

Board of Social Work Examiners Releases Proposed Regulations  
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Chapter President

On October 12, 2018 draft regulations to carry out the 2017 changes in our Social Work Practice Act were published in *The Maryland Register*, which started the 30 day comment period where social workers and members of the general public may have a say about what is proposed.

The new regulations amend four chapters of the current Code of Maryland Regulations (COMAR). Title 10 of COMAR refers to the Maryland Department of Health (formerly DHMH) and Section 42 refers to the Board of Social Work Examiners (BSWE). There are nine chapters of regulations in this section. Therefore, regulations regarding social work are found in COMAR Title 10.42.01-09. Four chapters are being amended 10.42.01 (Regulations Governing Licensure), 10.42.02 (was called Case Management, would now be called Social Work Practice), 10.42.08 (Supervision), and 10.42.09 (Disciplinary Sanctions and Monetary Penalties).

Over the past month, Dr. Daphne McClellan, executive director of NASW-MD, and other NASW board members travelled to every branch of the state, holding review and discussion sessions about the regulations. Throughout the sessions and after numerous phone calls, emails, and meetings we have learned what our members are concerned about and how the new regulations are viewed.

BSWs and MSWs are excited about the opportunity to have an end to the “forever supervision” necessitated by our old statute, and we are hopeful that the career path afforded by the changes in our law will result in more generalist and macro MSWs and BSWs choosing to become licensed.

Supervision has been a subject of discussions at every social work gathering in recent months. There is concern regarding a perceived change in the way the current regulations are interpreted regarding supervision hours for those working toward advanced licensure. According to reports, agencies that provide a mixture of individual and group supervision for young social workers (utilizing more than one LCSW-C supervisor) find that what was acceptable in the past is no longer being accepted when the supervisee applies to take the clinical exam. While this recent interpretation is not part of the proposed regulations, supervision regulations are currently being revised, giving us an opportunity to address the issue.

Although the use of technology with clients is on a back burner, using technology for supervision is not. The new regulations allow face-to-face supervision to include supervision conducted by secure video conferencing. This innovation has found wide-spread approval among supervisees and supervisors alike. However, a proposal to change the number of supervision hours required for LBSWs and LMSWs from 3 per month to one hour for every 40 hours worked has drawn mixed reviews. Social workers are happy that part-time employees will get the opportunity to have required supervision time that is more commensurate with their working hours, but many full-time supervisees and supervisors are concerned about the increased hours the change would require from them.

Other aspects of the new law and proposed regulations that have yielded positive responses are: 1) the definition of private practice and clarification that only an LCSW-C can ‘have’ a private practice and 2)

the opportunity for LBSWs and LMSWs to follow a career path that enables them to become independent practitioners and board approved supervisors.

NASW is known for its dedication to professional standards and regulation. As the organization that originated *The Code of Ethics* and which led the way for licensure in all 50 states, we are strongly committed to protecting the public and ensuring a competent workforce.

In addition to our dedication to professional standards, NASW is dedicated first and foremost to standing up for social workers (and our members in particular). Throughout the process of passage of the amendments to the Social Work Practice Act and the months afterward when the regulations were being written and voted upon by the board, we have heard from hundreds of social workers around the state. We found that social workers want the integrity of the profession preserved and want clients served by competent and ethical professionals. They also want a process for becoming licensed and advancing their credentials that is clear, fair, and flexible. Based on what we have heard from members, there are sections of the proposed regulations we believe would benefit from some adjustments and/or clarification. Therefore, NASW-MD and its Professional Standards Committee have prepared comments to be sent to the Office of Regulation and Policy Coordination. We distilled the feedback into our comments and recommendations listed below. We are urging the BSWE to review our concerns and make changes to the proposed regulations which will make them clearer and easier to follow while maintaining the primary purpose of protecting the public.

When possible, we suggested alternative language (**in bold**). Page numbers in our comments refer to the pages in *The Maryland Register*, Volume 45, Issue 21, published Friday, October 12, 2018.

- I. Definition of Clinical Social Work is different in 10.42.01.02(6) (pg. 990) and 10.42.02.02 B. (7) (pg. 992). **Suggest inserting the word “groups” to the second definition to make them identical.**
- II. In 10.42.02 there are new definitions which may be useful but are not complete. **We suggest in 10.42.02.02 B. (1) (pg. 992) that the words “includes, but is not limited to” be added to the definitions of Administration and Advocacy. “Administration includes, but is not limited to the process of ....” Advocacy includes but is not limited to the service in which ....”**
- III. Private practice is being defined for the first time in the amended statute and in these regulations. It is our understanding that it was the intent of the BSWE and the legislature to curtail the ability of LMSWs (formerly LGSWs) from having their own private practice with just the minimal supervision required by the regulations. According to the new regulations 10.42.02.03 D (6) (pg. 993) only a LCSW-C may **HAVE** a private clinical practice.

