



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY,  
NY 12234

**TO:**

The Professional Practice Committee

**FROM:**

Frank Muñoz

**SUBJECT:**

Proposed Amendment to the Regulations of the Commissioner of Education Relating to Limited Permits for Licensed Master Social Workers and Licensed Clinical Social Workers and Experience, Supervision, and Endorsement Requirements for Licensure as a Licensed Clinical Social Worker

**DATE:**

August 31, 2010

**STRATEGIC GOAL:**

Goal 3

**AUTHORIZATION(S):**

### Summary

#### Issue for Decision

Should the Regents amend sections 74.3, 74.4, 74.5, 74.6, and 74.7 and add a new section 74.9 of the Regulations of the Commissioner of Education relating to limited permits for licensed master social workers (LMSW) and licensed clinical social workers (LCSW) and experience, supervision, and endorsement requirements for licensure as an LCSW in New York?

#### Reason(s) for Consideration

Review of policy.

#### Proposed Handling

The proposed amendment is before the Professional Practice Committee for recommendation and will be presented to the Full Board for adoption as an emergency measure at its September 2010 meeting. A statement of facts and circumstances justifying the emergency action is attached.

## Procedural History

A Notice of Proposed Rule Making was published in the State Register on June 30, 2010. The proposed amendment was adopted as an emergency measure by the Board of Regents at its June 2010 meeting, effective June 29, 2010. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

## Background Information

Section 7704(2) of the Education Law requires an applicant seeking licensure as an LCSW to complete three years of full-time supervised post-graduate clinical social work experience in diagnosis, psychotherapy and assessment-based treatment planning, or its part-time equivalent obtained over a period of not more than six years. The law does not require the applicant to complete any other social work experience, although the practice of licensed clinical social work includes other activities, including case management, advocacy, and testing. Such activities are not acceptable toward completion of the experience requirement under the current law. The emergency regulations adopted in June require an applicant to complete 2,000 client contact hours in diagnosis, psychotherapy, and assessment-based treatment planning over a period of not less than 36 months and not more than 72 months under a qualified supervisor. While this is a 30 percent reduction from the current requirement for 2,880 client contact hours over the same period of time, it is still among the highest requirements for clinical hours in the U.S., and the Department believes 2,000 client contact hours provides sufficient experience to ensure client protection once the applicant is licensed.

The emergency regulation also amended section 74.3 of the Commissioner's regulations to clarify the experience requirements for licensure as an LCSW in New York. The amendments require an applicant for licensure to complete the required experience as an LMSW or permit holder in New York, except in certain limited circumstances. For experience completed in another jurisdiction, the experience must be obtained after the applicant completes his or her master's degree. The amendment requires the applicant to complete the experience in an acceptable setting under a qualified supervisor, as defined in section 74.6 of the Commissioner's regulations. The amendment also requires the supervisor to maintain records of the applicant's client contact hours and supervision and to submit verification of the client contact hours and supervision on forms prescribed by the Commissioner.

The June emergency action also amended section 74.4 of the Commissioner's regulations to clarify that limited permit applicants must be of good moral character and that the permit may only be issued for work in an authorized setting under a qualified supervisor. In addition, the amendment strengthens the requirement that the supervisor is responsible for the services provided by the permit holder and limits a licensee to supervising no more than five permit holders at any one time. Since the permit holder is only authorized to practice under supervision, this restriction is appropriate for public protection and consistent with the requirements in other professions. An LMSW or LCSW permit holder who is practicing clinical social work under supervision must be under general supervision as defined in the proposed amendment.

Section 74.5 of the Commissioner's regulations establishes the fee and experience requirements for an LCSW to qualify for the insurance privilege established in section 3221(l)(4)(D) or 4303(n) of the Insurance Law. The emergency amendments adopted in June increased the application fee from \$85 to \$100 and continued the requirement that the applicant complete 2,400 client contact hours of psychotherapy. The emergency item also specified that experience for the insurance privilege must be obtained after licensure as an LCSW over a period of not less than three years. In addition, the applicant would have to have no less than 400 client contact hours in any one year in order to qualify for the privilege. In order to clarify the process of meeting the requirements in Insurance Law, the amendment also defined an acceptable setting for the practice of licensed clinical social work and required an LCSW to submit for approval by the State Board for Social Work a plan for appropriate supervision. The amendment also defined acceptable supervision for the privilege as two or more hours per month of individual or group consultation or enrollment in a program in psychotherapy offered by an institution of higher education or by a psychotherapy institute chartered by the Board of Regents. This amendment also eliminated peer supervision, which is not authorized by the Insurance Law, and clarifies the pathway to the insurance privilege.

The emergency amendments to section 74.6 of the Regulations of the Commissioner of Education established the supervision requirements for a licensed master social worker providing clinical social work services. An LMSW who has submitted an application for licensure as an LCSW must maintain registration as a LMSW in New York and may practice only under supervision until licensed as an LCSW. The amendments clarify what constitutes an acceptable setting for the practice of clinical social work and require the supervisor to provide at least 100 hours of individual or group supervision to the LMSW, distributed appropriately over a period of at least 36 months. The LMSW would also be able to submit a plan for supervised experience toward licensure as an LCSW, for review and approval by the State Board for Social Work. By obtaining such approval prior to starting a position, an applicant would be able to avoid working for three years in a position which cannot be accepted toward meeting the experience requirements for licensure as an LCSW because the setting or supervisor was not authorized by law and/or regulation. The State Board's review and approval of the voluntary plan would both protect the public and provide assurances to the LMSW that the setting and supervisor are authorized to engage in the practice of clinical social work in New York. Since an LMSW may provide diagnosis, psychotherapy and assessment-based treatment planning under supervision without seeking licensure as an LCSW, the amendment requires such an LMSW to receive at least two hours per month of in-person individual or group clinical supervision.

