

Agenda
State Board for Mental Health Practitioners
Friday, February 3rd, 2023
10:00 a.m. - 12:30 p.m.

Sites:

1411 Broadway, 10th Floor NYC
89 Washington Ave., Albany, NY
109 S Union St. 2nd Floor Rochester, NY

****Agenda and Discussion Times Subject to Change****

1. Welcome and review of agenda
2. Review of September 30, 2022, meeting minutes
3. Presentation from Office of Professional Discipline
Dennis Spillane presenting.
4. Executive Secretary's Report
 - a. Staffing and Processing
 - b. Board member recruitment
 - c. Executive Orders
 - d. State of the State (compacts & scope)
5. Legislation and Regulations
 - a. Mandatory CE on appropriate boundaries (adopted)
 - b. Insurance law 3221 & 4303 (Ch. 818 of 2022)
6. Regulations (discussion)
 - a. Mental Health Diagnosis Privilege (Ch. 230 of 2022)
7. Other business
8. Adjournment

The University of the State of New York
State Education Department
Office of the Professions

**State Board for Mental Health Practitioners
Meeting Minutes**

Friday September 30, 2022

Meeting was held in-person via WebEx at the following locations:

State Education Building, 89 Washington Ave, EB 150, Albany, NY 12234
Office of the Professions, 1411 Broadway, 10th floor, New York, NY 10018
Syracuse Regional Office, 333 East Washington Street, Suite 211 Syracuse, NY 13202

Board members present:

Sara Friedman-McMullian (Vice-Chair) New York)
Helena Boersma (Syracuse)
Susan Boxer Kappel (New York)
Ann Canastra (New York)
Michele Meyer (Albany)
Timothy Mooney (Albany)
Angela Musolino (New York)
Jill Weldum (Syracuse)

Board members absent:

Thomas Biglin
Natalie Riccio (Chair)
Susan Wheeler Weeks
Sargam Jain
Renee Jones

Staff present:

Evan Seiden, Executive Secretary (ES) (New York)
David Hamilton, Assistant Commissioner of Professional Licensing & Practice (Albany)
Mary Fish, Associate in Professional Education (Albany)
Michele Govertsen, Education Program Assistant 1 (Albany)

Welcome and Review of Agenda

Evan Seiden called the meeting to order at 10:22 am. Board members and staff introduced themselves. Sara Friedman-McMullian announced that her term on the board expires today, and this will be her last Board meeting. One item was added to the agenda under other business.

Review of January 14, 2022 Board Meeting Minutes

The Board reviewed the minutes from the January 14, 2022 Board meeting. There were no changes made. A motion was made to approve the minutes motion was passed unanimously. It was determined that a quorum of the Board member was not present, therefore approval of the minutes will be voted on at the next meeting.

Executive Secretary's Report

Evan Seiden announced his appointment as Executive Secretary by the Board of Regents in April 2022, replacing David Hamilton, who was appointed to the Assistant Commissioner of Professional Licensing & Practice in December 2021. The Education Program Assistant 1 position has been filled in the Board office and a recruitment process has begun to replace the Senior Administrative Analyst position, due to the imminent retirement of that staff person. Review of licensure applications continues with the assistance of all staff. Nomination forms for potential Board members are being reviewed and additional candidates continue to be recruited. Board Nomination forms can be found on the NYSED website. The suspension of the Open Meetings Law (Executive Order 220.1) expired on (9/12/22). Executive Order #4 was extended by EO #4.13 until October 27, 2022, allowing all mental health practitioners with an unencumbered New York License that is in good standing, but not currently registered in New York to practice in New York.

Discussion: Mental Health Practitioners' Diagnosis Privilege (Chapter 230 of the Laws of 2022)

David Hamilton provided an overview of the law establishing a diagnostic privilege available to certain mental health practitioners. On June 24, 2022, Governor Kathy Hochul signed Chapter 23 of the laws of 2022 which allows licensed mental health counselors (LMHCs), licensed marriage and family therapists (LMFTs) and licensed psychoanalysts (LPs) to earn diagnostic privilege by meeting specified requirements. These professions did not previously have the authority to diagnose. The Board of Regents adopted emergency regulations on July 12, 2022. A 60-day public comment period commenced through the State Register on July 27, 2022. Those comments are currently being reviewed and addressed. The proposed amendment will be presented to the Board of Regents for permanent adoption at their November 2022 meeting. The Office of the Professions is working on regulations to implement the law, including the education experience requirements. A Frequently Asked Questions page will also be posted on the NYSED website in the coming months. It should be noted that the privilege cannot be issued until the June 24, 2024. The meeting opened up for discussion and the board members were able to ask questions, get clarifications and share feedback pertaining to the new law.

Legislation and Regulation Affecting Mental Health Practitioners

Evan Seiden provided updates on relevant pieces of legislation and regulation affecting the mental health practitioner professions.

- a. Chapter 159 of the Laws of 2021: amended the education law in relation to extending certain license exemptions for social workers, psychologists and mental health

practitioners employed in programs that are operated, regulated, approved or funded by certain state or local government agencies. Effective June 24, 2022, an individual must be licensed or authorized (e.g., limited permit holder or student intern) under the Education law to practice psychology, social work and mental health practice, as defined in Articles 153, 154 and 163 of the Education Law, respectively, to be employed in a program or service that is defined in law. This does not affect individuals who were hired prior to June 24, 2022 and who may accept employment similar programs without licensure.

- b. Legislative Bill A 1171 and S 6574: requires blanket health insurance policies to provide coverage for outpatient treatment by a mental health practitioner or clinical social worker. Insurers providing reimbursement for psychiatrists, or psychologists shall, provide the same coverage to the insured for such services when performed by a licensed clinical social worker, licensed mental health counselor, licensed creative arts, licensed marriage and family therapist, licensed psychoanalyst within the scope of practice. The bill has not been signed by the governor.
- c. Proposed Amendment to Mandatory Continuing Education: On October 4, 2022, it is anticipated that the Board of Regents will vote on the proposed amendment to the Commissioner's Regulations that would require psychologists, social workers and mental health practitioners to complete three hours of continuing education on issues related to maintaining appropriate professional boundaries with clients for each registration period, beginning on or after April 1, 2023.

Professional Practice and Licensure

Evan Seiden reviewed the objectives for Counseling Compact, developed by The Council of State Governments, in partnership with the American Counseling Association regarding cross-state practice of licensed professional counselors. Members discussed the qualifications for and effects the Counseling Compact would have for New York licensed mental health counselors. Compacts for medicine, nursing and physical therapy currently exist in several states, but there are no compacts in New York.

Other Business

Evan Seiden proposed a presentation from the Office of Professional Discipline for the next Board meeting.

Closing Remarks and Adjournment

Evan Seiden thanked the Board for a productive meeting. The next Board meeting will be scheduled for a date in January 2023. The meeting was adjourned at 12:10 p.m. by consensus (Boxer Kappel/Musolino).

Minutes submitted by,

A handwritten signature in black ink, appearing to read "Evan J. Seiden". The signature is fluid and cursive, with a large initial "E" and "S".

Evan Seiden MBA, LCSW-R
Executive Secretary
State Board for Social Work
State Board for Mental Health Practitioners

That is why Governor Hochul will establish a new capital grant fund to support providers' technological investment upgrades that facilitate the State's health care transformation goals. These funds will spur investment in advanced clinical technologies, cybersecurity tools, and other technological upgrades to improve quality of care, patient experience, accessibility, and efficiency.

Reform Traveling Nurse Agency Staffing Practices

During COVID-19, health care providers relied on contracts with temporary staffing agencies for contract staff and traveling nurses to meet the overwhelming demand. Post-pandemic reliance on agency staff at health care facilities has skyrocketed. At some upstate hospitals, usage is five times greater now than it was pre-pandemic. Contract labor can be significantly more expensive than directly employed staff, and as a result, labor costs have increased significantly for providers.⁵⁴

Governor Hochul will introduce legislation to require staffing agencies to register and report key data about their operations with the goal of increasing transparency into the utilization and costs of contract

labor. The State will use the collected data to explore options to remedy the dependence upon, and escalating costs related to, agency staffing.

