Proposed Amendments: \textit{N.J.A.C. 13:44G-3.1, 3.2 and 12.4}


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\textbf{Authorized Practice; Business Practices; Professional Conduct; Client Records; Confidentiality; Custody/Parenting Time Evaluations}

Authorized By: State Board of Social Work Examiners, Kay McCormack, Executive Director.

Authority: \textit{N.J.S.A. 45:15BB-11.}

Calendar Reference: See Summary below for explanation of exception to calendar requirement.


Submit written comments by January 2, 2009 to:
Kay McCormack, Executive Director
State Board of Social Work Examiners
124 Halsey Street
P.O. 45033
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The agency proposal follows:

\textbf{Summary}

The State Board of Social Work Examiners (the Board) proposes amendments to \textit{N.J.A.C. 13:44G-3.1, 3.2 and 12.4} and proposes new rule \textit{N.J.A.C. 13:44G-10.11} regarding the treatment of minors. In addition, the Board is proposing new Subchapter 13 to establish rules for conducting custody/parenting time evaluations, which may only be performed...
by licensed clinical social workers. The proposed amendments and new rules are the result of an extensive review by the Board through its Regulations Committee.

The Board proposes to amend N.J.A.C. 13:44G-3.1, which establishes the scope of practice for a licensed clinical social worker. Proposed N.J.A.C. 13:44G-3.1(a) amends the scope of practice of a licensed clinical social worker to include custody/parenting time evaluations, as long as the licensee satisfies the requirements set forth in Subchapter 13.

The Board proposes to amend N.J.A.C. 13:44G-3.2, which establishes the scope of practice for a licensed social worker. The amendment provides that no licensed social worker is permitted to perform custody/parenting time evaluations.

The proposed new rule at N.J.A.C. 13:44G-10.11 establishes that unless otherwise ordered by a court, at least one parent or guardian must consent to the treatment of a minor. If one parent consents, a licensee may treat a minor even over the objection of the other parent.

The Board proposes new N.J.A.C. 13:44G-12.4(a), which sets forth the release of client records. The Board proposes to define the term "authorized representative," which was previously used in the rules, as a person designated by the client or a court to exercise rights of the client. If the client is a minor, a parent or legal guardian will be deemed to be an authorized representative. When the client is more than 14 years of age, but has not yet reached the age of majority, an authorization must be signed by the client and by the client's parent or legal guardian before a social worker releases the client record.

The Board is also proposing to amend recodified N.J.A.C. 13:44G-12.4(c) to establish that a social worker may withhold information in the client record from a client or a client's guardian if, in the reasonable exercise of his or her professional judgment, the social worker believes the release of such information would adversely affect the client's health or welfare. That record or the summary must be accompanied with an explanation of the reasons for the refusal.

The Board is also proposing to recodify existing N.J.A.C. 13:44G-12.4(f) as (g) and to amend the rule to permit a social worker to require advance payment for release of a report prepared by the social worker as an evaluator.

Proposed new Subchapter 13 sets forth the responsibilities of those licensed clinical social workers who perform custody/parenting time evaluations and sets forth the requirements necessary for those evaluations.

N.J.A.C. 13:44G-13.1 sets forth the purpose and scope of the subchapter, as well as definitions. N.J.A.C. 13:44G-13.1(a) defines a "custody/parenting time evaluation" as a comprehensive, objective and impartial custody/parenting time evaluation, provided by a licensed clinical social worker, which provides information to the court or to attorneys who assist in making decisions as to custody/parenting time arrangements that will best provide for the needs of the minor child(ren) involved.

Proposed new rule N.J.A.C. 13:44G-13.2 sets forth competency requirements. The Board proposes that only licensed clinical social workers can perform custody/parenting time evaluations, as long as they are educated, trained and/or experienced in certain areas. If a licensed clinical social worker is presented with an area beyond his or her expertise, he or she must complete education, training and/or experience in the specific area or consult with an expert or refer to a licensed health care provider who has the education, experience, training and/or supervision in that area before completing or performing the evaluation.