It is our understanding that the language in 10.42.02.03 B. (5) and (6) (pg. 993) indicates that a person who is currently an LMSW may HAVE or own their own private practice under the supervision of an LCSW-C until Dec. 31, 2019 but if they have not obtained the LCSW-C by that date, the LMSW may not continue to HAVE or own a private practice after that date, beginning Jan. 1, 2020.

However, the language in that section which refers to LMSWs **engaging** in private practice is unclear and confusing. It is our understanding that an LMSW may be employed in a private practice group where they are properly supervised by an LCSW-C in order to render clinical services and acquire clinical work experience necessary for pursuing advanced licensure.

***In order to make the intent clear and to make the language consistent with 10.42.02.03 D. (6), we recommend that the following language in 10.42.02.03 B (5) be changed: “On or before December 31, 2019 an LMSW may not HAVE a private CLINICAL practice without the supervision of an LCSW-C”, and (6) be changed: “On or after January 1, 2020 an LMSW may not HAVE a private CLINICAL practice”.***

There is great anxiety across the state among young social workers who currently receive on-the-job training in clinical practice as part of a group practice. Some group practices have had practitioners quit their positions after reading the new regulations. Some LMSWs were told by the owners of the practice that they cannot continue to work there after December 31, 2019. The language suggested above would clarify this issue and help stabilize the workforce.

- IV. The process for LBSWs and LMSWs to apply for Independent Practice status has been laid out in three ways on page 994. In 10.42.02.05 E., the process is described for grandfathering licensees of more than 10 years. It was the legislative intent for this process to acknowledge the longevity of these licensed social workers with a process that is easy for both them and the BSWE. The statute specifically mentions only that the social worker be licensed and actively working as a social worker for at least ten years. The statute reads: “ **(ii) On or before January 1, 2008, was licensed by the Board as a licensed bachelor social worker or a licensed graduate social worker; and (iii) Has actively practiced bachelor social work, actively practiced graduate social work, or actively practiced master social work for at least 10 years**” (Health Occupations 19-302 (F) (2) (II) and (III)).

The reference to supervision was deliberately left out of the grandfathering language in recognition of the difficulty of providing documentation going back a decade or more and because ease of the process is one of the hallmarks of being “grandfathered”. Some of the people who supervised these long-term social workers have retired, moved, or passed away. There was no requirement that records be kept for this length of time. ***We suggest that the language in 10.42.02.05 E. (1) and (2) reflect the legislative intent by removing the reference to “under social work supervision” and that the application and documentation referred to in (3) and (4) be confined to documenting that one was licensed as an LBSW or LMSW (LGSW) on or before Jan. 1, 2008 and has been employed as a social worker for at least ten years.***

- V. The second process for current LBSWs and LMSWs to apply for Independent Practice is laid out in 10.42.02.05 F. The language in this section tries to bridge the gap between those who were licensed on or before Jan. 1, 2008 and those who will be licensed on or after July 1, 2019. However, this specificity is not necessary and is confusing to social

workers who were licensed on or before Jan. 1, 2008 but may not have been employed as social workers for at least 10 years.

***We suggest that 10.42.02.05 F be revised to say “An LBSW or LMSW licensed on or before June 30, 2019 shall:”***

This would mean that those who have been licensed for more than ten years would have two ways to qualify for Independent Practice. They could either meet the grandfathering requirements of having been licensed and employed as social workers for at least ten years **OR** they could meet the more strict supervision requirements laid out in the process described in letter F.

VI. ***Based on the reasoning we set out in III above, we suggest that 10.42.02.06, be changed to read: B. An LCSW may not have a private clinical practice. C. An LCSW-C may have a private clinical practice. D. On or after January 1, 2020, an LMSW may not have a private clinical practice.***

VII. We have received numerous phone calls and reports from LMSW supervisees, LCSW-C supervisors, and social work agencies regarding the difficulty in meeting the requirements to sit for the clinical exam. Some concerns are centered on the definition of what counts as clinical experience but the majority are in regard to the current interpretation of the regulations that all 3 hours of supervision one receives in a month must be done by the same person. This is a significant change and apparently conflicts with long-established practices in many agencies where group supervision is conducted by a different person than the contracted supervisor, or where the supervisee has a contract with more than one supervisor for different supervisory purposes. Many agencies rely on more than one LCSW-C to meet the needs of their agency in providing supervision due to various areas of expertise, work schedules, or perceived learning needs of the supervisees. In **10.42.08 Supervision**, the issue of social work supervision is addressed. This is an appropriate time to clarify that supervision in this section means “for the purposes of licensure,” and to make the process convenient for the social workers and agencies involved while assuring that supervisees receive the appropriate education to ensure protection of the public.

