

## Notice of Agency Rule-making Proposal

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

CHAPTER NUMBER AND TITLE:

Chapter 13: Licensure

Chapter 17: Record Retention Requirements

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

CONTACT PERSON FOR THIS FILING: Torrey Gray, Board Administrator, 35 State House Station, Augusta, ME 04333, tel. (207) 624-8420

CONTACT PERSON FOR SMALL BUSINESS INFORMATION (if different): Same as above.

PUBLIC HEARING (if any): October 9, 2015 at 9 a.m., Department of Professional and Financial Regulation, 76 Northern Avenue, Gardiner, Maine

COMMENT DEADLINE: October 19, 2015 at 5 p.m.

BRIEF \*SUMMARY: The Board of Social Worker Licensure proposes new Chapter 17 on record retention requirements for licensees of the Board. The rule sets forth specific requirements for licensees in private practice, including record retention periods, record destruction methods, and a continuing obligation to abide by the requirements after licensure ends. Licensees employed by or affiliated with agencies or other institutions must abide by the record retention policies of those particular agencies and institutions. The Board also proposes an amendment to Chapter 13 in order to update its rules on inactive status licensure. A more detailed description and the text of the proposed rules may be obtained from [www.maine.gov/professionallicensing](http://www.maine.gov/professionallicensing).

IMPACT ON MUNICIPALITIES OR COUNTIES (if any): None.

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STATUTORY AUTHORITY FOR THIS RULE: 32 MRS §§ 7030(2), 7060

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

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: [holly.doherty@maine.gov](mailto:holly.doherty@maine.gov)

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\* Check one of the following two boxes.

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

The above summary is for the newspaper notice only. A more detailed summary / basis statement is attached.

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

APPROVED FOR PAYMENT \_\_\_\_\_ DATE: \_\_\_\_\_  
(*authorized signature*)

FUND	AGENCY	ORG	APP	JOB	OBJT	AMOUNT
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**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**416 BOARD OF SOCIAL WORKER LICENSURE**

**Chapter 13: LICENSURE**

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**Summary:** This chapter contains the requirements for initial issuance and renewal of the social worker licenses issued by the board, including licensure by reciprocity, and also provides for inactive licenses.

[Note: These requirements supplement the statutory requirements for licensure contained in 32 M.R.S.A. §§7053(3) and 7060.]

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**1. Licensed Social Worker Conditional**

**1. Initial Issuance**

- A. Documented proof of a bachelor degree in a field that is sufficiently related to social work or social welfare;
- B. Three letters of professional recommendation written within 1 year of receipt by the board, two of which are to be provided by licensed social workers, licensed master social workers, licensed clinical social workers, certified social workers - independent practice, or similarly-credentialed social workers from any state or country;
- C. Evidence of employment in a social service delivery field; and
- D. Arrangement of consultation-
  - (1) For persons other than employees of the Department of Human Services, evidence of an arrangement of consultation to be provided by a licensed social worker with a bachelor degree in social work or social welfare with at least 2 years experience as a licensed social worker, a licensed master social worker, a licensed clinical social worker, or a certified social worker - independent practice, for the consultation required by section 2(1)(B) of this chapter.
  - (2) For employees of the Department of Human Services, evidence of an arrangement of consultation with a licensed social worker who has been licensed for at least 4 years or a licensed master social worker.

**2. Renewal**

- A. Completion of 25 continuing professional education contact hours as required by Chapter 14 of the board's rules.

- B. A conditional license may be renewed one time only so as to allow the licensee the opportunity to obtain the consultation and employment required by section 2(1)(B)(2) of this chapter for licensure as a licensed social worker.

[Note: Renewal of conditional social worker licenses originally issued prior to September 13, 2003 occurring on or after April 7, 2004 is governed by P&SL 2003, c. 41, An Act to Provide for a Limited Transition Provision for Renewal of Certain Social Worker Licenses.]