Proposed new rule N.J.A.C. 13:44G-13.3 prohibits a licensed clinical social worker who is treating or has been treating any person who is part of the custody/parenting time evaluation from assuming the role of evaluator. Under special circumstances, pursuant to a court order and with the consent of the parties, a licensed clinical social worker acting as an evaluator may agree to function subsequently as a treating social worker, in which case the licensee would no longer be permitted to function as an evaluator.
Proposed new rule N.J.A.C. 13:44G-13.4 sets forth the parties to whom a licensed clinical social worker must provide information when performing custody/parenting time evaluations. More specifically, if a licensed clinical social worker is court-appointed, the licensed clinical social worker must communicate substantive information to the court and both parties or their attorneys. If a licensed clinical social worker is selected by both parties, the licensed clinical social worker must communicate substantive information to both parties or their attorneys. If a licensed clinical social worker is selected by only one party, the licensed clinical social worker must communicate information only to that party or the party’s attorney.

Proposed new rule N.J.A.C. 13:44G-13.5(a) establishes that a licensed clinical social worker must provide certain information to the parties to assist them in understanding the nature of the custody/parenting time evaluation and the implications of their agreement to participate. N.J.A.C. 13:44G-13.5(b) provides that a licensed clinical social worker shall inform the parties about the purpose of any assessment instruments, interview techniques and the use of any information collected. The licensee must also provide this information to the children to the extent that they are able to understand.

N.J.A.C. 13:44G-13.6 establishes a licensed clinical social worker's responsibility when handling fees. Before commencing the custody/parenting time evaluation, a licensed clinical social worker must inform the party or parties responsible for paying the fees of the estimated fees for all anticipated services and any additional fees, should the licensed clinical social worker be requested, required or mandated to perform additional services. A licensed clinical social worker must provide to the party or parties responsible for paying the fees complete documentation of all fees, itemizing time, charges and services as appropriate. The rule also imposes specific requirements on licensed clinical social workers who accept payment of fees by retainers or fee schedules. Licensed clinical social workers may require payment prior to the delivery of a report.

N.J.A.C. 13:44G-13.7 establishes that the written report must be completed in a timely manner and include certain information, such as the identity of the party or parties on whose behalf the evaluation was prepared and list all individual(s) personally evaluated. A licensee is prohibited from providing an opinion regarding any individual whom the licensee has not personally evaluated although the licensee may report what an evaluated individual has stated, as long as the basis of the information is provided. N.J.A.C. 13:44G-13.7 also establishes to whom the licensee must submit the report.

The Board has determined that the comment period for this notice of proposal shall be 60 days; therefore, pursuant to N.J.A.C. 1:30-3.3(a)(5), this proposal is excepted from the rulemaking calendar requirement.

**Social Impact**

Proposed new rule N.J.A.C. 13:44G-10.11 will have a social impact upon the parent who objects to the treatment of a minor since the rule establishes that if only one parent consents, a licensee may treat a minor even over the objection of the other parent.

The proposed new rules at Subchapter 13 will have a positive social impact upon the public since the Board is proposing standards a licensed clinical social worker must satisfy before performing custody/parenting time evaluations. The proposed new rules will ensure that licensed clinical social workers who perform custody/parenting time evaluations are qualified to be providing such services to consumers.

The proposed new rules and amendments will positively affect the regulated community by clarifying the responsibilities concerning custody/parenting time evaluations. The proposed amendments and new rules are essential for the Board to identify those individuals who are qualified to render custody/parenting time evaluations and to ensure that every licensee is aware of and clearly understands the requirements and professional responsibilities before rendering such evaluations. Thus, the proposed amendments and new rules will have a positive impact upon the health, safety and welfare of each person who receives professional services.
Economic Impact

The proposed amendments and new rules at Subchapters 3 and 12 should have no significant adverse economic impact upon the regulated community or the public.

The proposed new rules at Subchapter 13 may, however, impose an economic impact upon licensed clinical social workers who wish to perform custody/parenting time evaluations because the proposed new rules establish standards licensees must adhere to in order to perform custody/parenting time evaluations. Therefore, licensees who wish to perform custody/parenting time evaluations may incur additional costs in order to obtain the necessary education, training, and/or experience standards required by the proposed new rules. Although there may be costs involved for a licensed clinical social worker to comply with the proposed new rules, these costs are greatly outweighed by the need to protect the health and welfare of the public and each person who receives social work services, especially those receiving custody/parenting time evaluations.