Section 7706(2) of the Education Law provides an exemption from licensure for an individual with a bachelor's degree in social work, if the person is under the general supervision of an LMSW or LCSW and engages in non-supervisory and non-clinical activities only. The June emergency amendments to section 74.7 of the Commissioner's regulations provided standards for an individual with a BSW or MSW degree to provide licensed master social work services, under supervision. In order to clarify the boundaries of practice, the amendment clearly states that the individual may not provide administrative supervision or engage in the practice of licensed clinical social work or use the title "LMSW" or "LCSW."

The emergency regulations also added a new section 74.9 to allow the Department to endorse for practice in New York the license of an LCSW licensed in another jurisdiction. The applicant would have to have at least 10 years of licensed practice during the 15 years immediately preceding the application for licensure in New York. In addition, the applicant must demonstrate: licensure as an LCSW on the basis of an a master's degree in social work from an acceptable school, post-degree supervised clinical experience, and the passage of a clinical examination in social work acceptable to the department. The applicant must also be of good character, complete coursework in the identification and reporting of suspected child abuse, and submit the application for licensure and fee established in law and regulation.

The Department received comments from professional associations, state and private agencies and interested individuals. An assessment of public comment is attached to this item. Based upon the comments submitted, it is recommended that section 74.5 be revised to allow certain individuals who started their experience for the insurance privilege prior to January 1, 2011, to submit experience obtained prior to licensure as an LCSW toward the experience requirements for the insurance privilege. A Revised Rule Making will be published in the State Register on September 22, 2010.

#### Recommendation

VOTED: That sections 74.3 through 74.7 of the Regulations of the Commissioner of Education be amended and that section 74.9 of the Regulations of the Commissioner of Education be added, as submitted, effective September 24, 2010, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the public health and general welfare to ensure that the rule remains continuously in effect until it is adopted as a permanent rule.

#### Timetable for Implementation

If adopted as an emergency measure at the September 2010 Regents meeting, the proposed amendment will become effective September 24, 2010. The revised regulations will be published for a 30-day period of public comment, and it is anticipated that the proposed amendment will be presented for permanent adoption at the November 2010 Regents meeting.

**STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE  
EMERGENCY ADOPTION**

The proposed amendments clarify the requirements for licensure as a licensed clinical social worker (LCSW), for the practice of clinical social work by a licensed master social worker (LMSW), and for the insurance privilege available to certain LCSWs. Legislation enacted in 2002 defined the scopes of practice for LMSWs and LCSWs and the requirements for licensure. The legislation also restricted the practice of these professions to those licensed or otherwise authorized to practice. The implementation of the law has been challenging, due to exemptions in law and the unique situation of licensure in one profession (LMSW) leading to licensure in another profession (LCSW) when additional requirements are satisfied.

When this law was enacted, it provided an exemption from licensure for individuals in certain programs until January 1, 2010. This date was subsequently changed to June 1, 2010 and then to July 1, 2013 and will require public and private agencies, including state government, to ensure an adequate supply of qualified, licensed professionals. However, the stringent standards of New York's licensing requirements have limited the ability of agencies to provide acceptable supervised experience for those seeking licensure as LCSWs. Therefore, agencies are at risk of not having sufficient staff to provide essential health services to individuals, families and communities. While part of the problem may be addressed only through legislation, the proposed amendments will, in conjunction with new legislation, play a significant part in addressing this serious problem.

Since the emergency regulations became effective, the State Board for Social Work has been able to approve the experience of hundreds of applicants for licensure as a LCSW who previously did not meet the existing requirements for licensure. It is

also anticipated that hundreds of other LMSWs, who have not completed sufficient supervised experience to meet the requirements established in the existing regulations, will now submit applications as their experience will satisfy the more flexible requirements established in this emergency action.

The proposed amendments were published in the State Register on June 30, 2010. During the 45-day public comment period, the Department received comments from professional associations, state and private agencies and interested individuals. Based upon the comments submitted, the proposed amendment was revised to allow certain individuals who started their experience for the insurance privilege prior to January 1, 2011, to submit experience obtained prior to licensure as an LCSW toward the experience requirements for the insurance privilege. A Revised Rule Making will be published in the State Register on September 22, 2010.

Pursuant to section 202 of the State Administrative Procedure Act, these revisions may not be adopted until publication of a Notice of Revised Rule Making in the State Register and expiration of a 30-day public comment period. However, the emergency rule adopted at the June 2010 Regents meeting will expire on September 26, 2010. A lapse in the emergency rule will cause disruptions in the licensure process.

Emergency action is necessary at the September 2010 Board of Regents meeting in order to ensure that the rule remains continuously in effect until such time as it can be revised and adopted as a permanent rule, after expiration of the 30-day public comment period for revised rule makings prescribed in the State Administrative Procedure Act, and thereby avoid disruption in the processing of applications for licensure as a clinical social worker.