## 2. Licensed Social Worker

### 1. Initial Issuance

A candidate for licensure must satisfy the requirements of paragraph A or B below and paragraphs C-E below.

A. Graduate of accredited program-

- (1) Documented proof of a bachelor degree in social work or social welfare from an accredited program;

OR

B. Conditional licensee-

- (1) A conditional license (licensed social worker conditional) issued by the board pursuant to section 1 of this chapter;
- (2) Completion of consultation by conditional licensees-
- (a) For persons other than employees of the Department of Human Services, evidence of successful completion of 96 hours of consultation provided by a licensed social worker with a bachelor degree in social work or social welfare who has completed the LSW consultation required by section 2(3) of this chapter, a licensed master social worker, a licensed clinical social worker, or a certified social worker - independent practice. This consultation-
- (i) Must be completed concurrently with 3,200 hours of social work employment occurring within a period of not less than 2 years nor more than 4 years; and
- (ii) Must include at least 72 hours of face-to-face consultation either individually or in a group of not more than 8 members. The remaining 24 hours may be completed by videoconference but not by telephone or any other audio-only technology.

As used in this subparagraph, "social work employment" consists of at least 90% paid employment. The remaining 10% may

consist of paid employment or volunteer work. Each social work employment experience, whether paid employment or volunteer work, must be accompanied by a proportionate amount of the 96 hours of consultation required for licensure.

- (b) For employees of the Department of Human Services whose conditional license was originally issued on or after January 1, 2004, evidence of successful completion of 96 hours of consultation with a licensed social worker who has been licensed for at least 4 years, or a licensed master social worker, concurrently with the first 3200 hours of social work employment occurring within a period of not less than 2 years nor more than 4 years. For employees of the Department of Human Services whose conditional license was originally issued prior to January 1, 2004, evidence of successful completion of consultation in a manner prescribed by that department.
- C. Three letters of professional recommendation written within 1 year of receipt by the board, two of which are to be provided by licensed social workers, licensed master social workers, licensed clinical social workers, certified social workers - independent practice, or similarly-credentialed social workers from any state or country. If the applicant is conditionally licensed as a social worker, 1 recommendation, except in extenuating circumstances, must be from the consultant to the applicant's conditional license;
  - D. Proof of a passing score on the ASWB Basic examination.
  - E. If the licensee previously held the licensed social worker conditional license, completion of 25 continuing professional education contact hours as required by Chapter 14 of the board's rules.

## **2. Renewal**

Completion of 25 continuing professional education contact hours as required by Chapter 14 of the board's rules.

## **3. Arrangement and Completion of LSW Consultation**

- A. Upon the commencement of employment as a licensed social worker, the licensee shall provide the board with evidence of an arrangement of consultation as follows:
  - (1) For persons other than employees of the Department of Human Services or health care facilities licensed by the Department of Human Services, the consultant must be a licensed master social worker, a licensed clinical social worker, or a certified social worker - independent practice.
  - (2) For employees of the Department of Human Services, the consultant must be a licensed social worker who has been licensed for at least 4 years; a licensed master social worker; or a licensed social worker who has been licensed for at least 2 years, has been designated by that

department as a supervisor trainee, and is concurrently receiving 48 hours of consultation with a licensed master social worker.

B. The licensed social worker must successfully complete the consultation as follows:

- (1) Persons other than employees of the Department of Human Services must provide documentation of 96 hours of consultation during the first 3200 hours of social work employment in a period of not less than 2 years nor more than 4 years. Consultation must include at least 72 hours of face-to-face consultation either individually or in a group of not more than 8 members. The remaining 24 hours may be completed by videoconference but not by telephone or any other audio-only technology.

As used in this subparagraph, "social work employment" consists of at least 90% paid employment. The remaining 10% may consist of paid employment or volunteer work. Each social work employment experience, whether paid employment or volunteer work, must be accompanied by a proportionate amount of the 96 hours of consultation required for licensure.

