

The Social Work Alliance

**National Association of Social Workers of New York City
National Association of Social Workers of New York State
NYS Coalition for Children's Mental Health Services
New York State Council for Community Behavioral Healthcare
New York State Rehabilitation Association
The Coalition of Behavioral Health Agencies, Inc.
UJA-Federation of New York
NYS Conference of Local Mental Hygiene Directors
Council of Family and Child Caring Agencies
Alcoholism and Substance Abuse Providers of New York State
United Neighborhood Houses of New York**

August 11, 2010

Mr. Frank Muñoz, Deputy Commissioner,
Office of the Professions, NY State Education Department,
89 Washington Ave., Albany, NY 12234-1000
Albany, NY 12234

Dear Mr. Muñoz:

The Social Work Licensure Alliance has reviewed the Education Departments proposed emergency regulations related to social work licensure and as such encloses the following copy of our comments.

Sincerely,

Members of the Social Work Licensure Alliance

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Comments on Proposed Amendments 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

The Social Work Licensure Alliance appreciates the timely and efficient review of policy and promulgation of proposed amendments to sections 74.3, 74.4, 74.5, 74.6 and 74.7 and the addition of new section 74.9. Such action will undoubtedly alleviate a number of cumbersome barriers to licensure, support the expedited review and processing of applications and provide clarity on supervision and experience for LMSWs and LCSWs. It is our contention that such steps in conjunction with the three year extension of the exemption for specific agencies, the mandate of a workforce review and Task Force to develop further statutory and/or regulatory actions, will stabilize the field of social work for the immediate future.

Specifically, the Social Work Licensure Alliance **strongly supports** the following regulatory amendments:

§74.3 specifies a reduction of the required number of hours in diagnosis, psychotherapy and assessment based treatment planning (from 2,880 hours to 2,000 hours) and allows for the aggregation of such hours over the course of three to six years rather than requiring weekly minima.

§74.6 proposes a reduction of the required number of supervisory hours (from 144 hours to 100 hours); provides for the clarification of settings and allows applicants to combine multiple settings in the pursuit of acceptable clinical experience; provides for an optional prospective review process for potential LCSW applicants; clarifies requirements that clinical supervisors prepare and maintain supervisory records; and allows supervision to be offered in either group or individual settings as opposed to requiring a prescribed amount in individual.

§74.7 allow individuals holding a baccalaureate of social work degree or an equivalent or higher degree to perform activities and services within the scope of a licensed master social worker. This amended regulation paves a path for MSWs with expired permits to work until they pass the exam.

Such provisions allow for a level of flexibility that is much more reflective of the varied arenas and settings associated with the practice of social work and will provide access to licensure at the clinical level to additional candidates while maintaining one of the highest standards for licensure at the clinical level in the nation.

The Social Work Licensure Alliance **is opposed** to the following regulatory amendments:

§74.5, specifically new subsection (c) restricts the time in which supervised practice hours in psychotherapy may be counted toward attainment of the “R” insurance credential. The proposed regulations allow only those hours completed after obtaining the LCSW license to count toward the R-credential; former regulations allowed a social worker to use all hours accumulated “beyond that required for licensure as a [LCSW]”- that is, anything obtained after 2,880 hours. The Social Work Licensure Alliance objects to this change. Given that many social workers have waited for periods of 12 months or greater after submitting their LCSW application to the State Education Department before receiving their LCSW, the proposed regulations would require forfeiture of supervised experience during the period “beyond that required for” the LCSW but prior to obtaining NYSED review and approval of the license; such forfeiture would be completely arbitrary and beyond the power of the applicant, subjecting them to the extensive backlogs in the NYSED licensing division.

Furthermore, in their filing with the State Register on June 30, 2010, the Education Department states that this change was made to conform to the “intent of the law” under Articles 32 and 43 of Insurance Law. The statute reads that the licensed clinical social worker “shall have...three or more additional years experience in psychotherapy” (Insurance Law 3221(1)(4)(D) and 4303(n)) but does not specify when the clock begins ticking for three or *more additional years*, and therefore NYSED should enjoy the openness of the statute to apply a rulemaking that is sensible and favorable to the profession and to common sense.

Also, §74.5 (c)(2) requires an LCSW to submit an application to the State Board for Social Work for review: a supervised experience plan for the R-credential prior to their commencing the supervised experience in psychotherapy. The Social Work Licensure Alliance objects to this change as well. Such a provision essentially prohibits an LCSW from operating within his or her own scope of practice by stating that supervised experience toward obtaining an R-credential may not commence until application is submitted to the State Education Department: “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.” It is not clear from the language whether such plan shall first be approved prior to the legitimate commencement of

experience toward the R-credential may begin, and clarification is needed. It is illogical that the same rule-making provides for the *optional prospective review* for experience toward the LCSW under new section 74.6(b), is simultaneously enacting *mandatory prospective review* of experience toward the R-credential; particularly given that an LCSW is free under their independent scope of practice to perform psychotherapy without any direct oversight or approval beyond an actively registered license.

Also, §74.5 (c)(2)(ii)(a) eliminates the provision of peer supervision for the R-credential, and newly requires that any Article 154 licensed supervisor hold the R-credential in order for such supervision to count towards the psychotherapy privilege. Again, NYSED states in their State Register filing that this change has been made to conform to existing statute, however upon review of Insurance Law Articles 32 and 43, this is only partly true. There are two separate standards under Insurance Law for a supervisor for the R-credential: one exists in 3221(1)(4)(d)(i)/4303(n)(i) and the other in 3221(1)(4)(d)(ii)/4303(n)(ii); subdivision (iii) of the respective provisions also allows for a combination of both (i) and (ii).

In the former subdivision (i), the Insurance Law refers to “supervision, satisfactory to the state board for social work, in a facility, licensed or incorporated by an appropriate governmental department...”; the statute is silent on the level of practitioner required for such supervision and provides express authority to the State Board for Social Work to determine “satisfactory” supervision in such facility settings through the rulemaking process.

In the latter subdivision (ii), Insurance Law does require supervision to be performed by a “licensed clinical social worker qualified for reimbursement pursuant to subsection (h) of this section [the LCSW-R credential].” Therefore the Alliance accepts that any supervision provided settings *other than those facility settings* enumerated in sections 3221(1)(4)(d)(i) or 4303(n)(i) must be provided by an LCSW with the R-credential (or a licensed psychologist or psychiatrist), however the proposed regulations should not impose this higher standard to all settings when not required to do so by law.

Again, as stated above, the Social Work Licensure Alliance is grateful for the attention to these vital social work licensure implementation issues and appreciates the Departments’ initiative to ameliorate many of our identified concerns.

However, given the changes proposed and enacted under Part 74 of the social work regulations, the Alliance strongly urges the Department to consider the hundreds, if not thousands of social workers currently in the pipeline working toward obtaining an LCSW or an LCSW-R credential. While we recognize many of the changes to regulation allow for a liberalization of experience requirements, we also contend that there are a number of new restrictions regarding supervised

practice. These new provisions should be used only from June 29th forward, permitting applicants to use experience accrued prior to June 29, 2010 which would allow a number of LCSWs to use those accrued hours towards the LCSW-R experience since the experience conformed to the regulations at the time.

Again, as stated above, the Social Work Licensure Alliance is grateful for the attention to these vital social work licensure implementation issues and appreciates the Departments' initiative to ameliorate many of our identified concerns.