



TO: The Professional Practice Committee

FROM: Douglas E. Lentivech

SUBJECT: Proposed Addition of Section 74.10 of the Regulations of the Commissioner of Education Relating to Continuing Education Requirements for Licensed Master Social Workers and Licensed Clinical Social Workers

DATE: April 21, 2014

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Board of Regents add a new section 74.10 to the Regulations of the Commissioner of Education relating to mandatory continuing education requirements for licensed master social workers and licensed clinical social workers?

Reason(s) for Consideration

Required by State statute (Chapter 443 of the Laws of 2013).

Proposed Handling

The proposed rule will be presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as a permanent rule at the April 2014 meeting of the Board of Regents. A copy of the proposed rule is attached. Supporting materials for the proposed rule are available upon request from the Secretary to the Board of Regents.

Procedural History

The proposed rule was discussed by the Professional Practice Committee at the January 2014 Board of Regents meeting. A Notice of Proposed Rule Making was

published in the State Register on February 19, 2014 for a 45-day public comment period. An Assessment of Public Comment is attached, however, no change in the proposed rule is recommended at this time.

Background Information

Section 7710 of the Education Law, as added by Chapter 443 of the Laws of 2013, requires licensed master social workers and licensed clinical social workers to complete 36 hours of mandatory continuing education when registering to practice in New York State, effective January 1, 2015. In order to implement the requirement for continuing education in a timely manner, the law authorizes the Department to promulgate and adopt regulations necessary to implement the law prior to the effective date.

The proposed rule establishes mandatory continuing education requirements and standards for the Department's approval of continuing education providers. The proposed rule requires each licensed master social worker and licensed clinical social worker to complete 36 hours of continuing education during each three-year registration period. The proposed rule provides a phase-in period in which licensees whose next registration period is during the first three years after January 1, 2015 will be required to complete only one hour of mandatory continuing education for each month in the registration period after January 1, 2015.

The proposed rule defines acceptable continuing education subjects and other types of educational activities that the Department will accept to satisfy the required continuing education requirements. Acceptable continuing education must contribute to the professional practice of social work and must be offered by a provider approved by the Department, based upon an application and fee. Acceptable courses may include, but are not limited to, university and college credit and non-credit courses; and professional development and technical sessions related to the practice of social work. Other acceptable education activities include: (1) preparing and teaching a course offered by a sponsor of continuing education; (2) preparing and teaching a course, acceptable to the department, at a higher education institution or psychotherapy institute relating to the practice of social work; (3) making a technical presentation at a professional conference sponsored by an organization that is a provider of continuing education; (4) completing a self-study program offered by a provider approved by the Department; (5) authoring a first-time article published in a peer-reviewed journal or a chapter in a published book; and (6) authoring a first-time book in the practice of social work.

Organizations that may apply to offer continuing education to licensed master social workers and licensed clinical social workers include higher education institutions; psychotherapy institutes chartered by the Board of Regents; national, state and local professional social work associations; national organizations of jurisdictional social work boards; or entities operated under an operating certificate issued under the Mental Hygiene or Public Health law. In order to become an approved provider, the organization must submit the \$900 fee and an application that meets the requirements in the proposed addition to the Commissioner's regulations. An approved provider must

apply and pay the fee every three years and, if the Department determines a provider is not meeting the standards, the Department may deny or terminate its approval.

The proposed rule also establishes continuing education requirements when there is a lapse in practice, requirements for licensees under conditional registration, and fees for licensees and providers. The proposed rule is modeled after similar mandatory continuing education requirements for licensed physical therapists and licensed massage therapists, for whom continuing education requirements have been in place since 2009 and 2012, respectively.

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That a new section 74.10 of the Regulations of the Commissioner of Education be added, as submitted, effective May 14, 2014.

Timetable for Implementation

If adopted at the April 2014 Regents meeting, the proposed rule will become effective on May 14, 2014.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 212, 6504, 6507 and 7710 of the Education Law and Chapter 443 of the Laws of 2013.

Section 74.10 of the Regulations of the Commissioner of Education is added, effective May 14, 2014, to read as follows:

§74.10 Continuing education for licensed master social workers or licensed clinical social workers.

(a) Definitions. As used in this section:

(1) Acceptable accrediting agency means an organization accepted by the department as a reliable authority for the purpose of accreditation at the postsecondary level, applying its criteria for granting accreditation in a fair, consistent and nondiscriminatory manner, such as an agency recognized for this purpose by the Council for Higher Education Accreditation.

