

**SUNRISE ANALYSIS
OF A PROPOSAL TO REGULATE
THE PRACTICE OF CLINICAL SOCIAL WORK**

A Report to the Governor and the Legislature of the State of Hawaii

**Submitted by the
Legislative Auditor of the State of Hawaii**

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Introduction

In 1984, the Legislature amended the Hawaii Regulatory Reform Act, or the "Sunset Law," by incorporating a "sunrise" provision requiring the Legislative Auditor to analyze proposed legislation that seeks to impose licensing or other regulatory controls on unregulated occupations.

The Legislative Auditor is required to assess the probable effects of the proposed measure and to determine whether its enactment would be consistent with state regulatory policies in the Sunset Law. These policies establish criteria for regulation such as the following:

- . Regulation is warranted only where necessary to protect the health, safety, and welfare of consumers.
- . Evidence of abuse shall be awarded great weight in determining whether regulation is desirable.
- . Regulation shall not be imposed except to protect relatively large numbers of consumers who may be at a disadvantage in choosing the provider of the service.
- . Regulation should not unreasonably restrict entry into the occupation by qualified persons.
- . The purpose of regulation is to protect the consumer and not the regulated occupation.

During the 1985 legislative session, Senate Bill No. 1131 relating to social work was introduced. The bill would establish licensing requirements for the practice of clinical social work. It was referred to the Legislative Auditor for sunrise analysis of whether its enactment would be consistent with sunset law policies.

This analysis contains some background information on the profession of social work, an examination of the need to regulate the practice of clinical social work, and an assessment of the proposed legislation.

The Social Work Profession

Social work is one of the major helping professions. Traditionally, it has focused on the needs of the poor and disadvantaged. Today, social work is practiced in a variety of settings using diverse methods.

In 1982, social workers held approximately 345,000 jobs in the United States.¹ More than half of these jobs were in state, county, or municipal government agencies, primarily in departments of human resources, social services, mental health, education, and corrections. A small number are employed by the federal government. In the private sector, social workers are employed by voluntary nonprofit agencies, community and religious organizations, hospitals, nursing homes, and other human services organizations.²

1. U.S., Bureau of Labor Statistics, *Occupational Outlook Handbook, 1984-85 Edition*, Washington, D.C., Government Printing Office, p. 89.

2. *Ibid.*

Social workers specialize in fields such as family services, child welfare, assistance to the elderly, corrections, and mental health services. A growing number are engaged in various forms of psychotherapy in private practice and in institutions.³

Social workers use different techniques depending on and appropriate to the setting and the clients served. These methods include casework, psychotherapy, counseling, group therapy, and community organizing. They also perform general administrative duties such as managing, planning, and budgeting for services.

Because social workers practice in such a variety of settings using differing techniques, the National Association of Social Workers (NASW) defines social work broadly as follows:

"Social work practice consists of professionally responsible intervention to (1) enhance the developmental, problem-solving, and coping capacities of people, (2) promote the effective and humane operation of systems that provide resources and services to people, (3) link people with systems that provide them with resources, services and opportunities, and (4) contribute to the development and improvement of social policy.

"The interventions are provided to individuals, families, small groups, organizations, neighborhoods and communities. They involve the disciplined application of knowledge and skill to a broad range of problems which affect the well-being of people both directly and indirectly. They are carried out at differentiated levels of knowledge and skill, through an organized network of professional social workers within the boundaries of ethical norms established by the profession and the sanction of society. Within these norms, the interventions may be carried out in cooperation with other helping disciplines and organizations as part of any human service enterprise."⁴

3. "Social Workers Vault Into a Leading Role in Psychotherapy," *New York Times*, April 30, 1985, p. C-1.

4. NASW Task Force on Sector Force Classification, *NASW Standards for the Classification of Social Work Practice*, Policy Statement 4, Silver Spring, Md., National Association of Social Workers, Inc., September 1981, p. 6.

