A7405-A Bronson Same as S 6431 BROUK

Education Law

TITLE....Relates to extending certain exemptions for persons employed as mental health practitioners, psychologists and social workers

This bill is not active in the current session.

05/07/21 referred to higher education
05/19/21 amend (t) and recommit to higher education
05/19/21 print number 7405a
05/25/21 reported referred to rules
06/01/21 reported
06/01/21 rules report cal.242
06/01/21 ordered to third reading rules cal.242
06/02/21 passed assembly
06/02/21 delivered to senate
06/02/21 REFERRED TO RULES
06/09/21 SUBSTITUTED FOR S6431
06/09/21 3RD READING CAL.1698
06/09/21 PASSED SENATE
06/09/21 RETURNED TO ASSEMBLY
06/17/21 delivered to governor
06/24/21 signed chap.159
LAW OF NEW YORK, 2021

CHAPTER 159

AN ACT to amend the education law, in relation to extending certain exemptions for persons employed as mental health practitioners, psychologists and social workers

Became a law June 24, 2021, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

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

Section 1. Subdivision 12 subsection 7605 of the education law, as added by section 2 of part Y of chapter 57 of the laws of 2018, is amended to read as follows:

12. Notwithstanding any other provision of law to the contrary, nothing in this article shall be construed to prohibit or limit the activities or services provided under this article by any person who is employed or who commences employment in a program or service operated, regulated, funded, or approved by the department of mental hygiene, the office of children and family services, or a local governmental unit as that term is defined in section 41.03 of the mental hygiene law or a social services district as defined in section sixty-one of the social services law or on or before [one-year] two years from the date that the regulations issued in accordance with section six of [the] part Y of chapter fifty-seven of the laws of two thousand eighteen [which added this subdivision] appear in the state register or are adopted, whichever is later. Such prohibitions or limitations shall not apply to such employees for as long as they remain employed by such programs or services and whether they remain employed by the same or other employers providing such programs or services. Provided, however, that any person who commences employment in such program or service after such date and performs services that are restricted under this article shall be appropriately licensed or authorized under this article. Each state oversight agency shall create and maintain a process to verify employment history of individuals exempt under this subdivision.

§ 2. Subdivision 8 of section 7706 of the education law, as added by section 4 of part Y of chapter 57 of the laws of 2018, is amended to read as follows:

8. Notwithstanding any other provision of law to the contrary, nothing in this article shall be construed to prohibit or limit the activities or services provided under this article by any person who is employed or who commences employment in a program or service 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 governmental unit as that term is defined in section 41.03 of the mental hygiene law or a social services district as defined in section sixty-one of the social services law or on or before [one-year] two years from the date that the regulations issued in accordance with section six of

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.
[the] part Y of chapter fifty-seven of the laws of two thousand eighteen [which added this subdivision] appear in the state register or are adopted, whichever is later. Such prohibitions or limitations shall not apply to such employees for as long as they remain employed by such programs or services and whether they remain employed by the same or other employers providing such programs or services. Provided however, that any person who commences employment in such program or service after such date and performs services that are restricted under this article shall be appropriately licensed or authorized under this article. Each state oversight agency shall create and maintain a process to verify employment history of individuals exempt under this subdivision.

§ 3. Subdivision 9 of section 8410 of the education law, as added by section 5 of part Y of chapter 57 of the laws of 2018, is amended to read as follows:

9. Notwithstanding any other provision of law to the contrary, nothing in this article shall be construed to prohibit or limit the activities or services provided under this article by any person who is employed or who commences employment in a program or service 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 governmental unit as that term is defined in section 41.03 of the mental hygiene law or a social services district as defined in section sixty-one of the social services law on or before [one-year] two years from the date that the regulations issued in accordance with section six of [the] part Y of chapter fifty-seven of the laws of two thousand eighteen [which added this subdivision] appear in the state register or are adopted, whichever is later. Such prohibitions or limitations shall not apply to such employees for as long as they remain employed by such programs or services and whether they remain employed by the same or other employers providing such programs or services. Provided however, that any person who commences employment in such program or service after such date and performs services that are restricted under this article shall be appropriately licensed or authorized under this article. Each state oversight agency shall create and maintain a process to verify employment history of individuals exempt under this subdivision.

§ 4. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK ss:
Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

ANDREA STEWART-COUSINS
Temporary President of the Senate

CARL E. HEASTIE
Speaker of the Assembly
TO: Professional Practice Committee

FROM: Sarah S. Benson

SUBJECT: Proposed Repeal of Sections 79-9.6, 79-10.6, 79-12.6, Addition of New Sections of 79-9.6, 79-10.6, 79-12.6 and Amendment of Sections of 79-9.4, 79-10.4, 79-12.4 of the Regulations of the Commissioner of Education Relating to Mental Health Practitioners’ Diagnosis Privilege

DATE: July 8, 2022

AUTHORIZATION(S): [Signature]

SUMMARY

Issue for Decision

Should the Board of Regents adopt the proposed repeal of sections 79-9.6, 79-10.6, 79-12.6, addition of new sections 79-9.6, 79-10.6, 79-12.6 and amendment of sections 79-9.4, 79-10.4, 79-12.4 of the Regulations of the Commissioner of Education relating to mental health practitioners’ diagnosis privilege?

