

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Texas Forensic Science Commission

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For further information, please call: (512) 936-0661



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS**

#### **CHAPTER 364. REQUIREMENTS FOR LICENSURE**

##### **40 TAC §364.5**

The Texas Board of Occupational Therapy Examiners proposes amendments to 40 Texas Administrative Code §364.5, concerning Recognition of Out-of-State License of Military Spouse. The proposed amendments allow a military spouse to show proof of residency by submitting a permanent change of station order. The amendments also include adding that individuals update the Board of certain changes.

House Bill 139 of the 87th Regular Legislative Session, to be codified at Texas Occupations Code §55.004(d), provides that: "A state agency that issues a license that has a residency requirement for license eligibility shall adopt rules regarding documentation necessary for a military spouse applicant to establish residency for purposes of this subsection, including by providing to the agency a copy of the permanent change of station order for the military service member to whom the spouse is married." The Bill takes effect September 1, 2021. In accordance with HB 139, the proposed amendment allows a permanent change of station order to serve as proof of residency for a military spouse requesting the authorization provided by the section.

An additional amendment concerns updating the Board of changes. Subsection (b)(2) of the section requires that a military spouse requesting the authorization submit proof of the military spouse's residency in this state and a copy of the military spouse's military identification card. The amendment adds the requirement that individuals who have received the authorization described by the section update the Board of any changes to information as specified under subsection (b)(2) within 30 days of such change(s). The change is proposed to enhance the Board's ability to remain apprised of changes to the information submitted for the authorization.

#### **FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS**

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state

or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4) because the amendments do not impose a cost on state or local governments.

#### **LOCAL EMPLOYMENT IMPACT**

Mr. Harper has determined that the proposed amendments would not impact a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022 and §2001.024(a)(6).

#### **PUBLIC BENEFIT AND COST NOTE**

Mr. Harper has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed amendments would be in effect, the public benefit will be the clarification of requirements for the authorization granted under the section and the enhancement of the Board's ability to maintain updated information regarding such authorizations. There would not be an additional anticipated economic cost to persons required to comply with the proposed amendments.

#### **ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES**

Mr. Harper has determined there would be no costs or adverse economic effects on small businesses, micro-businesses, or rural communities. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

#### **TAKINGS IMPACT ASSESSMENT**

The agency has determined that no private real property interests are affected by these proposed amendments and that these amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, these amendments do not constitute a taking under Texas Government Code §2007.043.

#### **GOVERNMENT GROWTH IMPACT STATEMENT**

The agency has determined under Texas Government Code §2001.0221 that during the first five years the rule would be in effect:

- (1) the rule will not create or eliminate a government program;
- (2) the rule will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) the rule will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rule will not require an increase or decrease in fees paid to the agency;
- (5) the rule will not create a new regulation;
- (6) the rule will expand an existing regulation to reference an item that may serve as proof of residency and to include that individuals notify the Board of additional changes;
- (7) the rule will not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) the rule will neither positively nor adversely affect this state's economy.

#### **COSTS TO REGULATED PERSONS**

The agency has determined that the rule does not impose a cost on regulated persons. This rule is not subject to Texas Government Code §2001.0045 because the rule does not impose a cost, is necessary to protect the health, safety, and welfare of the residents of this state, and is necessary to implement legislation as Texas Occupations Code §55.0041 requires the adoption of rules to implement the section. In addition, HB 139 of the 87th Regular Legislative Session requires the adoption of rules concerning accepting a permanent change of station order as proof of residency.

#### ENVIRONMENTAL IMPACT STATEMENT

The agency has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

#### PUBLIC COMMENT

Comments on the proposed amendments may be submitted in writing to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov within 30 days following the publication of this notice in the *Texas Register*. It is requested when sending a comment that individuals include the rule section to which the comment refers and that comments sent by email include "Public Comment" in the email's subject line.

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under chapter 454, and under Texas Occupations Code §55.0041, Recognition of Out-of-State License of Military Spouse, which requires to Board to adopt rules to implement the section.

#### CROSS REFERENCE TO STATUTE

The amendments are proposed under Texas Occupations Code §55.0041, Recognition of Out-of-State License of Military Spouse, and HB 139 of the 87th Regular Legislative Session, to be codified at Texas Occupations §55.004(d), which provides: "A state agency that issues a license that has a residency requirement for license eligibility shall adopt rules regarding documentation necessary for a military spouse applicant to establish residency for purposes of this subsection, including by providing to the agency a copy of the permanent change of station order for the military service member to whom the spouse is married."

#### §364.5. Recognition of Out-of-State License of Military Spouse.

(a) A military spouse may engage in the practice of occupational therapy without obtaining the applicable occupational therapy license if the military spouse is currently licensed in good standing by another jurisdiction of the U.S. that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(b) Before engaging in the practice of occupational therapy, the military spouse must:

(1) notify the Board in writing of the following:

(A) the military spouse's intent to practice in this state;

(B) the military spouse's full name and any previous last names, social security number, date of birth, residential address, business address, email address, and a chosen address of record;

(C) the license type, license number, and jurisdiction in which the military spouse is currently licensed in good standing; and

(D) a list of all jurisdictions in which the military spouse has held or currently holds a license with the license type, license number, and license expiration date of each;

(2) submit to the Board proof of the military spouse's residency in this state and a copy of the military spouse's military identification card. Proof of residency may include a copy of the permanent change of station order for the military service member to whom the spouse is married; and

(3) receive from the Board written confirmation that:

(A) the Board has verified the military spouse's license in the other jurisdiction; and

(B) the military spouse is authorized to engage in the practice of occupational therapy in accordance with this section.

(c) The military spouse shall comply with all other Board laws and regulations applicable to the practice of occupational therapy in this state. The military spouse may be subject to revocation of the authorization described by subsection (b)(3)(B) of this section for failure to comply with Board laws and regulations and the Board may notify any jurisdictions in which the military spouse is licensed of the revocation of such.

(d) A military spouse may engage in the practice of occupational therapy under the authority of this section only for the period during which the military service member to whom the military spouse is married is stationed at a military installation in this state but not to exceed three years from the date the military spouse receives the confirmation described by subsection (b)(3) of this section. During this authorization period, the military spouse must:

(1) maintain a current license in good standing in another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state;

(2) update the Board of any changes to information as specified in subsections [subsection] (b)(1)(B)-(C) and (b)(2) of this section within 30 days of such change(s); and

(3) notify the Board within 30 days of any disciplinary action taken against the military spouse by another jurisdiction.

(e) The Board will identify, with respect to each type of license issued by the Board, the jurisdictions that have licensing requirements that are substantially equivalent to the requirements for the license in this state; and the Board shall verify that a military spouse is licensed in good standing in the jurisdiction upon receipt of the items described by subsection (b)(1)-(2) of this section.

(f) In this section, "military service member" and "military spouse" have the meaning as defined in Chapter 55, Occupations Code, §55.001.

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Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

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For further information, please call: (512) 305-6900

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