

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

SENATE BILL NO. 2361
(Senators Anderson, Mathern)
(Representative J. Nelson)

AN ACT to create and enact subsection 8 of section 43-41-11 and three new sections to chapter 43-41 of the North Dakota Century Code, relating to the licensing of social workers; to amend and reenact subsections 9 and 10 of section 25-01-01, section 43-41-01, subsection 2 of section 43-41-02, subsection 1 of section 43-41-03, and sections 43-41-04, 43-41-05, 43-41-08, 43-41-10, and 43-41-12, of the North Dakota Century Code, relating to the licensing of social workers; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 9 and 10 of section 25-01-01 of the North Dakota Century Code are amended and reenacted as follows:

9. "Tier 2 mental health professional" means a tier 2a or a tier 2b mental health professional.
 - a. A tier 2a mental health professional is an independent clinician who is a licensed ~~independent~~ clinical social worker licensed under chapter 43-41, a licensed professional clinical counselor licensed under chapter 43-47, or a licensed marriage and family therapist licensed under chapter 43-53.
 - b. A tier 2b mental health professional is an addiction counselor licensed under chapter 43-45 or a registered nurse licensed under chapter 43-12.
10. "Tier 3 mental health professional" means a licensed associate professional counselor licensed under chapter 43-47, a licensed ~~certified~~master social worker ~~or licensed baccalaureate social worker~~ licensed under chapter 43-41, a licensed professional counselor licensed under chapter 43-47, an associate marriage and family therapist licensed under chapter 43-53, an occupational therapist licensed under chapter 43-40, a licensed practical nurse licensed under chapter 43-12, a behavior analyst licensed or registered under chapter 43-32, a vocational rehabilitation counselor practicing under chapter 50-06.1, a school psychologist, or a human relations counselor.

SECTION 2. AMENDMENT. Section 43-41-01 of the North Dakota Century Code is amended and reenacted as follows:

43-41-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of social work examiners.
2. ~~"College or university" means an institution of higher education whose social work program has been accredited by an accrediting body approved by the board.~~
3. ~~"Licensed certified social worker" means an individual who has a doctorate or master's degree in social work from a college or university and who has fulfilled the requirements for licensure.~~
4. ~~"Licensed independent clinical social worker" means an individual who has a doctorate or master's degree in social work from a college or university and who has fulfilled the requirements for licensure or has been registered by the board for third-party reimbursement before August 1, 1997.~~

5. "Licensed social worker" means an individual who has a baccalaureate degree in social work from a college or university and who has fulfilled the requirements for licensure.

"Client" means the individual, couple, family, group, organization, or community that seeks or receives social work services from an individual licensed social worker or an organization, regardless of whether the licensed social worker or organization bills or accepts or requests the payment of fees for the services.

3. "Clinical supervision for licensure" means an interactional professional relationship between a clinical supervisor which meets the standards adopted by the board and a social worker and which provides evaluation and direction over the supervisee's practice of clinical social work in preparation for the social worker's licensure as a licensed clinical social worker, in accordance with the requirements adopted by the board, and promotes development of the social worker's knowledge, skills, and abilities to engage in the practice of clinical social work in an ethical and competent manner.

4. "Consultation" means an advisory professional relationship between a social worker and an individual with particular expertise, with the social worker legally and ethically maintaining responsibility for all judgments and decisions regarding service to the client.

5. "Counseling" means a method used by a social worker to assist an individual, couple, family, or group in learning how to solve problems and make decisions about personal, health, social, educational, vocational, financial, and other interpersonal concerns.

6. "Electronic social work services" means the use of a computer, including the internet, social media, online chat, text, and electronic mail, or other electronic means, such as a wireless communications device, landline telephone, or video technology, to provide information to the public, deliver social work services to a client, communicate with a client, manage confidential information and case records, store and access information about clients, and arrange payment for professional services.

7. "Licensed baccalaureate social worker" means an individual licensed under this chapter to practice baccalaureate social work.

8. "Licensed clinical social worker" means an individual licensed under this chapter to practice clinical social work.

9. "Licensed master social worker" means an individual licensed under this chapter to practice masters social work.

- 6-10. "Private practice of social work" means the independent practice of social work by a qualified individual licensee who is practicing within that licensee's scope of practice, and who is self-employed on a full-time or part-time basis and is responsible for that independent practice. Consultation services provided to an organization or an agency are not considered to be the private practice of social work.

