

## **Guidelines to Implement Part Y of Chapter 57 of the Laws of 2018**

Chapters 420 and 676 of the Laws of 2002 amended the Education Law to, among other things, establish the professions of “licensed master social worker” and “licensed clinical social worker”, define the practice of psychology, and establish four mental health practitioner licenses (mental health counselor, marriage and family therapists, creative arts therapists and psychoanalysts). Articles 153, 154 and 163 of the Education Law define the requirements for licensure as a psychologist, social worker and mental health practitioner, respectively. The statutes provide that commencing with the profession of psychology on September 1, 2003, continuing with social work on September 1, 2004, and concluding on January 1, 2006 for the mental health practitioner professions, the practices of the seven professions became restricted to those licensed, otherwise authorized, or exempt. Exemptions, which are established in statute, include students under supervision, other individuals in licensed professions or in specific occupations, and individuals in certain settings.

In addition, the 2002 statutes enacted an exemption from licensure until January 1, 2010 for “any person in the employ of a program or service that is regulated, operated, funded or approved by the department of mental hygiene or a local government unit...of the mental hygiene law.” This exemption was broadened and extended by the Legislature in subsequent years.

The original exemptions for individuals employed in certain programs and services in the 2002 law were expanded in 2003 to include individuals in programs that are operated, regulated, funded or approved by the Office of Children and Family Services (OCFS) or a local social services district. The exemption was again extended to July 1, 2013 by chapters 130 and 132 of the Laws of 2010. With regard to the professions of social work and mental health practitioners, Chapters 130 and 132 also expanded the exempt settings to include persons in the employ of programs or services operated, regulated, funded or approved by the Department of Health (DOH), State Office for the Aging (SOFA), and the Department of Corrections and Community Supervision (DOCCS). The expansion of the exemptions to these agencies did not include the profession of psychology. The implementation of these licensure laws revealed a number of unforeseen and unintended consequences of the law, including uncertainty about what tasks and activities in these settings were required to be provided by licensed personnel and what types of activities could be provided by unlicensed personnel. The State Education Department (“SED”) has worked collaboratively for many years with the impacted state agencies and other stakeholders to address these critical issues.

In order to collect information about the provider workforce and to clarify the services and activities that, if not for the exemption, must only be performed by licensed or authorized personnel, in 2012, SED and the exempt State agencies collaborated on the development and administration of a survey. In developing the survey, the Office of the Professions and the exempt agencies identified five activities (diagnosis,

assessment/evaluation, psychotherapy, assessment-based treatment planning, and services other than psychotherapy) that, if not for the exemption, could only be provided by those appropriately licensed or otherwise authorized under law. To assist programs in completing the survey, it provided examples of activities that would constitute restricted professional practice and of tasks that could be performed by an unlicensed person.

The Office of the Professions in collaboration with the exempt state agencies disseminated the survey to their service providers. More than 2,200 programs completed the online survey, and the Office of the Professions shared the results with representatives of the exempt agencies, the Governor's office and the Legislature. The executive agencies, as required by statute, provided alternative plans, which are posted online ([www.op.nysesd.gov/surveys/mhpsw/exemp-agencyrpts.htm](http://www.op.nysesd.gov/surveys/mhpsw/exemp-agencyrpts.htm)).

Part AA of Chapter 57 of the Laws of 2013 extended the exemption from licensure as a social worker, psychologist or mental health practitioner for individuals employed in programs that are operated, regulated, approved or funded by certain state or local government agencies until July 1, 2016. Part AA added Education Law §7605(10), §7706(7) and §8410(8) to define exempt activities that do not require licensure as a psychologist, social worker or mental health practitioner, respectively. The law also required SED, in consultation with the affected agencies, professional associations, providers and consumers, to issue a report to the Governor and Legislature regarding implementation of the law. The 2015 report and additional information about the licensing laws and exemptions can be found on the Department's website at:

[www.op.nysesd.gov/surveys/mhpsw/complete\\_sed\\_2015\\_report\\_agency\\_statements.pdf](http://www.op.nysesd.gov/surveys/mhpsw/complete_sed_2015_report_agency_statements.pdf). The exemption was subsequently extended to July 1, 2018, pursuant to Part J of Chapter 59 of the Laws of 2016.

Part Y of Chapter 57 of the Laws of 2018 ("Part Y"), amended Articles 153 (Psychology), 154 (Social Work), and 163 (Mental Health Practitioners) of the Education Law to further extend the exemptions in the licensed social work, mental health, and psychology professions. Below is a summary of the affected licensed professions and exempt employment settings:

Licensed Professions	Exempt Employment Settings
<ul style="list-style-type: none"> <li>• Creative Arts Therapy</li> <li>• Licensed Clinical Social Work</li> <li>• Licensed Master Social Work</li> <li>• Marriage and Family Therapy</li> <li>• Mental Health Counseling</li> <li>• Psychoanalysis</li> </ul>	<p>Employees of a program or service operated, regulated, funded, or approved by the following:</p> <ul style="list-style-type: none"> <li>• Department of Mental Hygiene (OMH, OPWDD &amp; OASAS)</li> <li>• Office of Children and Family Services</li> <li>• Office of Temporary and Disability Assistance</li> <li>• Department of Corrections and Community Supervision</li> <li>• State Office for the Aging</li> <li>• Department of Health</li> <li>• Local governmental unit<sup>1</sup></li> <li>• Social services district<sup>2</sup></li> </ul>
<ul style="list-style-type: none"> <li>• Psychology</li> </ul>	<p>Employees of a program or service operated, regulated, funded, or approved by the following:</p> <ul style="list-style-type: none"> <li>• Department of Mental Hygiene (OMH, OPWDD &amp; OASAS)</li> <li>• Office of Children and Family Services</li> <li>• Local governmental unit<sup>1</sup></li> <li>• Social services district<sup>2</sup></li> </ul>