(2) Higher education institution means a degree-granting postsecondary institution accredited by an acceptable accrediting agency.

(3) Psychotherapy institute means a psychotherapy institute chartered by the Board of Regents, or an institution offering a program which meets the requirements of section 52.35 of this Chapter.

(b) Applicability of requirements.

(1) Each licensed master social worker or licensed clinical social worker, required under Article 154 of the Education Law to register with the department to practice in New York State, shall comply with the mandatory continuing education requirements as prescribed in subdivision (c) of this section, except those licensees exempt from the requirement or who obtain an adjustment to the requirement pursuant to paragraph (2) of this subdivision or who are subject to a different requirement pursuant to this section.

(2) Exemptions and adjustments to the requirement.

(i) Exemptions. The following licensees shall be exempt from the continuing education requirements, as prescribed in subdivision (c) of this section:

(a) licensees for the triennial registration period during which they are first licensed to practice as a licensed master social worker or licensed clinical social worker in New York State; and

(b) licensed master social workers or licensed clinical social workers who are not engaged in the practice of social work, as evidenced by not being registered to practice in New York State, except as otherwise prescribed in subdivision (e) of this section to meet the requirements for the resumption of practice in New York State.

(ii) Adjustments to the requirement. An adjustment to the continuing education requirement, as prescribed in subdivision (c) of this section, may be made by the department, provided that the licensee documents good cause that prevents compliance or the department determines otherwise that there is good cause that prevents compliance, which shall include, but not be limited to, any of the following reasons: poor health or a specific physical or mental disability certified by an appropriate health care professional; or extended active duty with the Armed Forces of the United States; or other good cause beyond the licensee's control which in the judgment of the department, makes it impossible for the licensee to comply with the continuing education requirements in a timely manner.

(c) Mandatory continuing education requirement.

(1) General requirement.

(i) During each triennial registration period, meaning a registration period of three years' duration, an applicant for registration shall complete at least 36 hours of continuing education, acceptable to the department, as defined in paragraph (2) of this

subdivision. Any licensed master social worker or licensed clinical social worker whose first registration date following January 1, 2015 occurs less than three years from such date shall complete continuing education hours on a prorated basis at the rate of one hour of acceptable formal continuing education per month for the period beginning January 1, 2015 up to the first registration date thereafter. Such continuing education shall be completed during the period beginning January 1, 2015 and ending before the first day of the new registration period.

(ii) Proration. Unless otherwise prescribed in this section, during each registration period of less than three years' duration, an applicant for registration shall complete acceptable continuing education, as defined in paragraph (2) of this subdivision and within the limits prescribed in such paragraph, on a prorated basis at a rate of one hour of continuing education per month for such registration period.

(iii) A licensed clinical social worker who is also licensed and registered to practice as a licensed master social worker in the same triennial registration period, shall not be required to complete more than thirty-six hours in the triennial registration period, or one hour per month for a registration period other than thirty-six months.

(2) Acceptable formal continuing education. To be acceptable to the department, continuing education shall meet the requirements of this paragraph. Such continuing education must be in subjects prescribed in subparagraph (i) of this paragraph and be the types of learning activities prescribed in subparagraph (ii) of this paragraph and subject to the prohibition contained in subparagraph (iii) of this paragraph.

(i) Subjects. Acceptable continuing education shall contribute to the professional practice of social work and shall have as its focus one or more of the following subjects:

(a) theories and concepts of human behavior in the social environment;

(b) social work practice, knowledge and skills;

(c) social work research, programs, or practice evaluations;

(d) social work management, administration or social policy;

(e) social work ethics;

(f) clinical interventions, evidence-based models, and principles of clinical social work practice, psychotherapy, and clinical social work diagnosis;

(g) client communications and recordkeeping;

(h) administrative supervision of licensed master social work and clinical supervision of licensed clinical social work practice;

(i) pedagogical methodologies or other topics which contribute to the professional practice of licensed master social work and licensed clinical social work; or

(j) cross-disciplinary offerings from medicine, law, administration, education and the behavioral sciences are acceptable if they are clearly related to the enhancement of social work practice, skills and knowledge and the health, safety, and/or welfare of the public.

(ii) Types of learning activities. Acceptable continuing education shall be the types of learning activities prescribed in this subparagraph and shall be subject to the limitations prescribed in this subparagraph and subparagraph (iii) of this paragraph.