The NASW is the major professional organization for those in the social work field with nearly 100,000 members and chapters in each of the 50 states, New York City, Puerto Rico, and Europe.⁵ Membership is open to those who meet professional educational requirements. Associate membership is available to those with non-social work degrees who work in a social work capacity.

The primary functions of NASW are professional development, establishing professional standards of social work practice, advancing sound social policies, and providing various services to members. One of NASW's goals is the licensing of social workers in all the states.

NASW established the Academy of Certified Social Workers (ACSW), a voluntary certification program which sets standards for social work practice. ACSW seeks to gain recognition for social workers as independent practitioners eligible for third-party reimbursements from insurance companies and other health benefits programs. Admission to the ACSW is based on educational qualifications, professional experience, references, and successful completion of a written examination.⁶

Membership in the ACSW fulfills one of the requirements for listing in the *NASW Register of Clinical Social Workers*. The *Register* is a directory of clinical social workers who qualify for inclusion according to NASW criteria on education

5. National Association of Social Workers, Inc., *NASW Register of Clinical Social Workers*, 4th ed., Silver Spring, Md., 1985, p. v.

6. Academy of Certified Social Workers, *Information Bulletin 1984-85*, Silver Spring, Md., National Association of Social Workers and Educational Testing Service, 1984.

and experience. The experience must include direct clinical social work practice. In 1984, the NASW adopted the following definition of clinical social work:

"Clinical social work shares with all social work practice the goal of enhancement and maintenance of psychosocial functioning of individuals, families, and small groups. Clinical social work practice is the professional application of social work theory and methods to the treatment and prevention of psychosocial dysfunction, disability, or impairment, including emotional and mental disorders. It is based on knowledge of one or more theories of human development within a psychosocial context.

"The perspective of person-in-situation is central to clinical social work practice. Clinical social work includes interventions directed to interpersonal interactions, intrapsychic dynamics, and life-support and management issues. Clinical social work services consist of assessment, diagnosis, and treatment, including psychotherapy and counseling; client-centered advocacy; consultation; and evaluation. The process of clinical social work is undertaken within the objectives of social work and the principles and values contained in the NASW Code of Ethics."⁷

Regulation of social work. NASW has actively pursued legal regulation of the practice of social work in order to promote public recognition of the profession. In 1964, NASW adopted a policy supporting this objective. Since then, NASW and its local chapters have obtained legal regulation with increasing success.⁸ In 1984, 33 states, Puerto Rico, and the Virgin Islands regulated social work. Twelve states have passed legislation to regulate social work since 1980.⁹

NASW officially adopted a "Model Licensing Act for Social Workers" in 1973 which is supposed to be the basis of all legislative proposals by state chapters.

7. National Association of Social Workers, Inc., *NASW Register of Clinical Social Workers*, p. vii.

8. National Association of Social Workers, Inc., *Standards for the Regulation of Social Work Practice*, NASW Policy Statement 5, Washington, D.C., 1976, p. 4.

9. National Association of Social Workers, Inc., "State Comparison of Laws Regulating Social Work," Silver Spring, Md., July 1984.

However, most chapters have requested waivers of that model law.¹⁰ Today, states vary considerably in how they regulate social work.

Some states regulate a broad scope of social work practice while other states regulate only clinical social work. Some states only regulate the use of titles relating to social work while other states prohibit anyone from practicing social work without a license. Some states regulate a single category of social worker while the majority of states regulate multiple levels of practice based on the education and experience of applicants. These levels range from associate social workers or social worker aides with associate of arts degrees to clinical social workers in independent practice with master's degrees in social work and five years of experience.

The majority of states license the practice of social work and prohibit anyone from representing oneself as a social worker without a license. However, because of diversity among the states in the scope of regulation and because licensing in one state may mean something entirely different in another state, licensing as a social worker or as a clinical social worker has no standard, national significance.

Almost all of the states provide for numerous exemptions from the law. These exemptions commonly include public employees, physicians, counselors, psychologists, nurses, students, attorneys, clergy, or persons of other recognized professions who work within the standards of their respective professions provided they do not represent themselves as social workers or engage in the practice of social work.