An emergency action is also necessary for the preservation of the general welfare in order to expedite the processing of applications for licensure as an LCSW in

New York by enabling applicants to obtain advance approval of the settings for their experience and of their supervision arrangements and by providing clarity regarding acceptable settings and supervisors for licensure. By reducing the number of hours of experience and the hours of supervision required for licensure as a LCSW, the proposed amendment will produce more qualified social workers to address the social work needs of residents of the State of New York.

## AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 212, 6501, 6504, 6506, 6507, 6508, 7704, 7705, and 7706 of the Education Law and sections 3221 and 4303 of the Insurance Law.

1. Sections 74.3 through 74.7 of the Regulations of the Commissioner of Education are amended, effective September 24, 2010, as follows.

### §74.3 Experience requirement for licensure as a licensed clinical social worker.

(a) An applicant for licensure as a licensed clinical social worker shall meet the experience requirement for licensure by submitting documentation of three years of full-time supervised clinical social work experience in diagnosis, psychotherapy, and assessment-based treatment plans, or the part-time equivalent, or a combination of full-time and part-time supervised clinical social work experience in diagnosis, psychotherapy, and assessment-based treatment plans, completed over a period not to exceed six years, in accordance with the requirements of [this section] section 74.6 of this Part. For purposes of this subdivision, the full-time experience shall consist of not less than [48 weeks per year, excluding vacation, with not less than an average of 20 client contact hours per week] 2,000 client contact hours over a continuous period of at least 36 months and not to exceed six years. [The part-time equivalent shall consist of the same total number of client contact hours provided over more than three years.]

(1) [The experience] Experience obtained in New York must be obtained as a licensed master social worker (LMSW) or limited permit holder, except the department may, in limited circumstances, accept other experience where an applicant demonstrates that such experience was obtained in an authorized setting and under the supervision of a qualified supervisor. Experience obtained in another jurisdiction must be obtained after the applicant completes the master's degree program in social work

required for licensure in licensed clinical social work, as prescribed in section 74.1(c) of this Part, and such experience must be obtained in a setting authorized in such jurisdiction to provide such services and be under the supervision of a qualified supervisor acceptable to the department.

(2) The supervised experience shall be obtained in [a facility setting, as prescribed in subparagraph (i) of this paragraph or a nonfacility setting,] a setting acceptable to the department, as [prescribed] defined in subdivision (a) of section 74.6 of this Part. [subparagraph (ii) of this paragraph, or a combination of the two.

(i) A facility setting shall mean a federal, state, county or municipal agency, or other political subdivision, or a chartered elementary or secondary school or degree-granting educational institution, or a not-for-profit or proprietary incorporated entity, which government agency, educational institution, or not-for-profit or proprietary incorporated entity is licensed or otherwise authorized to provide services that fall within the scope of practice of licensed clinical social work.

(ii) A nonfacility setting shall mean any other setting not prescribed in subparagraph (i) of this paragraph.

(3) Supervision of the experience. The experience shall be supervised in accordance with the requirements of this paragraph.

(i) Supervision of the experience shall consist of contact between the applicant and supervisor during which:

(a) the applicant apprises the supervisor of the diagnosis and treatment of each client;

(b) the applicant's cases are discussed;

(c) the supervisor provides the applicant with oversight and guidance in diagnosing and treating clients;

(d) the supervisor regularly reviews and evaluates the professional work of the applicant; and

(e) the supervisor provides at least one hour per week or two hours every other week of in-person individual or group clinical supervision, provided that at least two hours per month shall be individual clinical supervision.

(ii) The supervision shall be provided by:

(a) a licensed clinical social worker or the equivalent as determined by the department; or

(b) a psychologist who, at the time of supervision of the applicant, was licensed as a psychologist in the state where supervision occurred, and was qualified in psychotherapy as determined by the department, based upon a review of the psychologist's education and training, including but not limited to education and training in psychotherapy obtained through completion of a program in psychology registered pursuant to Part 52 of this Title or a program in psychology accredited by the American Psychological Association; or

(c) a physician who, at the time of supervision of the applicant, was a diplomate in psychiatry of the American Board of Psychiatry and Neurology, Inc. or had the equivalent training and experience as determined by the department.]

(3) The supervision shall be provided by a supervisor who meets the requirements of paragraph (c)(2) of section 74.6 of this Part.

(4) The supervisor(s) shall verify the applicant's supervised experience to the department on forms prescribed by the department. The department may request additional information or clarification in regard to the supervisor's qualifications or the authority of the setting to provide professional services. In the event a supervisor is deceased or not available, the verification may be submitted by a licensed colleague

who attests to the name and qualifications of the supervisor, the dates of supervised experience, client contact hours and supervision hours and other information required by the department to evaluate the applicant's supervised experience.

§74.4 Limited permits.

(a) Limited permits to practice licensed master social work. As authorized by section 7705 of the Education Law, on recommendation of the State Board for Social Work, the department may issue a limited permit to practice licensed master social work under the general supervision of a licensed master social worker or a licensed clinical social worker, in accordance with the requirements of this subdivision.