(a) Courses of learning. Acceptable courses of learning and other education activities must be taken from a provider who has been approved by the department on the basis of an application and fee, pursuant to subdivision (i) of this section. Formal courses of learning shall include but not be limited to, university and college credit and non-credit courses, and professional development programs and technical sessions offered by national, state and local professional associations and other organizations acceptable to the department, and any other organized educational and technical programs related to the practice of social work that are acceptable to the department.

(b) Other educational activities. Acceptable continuing education shall be the following other educational activities:

(1) preparing and teaching a course offered by a provider of continuing education to licensed master social workers and licensed clinical social workers, approved pursuant to subdivision (i) of this section, provided that such teaching shall not be acceptable where the licensee has taught the course on more than one occasion without presenting new or revised material. Continuing education hours that may be credited for this activity may include actual instructional time plus preparation time which may be up to two additional hours for each hour of presentation;

(2) preparing and teaching a course, acceptable to the department, at a higher education institution or psychotherapy institute, as defined in paragraphs (2) or (3) of subdivision (a) of this section, relating to the practice of social work, provided that such teaching shall not be acceptable where the licensee has taught the course on more than one occasion without presenting new or revised material. Continuing education hours that may be credited for this activity may include actual instructional time plus preparation time which may be up to two additional hours for each hour of presentation;

(3) making a technical presentation at a professional conference sponsored by an organization that is a provider of continuing education to licensed master social workers and licensed clinical social workers and that is approved pursuant to subdivision (i) of this section, provided that such presentation shall not be acceptable where the licensee has presented on the topic on more than one occasion without presenting new or revised material. Continuing education hours that may be credited for this activity shall include actual presentation time, plus preparation time which may be up to two additional hours for each hour of presentation;

(4) completing a self-study program, meaning structured study, offered by a provider approved pursuant to subdivision (i) of this section, that is based on audio, audio-visual, written, on-line, or other media, and does not include live instruction, transmitted in person or otherwise, during which the student may communicate and interact with the instructor and other students. Self-study may comprise no more than twelve hours of continuing education in any three-year registration period, or one-third of the hours for a registration period other than three years;

(5) authoring a first-time article published in a peer-reviewed journal or a chapter in a published book, provided that the amount of continuing education credit awarded for such activity shall be two hours; or

(6) authoring a first-time book in the practice of licensed master social work or licensed clinical social work, provided that the amount of continuing education credit awarded for such activity shall be five hours.

(c) The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement.

(iii) Prohibition. Any continuing education designed for the sole purpose of personal development, marketing, business practices, and maximizing profits for the practice of a licensed master social worker or licensed clinical social worker shall not be considered by the department as acceptable continuing education.

(d) Renewal of registration. At each re-registration, licensed master social workers and licensed clinical social workers shall certify to the department that they have either complied with the continuing education requirements, as prescribed in this section, or are subject to an exemption or adjustment to such continuing education requirements, as prescribed in subdivision (c) of this section.

(1) A licensee who has not satisfied the mandatory continuing education requirements shall not practice until such requirements have been met and the licensee has been issued a registration certificate by the department, except where a licensee has been issued a conditional registration, as provided for in subdivision (f) of this section.

(2) Continuing education hours taken during one registration period may not be transferred to the subsequent registration period.

(e) Requirement for lapse in practice.

(1) A licensee returning to the practice of licensed master social work or licensed clinical social work after a lapse in practice, as evidenced by not being registered to practice in New York State, whose first registration date after such lapse in practice occurs less than three years from January 1, 2015, shall be required to complete:

(i) at least one hour of acceptable continuing education for each month beginning with January 1, 2015 until the beginning of the new registration period, which shall be completed for a licensee who has not lawfully practiced licensed master social work or licensed clinical social work continuously in another jurisdiction throughout such lapse period, in the 12-month period before the beginning of the new registration period; and for the licensee who has lawfully practiced as a licensed master social worker or licensed clinical social worker continuously in another jurisdiction throughout such lapse period, in the new registration period or at the option of the licensee in the period beginning 36 months before the commencement of the new registration period and ending at the conclusion of such new registration period; and

(ii) for a licensee who has not lawfully practiced as a licensed master social worker or licensed clinical social worker continuously in another jurisdiction throughout such lapse period, at least 12 hours of acceptable continuing education in each

successive 12-month period of the new registration period; and for a licensee who has lawfully practiced licensed master social work or licensed clinical social work continuously in another jurisdiction throughout such lapse period, the regular continuing education requirement during the new registration period.