- (2) Employees of the Department of Human Services must provide documentation of 96 hours of consultation during the first 3200 hours of social work employment in a period of not less than 2 years nor more than 4 years. The consultant must be a licensed social worker who has been licensed for at least 4 years; a licensed master social worker; or a licensed social worker who has been licensed for at least 2 years, has been designated by that department as a supervisor trainee, and who is concurrently receiving 48 hours of consultation with a licensed master social worker.

A licensed social worker who has provided the board with evidence of an arrangement of consultation shall report the number of hours worked and number of consultation hours received at each license renewal until the consultation is completed. If the licensee fails to complete 3200 hours of social work employment and 96 hours of consultation in a period of 4 years, the license is subject to revocation and will not be further renewed.

[NOTE: Renewal of licensed social worker licenses originally issued prior to September 13, 2003 occurring on or after April 7, 2004 is governed by P&SL 2003, c. 41, An Act to Provide for a Limited Transition Provision for Renewal of Certain Social Worker Licenses.]

### **3. Licensed Master Social Worker**

#### **1. Initial Issuance**

- A. Documented proof of a master or doctoral degree in social work or social welfare from an accredited program or, until June 30, 2005, from a program in candidacy for accreditation;
- B. Three letters of professional recommendation written within 1 year of receipt by the board, 2 of which are to be provided by licensed master social workers, licensed clinical social workers, certified social workers - independent practice, or similarly-credentialed social workers from any state or country; and
- C. Proof of a passing score on the ASWB Intermediate examination.
- D. If the licensee previously held the licensed social worker license, completion of 25 continuing professional education contact hours as required by Chapter 14 of the board's rules.

#### **2. Renewal**

Completion of 25 continuing professional education contact hours as required by Chapter 14 of the board's rules.

### **4. Licensed Master Social Worker Conditional (Clinical)**

#### **1. Initial Issuance**

- A. Documented proof of a master or doctoral degree in social work or social welfare from an accredited program or, until June 30, 2005, from a program in candidacy for accreditation;
- B. Three letters of professional recommendation written within 1 year of receipt by the board, 2 of which are to be provided by licensed master social workers, licensed clinical social workers, certified social workers - independent practice, or similarly-credentialed social workers from any state or country;
- C. Proof of a passing score on the ASWB Intermediate examination; and
- D. Documentation of intent to provide the clinical internship described in section 5(1)(D) of this chapter, signed by the licensed clinical social worker, certified social worker - independent practice, or similarly-credentialed social worker from any state or country engaged as the consultant.
- E. If the licensee previously held the licensed social worker or licensed master social worker license, completion of 25 continuing professional education contact hours as required by Chapter 14 of the board's rules.

## 2. Renewal

- A. Completion of 25 continuing professional education contact hours as required by Chapter 14 of the board's rules.
- B. Evidence of successful completion of 4 consultation hours as described in section 5(1)(D) of this chapter for each month of actual clinical practice or part thereof engaged in by the licensee during the preceding license term, signed by the licensed clinical social worker or certified social worker - independent practice who served as consultant.
- C. The holder of a LMSW conditional (clinical) may renew that license indefinitely without applying for the LCSW so long as the contact hour and consultation requirements of this subsection are met each renewal cycle.

## 5. Licensed Clinical Social Worker

### 1. Initial Issuance

- A. Documented proof of a doctoral or master degree in social work or social welfare from an accredited program;
- B. A valid LMSW Conditional (Clinical) license issued by the board;
- C. Proof of a passing score on the ASWB Clinical examination;
- D. Evidence of successful completion of a clinical internship while licensed as a licensed master social worker conditional (clinical) through consultation with a licensed clinical social worker or certified social worker - independent practice. The clinical internship consists of-
  - (1) Clinical social work practice which encompasses interventions directed to interpersonal interactions, intrapsychic dynamics and life-support and management issues, including but not limited to individual, couples, family and group psychotherapy;
  - (2) For applicants whose MSWs are in clinical concentrations, 96 hours of consultation concurrent with 3,200 hours of social work employment occurring within a period of not less than 2 years. At least 72 consultation hours must be individual, face-to-face consultation. The remaining 24 consultation hours may be completed in group or by videoconference but not by telephone or any other audio-only technology;
  - (3) For applicants whose MSWs are in nonclinical concentrations, 192 hours of consultation concurrent with 6,400 hours of social work employment occurring within a period of not less than 4 years. At least 144 consultation hours must be individual, face-to-face consultation. The remaining 48 consultation hours may be completed in group or by

videoconference but not by telephone or any other audio-only technology;