<sup>1</sup>Per Article 41 of the Mental Hygiene Law

<sup>2</sup>Per section 61 of the Social Services Law

Under the new law, the current licensing exemptions reflected in the chart above will continue until one year after the Board of Regents adopts regulations to implement the amended law. The new law further clarifies and expands the list of activities that do not require licensure and establishes grandparenting provisions for current employees in these exempt settings.<sup>1</sup>

Part Y also requires SED, *in consultation with the exempt agencies*, to “develop formal guidance consistent with this chapter for service providers authorized to operate under the respective executive agencies, to identify the tasks and functions performed by each agency’s service provider workforce categorized as tasks and functions restricted to licensed personnel including tasks and functions that do not require a license under articles 153, 154, and 163 of the education law.” This document provides this formal guidance for service providers. This guidance identifies tasks and services that do (and do not) require licensure and addresses many frequently asked questions that the Department has received since the enactment of Part Y.

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<sup>1</sup> Please note that the permanent exemption for psychologists in Section 7605(1) of Article 153 employed in salaried positions operated by the Department of Mental Hygiene agencies, as well as other specified settings, is not affected by this amendment.

## **Development of these Guidelines**

On July 30, 2018, the Department hosted a public meeting and provided an opportunity for impacted stakeholders to provide written and oral comments on the implementation of the law. It was suggested that commenters address one or more of the following issues, or other topics the commenter found relevant:

1. Specific terms that should be clarified in departmental guidance.
2. Specific tasks and functions, not already identified in law or regulation, that must be performed by licensed persons that should be clarified in departmental guidance.
3. Specific tasks and functions, not already identified in law or regulation, that do not require licensure that should be clarified in departmental guidance.
4. Challenges in recruiting and retaining qualified licensees in the social work, psychology and mental health practitioner professions.
5. Systems to insure appropriate supervision of unlicensed staff providing services as part of a multi-disciplinary team in a program that is regulated, operated, funded or approved by an exempt executive agency.

A majority of the commenters, representing coalitions of provider agencies and professional associations, noted that the tasks and activities included in Part Y were carefully crafted by stakeholders, the Legislature and Executive and cautioned the Department against expanding or amending the list of activities that require licensure.<sup>2</sup> All comments submitted by interested stakeholders are posted on the Office of the Professions website [www.op.nysesd.gov/surveys/mhpsw/exempt-agencies-overview.htm](http://www.op.nysesd.gov/surveys/mhpsw/exempt-agencies-overview.htm) and this feedback was taken into consideration when drafting this guidance.

## **Frequently Asked Questions on Part Y of Chapter 57 of the Laws of 2018**

- 1. What is the “scope of practice” of an individual licensed under articles 153, 154 and 163 of the Education Law?**

Generally, Title VIII of the Education Law defines and restricts the practice of psychology, social work and mental health practitioners, to individuals licensed or otherwise authorized to practice (e.g., limited permit holders, students in an internship as part of a license-qualifying graduate program, and other licensed professions). Only an individual who is licensed and registered can use the restricted title or term established in law.<sup>3</sup> The scope of practice for each profession is found in **Attachment A**.

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<sup>2</sup> Some of the comments were outside the scope of the law, such as expanded reimbursement for professional services; alternatives to licensing examinations; and allowing mental health practitioners licensed under Article 163 to diagnose mental illness.

<sup>3</sup> Please note that the permanent exemption for psychology, in Education Law §7605(1) is for individuals employed in salaried positions operated by the Department of Mental Hygiene agencies, as well as other specified settings, allows use of the psychologist title.

**2. What tasks and functions are restricted to licensed personnel under articles 153, 154, and 163 of the Education Law under Part Y?**

Part Y identifies certain tasks and activities that are restricted to individuals licensed or otherwise authorized to practice under the Education Law, including assessment/evaluation; diagnosis; assessment-based treatment planning; psychotherapy; and treatment other than psychotherapy. The definition of these terms, and examples of activities that do and do not require licensure, are provided in **Attachment B**. A job that requires the performance of one or more of these five restricted activities may only be performed by an individual licensed or an individual otherwise authorized under the law to practice. Anyone with specific questions about whether particular duties fall within these five restricted activities may contact the appropriate State Board to request clarification. See also questions 12 & 13.

**3. If an activity is described as therapy, assessment or counseling, does it automatically require licensure?**

No. The laws defining the practice of psychology, social work and mental health practitioners, as well as other professions, may use the same terminology for different purposes or meanings. Terms, such as *therapy*, *assessment* and *counseling* may be part of the practice of the profession, but also may also be used to describe activities that do not require licensure under the law. Specific questions whether a specific modality or practice requires licensure should be directed to the appropriate State Board for clarification as to whether or not the activity is restricted under Title VIII or exempt under the law.