Reason(s) for Consideration

Required by statute (Chapter 230 of the Laws of 2022).

Proposed Handling

The proposed amendment is presented to the Professional Practice Committee and to the Full Board for adoption as an emergency rule at the July 2022 meeting of the Board of Regents. A copy of the proposed rule (Attachment A) and a statement of facts and circumstances justifying emergency action (Attachment B) are attached.
Procedural History

A Notice of Emergency Adoption and Proposed Rulemaking will be published in the State Register on July 27, 2022 for a 60-day public comment period. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

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 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, 2024,¹ Chapter 230 is immediately effective.

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.

¹ Sections 2 and 3 of Chapter 230 become effective June 24, 2024. These sections will be addressed in subsequent proposed amendments to the Commissioner’s regulations.
Proposed Amendments

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:

- 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 proposed amendment implements 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.

Related Regents Items

Not applicable.

Recommendation

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

VOTED: That sections 79-9.6, 79-10.6 and 79-12.6 of the Regulations of the Commissioner of Education be repealed and new sections 79-9.6, 79-10.6, and 79-12.6
of the Regulations of the Commissioner of Education be added and sections 79-9.4, 79-10.4, 79-12.4 of the Regulations of the Commissioner of Education be amended, as submitted, effective July 12, 2022, as an emergency action, upon the finding by the Board of Regents that such action is necessary for the preservation of the public health and general welfare in order to timely implement the provisions of sections (1), (4) and (5) of Chapter 230 of the Laws of 2022, which became effective June 24, 2022.

**Timetable for Implementation**

If adopted as an emergency rule at the July 2022 Regents meeting, the emergency rule will become effective July 12, 2022. It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at the November 2022 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. Because the emergency action will expire before the November 2022 Regents meeting, it is anticipated that an additional emergency action will be presented at the September 2022 meeting. If adopted at the November meeting, the proposed rule will become effective as a permanent rule on November 30, 2022.
AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

1. Section 79-9.4 of the Regulations of the Commissioner of Education is amended, to read as follows:

   Section 79-9.4 Limited permits for licensure and limited diagnostic permits.

   As authorized by section 8409 of the Education Law, the department may issue a limited permit for licensure or a limited diagnostic permit to practice mental health counseling in accordance with the requirements of this section, to allow an applicant to practice under supervision while meeting the experience and/or examination requirements for licensure or while meeting the experience for the diagnostic privilege pursuant to section 8401-a of the Education Law.

   (a) Limited permits for licensure.

   [[(a)]](1) An applicant for a limited permit to practice mental health counseling shall:

   [(1)](i) file an application for a limited permit with the department and pay the application fee, as prescribed in section 8409(3) of the Education Law;

   [(2)](ii) meet all requirements for licensure as a mental health counselor, including but not limited to the moral character and education requirements, except the examination and/or experience requirements; and

   [(3)](iii) be under the supervision of a supervisor acceptable to the department in accordance with the requirements of section 79-9.3 of this Subpart.
[(b)][(2)] In accordance with the requirements of section 79-9.3 of this Subpart, the limited permit in mental health counseling shall be issued for specific employment setting(s), acceptable to the department and the permit shall identify a qualified supervisor acceptable to the department.

[(1)][(i)] The supervisor shall be responsible for appropriate oversight of all services provided by a permit holder under his or her general supervision.

[(2)][(ii)] No supervisor shall supervise more than five permit holders at one time.

[(c)][(3)] The limited permit in mental health counseling shall be valid for a period of not more than 24 months, provided that the limited permit may be extended for no more than two additional 12-month periods at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement, and provided further that the time authorized by such limited permit and subsequent extensions shall not exceed 48 months total.

(b) Limited diagnostic permits.

(1) An applicant for a limited diagnostic permit to practice mental health counseling under supervision while gaining experience for the diagnostic privilege pursuant to section 8401-a of the Education Law shall:

(i) file an application for a limited diagnostic permit with the department and pay the application fee, as prescribed in section 8409(3) of the Education Law:
(ii) meet all the requirements for the mental health counselor diagnostic privilege prescribed in section 8401-a of the Education Law, including, but not limited to, licensure and registration in New York State as a mental health counselor except for the education and/or experience requirements required for the diagnostic privilege; and

(iii) be under the supervision of a supervisor acceptable to the department in accordance with the requirements of section 79.9-6 of this Subpart.