(1) An applicant for a limited permit to practice licensed master social work shall:

- (i) file an application for a limited permit with the department and pay the application fee; [and]
- (ii) be of good moral character, as determined by the department; and
- (iii) satisfy all requirements for licensure as a licensed master social worker, except the examination requirement.

(2) The limited permit in licensed master social work shall be issued for a specific [employment] setting deemed acceptable by the department, as described in subdivision (a) of section 74.6 of this Part. The setting shall not be a private practice owned or operated by the applicant.

(3) An individual practicing licensed master social work under a limited permit shall be under the general supervision of a licensed master social worker or licensed clinical social worker. For purposes of this subdivision, general supervision shall mean that the supervising licensed master social worker or licensed clinical social worker is available for consultation, assessment and evaluation, has authorized the permit holder

to provide the services, and exercises the degree of supervision appropriate to the circumstances. In addition:

(i) the supervisor shall be responsible for appropriate oversight of all services provided by a permit holder under his or her general supervision; and

(ii) no supervisor shall supervise more than five permit holders at one time.

(4) The limited permit in licensed master social work shall be valid for a period of not more than 12 months, and shall not be renewable.

(b) Limited permits to practice licensed clinical social work. As authorized by section 7705 of the Education Law, on recommendation of the State Board for Social Work, the department may issue a limited permit to practice licensed clinical social work under the general supervision of a licensed clinical social worker, in accordance with the requirements of this subdivision.

(1) An applicant for a limited permit to practice licensed clinical social work shall:

(i) file an application for a limited permit with the department and pay the application fee; [and]

(ii) be of good moral character, as determined by the department; and

(iii) satisfy all requirements for licensure as a licensed clinical social worker, except the examination requirement.

(2) The limited permit in licensed clinical social work shall be issued for a specific [employment] setting acceptable to the department, as described in subdivision (a) of section 74.6 of this Part, except that the setting shall not be a private practice owned or operated by the applicant.

(3) An individual practicing licensed clinical social work under a limited permit shall be under the general supervision of a licensed clinical social worker. For purposes of this subdivision, general supervision shall [mean that supervision of practice under

the limited permit shall consist of contact between the permit holder and supervisor during which:

- (i) the permit holder apprises the supervisor of the diagnosis and treatment of each client;
- (ii) the permit holder's cases are discussed;
- (iii) the supervisor provides the permit holder with oversight and guidance in diagnosing and treating clients;
- (iv) the supervisor regularly reviews and evaluates the professional work of the permit holder; and
- (v) the supervisor provides at least one hour per week or two hours every other week of in-person individual or group clinical supervision, provided that at least two hours per month shall be individual clinical supervision.] mean that the supervision meets the requirements set forth in subdivision (c) of section 74.6 of this Part. In addition:

- (i) the supervisor shall be responsible for appropriate oversight of all services provided by a permit holder under his or her general supervision; and
- (ii) no supervisor shall supervise more than five permit holders at one time.

(4) . . .

§74.5 Authorization qualifying licensed clinical social workers for certain insurance reimbursement.

(a) Upon satisfaction of the requirements set forth in subdivision (c) of this section, and filing with the department an application and a fee of [\$85] \$100, a licensed clinical social worker may qualify for insurance reimbursement [on the basis of three or more additional years of experience in psychotherapy beyond that required for licensure

as a licensed clinical social worker,] pursuant to Insurance Law[,] section 3221(l)(4)(D) or 4303(n).

(b) Definition. As used in this section, psychotherapy means the use of verbal methods in interpersonal relationships with the intent of assisting a person or persons to modify attitudes and behavior which are intellectually, socially or emotionally maladaptive.

(c) In order to fulfill the requirements of Insurance Law, section 3221(l)(4)(D) or 4303(n) and except as provided in subdivision (d) of this section, the licensed clinical social worker shall complete at least 2,400 client contact hours of experience in psychotherapy over a period of not less than three [or more additional] years [of experience in psychotherapy beyond that required for] after licensure as a licensed clinical social worker, with not less than 400 client contact hours in any one year, in accordance with the following criteria:

[(1)\_Length of experience. Each candidate shall have the experience which meets the standards of subparagraph (i), (ii) or (iii) of this paragraph.

(i) Experience obtained in a facility shall be:

(a) no less than three calendar years of experience providing psychotherapy services, which shall comprise no less than 2,400 direct client contact hours in sessions of at least 45 minutes each with not less than 400 client contact hours in any one year; and

(b) in a facility formally approved in a manner satisfactory to the department by the State Education Department, Office of Mental Health, Office of Mental Retardation and Developmental Disabilities, Division of Substance Abuse Services, Division of Alcoholism and Alcohol Abuse, State Department of Health, State Board of Social Welfare, State Department of Social Services, Secretary of State (except professional

service corporations), the Legislature of the State of New York, or comparable departments of other states, territories of the United States, or the United States as determined by the department.

(ii) Experience obtained in a nonfacility practice shall be no less than three calendar years of experience providing psychotherapy services, which shall comprise no less than 2,400 direct client hours in sessions of no less than 45 minutes each with no less than 400 client contact hours in any one year.

(iii) A combination of experience in facilities and experience in nonfacility practice which meets the standards of subparagraphs (i) and (ii) of this paragraph.

(2) Time of experience. Experience to be acceptable shall follow receipt of the master's degree in social work and shall have been obtained subsequent to the experience used as qualifying for licensure as a licensed clinical social worker.]