**4. Can a LMSW or LCSW licensed under the Education Law perform tasks that are within their scope of practice that do not require licensure under the law?**

Yes, Education Law §7702, as further amended by Part Y, lists social work functions that do not require licensure, including but not limited to:

- a. Serve as a community organizer, planner, or administrator for social service programs in any setting.
- b. Provide supervision and/or consultation to individuals, groups, institutions and agencies.
- c. Serve as a faculty member or instructor in an educational setting.
- d. Plan and/or conduct research projects and program evaluation studies.
- e. Maintain familiarity with both professional and self-help systems in the community in order to assist the client in those services when necessary.
- f. Provide advice and guidance and assist individuals or groups with difficult day to day problems such as finding employment, locating sources of

- assistance, and organizing community groups to work on a specific problem.
- g. Consult with other agencies on problems and cases served in common and coordinating services among agencies or providing case management.
  - h. Conduct data gathering on social problems.
  - i. Serve as an advocate for those clients or groups of clients whose needs are not being met by available programs or by a specific agency.
  - j. Assess, evaluate and formulate a plan of action based on client need.
  - k. Provide training to community groups, agencies, and other professionals.
  - l. Provide administrative supervision.
  - m. Provide peer services.
  - n. Collect basic information, gathering of demographic data, and informal observations, screening and referral used for general eligibility for a program or service and determining the functional status of an individual for the purpose of determining the need for services.<sup>4</sup>

**5. Can a licensed psychologist, social worker or mental health practitioner be professionally responsible when performing tasks that do not require licensure?**

Yes, if a licensee who provides services that do not require licensure is using the professional title and holding himself/herself out to practice as a licensed professional, the licensee may face charges of misconduct if he/she commits professional misconduct as defined in Education Law and the Rules of the Board of Regents while performing such services.

**6. Must individuals who are performing restricted professional services in settings that were previously exempt under the law now be licensed as a psychologist, social worker or mental health practitioner?**

No, Part Y added Education Law §§7605(12) (psychology), 7706(8) (social work) and 8410(9) (mental health practitioners) to provide an exemption from licensure for an individual who is employed or who commences employment in a program or service that is operated, regulated, funded or approved by the Department of Mental Hygiene, OCFS, DOCCS, Office of Temporary Disability Assistance, SOFA and DOH or a local government unit as that term is defined in section 41.01 of the Mental Hygiene Law or a social services district as defined in section 61 of the Social Services Law, on or before one year after the regulations are adopted by the Board of Regents or published in the State Register; whichever is later. The exemption applies to such employees for as long as they remain

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<sup>4</sup> Paragraphs (m) and (n) were added to Education Law §7702 by Part Y.

employed by such programs or services and whether they remain employed by the same or other employers providing such programs or services.

**However, any person who commences employment in such program or service after such date (one year after the date the regulations are adopted by the Board of Regents or published in the State Register; whichever is later) and performs services that are restricted under this article shall be appropriately licensed or authorized under this article.** Each state oversight agency is responsible for creating and maintaining a process to verify employment history of individuals exempt under the new law.

**7. Does the experience gained by individuals in exempt settings qualify for licensure?**

Yes, experience gained by individuals in exempt settings may qualify for licensure if such experience meets the other requirements for licensure in the specific profession. An individual's experience should be submitted by the supervisor on Department-approved forms for review.

**8. What services can be provided by an individual with a master's degree in psychology or its equivalent?**

Part Y added Education Law §7605(13) to provide an exemption from licensure for an individual with a master's degree in psychology or its equivalent. Such individual may engage in activities that constitute the practice of the appropriate profession when:

- employed in a program or service that is operated, regulated, funded or approved by the Department of Mental Hygiene, the Office of Children and Family Services, or a local government unit as defined in section 41.03 of the mental hygiene law or a social services district as defined in section 61 of the social services law; and
- the individual with a master's degree in psychology is working under the supervision of a psychologist licensed and registered under Article 153.

For purposes of this section, supervision shall mean that the licensed supervisor is available for consultation, assessment and evaluation, has authorized such individual to provide the services, and exercises the degree of supervision appropriate to the circumstances. **The supervisor remains responsible for the services provided and may be charged with unprofessional conduct under Part 29 of the Regents Rules in the event supervision is determined to be insufficient.** Nothing in this section of the law authorizes the use of a title or term restricted under the Education Law by the unlicensed individual.

**9. What services can be provided by an individual with a master's level degree required for licensure under Article 163?**

Part Y added Education Law §8410(10) to provide an exemption from licensure for an individual with a master's level degree required for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst (although this profession requires post-master's advanced certificate) under Article 163. Such individual may engage in activities that constitute the practice of the appropriate profession when:

- employed in a program or service that is operated, regulated, funded or approved by the Department of Mental Hygiene, the Office of Children and Family Services, the Department of Corrections and Community Supervision, the Office of Temporary and Disability Assistance, the State Office for the Aging and the Department of Health or a local government unit as defined in section 41.03 of the mental hygiene law or a social services district as defined in section 61 of the social services law; and
- the individual with a master's degree leading to licensure under Article 163 is working under the supervision of a psychologist licensed and registered under Article 153, a licensed clinical social worker licensed and registered under Article 154, or a licensee registered to practice the same profession under Article 163 of the Education Law.

For purposes of this section, supervision shall mean that the licensed supervisor is available for consultation, assessment and evaluation, has authorized such individual to provide the services, and exercises the degree of supervision appropriate to the circumstances. **The supervisor remains responsible for the services provided and may be charged with unprofessional conduct under Part 29 of the Regents Rules in the event supervision is determined to be insufficient.** Nothing in this section of the law authorizes the use of a title or term restricted under the Education Law by the unlicensed individual.