(2) Except as prescribed in paragraph (1) of this subdivision for registrations therein specified, a licensee who returns to practice as a licensed master social worker or licensed clinical social worker after a lapse in practice in which the licensee was not registered to practice in New York State and did not lawfully practice continuously in another jurisdiction throughout the lapse period, shall be required to complete:

(i) the continuing education requirement applicable to the period of time the licensee was registered in the licensee's last registration period;

(ii) at least one hour of acceptable continuing education for each month of lapsed registration up to a maximum 36 hours, which shall be completed in the 12 months before the beginning of the new registration period; and

(iii) at least 12 hours of acceptable continuing education in each succeeding 12-month period, after such registration is reissued, until the next registration date.

(3) Except as prescribed in paragraph (1) of this subdivision for registrations therein specified, a licensee who returns to the practice of licensed master social work or licensed clinical social work after a lapse in practice in which the licensee was not registered to practice in New York State but did lawfully practice licensed master social work or licensed clinical social work continuously in another jurisdiction throughout the lapse period, shall be required to complete:

(i) the continuing education requirement applicable to the period of time the licensee was registered in the licensee's last registration period; and

(ii) at least one hour of acceptable continuing education for each month of lapsed registration up to a maximum of 36 hours, which shall be completed in the new registration period, or at the option of the licensee in the period beginning 36 months before the commencement of the new registration period and ending at the conclusion of the new registration period; and

(iii) the regular continuing education requirement during the new registration period.

(f) Conditional registration.

(1) The department may issue a conditional registration to a licensee who attests to or admits to noncompliance with the continuing education requirements of this section, provided that such licensee meets the following requirements:

(i) the licensee agrees to remedy such deficiency within the conditional registration period;

(ii) the licensee agrees to complete the regular continuing education requirement at the rate of one hour of acceptable continuing education per month during such conditional registration period; and

(iii) the licensee agrees to complete additional continuing education during such conditional registration period, which the department may require to ensure the licensee's proper delivery of professional licensed master social work or licensed clinical social work services consistent with the licensee's practice as a licensed master social worker or licensed clinical social worker.

(2) The duration of such conditional registration shall not exceed one year and shall not be renewed or extended.

(g) Licensee records. Each licensee subject to the requirements of this section shall maintain, or ensure access by the department to, a record of completed continuing

education, which includes: the title of the course if a course, the type of educational activity if an educational activity, the subject of the continuing education, the number of hours of continuing education completed, the provider's name and any identifying number (if applicable), attendance verification if a course, participation verification if another educational activity, a copy of any article or book for which continuing education credit is claimed with proof of publication, and the date and location of the continuing education. Such records shall be retained for at least six years from the date of completion of the continuing education and shall be made available for review by the department in the administration of the requirements of this section.

(h) Measurement of continuing education study. Continuing education credit shall be granted only for acceptable continuing education, as prescribed in subdivision (c) of this section. For continuing education courses, a minimum of 50 minutes shall equal one continuing education hour of credit. For credit-bearing university or college courses, each semester-hour of credit shall equal 15 continuing education hours of credit, and each quarter-hour of credit shall equal 10 continuing education hours of credit. Continuing education credit for other educational activities shall be awarded as described in clause (b) of subparagraph (ii) of paragraph (2) of subdivision (c) of this section or as otherwise prescribed by the department.

(i) Provider approval.

(1) An entity seeking approval by the department as a provider of continuing education to licensed master social workers or licensed clinical social workers in the form of courses of learning or self-study programs shall submit the fee prescribed in paragraph (3) of subdivision (j) and meet the requirements of paragraphs (2) and (3) of this subdivision.

(2) An entity eligible to apply for approval to be a provider of continuing education to licensed master social workers and licensed clinical social workers includes, but is not limited to:

(i) a higher education institution that offers programs that are registered pursuant to Part 52 of this Title as leading to licensure as a licensed master social worker or licensed clinical social worker in New York or accredited by the Council on Social Work Education or a higher education institution that is accredited by an acceptable accrediting agency and that offers graduate coursework that is directly related to the enhancement of practice, skills and knowledge of licensed master social workers or licensed clinical social workers.