- (4) As part of the foregoing consultation, regular, systematic discussion and evaluation of cases, focusing on raw data, goals and objectives of specific social work practice; and
- (5) Documentation of the clinical supervision provided.

No less than 50% of the hours of consultation and social work employment described in this paragraph must have been completed within the 4 years immediately preceding application for licensure as a licensed clinical social worker.

Credit for consultation experience will only be given to practice in clinical settings such as organized public or private agencies, schools, institutions or other organizations which provide opportunities for contact with other professional disciplines and work experience with broad ranges of clients. Credit will not be given for practice with formal or informal affiliations of licensees or self-employed licensees.

For purposes of this level of licensure, "social work employment" consists of at least 90% paid employment. The remaining 10% may consist of paid employment, volunteer work or work as an independent contractor. Each social work employment experience, whether paid employment, volunteer work, or work as an independent contractor, must be accompanied by a proportionate amount of the 96 or 192 hours of consultation required for licensure.

- E. Three letters of professional recommendation written within 1 year of receipt by the board. Except in extenuating circumstances, 1 recommendation must be provided by the applicant's consultant. The second recommendation must be provided by a licensed master social worker, licensed clinical social worker, certified social worker - independent practice, or similarly-credentialed social worker from any state or country. The third recommendation must be provided by a licensed master social worker, licensed clinical social worker, or certified social worker - independent practice; by a board-certified psychiatrist, licensed clinical psychologist, licensed clinical professional counselor or certified psychiatric clinical nurse specialist; or by a similarly-credentialed professional from any state or country.
- F. Completion of 25 continuing professional education contact hours as required by Chapter 14 of the board's rules.

## **2. Partial Waiver of Clinical Experience and Consultation in Connection With Initial Licensure**

The board may waive up to 1 year of the clinical experience and consultation required for initial licensure pursuant to section 5(1)(D) of this chapter for a candidate who demonstrates to the satisfaction of the board lawful equivalent clinical experience and consultation that occurred prior to the applicant's receipt of the master degree in social work.

**3. Waiver of Clinical Experience and Consultation Completed in Another State**

For purposes of this section, the board may recognize clinical experience and consultation completed in another state following a candidate's receipt of the master degree in social work or social welfare that is substantially equivalent to the clinical experience and consultation required by section 5(1)(D) of this chapter.

**4. Renewal**

Completion of 25 continuing professional education contact hours as required by Chapter 14 of the board's rules.

**6. Certified Social Worker - Independent Practice****1. Initial Issuance**

This license is issued on a renewal basis only.

**2. Renewal**

Completion of 25 continued professional education contact hours as required by Chapter 14 of the board's rules.

**7. Change in Consultancy**

Both the consultant social worker and the consultee shall promptly notify the board upon the termination of a consultancy or clinical internship prior to full completion. The consultee or intern shall engage a replacement consultant and immediately provide evidence of the new arrangement for consultation to the board.