(2) In accordance with the requirements of section 79-9.6 of this Subpart, the limited diagnostic permit in mental health counseling shall be issued for specific employment setting(s), acceptable to the department and shall identify a qualified supervisor acceptable to the department.

(i) The supervisor shall be responsible for appropriate oversight of all services provided by a limited diagnostic permit holder under his or her general supervision.

(ii) No supervisor shall supervise more than five limited permit holders of any type at one time.

(3) The limited diagnostic permit in mental health counseling shall be valid for a period of not more than 24 months, provided that the limited diagnostic permit may be extended for no more than two additional 12 month periods at the discretion of the department if the department determines that the limited diagnostic permit holder has made good faith efforts to successfully complete the education and/or experience requirements but has not completed such education and/or experience requirements, or has other good cause, as determined by the department, for not completing the education and/or experience requirements, and provided further that the time authorized
by such limited diagnostic permit and subsequent extensions shall not extend 48
months in total.

2. Section 79-9.6 of the Regulations of the Commissioner of Education is
REPEALED and a new section 79-9.6 is added to read as follows:

79-9.6 Diagnostic privilege

(a) Definitions. As used in this section:

(1) “Diagnosis” means the process of distinguishing, beyond a general
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.

(2) “Development of assessment-based treatment plans” means 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.

(3) “General supervision” means that a qualified supervisor shall be available for
consultation, diagnosis and evaluation when professional services are being rendered
by an applicant and the supervisor shall exercise the degree of supervision appropriate
to the circumstances.

(4) “Face-to-face supervision” means in-person supervision provided, however,
that it may also be satisfied by utilizing technology acceptable to the department,
including secure video-conferencing to protect confidentiality.
(b) General provisions. As authorized by subdivision (11) of section 8410 of the Education Law, effective June 24, 2022, a mental health counselor licensed and registered pursuant to Article 163 of the Education Law, may engage in diagnosis and the development of assessment-based treatment plans in accordance with the provisions of this section.

(c) Acceptable setting. The experience shall be completed in a setting acceptable to the department, as described in subdivision (d) of section 79-9.3 of this Subpart.

(d) Supervision of experience. The experience shall be supervised in accordance with the requirements of this subdivision:

(1) An applicant shall obtain experience under this section while under the general supervision of a qualified supervisor. The supervisor shall provide an average of one hour per week or two hours every other week of face-to-face individual or group supervision wherein such supervisor shall:

(i) review the applicant’s diagnosis and treatment of each client under his or her general supervision; and

(ii) provide oversight, guidance and direction to the applicant in developing skills in diagnosis, psychotherapy and assessment-based treatment planning.

(2) The supervisor shall be authorized to diagnose, provide psychotherapy and assessment-based treatment plans and shall be licensed and registered in New York State to practice as:

(i) a licensed clinical social worker licensed under Article 154 of the Education Law or the equivalent, as determined by the department; or
(ii) a psychologist licensed under Article 153 of the Education Law who was
educated and trained in psychotherapy through the completion of a program in
psychology registered pursuant to Part 52 of this Title or a program in psychology
accredited by the American Psychological Association; or

(iii) a physician licensed under Article 131 of the Education Law who, at the time
of the supervision of the applicant, was a diplomate in psychiatry of the American Board
of Psychiatry and Neurology, Inc. or had the equivalent training and experience as
determined by the department; or

(iv) after June 24, 2022, a mental health counselor licensed and registered under
Article 163 of the Education Law who holds the diagnostic privilege authorized under
section 8401-a of the Education Law or the equivalent, as determined by the
department.

3. Section 79-10.4 of the Regulations of the Commissioner of Education is
amended, to read as follows:

Section 79-10.4 Limited permits for licensure and limited diagnostic permits.

As authorized by section 8409 of the Education Law, the department may issue a
limited permit for licensure or a limited diagnostic permit to practice marriage and family
therapy in accordance with the requirements of this section, to allow an applicant to
practice under supervision while meeting the experience and/or examination
requirements for licensure or while meeting the experience for the diagnostic privilege
pursuant to section 8401-a of the Education Law.

(a) Limited permits for licensure
[(a)](1) An applicant for a limited permit to practice marriage and family therapy shall:

[(1)](i) file an application for a limited permit with the department and pay the application fee, as prescribed in section 8409(3) of the Education Law;

[(2)](ii) meet all requirements for licensure as a marriage and family therapist, including but not limited to the moral character and education requirements, except the examination and/or experience requirements; and

[(3)](iii) be under the supervision of a supervisor acceptable to the department in accordance with the requirements of section 79-10.3 of this Subpart.