- 7-11. "Social work practice" consists of the professional application of social work values, principles, and techniques in helping people obtain tangible services; counseling; psychotherapy with individuals, families, and groups; helping communities or groups to improve social and health services; providing social casework; directly supervising programs providing social work services; social work education; social work research; or any combination of these. The practice of social work requires knowledge of human development and behavior, of social, economic, and cultural institutions, and the interaction of all these factors means the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities. The scope of practice for licensees of the board consist of the following:

- a. The practice of baccalaureate social work, which includes the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities. Baccalaureate social work is generalist practice that includes assessment, planning, implementation, intervention, evaluation, research, social work case management, information and referral, counseling, supervision, consultation, education, advocacy, community organization, and the development, implementation, and administration of policies, programs, and activities.
 - b. The practice of masters social work, which includes, in addition to the practice of baccalaureate social work, the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation, intervention, evaluation, social work case management information and referral, counseling, supervision, consultation, education, research, advocacy, community organization, and the development, implementation, and administration of policies, programs, and activities. Under the supervision of a licensed clinical social worker, the practice of masters social work may include the practices reserved to licensed clinical social workers.
 - c. The practice of clinical social work, which includes, in addition to the practice of baccalaureate social work and the practice of masters social work, the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, treatment planning, implementation and evaluation, social work case management information and referral, counseling, supervision, consultation, education, research, advocacy, community organization, the development, implementation, intervention, and administration of policies, programs, and activities, and the diagnosis and treatment of mental, emotional, and behavioral disorders, conditions, and addictions. Treatment methods include the provision of individual, marital, couple, family, and group counseling and psychotherapy. The practice of clinical social work may include the provision of clinical supervision.
12. "Psychotherapy" means the use of treatment methods utilizing a specialized, formal interaction between a licensed clinical social worker and an individual, couple, family, or group in which a therapeutic relationship is established, maintained, and sustained to understand unconscious processes; intrapersonal, interpersonal, and psychosocial dynamics; and the assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions, or addictions.
 13. "Social work case management" means a method to plan, provide, evaluate, and monitor services by a licensed social worker from a variety of resources on behalf of and in collaboration with a client.

SECTION 3. AMENDMENT. Subsection 2 of section 43-41-02 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~Nothing in this~~This chapter may not be construed to prevent students who are enrolled in programs of study leading to social work degrees from interning with a licensed baccalaureate social worker, a licensed ~~certified~~master social worker, or a licensed ~~independent~~ clinical social worker.

SECTION 4. AMENDMENT. Subsection 1 of section 43-41-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Only those persons licensed to practice under this chapter may represent themselves as a licensed baccalaureate social worker, licensed ~~certified~~master social worker, or licensed ~~independent~~ clinical social worker.

SECTION 5. AMENDMENT. Section 43-41-04 of the North Dakota Century Code is amended and reenacted as follows:

43-41-04. Licenses - Rules.

1. Except as otherwise provided in this chapter, ~~no~~ a person may not engage in social work practice in this state unless that person is a licensed baccalaureate social worker, a licensed certified master social worker, or a licensed independent clinical social worker.
2. ~~The board shall issue a license as a licensed social worker to an applicant who~~ To obtain a license to engage in the practice of social work, an applicant shall submit an application to the board in the form prescribed by the board and provide evidence satisfactory to the board the applicant:
 - a. ~~Has a baccalaureate degree in social work from a college or university~~ attained the age of majority.
 - b. ~~Has passed an~~ the examination approved by the board for this ~~purpose~~ the license sought.
 - c. ~~Has satisfied the board that the applicant agrees to adhere to the code of social work ethics adopted by the board.~~
3. ~~The board shall issue a license as a licensed certified social worker to an applicant who:~~
 - a. ~~Has a doctorate or master's degree in social work from a college or university.~~
 - b. ~~Has passed an examination approved by the board for this purpose.~~
 - e. ~~Has satisfied the board that the applicant agrees to adhere to the code of social work ethics adopted by the board.~~
4. ~~To obtain a license to practice clinical social work, an applicant for licensure by examination shall submit to the board a written application in the form prescribed by the board and provide satisfactory evidence the applicant:~~
 - a. ~~Has a doctorate or master's degree in social work from an approved social work program.~~
 - b. ~~Passed an examination approved by the board for this purpose.~~
 - e. ~~Within~~
 - d. Is of good moral character. As an element of good moral character, the board shall consider the applicant's adherence to values, principles, and ethical standards consistent with professional social work practice, and shall also consider information obtained through reports made under section 43-41-04.2 in licensure decisions to the extent permissible by all applicable laws.
 - e. Has paid all applicable fees specified by the board relative to the licensure process.
3. An applicant for licensure for the practice of:
 - a. Baccalaureate social work must demonstrate having been awarded a baccalaureate degree in social work from a social work program approved by the board.
 - b. Masters social work must demonstrate having been awarded a doctorate or master's degree in social work from a social work program approved by the board.
 - c. Clinical social work must demonstrate:

- (1) Having been awarded a doctorate or master's degree in social work from a social work program approved by the board.
 - (2) The successful completion, within a four-year period successfully completed, of three thousand hours of supervised post-master's clinical social work experience. The initial one thousand five hundred of the required hours must have been under the supervision of a licensed clinical social worker. Additional hours of supervision may be under other qualified mental health professionals approved by the board if barriers due to the geographical location, disability, or other factors determined by the board to create a hardship exist for the applicant. The qualified professional must be registered or otherwise qualified as a clinical supervisor by the board that licenses the other professional. However, if an applicant began supervised post-master's clinical social work experience before August 1, 2009, a master's licensed master social worker who has two years of experience, a licensed psychologist with a doctorate degree, or a licensed psychiatrist may have supervised the required hours. The applicant may demonstrate to the board's satisfaction that experience in the practice of clinical social work meets or exceeds the minimum supervisory requirements of the board.
- d. ~~Agrees to adhere to the code of social work ethics adopted by the board.~~
 - e. ~~Is of good moral character. In determining the character of an applicant in a licensure decision, the board shall consider information obtained through reports made under section 43-41-04.2.~~
 - f. ~~Paid all applicable fees specified by the board regarding the licensure process~~
4. The board may adopt rules pertaining to the supervision required under this section.

SECTION 6. AMENDMENT. Section 43-41-05 of the North Dakota Century Code is amended and reenacted as follows:

43-41-05. Private practice of social work.

A person may not engage in the private practice of social work unless that person has been licensed by the board as a licensed independent clinical social worker.

SECTION 7. AMENDMENT. Section 43-41-08 of the North Dakota Century Code is amended and reenacted as follows:

43-41-08. Board of social work examiners - Qualifications - Appointment - Term of office - Compensation.

1. The governor shall appoint the North Dakota board of social work examiners, which must consist of ~~six~~seven members, two of whom must be, at the time of initial appointment, licensed baccalaureate social workers; one of whom must be, at the time of initial appointment, a licensed ~~certified~~master social worker; ~~one~~two of whom must be, at the time of initial appointment, a licensed independent clinical social worker; and two of whom must be laypersons. Board members must demonstrate no conflict of interest.
2. The term of office of each board member must be for three years with ~~two~~no more than three members appointed annually. ~~No~~A member may not serve more than two consecutive terms.
3. The governor may remove any board member for good cause after giving that member a written statement of the reasons for removal and after that member has had an opportunity for a hearing.
4. Each board member shall ~~serve without compensation but shall~~of the board is entitled to receive as compensation a sum not to exceed the daily compensation of members of the

legislative assembly per day for each day during which the member is engaged in performance of the official duties of the board, and is entitled to be reimbursed for all reasonable and necessary expenses incurred in connection with the discharge of the official duties as provided in section 54-06-09 and per diem as must be fixed by the board.

5. ~~Board~~Annually, board members shall ~~annually~~ elect by a majority vote of the board a chairperson who shall preside at meetings of the board and a vice chairperson who shall preside at meetings of the board in the chairperson's absence. A majority of the members of the board constitutes a quorum.

SECTION 8. AMENDMENT. Section 43-41-10 of the North Dakota Century Code is amended and reenacted as follows:

43-41-10. Grounds for disciplinary proceedings.

1. The board may deny, refuse to renew, suspend, revoke, reprimand, restrict, or limit the license of, or place on probationary status any license issued under this chapter on proof at a hearing that the applicant or licensed person:
 1. a. Has been convicted of an offense determined by the board to have a direct bearing upon that individual's ability to practice social work or is not sufficiently rehabilitated as determined by the board in accordance with section 12.1-33-02.1.
 2. b. Is addicted to the habitual use of alcoholic beverages, narcotics, or stimulants ~~to such an extent as to incapacitate that individual from their other addictive substances that impair the social worker's ability to practice of social work.~~
 3. c. Has been grossly negligent in the practice of social work.
 4. d. Has violated one or more of the rules and regulations of the board.
 5. e. Has violated the code of social work ethics adopted by the board.
 - f. Has failed to make a report to the board as required under section 12 of this Act.
- 6-2. In order to pursue the investigation, the board may subpoena and examine witnesses and records, including client records, and copy, photograph, or take samples. The board may require a licensed social worker to give statements under oath ~~and~~. The board may require a licensed social worker to submit to a physical, chemical, or mental examination, or both, by a physician or physicians and/or other qualified evaluation professionals selected by the board if it appears to be in the best interests of the public that an evaluation examination be secured. The board may require a licensee to enroll in a treatment or monitoring program approved by the board if the board determines in good faith to do so would be beneficial to the licensee or protect the public. Failure to satisfactorily undergo an examination or enroll in a treatment and monitoring program must be reported to the board by the treating professional. Treating professionals are immune from any liability for reporting made in good faith. A licensee is deemed to consent to the treating professional of the approved evaluation, or the approved treatment and monitoring program, reporting to the board on the results of the examination or the progress of the treatment or monitoring program, at such intervals the board deems necessary. The approved examination, or treatment or monitoring program, may release examination information, or treatment or monitoring information, to the board so the board may evaluate the results of the examination or the licensee's progress in and the effectiveness of the treatment or monitoring program. A written request from the board constitutes authorization to release information. Absent a client release on file allowing the release of information, all client records released to the board are confidential and are not public records.
- 7-3. Unless there is a client release on file allowing the release of information at the public hearing, client and juvenile records introduced or client and juvenile testimony of a personal nature

