Minnesota Board of Behavioral Health and Therapy

Date: January 27, 2014

To: Representative Tina Liebling
Chair, House Health and Human Services Policy Committee

From: Kari Rechtzigel
Executive Director of the Minnesota Board of Behavioral Health and Therapy

Phone: 651.201.2759

Re: A bill for an act relating to health; changing licensing provisions for licensed professional clinical counselors; amending Minnesota Statutes 2012, section 148B.5301, subdivisions 2, 4
[Already jacketed]

Reports Required by Minnesota Statutes sections 214.001 and 214.002

The Minnesota Board of Behavioral Health and Therapy (BBHT) is seeking the passage of legislation establishing a permanent method to Licensed Professional Clinical Counselor (LPCC) licensure for persons who already hold the Licensed Professional Counselor (LPC) license. The LPC conversion method to LPCC licensure in Minnesota already exists in Minnesota Statutes section 148B.5301, subdivision 3 but expires on August 1, 2014.

The proposed legislation neither creates nor expands regulation of professional clinical counseling in the State of Minnesota nor does it expand the scope of practice for LPCCs in the State of Minnesota. The regulation of and scope of practice for LPCCs was created in 2007.

The analysis required by chapter 214.001 and 214.002 has already been done in 2003 when professional counseling licensure was created and again in 2007 when the LPCC license was created. The requirements for LPCC licensure were taken directly from the findings of a January 2007 report to the Legislature: "Baseline of Competency: Common Licensing Standards for Mental Health Professionals."

To the extent possible, responses that are applicable to the current legislative initiative are included below in response to the questionnaire items.

The following is a short synopsis of the legislative proposal followed by responses to the required questionnaire items.

Purpose of Proposed Legislation

- Clarifies that all licensure supervisors must meet the approved supervisor requirements in both statute and rule by adding a specific reference to Minnesota Rules part 2150.5010. Creates a permanent method to LPCC licensure after August 1, 2014, for persons who hold the LPC license and elect to convert it to the LPCC license.

Summary of Changes

- Adds a provision to Minnesota Statutes section 148B.5301, subdivision 2(b) requiring all LPCC licensure supervisors to meet the requirements in Minnesota Rules part 2150.5010.
- Creates a permanent method to LPCC licensure for persons who hold the LPC license and elect to convert it to the LPCC license.
- Adds a requirement that LPCC conversion applicants pass the National Clinical Mental Health Counseling Exam (NCMHCE).
- Adds a requirement that LPCC conversion applicants document direct client contact hours as part of the 4000 hours of supervised clinical practice required for licensure.

• History: The conversion method that expires on August 1, 2014, allows experienced counselors who meet the education and supervision requirements to obtain LPCC licensure without having to take a second national examination. In 2006 the Board participated in a task force ordered by the Legislature to make recommendations on common licensing standards for mental health professionals. The task force report was issued on January 15, 2007, and the LPCC license was created that same year and is based on recommendations in that report. The first LPCC licenses were issued in March 2008. Unfortunately, legislation to make LPCCs mental health professionals failed in 2007 and 2008 preventing them from being Medical Assistance program providers. On May 15, 2009, Governor Pawlenty signed into law a bill making LPCCs mental health professionals. Effective January 1, 2010, the Minnesota Department of Human Services received federal approval for the Medicaid State Plan Amendment making LPCCs eligible for reimbursement for services provided to Medical Assistance and MinnesotaCare clients.

The conversion method has been in place since 2007. The Board's rationale for proposing changes in 2014 is that more than five years have passed, and this is a significant amount of time to allow for a transitional or "grand parenting" provision to achieve licensure. The main benefits of the conversion method currently in place are that it allows experienced counselors to obtain LPCC licensure without having to take a second national examination, and it does not require applicants to document direct client contact hours as part of the 4000 hours of supervised clinical practice that are required for licensure. The Board now seeks to require that applicants pass the National Clinical Mental Health Counseling Exam (NCMHCE), which is the national standard for all states that offer a clinical counselor level license, and document direct client contact hours.

Non-controversial Proposal

• This proposal was drafted by the Board's Legislative Committee, Board staff, and the Board's legal counsel.

