

Notice of Agency Rulemaking Proposal

AGENCY: 02-416, Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Social Worker Licensure

CHAPTER NUMBER AND TITLE:

Chapter 10: Definitions (amend)

TYPE OF RULE (*check one*): Routine Technical Major Substantive

PROPOSED RULE NUMBER (*leave blank; to be assigned by Secretary of State*):

BRIEF SUMMARY:

The principal reason for this proposed rulemaking is to amend the definition of “organic mental illness” in the board’s rules. While 32 M.R.S. § 7001-A(10) and 32 M.R.S. § 7053-A use the term “organic mental illness” in the board’s law, that term is undefined. Pursuant to 32 M.R.S. § 7053-A, no social worker at any level may diagnose organic mental illness.

The board recently revised its rules, including Chapter 10 and the definition of “organic mental illness” to mean “any neurocognitive disorder or neurodevelopmental disorder” as described in the Diagnostic and Statistical Manual of Mental Disorders (Fifth Edition), American Psychiatric Association (Washington, D.C. 2013) (“DSM”). After the rule was adopted, the board received feedback from various stakeholders that the rule as amended broadened the disorders included in the definition of “organic mental illness” in a way that unintentionally restricts the ability of licensed clinical social workers to diagnose certain disorders, such as ADD/ADHD. As such a restriction was not the intent of the board, it is now proposing a language change to define “organic mental illness” to accurately reflect the board’s interpretation of the term as used in 32 M.R.S. §§ 7001-A(10) and 7053-A.

Date, time and location of PUBLIC HEARING (*if any*): N/A. Pursuant to 5 M.R.S. § 8052(1) and § 8053(3)(B), a hearing may be requested by five (5) interested persons by submitting a request in writing to contact person for this filing.

COMMENT DEADLINE: Friday, April 21, 2023, at 5:00 p.m.

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, email*): Kristina M. Halvorsen, 35 State House Station, Augusta, ME 04333, 207-624-8420, TTY: Maine relay 711, Kristina.M.Halvorsen@maine.gov.

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*): N/A

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*): N/A

STATUTORY AUTHORITY FOR THIS RULE: 32 M.R.S. §§ 7001-A, 7030(2), 7053-A.

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (*if different*):

AGENCY WEBSITE: <https://www.maine.gov/pfr/professionallicensing/professions/state-board-social-worker-licensure>


EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: kristin.racine@maine.gov

* Check one of the following two boxes.

The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rulemaking notice posted on the Secretary of State's website. Title 5 §8053, sub-§3, ¶D & sub-§6.

Please approve bottom portion of this form and assign appropriate AdvantageME number.

APPROVED FOR PAYMENT  DATE: 3/13/2023
(authorized signature)

FUND	AGENCY	ORG	APP	OBJ	PROGRAM	FUNDING Profile JVC	FUND Pri JVC	FUND Line JVC
014	02A	4420	01	4946				

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Additional Information for the Web (*if any*)

DETAILED SUMMARY:

Rulemaking Fact Sheet (5 MRSA §8057-A)

AGENCY: 02-416, Department of Professional and Financial Regulation, Board of Social Worker Licensure

NAME, ADDRESS, PHONE NUMBER, EMAIL OF AGENCY CONTACT PERSON: Kristina M. Halvorsen, 35 State House Station, Augusta, ME 04333, 207-624-8420, TTY: Maine relay 711, Kristina.M.Halvorsen@maine.gov.

CHAPTER NUMBER AND RULE TITLE:

Chapter 10: Definitions (amend)

TYPE OF RULE (*check one*): Routine Technical Major Substantive

STATUTORY AUTHORITY: 32 M.R.S. §§ 7001-A(10), 7030(2), 7053-A

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COMMENT DEADLINE: Friday, April 21, 2023, at 5:00 p.m.

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE:

The principal reason for this proposed rulemaking is to amend the definition of “organic mental illness” in the board’s rules. While 32 M.R.S. § 7001-A(10) and 32 M.R.S. § 7053-A use the term “organic mental illness” in the board’s law, that term is undefined. Pursuant to 32 M.R.S. § 7053-A, no social worker at any level may diagnose organic mental illness.