Allow Health Care Providers to Do More

The health care workforce shortage in New York has led to access and quality of care problems for New Yorkers. Governor Hochul signed an Executive Order in September 2021 to acknowledge this shortage and provide flexibility to allow health care providers to temporarily do more (expanding their “scope of practice”) under their licenses. Making these flexibilities permanent and expanding scope further will help alleviate the shortage, by continuing to allow the current workforce system to provide more care. In addition, Governor Hochul will advance legislation to allow New York to join the Interstate Licensure Compact and the Nurse Licensure Compact, which will make it easier for physicians and nurses licensed in other states to practice in New York, either physically or virtually, and allow New York providers to provide virtual care more easily for their patients who travel to other states.



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: Professional Practice Committee

FROM: Sarah S. Benson *Sarah S. Benson*

SUBJECT: Proposed Amendment of Sections 72.6, 74.10, 79-9.8, 79-10.8, 79-11.8, and 79-12.8 of the Regulations of the Commissioner of Education Relating to Continuing Education Requirements for Psychologists, Social Workers and Mental Health Practitioners

DATE: October 3, 2022

AUTHORIZATION(S): *Jan M. [Signature]* *Betsy [Signature]*

SUMMARY

Issue for Decision

Should the Board of Regents amend sections 72.6, 74.10, 79-9.8, 79-10.8, 79-11.8, and 79-12.8 of the Regulations of the Commissioner of Education relating to continuing education requirements for psychologists, social workers and mental health practitioners?

Reason for Consideration

Review of policy.

Proposed Handling

The proposed amendment is being presented to the Professional Practice Committee for recommendation to the Full Board for adoption at the October 2022 meeting of the Board of Regents. A copy of the proposed rule is attached (Attachment A).

Procedural History

The proposed amendment was presented to the Professional Practice Committee for discussion at the April 2022 meeting. A Notice of Proposed Rule Making was published in the State Register on April 27, 2022. Following the 60-day public comment period required under the State Administrative Procedure Act, the Department

PPC (A) 2 - REVISED

received approximately 29 comments. An Assessment of Public Comment is included (Attachment B).

No changes to the proposed amendment are recommended at this time based upon the public comment. However, the Department made one non-substantial revision to the proposed rule due to an omitted word. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

Background Information

Several disciplinary matters have recently come before the Board of Regents for action against licensed psychologists, social workers and mental health practitioners, which, included, among other things, boundary violations. Boundary violations are based on an unequal power relationship, where the licensed professional has the role of authority in the professional relationship and access to personal, confidential information about the patient/client. Examples of recent boundary violation disciplinary matters include:

- Licensee leaving multiple messages on a former patient's voicemail with inappropriate statements;
- Licensee sending inappropriate text messages to a patient on more than one occasion, causing such patient to think that licensee and patient were friends; and
- Licensee sending abundant text messages, which were not therapy-related, to a patient's phone, outside of their normally scheduled therapeutic meeting times, over a period of several months.

When a professional violates the patient's/client's trust by converting the professional into the personal, some patients/clients may not recognize the violation. In other cases, the patient/client may want to avoid terminating the professional relationship and, therefore, may not report inappropriate action by the licensee who is responsible for establishing and maintaining boundaries.¹ Therefore, it is likely that boundary violations occur more frequently than suggested even by the Board of Regents disciplinary actions.

The Education Law defines the license and practice of psychologists (Article 153), licensed master social work and licensed clinical social work (Article 154), and mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts (Article 163; together, "mental health practitioners"). Licensees in each of these seven professions must complete 36 hours of continuing education from a Department-approved provider each triennial registration period (Education Law §§7607[1], 7710[1] and 8410[1]). Licensees can only practice their professions if their registrations are current.

¹ Practice guidelines on appropriate professional boundaries for these professions can be found at:
Psychology: <http://www.op.nysed.gov/prof/psych/psychdual.htm>
Social Work: <http://www.op.nysed.gov/prof/sw/swboundaries.htm>
Mental Health Practitioners: <http://www.op.nysed.gov/prof/mhp/mhppg5.htm>

Pursuant to Education Law §§7607(3)(c), 7710(3)(b) and 8412(3)(b), the Department is authorized, in its discretion and as needed to contribute to the health and welfare of the public, to require the completion of continuing education courses in specific subjects to fulfill the mandatory continuing education requirements for psychologists, social workers and mental health practitioners, respectively.

Proposed Amendments

To further the interest of public health and protection, the proposed amendments to sections 72.6, 74.10, 79-9.8, 79-10.8, 79-11.8, and 79-12.8 of the Commissioner's regulations require psychologists, social workers and mental health practitioners to complete three continuing education credits on issues related to maintaining appropriate professional boundaries with patients/clients commencing with registration periods beginning on and after April 1, 2023. While professional education programs for psychology, social work and mental health practitioners include overviews of professional ethics that underlie those professions and discussions about transference and countertransference, licensees may be faced with real world challenges when engaged in practice that go beyond those covered by these educational requirements. Newly licensed and experienced professionals may blur the boundaries that separate the professional from the personal. Therefore, it is proposed that each licensee in these professions, whether engaged in education, direct patient care or administration, be required to complete three hours of acceptable continuing education in maintaining appropriate boundaries in professional relationships.

Non-Substantial Revision

Since publication of the proposed amendment in the State Register, Department staff discovered that, the word "between" was inadvertently omitted from the beginning of the proposed amendment to section 79-9.8(c)(2)(ii)(c) which should have read:

Commencing with registration periods beginning on or after April 1, 2023, a licensee shall complete, as part of the required 36 hours of continuing education, three hours of continuing education on issues related to maintaining appropriate professional boundaries between licensees and patients, from a provider approved by the department.

The Department proposed identical language in the amendment to sections 72.6, 74.10, 79-10.8, 79-11.8, and 79-12.8. This omitted language is needed to clarify the intent of the proposed amendment and ensure consistency in the language throughout the proposed amendment. Consequently, a non-substantial revision has been made to the amendment of section 79-9.8(c)(2)(ii)(c) of the Commissioner's regulations.

Related Regents Items

April 2022: Proposed Amendment of Sections 72.6, 74.10, 79-9.8, 79-10.8, 79-11.8, and 79-12.8 of the Regulations of the Commissioner of Education Relating to Continuing Education Requirements for Psychologists, Social Workers and Mental Health Practitioners
(<https://www.regents.nysed.gov/common/regents/files/422ppcd1.pdf>)

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That Sections 72.6, 74.10, 79-9.8, 79-10.8, 79-11.8, and 79-12.8 of the Regulations of the Commissioner of Education be amended, as submitted, effective October 19, 2022.

Timetable for Implementation

If adopted at the October 2022 meeting the proposed rule will become effective on October 19, 2022.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 7607, 7710 and 8412 of the Education Law.

1. Subdivision (c) of section 72.6 of the Regulations of the Commissioner of Education is amended, to read as follows:

(c) The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement.

(i) Commencing with registration periods beginning on or after April 1, 2023, a licensee shall complete, as part of the required 36 hours of continuing education, three hours of continuing education on issues related to maintaining appropriate professional boundaries between licensees and patients, from a provider approved by the department.

2. Clause (c) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 74.10 of the Regulations of the Commissioner of Education is amended, to read as follows:

(c) The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement.

(i) Commencing with registration periods beginning on or after April 1, 2023, a licensee shall complete, as part of the required 36 hours of continuing education, three hours of continuing education on issues related to maintaining appropriate professional

boundaries between licensees and patients, from a provider approved by the department.

3. Clause (c) of subparagraph (ii) paragraph (2) of subdivision (c) of section 79-9.8 of the Regulations of the Commissioner of Education is amended, to read as follows:

(c) The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement.