10. "Trend Toward Licensure Grows Despite Some Vocal Opposition," *NASW News*, v. 30, no. 7, June 1985, p. 7.

Regulatory efforts in Hawaii. The Hawaii chapter of the NASW (NASW-Hawaii) has long pursued legal regulation of social work in Hawaii. In 1974, the chapter's executive committee designated licensure as its top priority.¹¹ Over the years, the chapter has drafted and supported numerous bills for regulation. Bills were introduced at the Legislature in 1975, 1978, 1979, 1982, 1983, and 1985.

These bills took different forms. Several sought multi-level licensing of all social workers according to their educational backgrounds and type of practice. One bill sought to restrict only the use of the title of social worker. For various reasons, none of the bills passed. The bills were opposed on different occasions by different factions of social workers, the Hawaii Government Employees Association, the Department of Commerce and Consumer Affairs (DCCA), and the Hospital Association of Hawaii.

In 1981, the Senate adopted Senate Resolution No. 120, S.D. 1, requesting the Department of Regulatory Agencies (now the Department of Commerce and Consumer Affairs) to conduct a study of the need to regulate the practice of social work.

In January 1982, the department submitted its report to the Legislature. The department's analysis of the need to regulate the practice of social work was based on criteria established in the Sunset Law. The department stated that NASW claimed that the public could be harmed by abuses that fall in four general areas:

- "1) Unethical abuses resulting in monetary damages to clients;
- 2) Abuses resulting from inadequate training and experience, and doing indirect behavioral damage to clients;

11. National Association of Social Workers, Inc., Hawaii Chapter, "Why Don't We Already Have Licensing of Social Workers in Hawaii," Honolulu, no date.

- 3) Fraud and/or waste (emotional) to the State of Hawaii in regards to (1) and (2) above;
- 4) Fraud and/or waste to Hawaiian private charities in regards to (1) and (2) above."¹²

However, DCCA found no documented cases of fraud or of complaints involving social workers in Hawaii. The department concluded that there was no justification for the State to regulate social workers. The department also determined that NASW's other arguments for licensing based on the need to protect disadvantaged consumers and to ensure accountability and standards of practice for practitioners would not be accomplished through the licensing process.

The department concluded:

"Despite NASW's contention of abuses, there are no documented cases of fraud or of complaints involving social workers in Hawaii on public record. Thus, the primary criterion to judge the need for regulation is lacking. Moreover, public and private agencies which provide the majority of social services have established standards for hiring qualified social workers and provide proper supervision. While private practitioners may be more likely to be involved in abuses since they are not supervised by an agency, they generally attract clients who can afford to pay for services and would not meet the criterion of consumer disadvantage. It appears that if any class of social workers may need to be licensed, it should be limited to those in independent clinical practice but the number of such private practitioners would appear to be too small to consider licensure at the present time."¹³

DCCA stated that existing general law can be used to rectify problems that may arise and that this would be an effective alternative to any form of regulation.

After the DCCA report, bills to license social workers continued to be introduced at the Legislature. In 1982 and 1983, bills were introduced to license

12. Hawaii, Department of Regulatory Agencies, *Report on Senate Resolution No. 120, S.D. 1, Relating to a Study of the Need for Regulation of the Practice of Social Work*, Honolulu, January 13, 1982, p. 8.

13. *Ibid.*, pp. 17-18.

several categories of social workers in both the public and private sectors. None of the bills passed.

Current Proposal to Regulate Social Work

The stated purpose of Senate Bill No. 1131 which was introduced during the 1985 legislative session is "to protect the public by setting standards of qualifications, which include education, training, and experience, for those who seek to engage in the practice of social work and by promoting high standards of professional performance for those individuals already engaged in the practice of social work."

Senate Bill No. 1131 is narrower in scope than previous proposals to regulate social work. Despite its stated purpose, it does not regulate the practice of social work generally. The bill regulates the practice of *clinical* social work in the *private* sector. Social workers in the public and private sectors and clinical social workers employed by government agencies are not covered under the bill.