[(b)](2) In accordance with the requirements of section 79-10.3 of this Subpart, the limited permit in marriage and family therapy shall be issued for specific employment setting(s), acceptable to the department and the permit shall identify a qualified supervisor, acceptable to the department.

[(1)](i) The supervisor shall be responsible for appropriate oversight of all services provided by a permit holder under his or her general supervision.

[(2)](ii) No supervisor shall supervise more than five permit holders at one time.

[(c)](3) The limited permit in marriage and family therapy shall be valid for a period of not more than 24 months, provided that the limited permit may be extended for no more than two additional 12-month periods at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination.
and/or experience requirement, and provided further that the time authorized by such limited permit and subsequent extensions shall not exceed 48 months total.

(b) Limited diagnostic permits

(1) An applicant for a limited diagnostic permit to practice marriage and family therapy under supervision while gaining experience for the diagnostic privilege pursuant to section 8401-a of the Education Law shall:

(i) file an application for a limited diagnostic permit with the department and pay the application fee, as prescribed in section 8409(3) of the Education Law;

(ii) meet all the requirements for the marriage and family therapist diagnostic privilege prescribed in section 8401-a of the Education Law, including, but not limited to, licensure and registration in New York State as a marriage and family therapist, except for the education and/or experience requirements required for the diagnostic privilege; and

(iii) be under the supervision of a supervisor acceptable to the department in accordance with the requirements of section 79.10-6 of this Subpart.

(2) In accordance with the requirements of section 79-10.6 of this Subpart, the limited diagnostic permit in marriage and family therapy shall be issued for specific employment setting(s), acceptable to the department and shall identify a qualified supervisor acceptable to the department.

(i) The supervisor shall be responsible for appropriate oversight of all services provided by a limited diagnostic permit holder under his or her general supervision.

(ii) No supervisor shall supervise more than five limited permit holders of any type at one time.
(3) The limited diagnostic permit in marriage and family therapy shall be valid for a period of not more than 24 months, provided that the limited diagnostic permit may be extended for no more than two additional 12 month periods at the discretion of the department if the department determines that the limited diagnostic permit holder has made good faith efforts to successfully complete the education and/or experience requirements but has not completed such education and/or experience requirement, or has other good cause as determined by the department, for not completing the education and/or experience requirements, and provided further that the time authorized by such limited diagnostic permit and subsequent extensions shall not extend 48 months in total.

4. Section 79-10.6 of the Regulations of the Commissioner of Education is REPEALED and a new section 79-10.6 is added to read as follows:

79-10.6 Diagnostic privilege

(a) Definitions. As used in this section:

(1) “Diagnosis” means the process of distinguishing, beyond a general 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.

(2) “Development of assessment-based treatment plans” means 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.
(3) “General supervision” means that a qualified supervisor shall be available for consultation, diagnosis and evaluation when professional services are being rendered by an applicant and the supervisor shall exercise the degree of supervision appropriate to the circumstances.

(4) “Face-to-face supervision” means in-person supervision provided, however, that it may also be satisfied by utilizing technology acceptable to the department, including secure video-conferencing to protect confidentiality.

(b) General provisions. As authorized by subdivision (11) of section 8410 of the Education Law, effective June 24, 2022, a marriage and family therapist licensed and registered pursuant to Article 163 of the Education Law may engage in diagnosis and the development of assessment-based treatment plans in accordance with the provisions of this section.

(c) Acceptable setting. The experience shall be completed in a setting acceptable to the department, as described in subdivision (d) of section 79-10.3 of this Subpart.

(d) Supervision of experience. The experience shall be supervised in accordance with the requirements of this subdivision:

(1) An applicant shall obtain experience under this section while under the general supervision of a qualified supervisor. The supervisor shall provide an average of one hour per week or two hours every other week of face-to-face individual or group supervision wherein the supervisor shall:

(i) review the applicant’s diagnosis and treatment of each client under his or her general supervision; and
(ii) provide oversight, guidance and direction to the applicant in developing skills in diagnosis, psychotherapy and assessment-based treatment planning.

(2) The supervisor shall be authorized to diagnose, provide psychotherapy and assessment-based treatment plans and shall be licensed and registered in New York State to practice as:

(i) a licensed clinical social worker under Article 154 of the Education Law or the equivalent as determined by the department; or

(ii) a psychologist licensed under Article 153 of the Education Law who was educated and trained in psychotherapy through the completion of a program in psychology registered pursuant to Part 52 of this Title or a program in psychology accredited by the American Psychological Association; or

(iii) a physician licensed under Article 131 of the Education Law who, at the time of the supervision of the applicant, was a diplomate in psychiatry of the American Board of Psychiatry and Neurology, Inc. or had the equivalent training and experience as determined by the department; or

(iv) after June 24, 2022, a marriage and family therapist licensed and registered under Article 163 of the Education Law who holds the diagnostic privilege authorized under section 8401-a Education Law or the equivalent as determined by the department.