**10. Is licensure required to perform certain services, such as assessments, advice, peer services or substance abuse treatment?**

No, Part Y amended Education Law §§7605(10)(a), 7706 subdivision (7)(a), and 8410(8)(a) to provide an exemption from licensure for individuals who engage in certain activities that fall within the practice of a psychologist, social worker or mental health practitioner in any setting, including the following services:

- performing assessments including but not limited to basic information collection, gathering of demographic data, and informal observations, screening and referral used for general eligibility for a program or

- service and determining the functional status of an individual for the purpose of determining need for services;
- advising individuals regarding the appropriateness of benefits they are eligible for;
  - providing general advice and guidance and assisting individuals or groups with difficult day to day problems such as finding employment, locating sources of assistance, and organizing community groups to work on a specific problem;
  - providing peer services;
  - selecting for suitability and providing substance abuse treatment services or group re-entry services to incarcerated individuals in state correctional facilities; or
  - providing substance abuse treatment services or re-entry services to incarcerated individuals in local correctional facilities

**11. Is licensure by the Education Department required to create, develop or implement a service or recovery plan?**

No, Part Y amended Education Law §7605(10)(b), 7706(7)(b), and 8410(8)(b) to allow these activities so long as the plan is not a behavioral health diagnosis or treatment plan, such as a clinical social work diagnosis or an assessment-based treatment plan, as those terms are defined in Education Law §7701(2)(b) and (d); a diagnosis or treatment plan ordered or directed by a psychologist in accordance with section 7601-a; or the use of assessment instruments and psychotherapy to provide appropriate mental health counseling, marriage and family therapy, creative arts therapy or psychoanalytic services, as defined in Education Law §§ 8402(1), 8403(1), 8404(1) or 8405(1), respectively. See also questions 12 & 13.

Such service or recovery plans shall include, but are not limited to, coordinating, evaluating or determining the need for, or the provision of the following services:

- job training and employability;
- housing;
- homeless services and shelters for homeless individuals and families;
- refugee services;
- residential, day or community habilitation services;
- general public assistance;
- in home services and supports or home-delivered meals;
- recovery supports;
- adult or child protective services including investigations;
- detention as defined in Executive law §502;
- prevention and residential services for victims of domestic violence;

- services for runaway and homeless youth;
- foster care, adoption, preventive services or services in accordance with an approved plan pursuant to Social Services Law §404, including, adoption and foster home studies and assessments, family service plans, transition plans, permanency planning activities, and case planning or case management as such terms are defined in the regulations of the office of children and family services;
- residential rehabilitation;
- home and community based services; and
- de-escalation techniques, peer services or skill development.

**12. Is licensure under the Education Law required to participate on a multi-disciplinary team?**

No, Part Y amended Education Law §§7605(10)(c), 7706 (7)(c), and 8410(8)(c) to allow an unlicensed person to participate as a member of a multi-disciplinary team to assist in the development of or implementation of a behavioral health services or treatment plan; provided the team shall include one or more professionals licensed under Article 131 (medicine), 139 (nursing), 153 (psychology), 154 (social work) or 163 (mental health practitioners) and such team members may only perform services within his or her lawful scope of practice . Unless otherwise authorized, the unlicensed individual may not engage in the diagnosis of mental, emotional, behavioral, addictive and developmental disorders and disabilities; patient assessment and evaluating; the provision of psychotherapeutic treatment; the provision of treatment other than psychotherapeutic treatment; or independently developing and implementing assessment-based treatment plans as defined in Education Law §7701. The definition of these terms, and examples of activities that do and do not require licensure, are provided in **Attachment B**.

**13. What activities are considered an “assist” from an unlicensed person on a multi-disciplinary team?**

For purposes of unlicensed persons participating as a member of a multi-disciplinary team, Part Y added new Education Law §§7605(10)(c)(ii), 7706(7)(c)(ii) and 8410(8)(c)(ii) to define , "assist" to include, but not be limited to, the provision or performance of the following tasks, services, or functions by an individual who has obtained the training and experience required by the applicable state oversight agency to perform such task, service or function in facilities or programs operating pursuant to article 19-G of the executive law; articles 7, 16, 31 or 32 of the mental hygiene law; or title 3 of article 7 of the social services law:

1. helping an individual with the completion of forms or questionnaires;
2. reviewing existing case records and collecting background information about an individual which may be used by the licensed professional or multi-disciplinary team;
3. gathering and reporting information about previous behavioral health interventions, hospitalizations, documented diagnosis, or prior treatment for review by the licensed professional and multi-disciplinary team;
4. discussing with the individual his or her situation, needs, concerns, and thoughts in order to help identify services that support the individual's goals, independence, and quality of life;
5. providing advice, information, and assistance to individuals and family members to identify needs and available resources in the community to help meet the needs of the individual or family member;
6. engaging in immediate and long-term problem solving, engaging in the development of social skills, or providing general help in areas including, but not limited to, housing, employment, child care, parenting, community-based services, and finances;
7. distributing paper copies of self-administered tests for the individual to complete when such tests do not require the observation and judgment of a licensed professional;
8. monitoring treatment by the collection of written and/or observational data in accordance with the treatment plan and providing verbal or written reports to the multi-disciplinary team;
9. identifying gaps in services and coordinating access to or arranging services for individuals such as home care, community-based services, housing, employment, transportation, child care, vocational training, or health care;
10. offering education programs that provide information about disease identification and recommended treatments that may be provided, and how to access such treatment;
11. reporting on behavior, actions, and responses to treatment by collecting written and/or observational data as part of a multi-disciplinary team;
12. using de-escalation techniques consistent with appropriate training;
13. performing assessments using standardized, structured interview tools or instruments;
14. directly delivering services outlined in the service plan that are not clinical in nature but have been tailored to an individual based on any diagnoses such individual may have received from a licensed professional; and
15. advocating with educational, judicial or other systems to protect an individual's rights and access to appropriate services.