(i) Commencing with registration periods beginning on or after April 1, 2023, a licensee shall complete, as part of the required 36 hours of continuing education, three hours of continuing education on issues related to maintaining appropriate professional boundaries between licensees and patients, from a provider approved by the department.

4. Clause (c) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 79-10.8 of the Regulations of the Commissioner of Education is amended, to read as follows:

(c) The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement.

(i) Commencing with registration periods beginning on or after April 1, 2023, a licensee shall complete, as part of the required 36 hours of continuing education, three hours of continuing education on issues related to maintaining appropriate professional boundaries between licensees and patients, from a provider approved by the department.

5. Clause (c) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 79-11.8 of the Regulations of the Commissioner of Education is amended, to read as

follows:

(c) The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement.

(i) Commencing with registration periods beginning on or after April 1, 2023, a licensee shall complete, as part of the required 36 hours of continuing education, three hours of continuing education on issues related to maintaining appropriate professional boundaries between licensees and patients, from a provider approved by the department.

6. Clause (c) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 79-12.8 of the Regulations of the Commissioner of Education is amended, to read as follows:

(c) The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement.

(i) Commencing with registration periods beginning on or after April 1, 2023, a licensee shall complete, as part of the required 36 hours of continuing education, three hours of continuing education on issues related to maintaining appropriate professional boundaries between licensees and patients, from a provider approved by the department.

8 NYCRR §§ 72.8, 74.10, 79-9.8, 79-10.8, 79-11.8 and 79-12.8

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the April 27, 2022, State Register, the State Education Department received the following comments on the proposed rule:

1. COMMENT: A number of commenters supported the requirement while asserting that the majority of licensed professionals do not violate boundaries.

RESPONSE: The Department appreciates and acknowledges these comments. No changes are needed.

2. COMMENT: Several social workers suggested that boundary issues should be addressed in ethics coursework.

RESPONSE: Courses in ethics, which may include setting and honoring appropriate boundaries, may be offered by Department-approved providers as an acceptable subject for social work continuing education (CE), as defined in Education Law and NYCRR §74.10(2)(i)(e). Mandating coursework in boundary issues is intended to protect the public and remind licensed professionals of their responsibility to establish and maintain appropriate boundaries. No changes to the proposed rule are needed.

3. COMMENT: A social work commenter opined that course work on boundary issues should only be required for licensees who have violated boundaries.

RESPONSE: As part of their discipline of a licensee, the Board of Regents can and have required coursework relating to boundary issues. However, over the last 5 years, one-half of the disciplinary actions in these mental health professions were due to boundary violations by licensees. The purpose of the proposed rule is to require a triennial

refresher to licensees on the importance of professional boundaries in order to protect patients from future violations. No changes to the proposed rule are needed

4. COMMENT: A social worker supports the proposed rule, stating that telehealth and the prevalence of texting/emailing can blur boundaries between client and professional, and lead to inappropriate behaviors.

RESPONSE: The Department appreciates the supportive comment, and no changes to the proposed rule are necessary.

5. COMMENT: A social worker acknowledged that boundary issues are a valid concern, suggesting that coursework on professional burnout and similar topics may play a preventive role and mitigate the occurrence of boundary violations.

RESPONSE: The Department appreciates that many factors, including burnout, can affect a licensed professional's behavior. Coursework offered by Department-approved providers can aid licensees in setting and maintaining appropriate boundaries, which may include content on how professional burnout and/or other factors may adversely impact a licensed professional's behavior, without changing the proposed rule.

6. COMMENT: Two commenters suggested that mandatory professional boundaries CE is unnecessary, since "everyone knows appropriate boundaries" and this requirement will not enhance professional skill.

RESPONSE: In the past five years, approximately 50 percent of the Board of Regents disciplinary actions taken in these professions were the result of boundary issues. While disciplinary actions involve a fraction of these professions' licensees, the Board of Regents believes that preventive action, such as requiring three hours of professional boundaries CE in each three-year registration period, is necessary to protect patients and clients. No changes to the proposed rule are necessary.

7. COMMENT: A licensed social worker and the dean of a social work program both

commented that boundary issues should be addressed in professional education programs that award bachelor's and/or master's degrees.

RESPONSE: Section 52.30(a)(2)(i) of the Commissioner's regulations defines curriculum requirements for earning the Master of Social Work degree, which include social work values and ethics. While ethics should be addressed in the classroom and field instruction, it is apparent that post-licensure education in appropriate boundaries is necessary to better protect the public. No changes to the proposed rule are needed.

8. COMMENT: Two commenters suggested that boundary issues are only relevant to social workers who work directly with individuals, therefore, the proposal is over-reaching and broader ethics topics should be required instead.

RESPONSE: Licensed social workers provide services to individuals, couples, families, groups, organizations, and communities; boundary violations can occur in any or all of those interactions and/or settings. Boundaries are critical for patient protection from physical, sexual and/or financial abuse by a licensed professional, as well as protecting patient autonomy and privacy. Therefore, the proposed rule's mandatory professional boundaries CE requirement is appropriate and necessary for all licensed social workers seeking to register and practice in New York and, therefore, no changes to the proposed rule are needed.

9. COMMENT: Several commenters stated that licensees should be able to choose the topics of CE rather than have it mandated.

RESPONSE: The Department appreciates and understands licensees' concerns about mandatory CE topics. However, section 7210 of the Education Law allows the Department, as needed, to require the completion of CE courses in specific subjects to contribute to the health and welfare of the public. The professional boundaries coursework was proposed to protect the public by ensuring that, at least, three of the 36 hours of

triennially required CE for licensed social workers includes this content. No changes to the proposed rule are needed.

10. COMMENT: A social work commenter asked what the number of incidents of boundary violations that occur per hundred social workers in New York State? Additionally, the commenter asked if there is a comparison to others in the healthcare field like doctors and nurses and what the CE requirements are for those practitioners.

RESPONSE: During the period from 2017 to present, about 50 percent of 144 final disciplinary actions by the Board of Regents were based on boundary violations by licensees in these seven professions. Disciplinary actions are typically based on complaints; as such, the number of actual violations that are occurring in New York is likely even higher. The completion of at least three hours of CE on professional boundaries in each 36-month registration period will assist in increasing public protection. Regarding the comments on other healthcare professionals, these comments are beyond the scope of the proposed rule, however, the Department notes that physicians and nurses do not have CE requirements. No changes to the proposed rule are necessary.

11. COMMENT: Two social work associations suggested that licensees should be able to "carry over" credit for coursework in boundary issues to a subsequent registration period for a period starting on or after April 1, 2013.

RESPONSE: Education Law §§ 7607(2), 7710(2) and 8412(2) prohibit licensed psychologists, social workers, and mental health practitioners from transferring CE hours taken during one triennial registration period to the subsequent three-year period. While the Department appreciates the associations' concern, this cannot be permitted without statutory change.

12. COMMENT: Several commenters suggested that boundary issues CE should be offered by the State or by a professional association for free or at low-cost.

RESPONSE: Courses are developed and offered by providers approved by the Department, based on the applicable law and regulation. An approved provider may offer courses that meet the requirements as live in-person, live interactive (using phone or video technology), and self-study formats in acceptable subjects. CE fees, if any, are set by the approved provider, not the Department. No changes to the proposed rule are necessary.

13. COMMENT: An association of psychologists suggested that the proposed rule is duplicative, in that Education Law § 7607(2) requires each licensed psychologist to complete a minimum of 36 hours of acceptable learning activities, a minimum of three hours of which shall be course work in the area of professional ethics, including the laws, rules, and regulations for practice in New York.

RESPONSE: Boundary violations are a leading source of complaints against licensed psychologists, social workers and mental health practitioners and constitute unprofessional conduct under Education Law § 6509 and Parts 29.1(b)(2) and (5) of the Regents Rules. Coursework on appropriate boundaries, when taken from an approved provider, could meet some or all of the requirement for at least three hours of CE in ethics, based on law and regulation, therefore, no change to the proposed rule is required.