***We recommend that the name of this chapter be changed to “Supervision FOR THE PURPOSE OF LICENSURE”.*** Some agencies expressed the desire to hire LGPCs rather than LMSWs and people with Human Services degrees rather than LBSWs due to the supervision requirements faced by licensed social workers. The change we propose makes it clear that employers have the right to make supervision arrangements that meet their agency needs and the supervision requirements defined in the regulations are specifically for licensure purposes.

Additionally, we commend the BSWE for recognizing that many social workers are employed part-time and a mandatory 3 hours per month of supervision regardless of the number of hours worked can be a significant hardship. The change to one hour of supervision for every 40 hours worked for a part-time employee is a much needed

accommodation. However, the increase from a required 3 hours per month of supervision for full-time employees to 4 hours or more for those working full-time or overtime is a change many supervisors, supervisees, and agencies will find is an imposition that is difficult to meet. Even when supervisors and supervisees are striving to meet one hour each week, their efforts can be impeded by illness, vacations, and work emergencies, which results in getting in just the required 3 hours per month. For LBSWs and LMSWs who work in environments where no appropriate social work supervision is available and pay out of pocket for supervision, the added hour each month will be a burden to what is already a financial challenge.

***We suggest a revision to 10.42.08.07 Responsibilities of a Supervisor (pg. 996) C. A supervisor shall: Provide or ensure that a supervisee receives a minimum of 3 hours per month OR for part-time employees, 1 hour for every 40 hours worked of appropriate face-to-face supervision for each supervisee;***

***And we suggest the following revision to 10.42.08.08 Responsibilities of a Supervisee (pg. 996). A. (2) Participate in a minimum of 3 hours per month OR for part-time employees, 1 hour for every 40 hours worked of face-to-face supervision with the supervisee's supervisor(s);***

This language change keeps the current minimum supervision requirements for full-time employees while allowing part-time employees a more attainable number of hours. It also permits employers and supervisors the flexibility to provide the best supervision and education for supervisees while maintaining the optimum workforce for their agency. Thus, the contracted supervisor is **responsible** for the supervisee's supervision and education but may make arrangements for specified reasons for another appropriate person to provide some supervision hours.

- VIII. Finally, we find the table of violations in 10.42.09.04 (pgs. 997-998) confusing. In what appears to be an effort to abbreviate the references in the violations, some of them are unclear. We appreciate the words that were added to (1) to complete the unfinished sentence, but some of the other violations could be enhanced by including the language from the actual statute.

We recommend that the language in (9), (10), (16) and (18) be expanded as follows:

***(9) Provides professional services while: (i) Under the influence of alcohol; or (ii) Using any narcotic or controlled dangerous substance, as defined in § 5–101 of the Criminal Law Article, or other drug that is in excess of prescribed amounts or without valid medical indication;***

***(10) Is disciplined by a licensing or disciplinary authority of any state, country, or branch of the armed services, or the Veterans' Administration for an act that would be grounds for disciplinary action under this section;***

***(16) Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services on the basis of race, age, gender,***

***sexual orientation, disability, religion, or ethnic origin or because the individual is HIV positive;***

***(18) By threats, force, or improper means, intimidates or influences, or attempts to intimidate or influence, for the purpose of: (i) Causing any person to withhold or change testimony in hearings or proceedings before the Board or otherwise delegated to the Office of Administrative Hearings; or Subtitle3-Licensing 12 (ii) Hindering, preventing, or otherwise delaying a person from making information available to the Board in furtherance of an investigation by the Board;***

We invite feedback and comments from our members about what we are doing on your behalf. Please feel free to contact Daphne McClellan at [dmcclellan.naswmd@socialworkers.org](mailto:dmcclellan.naswmd@socialworkers.org) . We also encourage you to send your personal comments on the regulations to the Office of Regulation and Policy Coordination (instructions below). The open comment period ends on November 13<sup>th</sup>. Now is your chance to make your views known and have a voice in the regulation of YOUR career.

### **Opportunity for Public Comment**

Comments may be sent to Director, Office of Regulation and Policy Coordination, Maryland Department of Health, 201 W. Preston Street, Room 512, Baltimore, MD 21201 or call 410-767-6499 (TTY 800-735-2258) or email to [mdh.regs@maryland.gov](mailto:mdh.regs@maryland.gov) or fax to 410-767-6483. Comments will be accepted through November 13, 2018.