Cost

• The proposal will not require additional appropriations

Proposed Effective Date: August 1, 2014

Legislative Questionnaire for New or Expanded Regulation of Health Occupations (Licensing)

House Health and Human Services Policy Committee
Chair: Rep. Tina Liebling

"**[N]o regulation shall be imposed upon any occupation unless required for the safety and well being of the citizens**." Minn. Stat. 214.001, Subd. 2

In the 2014 session, no bill for "new or expanded regulation of an occupation" will be heard by the HHS policy committee unless the proponent first submits a written report as required by Minn. Stat. 214.002 subd. 1.

The report must succinctly address the questions set forth in Minn. Stat. 214.002 subd. 2 and subd. 3 (attached) and the following:

1. What other professions are likely to be impacted by the proposed regulatory changes? **RESPONSE:** None.

2. What position, if any, have professional associations of the impacted professions taken with respect to your proposal? **RESPONSE:** The Minnesota Counseling Association (MnCA) supports the Board's proposed legislation.

3. Please describe what efforts you have undertaken to minimize or resolve any conflict or disagreement described above. **RESPONSE:** The BBHT has corresponded with persons in leadership positions with the MnCA. The MnCA has responded that they are in favor of creating a permanent conversion method to LPCC licensure.

The Chair will use the report to help evaluate whether the bill is ready for consideration by the committee. To facilitate this consideration, the report should be filed by January 31st, 2014. If the bill is given a hearing, the report will be transmitted to all committee members to aid them in deciding whether the proposed legislation satisfies the criteria for regulation. The report will also be made available to the public and any opponents of the proposal will be given an opportunity to respond to or rebut items in the report. Any response will be used to help narrow the issues for hearing.

Legislative Questionnaire for Expanded Scope of Practice of Health Occupations

House Health and Human Services Policy Committee
Chair: Rep. Tina Liebling

In the 2014 session, no bill to expand the scope of an occupation's practice will be heard by the committee unless the proponent first submits a written report succinctly addressing the following:

1. How is this profession's scope of practice in the area of proposed change currently defined and what failings or shortcomings are being addressed by the proposed changes to the profession's scope? **RESPONSE:** The scope of practice for LPCCs is that of a "mental health professional" as defined in the Adult and Children's Mental Health Acts in Minnesota Statutes chapter 245. The proposed legislation does not change the scope of practice.

2. Does specialized skill or training support the expansion of this occupation into the proposed areas of practice? If so, what skills or training? **RESPONSE:** Not applicable. The proposed legislation does not expand the occupation or practice scope of LPCCs.

3. How would the public benefit by the occupation's ability to practice in the new proposed areas of practice? Is there any potential detriment to the public? Who would monitor practitioners to insure high quality service? **RESPONSE:** Not applicable. The LPCC license was created in 2007, and the public protection issue was addressed at that time. The BBHT regulates the practice of licensed professional clinical counseling in Minnesota.

4. Could Minnesotans effectively receive the impacted services by a means other than the proposed changes to scope of practice? **RESPONSE:** Not applicable. No change in scope of practice is being sought.

5. How would the new or expanded services be compensated? What other costs and what savings would accrue and to whom? (E.g., the state, providers, patients) **RESPONSE:** Not applicable.

6. What, if any, economic impact is foreseeable as a result of the proposed change? **RESPONSE:** There will be minimal expenses for the BBHT to change application forms. No other economic impact is anticipated. LPCCs will continue to be licensed and collect fees for services by reimbursement methods already in place.

7. What other professions are likely to be impacted by the proposed changes? **RESPONSE:** None.

8. What position, if any, have professional associations of the impacted professions taken with respect to your proposal? **RESPONSE:** the Minnesota Counseling Association supports to proposed legislation.

9. Please describe what efforts you have undertaken to minimize or resolve any conflict or disagreement described above. **RESPONSE:** see responses above. The BBHT has received the support of the professional association for licensed professional counselors and licensed professional clinical counselors in Minnesota.

The Chair will use the report to help evaluate whether the bill is ready for consideration by the committee. To facilitate this consideration, the report should be filed by January 31st, 2014. If the bill is given a hearing, the report will be transmitted to all committee members. The report will also be made available to the public and any opponents of the proposal will be given an opportunity to respond to or rebut items in the report. Any response will be used to help narrow the issues for hearing.