The bill defines the practice of clinical social work as follows:

"(a) Clinical social work practice is based on knowledge and theory of psychosocial development, behavior, psychopathology, unconscious motivation, interpersonal relationships, and environmental stress with particular attention to the person-in-situation configuration. Treatment and intervention includes individual, marital, family, and group psychotherapy.

"(b) Clinical social workers are autonomous providers of mental health services for the maintenance and enhancement of psychosocial functioning including the diagnosis, treatment, and prevention of mental and emotional disorders in individuals, families, and groups."

Senate Bill No. 1131 prohibits anyone from representing oneself as a social worker or engaging in the practice of clinical social work unless the person is licensed in accordance with provisions in the bill.

The practice of clinical social work is to be regulated by a Board of Social Work consisting of five members who are licensed social workers. Each board member shall be a citizen of the United States, a resident of the State, have a master's degree in social work from an accredited program, at least five years of experience as a social worker, and be a licensed social worker.

The board is empowered to examine the qualifications of applicants for licensure; issue licenses to qualified individuals; investigate and conduct hearings; and adopt, amend, and repeal rules setting professional and ethical standards for social workers and such other rules as are necessary to administer the proposed law.

Several categories of licensure are proposed: (1) a "clinical social worker" who holds a baccalaureate degree in social work from an accredited school; (2) a "senior clinical social worker" who holds a master's degree in social work from an accredited school; and (3) a "senior social worker" engaged in the independent practice of social work who has "had two years of full-time or a minimum of three thousand hours of part-time postgraduate experience, or two years of full-time or a minimum of three thousand hours of part-time experience, after being licensed at the 'senior clinical worker' level, under the supervision of a person eligible for licensure at the senior clinical social worker level. . . ."14

The bill provides for exemptions and the grandfathering of those who are employed in social work positions on or before January 1, 1986. Individuals currently employed in social work positions qualify for licensure as (1) a "clinical

14. The qualifications for licensing as a "senior social worker" are confusing. The difference between the first requirement for two years of full-time or 3,000 hours of part-time postgraduate experience and the alternate requirement of two years of full-time or 3,000 hours of part-time experience after being licensed at the "senior clinical worker" level is unclear, particularly since the bill establishes no "senior clinical worker" license.

social worker" if they have a bachelor's degree and one year of supervised social work experience; (2) a "senior clinical social worker" with a bachelor's degree and three years of supervised social work experience; and (3) a "social worker in independent private practice" with a master's degree and evidence of being in private practice by payment of general excise taxes.

The bill exempts from licensure: (1) social workers employed by the federal, state, or local government when carrying out their governmental functions; (2) members of other recognized professions or occupations when engaged in activities consistent with the training, standards, and ethics of their respective professions or occupations, provided that they do not hold themselves out to the public by the title of social worker or describe their services as social work; (3) persons licensed in other states with substantially the same requirements for licensure as those proposed in the bill; (4) students enrolled in an accredited program of study; and (5) persons engaged in teaching, consulting, and research at colleges and universities.

Grounds for the denial, suspension, and revocation of licenses include the habitual use of drugs, mental incompetency, gross negligence resulting in harm to clients, conviction of a felony substantially related to the functions of a social worker, and violations of the code of ethics for the practice of social work. Any violations of the proposed law are misdemeanors.

The proposed bill also seeks to amend Section 626-1, Hawaii Revised Statutes, to provide for privileged communication between social workers and their clients. This would allow clinical social workers and senior clinical social workers and their clients to refuse to disclose and to prevent other persons from disclosing communications resulting from the practice of clinical social work.