14. COMMENT: A psychologist expressed concern that the proposed rule would increase the number of required CE hours, imposing a burden on licensees.

RESPONSE: The proposed three-hours of professional boundaries CE would be included in the existing 36 hours of triennially required CE for all seven professions. A psychologist could complete more than three hours of CE in ethics, as part of the 36 required hours, if they chose to do so. No changes to the proposed rule are needed.

15. COMMENT: State professional associations commented that they did not have a chance to comment on the proposed regulation before it was discussed by the Board of Regents and urge changes to the regulation process.

RESPONSE: The time for professional organizations, or any other member of the public, to submit comments under the State Administrative Procedures Act (SAPA) is the 60-day comment period—the time period in which this comment was received. In any event, the Department notes that the proposed rule was shared with the State Boards for Psychology, Social Work, and Mental Health Practitioners for review and comment prior to its presentation to the Board of Regents as a discussion item. No changes to the proposed rule are needed.

16. COMMENT: A state psychological association thinks it is imperative to hire a permanent Board Secretary for Psychology before the Department takes any further action impacting the future of the profession.

RESPONSE: The comment is not relevant to the proposed rule. However, suggesting that action on laws, rules or regulations related to the psychology profession be deferred during this period does not serve the profession or the public. No changes to the proposed rule are necessary.

17. COMMENT: Several social work commenters suggested a pre-licensure course on boundary violations be required, similar to the required coursework for identifying and reporting suspected child abuse and neglect.

RESPONSE: A requirement for pre-licensure coursework is beyond the scope of the proposed rule, which focuses on CE for licensed social workers, psychologists, and mental health practitioners. A one-time requirement would not provide the on-going education to assist licensees in establishing and maintaining appropriate boundaries to protect the public throughout their professional careers. No changes to the proposed rule are needed.

S6574-A KENNEDY Same as A 1171-A Bronson

ON FILE: 06/01/21 Insurance Law

TITLE....Requires blanket health insurance policies to provide coverage for outpatient treatment by mental health practitioners; repealer

05/06/21 REFERRED TO INSURANCE

06/01/21 AMEND AND RECOMMIT TO INSURANCE

06/01/21 PRINT NUMBER 6574A

01/05/22 REFERRED TO INSURANCE

05/24/22 COMMITTEE DISCHARGED AND COMMITTED TO RULES

05/24/22 ORDERED TO THIRD READING CAL.1506

05/24/22 SUBSTITUTED BY A1171A

A01171 Bronson AMEND=A

01/07/21 referred to insurance

05/20/21 amend and recommit to insurance

05/20/21 print number 1171a

05/25/21 reported referred to codes

06/02/21 reported referred to ways and means

06/08/21 reported referred to rules

06/08/21 reported

06/08/21 rules report cal.529

06/08/21 ordered to third reading rules cal.529

06/10/21 passed assembly

06/10/21 delivered to senate

06/10/21 REFERRED TO RULES

01/05/22 DIED IN SENATE

01/05/22 RETURNED TO ASSEMBLY

01/05/22 ordered to third reading cal.67

03/30/22 passed assembly

03/30/22 delivered to senate

03/30/22 REFERRED TO INSURANCE

05/24/22 SUBSTITUTED FOR S6574A

05/24/22 3RD READING CAL.1506

05/24/22 PASSED SENATE

05/24/22 RETURNED TO ASSEMBLY

12/19/22 delivered to governor

12/30/22 signed chap.818

12/30/22 approval memo.99

STATE OF NEW YORK

6574--A

2021-2022 Regular Sessions

IN SENATE

May 6, 2021

Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to health insurance coverage of outpatient care provided by a mental health practitioner and a clinical social worker; and to repeal certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Items (i) and (ii) of subparagraph (A) of paragraph 35 of
2 subsection (i) of section 3216 of the insurance law, item (i) as amended
3 by section 12 of part AA of chapter 57 of the laws of 2021 and item (ii)
4 as added by section 8 of subpart A of part BB of chapter 57 of the laws
5 of 2019, are amended to read as follows:
6 (i) where the policy provides coverage for inpatient hospital care,
7 such policy shall include benefits for inpatient care in a hospital as
8 defined by subdivision ten of section 1.03 of the mental hygiene law and
9 benefits for outpatient care provided in a facility issued an operating
10 certificate by the commissioner of mental health pursuant to the
11 provisions of article thirty-one of the mental hygiene law, or in a
12 facility operated by the office of mental health, or in a crisis
13 stabilization center licensed pursuant to section 36.01 of the mental
14 hygiene law, or, for care provided in other states, to similarly
15 licensed or certified hospitals or facilities; and
16 (ii) where the policy provides coverage for physician services, such
17 policy shall include benefits for outpatient care provided by a psychia-
18 trist or psychologist licensed to practice in this state, a licensed
19 clinical social worker [~~who meets the requirements of subparagraph (D)~~
20 ~~of paragraph four of subsection (1) of section three thousand two~~
21 ~~hundred twenty-one of this article;~~] within the lawful scope of his or

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD05221-03-1

1 her practice, who is licensed pursuant to article one hundred fifty-four
2 of the education law, a mental health counselor, marriage and family
3 therapist, creative arts therapist or psychoanalyst licensed pursuant to
4 article one hundred sixty-three of the education law, a nurse practi-
5 tioner licensed to practice in this state, or a professional corporation
6 or university faculty practice corporation thereof. Nothing herein
7 shall be construed to modify or expand the scope of practice of a mental
8 health counselor, marriage and family therapist, creative arts therapist
9 or psychoanalyst licensed pursuant to article one hundred sixty-three of
10 the education law. Further, nothing herein shall be construed to create
11 a new mandated health benefit.

12 § 2. Subparagraph (A) of paragraph 4 of subsection (1) of section 3221
13 of the insurance law, as amended by section 11 of subpart A of part BB
14 of chapter 57 of the laws of 2019, is amended to read as follows:

15 (A) Every insurer delivering a group policy or issuing a group policy
16 for delivery, in this state, that provides reimbursement for psychiatric
17 or psychological services or for the diagnosis and treatment of mental
18 health conditions, however defined in such policy, by physicians,
19 psychiatrists or psychologists, shall ~~[make available and if requested~~
20 ~~by the policyholder]~~ provide the same coverage to insureds for such
21 services when performed by a licensed clinical social worker, within the
22 lawful scope of his or her practice, who is licensed pursuant to article
23 one hundred fifty-four of the education law~~[. Written notice of the~~
24 ~~availability of such coverage shall be delivered to the policyholder~~
25 ~~prior to inception of such group policy and annually thereafter, except~~
26 ~~that this notice shall not be required where a policy covers two hundred~~
27 ~~or more employees or where the benefit structure was the subject of~~
28 ~~collective bargaining affecting persons who are employed in more than~~
29 ~~one state.]~~ and mental health counselors, marriage and family thera-
30 pists, creative arts therapists and psychoanalysts licensed pursuant to
31 article one hundred sixty-three of the education law, within the lawful
32 scope of his or her practice. Nothing herein shall be construed to modi-
33 fy or expand the scope of practice of a mental health counselor,
34 marriage and family therapist, creative arts therapist or psychoanalyst
35 licensed pursuant to article one hundred sixty-three of the education
36 law. Further, nothing herein shall be construed to create a new mandated
37 health benefit.

38 § 3. Subparagraph (D) of paragraph 4 of subsection (1) of section 3221
39 of the insurance law is REPEALED.