5. Section 79-12.4 of the Regulations of the Commissioner of Education is amended, to read as follows:

Section 79-12.4 Limited permits for licensure and limited diagnostic permits.
As authorized by section 8409 of the Education Law, the department may issue a limited permit for licensure or a limited diagnostic permit to practice psychoanalysis in accordance with the requirements of this section, to allow an applicant to practice under supervision while meeting the experience and/or examination requirements for licensure or while meeting the experience for the diagnostic privilege pursuant to section 8401-a of the Education Law.

(a) Limited permits for licensure

[(a)](1) An applicant for a limited permit to practice psychoanalysis shall:

[(1)](i) file an application for a limited permit with the department and pay the application fee, as prescribed in section 8409(3) of the Education Law;

[(2)](ii) meet all requirements for licensure as a psychoanalyst, including but not limited to the moral character and education requirements, except the examination and/or experience requirements; and

[(3)](iii) be under the supervision of a supervisor acceptable to the department in accordance with the requirements of section 79-12.3 of this Subpart.

[(b)](2) In accordance with the requirements of section 79-12.3 of this Subpart, the limited permit in psychoanalysis shall be issued for specific employment setting(s), acceptable to the department and the permit shall identify a qualified supervisor, acceptable to the department.

[(1)](i) The supervisor shall be responsible for appropriate oversight of all services provided by a permit holder under his or her general supervision.

[(2)](ii) No supervisor shall supervise more than five permit holders at one time.
(c)(3) The limited permit in psychoanalysis shall be valid for a period of not more than 24 months, provided that the limited permit may be extended for no more than two additional 12-month periods at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement, and provided further that the time authorized by such limited permit and subsequent extensions shall not exceed 48 months total.

(b) Limited diagnostic permits

(1) An applicant for a limited diagnostic permit to psychoanalysis under supervision while gaining experience for the diagnostic privilege pursuant to section 8401-a of the Education Law shall:

(i) file an application for a limited diagnostic permit with the department and pay the application fee, as prescribed in section 8409(3) of the Education Law;

(ii) meet all the requirements for the psychoanalyst diagnostic privilege prescribed in section 8401-a of the Education Law, including, but not limited to, licensure and registration in New York State as a psychoanalyst, except for the education and/or experience requirements required for the diagnostic privilege; and

(iii) be under the supervision of a supervisor acceptable to the department in accordance with the requirements of section 79.12-6 of this Subpart.

(2) In accordance with the requirements of section 79-12.6 of this Subpart, the limited diagnostic permit in psychoanalysis shall be issued for specific employment
setting(s), acceptable to the department and shall identify a qualified supervisor acceptable to the department.

(i) The supervisor shall be responsible for appropriate oversight of all services provided by a limited diagnostic permit holder under his or her general supervision.

(ii) No supervisor shall supervise more than five limited permit holders of any type at one time.

(3) The limited diagnostic permit in psychoanalysis shall be valid for a period of not more than 24 months, provided that the limited diagnostic permit may be extended for no more than two additional 12 month periods at the discretion of the department if the department determines that the limited diagnostic permit holder has made good faith efforts to successfully complete the education and/or experience requirements but has not completed such education and/or experience requirement, or has other good cause as determined by the department, for not completing the education and/or experience requirements, and provided further that the time authorized by such limited diagnostic permit and subsequent extensions shall not extend 48 months in total.

6. Section 79-12.6 of the Regulations of the Commissioner of Education is REPEALED and a new section 79-12.6 is added to read as follows:

79-12.6 Diagnostic privilege

(a) Definitions. As used in this section:

(1) “Diagnosis” means the process of distinguishing, beyond a general 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.

(2) “Development of assessment-based treatment plans” means 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.

(3) “General supervision” means that a qualified supervisor shall be available for
consultation, diagnosis and evaluation when professional services are being rendered
by an applicant and the supervisor shall exercise the degree of supervision appropriate
to the circumstances.

(4) “Face-to-face supervision” means in-person supervision provided, however,
that it may also be satisfied by utilizing technology acceptable to the department,
including secure video-conferencing to protect confidentiality.

(b) General provisions. As authorized by subdivision (11) of section 8410 of the
Education Law, effective June 24, 2022, a psychoanalyst licensed and registered
pursuant to Article 163 of the Education Law may engage in diagnosis and the
development of assessment-based treatment plans in accordance with the provisions of
this section.

(c) Acceptable setting. The experience shall be completed in a setting acceptable
to the department, as described in subdivision (d) of section 79-12.3 of this Part.

