

COMMITTEE REPORT

TO: Patrick O'Donnell
Clerk of the Legislature

FROM: Senator Sara Howard
Chair, Health and Human Services Committee

DATE: 11.13.2020

RE: Health and Human Services Committee Report and Recommendations on Regulated Occupations within Committee Jurisdiction – Licensed Independent Mental Health Practitioner, Licensed Mental Health Practitioner, Marriage and Family Therapist, Master Social Worker, Social Worker, Professional Counselor, and Provisional Licenses or Certifications.

GENERAL INFORMATION

- I. Occupation Regulated
 - A) Licensed Independent Mental Health Practitioner, Licensed Mental Health Practitioner, Marriage and Family Therapist, Master Social Worker, Social Worker, Professional Counselor, and Provisional Licenses or Certifications.

- II. Name of Occupational Board Responsible for Enforcement
 - A) Per Nebraska Revised Statutes Section [38-161](#), the Board of Mental Health Practice provides recommendations to the Department of Health and Human Services regarding the issuance or denial of credentials, and provides recommendations to the Department of Health and Human Services regarding rules and regulations to carry out the Uniform Credentialing Act.

- III. Public Purpose and Assumptions Underlying License Creation
 - A) Pursuant to the Nebraska Revised Statutes, section [38-2102](#), “The Legislature determines that, in the interest of consumer protection and for the protection of public health, safety, and welfare, individuals should be provided a means by which they can be assured that their selection of a mental health practitioner is based on sound criteria and that the activities of those persons who by any title may offer or deliver therapeutic mental health services should be regulated. The purpose of licensing mental health practitioners is to provide for an omnibus title for such persons and to provide for associated certification of social workers,

master social workers, professional counselors, and marriage and family therapists.”

IV. Number of Regulated Professionals in Nebraska

- A) There are a total of 9,035 Licensed or Credentialed Mental Health Practitioners in Nebraska, including 2,145 Licensed Independent Mental Health Practitioners; 2,563 Mental Health Practitioners; 1,166 Provisional Mental Health Practitioners; 1,083 Master Social Workers; 351 Provisional Master Social Workers; 626 Social Workers; 995 Professional Counselors; and 106 Marriage and Family Therapists.

BOARD MEMBERSHIPS AND MEETINGS

I. Number of Members

- A) There are ten members of the Board of Mental Health Practice.

II. Who Appoints Members of the Board / Is Legislative Approval Required?

- A) The Board of Health appoints the members of the Board of Mental Health Practice. Legislative approval is not required.

III. Term Length

- A) The length of term for service on the Board of Mental Health Practice is up to two consecutive five year terms, on a rotating basis.

IV. Qualifications for Membership of the Board

- A) Pursuant to the Nebraska Revised Statutes, section [38-2120](#), The Board of Mental Health Practice is made up of eight professional members and two public members. The professional members shall have held and maintained an active credential and be and have been actively engaged in the practice of his or her profession for a period of five years just preceding his or her appointment and shall maintain such credential and practice while serving as a board member. Two professional members shall be certified master social workers, two professional members shall be certified professional counselors, two professional members shall be certified marriage and family therapists, and two professional members shall be licensed mental health practitioners that do not hold an associated certification.

V. The Number of Meetings Required Per Year / Meetings Actually Held

- A) For fiscal year (FY) 2014-2015: Meetings Required – 1; Meetings Held – 6.
B) For FY 2015-2016: Meetings Required – 1; Meetings Held – 7.
C) For FY 2016-2017: Meetings Required – 1; Meetings Held – 6.

- D) For FY 2017-2018: Meetings Required – 1; Meetings Held – 6.
- E) For FY 2018-2019: Meetings Required – 1; Meetings Held – 6.

VI. Annual Budget Information for the Previous Five Years

- A) The Board of Mental Health Practice is cash-funded from licensure fees. Funds for credentialed occupations may come from interest earned on the Professional and Occupational Credentialing Cash Fund, certification and verification of credentials, administrative fees, reinstatement fees, general funds and federal funds, fees for miscellaneous services, gifts, and grants.
- B) For FY 2014-2015: \$362,758
- C) For FY 2015-2016: \$341,984
- D) For FY 2016-2017: \$348,185
- E) For FY 2017-2018: \$28,076
- F) For FY 2018-2019: \$21,179

VII. Statement from Occupational Board on Effectiveness of Regulations

- A) The Chair of the Board of Mental Health Practice stated “The regulations help maintain a good minimum standard of care. The regulations are not meant to be burdensome or restrictive. They maintain at least a standard of care that will be helpful to public consumers. The regulations in the past have been effective. New regulations that are in process have been streamlined appropriately. They are not perfect, but they provide a good minimum standard to guide practitioners, and help define for the public what constitutes effective mental health care. Many practitioners will seek to work at much higher standards of care.”

AUTHORIZATION

I. Statutory Authorization

- A) Statutory authorization for the Licensed Independent Mental Health Practitioner, Licensed Mental Health Practitioner, Marriage and Family Therapist, Master Social Worker, Social Worker, and Professional Counselor occupations may be found in the Nebraska Revised Statutes, sections [38-2101](#) to [38-2139](#), which may be cited as the Mental Health Practice Act. For text of the Nebraska statutes relating to the Mental Health Practice occupations, see Appendix A.

II. Other Authorization

- A) Rules and regulations regarding the Licensed Independent Mental Health Practitioner, Licensed Mental Health Practitioner, Marriage and Family Therapist, Master Social Worker, Social Worker, and Professional

Counselor occupations may be found in the Nebraska Administrative Code [Title 172, Chapter 94](#).