40 § 4. Item (ii) of subparagraph (A) of paragraph 5 of subsection (1) of
41 section 3221 of the insurance law, as amended by section 13 of subpart A
42 of part BB of chapter 57 of the laws of 2019, is amended to read as
43 follows:

44 (ii) where the policy provides coverage for physician services, it
45 shall include benefits for outpatient care provided by a psychiatrist or
46 psychologist licensed to practice in this state, or a mental health
47 counselor, marriage and family therapist, creative arts therapist or
48 psychoanalyst licensed pursuant to article one hundred sixty-three of
49 the education law, or a licensed clinical social worker [who meets the
50 requirements of subparagraph (D) of paragraph four of this subsection]
51 within the lawful scope of his or her practice, who is licensed pursuant
52 to article one hundred fifty-four of the education law, a nurse practi-
53 tioner licensed to practice in this state, or a professional corporation
54 or university faculty practice corporation thereof. Nothing herein shall
55 be construed to modify or expand the scope of practice of a mental
56 health counselor, marriage and family therapist, creative arts therapist

1 or psychoanalyst licensed pursuant to article one hundred sixty-three of
2 the education law. Further, nothing herein shall be construed to create
3 a new mandated health benefit.

4 § 5. Paragraph 2 of subsection (g) of section 4303 of the insurance
5 law, as added by section 22 of subpart A of part BB of chapter 57 of the
6 laws of 2019, is amended to read as follows:

7 (2) where the contract provides coverage for physician services such
8 contract shall provide benefits for outpatient care provided by a
9 psychiatrist or psychologist licensed to practice in this state, or a
10 mental health counselor, marriage and family therapist, creative arts
11 therapist or psychoanalyst licensed pursuant to article one hundred
12 sixty-three of the education law, or a licensed clinical social worker
13 [who meets the requirements of subsection (n) of this section] within
14 the lawful scope of his or her practice, who is licensed pursuant to
15 article one hundred fifty-four of the education law, a nurse practition-
16 er licensed to practice [on] in this state, or professional corporation
17 or university faculty practice corporation thereof. Nothing herein shall
18 be construed to modify or expand the scope of practice of a mental
19 health counselor, marriage and family therapist, creative arts therapist
20 or psychoanalyst licensed pursuant to article one hundred sixty-three of
21 the education law. Further, nothing herein shall be construed to create
22 a new mandated health benefit.

23 § 6. Subsection (i) of section 4303 of the insurance law is REPEALED.

24 § 7. Subsection (n) of section 4303 of the insurance law, as amended
25 by section 30 of subpart A of part BB of chapter 57 of the laws of 2019,
26 is amended to read as follows:

27 (n) ~~[In addition to the requirements of subsection (i) of this~~
28 ~~section, every] Every~~ health service or medical expense indemnity corpo-
29 ration issuing a group contract pursuant to this section or a group
30 remittance contract for delivery in this state which contract provides
31 reimbursement to subscribers or physicians, psychiatrists or psychol-
32 ogists for psychiatric or psychological services or for the diagnosis
33 and treatment of mental health conditions, however defined in such
34 contract, must provide the same coverage to persons covered under the
35 group contract for such services when performed by a licensed clinical
36 social worker, within the lawful scope of his or her practice, who is
37 licensed pursuant to ~~[subdivision two of section seven thousand seven~~
38 ~~hundred four of the education law and in addition shall have either (i)~~
39 ~~three or more additional years experience in psychotherapy, which for~~
40 ~~the purposes of this subsection shall mean the use of verbal methods in~~
41 ~~interpersonal relationships with the intent of assisting a person or~~
42 ~~persons to modify attitudes and behavior which are intellectually,~~
43 ~~socially or emotionally maladaptive, under supervision, satisfactory to~~
44 ~~the state board for social work, in a facility, licensed or incorporated~~
45 ~~by an appropriate governmental department, providing services for diag-~~
46 ~~nosis or treatment of mental health conditions, or (ii) three or more~~
47 ~~additional years experience in psychotherapy under the supervision,~~
48 ~~satisfactory to the state board for social work, of a psychiatrist, a~~
49 ~~licensed and registered psychologist or a licensed clinical social work-~~
50 ~~er qualified for reimbursement pursuant to subsection (i) of this~~
51 ~~section, or (iii) a combination of the experience specified in para-~~
52 ~~graphs (i) and (ii) totaling three years, satisfactory to the state~~
53 ~~board for social work.] article one hundred fifty-four of the education
54 law and a mental health counselor, marriage and family therapist, crea-
55 ative arts therapist or psychoanalyst licensed pursuant to article one
56 hundred sixty-three of the education law. Nothing herein shall be~~

1 construed to modify or expand the scope of practice of a mental health
2 counselor, marriage and family therapist, creative arts therapist or
3 psychoanalyst licensed pursuant to article one hundred sixty-three of
4 the education law. Further, nothing herein shall be construed to create
5 a new mandated health benefit. The state board for social work shall
6 maintain a list of all licensed clinical social workers qualified for
7 reimbursement under this subsection. The state board for mental health
8 practitioners shall maintain a list of all licensed mental health coun-
9 selors, marriage and family therapists, creative arts therapists or
10 psychoanalysts qualified for reimbursement under this subsection.

11 § 8. This act shall take effect on the first of January next succeed-
12 ing the date upon which it shall have become a law; provided, however,
13 that the amendments made to item (1) of subparagraph (A) of paragraph 35
14 of subsection (i) of section 3216 of the insurance law made by section
15 one of this act shall take effect on the same date and in the same
16 manner as part AA of chapter 57 of the laws of 2021 takes effect; and
17 provided further, shall apply to policies and contracts issued, renewed,
18 modified, altered or amended on or after such effective date.

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI, Sec 1**

BILL NUMBER: S6574A

SPONSOR: KENNEDY

TITLE OF BILL:

An act to amend the insurance law, in relation to health insurance coverage of outpatient care provided by a mental health practitioner and a clinical social worker; and to repeal certain provisions of such law relating thereto

PURPOSE:

The purpose of this bill is to require blanket health insurance policies to provide coverage for outpatient treatment by licensed mental health providers.

SUMMARY OF PROVISIONS:

Section 1 would amend item (ii) of subparagraph (A) of paragraph 5 of subsection 1 of section 3221 of the insurance law to provide that a group or accident and health insurance policy which provides coverage for physician services must also provide coverage for outpatient care by a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst licensed under article one hundred sixty-three of the education law and a licensed clinical social worker licensed under article 154 of the education law. Nothing in this act shall be construed as to create a new mandated health benefit.

Section 2 would amend paragraph 1 of subsection (h) of section 4303 of the insurance law to require that a medical expense indemnity corporation or health service corporation must provide coverage for outpatient care by a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst licensed under article one hundred sixty-three of the education law and a licensed clinical social worker licensed under article, 154 of the education law. Nothing in this act shall be construed as to create a new mandated health benefit.

Section 3 states the enactment date.

JUSTIFICATION:

Current law does not explicitly include all licensed mental health providers as allowable providers of outpatient mental health services, thereby allowing insurers to deny coverage for the valuable services these practitioners can provide. Mental health providers licensed by the New York State Department of Education face strict requirements for licensure, including the requirement that they obtain a master's degree or higher in a mental health course of study. These requirements ensure that such practitioner is fully capable of providing mental health counseling. In addition to their master's level coursework, Licensed Clinical Social Workers are required to pass two competency exams and

complete three years of highly prescribed supervised experience in the provision of diagnosis, assessment-based treatment planning and psychotherapy. As such, they have the statutory authority to diagnose and are often the first to diagnose and treat people with mental disorders and various emotional and, behavioral disturbances. Clinical Social Workers are essential to a variety of client-centered settings, including community mental health centers, hospitals, substance use treatment and recovery, programs, schools, primary health care centers, child welfare agencies, aging services, employee assistance programs, and private practice settings.

This bill would require insurers to reimburse mental health providers licensed under article 163 of the education law and licensed clinical social workers licensed under 154 of the education laws in addition to psychiatrists and psychologists. This change will continue to serve the intent of Timothy's Law by making needed mental health services available to more patients. It will benefit rural areas especially, where a patient may have limited access to a psychiatrist or psychologist. This amendment will ensure that a patient is not denied mental health services because the currently enumerated providers are located too far from the patient's home, or the patient is unable to afford the out of pocket expense of a mental health practitioner. In addition, this bill would amplify patient choice by increasing the variety and number of reimbursable providers available to treat mental health disorders.