(1) Acceptable setting. The experience shall be completed in a setting acceptable to the department, as described in this paragraph, which may include a practice owned or operated by the applicant. An acceptable setting shall mean:

(i) a professional service corporation, registered limited liability partnership, or professional service limited liability company authorized to provide services that include psychotherapy;

(ii) a sole proprietorship owned by a licensee who provides services that are within the scope of his or her profession and services that are within the scope of psychotherapy;

(iii) a professional partnership owned by licensees who provide services that include psychotherapy.

(iv) a hospital or clinic authorized under article 28 of the Public Health Law to provide services that include psychotherapy;

(v) a program or facility authorized under the Mental Hygiene Law to provide services that include psychotherapy;

(vi) a program or facility authorized under federal law to provide services that include psychotherapy; or

(vii) an entity defined as exempt from the licensing requirements or otherwise authorized under New York law or the laws of the jurisdiction in which the entity is located to provide services that include psychotherapy.

[3](2) Supervision of experience. [All experience shall be under satisfactory supervision in accordance with] The licensed clinical social worker shall submit for review and approval by the State Board for Social Work, on forms prescribed by the department, a plan for supervised experience that will meet the requirements of this paragraph. The plan shall be submitted to the State Board for Social Work before the licensed clinical social worker commences the supervised experience requirement under this section.

(i) The [supervision of the experience shall be] plan for supervision shall specify:

(a) individual [supervision ] or group consultation of no less than two hours per month; or

(b) [group supervision or group consultation of no less than four hours per month;

(c) case seminars of no less than four hours per month in a formal course]

enrollment in a program authorized to provide psychotherapy offered by an institution of higher education or by a psychotherapy institute chartered by the Board of Regents [; or

(d) peer supervision, consisting of no less than four hours per month. Candidates presenting peer supervision for approval shall also submit two case summaries satisfactory to the board. Such case summaries shall include and demonstrate the relationships among the presenting problem, the background material, a formulation of

case dynamics, a diagnostic statement, the treatment process, the treatment outcomes, and supervisory issues].

(ii) [To be satisfactory,] The individual or group supervision must be provided by:

(a) A licensed clinical social worker who, at the time of supervision of the applicant, held the psychotherapy privilege authorized by this paragraph [met the qualifications for licensure as a licensed clinical social worker pursuant to Article 154 of the Education Law] or [their] the equivalent as determined by the department; or

(b) . . .

(c) . . .

(d) An applicant who started the experience to qualify for insurance reimbursement prior to January 1, 2011 may submit any experience obtained prior to licensure as a licensed clinical social worker provided that such experience, in the determination of the department, satisfies the experience requirements for such reimbursement and is obtained after the experience used to satisfy the experience requirements for licensure as a licensed clinical social worker. Experience to qualify for insurance reimbursement commenced on after January 1, 2011 shall be obtained only after licensure as a licensed clinical social worker.

§74.6 Supervision [of licensed master social worker] requirements for certain qualified individuals providing clinical social work services.

[In accordance with section 7701(1)(d) of the Education Law, a licensed master social worker] Certain qualified individuals, as defined in paragraph (2) of subdivision (a) of this section, that seek to use the services to satisfy the experience requirements for licensure as a licensed clinical social worker may provide clinical social work services in a [facility setting or a non-facility] setting acceptable to the department, [as defined by]

as described in paragraph (1) of subdivision (a) of this section, under appropriate supervision, as prescribed in subdivision [(b)] (c) of this section.

(a) For purposes of this section:

(1) [A facility setting shall mean a federal, state, county or municipal agency, or other political subdivision, or a chartered elementary or secondary school or degree-granting educational institution, or a not-for-profit or proprietary incorporated entity, which government agency, educational institution, or not-for-profit or proprietary incorporated entity is licensed or otherwise authorized to provide services that fall within the scope of practice of licensed clinical social work.

(2) A non-facility setting shall mean any other setting not prescribed in paragraph (1) of this subdivision.]

An acceptable setting shall mean:

(i) a professional service corporation, registered limited liability partnership, or professional service limited liability company authorized to provide services that are within the scope of practice of licensed clinical social work;

(ii) a sole proprietorship owned by a licensee who provides services that are within the scope of his or her profession and services that are within the scope of licensed clinical social work;

(iii) a professional partnership owned by licensees who provide services that are within the scope of practice of licensed clinical social work.

(iv) a hospital or clinic authorized under article 28 of the Public Health Law to provide services that are within the scope of practice of licensed clinical social work;

(v) a program or facility authorized under the Mental Hygiene Law to provide services that are within the scope of practice of licensed clinical social work;

(vi) a program or facility authorized under federal law to provide services that are within the scope of practice of licensed clinical social work; or

(vii) an entity defined as exempt from the licensing requirements or otherwise authorized under New York law or the laws of the jurisdiction in which the entity is located to provide services that are within the scope of practice of licensed clinical social work.

(2) A qualified individual shall mean a licensed master social worker, an individual with a limited permit to practice licensed clinical social work as authorized by section 7705 of the Education Law, or an individual otherwise authorized to provide clinical social work services in a setting acceptable to the department and under appropriate supervision.