CREDENTIALING

- I. Number of Licenses, Certifications, or Registrations Issued In Past Five Years
 - A) There were 5,038 total Mental Health Practice licenses or credentials issued in the past five years, including 992 Independent Mental Health Practitioner licenses; 896 Mental Health Practitioner licenses; 1,627 Provisional Mental Health Practitioner licenses; 341 Master Social Worker certifications; 463 Provisional Master Social Worker certifications; 327 Social Worker certifications; 360 Professional Counselor certifications; and 32 Marriage and Family Therapist certifications.

- II. Number of Licenses, Certifications, or Registrations Denied in Past Five Years
 - A) There have been four licenses or certifications denied in the past five years.
 - B) One was denied because of a conviction or diagnosis, one did not have required experience, one did not have a social work degree, and one had an action in another state.

- III. Number of Licenses, Certifications, or Registrations Revoked in Past Five Years
 - A) There have been 23 licenses or certifications revoked in the past five years.
 - B) Reasons for revocation included dishonorable conduct, failure to safeguard a client's dignity, sexual abuse or misconduct, misdemeanor and felony convictions, failure to report, obtaining fees by fraud, falsification of patient records, disciplinary history, substance abuse disorder, and practicing while impaired.

- IV. Number of Licenses, Certifications, or Registrations Penalized in Past Five Years
 - A) There have been seven licenses or certifications penalized in the past five years.
 - B) Those licenses were assessed civil penalties, not to exceed \$20,000.

- V. Comparison of How Other States Regulate This Occupation
 - A) Many states license marriage and family therapists, social workers, and professional counselors, as opposed to certifications, and do not have a mental health practice license or independent mental health practice

license. Scopes of practice for each of these in other states are similar to the independent mental health practice license in Nebraska. In regards to education and post-master supervised experience, Nebraska is consistent as the post master's experience ranges from 2000 to 4000 hours (Nebraska Requires 3000); and the supervision ranges from 100-200 hours or 2 hours for every 15 hours of work (Nebraska requires 1 hour per week).

The Association of Social Work Boards maintains a database including jurisdictional requirements for social workers, found [here](#). The Association of Marriage and Family Therapy Regulatory Boards maintains a website with state licensure comparisons, found [here](#). The American Association of State Counseling Boards website has links to each state's licensing board, found [here](#). All 50 states, the District of Columbia, Guam, and Puerto Rico have form of counselor licensing.

VI. What Is The Potential Harm if These Occupations Are No Longer Licensed, Certified, or Regulated?

- A) There could be significant harm to the public health, safety and welfare if these occupations are no longer licensed or certified. A lack of licensing and regulation could lead to advice-driven counseling, episodes of dual relationships, and the inability to effectively deal with countertransference. These are issues that trained and licensed practitioners negotiate, relying on their education, experience, and training.

COMMITTEE RECOMMENDATION ON CONTINUATION, MODIFICATION, OR TERMINATION OF OCCUPATIONAL REGULATIONS

Regulated occupations under the purview of the Health and Human Services Committee are unique in that through the Nebraska Regulation of Health Professions Act (Neb. Rev. Stat. Sections 71-6201 to 71-6229), health professions which are not licensed or regulated, or health professions that wish to change their scope of practice, go through a three-stage credentialing process.

Credentialing review is a three-stage process conducted by the following review bodies in the following order:

- 1) The review of an ad hoc technical review committee appointed by the Director of the Division of Public Health;
- 2) The review of the State Board of Health;
- 3) The review of the Director of the Division of Public Health.

The three review bodies each create their own independent report on each proposal. All reports created by the review process are available to members of the Health and Human Services Committee to assist them during their review of any bills that might arise from credentialing review proposals. These reports include recommendations regarding the level of licensure of the health profession. These reports are advisory to the Legislature, and only the action of the Legislature may create changes in the regulatory status of a profession. These reports represent expert input into possible public health and safety aspects of credentialing review proposals, and the nine-month process is overseen by those with experience in the provision of health-related or medical services.

The licenses, certifications, and registrations overseen by the Board of Mental Health Practice and the Department of Health and Human Services are intended to protect the health, safety, and welfare of Nebraskans. The current regulation of the Licensed Independent Mental Health Practitioner, Licensed Mental Health Practitioner, Marriage and Family Therapist, Master Social Worker, Social Worker, and Professional Counselor occupations by licensure or certification is appropriate and balanced and does not need modification at this time.

APPENDIX A

STATUTES PERTAINING TO THE MENTAL HEALTH PRACTICE ACT

38-2101. Act, how cited.

Sections 38-2101 to 38-2139 shall be known and may be cited as the Mental Health Practice Act.

Source: Laws 2007, LB247, § 72; Laws 2007, LB463, § 720.

38-2102. Legislative findings.

The Legislature finds that, because many mental health practitioners are not regulated in this state, anyone may offer mental health services by using an unrestricted title and that there is no means for identifying qualified practitioners, for enforcing professional standards, or for holding such practitioners accountable for their actions. Therefor the Legislature determines that, in the interest of consumer protection and for the protection of public health, safety, and welfare, individuals should be provided a means by which they can be assured that their selection of a mental health practitioner is based on sound criteria and that the activities of those persons who by any title may offer or deliver therapeutic mental health services should be regulated.

The purpose of licensing mental health practitioners is to provide for an omnibus title for such persons and to provide for associated certification of social workers, master social workers, professional counselors, and marriage and family therapists.

Source: Laws 1993, LB 669, § 14; R.S.1943, (2003), § 71-1,295; Laws 2007, LB463, § 721.

38-2103. Definitions, where found.

For purposes of the Mental Health Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2104 to 38-2119 apply.

Source: Laws 1993, LB 669, § 15; R.S.1943, (2003), § 71-1,296; Laws 2007, LB247, § 38; Laws 2007, LB463, § 722.

38-2104. Approved educational program, defined.

