Rule: 781.403. Independent Practice Recognition (Non-Clinical)

Action: Proposed Repeal

Comment: The proposed repeal removes the current rule in conjunction with proposed new rules that restructure and consolidate existing rule language.

~~§781.403. Independent Practice Recognition (Non-Clinical)~~

~~(a) An LBSW or LMSW who seeks to obtain the specialty recognition of independent non-clinical practice shall meet requirements and parameters set by the Council in §781.401 of this title (relating to Qualifications for Licensure).~~

~~(b) An individual supervising an LBSW for independent non-clinical practice recognition shall be an LBSW recognized for independent non-clinical practice; an LMSW recognized for independent non-clinical practice; an LMSW-AP; or an LCSW. The supervisor shall be Council-approved.~~

~~(c) An individual supervising an LMSW for the independent non-clinical practice recognition shall be Council-approved and shall be an LMSW recognized for independent non-clinical practice, an LMSW-AP, or an LCSW.~~

~~(d) A person who has obtained only the temporary license may not begin supervision until the Council issues a regular license.~~

~~(e) The Council may use the Internal Revenue Service (IRS) guidelines developed in 1996 to demonstrate whether a professional is an independent contractor or an employee. These guidelines revolve around the control an employer has in an employer-employee relationship, in which the employer has the right to control the "means and details" by which services are performed.~~

~~(1) Behavioral control. The employer can control the employee's behavior by giving instructions about how the work gets done rather than simply looking at the end products of work. The more detailed the instructions, the more control the employer exercises. An employer requiring that employees be trained for the job is also an example of behavioral control, though contractors may also go through training.~~

~~(2) Financial control. The employer determines the amount and regularity of payments to employees. A contractor is typically paid when he/she completes the work, and the contractor usually sets a timeframe for completing the work. The most important element of financial control is that a contractor has more freedom to make business decisions that affect the profitability of his/her work. A contractor, for instance, may invest in renting an office or buying equipment, while the employee does not. While employees are usually reimbursed for job-related expenses, the contractor may or may not be reimbursed, but lack of reimbursement usually signals that a worker is independent. An independent contractor often makes his or her services available to other potential clients, while an employee does not.~~

~~(3) Relationship of the parties. The intent of the relationship is significant. The relationship is usually outlined in the written contract and gives one party more control than the other. If a company gives a worker employee benefits, the worker is an employee. The ability to terminate the relationship is another evidence of control in the relationship. If the employer-employee relationship appears to be permanent, it denotes an employee, not contractor, relationship. If a worker performs activities that are a key aspect of the company's regular business, that denotes an employee status.~~

~~(f) An LBSW or LMSW who plans to apply for the specialty recognition of non-clinical independent practice shall follow procedures set out in §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition).~~

~~(g) An LBSW or LMSW may practice independently when the LMSW or LBSW holds the independent practice specialty recognition, or when under a supervision plan for independent practice but the Council-approved supervisor is still responsible for the acts or omissions of the supervisee while providing services under the supervision plan.~~