**8. Licensure by Reciprocity**

A person applying for licensure by reciprocity pursuant to 32 M.R.S.A. §7054-A shall submit the following materials with the license application:

**1. License From Other Jurisdiction**

A copy of the applicant's current social work license and copies of all academic degrees which served as the basis for the applicant's licensure in the jurisdiction of origin;

**2. Examination Score**

Proof of a passing score on an examination administered by or under the auspices of the jurisdiction of origin, provided that an applicant who submits documentation of licensure obtained prior to 1984 need not provide proof of having passed an examination;

### **3. Letters of Recommendation**

The letters of recommendation required by this chapter for the category of license applied for;

### **4. Report of Adverse Disciplinary Action and Pending Complaints**

A statement describing any adverse disciplinary action and pending complaints against any professional license held by the applicant in any jurisdiction; and

### **5. Statute and Rules**

The statutes and rules governing eligibility for social work licensure in the jurisdiction of origin that were in effect at the time the applicant was licensed in the jurisdiction of origin.

[Note: The board will publish from time to time a list of jurisdictions whose licenses it recognizes as equivalent to the Maine categories of licensed social worker, licensed master social worker and licensed clinical social worker. Applicants for licensure by reciprocity from these jurisdictions will not need to submit statutes and rules.]

### **6. Applicants Licensed via Grandparenting in Home State**

The board may deny an application for licensure by reciprocity when the applicant's social work license in the jurisdiction of origin was obtained by way of reciprocity or grandparenting and the qualifications of the applicant do not meet the requirements of these rules and 32 M.R.S.A. §7053.

## **9. Inactive Status**

### **1. ~~Request~~**

~~Pursuant to 32 M.R.S.A. §7060, a licensee may request in writing to be placed on inactive status for a period not to exceed 2 years. The licensee need not apply for any license renewal that comes due while the licensee is on inactive status.~~

### **2. ~~Continuing Professional Education~~**

~~During a period of inactive status, the licensee must continue to meet the requirements for continuing professional education contained in Chapter 14 of the board's rules.~~

### **3. ~~Reinstatement~~**

~~To return to active status, the licensee shall request reinstatement in writing within the period for which inactive status was granted and shall simultaneously apply for renewal of any license that may have expired during the licensee's period of inactive status. Failure to apply for reinstatement prior to the expiration of inactive status shall be deemed a failure to apply for license renewal prior to license expiration for purposes of 32 M.R.S.A. §7060, first paragraph and Chapter 11 of the Rules of the Office of Licensing and Registration.~~

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### **1. Initial Issuance**

A licensee may apply for an inactive status license pursuant to 32 MRS § 7060. If a licensee applies for an inactive status license during the 3 months prior to the expiration date of the licensee's active license, the licensee shall demonstrate compliance with the 25 contact hours of continuing professional education required for that active license term. The board may refuse to issue an inactive status license to a licensee who fails to demonstrate such compliance, or who is otherwise ineligible for renewal of an active license.

### **2. Prohibition against Practice**

A licensee with an inactive status license shall not practice social work in the State of Maine.

### **3. Continuing Education**

A licensee with an inactive status license need not comply with the continuing professional education requirement set forth in Chapter 14 of the board's rules. However, in order to return to active status, a licensee shall obtain continuing professional education contact hours as set forth in subsection 5.

### **4. Annual Renewal**

A licensee may renew an inactive status license annually by:

A. Submitting a renewal application;

B. Paying the license fee set forth in Chapter 10, Section 5(37) of the rules of the Office of Professional and Occupational Regulation, entitled "Establishment of License Fees;" and

C. Providing such other information as the board may require.

### **5. Reinstatement to Active Status License**

A licensee with an inactive status license may return to active status by submitting an application to the board, paying the required license fee, and certifying to completion of 25 contact hours of continuing professional education during the two-year period prior to application, in accordance with the requirements for nature and amount of contact hours set forth in Chapter 14 of the board's rules. In the event that a licensee applies to return to active status in less than one year, the licensee may satisfy the continuing professional education requirement by providing evidence of having met the requirement for the most recent renewal cycle.

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STATUTORY AUTHORITY: 32 M.R.S.A. §§7030(2), 7053, 7057 and 7060; PS&L 2003, c. 41

EFFECTIVE DATE:

August 3, 2004 - filing 2004-312

NON-SUBSTANTIVE CORRECTIONS:

September 12, 2004 - indentions only

**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**416 BOARD OF SOCIAL WORKER LICENSURE**

**Chapter 17: RECORD RETENTION REQUIREMENTS**

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**Summary:** This chapter sets forth client record retention requirements.