(b) A qualified individual may submit to the State Board for Social Work a plan for his or her supervised experience in New York toward licensure as a licensed clinical social worker for review and approval. The plan shall include:

(1) a copy of documentation establishing that the agency or setting is an acceptable setting as defined in subdivision (a) of this section;

(2) a copy of the license of the qualified supervisor, as defined in subdivision (c) of this section;

(3) a plan for supervision of the qualified individual accompanied by an attestation from the supervisor(s) that he/she is responsible for any services provided by the individual;

(4) if a third-party is supervising the qualified individual, an affirmation from a designated representative of the setting that the setting is authorized to provide clinical social work services and that the setting will ensure appropriate supervision of the qualified individual when the individual is performing such services..

[b] (c) Supervision of the clinical social work services provided by [the licensed master social worker] a qualified individual seeking licensure as a licensed clinical social worker.

(1) Supervision of the clinical social work services provided by the [licensed master social worker] qualified individual shall consist of contact between the [licensed master social worker] qualified individual and supervisor during which:

- (i) the [licensed master social worker] qualified individual apprises the supervisor of the diagnosis and treatment of each client;
- (ii) the [licensed master social worker's] qualified individual's cases are discussed;
- (iii) the supervisor provides the [licensed master social worker] qualified individual with oversight and guidance in diagnosing and treating clients;
- (iv) the supervisor regularly reviews and evaluates the professional work of the [licensed master social worker] qualified individual; and
- (v) the supervisor provides at least [one hour per week or two hours every other week of] one hundred hours of in-person individual or group clinical supervision, distributed appropriately over the period of the supervised experience. [, provided that at least two hours per month shall be individual clinical supervision.]

(2) . . .

(d) Supervision of a licensed master social worker providing clinical social work services in accordance with section 7701(1)(d) of the Education Law who is not using such services to satisfy the experience requirements for licensure as a licensed clinical social worker.

(1) Supervision of the clinical social work services provided by the licensed master social worker shall consist of contact between the licensed master social worker and supervisor during which:

- (i) the licensed master social worker apprises the supervisor of the diagnosis and treatment of each client;
- (ii) the licensed master social worker's cases are discussed;
- (iii) the supervisor provides the licensed master social worker with oversight and guidance in diagnosing and treating clients;
- (iv) the supervisor regularly reviews and evaluates the professional work of the licensed master social worker; and
- (v) the supervisor provides at least two hours per month of in-person individual or group clinical supervision.

(2) The supervision shall be provided by an appropriate supervisor as described in paragraph (c)(2) of this section.

(e) Verification of the experience. The supervisor shall be responsible for maintaining records of the client contact hours in diagnosis, psychotherapy and assessment-based treatment planning and supervision hours provided to the qualified individual. Upon request by the department, such records shall be provided by the supervisor.

§74.7 Supervision of [baccalaureate] certain social workers providing licensed master social work services.

In accordance with section 7706(2) of the Education Law, an individual who holds a baccalaureate of social work degree or an equivalent or higher degree based upon completion of a baccalaureate or master's degree program in social work registered by the department pursuant to Part 52 of this Title, or approved by an

acceptable accrediting agency as defined in section 74.1(a) of this Part, shall be permitted to perform activities and services within the scope of practice of a licensed master social worker as defined in paragraphs (a) and (b) of subdivision (1) of section 7701 of the Education Law, under the supervision of a licensed master social worker or a licensed clinical social worker. For purposes of this section, supervision shall mean that the licensed master social worker or licensed clinical social worker is available for consultation, assessment and evaluation, has authorized [the baccalaureate social worker] such individual to provide the services, and exercises the degree of supervision appropriate to the circumstances. Nothing in this section shall authorize the use of a title restricted under subdivisions 2 and 3 of section 7702 of the Education Law or the practice of licensed clinical social work, as defined in section 7701 of the Education Law.

2. The Regulations of the Commissioner of Education are amended, effective September 24, 2010, by the addition of a new section 74.9, to read as follows:

§ 74.9 Licensure by endorsement of certain licensed clinical social workers.

An applicant seeking endorsement of a license in clinical social work issued by another state, country or territory shall present evidence of:

- (a) age, the applicant shall be at least 21 years of age;
- (b) licensure by another jurisdiction in clinical social work;
- (c) completion of a master's degree in social work with clinical content that qualified the applicant for licensure as a licensed clinical social worker in the other jurisdiction;
- (d) completion of supervised experience in clinical social work and psychotherapy that qualified the applicant for initial licensure in the other jurisdiction;

(e) passage of an examination acceptable to the department for the practice of clinical social work, as defined in section 74.2 of this Part;

(f) at least ten years of experience in clinical social work satisfactory to the State Board for Social Work, within the 15 years immediately preceding the application for licensure by endorsement in New York;

(g) completion of coursework in the identification and reporting of suspected child abuse and neglect or the exemption from such coursework, as specified in section 6507(3) of the Education Law;

(h) good moral character as determined by the department; and

(i) acceptable licensure and discipline status in each jurisdiction in which the applicant holds a professional license.

## SUMMARY OF ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on June 29, 2010, the State Education Department received the following comments.

**COMMENT:** Several commenters expressed concern with the requirement that a candidate applying for the psychotherapy privilege must complete the supervised experience requirement after becoming a licensed clinical social worker ("LCSW"), as opposed to the prior regulations which allowed an individual to complete the experience prior to licensure stating this change could eliminate a year or more of supervised experience completed while the applicant was under supervision and taking the licensure examination.