(1) Approved educational program means a program of education and training accredited by an agency listed in subsection (2) of this section or approved by the board. Such approval may be based on the program's accreditation by an accrediting agency with requirements similar to an agency listed in subsection (2) of this section or on standards established by the board in the manner and form provided in section 38-133.

(2) Approved educational program includes a program of education and training accredited by:

- (a) The Commission on Accreditation for Marriage and Family Therapy Education;
- (b) The Council for Accreditation of Counseling and Related Educational Programs;
- (c) The Council on Rehabilitation Education;
- (d) The Council on Social Work Education; or
- (e) The American Psychological Association for a doctoral degree program enrolled in by a person who has a master's degree or its equivalent in psychology.

Source: Laws 1986, LB 286, § 12; R.S.1943, (1990), § 71-1,255; Laws 1993, LB 669, § 16; R.S.1943, (2003), § 71-1,297; Laws 2007, LB463, § 723; Laws 2018, LB1034, § 32.

38-2105. Board, defined.

Board means the Board of Mental Health Practice.

Source: Laws 1993, LB 669, § 17; Laws 1999, LB 828, § 148; R.S.1943, (2003), § 71-1,298; Laws 2007, LB463, § 724.

38-2106. Certified marriage and family therapist, defined.

Certified marriage and family therapist means a person who is certified to practice marriage and family therapy pursuant to the Uniform Credentialing Act and who holds a current certificate issued by the department.

Source: Laws 1993, LB 669, § 18; R.S.1943, (2003), § 71-1,299; Laws 2007, LB463, § 725.

38-2107. Certified master social work, defined.

Certified master social work means the specialized application of social work values, knowledge, principles, and methods in all areas of social work practice. Certified master social work may include the private, independent, and autonomous practice of social work.

Source: Laws 1986, LB 286, § 6; R.S.1943, (1990), § 71-1,249; Laws 1993, LB 669, § 19; R.S.1943, (2003), § 71-1,300; Laws 2007, LB463, § 726.

38-2108. Certified master social worker, defined.

Certified master social worker means a person who meets the standards established in subsection (1) of section 38-2128 and who holds a current certificate issued by the department.

Source: Laws 1986, LB 286, § 8; R.S.1943, (1990), § 71-1,251; Laws 1993, LB 669, § 20; R.S.1943, (2003), § 71-1,301; Laws 2007, LB463, § 727.

38-2109. Certified professional counselor, defined.

Certified professional counselor means a person who is certified to practice professional counseling pursuant to the Uniform Credentialing Act and who holds a current certificate issued by the department.

Source: Laws 1993, LB 669, § 21; R.S.1943, (2003), § 71-1,302; Laws 2007, LB463, § 728.

38-2110. Certified social work, defined.

Certified social work means the professional application of social work values, knowledge, principles, and methods in all areas of social work practice, except that certified social work shall not include private, independent, and autonomous practice of social work.

Source: Laws 1986, LB 286, § 7; R.S.1943, (1990), § 71-1,250; Laws 1993, LB 669, § 22; R.S.1943, (2003), § 71-1,303; Laws 2007, LB463, § 729.

38-2111. Certified social worker, defined.

Certified social worker means a person who meets the standards established in subsection (2) of section 38-2128 and who holds a current certificate issued by the department.

Source: Laws 1986, LB 286, § 9; R.S.1943, (1990), § 71-1,252; Laws 1993, LB 669, § 23; R.S.1943, (2003), § 71-1,304; Laws 2007, LB463, § 730.

38-2112. Consultation, defined.

Consultation means a professional collaborative relationship between a licensed mental health practitioner and a consultant who is a psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111 or as provided in similar provisions of the Psychology Interjurisdictional Compact, a qualified physician, or a licensed independent mental health practitioner in which (1) the consultant makes a diagnosis based on information supplied by the licensed mental health practitioner and any additional assessment deemed necessary by the consultant and (2) the consultant and the licensed mental health practitioner jointly develop a treatment plan which indicates the responsibility of each professional for implementing elements of the plan, updating the plan, and assessing the client's progress.

Source: Laws 1993, LB 669, § 24; Laws 1994, LB 1210, § 95; R.S.1943, (2003), § 71-1,305; Laws 2007, LB463, § 731; Laws 2008, LB1108, § 1; Laws 2018, LB1034, § 33.

38-2113. Independent mental health practice, defined.

(1) Independent mental health practice means the provision of treatment, assessment, psychotherapy, counseling, or equivalent activities to individuals, couples, families, or groups for behavioral, cognitive, social, mental, or emotional disorders, including interpersonal or personal situations.

(2) Independent mental health practice includes diagnosing major mental illness or disorder, using psychotherapy with individuals suspected of having major mental or emotional disorders, or using psychotherapy to treat the concomitants of organic illness, with or without consultation with a qualified physician or licensed psychologist.

(3) Independent mental health practice does not include the practice of psychology or medicine, prescribing drugs or electroconvulsive therapy, treating physical disease, injury, or deformity, or measuring personality or intelligence for the purpose of diagnosis or treatment planning.

Source: Laws 2007, LB247, § 39; R.S.Supp.,2007, § 71-1,305.01.

38-2114. Marriage and family therapy, defined.

Marriage and family therapy means the assessment and treatment of mental and emotional disorders, whether cognitive, affective, or behavioral, within the context of marriage and family systems through the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to individuals, couples, and families for the purpose of treating such disorders.

Source: Laws 1993, LB 669, § 25; R.S.1943, (2003), § 71-1,306; Laws 2007, LB463, § 732.

38-2115. Mental health practice, defined; limitation on practice.

(1) Mental health practice means the provision of treatment, assessment, psychotherapy, counseling, or equivalent activities to individuals, couples, families, or groups for behavioral, cognitive, social, mental, or emotional disorders, including interpersonal or personal situations.

