

February 25, 2022
 Delegate C.T. Wilson, Chair
 Delegate Brian M. Crosby, Vice Chair
 Economic Matters Committee
 Room 231
 House Office Building
 Annapolis, Maryland 21401

**RE: HB-1164 LABOR AND EMPLOYMENT-WORKERS' COMPENSATION-
 LICENSED CERTIFIED SOCIAL WORKER-CLINICAL (LCSW-C)**

POSITION: SUPPORT

Dear Delegate C.T. Wilson, Chair, Delegate Brian M. Crosby and Members of the Committee:

Disclaimer: The opinions and suggested amendments concerning HB-1164 are my own and do not in any way, shape, form, or matter in any setting represent those of any other person, individual (LLC, S-Corp., etc.) or Governmental agency, for, or not for Profit Corporation, or organization (professional or lay).

I have reviewed the requirements for Workers Compensation Case Managers. I am familiar with the processes of the WCC (G0235). I would like to publically thank the staff of the Members of the Workers Compensation Sub-Committee for being very helpful.

Workers Compensation Case Manager:

Nurses are recognized in the **Labor and Employment Article Sec.9 Workers' Compensation, Subtitle Sec.9-6A-09**.are recognized Medical Case Managers. However, the LCSW-C is recognized as a medical provider in Title 14 Independent Agencies, Subtitle 09 Workers Compensation Commission, Ch. 08,auth. L&E Sec. 9-309, 9-663, and 9-731; 01 Definitions B. Terms Defined, 2(m) authorized provider means "A Licensed Clinical Social Worker) (now means LCSW-C) (the statute was written before the separate designation of the LCSW-C clinical license and authorities granted). It is now requested the LCSW-C be added as Workers Compensation Case Managers, as Case Management is specifically within the Scope of Practice of the Licensed Certified Social Worker-Clinical (HO 19-101 Et. Seq.).

The essential duties of a LCSW-C in various health care settings are comparable to those of a nurse case manager, which includes home visits, arranging for and taking patients to health care appointments, maintaining and organizing medical records, including interactions with insurance companies, and suggesting and making referrals for care. Nurse case managers do not usually provide physical (somatic) care of the patient; physical and mental health treatment is usually provided by other providers who may include both the LCSW-C, nurses, pt's, and Ot's, etc.

As an LCSW-C, it is very important for the benefit of the public that this amendment be enacted. In urban and rural settings we need qualified health care providers to fill these positions. We need LCSW-C's who are qualified, registered with the WCC, and who can relate to the injured worker to help facilitate care.

Testimony Opinion on Permanent Impairment:

It is recommended and I support strongly that Sec. 9-721 (c) be amended as follows:

Section 9-721(c) If a permanent impairment involves a behavior or mental disorder a licensed psychologist **LICENSED CERTIFIED SOCIAL WORKER-CLINICAL (LCSW-C)**, or qualified physician shall: **In support of this amendment I submit the following documentation:**

1. The LCSW-C in statute, HO-19-101 (5) states as follows: **For an individual licensed as a certified social worker–clinical, “practice social work” also includes: Supervision of other social workers; (ii) Evaluation, diagnosis, and treatment of biopsychosocial conditions, mental and emotional conditions and impairments, and behavioral health disorders, including substance use disorders, addictive disorders, and mental disorders, as defined in § 7.5–101 of the Health – General Article.** The HO 19-101, Et.Seq. Further, HO 19-101 Et. Seq. limits, the practice of social work to the special qualifications and knowledge of the licensed social worker.

2. On January 30, 2004, at the request of Del. Sandy Rosenberg, **an Attorney General Advice of Counsel** was issued by Kathryn M. Rowe, AAG **“In conclusion it is my view a licensed clinical social worker may be permitted to testify with respect to ultimate issues such as sanity and competence to stand trial”.** (See attachment).