**RESPONSE:** The Department will revise its regulations to allow individuals who started their experience for the insurance privilege prior to January 1, 2011 to meet the experience requirements under the prior requirements, which allowed applicants to complete their experience before licensure.

**COMMENT:** Several commenters strongly support the amendments related to supervised experience for licensure as an LCSW and the supervision of a BSW or MSW providing certain services, as the amendments provide a level of flexibility that reflects the settings in which social workers practice while maintaining appropriate standards for licensure as an LCSW.

**RESPONSE:** The Department appreciates the response and support.

**COMMENT:** The proposed amendment to 74.6 would allow a Licensed Master Social Worker to provide diagnosis, psychotherapy, and assessment-based treatment planning under supervision. Would you want your child to be treated by an LMSW who was not required to study differential diagnosis and to understand the DSM-IV-TR, academically?

**RESPONSE:** Section 7701(c) of the Education Law authorizes an LMSW to practice clinical social work, including diagnosis, psychotherapy and assessment-based treatment planning, under supervision in a setting acceptable to the Department. The proposed regulation requires the LMSW to be under supervision and is consistent with the Education Law; therefore, no change is needed.

**COMMENT:** SED should consider amending the regulations to include the Licensed Mental Health Counselor as an acceptable supervisor for an LMSW who is providing clinical social work services.

**RESPONSE:** Section 7704(2)(c) of the Education Law specifically defines a qualified supervisor as a LCSW, licensed psychologist or a psychiatrist. The law does not allow the Department to define in regulation any other supervisor for the LMSW practicing clinical social work.

**COMMENT:** Section 74.3(a) should be amended to allow the Department to approve interruptions for good cause in the requirement for supervised experience to be completed in no more than six continuous years.

**RESPONSE:** Section 7704(2)(c) of the Education Law requires an applicant to have at least three years full-time supervised experience over a continuous period not to exceed six continuous years and does not provide for interruptions in supervised experience.

**COMMENT:** Please amend 74.3(a)(4) to require the verification of supervised experience to be submitted by a licensed colleague of the supervisor, not the applicant, if the supervisor is deceased or not available.

**RESPONSE:** The regulation provides flexibility when an applicant's former supervisor cannot be located. The suggested change is not necessary.

COMMENT: Please amend the regulations to establish a time limit for the Department to respond to limited permit applications.

RESPONSE: Applications are processed in a timely manner when the applicant has submitted all necessary information. It is not necessary to establish this timeline in regulation.

COMMENT: Is the limit on supervising 5 permit holders at one time enforced across disciplines (e.g., LMSW, LMHC) and does the limit include clinical supervision of LMSWs?

RESPONSE: The proposed amendment restricts a licensed professional to supervising no more than five permit holders, in any combination of professions that he/she is competent to practice and supervise and does not include clinical supervision of licensees.

COMMENT: Section 74.6 establishes a process by which an LMSW may file a supervision plan for prior review but does not address a change in supervisor and how will this impact the supervision and experience accrued?

RESPONSE: If the LMSW or supervisor should leave the setting, a new plan may be submitted to the State Board and the LMSW could complete the experience under the new approved plan. Once the new plan is approved by the Department, the LMSW could complete the remainder of the experience under the new plan.

COMMENT: Please define good moral character and how a supervisor or applicant can demonstrate good moral character or respond to any questions about his/her moral character.

RESPONSE: Section 28-1 of the Regents Rules sets out the process by which a question of the applicant's moral character is investigated and reviewed to determine if the applicant has met the requirement.

COMMENT: Please clarify the process for obtaining a permit, including information on where to obtain the permit, cost, and the application.

RESPONSE: Applications, instructions and other information about permits, including costs, are available on our website: [www.op.nysesd.gov/prof/sw/](http://www.op.nysesd.gov/prof/sw/).

COMMENT: Language in 74.4(a)(2) and 74.4(b)(2) should be amended to allow a LMSW or LMSW permit holder to provide services in a private practice that he or she owns and operates.

RESPONSE: The Department disagrees with the comment, as the permit holder and the LMSW are only authorized to provide services under supervision, in a setting that is authorized to provide professional services to a public and this does not include a setting owned by an LMSW permit holder or LMSW.

COMMENT: A commenter applauded the Department's proposal to allow for the submission of a supervision plan by an LCSW seeking the psychotherapy privilege and for qualified individuals seeking to provide clinical social work services under supervision.

RESPONSE: The Department appreciates the comment.

COMMENT: Is the new form for supervisors different than the current log and can it be used for permit and non-permit holders?

RESPONSE: The Office of the Professions is revising existing applications. In the meantime, an applicant may use the existing forms and the supervisor may use the log that is part of Form 4B to maintain a record of the client contact and supervision hours.

COMMENT: Comments about the manner and effectiveness of clinical group supervision for LCSW licensure included a suggestion that the regulation require more

individual supervision and the possibility of waivers from stricter requirements in the event of hardship.

RESPONSE: There is no evidence that individual supervision provides a more qualified or competent entry level practitioner than does group supervision. The regulation provides appropriate flexibility and no change is needed.

COMMENT: A supervisor should be responsible for no more than four individuals or four members of a group to ensure appropriate supervision.