(ii) a psychotherapy institute, as defined in paragraph (3) of subdivision (a) of this section that offers coursework that is directly related to the enhancement of practice, skills and knowledge of licensed master social workers or licensed clinical social workers.

(iii) a national social work organization or other professional organization that promotes and protects the health, safety and welfare of the public and fosters good practice in the social work professions, including specialty boards, acceptable to the department;

(iv) a New York State social work organization, acceptable to the department, that is incorporated or otherwise organized in New York State that promotes and protects the health, safety and welfare of the public and fosters good practice in the social work professions in the State of New York as a whole and/or a region of the State of New York;

(v) a national organization of jurisdictional boards of social work that promote and protect the health, safety and welfare of the public and fosters good practice in the social work professions;

(vi) an entity operated under an operating certificate appropriately issued in accordance with articles sixteen, thirty-one or thirty-two of the Mental Hygiene Law; or

(vii) an entity, hospital or health facility defined in section 2801 of the Public Health Law.

(3) Department review of providers.

(i) The department shall conduct a review of providers that apply for approval to offer continuing education to licensed master social workers or licensed clinical social workers.

(ii) An organization desiring to offer continuing education shall submit, with the fee as set forth in subdivision (j) of this section, an application for advance approval as a provider at least 90 days prior to the date of the commencement of such continuing education that documents that the organization:

(a) will offer courses of learning or self-study programs in one or more of the subjects prescribed for acceptable continuing education in subparagraph (i) of paragraph (2) of subdivision (c) of this section;

(b) is an organized entity, included in paragraph (2) of this subdivision, including but not limited to an institution that offers a graduate program that leads to licensure in social work; or a national, State, or local social work organization; a hospital, behavioral health program or program serving persons with developmental disabilities; or another entity that employs licensed master social workers and licensed clinical social workers and that meets the requirements of this subdivision;

(c) provides course instructors who are qualified to teach the courses which will be offered, including but not limited to, faculty of a licensed master social work or licensed clinical social work program offered by a higher education institution; or instructors who are specially qualified authorities in activities that are directed at developing and enhancing a licensee's practice as a licensed master social worker or licensed clinical social worker, as determined by the department with assistance from the State Board for Social Work, to conduct such courses;

(d) has a method of assessing the learning of participants, and describes such method; and

(e) will maintain records for at least six years from the date of completion of coursework, which shall include, but shall not be limited to, the name and curriculum vitae of the faculty, a record of attendance of licensed master social workers or licensed clinical social workers in the course if a course; a record of participation of licensed master social workers or licensed clinical social workers in the self-instructional coursework if self-instructional coursework; an outline of the course, date and location of the course, and the number of hours for completion of the course. In the event an approved provider discontinues operation, the governing body of such provider shall notify the department and shall transfer all records as directed by the department.

(iii) Providers that are approved by the department pursuant to the requirements of this paragraph shall be approved for a three-year term.

(iv) The department may conduct site visits of, or request information from, a provider approved pursuant to the requirements of this paragraph to ensure compliance with such requirements, and a provider shall cooperate with the department in permitting such site visits and in providing such information.

(v) A determination by the department that a provider approved pursuant to the requirements of this paragraph is not meeting the standards set forth in this paragraph shall result in the denial or termination of the approved status of the provider.

(vi) Prohibition: Presenters of didactic instruction may be persons who are not licensed by the State of New York as licensed master social workers or licensed clinical social workers. The performance of activities that fall within the restricted scope of practice of the licensed master social worker or licensed clinical social worker must be done by individuals licensed and registered under Article 154 of the Education Law, or those otherwise authorized by law to perform such activities, when the continuing education occurs in the State of New York.

(j) Fees.

(1) At the beginning of each registration period, a mandatory continuing education fee of \$45 shall be collected from licensees engaged in the practice of social work in New York State, except for those exempt from the requirement pursuant to subparagraph (i) of paragraph (2) of subdivision (c) of this section. This fee shall be in addition to any applicable registration fees required by sections 6507-a and 7704 of the Education Law.

(2) Licensees applying for a conditional registration, pursuant to the requirements of subdivision (f) of this section, shall pay a fee that is the same as and in addition to, any applicable fee for the triennial registration required by sections 6507-a and 7704 of the Education Law. In addition, such licensees shall pay the \$45 mandatory continuing education fee.

(3) Organizations desiring to offer continuing education to licensed master social workers and/or licensed clinical social workers shall submit an application fee of \$900 with the application requesting the issuance of a permit from the department to become

an approved provider of a formal continuing education program. A fee of \$900 shall accompany an application for a three-year renewal of the permit.