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**1. Generally**

A licensee who is not in private practice shall retain client records as required by the employing or affiliated agency or institution. A licensee shall comply with all of the employing or affiliated agency or institution policies concerning the retention of client records.

**2. Private Practice**

A licensee in private practice, as defined in 32 MRS § 7001-A(9), shall comply with the following requirements:

**1. Record Retention**

A licensee shall retain all client records for at least 7 years after the client's last date of service or date of death, except that:

- A. Records for a minor client shall be retained for at least 7 years after the client reaches the age of 18.
- B. In the event that a licensee receives information that a client is involved in litigation in which the client's records may be relevant, the licensee shall retain the client's records until the matter is resolved by the court.

**2. Record Destruction**

A licensee may destroy client records when the applicable retention period has expired, as follows:

- A. Paper client records shall be destroyed through the use of a secure shredding system.
- B. Electronic client records shall be destroyed through a technologically appropriate process that renders the records unreadable, indecipherable, and incapable of being reconstructed.

**3. Continuing Obligation After Licensure Ends**

In the event that a licensee no longer holds a license, client records generated in the course of the licensee's private practice must be retained in accordance with this Chapter.

STATUTORY AUTHORITY: 32 MRS § 7030(2)

EFFECTIVE DATE:

# Rule-Making Fact Sheet

(5 MRS § 8057-A)

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

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON: Torrey Gray, Board Administrator, 35 State House Station, Augusta, ME 04333, tel. (207) 624-8420

CHAPTER NUMBER AND RULE TITLE: **Chapter 13:** Licensure (amended)

STATUTORY AUTHORITY: 32 MRS §§ 7030(2), 7060

DATE AND PLACE OF PUBLIC HEARING: October 9, 2015 at 9 a.m., Department of Professional and Financial Regulation, 76 Northern Avenue, Gardiner, Maine

COMMENT DEADLINE: October 19, 2015 at 5 p.m.

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE: To update the inactive status license rule in accordance with statutory changes set forth by PL 2007, c. 402.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (PRIMARY SOURCES): Professional judgment of the Board.

ANALYSIS AND EXPECTED OPERATION OF THE RULE: The Board proposes to amend Chapter 13 by updating the inactive status license rule. The rule currently in effect was promulgated in 2004, but legislation amended the statute authorizing the rule in 2007. As a result, the rule does not align with the current statute (see 32 MRS § 7060).

First, the 2007 legislation amended the statute by setting forth the requirement that the holder of an inactive status license must renew the license annually and must also pay a renewal fee. The current rule, however, states that a licensee need not apply for any license renewal while on inactive status. Therefore, the Board proposes amending the rule in order to set forth requirements for annual renewal (see proposed Section 9(4)).

In addition, the amended statute provides that the holder of an inactive status license need not obtain the continuing education hours required for renewal as set forth in the statute and rules. In contradiction to that, the current rule requires a licensee on inactive status to continue to meet the requirements for continuing education contained in Chapter 14 of the rules. Therefore, the Board proposes amending the rule to state that a licensee on inactive status is not required to comply with the continuing education requirement set forth in Chapter 14. However, in order to ensure that licensees who have been on inactive status and wish to return to active status are up-to-date on their knowledge of the profession, the Board also proposes that licensees must obtain some continuing education before returning to active status, as set forth in proposed Section 9(5). An exception has also been proposed for licensees wishing to return to active status after less than a year of being on inactive status.

In amending the rule, the Board also sets forth a provision requiring that a licensee who applies for inactive status during the 3 months prior to the expiration of his/her active license must still comply with the continuing education requirement for that active license term. Other licensing boards have implemented similar requirements.