RESPONSE: This level of specificity is not required in the regulation, as the supervisor is responsible for accepting no more supervisees than he or she can supervise appropriately.

COMMENT: Sections 74.6(c)(1) and 74.6(d)(1) should be amended, similar to amendments in section 74.4, to clarify the supervisor's responsibility for appropriate oversight of all services provided under his or her supervision.

RESPONSE: A change is not required as the supervisor is responsible under Part 29 of the Regents Rules for appropriate oversight of an individual who is only authorized to practice under his/her supervision.

COMMENT: Is Child Welfare Services authorized under law or regulation to provide services that are within the scope of licensed clinical social work?

RESPONSE: An entity must be authorized by law to provide professional services. The entity should discuss any questions about its authority to provide professional services with its attorney to ensure compliance with applicable laws.

COMMENT: Commenters suggested that 74.5(c)(1)(v) and 74.6(a)(v) should be amended to "specify a program or facility authorized under articles 16, 31 or 32 of the mental hygiene law...", an OCFS program exempt until July 1, 2013, or a

psychotherapy institute granted a waiver under section 6503-a be defined as acceptable settings.

RESPONSE: The regulations clearly provide that if the facility or program is authorized under the Mental Hygiene Law, it is an acceptable setting. A program that is exempt or issued a waiver is considered “otherwise authorized” under the regulations. Therefore, this level of specificity is not needed in the regulations.

COMMENT: Social workers perform many tasks that are not included in diagnosis, psychotherapy, and assessment based treatment planning and this makes it difficult to ensure enough time in those areas and counting hours becomes a challenge.

RESPONSE: The amendments are intended to provide flexibility to supervisors in assuring that applicants complete appropriate experience in diagnosis, psychotherapy and assessment-based treatment planning, even if these are not provided in 60-minute sessions.

COMMENT: "Diagnosis" and "assessment-based treatment planning" involve work that does not happen 'face-to-face' with the client; does this count toward experience hours for these tasks?"

RESPONSE: It depends on the situation. Generally, to count toward experience hours, these tasks should happen 'face-to-face' with the client. However, a minimal amount of time that does not happen 'face-to-face' may be counted towards this experience. For example, a 50 minute face-to-face client session followed by 10 minutes of non-face-to-face documentation and recordkeeping, including treatment planning, would be acceptable by the Department for this experience.

COMMENT: It would be helpful to have some more clarity regarding assessment based treatment planning and if this is the same as a treatment plan or behavior plan?

RESPONSE: Assessment-based treatment planning is defined in subparagraph (d) of paragraph (2) of section 7701 of the Education Law, in the context of LCSW practice. It depends on the plan and whether or not a treatment plan or behavior plan meets the definition of assessment based treatment planning.

COMMENT: What does the supervised plan for the “R” psychotherapy privilege look like and what happens when there are changes over time?

RESPONSE: The LCSW will submit a plan for prior review by the State Board, to ensure the supervisor and setting are legally authorized and acceptable toward the privilege. If there are changes in the supervisor or setting, a new plan may be submitted for review.

COMMENT: The client contact hours required in 74.5(c) for the privilege should be reduced from 2,400 to 2,000, consistent with the changes for licensure as a LCSW.

RESPONSE: The Department disagrees with the recommendation. The psychotherapy privilege is intended to recognize those LCSWs who provide psychotherapy and therefore, the required hours are appropriate for the privilege.

COMMENT: Several commenters object to requirements in 74.5(c)(2) that an LCSW submit the proposed plan for meeting the privilege requirement prior to starting such experience, as this may prevent the LCSW from providing psychotherapy services that he/she can legally provide and the regulation suggests the privilege is required to provide psychotherapy services.

RESPONSE: The Department disagrees with the comments. The law does not restrict an LCSW from providing psychotherapy, if competent, nor require the LCSW to apply for or receive the privilege. A requirement for prior approval ensures public protection as well as providing assurances to the LCSW that the plan for meeting the privilege is consistent with the laws and regulations.

COMMENT: The amendment to 74.5(c)(2)(ii)(a) eliminates the possibility of peer supervision for the privilege, although this was allowed under the previous regulations. Several commenters believe that the Department's reading of the Insurance Law, requiring the supervisor to hold the privilege, does not apply for experience in certain settings and the regulations should be amended to allow peer supervision.

RESPONSE: The Department disagrees with the comment and believes that there should not be different standards for oversight of psychotherapy practice in facilities than for practice in other settings. The supervising LCSW who holds the privilege has demonstrated competence in psychotherapy, consistent with the Insurance Law and therefore a regulatory change is not warranted.

COMMENT: What exactly counts as acceptable experience in clinical social work for endorsement of a license issued in another state.

RESPONSE: The new section 74.9 allows the Department to endorse a license issued to an LCSW in another jurisdiction if the applicant met appropriate clinical requirements for licensure, although these may vary among states, and has at least 10 years of licensed practice in the 15 years prior to application for endorsement in New York. The State Board should not need to review experience or education, if acceptable in other states.

COMMENT: I support the new 74.9 to allow the Department to endorse for licensure as an LCSW in New York, certain individuals who are licensed as an LCSW in other states.

RESPONSE: No response is required.

COMMENT: I support the proposed amendments to 74.7 relating to the supervised practice of a person with a BSW degree.

RESPONSE: No response is required.