## **15. What if I have other questions about services that require professional licensure?**

The new law, which was supported by professional associations, provider organizations and the executive agencies that oversee those providers, identifies specific tasks and activities that do not require licensure. If you have a question about whether a license is required for other tasks or activities, you may submit a question to the appropriate State Board for the profession.

Please understand that SED cannot answer hypothetical questions, issue advisory opinions, offer detailed legal advice or provide career guidance. While we can share with you commonly accepted interpretations of applicable laws and regulations, it should be noted that the applicability of statute and regulation depends ultimately on the distinctive nature of a particular case that will change given a different set of circumstances.

## **16. What if I have a complaint?**

If you believe a licensed professional, or an unlicensed person who is not authorized to practice a profession, has engaged in unprofessional conduct or the illegal practice of a profession, respectively, you may file a complaint with the Office of Professional Discipline (OPD). Information about complaints is at [www.op.nysesd.gov/opd/](http://www.op.nysesd.gov/opd/).

## **17. How do I verify that an individual is licensed?**

You can verify an individuals' license or limited permit issued by the Department under Title VIII of the Education Law to practice as a psychologist, social worker or mental health practitioner at [www.op.nysesd.gov/opsearches.htm](http://www.op.nysesd.gov/opsearches.htm). This site does not provide information about individuals who are exempt or those who have applied for licensure under the Education Law. Questions about unlicensed individuals who are authorized to practice in an exempt program should be directed to the employing agency or the appropriate State oversight agency.

## **Attachment A. Scopes of Practice for Psychology, Social Work and Mental Health Practitioners**

### **§7601-a. Definition of the practice of psychology.**

1. The practice of psychology is the observation, description, evaluation, interpretation, and modification of behavior for the purpose of preventing or eliminating symptomatic, maladaptive or undesired behavior; enhancing interpersonal relationships, personal, group or organizational effectiveness and work and/or life adjustment; and improving behavioral health and/or mental health. The practice includes, but is not limited to psychological (including neuropsychological) testing and counseling; psychoanalysis; psychotherapy; the diagnosis and treatment of mental, nervous, emotional, cognitive or behavioral disorders, disabilities, ailments or illnesses, alcoholism, substance abuse, disorders of habit or conduct, the psychological aspects of physical illness, accident, injury or disability, psychological aspects of learning (including learning disorders); and the use of accepted classification systems.
2. The term "diagnosis and treatment" means the appropriate psychological diagnosis and the ordering or providing of treatment according to need. Treatment includes, but is not limited to counseling, psychotherapy, marital or family therapy, psychoanalysis, and other psychological interventions, including verbal, behavioral, or other appropriate means as defined in regulations promulgated by the commissioner.

### **§ 7701. Definitions.**

1. Practice of licensed master social work.
  - a. The practice of licensed master social work shall mean the professional application of social work theory, principles, and the methods to prevent, assess, evaluate, formulate and implement a plan of action based on client needs and strengths, and intervene to address mental, social, emotional, behavioral, developmental, and addictive disorders, conditions and disabilities, and of the psychosocial aspects of illness and injury experienced by individuals, couples, families, groups, communities, organizations, and society.
  - b. Licensed master social workers engage in the administration of tests and measures of psychosocial functioning, social work advocacy, case management, counseling, consultation, research, administration and management, and teaching.
  - c. Licensed master social workers provide all forms of supervision other than supervision of the practice of licensed clinical social work as defined in subdivision two of this section.
  - d. Licensed master social workers practice licensed clinical social work in facility settings or other supervised settings approved by the department under supervision in accordance with the commissioner's regulations.

2. Practice of clinical social work.

- a. The practice of clinical social work encompasses the scope of practice of licensed master social work and, in addition, includes the diagnosis of mental, emotional, behavioral, addictive and developmental disorders and disabilities and of the psychosocial aspects of illness, injury, disability and impairment undertaken within a psychosocial framework; administration and interpretation of tests and measures of psychosocial functioning; development and implementation of appropriate assessment-based treatment plans; and the provision of crisis oriented psychotherapy and brief, short-term and long-term psychotherapy and psychotherapeutic treatment to individuals, couples, families and groups, habilitation, psychoanalysis and behavior therapy; all undertaken for the purpose of preventing, assessing, treating, ameliorating and resolving psychosocial dysfunction with the goal of maintaining and enhancing the mental, emotional, behavioral, and social functioning and well-being of individuals, couples, families, small groups, organizations, communities and society.
- b. Diagnosis in the context of licensed clinical social work practice is the process of distinguishing, beyond general social work assessment, between similar mental, emotional, behavioral, developmental and addictive disorders, impairments and disabilities within a psychosocial framework on the basis of their similar and unique characteristics consistent with accepted classification systems.
- c. Psychotherapy in the context of licensed clinical social work practice is the use of verbal methods in interpersonal relationships with the intent of assisting a person or persons to modify attitudes and behavior which are intellectually, socially, or emotionally maladaptive.
- d. Development of assessment-based treatment plans in the context of licensed clinical social work practice refers to the development of an integrated plan of prioritized interventions, that is based on the diagnosis and psychosocial assessment of the client, to address mental, emotional, behavioral, developmental and addictive disorders, impairments and disabilities, reactions to illnesses, injuries, disabilities and impairments, and social problems.