(d) Supervision of experience. The experience shall be supervised in accordance
with the requirements of this subdivision:
(1) An applicant shall obtain experience under this section while under the general supervision of a qualified supervisor. The supervisor shall provide an average of one hour per week or two hours every other week of face-to-face individual or group supervision wherein the supervisor of such experience shall:

(i) review the applicant’s diagnosis and treatment of each client under his or her general supervision; and

(ii) provide oversight, guidance and direction to the applicant in developing skills in diagnosis, psychotherapy and assessment-based treatment planning.

(2) The supervisor shall be authorized to diagnose, provide psychotherapy and assessment-based treatment plans and shall be licensed and registered in New York State to practice as:

(i) a licensed clinical social worker licensed under Article 154 of the Education Law or the equivalent as determined by the department; or

(ii) a psychologist licensed under Article 153 of the Education Law who was educated and trained in psychotherapy through the completion of a program in psychology registered pursuant to Part 52 of this Title or a program in psychology accredited by the American Psychological Association; or

(iii) a physician licensed under Article 131 of the Education Law who, at the time of the supervision of the applicant, was a diplomate in psychiatry of the American Board of Psychiatry and Neurology, Inc. or had the equivalent training and experience as determined by the department; or

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(iv) after June 24, 2022, a psychoanalyst licensed and registered under Article 163 of the Education Law who holds the diagnostic privilege authorized under section 8401-a of the Education Law or the equivalent as determined by the department.
The proposed rule is necessary to implement Sections (1), (4) and (5) of Chapter 230 of the Laws of 2022 (Chapter 230), which became effective June 24, 2022. The proposed rule conforms the Commissioner’s regulations to Sections (1), (4) and (5) of Chapter 230, which amended the Education Law by defining “diagnosis” and “development of assessment-based treatment plans”; authorizing the Department to issue limited permits to applicants who are gaining experience for the diagnostic privilege; and authorizing licensed mental health counselors, licensed marriage and family therapists and licensed psychoanalysts in certain settings approved by the Department to diagnose and develop assessment-based treatment plans through June 24, 2025.

Since the Board of Regents meets at fixed intervals, the earliest that the proposed rule can be presented for adoption, after expiration of the required 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the November 14-15, 2022 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the November meeting, would be November 30, 2022, the date the Notice of Adoption would be published in the State Register. However, Sections (1), (4), and (5) of Chapter 230 became effective June 24, 2022.
Therefore, emergency action is necessary at the July 2022 meeting for the preservation of the public health and general welfare in order to enable the State Education Department to timely implement the requirements of Sections (1), (4), and (5) of Chapter 230, which, among other things, defines “diagnosis” and “development of assessment-based treatment plans”; authorizes the Department to issue limited permits to applicants who are gaining experience for the diagnostic privilege; and authorizes licensed mental health counselors, licensed marriage and family therapists and licensed psychoanalysts in certain settings approved by the Department to diagnose and develop assessment-based treatment plans through June 24, 2025, in order to address the critical workforce shortages in the mental health professions by ensuring 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.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the November 2022 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rule making. However, since the emergency action will expire before the November 2022 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the September 2022 Regents meeting.
S9449 BROUK Same as A 6008-E Bronson
ON FILE: 05/27/22 Education Law
TITLE....Relates to required clinical education for certain mental health practitioners and other mental health professionals
05/27/22 REFERRED TO HIGHER EDUCATION
06/01/22 COMMITTEE DISCHARGED AND COMMITTED TO RULES
06/01/22 ORDERED TO THIRD READING CAL.1800
06/01/22 PASSED SENATE
06/01/22 DELIVERED TO ASSEMBLY
06/01/22 referred to ways and means
06/02/22 substituted for a6008e
06/02/22 ordered to third reading rules cal.603
06/02/22 passed assembly
06/02/22 returned to senate
06/23/22 DELIVERED TO GOVERNOR
06/24/22 SIGNED CHAP.230
AN ACT to amend the education law, in relation to diagnostic privilege; and providing for the repeal of certain provisions upon expiration thereof

Became a law June 24, 2022, with the approval of the Governor. Passed by a majority vote, three-fifths being present.

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

Section 1. Section 8401 of the education law is amended by adding two new subdivisions 3 and 4 to read as follows:

3. “Diagnosis” means the process of distinguishing, beyond a general 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.

4. “Development of assessment-based treatment plans” means 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.

§ 2. The education law is amended by adding a new section 8401-a to read as follows:

§ 8401-a. Diagnostic privilege. 1. For issuance of a privilege to diagnose and develop assessment-based treatment plans, as defined in section eighty-four hundred one of this article, the applicant shall fulfill the following requirements:

(a) Application: File an application with the department;

(b) License: Be licensed and registered as a mental health counselor, marriage and family therapist, or a psychoanalyst in the state;

(c) Education: Verify the completion of a sixty semester hour master's degree or higher, or the clock hour equivalent program of study in a psychoanalytic institute, that includes completion of a core curriculum which includes at least twelve semester hours or clock hour equivalent of clinical courses that prepares the applicant to diagnose and develop assessment-based treatment plans acceptable to the department. A person who has received a master's or higher degree during which they did not complete the required hours, may satisfy such requirement by completing the equivalent post-graduate courses in accordance with the commissioner's regulations;

(d) Experience: (i) Have completed at least two thousand 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 this article, satisfactory to the department.