8 NYCRR §74.10

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the February 19, 2014 State Register, the State Education Department received the following comments:

1. COMMENT:

Several commenters made various requests regarding the number of hours of continuing education required to be completed under the proposed rule. These comments included: increasing the number of required hours to 45 every three years; reducing the required hours to 6 hours per year; and varying the number of hours required, based on the experience of the practitioners, with more experienced practitioners needing fewer, if any, hours than newly licensed social workers.

DEPARTMENT RESPONSE:

Section 7710 of the Education Law, as added by Chapter 443 of the Laws of 2013, establishes a mandatory requirement that each licensed master social worker (LMSW) and licensed clinical social worker (LCSW) complete 36 hours of acceptable continuing education during each three-year registration period, regardless of his or her years of practice experience.

2. COMMENT:

The commenter asked whether the continuing education requirement is the same for LMSWs and LCSWs.

DEPARTMENT RESPONSE:

Yes.

3. COMMENT:

A definition of continuing education hours could not be found in the proposed rule.

DEPARTMENT RESPONSE:

A definition is provided in section 74.10(h) of the proposed rule, including a minimum of 50 minutes for one hour of continuing education credit. The definition also provides that for credit-bearing courses completed in an approved college or university each semester-hour of credit will equal 15 continuing education hours of credit and each quarter-hour of credit will equal 10 continuing hours of credit. The definition also provides that continuing education credit for other acceptable educational activities will be awarded as described in section 74.10(c)(2)(ii)(b) of the proposed rule.

4. COMMENT:

Several commenters asked whether continuing education hours earned in another jurisdiction or from a provider approved by another organization, including the Association of Social Work Boards, would be acceptable.

DEPARTMENT RESPONSE:

Other jurisdictions and associations must apply for approval in New York State in order for those hours to be acceptable to the Department for continuing education purposes.

5. COMMENT:

Several commenters expressed the concern that the proposed \$900 application fee for prospective approved providers may limit professional access to continuing education activities or limit the ability to get credit for continued professional growth.

DEPARTMENT RESPONSE:

Section 7710(3)(b) of the Education Law requires prospective providers of social work continuing education to file an application with the Department and pay a fee, pursuant to the Regulations of the Commissioner of Education. The proposed rule implements this statutory requirement. In addition, the proposed \$900 fee is the same

amount as for entities that offer continuing education in other licensed professions and is only required to be paid every three years.

6. COMMENT:

If a person went to an institute to earn certification as a psychotherapist, would the credit for the classes and hours of practice be denied if the institute did not pay the \$900 fee to register with the Department?

DEPARTMENT RESPONSE:

Yes, the psychotherapy institute must be an approved provider to award continuing education credits for coursework.

7. COMMENT:

Several commenters stated that each licensee knows what learning activities he or she needs and expressed concerns that the proposed subjects were too limited.

DEPARTMENT RESPONSE:

The proposed rule defines a variety of acceptable continuing education activities and allows LMSWs and LCSWs the flexibility to complete activities that develop and enhance their ability to practice the profession of social work.

8. COMMENT:

The commenter expressed concern about whether there will be a sufficient number of providers of continuing education, while also being mindful of the need for sufficient standards, and asked what types of organizations, not specifically listed in section 74.10(i)(2) such as those providing child welfare, homeless services, and aging services, would be able to qualify to become an approved provider?

DEPARTMENT RESPONSE:

Such entities may apply to become an approved provider if they meet the other requirements in section 74.10(i) of the proposed rule.

9. COMMENT:

Commenters asked whether a Department approved provider would be able to approve other providers and whether their particular organization could be designated as an approver of providers for New York State? It was noted that while this could expand the number of providers, the development of standards and consideration of limiting the types of organizations that receive such authority was urged. In addition, other commenters expressed interest in their organization becoming a provider.

DEPARTMENT RESPONSE:

The Department may approve a provider that meets the requirements set forth in the law and regulations. This provider may offer courses that are developed and taught by the provider's staff or by other qualified instructors. In either case, the Department approved provider is responsible for compliance with the standards established in law and section 74.10(i) of the proposed rule, including the maintenance of all records. The approved provider must apply triennially for approval to offer continuing education to licensed social workers and is subject to site visits and information requests by the Department to ensure compliance with section 74.10(i) of the proposed rule.

