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RULE ADOPTIONS

Law and Public Safety
Division of Consumer Affairs

STATE BOARD OF SOCIAL WORK EXAMINERS

Adopted Amendments: N.J.A.C. 13:44G-3.1, 3.2 and 12.4

Adopted New Rules: N.J.A.C. 13:44G-10.11 and 13

**Authorized Practice; Business Practices; Professional Conduct; Client Records; Confidentiality;
Custody/Parenting Time Evaluations**

Proposed: November 3, 2008 at 40 N.J.R. 6388(a).

Adopted: February 25, 2009 by the State Board of Social Work Examiners, Doreen J. Bobby, Chair.

Filed: April 24, 2009 as R.2009 d.176, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.6).

Authority: N.J.S.A. 45:15BB-11.

Effective Date: May 18, 2009.

Expiration Date: September 18, 2013.

Federal Standards Statement

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

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

SUBCHAPTER 3. AUTHORIZED PRACTICE

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

(a) The scope of practice of 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;
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
3. Custody/parenting time evaluations as set forth in Subchapter 13.

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

(a) The scope of practice of 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]* ***14 years of age or older***, 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.

(b) (No change in text.)

(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.

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

(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.

[(g)] ***(h)*** (No change in text.)

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.

[page=2138] 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
6. Limitation on communications as set forth in N.J.A.C. 13:44G-13.4.

(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.