**§8402. Mental health counseling.**

1. Definition of the practice of mental health counseling. The practice of the profession of mental health counseling is defined as:
  - a. the evaluation, assessment, amelioration, treatment, modification, or adjustment to a disability, problem, or disorder of behavior, character, development, emotion, personality or relationships by the use of verbal or behavioral methods with individuals, couples, families or groups in private practice, group, or organized settings; and
  - b. the use of assessment instruments and mental health counseling and psychotherapy to identify, evaluate and treat dysfunctions and disorders for purposes of providing appropriate mental health counseling services.

### **§8403. Marriage and family therapy.**

1. Definition of the practice of marriage and family therapy. The practice of the profession of marriage and family therapy is defined as:
  - a. the assessment and treatment of nervous and mental disorders, whether affective, cognitive or behavioral, which results in dysfunctional interpersonal family relationships including, but not limited to familial relationships, marital/couple relationships, parent-child relationships, pre-marital and other personal relationships;
  - b. the use of mental health counseling, psychotherapy and therapeutic techniques to evaluate and treat marital, relational, and family systems, and individuals in relationship to these systems;
  - c. the use of mental health counseling and psychotherapeutic techniques to treat mental, emotional and behavioral disorders and ailments within the context of marital, relational and family systems to prevent and ameliorate dysfunction; and
  - d. the use of assessment instruments and mental health counseling and psychotherapy to identify and evaluate dysfunctions and disorders for purposes of providing appropriate marriage and family therapy services.

### **§8404. Creative arts therapy.**

1. Definition of the practice of creative arts therapy. The practice of the profession of creative arts therapy is defined as:
  - a. the assessment, evaluation, and the therapeutic intervention and treatment, which may be either primary, parallel or adjunctive, of mental, emotional, developmental and behavioral disorders through the use of the arts as approved by the department; and
  - b. the use of assessment instruments and mental health counseling and psychotherapy to identify, evaluate and treat dysfunctions and disorders for purposes of providing appropriate creative arts therapy services.

### **§8405. Psychoanalysis.**

1. Definition of the practice of psychoanalysis. The practice of the profession of psychoanalysis is defined as:
  - a. the observation, description, evaluation, and interpretation of dynamic unconscious mental processes that contribute to the formation of personality and behavior in order to identify and resolve unconscious psychic problems which affect interpersonal relationships and emotional development, to facilitate changes in personality and behavior through the use of verbal and nonverbal cognitive and emotional communication, and to develop adaptive functioning; and
  - b. the use of assessment instruments and mental health counseling and psychotherapy to identify, evaluate and treat dysfunctions and disorders for purposes of providing appropriate psychoanalytic services.

## Attachment B. Definitions & Examples of Restricted Activities

Please note that the examples below were jointly developed by the State Education Department and the Exempt Agencies in 2012 to clarify the services and activities that, if not for the exemption, could only be performed by licensed or authorized personnel. Chapter 57 of the Laws of 2018 (Part Y) allows certain unlicensed persons who participate as a member of a multi-disciplinary team in certain settings to assist in certain activities – see FAQs #12 & 13.

### Assessment/Evaluation

**Assessment/evaluation** in the practice of the professions includes collecting information through clinical interviews; psychological and psychosocial tests and measures, contacts with members of the consumer's family and educational, employment, and/or health care settings/providers **for the purpose of determining a behavioral health diagnosis and/or appropriate behavioral management, discharge, or treatment plan for the consumer**. This includes the administration and interpretation of psychological tests and procedures including measures of cognitive, language, sensorimotor, and physical functioning to identify developmental disorders and disabilities in young children, and to determine levels of growth and delay for purposes of treatment, training and placement for adolescents and adults.

Examples of “assessment/evaluation” and related professional practices include, but are not limited to:

- a. Clinical interviews with the consumer and/or collateral parties to collect information necessary to determine the consumer's level of function for persons with mental, emotional, nervous, behavioral and developmental needs, for the purpose of establishing a diagnosis or completing or modifying a treatment plan.
- b. Determining the consumer's psychological and developmental progress, through the administration and scoring of appropriate instruments, including clinical interviews with the consumer, family members, and others.
- c. Using written text, art, music, photographs, or other media to evaluate how the consumer expresses emotions, thoughts, or behaviors, in order to develop or modify the diagnosis or treatment plan.
- d. Administering, scoring and interpreting clinical tests and measures of psychosocial, developmental, and psychological functioning and reviewing the results of the evaluation with a consumer to establish a behavioral health service treatment plan.

Related activities which are generally NOT considered “assessment/evaluation” include, but are not limited to:

- a. Having a consumer complete a form that provides information that may include but is not limited to housing, employment, income, psychosocial or health status, as part of the "intake."
- b. Providing a consumer with a paper-and-pencil test to complete, when such test does not require the observation and judgment of a licensed professional and commonly is identified as self-administered.
- c. Observing, describing and reporting the behavior of consumers, and, if appropriate, gathering information about such things as the person's living situation, health, nutrition and available informal supports in order to identify problems and needs.

## Diagnosis

**Diagnosis** is the identification of a disorder on the basis of its signs and symptoms and an analysis of the underlying mental, nervous, emotional, behavioral, developmental and addictive disorders, impairment and disabilities to determine their cause and potential treatments. Such diagnoses are commonly made consistent with acceptable classification systems Diagnostic and Statistical Manual of Mental Disorders (DSM). **Statutory definitions are attached to the cover letter that informed you of the survey.**

Examples of "diagnosis" and related professional practice include, but are not limited to:

- a. Evaluating information that is gathered regarding the consumer's health, mental health, social, and developmental status directly from the consumer or in consultation with others, to make a behavioral health diagnosis using the DSM or similar classification system.
- b. Engaging in clinical interviews and clinical testing to gather, interpret and evaluate information from appropriate sources, to identify signs and symptoms and causes of behaviors for purpose of making a mental health diagnosis.
- c. The application of professional judgment based on the clinical evaluation, which could include relevant information received from consumer and others, including direct care staff, to reach a diagnosis of the consumer's disorder or dysfunction and identifying it using the DSM or other classification system.

