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November 8, 2016

Submitted via www.regulations.gov

Carolyn W. Colvin
Acting Commissioner
Social Security Administration
6401 Security Blvd.
Baltimore, MD 21235-6401

Re: Notice of Proposed Rulemaking, Social Security Administration, Revisions to Rules Regarding the Evaluation of Medical Evidence, Docket No. SSA-2012-0035

Dear Acting Commissioner Colvin:

NASW is pleased to submit the following comments in response to the above-referenced notice of proposed rulemaking. NASW is the largest membership organization of professional social workers in the United States, with approximately 132,000 members. The Association works to enhance the professional growth and development of its members, to create and maintain professional standards, and to advance sound social policies.

As discussed below, NASW wishes to respond to SSA's request for comments on whether it should add to its list of acceptable medical sources (AMSs) clinical social workers (CSWs),[1] in addition to the other medical professionals the NPRM proposes to include on that list. CSWs represent the highest level of social work practice and are experts in the diagnosis and treatment of mental illness. NASW requests SSA to add clinical social workers to its list of AMSs.

SSA proposes to add to its list of AMSs -- health care professionals deemed qualified to provide objective medical evidence to support disability claims -- advance practice registered nurses (APRNs) and audiologists. As the NPRM notes, in order to be found disabled, an individual must have a physical or mental impairment that results from anatomical, physiological or psychological abnormalities that are demonstrable by

[1] Depending on the state in which they are licensed, clinical social workers may have different licensing designations such as licensed independent clinical social worker (LICSW), licensed certified social worker – clinical (LCSW-C), and licensed clinical social worker (LCSW). All are authorized to provide mental health services independently. For ease of reference, the term "clinical social worker" is used here.

medically acceptable clinical and laboratory diagnostic techniques, that is, a medically determinable impairment.

In supporting this proposal, SSA states that it is "satisfied that these medical sources have sufficiently consistent and rigorous national licensing requirements for education, training, certification, and scope of practice" to be relied upon to provide evidence of a medically determinable impairment.[2] The NPRM also notes that APRNs provide diagnostic and clinical treatment of acute and chronic illnesses, and that audiologists assess, diagnose and treat dysfunction in hearing and other disorders. The proposal also places significance on the fact that these practitioners have an increasingly important role, nationwide, in providing primary and specialized health care, as compared to other practitioners who are currently recognized as AMSs.

Addressing a matter of particular importance to NASW, the NPRM states that SSA is interested in receiving public comment on whether there are other professionals, such as clinical social workers, who should be included on the AMS list.

NASW strongly recommends that CSWs be added to the AMS list – based on the same rationale that SSA is relying on for its proposal to add APRNs and audiologists. That is, CSWs, nationwide, have consistent and quite rigorous licensing requirements relating to education, training, certification and scope of practice. Further, they have a dominant role in providing mental health treatment, as compared to the mental health practitioners currently recognized as AMSs (psychologists and psychiatrists).[3]

The Important Nationwide Role of CSWs in Providing Mental Health Treatment

SSA states that it proposes to revise its rules on AMSs "to reflect changes in the national healthcare workforce and the manner in which many people now receive primary medical care."[4] In supporting the proposed inclusion of APRNs and audiologists on the AMS list, SSA relies on the following factors: these professions have an increasing role in providing either primary or specialized care, especially given the growing shortage of primary care physicians nationwide; APRNs are more likely to provide primary care than physicians to individuals in rural areas; and health professionals other than physicians and psychiatrists serve most homeless disability claimants.

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[2] 81 Fed. Reg. 62568.

[3] Moreover, it is critically important to include LCSWs on the AMS list to "streamline the process for obtaining benefits, ensuring that eligible individuals gain access to these critical benefits in a timely manner." National Law Center on Homelessness and Poverty, *Improving Access: Expanding Acceptable Medical Sources for the Social Security Administration Disability Determination Process* (2012), p. 1 (hereinafter "NLCHP Report"), available at https://www.manatt.com/uploadedFiles/Content/News_and_Events/Firm_News/5.14.12%20Improving%20Access,%20FINAL[1].pdf (visited October7, 2016).

[4] 81 Fed. Reg. 62567.