At hearings on Senate Bill No. 1131, the NASW-Hawaii testified in support of the bill saying that the State should offer protection to the mentally ill and provide adequate recourse to the public in the event of harmful practices by social workers.¹⁵ The Hospital Association of Hawaii opposed the bill, testifying that it was concerned that the bill would restrict entry into the profession and that it would inhibit hospital and long-term care facilities in delivering the most cost-effective services.¹⁶ DCCA also opposed the measure stating that it had concluded from its 1982 study that licensure of social workers was not essential to public welfare or safety.¹⁷

Analysis of the Proposed Legislation

Summary of findings. Our analysis of Senate Bill No. 1131 is based on criteria in the Sunset Law. We find that regulation of clinical social work is not warranted, because it does not comply with state regulatory policies in the Sunset Law. In summary, our findings are:

1. There is no evidence that consumers have been or are likely to be injured by clinical social workers in private practice.

15. Testimony on Senate Bill No. 1131 submitted by Ronaele Whittington, D.S.W., Committee Chair, National Association of Social Workers, Inc., Hawaii Chapter, to Senator Steve Cobb, Senate Committee on Consumer Protection and Commerce, February 20, 1985.

16. Testimony on Senate Bill No. 1131 submitted by Stanley B. Snodgrass, President and CEO, Hospital Association of Hawaii, to the Honorable Steve Cobb, Chairman, Senate Committee on Consumer Protection and Commerce, February 20, 1985.

17. Testimony on Senate Bill No. 1131 submitted by the Department of Commerce and Consumer Affairs to the Senate Committee on Consumer Protection and Commerce, February 20, 1985.

2. Consumers of these private services are relatively few in number and are not likely to be disadvantaged in selecting a provider.

3. Regulation may restrict entry into the occupation.

4. The impetus for regulation comes from social workers and regulation will benefit primarily social workers and not consumers.

5. There are numerous problems with Senate Bill No. 1131 including the broad and unclear scope of practice that is subject to regulation, the questionable validity of standards for licensure, and other inconsistent, confusing, and contradictory provisions.

No evidence of harm. According to members of NASW-Hawaii's Task Force on the Licensing of Social Workers, Committee on Verifying Abuse and Harm, regulation is needed for several reasons. They say that the title of "social worker" needs to be better defined to ensure the quality of services. Currently, anyone can call themselves social workers. The contention is that social workers can abuse clients financially, psychologically, emotionally, and sexually and that these clients are vulnerable and need a place to report abuses and questionable practices. According to committee members, there is also a need to restrain social workers who are alcoholics or substance abusers or who engage in unethical practices. Finally, they contend that licensing will help to weed out poor social work students by preventing them from practicing.

We find no documented evidence that clinical social workers in the private sector have caused harm to consumers or are likely to do so. NASW-Hawaii provided no evidence relating to malpractice by *clinical social workers in the private sector*, the group to be regulated under the proposed bill.

NASW-Hawaii's evidence of injuries to consumers consists mostly of newspaper accounts of incidents on the mainland where *social workers employed by*

public agencies had been charged with negligence or misconduct. These include cases of child abuse where children had died because they had been left with or returned to abusive parents by social workers. NASW-Hawaii's evidence is not relevant to Senate Bill No. 1131 as it involves primarily social workers employed by public agencies. These kinds of social workers are exempt under Senate Bill No. 1131.

According to the Office of Consumer Protection and the Ombudsman's Office, no complaints have been made against social workers or clinical social workers in Hawaii in the past three years. The situation remains unchanged from that reported by DCCA in 1982: i.e., there is no justification for the State to regulate social workers as there are no documented cases of fraud or of complaints involving social workers in Hawaii.

Few consumers of services. DCCA had noted in its 1982 report that there may be some reason to regulate social workers in independent clinical practice but that the number of such private practitioners was too few to justify a licensure program. Data is not available on the number of consumers of clinical social work services. However, they are probably few in number because the number of clinical social workers in private practice continues to be extremely small.

There are only three social workers listed under "Social Workers" in the Oahu telephone directory yellow pages and only one listed in the Hawaii directory. The 1985 *NASW Register of Clinical Social Workers* lists 22 registered clinical social workers in Hawaii. The Executive Director of NASW-Hawaii estimates that there are 10-15 full-time private practitioners in the State. Given the small number of practitioners, a licensing program remains unwarranted.