LEGISLATIVE HISTORY:

2019: A670 Vetoed

2017,2018: S.3952/A.2163 Referred to Insurance 2015,2016:
S.2065A/A.6376-A Referred to Insurance 2013,2014; S.2708/A.978 Referred to Insurance 2011,2012; S.4756/A.9186 Referred to Insurance

FISCAL IMPLICATIONS:

Undetermined.

EFFECTIVE DATE:

This act shall take effect the first of January next succeeding

APPROVAL MEMORANDUM - No. 99 Chapter 818

MEMORANDUM filed with Assembly Bill Number 1171-A, entitled:

"AN ACT to amend the insurance law, in relation to health insurance coverage of outpatient care provided by mental health practitioner and a clinical social worker; and to repeal certain provisions of such law relating thereto"

APPROVED

This bill would require blanket health insurance policies to provide coverage for outpatient treatment services for a variety of issues treated by licensed mental health providers.

Having the proper coverage for mental health treatment services is very important to ensure that patients can receive proper treatment. However, this bill as drafted expanded such coverage to include treatment by creative arts therapists, which could open up an increased cost to the State under the federal Affordable Care Act thereby impacting individual and small group markets. I have reached agreement with the Legislature to remove the reference to creative arts therapists to avoid this potential cost to the State.

Based on this agreement, I am pleased to sign this bill into law.

This bill is approved.

(signed) KATHY HOCHUL

DRAFT Chapter 230 Implementation

Licensed mental health counselors (LMHCs), licensed marriage and family therapists (LMFTs) and licensed psychoanalysts (LPs) do not currently have the authority to diagnose. The Legislature determined that there was a need to increase the number of licensed mental health professionals authorized to diagnose in order to address critical workforce shortages and ensure that programs and services providing addiction and mental health services to children, adults and communities have the appropriate staff to provide comprehensive services, including diagnosis.

On June 24, 2022, the Governor signed Chapter 230 of the Laws of 2022 (Chapter 230), which allows licensed mental health counselors (LMHCs), licensed marriage and family therapists (LMFTs) and licensed psychoanalysts (LPs) to earn a diagnostic privilege by meeting specified requirements. These professions did not previously have the authority to diagnose. Except for two provisions that take effect June 30, 2024, Chapter 230 is immediately effective. The provisions of Chapter 230 that take effect on June 24, 2024 are addressed in these proposed regulations.

This Chapter amends Education Law §8401 by adding a new subdivision (3), which defines the term “diagnosis” and a new subdivision (4), which defines the term “development of assessment-assessment based treatment plans.” Chapter 230 also adds a new section 8401-a to the Education Law which, effective June 24, 2024, establishes a process and requirements for eligible LMHCs, LMFTs and LPs, to apply to the Department for the issuance of a privilege to diagnose and to develop assessment-based treatment plans.

Additionally, Chapter 230 amends:

- Subdivision (1) of Education Law §8407 (boundaries of professional competency), effective June 24, 2024, to recognize licensed professionals who have obtained the diagnostic privilege from the Department.
- Education Law §8409 to authorize the Department to issue limited permits to applicants who are gaining experience for the diagnostic privilege; and
- Education Law §8410 to authorize LMHCs, LMFTs and LPs to diagnose and develop assessment-based treatment plans through June 24, 2025, in certain settings approved by the Department.

Proposed Amendments

Chapter 230 requires that that an applicant for the privilege must demonstrate completion of a 60-semester hour masters or higher degree in mental health counseling, marriage and family therapy or the clock-hour equivalent in psychoanalysis

DRAFT Chapter 230 Implementation

that contains at least 12 semester hours of clinical content acceptable to the Department, that prepares the candidate to engage in diagnosis, psychotherapy and assessment-based treatment planning. A new sub-paragraph 79-9.6 (e), 79-10.6 (e) and 79-12.6 (e) defines clinical content in mental health counseling, marriage and family therapy, and psychoanalysis, respectively. A candidate who did not complete acceptable clinical content in a license-qualifying may complete post-graduate coursework acceptable to the Department to remedy any deficiencies.

In addition to clinical education requirements, Chapter 230 requires a candidate for the privilege to submit supervised experience, as defined in 79-9.6 (f), 79-10.6 (f) and 79-12.6 (f). The law provides two standards, based on the candidate's date of licensure in New York:

- A candidate who was licensed on or after June 24, 2024 must submit verification of having completed a supervised experience of at least 2,000 hours of supervised, direct client contact that shall include, but not be limited to, diagnosis, psychotherapy and the development of assessment-based treatment plans, as defined in section eighty-four hundred one of the Education law in the profession.
- A candidate who was licensed in New York prior to June 24, 2024 must submit verification of at least three years of experience engaged in direct client contact that shall include diagnosis, psychotherapy and the development of assessment-based treatment plans and submit the application within 3 years of the effective date of this section.

New sections 79-9.6 (g), 79-10.6 (g) and 79-12.6 (g) summarizes the documentation and fees that must be submitted to the Department by a candidate for the privilege, including the \$175 application fee in Chapter 230. Sections 79-9.6 (h), 79-10.6 (h) and 79-12.6 (h) require the licensee to submit a registration application and \$175 fee, attest to meeting the requirements for the privilege every three years. The privilege renewal is coterminous with the licensee's triennial registration period and requires the licensee to pay registration fee (\$241) and the privilege fee.

Chapter 230 amends the boundaries of professional practice, as defined in Education Law §8407, by defining unprofessional conduct to include making a diagnosis or assessment-based treatment plan without the privilege. Additionally, a licensee with the privilege does not require a physician's evaluation of a patient with specified diagnosis. These provisions are incorporated in amendments to Subpart 29-15 of the Regents Rules that define unprofessional conduct in the professions established under Article 163.

Related Regents Actions

At their July 2022 meeting, the Board of Regents approved emergency regulations to implement immediately certain provisions of Chapter 230. Following the 60-day period for public comment, the regulations were adopted as proposed, effective November 30, 2022. The proposed amendments to sections 79-9.4, 79-10.4 and 79-12.4 of the Commissioner's regulations implement the provisions of Chapter 230 by:

DRAFT Chapter 230 Implementation

- establishing the requirements for the Department's issuance of limited diagnostic permits to applicants for the diagnostic privilege in mental health counseling, marriage and family therapy and psychoanalysis;
- allowing applicants, with limited diagnostic permits, to practice under a qualified supervisor in an authorized setting, while they gain the required experience for the diagnostic privilege;
- authorizing applicants with limited diagnostic permits, who are licensed on or after June 24, 2024, to engage in supervised practice while meeting the additional requirements for the diagnostic privilege; and
- changing the titles of sections 79-9.4, 79-10.4 and 79-12.4 from limited permits to limited permits for licensure and limited diagnostic permits.

Additionally, the July 2022 amendments implemented Chapter 230 by repealing current sections 79-9.6, 79-10.6 and 79-12.6 of the Commissioner's regulations and adding new sections 79-9.6, 79-10.6 and 79-12.6 which:

- establish the requirements to be met by LMHCs, LMFTs or LPs who are completing supervised experience in diagnosis and assessment-based treatment planning under the exemption in Education Law §8410(11);
- define the terms "diagnosis," "assessment-based treatment planning" and "general supervision" of the licensee providing those services;
- define an acceptable setting, as defined in sections 79-9.3, 79-10.3 and 79-12.3 of the Commissioner's regulations, for the practice of mental health counseling, marriage and family therapy and psychoanalysis, respectively; and
- define acceptable supervisors of clinical experience in diagnosis and assessment-based treatment planning for LMHCs, LMFTs and LPs, such as licensed clinical social workers, psychologists or psychiatrists or, after June 24, 2024, LMHCs, LMFTs or LPs who hold the diagnostic privilege pursuant to Education Law §8401-a.