CSWs should be included on the AMS list for the same reasons. According to the Bureau of Labor Statistics, social work is one of the fastest growing careers in the United States, with the profession expected to grow by 19% between 2012 and 2022.[5] Professional clinical social workers are the nation's largest group of mental health providers. According to the Substance Abuse and Mental Health Services Administration, there are more clinically trained social workers than psychiatrists, psychologists, and psychiatric nurses combined.[6] Specifically, there are approximately 200,000 CSWs in the United States who are licensed at the clinical level.[7] Further, the relatively higher cost of psychiatrists' and psychologists' services makes it difficult for many individuals with mental health issues (a large proportion of whom are uninsured) to access such services.[8] For many low-income individuals—even those with health insurance—CSWs provide most of their primary mental health care.[9] Nearly one-third of Americans live in an area with an insufficient number of mental health professionals, and individuals in rural areas have particular difficulty in gaining access to mental health professionals currently listed as AMSs.[10]

Including CSW's on the AMS list would recognize the changing composition of the healthcare workforce, how it affects individuals applying for disability benefits and the critical role CSWs can play in providing diagnostic and other clinical information needed for claims.

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[5] Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2016-17 Edition*, *Social Workers*, available at http://www.bls.gov/ooh/community-and-social-service/social-workers.htm (visited October 17, 2016).

[6] Substance Abuse and Mental Health Services Administration, *Behavioral health, United States, 2012* (2013) (HHS Publication No. SMA 13-4797), p. 192 (hereinafter "SAMHSA Report"), available at www.ncbi.nlm.nih.gov/books/NBK174670/ (visited October 17, 2016). *See also* NASW, *NASW Standards for Clinical Social Work* (2005), p. 7, available at https://www.socialworkers.org/practice/standards/naswclinicalswstandards.pdf (visited October 27, 2016).

[7] SAMHSA Report, *see* Table 93 "Mental Health and Substance Abuse Treatment Providers, by discipline and state: number, United States, 2008, 2009, and 2011."

[8] NLCHP Report, p. 2. The report explains (at pp. 2-3) that:

> As a result, many low-income individuals will only begin receiving Social Security benefits after SSA schedules a consultative examination [which is necessary when an AMS is not available to provide support for a disability finding]. In addition to delaying benefits, the need for a consultative examination creates logistical hurdles for many applicants—especially those in rural areas. Often, consultative examinations may be scheduled many miles away, and low-income individuals may be unable to afford or have health problems that impede traveling long distances to these examinations.

[9] NLCHP Report, p.2.

[10] NLCHP Report, p. 6.

Education and Training Requirements Qualifying CSWs as AMSs

CSWs have consistent educational and training requirements to obtain an MSW, regardless of the institution they attend. All clinical social workers must possess a master of social work degree from an accredited social work program,[11] and the large majority of states require that such program comply with national accreditation standards established by the Council on Social Work Education (CSWE).[12] A small minority of states permit candidates to complete programs that are either CSWE-accredited or that meet equivalent criteria.[13] Although the MSW is a terminal degree, many clinical social workers also obtain a doctorate in clinical social work.

In addition, all CSWs must complete at least 3000 hours of post-degree clinical supervision, over a period of at least two years.[14] Finally, to qualify for licensure, all CSW candidates must pass the national Clinical Exam of the Association of Social Work Boards (ASWB). The examination was carefully developed by ASWB, following standards established jointly by the American Psychological Association, the American Educational Research Association, and the National Council on Measurement in Education.[15]

After meeting licensure requirements to become a clinical social worker, in all states, one must maintain competency through continuing education as a condition of license renewal.[16]

Scope of Practice Qualifying CSWs as AMSs

The practice of clinical social work requires the application of advanced clinical knowledge and skills in multidimensional assessment, diagnosis, and treatment of psychosocial dysfunction, disability, or impairment, including emotional, mental, and behavioral disorders, and addictions. Clinical practice interventions include case formulation based on differential diagnosis and assessment of risks and vulnerabilities and those factors that produce and constrain the strengths and resilience found in the transactions among people, their communities, and the larger social environment.

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[11] Congressional Research Service, *The mental health workforce: A primer* (2014),(hereinafter "CRS Report"), p. 5, available at http://fas.org/sgp/crs/misc/R43255.pdf (visited October 18, 2016).

[12] The CSWE educational policy and accreditation standards are available at http://www.cswe.org/File.aspx?id=81660.

[13] Kansas is an example of such a state, and imposes very stringent requirements for social work educational programs that are not CSWE-accredited. *See* KAR 102-2-6(b).

[14] CRS Report, p. 5.