(2) Mental health practice does not include:

(a) The practice of psychology or medicine;

(b) Prescribing drugs or electroconvulsive therapy;

(c) Treating physical disease, injury, or deformity;

(d) Diagnosing major mental illness or disorder except in consultation with a qualified physician, a psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111 or as provided in similar provisions of the Psychology Interjurisdictional Compact, or a licensed independent mental health practitioner;

(e) Measuring personality or intelligence for the purpose of diagnosis or treatment planning;

(f) Using psychotherapy with individuals suspected of having major mental or emotional disorders except in consultation with a qualified physician, a licensed psychologist, or a licensed independent mental health practitioner; or

(g) Using psychotherapy to treat the concomitants of organic illness except in consultation with a qualified physician or licensed psychologist.

(3) Mental health practice includes the initial assessment of organic mental or emotional disorders for the purpose of referral or consultation.

(4) Nothing in sections 38-2114, 38-2118, and 38-2119 shall be deemed to constitute authorization to engage in activities beyond those described in this section. Persons certified under the Mental Health Practice Act but not licensed under section 38-2122 shall not engage in mental health practice.

Source: Laws 1993, LB 669, § 26; Laws 1994, LB 1210, § 96; R.S.1943, (2003), § 71-1,307; Laws 2007, LB247, § 40; Laws 2007, LB463, § 733; Laws 2008, LB1108, § 2; Laws 2018, LB1034, § 34.

38-2116. Mental health practitioner, independent mental health practitioner, defined; use of titles.

(1) Mental health practitioner means a person who holds himself or herself out as a person qualified to engage in mental health practice or a person who offers or renders mental health practice services. Independent mental health practitioner means a person who holds himself or herself out as a person qualified to engage in independent mental health practice or a person who offers or renders independent mental health practice services.

(2) A person who is licensed as a mental health practitioner and certified as a master social worker may use the title licensed clinical social worker. A person who is licensed as a mental health practitioner and certified as a professional counselor may use the title licensed professional counselor. A person who is licensed as a mental health practitioner and certified as a marriage and family therapist may use the title licensed marriage and family therapist. No person shall use the title licensed clinical social worker, licensed professional counselor, or licensed marriage and family therapist unless he or she is licensed and certified as provided in this subsection.

(3) A person who is licensed as an independent mental health practitioner and certified as a master social worker may use the title licensed independent clinical social worker. A person who is licensed as an independent mental health practitioner and certified as a professional counselor may use the title licensed independent professional counselor. A person who is licensed as an independent mental health practitioner and certified as a marriage and family therapist may use the title licensed independent marriage and family therapist. No person shall use the title licensed independent clinical social worker, licensed independent professional counselor, or licensed independent marriage and family therapist unless he or she is licensed and certified as provided in this subsection.

(4) A mental health practitioner shall not represent himself or herself as a physician or psychologist and shall not represent his or her services as being medical or psychological in nature. An independent mental health practitioner shall not represent himself or herself as a physician or psychologist.

Source: Laws 1993, LB 669, § 27; R.S.1943, (2003), § 71-1,308; Laws 2007, LB247, § 41; Laws 2007, LB463, § 734; Laws 2008, LB1108, § 3.

38-2117. Mental health program, defined.

Mental health program means an approved educational program in a field such as, but not limited to, social work, professional counseling, marriage and family therapy, human development, psychology, or family relations, the content of which contains an emphasis on therapeutic mental health and course work in psychotherapy and the assessment of mental disorders.

Source: Laws 1993, LB 669, § 28; R.S.1943, (2003), § 71-1,309; Laws 2007, LB463, § 735; Laws 2018, LB1034, § 35.

38-2118. Professional counseling, defined.

Professional counseling means the assessment and treatment of mental and emotional disorders within the context of professional counseling theory and practice of individuals, couples, families, or groups and includes, but is not limited to:

(1) Assisting individuals or groups through the counseling relationship to develop understanding, define goals, plan action, and change behavior with the goal of reflecting interests, abilities, aptitudes, and needs as they are related to personal and social concerns, educational progress, and occupations;

(2) Appraisal activities which shall mean selecting, administering, scoring, and interpreting instruments designed to assess a person's aptitudes, attitudes, abilities, achievements, interests, and personal characteristics, except that nothing in this subdivision shall be construed to authorize a certified professional counselor to engage in the practice of clinical psychology as defined in section 38-3111;

(3) Referral activities which evaluate data to identify which persons or groups may better be served by other specialists;

(4) Research activities which shall mean reporting, designing, conducting, or consulting on research in counseling with human subjects;

(5) Therapeutic, vocational, or personal rehabilitation in relationship to adapting to physical, emotional, or intellectual disability; and

(6) Consulting on any activity listed in this section.

Source: Laws 1986, LB 579, § 2; Laws 1988, LB 1100, § 88; R.S.1943, (1990), § 71-1,266; Laws 1993, LB 669, § 29; Laws 1994, LB 1210, § 97; R.S.1943, (2003), § 71-1,310; Laws 2007, LB463, § 736.

38-2119. Social work practice or the practice of social work, defined.

(1) Social work practice or the practice of social work means the professional activity of helping individuals, groups, and families or larger systems such as organizations and communities to improve, restore, or enhance their capacities for personal and social functioning and the professional application of social work values, knowledge, principles, and methods in the following areas of practice:

- (a) Information, resource identification and development, and referral services;
- (b) Preparation and evaluation of psychosocial assessments and development of social work service plans;
- (c) Case management, coordination, and monitoring of social work service plans in the areas of personal, social, or economic resources, conditions, or problems;
- (d) Development, implementation, and evaluation of social work programs and policies;
- (e) Supportive contacts to assist individuals and groups with personal adjustment to crisis, transition, economic change, or a personal or family member's health condition, especially in the area of services given in hospitals, health clinics, home health agencies, schools, shelters for the homeless, shelters for the urgent care of victims of sexual assault, child abuse, elder abuse, or domestic violence, nursing homes, and correctional facilities. Nothing in this subdivision shall be construed to prevent charitable and religious organizations, the clergy, governmental agencies, hospitals, health clinics, home health agencies, schools, shelters for the homeless, shelters for the urgent care of victims of sexual assault, child abuse, elder abuse, or domestic violence, nursing homes, or correctional facilities from providing supportive contacts to assist individuals and groups with adjustment to crisis, transition, economic change, or personal or a family member's health condition if such persons or organizations do not represent themselves to be social workers;
- (f) Social casework for and prevention of psychosocial dysfunction, disability, or impairment; and
- (g) Social work research, consultation, and education.