Since the proposed new rules at Subchapter 13 only permit licensed clinical social workers who have the requisite education, training and/or experience to perform custody/parenting time evaluations, the proposed new rules may also have a negative economic impact upon those licensees who will no longer be permitted to perform custody/parenting time evaluations. But the need to protect the welfare of the public receiving custody/parenting time evaluations outweighs the negative impact upon those licensees who are no longer able to perform such evaluations.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments and new rules are dictated by State statute and are not subject to Federal requirements or standards.

Jobs Impact

The proposed amendments and new rules should not result in the creation or loss of jobs in the State. But the new rules at Subchapter 13 will enhance the qualifications of each licensed clinical social worker performing custody/parenting time evaluations, thus increasing his or her marketability and earning potential in the profession. The same proposed new rules, which prohibit licensed social workers from performing custody/parenting time evaluations, may slightly reduce the earning potential of those licensees.

Agriculture Industry Impact

The Board believes the proposed amendments and new rules will have no impact upon the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act (the Act), N.J.S.A. 52:14B-16 et seq., the approximately 7,600 clinical social workers licensed by the Board are deemed "small businesses," then the following analysis applies.

The proposed amendments and new rules at Subchapters 3, 10 and 12, respectively, do not impose reporting or recordkeeping requirements upon licensees. The proposed amendments do, however, impose compliance requirements since the amended scope of practice allows only licensed clinical social workers to perform custody/parenting time evaluations and prohibits licensed social workers from performing such evaluations. In addition, the proposed new rule at Subchapter 10 establishes that a licensee must obtain at least one parent or guardian's consent to treat a minor, even over the objection of the other parent. The proposed amendment at Subchapter 12 imposes compliance requirements upon social workers since they must comply with the amendment when determining whether they can release a
treatment record. In addition, if a social worker withholds information contained in the client record, he or she must explain the reasons for the withheld information.

The new rules at Subchapter 13 will impose recordkeeping and compliance requirements upon licensed clinical social workers who wish to perform custody/parenting time evaluations. The proposed new rules do not impose any reporting requirements upon such licensees.

The proposed new rules at N.J.A.C. 13:44G-13.2 impose compliance requirements upon licensed clinical social workers who perform custody/parenting time evaluations since the rule requires these licensees to have the education, training and/or experience in certain areas. In addition, when certain areas are involved, a licensed clinical social worker must have the education, training and/or experience in the certain area or the licensed clinical social worker must consult with an expert or refer to a licensed health care provider who has the education, experience, training and/or supervision in that area.

N.J.A.C. 13:44G-13.3 imposes compliance requirements upon licensed clinical social workers in that dual relationships are prohibited.

N.J.A.C. 13:44G-13.4 imposes compliance requirements upon licensed clinical social workers who perform custody/parenting time evaluations since the proposed new rule establishes to whom the licensee must communicate information.

N.J.A.C. 13:44G-13.5 imposes compliance requirements upon licensed clinical social workers since the new rule establishes that licensees must provide written information to the parties to assist them in understanding the nature of the custody/parenting time evaluation and the implications of their agreement to participate. In addition, licensed clinical social workers must inform the parties about the purpose of any assessment instruments, interview techniques, and the use of any information collected.

N.J.A.C. 13:44G-13.6 imposes compliance requirements upon licensed clinical social workers who perform custody/parenting time evaluations since the proposed new rule establishes procedures for informing the parties about the licensee's fee. In addition, the proposed new rule establishes the procedures a licensee must follow if a retainer or fee schedule is accepted.

N.J.A.C. 13:44G-13.7 imposes compliance requirements upon licensees who perform custody/parenting time evaluations since the proposed new rule establishes certain information a licensee must include in his or her report. The proposed new rule also specifies to whom the licensee must provide the report.

There are no additional compliance requirements and no professional services are necessary in order to comply with the proposed amendments and new rules. No initial or ongoing costs are anticipated with regard to compliance with the proposed amendments and new rules. Since the proposed amendments and new rules further the welfare of consumers by ensuring that individuals who provide custody/parenting time evaluations are qualified, the rules must be applied uniformly to all licensed clinical social workers who perform such evaluations.

[page=6390] Smart Growth Impact Statement

The Committee does not anticipate that the proposed amendments and new rules will have any impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan, otherwise known as the State Plan.