**FINDINGS UNDER CRITERIA CONTAINED IN EXECUTIVE ORDER 20 FY 11/12:**

(A) The proposed rule will not negatively impact job growth or creation; (B) The appropriate fee for an inactive status license must be added to Chapter 10: "Establishment of License Fees" because the statute sets forth that an inactive status license must be renewed annually and is subject to a renewal fee; (C) There is no cost to the public in terms of time and money required to comply with the rule; (D) No other state laws or rules already address the subject matter of this rule; (E) There are no relevant federal standards.

**FISCAL IMPACT OF THE RULE:** Minimal.

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

**ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:**

**INDIVIDUALS OR GROUPS AFFECTED AND HOW THEY WILL BE AFFECTED:**

**BENEFITS OF THE RULE:**

*Note: If necessary, additional pages may be used.*

# Rule-Making Fact Sheet

(5 MRS § 8057-A)

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

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON: Torrey Gray, Board Administrator, 35 State House Station, Augusta, ME 04333, tel. (207) 624-8420

CHAPTER NUMBER AND RULE TITLE: **Chapter 17:** Record Retention Requirements (new)

STATUTORY AUTHORITY: 32 MRS § 7030(2)

DATE AND PLACE OF PUBLIC HEARING: October 9, 2015 at 9 a.m., Department of Professional and Financial Regulation, 76 Northern Avenue, Gardiner, Maine

COMMENT DEADLINE: October 19, 2015 at 5 p.m.

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE: To define licensee obligations for retaining client records.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (PRIMARY SOURCES): Professional judgment of the Board; LD 1187, “An Act to Specify the Record-keeping Requirements for Social Workers”; Chapters 110, 112, 113, and 118 of the Maine Department of Health and Human Services rules; and other States’ rules and regulations (e.g., Rule 16 of the Colorado State Board of Social Work Examiners rules, Chapter 64B4-9.001 of the Florida Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling rules, Chapter 500 of the New Hampshire Board of Mental Health Practice rules, and 258 CMR 22.00 for the Massachusetts Board of Registration of Social Workers).

ANALYSIS AND EXPECTED OPERATION OF THE RULE: The Board proposes a new chapter 17 in order to set forth client record retention requirements for licensees of the Board.

Since licensees employed or affiliated with agencies or other institutions must abide by the record retention requirements of those agencies and institutions, the Board determined that rules were only necessary for those licensees engaged in private practice, defined in Board statute as “practicing social work on a self-employed basis.” 32 MRS § 7001-A(9). Accordingly, Section 2 of the proposed rule sets forth the record retention requirements for licensees in private practice.

The Board proposes a general record retention period of 7 years after the client’s last date of service or death, which the Board found to be a common standard across many states and among various agencies. This standard is also consistent with the rules set forth by Maine’s Department of Health and Human Services for long term care facilities and hospitals. The Board also set forth two exceptions to the general rule, one for minor clients and another for clients involved in litigation in which the client’s records may be relevant.

The Board also proposes a provision setting forth that client records may be destroyed after the applicable retention period has expired, and if destroyed, the manner in which the records must be destroyed.

In addition, the Board proposes a provision pertaining to a licensee's continuing obligation after licensure ends to retain client records generated in the course of private practice, in accordance with the rules. This provision makes it clear that a former licensee is still responsible for records created while licensed.

**FINDINGS UNDER CRITERIA CONTAINED IN EXECUTIVE ORDER 20 FY 11/12:**

(A) The proposed rule will not negatively impact job growth or creation; (B) There are no fees included in the rule; (C) There is no cost to the public in terms of time and money required to comply with the rule; (D) No other state laws or rules already address the subject matter of this rule; (E) There are no relevant federal standards.

**FISCAL IMPACT OF THE RULE:** None.

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

**ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:**

**INDIVIDUALS OR GROUPS AFFECTED AND HOW THEY WILL BE AFFECTED:**

**BENEFITS OF THE RULE:**

*Note: If necessary, additional pages may be used.*