[15] For more information on the examination, see the ASWB's web site, https://www.aswb.org.

[16] *See* the ASWB website at https://www.aswb.org/licensees/continuing-education/.

CSWs are engaged in crisis intervention, brief and long-term psychotherapy and counseling, client-centered advocacy, consultation, and evaluation.[17] Treatment modalities include the provision of individual, family, and group therapy.

All states authorize CSWs to clinically diagnose patients with emotional and mental disorders as part of the therapeutic process.[18] As the largest professional group of mental health providers in the United States, CSWs play a significant role in the provision of mental health services. Further, all states authorize CSWs to practice independently without any supervision by a physician or other health care provider.

When diagnosing and treating mental illness and impairment, clinical social workers frequently use tools such as the International Classification of Diseases, 10th edition, Clinical Modification; the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition; the International Classification of Functioning, Disability and Health; and the World Health Organization Disability Assessment Schedule 2.0. CSWs are unique in their holistic approach to treatment, focusing on the patient's relationship to his or her environment. As one of the core mental health disciplines specified in the Surgeon General's Report on Mental Health of 1999, CSWs are at the forefront of identifying and evaluating children and adults with mental illness.[19]

The following is a representative sampling of provisions contained in state licensing statutes regarding the authority of CSWs to diagnose and treat mental disorders:[20]

- Florida -- "The practice of clinical social work includes methods of a psychological nature used to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, and substance abuse."[21]

- Kansas – A CSW "may diagnose and treat mental disorders specified in the edition of the diagnostic and statistical manual of mental disorders of the

[17] Council on Social Work Education, *Advanced Social Work Practice in Clinical Social Work* (2009).

[18] Only two states' licensing laws do not *expressly* authorize CSWs to diagnose. However, these laws expressly authorize CSWs to make evaluations and assessments. It is clear that these terms may be used interchangeably with the term diagnosis. *See* Barker, R. (2003). *Social Work Dictionary* (5th ed.), 118, 348. National Association of Social Workers: Wash., DC. As a result, health plans including Medicare, have accepted diagnosis, assessment, and evaluation as interchangeable terms used by CSWs to diagnose and treat mental illness.

[19] U.S. Dept. of Health and Human Services, *Mental Health: A Report of the Surgeon General* (1999).

[20] A comprehensive compilation of citations to state licensing statutes and regulations on this issue is attached as Appendix A to these comments.

[21] Fla. Stat. Ann. § 491.003(7).

American psychiatric association designated by the board by rules and regulations. . . ."[22]

- Maryland -- CSWs may "evaluate, diagnose, and treat psychosocial conditions, mental and emotional conditions and impairments, and mental disorders."[23]

- Rhode Island -- "'Clinical social work practice' means . . . diagnosis, assessment, and treatment of cognitive, affective, and behavioral disorders arising from physical, environmental, or emotional conditions."[24]

- Tennessee -- "The practice of clinical social work requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis and treatment of mental, emotional and behavioral disorders, conditions and addictions, including severe mental illness in adults and serious emotional disturbances in children. . . . Clinical social workers are qualified to use the Diagnostic and Statistical Manual of Mental Disorders (DSM), the International Classification of Diseases (ICD), and other diagnostic classification systems in assessment, diagnosis, treatment planning and other activities."[25]

Moreover, in addition to expertise around diagnosing and treating mental impairments, CSWs have extensive expertise regarding human and social development, areas of daily living, interpersonal relationships and other factors relevant to the disability determination process. They also typically have very close ongoing working relationships with their patients and an intimate knowledge of their patients' circumstances, symptoms, medical history, and functional impairment -- positioning them well to serve as AMSs.

Conclusion

It is clear that CSWs, nationwide, must adhere to consistent and rigorous national licensing requirements relating to education, training, certification, and scope of practice. Further, CSWs play a critical role in providing mental health treatment -- and are well-equipped to provide necessary evidence to SSA on the full range of issues relevant to the disability determination process.

[22] Kan. Stat. Ann. § 65-6319**.**

[23] Md. Code Ann., Health Occ., § 19-101(m)(4).

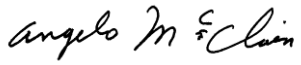
[24] R.I. Gen. Laws § 5-39.1-2(2).

[25] Tenn. Code Ann. § 63-23-105 (a).

NASW strongly recommends that SSA, in its final rule, add clinical social workers to its list of acceptable medical sources.