(2) Social work practice does not include the following:

- (a) The measuring and testing of personality or intelligence;
- (b) Accepting fees or compensation for the treatment of disease, injury, or deformity of persons by drugs, surgery, or any manual or mechanical treatment whatsoever;

(c) Prescribing drugs or electroconvulsive therapy; and

(d) Treating organic diseases or major psychiatric diseases.

(3) A certified master social worker who practices within the confines of this section shall not be required to be licensed as a mental health practitioner.

Source: Laws 1986, LB 286, § 5; R.S.1943, (1990), § 71-1,248; Laws 1993, LB 669, § 30; Laws 1994, LB 1210, § 98; R.S.1943, (2003), § 71-1,311; Laws 2007, LB463, § 737.

38-2120. Board; membership; qualifications.

The board shall consist of eight professional members and two public members appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165. Two professional members shall be certified master social workers, two professional members shall be certified professional counselors, two professional members shall be certified marriage and family therapists, and two professional members shall be licensed mental health practitioners that do not hold an associated certification.

Source: Laws 2007, LB463, § 738.

38-2121. License; required; exceptions.

The requirement to be licensed as a mental health practitioner pursuant to the Uniform Credentialing Act in order to engage in mental health practice shall not be construed to prevent:

(1) Qualified members of other professions who are licensed, certified, or registered by this state from practice of any mental health activity consistent with the scope of practice of their respective professions;

(2) Alcohol and drug counselors who are licensed by the Division of Public Health of the Department of Health and Human Services and problem gambling counselors who are certified by the Department of Health and Human Services prior to July 1, 2013, or by the Nebraska Commission on Problem Gambling beginning on July 1, 2013, from practicing their profession. Such exclusion shall include students training and working under the supervision of an individual qualified under section 38-315;

(3) Any person employed by an agency, bureau, or division of the federal government from discharging his or her official duties, except that if such person engages in mental health practice in this state outside the scope of such official duty or represents himself or herself as a licensed mental health practitioner, he or she shall be licensed;

(4) Teaching or the conduct of research related to mental health services or consultation with organizations or institutions if such teaching, research, or consultation does not involve the delivery or supervision of mental health services to

individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services;

(5) The delivery of mental health services by:

(a) Students, interns, or residents whose activities constitute a part of the course of study for medicine, psychology, nursing, school psychology, social work, clinical social work, counseling, marriage and family therapy, or other health care or mental health service professions; or

(b) Individuals seeking to fulfill postgraduate requirements for licensure when those individuals are supervised by a licensed professional consistent with the applicable regulations of the appropriate professional board;

(6) Duly recognized members of the clergy from providing mental health services in the course of their ministerial duties and consistent with the codes of ethics of their profession if they do not represent themselves to be mental health practitioners;

(7) The incidental exchange of advice or support by persons who do not represent themselves as engaging in mental health practice, including participation in self-help groups when the leaders of such groups receive no compensation for their participation and do not represent themselves as mental health practitioners or their services as mental health practice;

(8) Any person providing emergency crisis intervention or referral services or limited services supporting a service plan developed by and delivered under the supervision of a licensed mental health practitioner, licensed physician, or a psychologist licensed to engage in the practice of psychology if such persons are not represented as being licensed mental health practitioners or their services are not represented as mental health practice; or

(9) Staff employed in a program designated by an agency of state government to provide rehabilitation and support services to individuals with mental illness from completing a rehabilitation assessment or preparing, implementing, and evaluating an individual rehabilitation plan.

Source: Laws 1993, LB 669, § 31; Laws 1994, LB 1210, § 99; Laws 1995, LB 275, § 5; Laws 1996, LB 1044, § 479; Laws 2004, LB 1083, § 114; R.S.Supp.,2006, § 71-1,312; Laws 2007, LB296, § 361; Laws 2007, LB463, § 739; Laws 2013, LB6, § 11.

38-2122. Mental health practitioner; qualifications.

A person shall be qualified to be a licensed mental health practitioner if he or she:

(1) Has received a master's degree, a doctoral degree, or the equivalent of a master's degree, as determined by the board, that consists of course work and training which was primarily therapeutic mental health in content and included a practicum or

internship and was from an approved educational program. Practicums or internships completed after September 1, 1995, must include a minimum of three hundred clock hours of direct client contact under the supervision of a qualified physician, a licensed psychologist, or a licensed mental health practitioner;

(2) Has successfully completed three thousand hours of supervised experience in mental health practice of which fifteen hundred hours were in direct client contact in a setting where mental health services were being offered and the remaining fifteen hundred hours included, but were not limited to, review of client records, case conferences, direct observation, and video observation. For purposes of this subdivision, supervised means monitored by a qualified physician, a licensed clinical psychologist, or a certified master social worker, certified professional counselor, or marriage and family therapist qualified for certification on September 1, 1994, for any hours completed before such date or by a qualified physician, a psychologist licensed to engage in the practice of psychology, or a licensed mental health practitioner for any hours completed after such date, including evaluative face-to-face contact for a minimum of one hour per week. Such three thousand hours shall be accumulated after completion of the master's degree, doctoral degree, or equivalent of the master's degree; and

(3) Has satisfactorily passed an examination approved by the board. An individual who by reason of educational background is eligible for certification as a certified master social worker, a certified professional counselor, or a certified marriage and family therapist shall take and pass a certification examination approved by the board before becoming licensed as a mental health practitioner.