The board recently revised its rules, including Chapter 10 and the definition of “organic mental illness” to mean “any neurocognitive disorder or neurodevelopmental disorder” as described in the Diagnostic and Statistical Manual of Mental Disorders (Fifth Edition), American Psychiatric Association (Washington, D.C. 2013) (“DSM”). After the rule was adopted, the board received feedback from various stakeholders that the rule as amended broadened the disorders included in the definition of “organic mental illness” in a way that unintentionally restricts the ability of licensed clinical social workers to diagnose certain disorders, such as ADD/ADHD. As such a restriction was not the intent of the board, it is now proposing a language change to define “organic mental illness” to accurately reflect the board’s interpretation of the term as used in 32 M.R.S. §§ 7001-A(10) and 7053-A.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___ YES NO

ANALYSIS AND EXPECTED OPERATION OF THE RULE: It is expected the rule change will align the definition of “organic mental illness” with the types of disorders that the board intended to be within the scope of diagnoses a licensed clinical social worker cannot make pursuant to 32 M.R.S. § 7053-A.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) Expertise of board members and staff; input from stakeholders; and publications of the National Institutes of Health (NIH).

ESTIMATED FISCAL IMPACT OF THE RULE: None anticipated.

FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

[see §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED
AND HOW THEY WILL BE AFFECTED: [see §8057-A(2)(B)]

BENEFITS OF THE RULE: [see §8057-A(2)(C)]

Note: If necessary, additional pages may be used.

Chapter 10: DEFINITIONS

Summary: This chapter defines terms used in these rules and supplements those contained in 32 M.R.S. §7001-A.

1. Definitions

As used in the rules of the State Board of Social Worker Licensure, unless the context otherwise indicates, the following terms have the following meanings:

1. **Accredited program.** An “accredited program” is a program accredited by the Council on Social Work Education or similar accrediting organization.
2. **ASWB.** “ASWB” is Association of Social Work Boards.
3. **Bachelor’s degree.** “Bachelor’s degree” is a baccalaureate degree conferred by a college or university located in the United States that has been accredited by an accrediting agency recognized by the United States Department of Education or conferred by an institution located outside the United States and recognized as equivalent to a bachelor’s degree by the International Social Work Degree Recognition and Evaluation Service of the Department of Social Work Accreditation.
4. **Clinical concentration.** “Clinical concentration” is course content in a Master of Social Work (MSW) degree consisting of:
 - A. A minimum of 2 graduate courses in personality theory, 1 of which focused on adult psychopathology, and the other on normal growth and development. (Advanced standing MSW students are not required to separately complete coursework on normal growth and development at the graduate level); and
 - B. One of the following groupings:
 - (1) Four graduate clinical methods courses in practice with individuals, couples, families and groups;
 - (2) Three clinical methods courses and 1 additional course in personality theory.
5. **Clinical social work practice.** “Clinical social work practice” is the practice of social work in a clinical setting. “Clinical social work practice” is the professional application of social work theory and methods to the evaluation, diagnosis, treatment and prevention of psychosocial dysfunction, disability or impairment, including emotional and mental disorders. “Clinical social work practice” is based on knowledge and theory of

psychosocial development, behavior, psychopathology, unconscious motivation, interpersonal relationships, environmental stress, social systems, and cultural diversity with particular attention to person-in-environment. Clinical social work practice shares with all social work practice the goal of enhancement and maintenance of psychosocial functioning of individuals, families and small groups.