Related activities which are generally NOT considered "diagnosis" include, but are not limited to:

- a. Recording and/or verifying information about the consumer, as part of an intake, or assessment document, for the purpose of providing the diagnosing clinician with information necessary to make the diagnosis.
- b. Assisting in the data gathering regarding psychosocial functioning and collecting other information about the consumer's social, mental and health status, to the extent such assistance does not involve restricted professional practice activities.
- c. Collecting information, including assisting the consumer in the completion of forms and questionnaires that will provide background information for the licensed professional who is making the diagnosis.
- d. Coordinating access to or arranging for services such as home care and other community-based services, housing, employment, vocational training, or health care.
- e. Assisting in gathering information about previous mental health interventions, hospitalizations, emergency interventions and other forms of treatment, for review by the licensed professional.
- f. Reporting observations about the behavior, action, and responses to treatment as part of a multi-disciplinary team.

## **Assessment-based treatment planning**

**Assessment-based treatment planning** is described as the development of an integrated plan of prioritized interventions, that is based on the diagnosis and psychosocial assessment of the consumer, to address mental, emotional, behavioral, developmental and addictive disorders, impairments and disabilities, reactions to illnesses, injuries, disabilities and impairments, and social problems. Assessment-based treatment planning is used to determine when professional services should be initiated, altered, reduced or eliminated.

Examples of “assessment-based treatment planning” and related professional practice include, but are not limited to:

- a. Using professional knowledge and judgment to establish or approve recommended treatment goals with the consumer that reflect long- and short-term objectives for the purpose of improving mental health.
- b. Ongoing re-assessment and revision of a treatment plan related to a consumer’s progress toward achieving treatment goals based on information obtained from the consumer, from psychosocial tests and measures, from appropriately trained staff, and from collateral sources.
- c. Conducting family or other corollary group meetings, alone or with the assistance of staff, to assess and integrate family interactions with the consumer into a long-term mental health treatment plan. This meeting is part of the treatment planning process, rather than family meetings concerning daily activities.
- d. Determining the appropriate psychotherapy and mental health services to be provided to a consumer.

Related activities which are generally NOT considered “assessment-based treatment planning,” include, but are not limited to:

- a. Conducting an intake or needs assessment that attempts to identify the consumer’s understanding and perception of the situation, problem(s) and needs, gather information related to such things as the person’s living situation, functioning, health, nutrition and informal supports, determine eligibility and appropriateness for services from an agency, filling out standard forms and giving routine instructions.
- b. Collecting data, gathering information and providing input or opinion to enable the licensed professional to determine the consumer’s progress in meeting the treatment goals and modify such goals to reflect changes in the consumer’s condition.
- c. Identifying gaps in necessary services and advocating for consumers with public and private providers and government entities to provide access to services.

- d. Reviewing existing case records for available information to assist in gathering background information which may be used by the licensed professional or multi-disciplinary team to provide appropriate services.
- e. Providing information, assistance, referrals and support, consistent with applicable laws and policies, to the extent the individual is qualified by training and education.
- f. Providing case management services to individuals, including but not limited to, developing and implementing a plan to access services including transportation, employment, and housing, and scheduling appointments for the consumer.

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## Psychotherapy

**Psychotherapy** is defined in section 8401(2) of the Education Law as the treatment of mental, nervous, emotional, behavioral and addictive disorders, and ailments by the use of both verbal and behavioral methods of intervention in interpersonal relationships with the intent of assisting the person's ability to modify attitudes, thinking, affect, and behavior which are intellectually, socially and emotionally maladaptive.

There may be other definitions of psychotherapy in federal (e.g., Medicare) or state (e.g., Insurance) laws and in health insurance policies. This survey is using a definition in the Education Law which describes many theoretically-based, scientific systems of activities that are provided directly by individuals licensed or authorized under the Education Law or under an exemption until July 1, 2013.

Examples of "psychotherapy" and related professional practice include, but are not limited to:

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| a. | Providing individual, family or group therapy based on a professional assessment and as part of a behavioral health treatment plan developed by the individual licensed under Education Law.  |
| b. | Planning, approving and/or overseeing the development or modification of a reward-based behavior modification treatment plan to reinforce positive behaviors (e.g., abstinence) or discourage negative behaviors (e.g., substance abuse). The licensed professional is responsible for determining the type and amount of psychotherapy that is needed, but may seek and consider information from direct care staff. |
| c. | Providing direct treatment to the consumer (alone or in group therapy) based on various psychotherapy models (e.g., Cognitive-Behavioral Therapy or psychoanalysis).  |
| d. | Conducting and leading art or music therapy group sessions to assess and/or treat the consumer's mental health needs. Licensee can use appropriately trained staff to provide support for these activities, such as assisting consumers with movements or playing an instrument.  |
| e. | Utilizing directive techniques to educate the consumer so that he/she can (1) learn and understand their symptoms and the purpose and goals of the treatment of their mental illness or other conditions and (2) develop/strengthen coping skills and personal strengths to more fully engage in treatment and life activities.   |

