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To: Board Members **Date:** October 26, 2020
From: Rosanne Helms, Legislative Manager **Telephone:** (916) 574-7897
Subject: Discussion of Supervision of Associates Within Kaiser Health System

Background

Kaiser frequently employs associate clinical social workers (ASWs) who are gaining experience toward licensure. According to their 2020 Northern California HMO Provider Manual, Kaiser is split into three employing entities:

- **Kaiser Foundation Health Plan, Inc. (KFHP):** KFHP is a California nonprofit, public benefit corporation that is licensed as a health care service plan under the Knox-Keene Act. KFHP offers HMO plans. KFHP contracts with Kaiser Foundation Hospitals and The Permanente Medical Group to provide or arrange for the provision of medical services.
- **Kaiser Foundation Hospitals (KFH):** KFH is a California nonprofit public benefit corporation that owns and operates community hospitals and outpatient facilities. KFH provides and arranges for hospital and other facility services, and sponsors charitable, educational, and research activities.
- **The Permanente Medical Group, Inc. (TPMG):** TPMG is a professional corporation of physicians in KPNC that provides and arranges for professional medical services.

Source: Kaiser 2020 Northern California HMO Provider Manual.

A check of the Secretary of State's web site confirms that The Permanente Medical Group is registered as a professional corporation. Kaiser Foundation Hospitals and Kaiser Foundation Health Plan, Inc. are registered as domestic nonprofits.

ASWs working for The Permanente Medical Group (professional corporation) arm of Kaiser believe it is unfair that they have limits on their required supervision for gaining experience hours toward LCSW licensure that other ASWs working under the Kaiser nonprofit corporations (exempt settings) do not have. (See **Attachment A** for a further explanation of their concern.)

This issue would partly resolve with the setting definitions bill the Board is proposing. Below, we compare current law to the proposed new law. Although the laws shown below are for associates seeking LCSW licensure, the same holds true for associates

seeking LMFT or LPCC licensure (Corresponding sections are BPC §4980.43.4 for LMFTs, and 4999.46.4 for LPCCs).

Current Law (LCSW)

Business and Professions Code (BPC) §4996.23.3

(a) An associate clinical social worker or an applicant for licensure shall only perform mental health and related services at the places where their employer permits business to be conducted.

(b) An associate who is employed or volunteering in a private practice shall be supervised by an individual who is employed by, and shall practice at the same site as, the associate's employer. Alternatively, the supervisor may be an owner of the private practice. However, if the site is incorporated, the supervisor must be employed full-time at the site and be actively engaged in performing professional services at the site.

(c) A supervisor at a private practice or a corporation shall not supervise more than a total of three supervisees at any one time. A supervisee may be registered as an associate marriage and family therapist, an associate professional clinical counselor, or an associate clinical social worker.

For Kaiser, this means the following applies under current law:

- For those ASWs working at its professional corporation, their supervisor must be employed full-time at the same site as them and perform professional services there. There is a limit of three supervisees per supervisor.
- For those ASWs working at Kaiser's nonprofit corporations, the above limitations do not apply – they are considered to be working in an exempt setting.

Proposed Law (LCSW)

BPC §4996.23.3

(a) An associate clinical social worker or an applicant for licensure shall only perform mental health and related services at the places where their employer permits business to be conducted.

(b) An associate who is employed by or volunteering in a private practice or a professional corporation shall be supervised by an individual who: is employed by, and shall practice at the same site as, the associate's employer. Alternatively, the supervisor may be an owner of the private practice. However, if the site is incorporated, the supervisor must be employed full-time at the site and be actively engaged in performing professional services at the site.

(1) Is employed by or contracted by the associate's employer, or is an owner of the private practice or professional corporation, and

(2) Provides psychotherapeutic services to clients at the same site as the associate.

~~(c) A supervisor at a private practice or a corporation shall not supervise more than a total of three supervisees at any one time. A supervisee may be registered as an associate marriage and family therapist, an associate professional clinical counselor, or an associate clinical social worker.~~

(c) Supervisors of supervisees in a non-exempt setting shall not serve as an individual or triadic supervisor for more than a total of six supervisees at any time. Supervisees may be registered as associate marriage and family therapists, associate professional clinical counselors, associate clinical social workers, or any combination of these.

For Kaiser, under the proposal this would mean the following:

- For those ASWs working at its professional corporation, under the new law Kaiser would be able to contract or arrange with outside supervisors for their associates. Those supervisors would not need to be employed full-time at the same site as their associates. However, the supervisors would be required to see clients at the same site as each associate they supervise. There is a limit of six supervisees per supervisor.
- For those ASWs working at Kaiser's nonprofit corporations, the above limits do not apply – they are considered to be working in an exempt setting.

Possible Modifications to the Proposed Setting Definitions Bill Language

There are two pieces of the setting definition bill language that could address Kaiser's concern:

1. BPC sections §4980.43.4(b)(2) for LMFTs, 4996.23.3(b)(2) for LCSWs, and 4999.46.4(b)(2) for LPCCs.

These sections require the supervisor in private practice or professional corporation to be supervised by an individual who provides psychotherapeutic services to clients at the same site as the associate.