Licensing costs may be restrictive. Also, given the small number of practitioners, licensing fees may be prohibitive and restrict entry into the

occupation. Act 92, SLH 1980, requires the Director of DCCA to maintain a reasonable relationship between licensing fees and the cost or value of services rendered. These costs include the operational costs of a board and apportioned costs for DCCA staff services, including its Regulated Industries Complaints Office, hearings office, administrative services, and the director's office, central services, and apportioned costs of the Department of the Attorney General.

Licensing fees are generally higher for regulatory programs with fewer licensees as the costs are spread among only a few members. Applicants in some of the smaller regulatory programs pay as much as \$100 for the application fee, \$100 for the examination fee, another \$100 for the original license fee, and \$150 for the biennial license renewal. These expenses may be prohibitive for certain applicants and may also discriminate against minorities and lower income individuals.

The National Association of Black Social Workers opposes licensing which it sees as just another subjective measure used to exclude minorities. The association says that licensing discriminates against black social workers.¹⁸

Clients are not disadvantaged. Another reason for regulation advanced by NASW-Hawaii is that licensing is needed to protect clients who are disadvantaged and vulnerable. The contention is that these clients need a place such as a board of social work to report abuses and unethical practices.

However, recourses are already available to clients of private clinical social work services, and these clients are not likely to be disadvantaged. Clients of clinical social workers who are employed by private agencies can complain directly to the agency itself. Most private agencies offer recourse to dissatisfied clients. Clients of private, independent practitioners are likely to be middle-income or

18. "Trend Toward Licensure Grows," *NASW News*, p. 6.

higher-income consumers who can pay for these services and are not disadvantaged. They are voluntary consumers who are able to make rational choices about the services they purchase.

Consumers of private practitioners can also complain to the Office of Consumer Protection or to the NASW. NASW has adopted standards of ethical practice, and it has established a peer review mechanism to review complaints of unethical conduct. Finally, consumers can resort to general state tort laws and bring civil suit against practitioners if they believe that they have been victims of malpractice.

Impetus for regulation. The impetus for regulation comes from social workers, not injured consumers. NASW has long sought legal regulation of the profession in order to increase public recognition of the profession. NASW states, ". . . social workers have a real and legitimate self interest in achieving the same type of legal and social recognition that the other, major, learned professions have obtained."¹⁹

A second major NASW objective is to have insurance carriers recognize social workers as vendors of professional services that qualify for reimbursement under health and mental health policies. To this end, NASW has sought "freedom-of-choice" legislation that requires insurers offering mental health coverage to give beneficiaries the freedom to choose any qualified mental health provider, including social workers.

NASW sees licensing at the state level as the means to accomplish "vendorship" or third-party reimbursements. Legal regulation of the practice of social work is viewed as a necessary precondition and a first step toward obtaining a

19. National Association of Social Workers, Inc., *Answers to Questions State Legislators Ask About Social Work Licensing*, Silver Spring, Md., n.p., no date.

state vendorship law. In a report on vendorship, NASW states: "State licensing at the independent clinical practice level is considered a prerequisite for effecting an amendment to the state's insurance code to include social workers as qualified mental health providers (a vendorship law). Social work licensing and vendorship laws at the state level are more effective than individual negotiation with hundreds of insurer, employers, and consumer groups."²⁰

Social workers' desires for recognition and third-party reimbursements are entirely separate issues from the need to regulate social workers to protect the public. It is true that licensing might serve to promote professionalism and third-party reimbursements for social workers. However, this would be contrary to sunset law policy which holds that licensing should not be used to promote the self-interests of any particular occupation.

Moreover, there are circumstances under which social workers can engage in private clinical practice and receive reimbursements from insurers without licensing. Qualified social workers are eligible for direct reimbursements for their services, independent of physician referral or supervision, under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). CHAMPUS provides health benefits for dependents of active duty and deceased military personnel and retirees.²¹

20. National Association of Social Workers, Inc., *Professional Social Work Recognition, Vendorship Report*, Silver Spring, Md., January 1985, p. 3.