Housing Affordability Impact

The proposed amendments and new rules will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing
because the rules concern the regulation of licensed clinical social workers.

**Smart Growth Development Impact**

The proposed amendments and new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the rules concern the regulation of licensed clinical social workers.

**Full text** of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

**SUBCHAPTER 3. AUTHORIZED PRACTICE**

13:44G-3.1 Practice as [a] an LCSW; scope

(a) The scope of practice of [a] an LCSW includes, but is not limited to:

1. Clinical social work services. Clinical social work services include, but are not limited to, clinical assessment, clinical consultation, psychotherapeutic counseling, client centered advocacy, and clinical supervision of individuals pursuant to the standards set forth in *N.J.A.C. 13:44G-8.1*. These terms are more specifically defined in *N.J.A.C. 13:44G-1.2*; [and]

2. Social work services. Social work services include, but are not limited to, social work assessment, social work consultation, social work counseling, social work planning, social work community organization, social work policy, social work administration, social work research, and social work client-centered advocacy. These terms are more specifically defined in *N.J.A.C. 13:44G-1.2*; and


13:44G-3.2 Practice as [a] an LSW; scope

(a) The scope of practice of [a] an LSW includes, but is not limited to:

1.-2. (No change.)

(b) No LSW is permitted to perform custody/parenting time evaluations as set forth in Subchapter 13.

13:44G-10.11 Treatment of minors

Unless otherwise ordered by a court, at least one parent or guardian shall consent to the treatment of a minor. If one parent consents, a licensee may treat a minor even over the objection of the other parent.

13:44G-12.4 Release of client record

(a) For purposes of this section, "authorized representative" means, but is not limited to a person designated by the client or a court to exercise rights under this section. An authorized representative may be the client's attorney or an agent of a third-party payor with whom the client has a contract, which provides that the third-party payor be given access to records to assess a claim for monetary damages or reimbursement.

1. Unless otherwise ordered by a court, if the client is a minor, a parent or legal guardian will be deemed to be an authorized representative.
2. Unless otherwise ordered by a court, when the client is more than 14 years of age, but has not yet reached the age of majority, an authorization shall be signed by the client and by the client's parent or legal guardian.

[(a)] (b) (No change in text.)

[(b)] (c) A social worker may elect to provide a summary of the client record, as long as the summary adequately reflects the client's history and treatment, unless otherwise required by law. A social worker may withhold information contained in the client record from a client or a client's guardian if, in the reasonable exercise of his or her professional judgment, the social worker believes the release of such information would adversely affect the client's health or welfare. That record or the summary shall be accompanied with an explanation of the reasons for the refusal.

Recode existing (c)-(e) as (d)-(f) (No change in text.)

[(f)] (g) When a report is needed to enable a client to receive ongoing care by another practitioner or for use in judicial proceedings, a social worker shall not require advance payment as a condition for releasing the report; except that a social worker may require advance payment for release of a report prepared by the social worker as an expert witness or as a custody/parenting evaluator pursuant to N.J.A.C. 13:44G-13.6.

SUBCHAPTER 13. CUSTODY/PARENTING TIME EVALUATIONS

13:44G-13.1 Purpose and scope; definitions

(a) A "custody/parenting time evaluation" means the analysis performed by an LCSW to provide comprehensive, objective and impartial information to the court or to attorneys which assists in making decisions as to custody/parenting time arrangements that will best provide for the needs of the minor child(ren) involved.

(b) This subchapter contains the requirements for custody/parenting time evaluations performed by LCSWs.

13:44G-13.2 Competency

(a) Only LCSWs are competent to perform custody/parenting time evaluations.

(b) The LCSW who performs custody/parenting time evaluations shall have education, training and/or experience in the following categories:

1. Child growth and development;

2. Parent-child bonding;

3. Scope of parenting, including assessment skills pertaining to the extent of parent involvement and parental capacity to provide for the child's physical and psychological needs;

4. Adult development and psychopathology;

5. Family functioning;

6. Child and family development;
7. Child and family psychopathology;

8. The impact of divorce or family dissolution on children; and

9. The impact of age, gender, race, ethnicity, national origin, language, culture, religion, sexual orientation/identity, disability and socioeconomic status.

