

BEFORE THE BOARD OF BEHAVIORAL HEALTH
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT AND
ARM 24.219.301 definitions,)	REPEAL
24.219.501, 24.219.505, 24.219.512,)	
24.219.601, 24.219.605, 24.219.612,)	
24.219.712, 24.219.5006,)	
24.219.5007, and 24.219.5013 license)	
requirements for licensed clinical)	
social workers (LCSW), licensed)	
master's social workers (LMSW),)	
licensed baccalaureate social workers)	
(LBSW), licensed clinical professional)	
counselors (LCPC), licensed marriage)	
and family therapists (LMFT), and)	
licensed addiction counselors (LAC),)	
24.219.5020 examination – LAC, and)	
the repeal of 24.219.606 professional)	
counselor licensure candidate)	
requirements and 24.219.2101)	
continuing education requirements)	

TO: All Concerned Persons

1. On September 24, 2021, the Board of Behavioral Health published MAR Notice No. 24-219-36 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 1176 of the 2021 Montana Administrative Register, Issue No. 18.

2. On October 20, 2021, a public hearing was held on the proposed amendment and repeal of the above-stated rules via the videoconference and telephonic platform. Comments were received by the October 22, 2021, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: One commenter generally supported the proposed rule changes.

RESPONSE 1: The board appreciates all comments received during the rulemaking process.

COMMENT 2: Multiple commenters were concerned the requirement that applicants with bachelor's degrees in social work become licensed as licensed bachelor's social workers is restricting job opportunities, as is the title protection of "LBSW," "licensed baccalaureate social worker," "LSW," and "licensed social worker."

RESPONSE 2: The board notes title protection was enacted under Senate Bill 102 (2021) and took effect on July 1, 2021, and no rulemaking is required for implementation. The board lacks the authority to alter title protection set by the legislature. As amended, 37-22-305(1)(b), MCA prohibits anyone without a proper license from representing themselves as a social worker, licensed social worker, licensed clinical social worker, licensed baccalaureate social worker, or licensed master's social worker, by using LSW, LCSW, LBSW, or LMSW after the person's name or by any other means. There are exemptions to licensure as an LBSW or LMSW under 37-22-301, MCA, and individuals qualifying for those exemptions are not required to become licensed as an LBSW or LMSW. As the board does not regulate agencies or the employer/employee relationship, any requirements that private employers have regarding licensure are outside the board's jurisdiction.

COMMENT 3: Multiple commenters stated the board's LBSW license requirements and process are confusing. Commenters asserted they were told that a grandfather clause would allow them to become licensed as LBSWs without passing an exam or obtaining 2000 hours qualifying supervised experience if they applied before May 1, 2021. The commenters stated that despite years of experience in the field, they will have to spend a lot of time obtaining the requisite hours under a candidate license. Commenters also stated that many employers hiring bachelor's and non-clinical master's degree holders were and are not structured to provide supervision by an LCSW and that there were no LBSW or LMSW in Montana prior to this legislation.

RESPONSE 3: The board is unable to create a grandfather clause via rulemaking as they must originate in statute as passed by the legislature. The current statute does not have grandfather clauses or exemptions from the supervised work experience requirements. Individuals who applied for LMSW or LBSW with qualifying supervised work experience prior to May 1, 2021, were allowed an exam exemption, but that was the only exemption. There never was any statutory exemption that allowed applicants to qualify for licensure without obtaining supervised work experience.

The board does have rulemaking authority to set supervised work experience hours required for licensure as an LBSW or LMSW and did put this into rule in 2020 to implement the 2019 legislation that created the licenses. Amendments to all these requirements are outside the scope of this proposed rulemaking, but the board may consider these suggestions in a future rulemaking. See also RESPONSE 2 regarding employer/employee relationships.

COMMENT 4: Multiple commenters asked the board to consider implementing a grandfather clause to allow those with bachelor's degrees to become licensed without obtaining additional experience and/or passing a licensing exam.

RESPONSE 4: See RESPONSE 3.

COMMENT 5: One commenter asked why supervised experience hours obtained during a bachelor's degree program do not count toward the 2000 hours of supervised work experience.

RESPONSE 5: Supervised work experience requirements for LBSW are outside the scope of this rulemaking. Further, the board notes that 37-22-307, MCA, requires that supervised work experience is earned under a candidate license which by its definition, is post-degree. The board lacks the authority to alter this requirement as it is established in statute.

COMMENT 6: Multiple commenters supported the amendments to ARM 24.219.501 and 24.219.512 allowing degree programs in CSWE candidacy accreditation status to meet degree requirements in addition to fully accredited CSWE programs.

RESPONSE 6: The board appreciates all comments received during the rulemaking process.

COMMENT 7: Multiple commenters supported the changes to allow marriage and family therapists (LMFTs) currently licensed in other jurisdictions to use equitable work experience to count toward education requirements. The commenters requested the board amend ARM 24.219.712 to only require two years of post-degree experience instead of five, stating it would be more in line with the profession's evolution in terms of license portability.

RESPONSE 7: When proposing these rules, the board determined based on the available data from other jurisdictions, that five years of experience for a minimum of a 48-semester-credit degree for individuals currently licensed as LMFTs in another jurisdiction was equitable experience for the current minimum requirement of a 60-semester-credit qualifying degree for those not licensed in another jurisdiction. The board will continue to track licensing requirements and trends and may consider reducing the years of equitable experience for LMFTs in a future rulemaking.

COMMENT 8: Multiple commenters requested the board amend ARM 24.219.712(1)(a) to match the credit requirements in ARM 24.219.701(2)(c) by changing the minimum credits of 48 semester or 72 quarter credits to 60 semester hours or 90 quarter hours.

RESPONSE 8: The board proposed the amendments to ARM 24.219.712 specifically to enact House Bill 177 (2021) which allows individuals who are licensed in other jurisdictions to qualify for Montana licensure with degrees having fewer credit requirements or when the degree requirements of the current licensure state are not substantially equivalent to Montana's. This increases license mobility while still ensuring adequate public protection. Increasing the minimum credits to 60 semester or 90 quarter hours would negate setting experience to count toward education and require all individuals licensed in another jurisdiction to have a 60-semester-credit degree which is the same requirement that existed prior to House

Bill 177 taking effect and the same requirement that exists for individuals not currently licensed in another jurisdiction in ARM 24.219.701.

4. The board has amended ARM 24.219.301, 24.219.501, 24.219.505, 24.219.512, 24.219.601, 24.219.605, 24.219.612, 24.219.712, 24.219.5006, 24.219.5007, 24.219.5013, and 24.219.5020 as proposed.

5. The board has repealed ARM 24.219.606 and 24.219.2101 as proposed.

BOARD OF BEHAVIORAL HEALTH
ELAINE MARONICK, LCPC, LMFT
CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 30, 2021.