taken at a public hearing is confidential and closed to the public. The portions of board meetings at which client and juvenile testimony or records are taken or reviewed are confidential and closed to the public. If no client or juvenile testimony or records are taken or reviewed, the remainder of the meeting is an open meeting unless a specific exemption is otherwise applicable.

4. Until the board proceeds with disciplinary action, the complaint, the response, and any record received by the board during an investigation of a complaint under this section are exempt records, as defined in section 44-04-17.1.

SECTION 9. Subsection 8 of section 43-41-11 of the North Dakota Century Code is created and enacted as follows:

8. The board shall recover costs of the board resulting from a hearing or disciplinary process:
 - a. If an order is issued in resolution of a disciplinary proceeding before the board, the board may request the administrative law judge to direct a licensee found as a result of the proceeding to have violated any laws or rules to pay to the board a sum not to exceed the costs of the investigation and fees of the attorneys representing the board in the matter. The costs to be assessed must be fixed by the administrative law judge and may not be increased by the board.
 - b. If an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for payment in the district court of Burleigh County. This right of enforcement is in addition to any other rights the board may have as to any person directed to pay costs. In any action for recovery of costs, proof of the board's decision is conclusive proof of the validity of the order of payment and the terms for payment.

SECTION 10. AMENDMENT. Section 43-41-12 of the North Dakota Century Code is amended and reenacted as follows:

43-41-12. Renewal of licenses.

1. All licenses are effective when granted by the board.
2. All licenses of licensed ~~baccalaureate~~ social workers, licensed ~~certifiedmaster~~ social workers, and licensed ~~independent~~ clinical social workers expire on December thirty-first of every odd-numbered year.
3. A license may be renewed by payment of the renewal fee and completion of the continuing education requirements set by the board, provided the applicant's license is not currently revoked or grounds for denial under section 43-41-10 do not exist.
4. If the application for renewal is not received on or before the expiration date, the license expires and the person may not practice social work until a new application is made and a license is granted by the board.
5. At the time of renewal the board ~~shall~~may require each applicant to present satisfactory evidence ~~that the applicant has completed~~ the continuing education requirements specified by the board.
6. If a license has not been renewed as a result of nonpayment of the renewal fee or the failure of the licensee to present satisfactory evidence of completion of the continuing education requirements, the licensee must reapply for licensure.
7. The board may extend the renewal deadline for an applicant having proof of medical or other hardship rendering the applicant unable to meet the renewal deadline.

SECTION 11. A new section to chapter 43-41 of the North Dakota Century Code is created and enacted as follows:

Electronic social work services.

1. The practice of social work in this state through electronic social work services or other means, regardless of the location of the practitioner, constitutes the practice of social work and is subject to this chapter.
2. The practice of social work by a practitioner in this jurisdiction through electronic social work services or other means, regardless of the location of the client, constitutes the practice of social work and is subject to this chapter.
3. A social worker providing electronic social work services shall take all necessary measures to ensure compliance with relevant practice standards as established by the board.

SECTION 12. A new section to chapter 43-41 of the North Dakota Century Code is created and enacted as follows:

Permission to report - Immunity.

An individual who has knowledge of conduct by an applicant or a licensee which may constitute grounds for disciplinary action under this chapter or the rules of the board or of any unlicensed practice under this chapter may report the violation to the board. An individual is immune from civil liability or criminal prosecution for submitting in good faith a report under this chapter or for otherwise reporting, providing information, or testifying about violations or alleged violations of this chapter.

SECTION 13. A new section to chapter 43-41 of the North Dakota Century Code is created and enacted as follows:

Duty to report - Immunity.

A licensed social worker who has substantial evidence a licensee has an active addictive disease for which the licensee is not receiving treatment under a program approved by the board under an agreement entered under this section, is diverting a controlled substance, or is mentally or physically incompetent to carry out the duties of the license, shall report the evidence to the board. An individual who reports under this section in good faith and without malice is immune from any civil or criminal liability arising from the report. Failure to provide a report within a reasonable time may be considered grounds for disciplinary action against the licensee.

SECTION 14. EFFECTIVE DATE. This Act is effective on February 1, 2020.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2361.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 86 Nays 4 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State