(c) When the following areas are involved, an LCSW shall have education, training and/or experience in the specific area or the LCSW shall consult with an expert or refer to a licensed health care provider who has education, experience, training and/or supervision in the following areas:

1. Physical, sexual or psychological abuse of spouse or children;

2. Neglect of children;

3. Alcohol or substance abuse, which impairs the ability to parent;

4. Medical/physical/neurological impairment, which affects the ability to parent; or

5. Other areas beyond the LCSW’s expertise, which are relevant to the custody/parenting time evaluation.

13:44G-13.3 Dual relationships

(a) If an LCSW is now or has been a treating social worker for any person who is part of the custody/parenting time evaluation, the treating social worker shall not assume the role of evaluator in a custody/parenting time evaluation case and shall advise any party or court of this prohibition.

(b) Under special circumstances, pursuant to a court order and with the consent of the parties, an LCSW whose initial involvement with the case has been as an evaluator may agree to function subsequently as a treating social worker, in which case the LCSW would no longer be permitted to function as an evaluator.

13:44G-13.4 Communications

(a) If a LCSW is court-appointed, the LCSW shall communicate any substantive information only to the court and both parties or their attorneys simultaneously, either in writing or through a conference call.

(b) If an LCSW is selected by both parties without a court appointment, the LCSW shall communicate any substantive information only to both parties or their attorneys simultaneously, either in writing or through a conference call.

(c) If an LCSW is selected by only one party without a court appointment, the LCSW shall communicate any information only to that party or the party's attorney.

13:44G-13.5 Informed consent

(a) Before commencing the custody/parenting time evaluation, an LCSW shall provide information, in writing, to the parties to assist them in understanding the nature of the custody/parenting time evaluation and the implications of their agreement to participate. This information shall include, but not be limited to, the following:
1. Purpose, procedures and methods;

2. Fees;

3. Responsibility of parties for payment of the fees and whether payment will be required prior to the delivery of the report;

4. Limits of confidentiality;

5. Special policies pertaining to issues, such as cancelled and/or missed appointments; and


(b) An LCSW shall inform the parties about the purpose of any assessment instruments, interview techniques and the use of any information collected. The LCSW shall provide this information, as appropriate, to children, to the extent that they are able to understand.

13:44G-13.6 Fees

(a) Before commencing the custody/parenting time evaluation, an LCSW shall inform the party or parties responsible for paying the fees, in writing, the estimated fees for all anticipated services and any additional fees should the LCSW be required, requested or mandated to perform additional services.

(b) An LCSW shall provide to the party or parties responsible for paying the fees complete documentation of all fees, itemizing time, charges and services as appropriate.

(c) An LCSW may accept payment of fees by retainer or by a prearranged fee schedule:

1. If a retainer is accepted, an LCSW shall inform the court, attorneys, and/or party or parties of the schedule for payment of the remainder and of the contingent relationship between complete payment and final delivery of services. An LCSW shall inform the court, attorneys and/or party or parties that payment in excess of the reasonable estimate is expected if delivery of services unforeseeably exceeds that anticipated. An LCSW shall inform the court, attorneys and/or party or parties that unused fees will be refunded as soon as possible upon completion of the professional services; or

2. If payment by a fee schedule is accepted an LCSW shall provide a complete explanation of the expected per-visit payment or other scheduled costs.

(d) An LCSW may require payment for the report prior to its delivery.

13:44G-13.7 Reports and recommendations

(a) An LCSW’s written report shall identify the party or parties on whose behalf the evaluation was prepared and list all individual(s) personally evaluated.

(b) An LCSW shall not provide any opinion regarding any individual whom the LCSW has not personally evaluated. An LCSW may report what an evaluated individual has stated or address theoretical issues or hypothetical questions, so long as the limited basis of the information is explained.
(c) An LCSW shall complete written reports in a timely manner. Delays of more than one month from the final session with any party to the custody/parenting time evaluation are considered excessive. In the event of extenuating circumstances, such as inability to collect final documents from collateral contacts, the LCSW shall provide, in writing, the reasons for the delay as follows:

1. An LCSW who is court-appointed shall submit the report only to the court and to both parties or their attorneys, unless otherwise specified in a court order;

2. An LCSW who is selected by both parties without a court appointment shall submit the report only to both parties or their attorneys; or

3. An LCSW who is selected by only one party without a court appointment shall submit the report only to that party or the party's attorney.