Timetable for Implementation

It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at the _____ 2023 Regents meeting, after publication in the State Register and the expiration of the 60-day public comment period required under the State Administrative Procedures Act. If adopted at the TBD meeting, the proposed rule will become effective on _____, 2023.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 8401, 8402, 8403, 8405, 8409, 8410, 8401-a of the Education Law and Chapter 230 of the Laws of 2022.

1. **Section 79-9.6 of the Regulations of the Commissioner of Education is amended with the addition of the following:**

(e) Acceptable clinical education.

(1) To meet the clinical education requirement for the privilege, the candidate shall present satisfactory evidence of having received a master's degree or higher in mental health counseling of at least 60 semester hours, or its equivalent through completion of:

(i) a program in mental health counseling that is registered as leading to licensure in mental health counseling by the department pursuant to section 52.32 of this Title, provided the candidate satisfactorily demonstrates completion of coursework prescribed in paragraph (2) of this subdivision; or

(ii) a program in mental health counseling that is accredited by an acceptable accrediting agency, provided the candidate satisfactorily demonstrates completion of coursework prescribed in paragraph (2) of this subdivision; or

(iii) a program in mental health counseling located outside the United States and its territories that is recognized by the appropriate civil authorities of the jurisdiction in which the program is located as a program that prepares an applicant for the professional practice of mental health counseling, has been verified in accordance with section 59.2(c) of this Title, and which is determined by the department to have substantial equivalence to a program in mental health counseling registered as leading

DRAFT Chapter 230 Implementation

to licensure by the department pursuant to section 52.32 of this Title or to a program in mental health counseling accredited by an acceptable accrediting agency, provided the candidate satisfactorily demonstrates completion of coursework prescribed in paragraph (2) of this subdivision.

(2) Clinical content.

(i) A applicant must demonstrate satisfactory completion of at least 12 semester hours or the equivalent of coursework that prepares the individual to diagnose and develop assessment-based treatment plans, acceptable to the department that includes course work such as:

(a) diagnosis and assessment-based treatment planning in the practice of mental health counseling and psychotherapy;

(b) assessment, evaluation and diagnosis using accepted classification systems in the practice of mental health counseling;

(c) developing and implementing assessment-based treatment plans for the provision of mental health counseling services; and

(d) clinical mental health counseling interventions with diverse populations.

(ii) The clinical content prescribed in subparagraph (i) of this paragraph must be coursework offered in a program prescribed in paragraph (1) of this subdivision. Such coursework may be taken as part of the master's or higher degree program in mental health counseling that the candidate has completed or post-graduate courses to remedy deficiencies in clinical content.

(f) Acceptable experience.

An applicant for the diagnostic privilege shall cause to be submitted on department forms verification of supervised experience under a qualified supervisor as defined in

DRAFT Chapter 230 Implementation

subdivision (d) of this paragraph and in an acceptable setting, as defined in subdivision (d) of section 79-9.3 of this Subpart, that satisfies sub-paragraph (1) or (2) of this paragraph.

(1) An applicant for the diagnostic privilege who was licensed as a mental health counselor pursuant to Article 163 of the Education Law on or after June 24, 2024 shall meet the experience requirement for the privilege by submitting sufficient documentation of having completed a supervised experience of at least 2,000 hours of supervised, direct client contact that shall include, but not be limited to, diagnosis, psychotherapy and the development of assessment-based treatment plans, as defined in section eighty-four hundred one of the Education law; or

(2) An applicant for the diagnostic privilege who was licensed as a mental health counselor pursuant to Article 163 of the Education Law prior to June 24, 2024 shall meet the experience requirement for the privilege by submitting attestation, on a form prescribed by the department, that such applicant has at least three years of experience engaged in direct client contact that shall include diagnosis, psychotherapy and the development of assessment-based treatment plans. Such candidate shall submit an application and fee for the privilege to the department within three years of the effective date of this section.

(g) Application for the privilege to diagnose and create assessment-based treatment planning.

- (1) Submit the application for the privilege and pay the \$175 application fee;
- (2) Submit verification of licensure as a mental health counselor in New York;
- (3) Cause to be submitted verification of acceptable clinical education, as defined in subdivision (e) of this Subpart; and

DRAFT Chapter 230 Implementation

(4) Cause to be submitted verification of supervised experience in diagnosis and assessment-based treatment plans, as defined in subdivision (f) of this Subpart.

(h) Registration.

A privilege issued under this section shall be valid for the life of the holder, unless revoked, annulled, or suspended by the Board of Regents. Such a privilege shall be subject to the same oversight and disciplinary provisions as licenses issued under this title. The holder of a privilege issued under this section shall register with the department as a privilege holder in the same manner and subject to the same provisions as required of a licensee pursuant to section sixty-five hundred two of this title, provided that, at the time of each registration, the privilege holder shall certify that he or she continues to meet the requirements for the privilege set forth in this section. The fee for such registration shall be one hundred seventy-five dollars which shall be paid in addition to the triennial registration fee for the license. The registration period for a privilege holder shall be coterminous with his or her registration under this article.

2. Section 79-10.6 of the Regulations of the Commissioner of Education is amended with the addition of the following:

(e) Acceptable clinical education.

(1) To meet the clinical education requirement for the privilege, the candidate shall present satisfactory evidence of having received a master's degree or higher in marriage and family therapy of at least 60 semester hours, or its equivalent through completion of:

(i) a program in marriage and family therapy that is registered as leading to licensure in marriage and family therapy by the department pursuant to section 52.33 of this Title,

DRAFT Chapter 230 Implementation

provided the candidate satisfactorily demonstrates completion of coursework prescribed in paragraph (2) of this subdivision; or

(ii) a program in marriage and family therapy that is accredited by an acceptable accrediting agency, provided the candidate satisfactorily demonstrates completion of coursework prescribed in paragraph (2) of this subdivision; or

(iii) a program in marriage and family therapy located outside the United States and its territories that is recognized by the appropriate civil authorities of the jurisdiction in which the program is located as a program that prepares an applicant for the professional practice of marriage and family therapy, has been verified in accordance with section 59.2(c) of this Title, and which is determined by the department to have substantial equivalence to a program in marriage and family therapy registered as leading to licensure by the department pursuant to section 52.33 of this Title or to a program in marriage and family therapy accredited by an acceptable accrediting agency, provided the candidate satisfactorily demonstrates completion of coursework prescribed in paragraph (2) of this subdivision.

(2) Clinical content.

(i) An applicant must demonstrate satisfactory completion of at least 12 semester hours or the equivalent of coursework that prepares the individual to diagnose and develop assessment-based treatment plans, acceptable to the department that includes course work such as:

(a) diagnosis and assessment-based treatment planning in the practice of marriage and family therapy and psychotherapy;

(b) assessment, evaluation and diagnosis using accepted classification systems in the practice of marriage and family therapy;

DRAFT Chapter 230 Implementation

(c) developing and implementing assessment-based treatment plans for the provision of marriage and family therapy services; and

(d) clinical marriage and family therapy interventions with diverse populations.

(ii) The clinical content prescribed in subparagraph (i) of this paragraph must be coursework offered in a program prescribed in paragraph (1) of this subdivision. Such coursework may be taken as part of the master's or higher degree program in marriage and family therapy that the candidate has completed or post-graduate courses to remedy deficiencies in clinical content.

(f) Acceptable experience.

An applicant for the diagnostic privilege shall cause to be submitted on department forms verification of supervised experience under a qualified supervisor as defined in subdivision (d) of this paragraph and in an acceptable setting, as defined in subdivision (d) of section 79-10.3 of this Subpart, that satisfies sub-paragraph (1) or (2) of this paragraph.