Source: Laws 1993, LB 669, § 33; Laws 1994, LB 1210, § 100; Laws 1995, LB 406, § 31; Laws 1997, LB 622, § 84; Laws 1997, LB 752, § 160; R.S.1943, (2003), § 71-1,314; Laws 2007, LB463, § 740; Laws 2018, LB1034, § 36.

38-2123. Provisional mental health practitioner license; qualifications; application; expiration; disclosure required.

(1) A person who needs to obtain the required three thousand hours of supervised experience in mental health practice as specified in section 38-2122 to qualify for a mental health practitioner license shall obtain a provisional mental health practitioner license. To qualify for a provisional mental health practitioner license, such person shall:

(a) Have a master's degree, a doctoral degree, or the equivalent of a master's degree, as determined by the board, that consists of course work and training which was primarily therapeutic mental health in content and included a practicum or internship and was from a mental health program as specified in section 38-2122;

(b) Apply prior to earning the three thousand hours of supervised experience; and

(c) Pay the provisional mental health practitioner license fee.

(2) The rules and regulations approved by the board and adopted and promulgated by the department shall not require that the applicant have a supervisor in place at the time of application for a provisional mental health practitioner license.

(3) A provisional mental health practitioner license shall expire upon receipt of licensure as a mental health practitioner or five years after the date of issuance, whichever comes first.

(4) A person who holds a provisional mental health practitioner license shall inform all clients that he or she holds a provisional license and is practicing mental health under supervision and shall identify the supervisor. Failure to make such disclosure is a ground for discipline as set forth in section 38-2139.

Source: Laws 1997, LB 622, § 81; Laws 2003, LB 242, § 73; R.S.1943, (2003), § 71-1,314.01; Laws 2007, LB463, § 741; Laws 2018, LB1034, § 37.

38-2124. Independent mental health practitioner; qualifications.

(1) No person shall hold himself or herself out as an independent mental health practitioner unless he or she is licensed as such by the department. A person shall be qualified to be a licensed independent mental health practitioner if he or she:

(a)(i)(A) Graduated with a master's or doctoral degree from an educational program which is accredited, at the time of graduation or within four years after graduation, by the Council for Accreditation of Counseling and Related Educational Programs, the Commission on Accreditation for Marriage and Family Therapy Education, or the Council on Social Work Education or (B) graduated with a master's or doctoral degree from an educational program deemed by the board to be equivalent in didactic content and supervised clinical experience to an accredited program;

(ii)(A) Is licensed as a licensed mental health practitioner or (B) is licensed as a provisional mental health practitioner and has satisfactorily passed an examination approved by the board pursuant to subdivision (3) of section 38-2122; and

(iii) Has three thousand hours of experience supervised by a licensed physician, a licensed psychologist, or a licensed independent mental health practitioner, one-half of which is comprised of experience with clients diagnosed under the major mental illness or disorder category; or

(b)(i) Graduated from an educational program which does not meet the requirements of subdivision (a)(i) of this subsection;

(ii)(A) Is licensed as a licensed mental health practitioner or (B) is licensed as a provisional mental health practitioner and has satisfactorily passed an examination approved by the board pursuant to subdivision (3) of section 38-2122; and

(iii) Has seven thousand hours of experience obtained in a period of not less than ten years and supervised by a licensed physician, a licensed psychologist, or a licensed independent mental health practitioner, one-half of which is comprised of experience with clients diagnosed under the major mental illness or disorder category.

(2) The experience required under this section shall be documented in a reasonable form and manner as prescribed by the board, which may consist of sworn statements from the applicant and his or her employers and supervisors. The board shall not in any case require the applicant to produce individual case records.

(3) The application for an independent mental health practitioner license shall include the applicant's social security number.

Source: Laws 2007, LB247, § 42; R.S.Supp.,2007, § 71-1,314.02; Laws 2008, LB1108, § 4; Laws 2018, LB1034, § 38.

38-2125. Reciprocity; military spouse; temporary license.

The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who (1) meets the licensure requirements of the Mental Health Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board, or

(2) has been in active practice in the appropriate discipline for at least five years following initial licensure or certification in another jurisdiction and has passed the Nebraska jurisprudence examination. An applicant for a license who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 742; Laws 2017, LB88, § 65; Laws 2018, LB1034, § 39.

38-2126. Certified social workers and certified master social workers; legislative findings.

The Legislature finds that certified social workers and certified master social workers provide a wide range of psychosocial assessment, intervention, and support services that do not constitute the clinical treatment services of licensed mental health practitioners, psychologists, or physicians. The Legislature therefore finds that it is appropriate to provide for certification of social workers and master social workers.

Source: Laws 1993, LB 669, § 36; R.S.1943, (2003), § 71-1,317; Laws 2007, LB463, § 743.

38-2127. Practice of social work; certificate required; exceptions.

The requirement to be certified as a social worker pursuant to the Uniform Credentialing Act in order to represent himself or herself as a social worker shall not be construed to prevent:

(1) Qualified members of other professions, including, but not limited to, licensed physicians, registered or licensed practical nurses, attorneys, marriage and family therapists, psychologists, psychotherapists, vocational guidance counselors, school psychologists, members of the clergy, court employees, or other persons credentialed under the Uniform Credentialing Act from doing work consistent with the scope of practice of their respective professions, except that such qualified members shall not hold themselves out to the public by title as being engaged in the practice of social work; or

(2) The activities and services of a student or intern in social work practice who is pursuing a course of study in an approved educational program if the activities and services constitute a part of his or her supervised course of study or experience for certification and are performed under the supervision of a certified master social worker and the person is identified by an appropriate title as a social work student or intern. For purposes of this subdivision, supervision means that written records of services or procedures are examined and evaluative interviews are conducted relative thereto by a certified master social worker.