10. COMMENT:

Please clarify the circumstances under which an employer could award continuing education credit for employees that complete in-service training or case conferences.

DEPARTMENT RESPONSE:

An organization seeking to provide continuing education must meet the requirements in section 74.10(i) of the proposed rule to offer courses of learning. In order to award credit for in-service training and case conferences, the organization must be approved by the Department to offer continuing education to social workers and the

in-service training and case conferences must be clearly related to the enhancement of social work practice, skills, and knowledge and the health, safety, and/or welfare of the public.

11. COMMENT:

Individual social workers may seek to become approved providers of continuing education, and we ask the Department to clarify what additional requirements, e.g., incorporation, would be necessary for this to happen.

DEPARTMENT RESPONSE:

An individual applying to become an approved provider will have to meet the requirements set forth in the proposed rule. The proposed rule does not require incorporation or any particular form of business organization or structure.

12. COMMENT:

The commenter has cerebral palsy and believes the regulation should allow a licensee to complete continuing education courses by webinar.

DEPARTMENT RESPONSE:

The regulation does not prevent a licensee from completing continuing education courses by webinar. The law and proposed rule also allow an LMSW or LCSW to complete a maximum of 12 hours of self-study in each three-year registration period. A self-study program is one that “does not include live instruction, transmitted in person or otherwise, during which the student may communicate and interact with the instructor and other students.” However, webinars and other continuing education offerings during which the student may communicate and interact with the instructor and other students are not considered self-study and, therefore, are not limited.

13. COMMENT:

The commenter believes that the time and energy required to attend continuing education activities would discriminate against licensees with disabilities or special needs.

DEPARTMENT RESPONSE:

The law and proposed rule allow the Department to adjust the continuing education requirement for a licensee who documents good cause that prevents compliance, which includes poor health or a specific physical or mental disability certified by an appropriate health care professional.

14. COMMENT:

The following comments and requests for clarification were received regarding the required continuing education hours for an LMSW or LCSW:

- The proposed rule should not require LMSWs and LCSWs to complete one hour of acceptable continuing education each month for 36 months.
- Please clarify the continuing education hours required for an LMSW or LCSW who has not practiced and wants to register his or her license in New York State.
- Must credits be completed on a monthly basis or could they be aggregated and taken within a shorter period?
- Could the Department provide a grace period from compliance for a licensee whose next registration period starts within 90 days of January 1, 2015, the effective date of the law, since approved coursework cannot be completed prior to that date and such a grace period would help licensees meet the requirements in a timely manner?

DEPARTMENT RESPONSE:

The law and proposed rule phase-in the continuing education requirement starting on January 1, 2015, such that each LMSW or LCSW, including one returning to practice, must complete one hour of acceptable continuing education for each month in his or her registration period, after January 1, 2015. However, the LMSW or LCSW is not required to literally complete one hour in each month of the registration period, but is responsible for completing the number of required hours within the specified time period. The Department plans to publish a chart on its website to guide LMSWs and LCSWs in calculating the required hours of continuing education. The law and proposed rule allow the Department to adjust the requirement for good cause; if providers are not approved and courses are unavailable by January 1, 2015, the Department will explore such an option.

15. COMMENT:

Clarification is needed for social workers who are licensed in another jurisdiction and applying for licensure as to whether continuing education completed in another jurisdiction will be acceptable in New York State.

DEPARTMENT RESPONSE:

An individual who is applying for licensure in New York State and who was licensed and registered in another jurisdiction would have to complete coursework acceptable to New York State starting with his or her first registration period in New York State.

16. COMMENT:

Several commenters asked for clarification regarding the process by which a licensee, who has not completed the required activities or whose activities were disallowed by a Department audit, could remedy the deficiency.

DEPARTMENT RESPONSE:

The law and proposed rule allow an LMSW or LCSW who has not met the requirement to apply for a conditional registration, for up to one year, to allow him or her to practice during that period. During this period, the LMSW or LCSW could remedy any deficiency, as well as complete the continuing education hours that would otherwise be required during that period. At the end of the conditional registration, the LMSW or LCSW would be eligible to register for the remainder of the registration period.

17. COMMENT:

The proposed rule to allow an LMSW or LCSW to apply for a one-year conditional registration should be very helpful, assuming that an untold number of licensees will require this.

DEPARTMENT RESPONSE:

The commenter's support of the proposed rule is noted. However, the Department does not yet know, and therefore cannot comment on, how many licensees will apply for a conditional registration.

