



New York State Society for Clinical Social Work

Reference Article

Policy Problems Found in State Licensing of Psychotherapists: Questions about Authorized Settings, Experience Requirements, Expiration of Exemptions

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10/09/08--New York State Education Department's Office of the Professions (OP) has identified a major public health policy problem subsequent to the enactment of laws that established the licensing of all mental health professionals in 2002. The State licenses qualified individuals providing psychotherapy services but there are also implications for the settings where psychotherapy is provided by the licensed professional. The licensed practitioner must comply with Education Law as well as other New York laws such as labor and corporate practice laws. In other words, any person providing psychotherapy services must be licensed or specifically exempted by the statute and any setting where the services occur must also be legally permitted to do so.

Unforeseen consequences are frequently encountered in implementing new statutes and in this case many problems have emerged as the mental health community attempts to comply with new and pre-existing laws. This article is intended to provide an understanding of some of the basic issues which the OP is trying to resolve with the help of the stakeholders: the professions involved, legislators and their staff, and the Governor's office. Three key problem areas have been identified: issues around authorized settings for professional practice, procedures for meeting experience requirements for individual licensure and addressing problems arising from the January 1, 2010 expiration of licensure exemptions for individuals in certain programs.

The Society Board with the help of our lobbying firm is actively involved in this process. We are monitoring the situation closely and most recently, the Board has adopted two resolutions:

- advocating that LMSWs who graduated after 2004 and worked in unauthorized settings, should be permitted to use that experience to fulfill their supervised clinical experience;
- supporting the expansion of authorized settings for psychotherapy services while maintaining meaningful professional standards for mental health practitioners for consumer protection.

What Has Changed?

In 2002, when we were finally successful in passing legislation to license social work in New York, the State also licensed the practice of psychology and four new groups of mental health practitioners: mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts. The goal of this legislation was to enhance public protection by limiting the provision of mental health services to those with demonstrated knowledge and skills that qualified them to do so. Mechanisms of accountability were established by licensing these individuals so that the practice of psychotherapy was restricted to those who the state recognized as qualified to deliver mental health services.

Statutory History for MSWs

Historically, social workers gained title protection for “Certified Social Workers” in 1965. Insurance reimbursement for CSW psychotherapy services was obtained in 1978 (“P”) and in 1985 (“R”). In 2002, scope of practice and title protection for social work and clinical social work became law, effective 9/1/04 (scopes of practice for LMSW and LCSW follow). The “P” law was integrated into the LCSW and at the time we expected that the experience requirements for the “P” would transfer to the LCSW. For the “P”, the three years of supervised clinical experience could be obtained either in an agency or in private practice and certified social workers could maintain a private psychotherapy practice. However, when clinical social work became licensed, some of these requirements changed. It was not until LMSWs, who completed three years of supervised experience after 2004 and who were still practicing as if the former “P” system rules were still in effect, applied for the LCSW, that the State Education Department and the field realized the extent to which there are questions as to what constitutes an authorized setting and acceptable experience.

Major Issues

Currently in New York, there are 48 licensed professions established under Title VIII of the Education Law. As in the past, when any profession is newly licensed, it must integrate the provisions of other laws. For LMSWs and other mental health practitioners seeking to be licensed as psychotherapists, three major issues have surfaced:

1. Authorized settings for the practice of psychotherapy: Before 2002, there was no regulation of psychotherapy in New York State. Anyone could claim to be a “psychotherapist” and many different kinds of entities could offer mental health services: licensed treatment clinics, unlicensed treatment centers, not-for-profit organizations, family agencies, schools, etc. After 2002, the pre-existing corporate practice laws became relevant for any person or any setting providing mental health services. These laws alter the circumstances that create an authorized setting. It can be a clinic licensed by a state agency, such as the Office of Mental Health (OMH), or another legal entity established in accordance with New York Business Corporation laws. It would not affect a LCSWs in a solo private practice as they are already in compliance with these statutes. It would not effect LCSWs in solo private practice.

Corporate practice is the term used to describe a situation in which a non-licensee or business entity attempt to employ or provide services restricted to licensed professionals. In general, the practice of a profession is restricted to persons who are licensed, although there are exemptions in law for certain entities such as hospitals or vision care centers. Although few considered corporate practice in the development and implementation of the social work laws, the restrictions on practice by non-licensees have created serious problems for many settings, i.e. advanced training institutes which require clinical experience as part of their curriculum. For years many institutes offered their candidates a clinical experience in treatment centers which attracted low-fee patients. After 2002, many of these centers did not qualify as authorized settings for providing mental health services despite their long histories of successfully doing so. The field has only recently become aware of this problem and the extent to which it affects the delivery of mental health and social work services.

The Education Law and Regents Rules prohibit licensed professions from engaging in fee-splitting or fee-sharing so that a non-licensee cannot receive fees from a licensed professional. The Business Corporation Laws that allow an LCSW to form a professional corporation restrict ownership of a professional corporation to members who are licensed as an LCSW. This means that an LCSW cannot form an entity with anyone licensed in another profession, including LMSW, marriage and family therapy, or psychology. Since this was allowed prior to licensure, the law provided an exemption for these entities to operate without change until July 1, 2009. After this date, the entity must only have LCSW members.

