. Tex. Health & Safety Code § 161.701(2) defines the term health care provider in Subchapter X as the following:

- (2) "Health care provider" means a person other than a physician who is licensed, certified, or otherwise authorized by this state's laws to provide or render health care or to dispense or prescribe a prescription drug in the ordinary course of business or practice of a profession.

As you may be aware, H.B. 1501, 86th Leg., R.S. (2019) created the Executive Council and authorized this agency to license and regulate the practice of marriage and family therapy, professional counseling, psychology, and social work in Texas. This agency’s enabling statutes are found at Tex. Occ. Code Chs.

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501, 502, 503, 505, and 507; and the agency's rules are found at 22 Tex. Admin. Code Pts. 21, 30, 34, 35, and 41.

The definition found in Tex. Health & Safety Code § 161.701(2) presents some ambiguity for this agency, as the Executive Council licenses mental health care providers; however, based on the activities and services proscribed by § 161.702, mental health care services do not appear to fall within the intended scope of S.B. 14. For example, Tex. Health & Safety Code § 161.702 prohibits health care providers from (1) performing a surgery, (2) performing a mastectomy, (3) providing, prescribing, or dispensing prescription drugs, or (4) removing any other body parts or tissues. None of the mental health care providers licensed by the Executive Council can legally provide any of these services under their license. Additionally, S.B. 14 amends the licensing act for physicians, Tex. Occ. Code Ch. 164, so the focus of these laws appears directed specifically towards medical procedures and medical professionals. Therefore, after considering the definition of health care provider in S.B. 14 in context with the remainder of the bill, and based on a plain reading of the statutory text, the agency believes that mental health care providers are not intended to be encompassed within the scope of S.B. 14.

Alternatively, if you conclude that mental health care providers licensed by the Executive Council are included within the definition of health care provider under Tex. Health & Safety Code § 161.701(2), the agency respectfully seeks clarification as to how such providers are impacted by S.B. 14, given that the prohibited activities and services are exclusively medical in nature and fall outside the scope of practice for mental health professionals.

Lastly, it is worth noting that the U.S. Supreme Court in *Chiles v. Salazar, et al.*, No. 24-539 (U.S. cert. granted March 10, 2025) is examining a question which relates to the Executive Council's questions. Ultimately, the court is examining whether the regulated practice of mental health counseling is conduct or speech. Circuit courts are split, as the Third and Eleventh Circuits treat mental health counseling as speech and not conduct, while the Ninth and Tenth Circuits treat it as conduct and not speech. Given the significance of the question before the court, which may have far reaching implications, this case may be something you want to consider in your opinion.

Based upon the foregoing, the Texas Behavioral Health Executive Council respectfully requests a Texas Attorney General Opinion on whether its licensees fall within the meaning of "health care provider" found in Tex. Health & Safety Code § 161.701(2) and the implications of S.B. 14 with regard to those same providers.

Affected or Interested Groups or Parties

The Council has identified the following persons or groups likely to be interested in the opinion.

National Association of Social Workers Texas
810 W. 11th Street
Austin, Texas 78701

Texas Counseling Association
1210 San Antonio St., Ste. 200
Austin, Texas 78701

Texas Psychological Association
3305 Steck Ave., Ste. 200
Austin, Texas 78757

Texas Association of Psychological Associates
P.O. Box 601374
Dallas, Texas 75360

Texas Association of School Psychologists
14070 Proton Road, Ste. 100
Dallas, Texas 75244

The Honorable Greg Abbott
Governor of Texas
Office of the Governor
P.O. Box 12428
Austin, Texas 78711-2428

Christian Counselors of Texas
P.O. Box 1432
Midlothian, Texas 76065

Texas Society for Clinical Social Work
3221 Clearview Drive
Austin, Texas 78703

Texas Assn. for Marriage and Family Therapy
1401 Lavaca St., Ste. 712
Austin, Texas 78701

The Honorable Steve Toth
Texas House of Representatives
Room E1.404
P.O. Box 2910
Austin, Texas 78768

Association for Mental Health Professionals
5300 Town and Country Blvd., Ste 130
Frisco, Texas 75034

The Council appreciates your review of this matter and looks forward to your opinion. If additional information is required, please contact me at (512) 305-7700.

Respectfully,



Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council