Source: Laws 1986, LB 286, § 13; Laws 1987, LB 473, § 31; R.S.1943, (1990), § 71-1,256; Laws 1993, LB 669, § 37; R.S.1943, (2003), § 71-1,318; Laws 2007, LB463, § 744.

38-2128. Certified master social worker; certified social worker; qualifications.

(1) A person shall be qualified to be a certified master social worker if he or she:

(a) Has a doctorate or a master's degree in social work from an approved educational program;

(b) Has had a minimum of at least three thousand hours of experience, in addition to the master's or doctorate degree, in social work under the supervision as defined in section 38-2127 of a certified master social worker;

(c) Provides evidence to the department that he or she meets the requirements of subdivisions (1)(a) and (1)(b) of this section; and

(d) Completes an application and satisfactorily passes an examination approved by the board.

(2) A person shall be qualified to be a certified social worker if he or she provides evidence to the board that he or she has a baccalaureate or master's degree in social work from an approved educational program and completes an application form.

Source: Laws 1986, LB 286, § 15; Laws 1988, LB 1100, § 85; Laws 1990, LB 1080, § 1; R.S.1943, (1990), § 71-1,258; Laws 1993, LB 669, § 38; Laws 1993, LB 506, § 1; Laws 1994, LB 1210, § 101; Laws 1997, LB 752, § 161; R.S.1943, (2003), § 71-1,319; Laws 2007, LB463, § 745.

38-2129. Provisional certification as master social worker; qualifications; application; expiration.

(1) A person who needs to obtain the required three thousand hours of supervised experience in social work as specified in section 38-2128 to qualify for certification as a master social worker shall obtain a provisional certification as a master social worker. To qualify for a provisional certification as a master social worker, such person shall:

(a) Have a doctorate or master's degree in social work from an approved educational program; and

(b) Apply prior to earning the three thousand hours of supervised experience.

(2) A provisional master social worker certification shall expire upon receipt of certification as a master social worker or five years after the date of issuance, whichever comes first.

(3) A person who holds a provisional certification as a master social worker shall inform all clients that he or she holds a provisional certification and is practicing social work under supervision and shall identify the supervisor. Failure to make such disclosure is a ground for discipline as set forth in section 38-2139.

Source: Laws 1997, LB 622, § 82; Laws 2003, LB 242, § 74; R.S.1943, (2003), § 71-1,319.01; Laws 2007, LB463, § 746.

38-2130. Certified marriage and family therapist, certified professional counselor, social worker; reciprocity; military spouse; temporary certificate.

The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who (1) meets the licensure requirements of the Mental Health Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board, or

(2) has been in active practice in the appropriate discipline for at least five years following initial licensure or certification in another jurisdiction and has passed the Nebraska jurisprudence examination. An applicant for a license who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 742; Laws 2017, LB88, § 65; Laws 2018, LB1034, § 39.

38-2131. Certified social workers; certified master social workers; act, how construed.

Nothing in the Mental Health Practice Act shall be construed to require the State of Nebraska, any agency of the State of Nebraska, or any of the entities which operate under rules and regulations of a state agency, which either employ or contract for the services of social services workers, to employ or contract with only persons certified

pursuant to the act for the performance of any of the professional activities enumerated in section 38-2119.

Source: Laws 1986, LB 286, § 21; R.S.1943, (1990), § 71-1,264; Laws 1993, LB 669, § 42; R.S.1943, (2003), § 71-1,323; Laws 2007, LB463, § 748.

38-2132. Certified professional counselor; qualifications.

A person shall be qualified to be a certified professional counselor if he or she:

- (1) Has received a master's degree from an approved educational program;
- (2) Has had three thousand hours of experience in professional counseling approved by the board after receipt of the master's degree; and
- (3) Completes an application and satisfactorily passes an examination approved by the board.

Source: Laws 1986, LB 579, § 5; Laws 1988, LB 1100, § 91; R.S.1943, (1990), § 71-1,269; Laws 1993, LB 669, § 44; Laws 1994, LB 1210, § 104; Laws 1997, LB 752, § 162; R.S.1943, (2003), § 71-1,325; Laws 2007, LB463, § 749.

38-2133. Marriage and family therapist; certification; qualifications.

(1) A person who applies to the department for certification as a marriage and family therapist shall be qualified for such certification if he or she:

- (a) Provides evidence to the department that he or she has a master's or doctoral degree in marriage and family therapy from a program approved by the board or a graduate degree in a field determined by the board to be related to marriage and family therapy and graduate-level course work determined by the board to be equivalent to a master's degree in marriage and family therapy;
- (b) Provides evidence to the department that he or she has had at least three thousand hours of experience in marriage and family therapy under a qualified supervisor following receipt of the graduate degree. The three thousand hours shall include at least one thousand five hundred hours of direct-client contact during the five years preceding application for certification. During the course of completing the client-contact hours, there shall be at least one hundred hours of supervisor-supervisee contact hours with a qualified supervisor and supervision shall be provided at least one hour per week or two hours every two weeks; and
- (c) Completes an application and passes an examination approved by the board.