Issues related to the practice of a profession by a corporation are not unique to social work and mental health. The Education Department

is addressing similar issues of corporate practice when prisons attempt to contract with business corporations, teachers and licensed professionals attempt to form schools for students with disabilities, retail establishments seek to provide health care services or community-based organizations provide services restricted to the LMSW or LCSW.. The latter is particularly problematic, as many not-for-profits have long histories of providing mental health services across New York State. The 2002 licensing laws have had a serious impact on these entities and may threaten access to their services by their client base including at-risk consumers.

2. Supervised Experience: What kind of supervised experience qualifies for licensure?

The law and regulations specify what services the LMSW and the LCSW can provide in their scopes of practice. The duration and frequency of supervision as well as the qualifications of the supervisor are also delineated. The supervisor is legally and professionally responsible for overseeing all mental health services provided by the LMSW which includes ensuring appropriate evaluation, diagnosis and treatment are being carried out.

Prior to licensure, a certified social worker could hire a supervisor to meet the supervision requirement for the “P.” After the licensing statute was enacted, an LMSW cannot hire a supervisor to meet the supervision requirements for the LCSW. The LMSW must be an employee in a legally authorized setting in order to gain psychotherapy experience. If an individual LCSW in private practice wishes to employ and supervise an LMSW, the LCSW must hire the LMSW to see the LCSW’s patients and provide supervision. Billing is done by the LCSW.

As noted above, the “P” statute previously allowed certified social workers to gain supervised clinical experience in their own private psychotherapy practice. This is no longer possible. Although LMSWs may have private practices, they can only provide those services described in their scope of practice – interventions, supportive counseling, etc. They cannot provide psychotherapy services – including diagnosis and treatment or represent themselves as psychotherapists. These are the issues that are being addressed by the Department and the stakeholders, including the executive and legislative branches.

LICENSED MASTER SOCIAL WORK SCOPE OF PRACTICE

The statute, Education Law (7701) defines the scope of practice of LMSW as “1... (a)... the professional application of social work theory, principles, and the methods to prevent, assess, evaluate, formulate and implement a plan of action based on client needs and strengths, and intervene to address mental, social, emotional, behavioral, developmental, and addictive disorders, conditions and disabilities, and of the psychosocial aspects of illness and injury experienced by individuals, couples, families, groups, communities, organizations, and society. (b) LMSWs engage in the administration of tests and measures of psychosocial functioning, social work advocacy, case management, counseling, consultation, research, administration and management, and teaching. (c) LMSWs provided all forms of supervision other than supervision of the practice of LCSW... (d) LMSWs practice licensed clinical social work in facility settings under supervision or other supervised settings approved by the department under supervision in accordance with the commissioner’s regulations.”

3. Exemptions end on January 1, 2010: What happens to the practice of the psychotherapy after January 1, 2010 when the exemptions to the licensing laws end for mental health professionals in programs regulated, funded operated or approved by OMH, OMRDD, OASAS, OCFS, local social service or mental hygiene districts?

After that date, current law provides that the staff (individual practitioners) in these programs will need to meet licensure requirements. Agencies authorized to deliver mental health services will need to do so solely with licensed professionals. At this time,

it appears that these agencies will be unable to meet this deadline and negotiations are underway for a limited extension of exemptions.

As you can see from this brief summary, the Office of the Professions is contending with a serious public health policy problem which impacts on all persons providing psychotherapy and their patients as well as the settings where these services are provided. The State Education Department is committed to working out a satisfactory resolution which protects access to mental health services and supports at least minimum competence for its licensees.

Much of the material in this article is provided by OP which is continuing to collect information from professional associations, provider groups and State agencies. Once the major problems have been identified, they will have to be prioritized for action. This will be a process which will take several months to resolve, first by regulation. Additional solutions will take longer to achieve and will require legislation. In the meantime, we will be asking you to write to your legislators to advocate for specific suggestions soon. Stay tuned.

Here is the scope of practice for the LCSW. Note the LCSW's scope incorporates the LMSW.

LICENSED CLINICAL SOCIAL WORK SCOPE OF PRACTICE

The statute, Education Law (7701) defines the scope of practice of LCSW as "2...(a)...encompasses the scope of practice of LMSW and, in addition, includes the diagnostic assessment of mental, emotional, behavioral, addictive and developmental, disorders and disabilities, and of the psychosocial aspects of illness, injury, disability and impairment undertaken within a psychosocial framework; administration and interpretation of tests and measures of psychosocial functioning; development and implementation of appropriate assessment-based treatment plans; and the provision of crisis oriented psychotherapy and brief short-term and long-term psychotherapy and psychotherapeutic treatment to individuals, couples, families, groups, habilitation, psychoanalysis and behavior therapy; all undertaken for the purpose of preventing, assessing, treating, ameliorating, and resolving psychosocial dysfunction with the goal of maintaining and enhancing the psychological and social functioning and well being of individuals, couples, families, groups, communities, organizations, and society.