(1) An applicant for the diagnostic privilege who was licensed as a marriage and family therapist pursuant to Article 163 of the Education Law on or after June 24, 2024 shall meet the experience requirement for the privilege by submitting sufficient documentation of having completed a supervised experience of at least 2,000 hours of supervised, direct client contact that shall include, but not be limited to, diagnosis, psychotherapy and the development of assessment-based treatment plans, as defined in section eighty-four hundred one of the Education law; or

(2) An applicant for the diagnostic privilege who was licensed as a marriage and family therapist pursuant to Article 163 of the Education Law prior to June 24, 2024 shall meet

DRAFT Chapter 230 Implementation

the experience requirement for the privilege by submitting attestation, on a form prescribed by the department, that such applicant has at least three years of experience engaged in direct client contact that shall include diagnosis, psychotherapy and the development of assessment-based treatment plans. Such candidate shall submit an application and fee for the privilege to the department within three years of the effective date of this section.

(g) Application for the privilege to diagnose and create assessment-based treatment planning.

(1) Submit the application for the privilege and pay the \$175 application fee;

(2) Submit verification of licensure as a marriage and family therapist in New York;

(3) Cause to be submitted verification of acceptable clinical education, as defined in sub-paragraph (e) of this Subpart; and

(4) Cause to be submitted verification of supervised experience in diagnosis and assessment-based treatment plans, as defined in sub-paragraph (f) of this Subpart.

(h) Registration.

A privilege issued under this section shall be valid for the life of the holder, unless revoked, annulled, or suspended by the Board of Regents. Such a privilege shall be subject to the same oversight and disciplinary provisions as licenses issued under this title. The holder of a privilege issued under this section shall register with the department as a privilege holder in the same manner and subject to the same provisions as required of a licensee pursuant to section sixty-five hundred two of this title, provided that, at the time of each registration, the privilege holder shall certify that he or she continues to meet the requirements for the privilege set forth in this section.

DRAFT Chapter 230 Implementation

The fee for such registration shall be one hundred seventy-five dollars which shall be paid in addition to the triennial registration fee for the license. The registration period for a privilege holder shall be coterminous with his or her registration under this article.

3. Section 79-12.6 of the Regulations of the Commissioner of Education is amended with the addition of the following:

(e) Acceptable clinical education.

(1) To meet the clinical education requirement for the privilege, the candidate shall present satisfactory evidence of having received a master's degree or higher in psychoanalysis of at least 60 semester hours, or its equivalent through completion of:

(i) a program in psychoanalysis that is registered as leading to licensure in psychoanalysis by the department pursuant to section 52.35 of this Title, provided the candidate satisfactorily demonstrates completion of coursework prescribed in paragraph

(2) of this subdivision; or

(ii) a program in psychoanalysis that is accredited by an acceptable accrediting agency, provided the candidate satisfactorily demonstrates completion of coursework prescribed in paragraph (2) of this subdivision; or

(iii) a program in psychoanalysis located outside the United States and its territories that is recognized by the appropriate civil authorities of the jurisdiction in which the program is located as a program that prepares an applicant for the professional practice of psychoanalysis, has been verified in accordance with section 59.2(c) of this Title, and which is determined by the department to have substantial equivalence to a program in psychoanalysis registered as leading to licensure by the department pursuant to section 52.35 of this Title or to a program in psychoanalysis accredited by an acceptable

DRAFT Chapter 230 Implementation

accrediting agency, provided the candidate satisfactorily demonstrates completion of coursework prescribed in paragraph (2) of this subdivision.

(2) Clinical content.

(i) A applicant must demonstrate satisfactory completion of at least 12 semester hours or the equivalent of coursework that prepares the individual to diagnose and develop assessment-based treatment plans, acceptable to the department that includes course work such as:

(a) diagnosis and assessment-based treatment planning in the practice of psychoanalysis and psychotherapy;

(b) assessment, evaluation and diagnosis using accepted classification systems in the practice of psychoanalysis;

(c) developing and implementing assessment-based treatment plans for the provision of psychoanalysis services; and

(d) clinical psychoanalysis interventions with diverse populations.

(ii) The clinical content prescribed in subparagraph (i) of this paragraph must be coursework offered in a program prescribed in paragraph (1) of this subdivision. Such coursework may be taken as part of the master's or higher degree program in psychoanalysis that the candidate has completed or post-graduate courses to remedy deficiencies in clinical content.

(f) Acceptable experience.

An applicant for the diagnostic privilege shall cause to be submitted on department forms to verification of supervised experience under a qualified supervisor as defined in subdivision (d) of this paragraph and in an acceptable setting, as defined in subdivision

DRAFT Chapter 230 Implementation

(d) of section 79-12.3 of this Subpart, that satisfies paragraph (1) or (2) of this paragraph.

(1) An applicant for the diagnostic privilege who was licensed as a psychoanalyst pursuant to Article 163 of the Education Law on or after June 24, 2024 shall meet the experience requirement for the privilege by submitting sufficient documentation of having completed a supervised experience of at least 2,000 hours of supervised, direct client contact that shall include, but not be limited to, diagnosis, psychotherapy and the development of assessment-based treatment plans, as defined in section eighty-four hundred one of the Education law.

(2) An applicant for the diagnostic privilege who was licensed as a psychoanalyst pursuant to Article 163 of the Education Law prior to June 24, 2024 shall meet the experience requirement for the privilege by submitting attestation, on a form prescribed by the department, that such applicant has at least three years of experience engaged in direct client contact that shall include diagnosis, psychotherapy and the development of assessment-based treatment plans. Such candidate shall submit an application and fee for the privilege to the department within three years of the effective date of this section.

(g) Application for the privilege to diagnose and create assessment-based treatment planning.

(1) Submit the application for the privilege and pay the \$175 application fee;

(2) Submit verification of licensure as a psychoanalyst in New York;

(3) Cause to be submitted verification of acceptable clinical education, as defined in sub-paragraph (e) of this Subpart; and

DRAFT Chapter 230 Implementation

(4) Cause to be submitted verification of supervised experience in diagnosis and assessment-based treatment plans, as defined in sub-paragraph (f) of this Subpart.

(h) Registration.

A privilege issued under this section shall be valid for the life of the holder, unless revoked, annulled, or suspended by the Board of Regents. Such a privilege shall be subject to the same oversight and disciplinary provisions as licenses issued under this title. The holder of a privilege issued under this section shall register with the department as a privilege holder in the same manner and subject to the same provisions as required of a licensee pursuant to section sixty-five hundred two of this title, provided that, at the time of each registration, the privilege holder shall certify that he or she continues to meet the requirements for the privilege set forth in this section. The fee for such registration shall be one hundred seventy-five dollars which shall be paid in addition to the triennial registration fee for the license. The registration period for a privilege holder shall be coterminous with his or her registration under this article.

4. Subpart 29.15 of the Rules of the Board of Regents is amended, to read as follows:

29.15 Special provisions for the professions of creative arts therapy, marriage and family therapy, mental health counseling, and psychoanalysis.

Unprofessional conduct in the practice of creative arts therapy, marriage and family therapy, mental health counseling and psychoanalysis shall include conduct prohibited by sections 29.1 and 29.2 of this Part and, in accordance with section 8407 of the Education Law, shall also include:

(a) in the case of treatment of schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder, attention-

DRAFT Chapter 230 Implementation

deficit hyperactivity disorder and autism, providing any mental health service for such illness on a continuous and sustained basis without a medical evaluation of the illness by, and consultation with, a physician regarding such illness, unless such licensed professional has been issued a privilege to diagnose and develop assessment-based treatment plans by the department. Such medical evaluation and consultation shall be to determine and advise whether any medical care is indicated for such illness;

(b) prescribing or administering drugs as a treatment, therapy, or professional service in the practice of his or her profession; [or]

(c) using invasive procedures as a treatment, therapy, or professional service in the practice of his or her profession. For purposes of this subdivision, invasive procedure means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or other means. Invasive procedure includes, but is not limited to surgery, lasers, ionizing radiation, therapeutic ultrasound, or electroconvulsive therapy; or

(d) A mental health counselor, marriage and family therapist or psychoanalyst who engages in diagnosis and the development of assessment-based treatment plans without a privilege may be charged with professional misconduct under section sixty-five hundred nine of this title.