18. COMMENT:

Several commenters support continuing education but also expressed concerns that the cost of continuing education will be borne by the underpaid social work professionals.

DEPARTMENT RESPONSE:

The cost of approved continuing education programs will vary based on the types of activities that are offered by approved providers. The proposed rule provides a variety of ways in which LMSWs and LCSWs can complete approved continuing education activities which were developed to provide flexibility and allow individuals to find activities that fit within their budgets. In addition, the \$45 mandatory continuing

education fee proposed by the Department, pursuant to section 7710(3)(c) of the Education Law, is the same amount as the mandatory continuing education fees in other licensed professions and is only required to be paid every three years. The \$45 fee also allows the Department to implement the continuing education requirements.

19. COMMENT:

Commenters expressed the position that professional development activities unique to school social workers should be considered acceptable subjects in the proposed rule, meet the requirements for mandatory continuing education, and exempt the school from the provider application fee

DEPARTMENT RESPONSE:

A school district, board of cooperative educational services (BOCES) or other qualified organization could apply to become an approved provider of continuing education for licensed social workers and offer coursework relevant to school social work. If the professional development activities are offered by a Department-approved provider and clearly related to the enhancement of social work practice, skills, and knowledge, the hours would be acceptable toward the mandatory requirement. The Department has determined that the application fee shall be applied to all prospective continuing education providers in a uniform manner. This fee is the same amount charged to prospective continuing education providers in other licensed professions and is only required to be paid every three years.

20. COMMENT:

Given the diversity of New York state and the prevalence of bias in society, the commenter recommends that the list of subjects that may be studied specifically include race, diversity, cultural and linguistic competency, and the immigrant experience as permissible subjects. A broader listing of cross-disciplinary offerings, including

anthropology, history, sociology, economics, political science, public policy, demography, and public health, should also be considered. In addition, offerings in case management, nursing, medicine, and bioethics would be relevant for many social workers.

DEPARTMENT RESPONSE:

The suggested topics and offerings in other disciplines would be allowed within the proposed rule, if the course is clearly related to the enhancement of social work practice, skills, and knowledge and the health, safety, and/or welfare of the public and as long as the Department approves the provider.

21. COMMENT:

School districts would have to provide time off to allow school social workers to participate in continuing education activities. This may result in a decision to replace school social workers with school counselors and school psychologists, who do not have to complete mandatory continuing education.

DEPARTMENT RESPONSE:

The proposed rule implements section 7710 of the Education Law by establishing mandatory continuing education requirements for LMSWs and LCSWs and standards for the Department's approval of continuing education providers. The continuing education requirements are statutory and cannot be changed by the regulation.

22. COMMENT:

A commenter states that a list of approved providers should be available before the law takes effect, in order to allow licensees to comply with the requirement.

DEPARTMENT RESPONSE:

The Department will strive to approve providers in advance of the statute's January 1, 2015 effective date. However, the law and proposed rule require that

continuing education activities be taken from approved providers on or after January 1, 2015.

23. COMMENT:

The Department should monitor any effect of the law on the number of licensed social workers registered to practice.

DEPARTMENT RESPONSE:

The Department plans to monitor the effect of the law.

24. COMMENT:

New York State should consider the development of a self-assessment tool for social workers to use that, along with periodic retesting, may represent the next generation of tools to be used in assessing continuing competence.

DEPARTMENT RESPONSE:

The commenter's suggestions are noted and may be considered by the Department in the future.

25. COMMENT:

Several commenters requested clarification of section 74.10(i)(3)(vi) which provides that presenters of didactic instruction may be persons who are not licensed by the State of New York as LMSWs or LCSWs but that the performance of activities that fall within the restricted scope of practice of the LMSW or LCSW must be done by individuals who are licensed and registered under Article 154 of the Education Law. Would this provision allow an individual with appropriate expertise to provide instruction without licensure as a social worker, as long as he or she is not engaged in the restricted scope of practice of the profession?

DEPARTMENT RESPONSE:

An unlicensed instructor may provide didactic instruction, including lectures, and the use of role-plays, vignettes and other activities to simulate professional practice.

The provision is intended to reinforce the provisions of Article 154 that prohibit an unlicensed person from providing professional services to a consumer. Licensure is not required of an instructor, but he or she must be qualified as defined in section 74.10(i)(3)(ii)(c) of the proposed rule.