Thank you for the opportunity to provide comments on this important issue. Should you have questions or require additional information, please do not hesitate to contact Gary Gross, Associate Counsel (at ggross.nasw@socialworkers.org); Mirean Coleman, LICSW, Clinical Manager (at mcoleman.nasw@socialworkers.org); or me (at naswceo@naswdc.org).

Sincerely,



Angelo McClain, PhD, LICSW
NASW Chief Executive Officer

Attachment

Appendix A – Citations to State Statutes and Regulations Authorizing CSWs to Diagnose and Treat Mental Health Disorders

Alabama -- Ala. Admin. Code r. 850-X-2-.01
Alaska -- Alaska Stat. § 08.95.990
Arizona -- Ariz. Rev. Stat. § 32-3251 (11)(a), (c)
Arkansas -- Ark. Code Ann. § 17-103-103(1)
California -- Cal. Bus. & Prof. Code § 4996.9 and 4996.23(a)
Colorado -- Colo. Rev. Stat. § 12-43-403
Connecticut -- Conn. Gen. Stat. § 20-195m
Delaware -- Del. Code Ann. tit. 24, § 3902
District of Columbia -- D.C. Code § 3-1201.02 (18)(A)
Florida -- Fla. Stat. Ann. § 491.003 (7)
Georgia -- Ga. Code Ann. § 43-10A-3 (13)
Hawaii -- Haw. Rev. Stat. Ann. § 467E-1(7), (8)
Idaho -- Idaho Admin. Code r. 24.14.01.010.03
Illinois -- 225 Ill. Comp. Stat. Ann. 20/3(5), (6)
Indiana -- Ind. Code Ann. § 25-23.6-1-6
Iowa -- Iowa Code § 154C.1(3), (4)
Kansas -- Kan. Stat. Ann. § 65-6319
Kentucky -- 201 Ky. Admin. Regs. 23:070.1, .3
Louisiana -- La. Rev. Stat. Ann. § 37:2708(B)
Maine -- Me. Rev. Stat. tit. 32, § 7001-A 10
Maryland -- Md. Code Ann., Health Occ. § 19-101(m)(4)
Massachusetts -- 258 Mass. Code Regs. 8.04, 12:01
Michigan -- Mich. Comp. Laws Serv. § 333.18501(g)
Minnesota -- Minn. Stat. Ann. § 148E.010
Mississippi -- Miss. Code Ann. § 73-53-3(e)
Missouri -- Mo. Rev. Stat. § 337.600(2)
Montana -- Mont. Code Ann. § 37-22-102(5)
Nebraska -- Neb. Rev. Stat. Ann § 38-2113(2)
Nevada -- Nev. Rev. Stat. Ann. § 641B.030(3)
New Hampshire -- N.H. Rev. Stat. Ann. § 330-A:2VI
New Jersey -- N.J. Stat. § 45:15BB-3 and N.J. Admin. Code § 13:44G-1.2
New Mexico -- N.M. Stat. Ann. § 61-31-6(B)(1)
New York -- N.Y. Educ. Law § 7701(2)
North Carolina -- N.C. Gen. Stat. § 90B-3(6)
North Dakota -- N.D. Admin. Code 75-02-01-03.1
Ohio -- Ohio Rev. Code Ann. § 4757.01(C)
Oklahoma -- Okla. Stat. tit. 59, § 1250.1.9 and .33
Oregon -- Or. Rev. Stat. Ann. § 675.510(2)(a)
Pennsylvania -- 63 Pa. Stat. Ann. § 1903
Rhode Island -- 5 R.I. Gen. Laws § 39.1-2(2)
South Carolina -- S.C. Code Ann. § 40-63-20(25)
South Dakota -- S.D. Codified Laws § 36-26-45

Tennessee -- Tenn. Code Ann. § 63-23-105(a)
Texas -- Tex. Occ. Code § 505.0025(a)
Utah -- Utah Code Ann. § 58-60-202(3)(a) and Utah Code Ann. § 58-60-102(5)-(7)
Vermont -- Vt. Stat. Ann. tit. 26, § 3201
Virginia -- Va. Code Ann. § 54.1-3700
Washington -- Wash. Rev. Code Ann. § 18.225.010(7)
West Virginia -- W. Va. Code § 30-30-11
Wisconsin -- Wis. Stat. Ann. § 457.01(1n), (8m)
Wyoming -- Wyo. Stat. Ann. § 33-38-102(a)(v)