3. The Court of Appeals of Maryland held that once qualified as an expert witness in social work, a licensed clinical social worker may opine regarding the subject of risk and safety assessment. *In re:Tatianna B.*, 417 Md. 259, 9 A.3d 502 (2010).

4. House Bill-1615 (2018), **Pg. 5, line 17; pg.6 line 3 deleted physician and inserted “by a licensed health care provider” to render an opinion on the ultimate issue of permanent impairment (DHR).**

5. The LCSW-C, if trained, may conduct various assessments including psychological testing; reference: BCBS Federal Employee Benefits Program (2005)

6. There are several other statutes involving impairment which include the LCSW-C as authorized to evaluate impairment including, but not limited to, Certification of Guardianship, Involuntary Commitment to a hospital, etc.

I have been qualified as an Expert Witness in the Maryland District and Circuit Courts, and the Federal District Court for the 4th Circuit on issues concerning mental and emotional disorders, substance use disorders, impairments and conditions. But, because only a psychologist or qualified physician is allowed to testify, but not the LCSW-C, in the Labor and Employment Article Sec.9-721(c), I was not able to be considered to testify as to permanent impairment, even though I was the treating provider. I have been involved as a treating provider in several serious WCC cases. I was referred at least one case by the Commission to resolve a rating discrepancy by personally reevaluating the injured worker. I am also permitted to authorize Temporary Total Disability (TT). I am willing to discuss cases with members of the Committee or staff privately, as there were sensitive issues involved concerning public safety in some cases, and revocation of a psychiatrist’s medical license.

Treatment and evaluation of the injured worker is part of forensic social work as it is for psychologists and physicians. Interestingly, the statute states a "qualified physician" but not for psychologists (just licensed psychologist). Further, like the LCSW-C, psychologists do not have prescriptive privileges, nor are psychologists required to study pharmacology as a component of their degree. Like the LCSW-C they may study these areas of practice (Rehabilitation, Workers Compensation, and Disability) voluntarily or learn on the job. Also, the LCSW-C may take voluntarily, graduate courses to allow them to conduct psychological testing (AG Opinion, Commercial Free Speech 7/7/1981).

In the practice of evaluating (FCE, FCA), treating, diagnosing, and determining if an impairment exists, which is causally related to employment, (does a handicap exist; does it amount to an impairment; if so the severity of impairment, length of expected impairment, degree rating of impairment; does it amount to a disability (disability is a legal determination) the qualified Licensed Certified Social Worker included in providing testimony as to the degree of impairment and the relation to employment.

Whether a physician, psychologist, or Licensed Certified Social Worker-Clinical, this amendment will only apply to those who are experienced in this practice area by both training, ongoing CEU's, and work experience. Like the practice of law, not every lawyer is involved in workers compensation or other disability determination cases, nor are all physicians or psychologists. There is a legal process to allow or deny, or limit a witnesses testimony regardless of profession.

For the benefit of the public, especially involving working class injured individuals, who cannot afford treatment, second opinions, or evaluations from psychiatrists and psychologists (who either usually charge directly or place a medical provider's lien on an award) and who want a therapist they can relate too, and afford, the LCSW-C ,who is also trained and experienced, meets those needs.

Enactment of this amendment will increase training and employment opportunities in the area of Vocational Rehabilitation. If you want to increase diversity, and equity within the Social Work profession, and serve the public good, this legislation will help achieve that goal.

Sincerely,



Arthur Flax, LCSW-C, DCSW

6126 D Greenmeadow Parkway

Baltimore, Maryland 21209-3349; 410-653-6300;

flaxcps@gmail.com

Attachments: AG Advice of Counsel 1/30/2004; *In re: Tatianna B.*, 417 Md. 259, 9 A.3d 502 (2010); HB-1615 (2018); NIH Pub. Med Article; Flax WCC Practitioner G0235; MTA- Mobility; TDAP Family Investment Adm. Medical Report Form 500;