21. U.S., Department of Defense, Office of Civilian Health and Medical Program of the Uniformed Services, Memorandum for Acting Assistant Secretary of Defense, Subject: Final Report on CHAMPUS Experimental Study on Reimbursement of Independent Certified Clinical Social Workers, Aurora, Colo., no date. A study on reimbursements of social workers under CHAMPUS shows Hawaii to have the highest number of claims for reimbursements. Hawaii also had the highest fee profile of \$88 for a single clinical social worker therapy session. This exceeds the physician/psychiatrist fee for psychotherapy.

Deficiencies in Senate Bill No. 1131. The proposed regulatory measure is deficient in a number of respects. The bill has a broad and ambiguous scope of practice, and it is not clear what is to be regulated. The requirements for licensure are questionable and unrelated to ensuring a minimal level of competency. The licensing categories are inconsistent and confusing. Finally, the bill omits some standard provisions found in existing licensing laws such as providing for public representation on the proposed board, and the bill includes archaic provisions that have been deleted from most licensing laws such as requirements for citizenship and good moral character.

Broad and unclear scope of regulation. The bill regulates the use of the title "social worker" and the practice of clinical social work. No one may represent oneself as a "social worker" or engage in the practice of "clinical social work" without a license.

The proposed restriction on the use of the title "social worker" is inconsistent with other provisions in the bill. Senate Bill No. 1131 does not license social workers; it licenses *clinical* social workers. The licensing sections of the bill contain no definition of the terms "social worker" or of the practice of "social work." No standards are established for who may call themselves social workers. Without any definition or standards, there is no way to determine who may call themselves social workers.

Section -3(2) of the bill relating to social worker-client privilege defines a social worker as a "clinical social worker" or a "senior clinical social worker." However, the definition does not include the "senior social worker" or the "social worker in independent practice" who are also to be licensed under the bill. Consequently, it is not clear how this definition relates to the use of the title "social worker" in the licensing sections of the bill.

The definitions of "clinical social work" and "clinical social worker" in the bill are extremely broad. Social work practice is said to be based on a knowledge of psychological development, behavior, psychopathology, etc., and includes individual, marital, family, and group psychotherapy. Clinical social workers are defined as autonomous providers of mental health services including the diagnosis, treatment, and prevention of mental and emotional disorders in individuals, families, and groups.

These broad definitions make it virtually impossible to establish the boundaries of what practices will be regulated. Without clearly established boundaries, the law will be difficult to enforce. The definition encroaches on numerous related occupations such as marriage and family counselors, school counselors, guidance personnel, nurses, clergy, recreational therapists, etc.

The bill seeks to get around this problem by exempting "members of other recognized professions or occupations from engaging in activities consistent with the training, standards, and ethics of their respective professions or occupations and calling; provided that they do not hold themselves out to the public by any title of social worker or description of services called social work."

In effect, other occupations can engage in the same scope of practice, provided they do not call it social work. However, as noted earlier, the bill fails to define either social workers or the practice of social work.

Questionable validity of requirements for licensure. The requirements for licensing in Senate Bill No. 1131 are not performance or competency based. The primary requirements for licensure are academic degrees. A person may be licensed as a "clinical social worker" with a baccalaureate degree in social work. A "senior clinical social worker" must have a master's degree in social work. A "senior social worker" must have two years of postgraduate experience.

Those currently employed as social workers can be licensed without degrees in social work. Anyone with a bachelor's degree, one year of supervised social work experience, and employed in a social work position as of January 1, 1986 is eligible for a "clinical social worker" license.

The validity of requiring only academic degrees is questionable. Most of the empirical evidence suggests that there is little relationship between competence and academic degrees or grades. According to a four-volume study on the regulation of psychotherapists: "In the mental health field itself, evidence exists that academic credentials are inappropriate as a means of identifying the competent practitioner. A reasonably large group of practitioners believe that extensive academic and professional training are not essential."²²

Generally, licensing programs require applicants to meet specific training and experience requirements in addition to having an academic degree. Virtually all licensing programs also require applicants to pass competency based examinations to determine whether applicants have the necessary skills to practice the occupation.