(ii) Subparagraph (i) of this paragraph shall not apply to a mental health counselor, marriage and family therapist, or psychoanalyst who was licensed prior to June twenty-four, two thousand twenty-four, and

EXPLANATION--Matter in italics is new; matter in brackets [ ] is old law to be omitted.
who provides attestation, on a form prescribed by the department, from a supervisor in a facility setting or other supervised setting approved by the department under supervision in accordance with the commissioner’s regulations, that such licensee 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 licensee shall submit an application to the department within three years of the effective date of this section.

(e) Fee: Pay a fee of one hundred seventy-five dollars for issuance of a privilege to diagnose and develop assessment-based treatment plans.

2. 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.

3. 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. The registration period for a privilege holder shall be coterminous with his or her registration under this article.

§ 3. Subdivision 1 of section 8407 of the education law, as added by chapter 676 of the laws of 2002, is amended to read as follows:

1. It shall be deemed practicing outside the boundaries of his or her professional competence for a person licensed pursuant to this article, in the case of treatment of any serious mental illness, to provide 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 diagnosis 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. For purposes of this section, “serious mental illness” means schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder, attention-deficit hyperactivity disorder and autism.

§ 4. Subdivision 1 of section 8409 of the education law, as amended by chapter 210 of the laws of 2004, is amended to read as follows:

1. The department may issue a limited permit to an applicant who meets all qualifications for licensure, except the examination and/or experience requirements, or to an applicant who is gaining experience for the diagnostic privilege, in accordance with regulations promulgated therefor.

§ 5. Section 8410 of the education law is amended by adding a new subdivision 11 to read as follows:

11. Prohibit or limit a mental health counselor, marriage and family therapist, or psychoanalyst licensed and registered pursuant to this article from engaging in diagnosis and the development of assessment-based treatment plans, as defined in section eighty-four hundred one of this article, in a facility setting or other supervised settings
approved by the department under supervision in accordance with the commissioner's regulations.

§ 6. This act shall take effect June 24, 2022; provided however, that sections two and three of this act shall take effect June 24, 2024; provided, further, that the provisions of section five of this act shall expire and be deemed repealed June 24, 2025. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.

The Legislature of the STATE OF NEW YORK §§:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

ANDREA STEWART-COUSINS  CARL E. HEASTIE
Temporary President of the Senate  Speaker of the Assembly
A1171-A Bronson Same as S 6574-A KENNEDY
Insurance Law
TITLE....Requires blanket health insurance policies to provide coverage for outpatient treatment by mental health practitioners; repealer
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
STATE OF NEW YORK

1171--A

2021-2022 Regular Sessions

IN ASSEMBLY

January 7, 2021

Introduced by M. of A. BRONSON, CLARK, LUNSFORD, MEEKS, WALLACE, BUTTENSCHON, ROZIC, SANTABARBARA, LUPARDO, HUNTER, GUNTHER, STECK, STIRPE, JONES, MAGNARELLI, FAHY, McMAHON, BARRETT, WOERNER, WEPFIN, GOTTFRIED, CRUZ, CARROLL -- read once and referred 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:

Section 1. Items (i) and (ii) of subparagraph (A) of paragraph 35 of subsection (i) of section 3216 of the insurance law, item (i) as amended by section 12 of part AA of chapter 57 of the laws of 2021 and item (ii) as added by section 8 of subpart A of part BB of chapter 57 of the laws of 2019, are amended to read as follows:

(i) where the policy provides coverage for inpatient hospital care, such policy shall include benefits for inpatient care in a hospital as defined by subdivision ten of section 1.03 of the mental hygiene law and benefits for outpatient care provided in a facility issued an operating certificate by the commissioner of mental health pursuant to the provisions of article thirty-one of the mental hygiene law, or in a facility operated by the office of mental health, or in a crisis stabilization center licensed pursuant to section 36.01 of the mental hygiene law, or, for care provided in other states, to similarly licensed or certified hospitals or facilities; and

(ii) where the policy provides coverage for physician services, such policy shall include benefits for outpatient care provided by a psychiatric or psychologist licensed to practice in this state, a licensed clinical social worker [who meets the requirements of subparagraph (D)]

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

LBD05221-02-1
of paragraph four of subsection (1) of section three thousand two
hundred twenty-one of this article, within the lawful scope of his or
her practice, who is licensed pursuant to article one hundred fifty-four
of the education law, a mental health counselor, marriage and family
therapist, creative arts therapist or psychoanalyst licensed pursuant to
article one hundred sixty-three of the education law, a nurse practi-
tioner licensed to practice in this state, or a professional corporation
or university faculty practice corporation thereof. Nothing herein
shall be construed to modify or expand the scope of practice of a mental
health counselor, marriage and family therapist, creative arts therapist
or psychoanalyst licensed pursuant to article one hundred sixty-three of
the education law. Further, nothing herein shall be construed to create
a new mandated health benefit.