**Related activities which are generally NOT considered "psychotherapy" include, but are not limited to:**

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| a. | Assisting the consumer in the completion of forms or documents and collecting records and information for use by the licensed professional.  |
| b. | Collecting information about consumer behavior and providing such information to the licensed professional.  |
| c. | Providing rewards to consumers with points for positive activities, based on a token-based reward systems developed by an individual licensed under the Education Law.   |
| d. | Leading peer support groups to provide group members with an opportunity to share information and experiences as a means to provide mutual support among members.  |
| e. | Assisting consumers in arts and crafts, music, recreation or other activities to provide social and extracurricular activities that increase social interactions with others for socialization or recreational purposes. |
| f. | Discussing with the individual his/her situation, needs, concerns, and thoughts in order to help identify services that support the person's independence and quality of life.   |

## Treatment other than psychotherapy

**Treatment** is a broad term that can be used to describe certain restricted activities performed by professionally licensed individuals, as well as non-restricted activities performed by those who are not licensed. It is difficult to define the term in such a way as to clearly draw a distinction between restricted and non-restricted activities. For purposes of this survey, professional treatment refers to activities and services that are based on the exercise of professional judgment in the provision of mental health services and are within the scopes of practice of psychology, social work, mental health counseling, creative arts therapy, marriage and family therapy, and psychoanalysis. Examples of treatment are provided below.

**Counseling** is included in the scopes of practice of several professions and the term, when used in a professional context, is often used interchangeably with "psychotherapy" and "treatment". Please note, however, that there are activities described as "counseling" (e.g., career counseling) that do not fall within the restricted scopes of practice of mental health professionals. There are also specific permanent exemptions in the Education Law for credentialed attorneys, rape crisis counselors, credentialed alcoholism and substance abuse counselors and for clergy members providing pastoral counseling when acting within their respective authorities (Education Law section 8410[2] and [4]. Additionally, Education Law section 8410(5) states that licensure is not required to provide instruction, advice, support, encouragement, or information to individuals, families, and relational groups.

Examples of "treatment other than psychotherapy" and related professional practice includes, but is not limited to:

- a. Developing a mental health treatment plan based on an assessment/evaluation of a person's psychological, social and developmental functions, of supports and services to address addictive or behavioral disorders and conditions leading to purposeful behavioral change.
- b. Using psychological interventions to modify behavior for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior; to enhance interpersonal relationships, personal, group or organizational effectiveness, or work and/or life adjustment; or to improve behavioral or mental health.
- c. Assessing the consumer's disability when developing a treatment plan based on that assessment/evaluation using the DSM or similar classification systems that may include counseling, job training and access to technology and services, that assists the patient in achieving maximum participation in work and social activities.
- d. Providing individual, couple, family, relational and group therapy by following a behavioral health treatment plan that is based on an assessment/evaluation implementing change in the overall, long-term mental well-being of individuals, couple, families and those in other relationships, considering the nature and roles of individuals in relation to others, particularly in the family system.
- e. Using creative arts (e.g., dance, art, music) to care for the consumer who are assessed and evaluated using the DSM or similar classification systems and are following a treatment plan that by design seeks to increase awareness of self and others, cope with the symptoms of stress, illness and trauma, and enhance cognitive abilities through the creation of and reflection on art and the artistic process to improve self-esteem, develop more effective communications skills and relationships, gain insight into patterns of behavior, and create new options for coping with problems.

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| <p>f. Providing professional clinical interventions or professional counseling services to change or improve a consumer's behavioral health related to addictions, such as alcohol or substance abuse; compliance with treatment programs for physical illnesses, such as cardiac rehabilitation regimens; or recognizing and controlling behavior leading to spousal or child abuse.</p> |
| <p>g. Providing recommendations for mental and physical rehabilitation activities based on neuropsychological testing related to traumatic brain injury, disturbances of memory, thought, and attention, and/or sensorimotor functioning.</p>   |
| <p>h. Establishing and conducting behavior modification groups with the intent of changing the harmful behavior of persons.</p>   |

**Related activities which are generally NOT considered "treatment other than psychotherapy" include, but are not limited to:**

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| <p>a. Participating as a member of a multi-disciplinary team which is responsible for providing/monitoring treatment in accord with the treatment plan and providing verbal or written reports to the multi-disciplinary treatment team. Providing guidance, support, re-assurance or instruction to consumers.</p> |
| <p>b. Providing advice, information and assistance to individuals and family members to identify needs and available resources in the community to meet the needs of the individual or a family member.</p>   |
| <p>c. Engaging in immediate and long term problem solving, engaging in the development of social skills, or giving practical help in areas such as, but not limited to, housing, employment, child care, parenting, community based services and finances.</p>  |
| <p>d. Leading or coaching self-management support groups (such as in the Chronic Disease Self-Management Program) or other support groups that are part of other non-mental health treatment group programs.</p>  |
| <p>e. Offering education programs that provide information about disease identification and recommended treatments that may be provided by licensed health care professionals.</p>  |
| <p>f. Providing information about self-help services and access to community resources to assist the person receiving services in meeting goals for education, employment, mental health status, community living or other conditions.</p>  |
| <p>g. Providing concrete services, directly or through a third-party, such as child care, transportation, home care, home delivered meals and shopping and food preparation.</p>  |
| <p>h. Advocating with educational, judicial or other systems to ensure protection of the individual's rights and access to appropriate services.</p>  |

- i. Implementing a care plan designed to address problems, needs and desires.
- j. Using de-escalation techniques to respond appropriately to dangerous or threatening behaviors and intervening as authorized to ensure the immediate safety of the patient and others.