If the word "site" were replaced by a broader term such as entity, provider, institution, or organization, this could allow Kaiser and other similar professional corporations with different branches to use supervisors within the same organization who do not necessarily provide services to clients at the same site.

Attachment B contains dictionary definitions of these terms.

One other suggestion would be to replace the requirement that the supervisor "Provides psychotherapeutic services to clients at the same site as the associate" with a requirement that the supervisor "Performs psychotherapeutic services for clients of the associate's employer."

However, staff urges some caution when considering a solution here, as there is some potential for it to lead to less oversight of associates in private practices or

professional corporations. Historically, there have been public protection concerns with allowing associates to practice somewhat independently of their supervisors, so language should be chosen that will not further this practice. The Board's Enforcement Unit investigates a number of complaints where it is determined that the supervisor is not on site and the associate is practicing somewhat independently. Associates are required to be under supervision for public protection issues because they are new practitioners. Not having a supervisor who practices at the same site reviewing their work could lead to issues such as being unaware of associate misconduct, supervisor access to records, and associates collecting payment.

Staff closely examined the licensing laws for three other states (Arizona, Massachusetts, and Florida) to determine if they had any similar restrictions on supervision in private practices. Those findings are shown in **Attachment C**.

2. BPC sections §4980.06(a)(4) for LMFTs, 4996.14.2(a)(4) for LCSWs, and 4999.26(c)(8) for LPCCs.

These proposed subsections provide that an “entity that is licensed or certified by a government regulatory agency to provide health care services shall not be considered a private practice setting.”

Such an entity would instead be considered either a non-exempt setting or an exempt setting, depending on its features. It would therefore not be subject to the above requirement that supervisors must provide services at the same site as their associates in private practices or professional corporations. Additionally, trainees could work there under the supervision of their school.

It is unknown at this time if The Permanente Medical Group is licensed or certified by a government regulatory agency to provide health care services. If it is, it would be considered a non-exempt setting.

Because all of the various types of government regulatory agencies licensing or certifying various entities is unknown, staff cautions that this allowance may need to be narrowed or further clarified via regulations in the future, based upon any implementation issues that may arise.

At this time, staff suggests the Board consider the following three options regarding this provision:

- a. Delete this allowance from the bill: “An entity that is licensed or certified by a government regulatory agency to provide health care services shall not be considered a private practice setting.” By continuing to run the bill, the Board still gains a clarified definition of a private practice setting. The issue of government license/certification remains, but the Board could continue that discussion at the Policy and Advocacy Committee until a resolution is reached.

- b. Leave this allowance in the bill: “An entity that is licensed or certified by a government regulatory agency to provide health care services shall not be considered a private practice setting.” If unintended consequences arise, the Board could pursue regulations to further clarify. If desired, the discussion could also be continued in the Policy and Advocacy Committee.
- c. Not run the bill and hold for another year for further discussion.

Policy and Advocacy Committee Discussion

The Policy and Advocacy Committee discussed this issue at its October 9, 2020 meeting. It directed staff to look into the issues raised further, and bring the issue to the Board meeting for further discussion.

Recommendation

Conduct an open discussion about supervision of associates within the different branches of the Kaiser health system.

Attachments

Attachment A: Clinical Supervision Disparity Between Nonprofit and For-Profit Settings
(From Josey Baker, LCSW, PPSC, Medical Social Worker, The Permanente Medical Group, Inc.)

Attachment B: Definitions From Merriam-Webster’s Online Dictionary

Attachment C: Statutes and Regulations Related to Supervision Settings in Other States

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ATTACHMENT A

Clinical Supervision Disparity between NonProfit and For-Profit Settings

(From Josey Baker, LCSW, PPSC, Medical Social Worker, The Permanente Medical Group, Inc)

This is the Regulation that we are interested in bringing to the attention of the advisory committee:

§ 4999.46.4. SUPERVISEES: LOCATION OF SERVICES; MAXIMUM NUMBER OF REGISTRANTS; OVERSIGHT AGREEMENT

(a) A clinical counselor trainee, associate, or applicant for licensure shall only perform mental health and related services at the places where their employer permits business to be conducted.

(b) An associate who is employed or volunteering in a private practice shall be supervised by an individual who is employed by, and shall practice at the same site as, the associate's employer. Alternatively, the supervisor may be an owner of the private practice. However, if the site is incorporated, the supervisor must be employed full-time at the site and be actively engaged in performing professional services at the site.

