

NASW-NYS offers many thanks to the State Education Department, specifically Frank Munoz, Associate Commissioner for the Professions and David Hamilton, Executive Secretary to the State Board for Social Work for their continued responsiveness to the Chapter and the profession regarding emerging social work licensure implementation issues.

Over the last several months NASW-NYS and NASW-NYC Policy Staff have been working in conjunction with the State Education Department on the issue of independently owned and operated settings as they relate to experience for the LCSW. As a result of this work, the Department's Committee on the Professions recently issued a decision (January 31, 2009) to authorize the State Education Department to accept experience for licensure as a licensed clinical social worker that was completed in a private practice owned by the applicant and/or under a supervisor who was employed by the applicant, provided that such experience otherwise satisfies the requirements set forth in section 74.3 of the Regulations of the Commissioner of Education and is otherwise in compliance with all applicable laws and regulations, and further provided that in order to be acceptable under this vote, the experience must have been commenced prior to February 2, 2009 and the application must be submitted to the Department no later than February 2, 2015 on forms prescribed by the Department. The entire COP decision reads as follows...

COP Decision

Date: January 22, 2009

To: Committee on the Professions

From: David Hamilton, State Board for Social Work

Subject: Request for determination on experience for licensure

Issue: Prior to licensure as a licensed clinical social worker (LCSW), an applicant must complete three years of full-time post-degree supervised experience, acceptable to the Department, or the part-time equivalent thereof obtained over a period not to exceed six years. It has come to the attention of the State Board for Social Work that certain applicants for licensure as an LCSW have completed, or are in the process of completing, experience that meets the explicit supervision content criteria of applicable laws and regulations regarding experience but is provided in a setting or under a supervision arrangement that may not be consistent with more general interpretations of the laws relating to the practice of the professions. More specifically, the types of experience that are in question are those in which:

1. the setting was in a private practice owned by the applicant; and/or
2. the supervisor of the experience was employed by the applicant.

Education Law allows a licensed master social worker (LMSW) to practice licensed clinical social work in "facility settings or other supervised settings approved by the department, under supervision in accordance with the Commissioner's Regulations" (Education Law section 7701[1][d]). Section 74.3 of the Regulations of the Commissioner of Education defines an acceptable setting as a facility or non-facility setting or a combination of the two. These terms are defined as follows:

- 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.

Applicants have proceeded under the assumption that a "non-facility setting" includes a private LMSW practice owned by the applicant, who then practiced clinical social work in that setting and purchased supervision from an LCSW, licensed psychologist or psychiatrist who met the definition of qualified supervisor in Education Law and Commissioner's Regulations. This assumption would have been consistent with the practice of social work prior to September 1, 2004, at which time the profession enjoyed only "title protection." It would not, however, be consistent with current Education Law which provides for both title protection and scope of practice protection for LMSWs and LCSWs, as the owner of a scope-protected professional practice must be finally responsible for all professional activities undertaken in the practice and may not, therefore, be under the supervision another individual.

Why is it necessary to act?

Effective September 1, 2004, the title protected profession of "certified social work" was converted to two separate professions – "licensed master social work" and "licensed clinical social work," each with both scope and title protection. Given:

- the number of existing social work practitioners and unlicensed individuals providing the same services when there was no scope of practice protection;
- the great variety of entities (including professional practices, business corporations, and not-for-profit corporations) that were legally providing social work services prior to the enactment of the new law;
- the overlap with statutory and regulatory provisions relating to eligibility for insurance reimbursement for psychotherapy services; and
- the complexity of the change in authorized social work providers,

it was very difficult to effectively communicate the many practice changes and new requirements to the vast array of impacted employers, students, applicants and licensees. Accordingly, a number of issues have arisen concerning the settings in which acceptable experience may be obtained for licensure as an LCSW. Many individuals who were already engaged in obtaining their education and/or experience at the time the new law became effective proceeded as if the laws did not change on September 1, 2004. The situation was further complicated as some of the information provided with application forms, on the Office of the Professions web site, and in response to questions either continued to provide information that was accurate under the pre-existing law but not under the new law or did not fully and clearly address the change in acceptable settings and the hiring of supervisors.

The Office of the Professions is currently engaged in discussions with stakeholders to address the issues related to acceptable experience for licensure as an LCSW, as well as a variety of other issues that have arisen in implementing the new law since September 1, 2004. The solutions will vary, from statutory changes to address corporate practice issues and the expiration in 2010 of a statutory exemption for certain practice settings, to clarification of the regulations defining acceptable experience for licensure for future applicants.

One aspect of the solution is this request to the Committee on the Professions that Department staff be authorized to accept experience for licensure as an LCSW that was completed in a private practice owned by the applicant and/or under a supervisor who was employed by the applicant as long as that experience

otherwise satisfies the requirements set forth in section 74.3 of the Commissioner's Regulations and is otherwise in compliance with all applicable laws and regulations. While the Department has determined that, under the context of the new social work licensure law, such practice and supervision arrangements do not constitute best practices for the training of LCSWs and should not be applied prospectively, it recognizes that applicant ownership and payment of a supervisor were the norm under the former law and provided for adequate training for many now licensed as LCSWs under the statutory grandparenting provisions. Given the factors listed above, the reliance by applicants on previously existing practices, and the delay in communicating the changes in those practices to applicants, it is recommended that the Department be authorized to accept experience obtained in a private practice owned by the applicant and/or under supervision paid for by the applicant, as provided below. Except as specified herein for private practice settings owned by the applicant, this policy will not apply to supervision obtained in practice environments which are not authorized to provide clinical social work services or exempt from the requirements of licensure. For example, experience obtained in a business or not-for-profit corporation that is not authorized to provide the appropriate professional services or exempt from licensure requirements will not be accepted to satisfy the experience requirements for licensure.

If the COP approves the vote below, the State Board will review those applications previously deemed not acceptable because the setting was a private practice owned by the applicant and/or because the supervisor was hired by the applicant to oversee the experience. In addition, the State Board will communicate through the OP Web site and list-serve, as well as through professional associations, provider groups, schools of social work, and State agencies, the COP action and opportunity for re-evaluation and submission of applications from individuals who would have met the requirements. The opportunity to take advantage of this COP action will be limited to those who commenced their supervised experience before February 2, 2009, who submit their applications for licensure prior to February 2, 2015, and who meet all other licensure requirements. In accordance with Section 74.3 of the Regulations of the Commissioner, the experience will have to be completed within six years from the commencement of the experience.

Voted that: The Committee on the Professions authorizes Department staff to accept experience for licensure as a licensed clinical social worker that was completed in a private practice owned by the applicant and/or under a supervisor who was employed by the applicant, provided that such experience otherwise satisfies the requirements set forth in section 74.3 of the Regulations of the Commissioner of Education and is otherwise in compliance with all applicable laws and regulations, and further provided that in order to be acceptable under this vote, the experience must have been commenced prior to February 2, 2009 and the application must be submitted to the Department no later than February 2, 2015 on forms prescribed by the Department.