The preponderance of evidence suggests that *experience* does make a difference. Also, the effectiveness of therapists is determined by the presence of certain personality characteristics and interpersonal skills rather than technical ability, diagnostic skills, and interpersonal knowledge.²³ However, none of this is taken into consideration under Senate Bill No. 1131. Applicants may be licensed as clinical social workers and provide psychotherapy without any experience in a clinical setting. Under Senate Bill No. 1131, an individual may also operate a

22. Daniel B. Hogan, *The Regulation of Psychotherapists, A Study in the Philosophy and Practice of Professional Regulation*, Cambridge, Mass., Ballinger Publishing Co., 1979, v. 1, p. 160.

23. *Ibid.*, pp. 124 and 169.

private, independent practice as a psychotherapist without any prior clinical experience in psychotherapy. To qualify for licensure as a social worker in independent practice, all an applicant needs is a master's degree in social work and two years postgraduate experience. The kind of experience is not specified.

It is extremely difficult to establish objective and valid licensing standards for clinical social work practice that will predict a minimal, safe, entry level of clinical practice. Competency as a mental health therapist can be defined in a number of different ways. Empirical research findings are inconclusive on the relationship between positive or negative therapeutic outcomes and particular characteristics of therapists or of forms of therapy practiced.

There is even disagreement on what might be considered positive or negative client outcomes. According to the same study on the regulation of psychotherapists: "Significant disagreement is liable to result in choosing any set of outcomes as desirable, since the determination of mental health and illness is highly subjective and open to considerable variation. . . . Without a clear picture of expected outcomes, a determination of what skills a practitioner needs to ensure them is also inherently impossible."²⁴

Inconsistent licensing categories. The bill says that there shall be two license categories. However, it actually establishes three or more: (1) a "clinical social worker," (2) a "senior clinical social worker," and (3) a "senior social worker." It also mentions a "social worker in private independent practice," and it is not clear whether this is the same as a "senior social worker."

Section -2(b) of the bill defines "clinical social workers" as *autonomous* providers of mental health services. But later provisions define only the "senior

24. *Ibid.*, p. 101.

social worker" and the "social worker in private independent practice" as working autonomously. The reason for the licensing categories of "clinical social worker" and "senior clinical social worker" is unclear. They do not function autonomously, and the bill fails to describe what the respective licensees are entitled to do.

Other technical problems. The bill proposes to establish a board of social work consisting of five members who shall be licensed social workers. No provision is made for representation of consumer interests by public members. Today, occupational licensing boards consist of a mix of industry and public members to ensure a balance on each regulatory board. Industry dominated boards have been found to operate in ways that further the interests of the industry at the expense of consumers. Consequently, it has been a legislative policy to provide for public membership on occupational licensing boards to provide a balance.

The bill gives the proposed board investigative powers. However, all boards were required to delegate to DCCA their powers to investigate complaints under Act 204, SLH 1982.

The bill also requires applicants to comply with citizenship and residency requirements and to be of good moral character. These requirements are irrelevant and defective. Citizenship and durational residency requirements have been found to be unconstitutional. Requirements for good moral character are unenforceable. Most occupational licensing statutes have been amended to remove these three requirements.

Conclusion

Licensing is an exclusionary measure that places restraints on the freedom of individuals to pursue their professions. Unless there is clear evidence that it is needed to protect public health, safety, and welfare, licensure should not be imposed.

There is no evidence that the public needs to be protected against misconduct or malpractice by clinical social workers. The situation remains the same as that found by the Department of Commerce and Consumer Affairs in 1982 when it concluded that there was no justification for the State to regulate social workers.

We likewise conclude from our current analysis that regulation of clinical social workers does not meet criteria set forth in the Sunset Law.

Recommendation

We recommend that Senate Bill No. 1131 not be enacted.