Here is a basic outline of the disparities between nonprofit and for-profit settings:

Did you know it is extremely difficult for some medical social workers in for-profit settings to get their clinical supervision hours to earn their LCSW despite holding similar job descriptions as their non-profit cohorts?	
Medical social workers in non-profit settings can hire someone to provide clinical supervision.	Medical social workers in for-profit settings can't.
Medical social workers in non-profit settings can have someone volunteer to provide clinical supervision.	Medical social workers in for-profit settings can't.
For non-profit medical social workers, a clinical supervisor must <ul style="list-style-type: none"> • be licensed in approved profession, • practiced psychotherapy for at least two years, and • completed supervision training. 	In addition to the basic clinical supervisor requirements, medical social workers in for-profit settings must find someone who works in the same building (regardless of department/specialty) for at least 20 hours/week.
Social workers in non-profit settings can pick up extra work hours anywhere and have <u>all</u> of those work hours be counted towards their clinical work experience.	Social workers in for-profit settings who pick up extra work hours within the same department with the same direct manager and director, but happens to be located at another building, would need to find a clinical supervisor for each building.

ATTACHMENT A

Clinical Supervision Disparity between NonProfit and For-Profit Settings

This is a link to the petition signed by 301 MSW who are in support of amending the regulation mentioned above

<https://www.ipetitions.com/petition/all-medical-social-workers-should-be-treated-the>

If time allows, we would like to illustrate the unforeseen implications of this regulation on ASW's in for profit settings.

Attachment B

Definitions are From Merriam-Webster's Online Dictionary (<https://www.merriam-webster.com>)

Organization

: association, society charitable organizations

: an administrative and functional structure (such as a business or a political party) The new president plans to make changes to the company's organization. also : the personnel of such a structure The organization will vote on the proposed changes.

Provider

: one that provides

: a group or company that provides a specified service

Institution

: an established organization or corporation (such as a bank or university) especially of a public character

: an established organization

: a place where an organization takes care of people for a usually long period of time

Entity

: something that has separate and distinct existence and objective or conceptual reality

: an organization (as a business or governmental unit) that has a legal identity which is separate from those of its members

Site

: the spatial location of an actual or planned structure or set of structures (such as a building, town, or monuments)

: a space of ground occupied or to be occupied by a building

: the place, scene, or point of an occurrence or event a picnic site

: the place where something (such as a building) is, was, or will be located

: a place where something important has happened

: a place that is used for a particular activity

Synonyms for site: emplacement, locale, locality, location, locus, place, point, position, spot, venue, where

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ATTACHMENT C

Statutes and Regulations Related to Supervision Settings in Other States

Arizona Regulations for Board of Behavioral Health Examiners

R4-6-101. A.6. “Behavioral health entity” means any organization, agency, business, or professional practice, including a for-profit private practice, which provides assessment, diagnosis, and treatment to individuals, groups, or families for behavioral health related issues.

R4-6-212. B. Unless an exemption was obtained under R4-6-212.01, the Board shall accept hours of clinical supervision submitted by an applicant if the clinical supervision was provided by an individual who:

1. Was qualified under subsection (A), and
2. Was employed by the behavioral health entity at which the applicant obtained hours of clinical supervision.

R4-6-212.01. 1.b. Employment of clinical supervisor. The Board may grant an exemption to the requirement in R4-6-212(B) regarding employment of the supervisor by the behavioral health entity at which the supervisee obtains hours of clinical supervision if the supervisee provides verification that:

- i. The supervisor and behavioral health entity have a written contract providing the supervisor the same access to the supervisee’s clinical records provided to employees of the behavioral health entity, and
- ii. Supervisee’s clients authorized the release of their clinical records to the supervisor; and

Massachusetts Regulations for Marriage and Family Therapists

262 CMR 3.03. 3. (3) Two Year Experience Requirement. A minimum of two years full-time, or equivalent part-time (3360 hours), post masters supervised clinical experience with individuals, family groups, couples, groups or organizations (public or private) for the purpose of assessment and intervention in a clinic or hospital licensed by the Commonwealth of Massachusetts Department of Mental Health accredited by the Joint Commission on Accreditation of Health Care Organizations or an equivalent center or institute, or under the direction of an approved supervisor. Private practice settings are not considered acceptable settings for this post-masters supervised clinical experience. 200 hours of supervision are required, of which 100 hours must be individual supervision. The required two years full-time, or equivalent part-time, supervised clinical experience in marriage and family therapy must include a minimum

of 1000 hours of post-master's degree face-to-face contact hours of clinical experience with individuals, family groups, couples, groups or organizations (public or private) under the direction of an approved supervisor; a minimum 500 hours of which must be face-to-face contact hours of clinical experience with couples and families under the direction of an approved supervisor.

Florida Statutes for Marriage and Family Therapists

491.005.(3)(c) Has had at least 2 years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services, which must be at the post-master's level under the supervision of a licensed marriage and family therapist with at least 5 years of experience, or the equivalent, who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If a graduate has a master's degree with a major emphasis in marriage and family therapy or a closely related field that did not include all the coursework required under sub-subparagraphs (b)1.a.-c., credit for the post-master's level clinical experience shall not commence until the applicant has completed a minimum of 10 of the courses required under sub-subparagraphs (b)1.a.-c., as determined by the board, and at least 6 semester hours or 9 quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques. Within the 3 years of required experience, the applicant shall provide direct individual, group, or family therapy and counseling, to include the following categories of cases: unmarried dyads, married couples, separating and divorcing couples, and family groups including children. A doctoral internship may be applied toward the clinical experience requirement. **A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.**