6. **Contact hour.** A “contact hour” is 60 minutes of participation in a continuing professional education activity described in Chapter 14.
7. **Doctoral degree.** “Doctoral degree” is a doctoral degree conferred by a college or university located in the United States that has been accredited by an accrediting agency recognized by the United States Department of Education or conferred by an institution located outside the United States and recognized as equivalent to a doctoral degree by the International Social Work Degree Recognition and Evaluation Service of the Department of Social Work Accreditation.
8. **Field sufficiently related to social work or social welfare.** “Field sufficiently related to social work or social welfare” includes, but is not limited to, behavioral science, social and behavioral sciences, childhood development, education, human development, mental health and human services, psychology, educational psychology, rehabilitation services, and sociology.
9. **Major sexual violation.** “Major sexual violation” is the more serious of the 2 levels of sexual misconduct. A major sexual violation consists of any conduct by a social worker with a client or another individual described in these rules that is overtly sexual or may be reasonably interpreted as overtly sexual, even when initiated or consented to by a client, including but not limited to:
 - A. Sexual intercourse or genital to genital contact;
 - B. Oral to genital contact;
 - C. Oral to anal contact or genital to anal contact;
 - D. Kissing in a sexual manner (e.g., kissing on the lips);
 - E. Any touching of a body part for any purpose other than appropriate comfort, or where the client has refused or has withdrawn consent;
 - F. Performing or offering to perform any service, or providing or offering to provide any consideration, of any kind in exchange for sexual favors.
10. **Master’s degree.** “Master’s degree” is a master’s degree conferred by a college or university located in the United States that has been accredited by an accrediting agency recognized by the United States Department of Education or conferred by an institution located outside the United States and recognized as equivalent to a master’s degree by the International Social Work Degree Recognition and Evaluation Service of the Department of Social Work Accreditation.
11. **Minor sexual violation.** “Minor sexual violation” is the less serious of the 2 levels of sexual misconduct. A minor sexual violation consists of words, gestures, expressions or

behaviors by the social worker that are seductive, sexually suggestive, sexualized or sexually demeaning to a client or another individual described in these rules, including but not limited to:

- A. Kissing;
- B. Inappropriate comments about or to a client, including but not limited to sexual comments about a client's body or underclothing;
- C. Criticism of the client's sexual orientation or gender identity;
- D. Comments about the client's sexual performance when not clinically indicated;
- E. Requests for details of sexual likes or dislikes when not clinically indicated;
- F. Use of the social worker-client relationship to solicit a date or initiate a romantic relationship; or
- G. Initiation or participation by the social worker of conversation regarding the sexual problems, preferences or fantasies of the social worker or client when not clinically indicated.

12. **Organic mental illness.** “Organic mental illness” means ~~any neurocognitive disorder or neurodevelopmental disorder as described in the Diagnostic and Statistical Manual of Mental Disorders (Fifth Edition), American Psychiatric Association (Washington, D.C. 2013)~~ any decrease in mental functioning in which the cause is not attributable to psychiatric illness, which includes damage from physical trauma, anoxic injury, damage from chemicals or toxins, infection, cancer, and degenerative diseases, including Alzheimer’s disease, Huntington’s disease, Parkinson’s disease, and Creutzfeldt-Jakob disease.

13. **Organic treatment.** “Organic treatment” is any treatment directly affecting the organs of the body, *e.g.*, medication and any type of direct physical treatment.

14. **Psychopathology.** For purposes of “psychosocial evaluation” as defined in 32 M.R.S. §7001-A(10), “psychopathology” is a severe and protracted change in behavioral, affective, cognitive or biological functioning including but not limited to:

- A. Behavioral
 - (1) Impairment in ability to understand one's behavior and its consequences;
 - (2) Impairment in ability to control one's behavior; or
 - (3) Inability to maintain occupational, educational or other basic social functioning.
- B. Affective
 - (1) Significant depression; or

- (2) Excessive elation or irritability.
 - C. Cognitive
 - (1) Impairments/errors in judgment;
 - (2) Confusion/disorientation;
 - (3) Illogical thinking, thoughts of suicide or assaultiveness; or
 - (4) Hallucinations, delusions.
 - D. Biological
 - (1) Eating disturbance;
 - (2) Sleeping disturbance;
 - (3) Unexplained pain;
 - (4) Bowel disturbance; or
 - (5) Substance use disorder.
15. **Sexual misconduct.** “Sexual misconduct” by a social worker is nondiagnostic, nontherapeutic behavior that exploits the social worker-client relationship in a sexual way. Sexual misconduct includes both major sexual violations and minor sexual violations and includes violations that occur during in-person interaction or through electronic communication, including but not limited to communication via email, text messaging, and social media.
16. **Social service delivery field.** “Social service delivery field” means a field in which services are provided to advance human welfare, especially with regard to disadvantaged or vulnerable persons or groups.
17. **Social work employment.** “Social work employment” means work in the social service delivery field that is compensated financially.
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STATUTORY AUTHORITY:

32 M.R.S. §§ 7030 (2); 7001-A

EFFECTIVE DATE:

October 23, 2004 - filing 2004-461

REPEALED AND REPLACED:

October 11, 2022 – filing 2022-196