(2) For purposes of this section:

- (a) Actively engaged in the practice of marriage and family therapy may include (i) services and activities provided under the direct supervision of a person with at least a master's degree in marriage and family therapy from a program approved by the board

or (ii) services and activities that are classified by title or by description of duties and responsibilities as marriage and family therapy practice;

(b) Qualified supervisor means (i) a licensed mental health practitioner, a psychologist licensed to engage in the practice of psychology, or a licensed physician who holds a designation of approved supervisor from an association which establishes standards for marriage and family therapy in conformity with accepted industry standards; such standards shall be specified in rules and regulations approved by the board and adopted and promulgated by the department or (ii) a marriage and family therapist who has practiced for five years and has completed a five-hour supervision course that may be provided by an association which establishes standards for marriage and family therapy in conformity with accepted industry standards; such standards shall be specified in rules and regulations approved by the board and adopted and promulgated by the department; and

(c) Supervision means face-to-face contact between an applicant and a qualified supervisor during which the applicant apprises the supervisor of the diagnosis and treatment of each client, the clients' cases are discussed, the supervisor provides the applicant with oversight and guidance in treating and dealing with clients, and the supervisor evaluates the applicant's performance. In order for a supervised period of time to be credited toward the time of supervision required by subsection (1) of this section, it shall consist of the following:

(i) Focus on raw data from the applicant's clinical work which is made directly available to the supervisor through such means as written clinical materials, direct observation, and video and audio recordings;

(ii) A process which is distinguishable from personal psychotherapy or didactic instruction; and

(iii) A proportion of individual and group supervision as determined by the rules and regulations of the board.

Source: Laws 1993, LB 669, § 48; Laws 1994, LB 1210, § 107; Laws 1997, LB 752, § 163; Laws 2000, LB 1135, § 15; Laws 2003, LB 242, § 78; R.S.1943, (2003), § 71-1,329; Laws 2007, LB463, § 750; Laws 2012, LB1148, § 1.

38-2134. Marriage and family therapists; act, how construed.

Nothing in the Mental Health Practice Act shall be construed to require the State of Nebraska, any agency of the State of Nebraska, or any of the entities which operate under rules and regulations of a state agency, which employ or contract for the services of marriage and family therapists, to employ or contract with only persons certified pursuant to the act for the performance of any of the professional activities enumerated in section 38-2119.

Source: Laws 1993, LB 669, § 51; R.S.1943, (2003), § 71-1,332; Laws 2007, LB463, § 751.

38-2135. Fees.

The department shall establish and collect fees for credentialing under the Mental Health Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 752.

38-2136. Mental health practitioners; confidentiality; exception.

No person licensed or certified pursuant to the Mental Health Practice Act shall disclose any information he or she may have acquired from any person consulting him or her in his or her professional capacity except:

(1) With the written consent of the person or, in the case of death or disability, of the person's personal representative, any other person authorized to sue on behalf of the person, or the beneficiary of an insurance policy on the person's life, health, or physical condition. When more than one person in a family receives therapy conjointly, each such family member who is legally competent to execute a waiver shall agree to the waiver referred to in this subdivision. Without such a waiver from each family member legally competent to execute a waiver, a practitioner shall not disclose information received from any family member who received therapy conjointly;

(2) As such privilege is limited by the laws of the State of Nebraska or as the board may determine by rule and regulation;

(3) When the person waives the privilege by bringing charges against the licensee; or

(4) When there is a duty to warn under the limited circumstances set forth in section 38-2137.

Source: Laws 1993, LB 669, § 54; Laws 1994, LB 1210, § 109; Laws 1999, LB 828, § 150; R.S.1943, (2003), § 71-1,335; Laws 2007, LB247, § 46; Laws 2007, LB463, § 753.

38-2137. Mental health practitioner; duty to warn of patient's threatened violent behavior; limitation on liability.

(1) There shall be no monetary liability on the part of, and no cause of action shall arise against, any person who is licensed or certified pursuant to the Mental Health Practice Act for failing to warn of and protect from a patient's threatened violent behavior or failing to predict and warn of and protect from a patient's violent behavior except when the patient has communicated to the mental health practitioner a serious threat of physical violence against himself, herself, or a reasonably identifiable victim or victims.

(2) The duty to warn of or to take reasonable precautions to provide protection from violent behavior shall arise only under the limited circumstances specified in

subsection (1) of this section. The duty shall be discharged by the mental health practitioner if reasonable efforts are made to communicate the threat to the victim or victims and to a law enforcement agency.

(3) No monetary liability and no cause of action shall arise under section 38-2136 against a licensee or certificate holder for information disclosed to third parties in an effort to discharge a duty arising under subsection (1) of this section according to the provisions of subsection (2) of this section.

Source: Laws 1993, LB 669, § 55; R.S.1943, (2003), § 71-1,336; Laws 2007, LB247, § 47; Laws 2007, LB463, § 754.

38-2138. Code of ethics; board; duties; duty to report violations.

The board shall adopt a code of ethics which is essentially in agreement with the current code of ethics of the national and state associations of the specialty professions included in mental health practice and which the board deems necessary to assure adequate protection of the public in the provision of mental health services to the public. A violation of the code of ethics shall be considered an act of unprofessional conduct.

The board shall ensure through the code of ethics and the rules and regulations adopted and promulgated under the Mental Health Practice Act that persons licensed or certified pursuant to the act limit their practice to demonstrated areas of competence as documented by relevant professional education, training, and experience. Intentional failure by a mental health practitioner to report known acts of unprofessional conduct by a mental health practitioner to the department or the board shall be considered an act of unprofessional conduct and shall be grounds for disciplinary action under appropriate sections of the Uniform Credentialing Act unless the mental health practitioner has acquired such knowledge in a professional relationship otherwise protected by confidentiality.

Source: Laws 1993, LB 669, § 56; Laws 1999, LB 828, § 151; R.S.1943, (2003), § 71-1,337; Laws 2007, LB247, § 48; Laws 2007, LB463, § 755.

38-2139. Additional grounds for disciplinary action.

In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a credential subject to the Mental Health Practice Act may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant or licensee fails to disclose the information required by section 38-2123 or 38-2129.

Source: Laws 2007, LB463, § 756.