214.001 POLICY AND REGULATION.

Subdivision 1. Policy. The legislature finds that the interests of the people of the state are served by the regulation of certain occupations. The legislature further finds: (1) that it is desirable for boards composed primarily of members of the occupations so regulated to be charged with formulating the policies and standards governing the occupation; (2) that economical and efficient administration of the regulation activities can be achieved through the provision of administrative services by departments of state government; and (3) that procedural fairness in the disciplining of persons regulated by the boards requires a separation of the investigative and prosecutorial functions from the board's judicial responsibility.

Subd. 2.Criteria for regulation. The legislature declares that no regulation shall be imposed upon any occupation unless required for the safety and well being of the citizens of the state. In evaluating whether an occupation shall be regulated, the following factors shall be considered:

(1) whether the unregulated practice of an occupation may harm or endanger the health, safety and welfare of citizens of the state and whether the potential for harm is recognizable and not remote;

(2) whether the practice of an occupation requires specialized skill or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability;

(3) whether the citizens of this state are or may be effectively protected by other means; and

(4) whether the overall cost effectiveness and economic impact would be positive for citizens of the state.

Subd. 3. Regulation of new occupations. If the legislature finds after evaluation of the factors identified in subdivision 2 that it is necessary to regulate an occupation not heretofore credentialed or regulated, then regulation should be implemented consistent with the policy of this section, in modes in the following order:

(1) creation or extension of common law or statutory causes of civil action, and the creation or extension of criminal prohibitions;

(2) imposition of inspection requirements and the ability to enforce violations by injunctive relief in the courts;

(3) implementation of a system of registration whereby practitioners who will be the only persons permitted to use a designated title are listed on an official roster after having met predetermined qualifications; or

(4) implementation of a system of licensing whereby a practitioner must receive recognition by the state of having met predetermined qualifications, and persons not so licensed are prohibited from practicing.
Two or more of these modes may be simultaneously implemented if necessary and appropriate.

Subd. 4. Information from Council of Health Boards. The chair of a standing committee in either house of the legislature may request information from the Council of Health Boards on proposals relating to the regulation of health occupations.

214.002 EVIDENCE IN SUPPORT OF REGULATION.
Subdivision 1. Written report. Within 15 days of the introduction of a bill proposing new or expanded regulation of an occupation, the proponents of the new or expanded regulation shall submit a written report to the chair of the standing committee in each house of the legislature to which the bill was referred and to the Council of Health Boards setting out the information required by this section. If a committee chair requests that the report be submitted earlier, but no fewer than five days from introduction of the bill, the proponents shall comply with the request.

Subd. 2. Contents of report. A report in support of the regulation of a health-related or non-health-related occupation must address the following issues as specifically as possible:
(1) the harm to the public that is or could be posed by the unregulated practice of the occupation or by continued practice at its current degree of regulation;
(2) any reason why existing civil or criminal laws or procedures are inadequate to prevent or remedy any harm to the public;
(3) why the proposed level of regulation is being proposed and why, if there is a lesser degree of regulation, it was not selected;
(4) any associations, organizations, or other groups representing the occupation seeking regulation and the approximate number of members in each in Minnesota;
(5) the functions typically performed by members of this occupational group and whether they are identical or similar to those performed by another occupational group or groups;
(6) whether any specialized training, education, or experience is required to engage in the occupation and, if so, how current practitioners have acquired that training, education, or experience;
(7) whether the proposed regulation would change the way practitioners of the occupation acquire any necessary specialized training, education, or experience and, if so, why;
(8) whether any current practitioners of the occupation in Minnesota lack whatever specialized training, education, or experience might be required to engage in the occupation and, if so, how the proposed regulation would address that lack;
(9) whether new entrants into the occupation would be required to provide evidence of any necessary training, education, or experience, or to pass an examination, or both;
(10) whether current practitioners would be required to provide evidence of any necessary training, education, or experience, or to pass an examination, and, if not, why not; and
(11) the expected impact of the proposed regulation on the supply of practitioners of the occupation and on the cost of services or goods provided by the occupation.

Subd. 3. Additional contents; health-related occupations. In addition to the contents listed in subdivision 2, a report submitted by supporters of regulation of a health-related occupation must address the following issues as specifically as possible:
(1) typical work settings and conditions for practitioners of the occupation; and
(2) whether practitioners of the occupation work without supervision or are supervised and monitored by a regulated institution or by regulated health professionals.