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

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

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

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

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

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

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

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

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

(n) [In addition to the requirements of subsection (i) of this section, every] Every health service or medical expense indemnity corporation issuing a group contract pursuant to this section or a group remittance contract for delivery in this state which contract provides reimbursement to subscribers or physicians, psychiatrists or psychologists for psychiatric or psychological services or for the diagnosis and treatment of mental health conditions, however defined in such contract, must provide the same coverage to persons covered under the group contract for such services when performed by a licensed clinical social worker, within the lawful scope of his or her practice, who is licensed pursuant to subdivision two of section seven thousand seven hundred four of the education law and in addition shall have either (i) three or more additional years experience in psychotherapy, which for the purposes of this subsection shall mean 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, under supervision, satisfactory to the state board for social work, in a facility, licensed or incorporated by an appropriate governmental department, providing services for diagnosis or treatment of mental health conditions, or (ii) three or more additional years experience in psychotherapy under the supervision, satisfactory to the state board for social work, of a psychiatrist, a licensed and registered psychologist or a licensed clinical social worker qualified for reimbursement pursuant to subsection (i) of this section, or (iii) a combination of the experience specified in paragraphs (i) and (ii) totaling three years, satisfactory to the state board for social work.] Article one hundred fifty-four of the education law and a mental health counselor, marriage and family therapist, crea-
five arts therapist or psychoanalyst licensed pursuant to article one hundred sixty-three of the education law. Nothing herein shall be construed to modify or expand the scope of practice of a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst licensed pursuant to article one hundred sixty-three of the education law. Further, nothing herein shall be construed to create a new mandated health benefit. The state board for social work shall maintain a list of all licensed clinical social workers qualified for reimbursement under this subsection. The state board for mental health practitioners shall maintain a list of all licensed mental health counselors, marriage and family therapists, creative arts therapists or psychoanalysts qualified for reimbursement under this subsection.

§ 8. This act shall take effect on the first of January next succeeding the date upon which it shall have become a law; provided, however, that the amendments made to item (i) of subparagraph (A) of paragraph 35 of subsection (i) of section 3216 of the insurance law made by section one of this act shall take effect on the same date and in the same manner as part AA of chapter 57 of the laws of 2021 takes effect; and provided further, shall apply to policies and contracts issued, renewed, modified, altered or amended on or after such effective date.
TO: Professional Practice Committee

FROM: 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: April 6, 2022

AUTHORIZATION(S):

SUMMARY

Issue for Discussion

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 amendments will be presented to the Professional Practice Committee for discussion at the April 2022 meeting of the Board of Regents. A copy of the proposed rule is attached (Attachment A).

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on April 27, 2022. 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. 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.

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.

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

Related Regents Items

Not applicable.

Timetable for Implementation

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption at the September 2022 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the September 2022 meeting the proposed rule will become effective on September 28, 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 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.
practice, or any other Encumbrance on licensure affecting a Regulated Social Worker's authorization to practice, including issuance of a cease and desist action.

C. “Alternative Program” means a non-disciplinary monitoring or practice remediation process approved by a Social Work Licensing Authority to address Impaired Practitioners.

D. “Compact Commission” or “Commission” means the national administrative body whose membership consists of all Member States that have enacted the Compact.

E. “Current Significant Investigative Information” means:

1. Investigative information that a Licensing Authority, after a preliminary inquiry that includes notification and an opportunity for the Regulated Social Worker to respond has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction as may be defined by the Commission; or

2. Investigative information that indicates that the Regulated Social Worker represents an immediate threat to public health and safety, as may be defined by the Commission, regardless of whether the Regulated Social Worker has been notified and has had an opportunity to respond.

F. “Data System” means a repository of information about Licensees, including, but not limited to, continuing education, examination, licensure, Current Significant Investigative Information, Disqualifying Event, Interstate Compact License(s) and Adverse Action information or other information as required by the Commission.

G. “Domicile” means the jurisdiction in which the licensee resides and intends to remain indefinitely.

H. “Disqualifying Event” means any Adverse Action or incident which results in an encumbrance that disqualifies or makes the Licensee ineligible to either obtain, retain or renew an Interstate Compact License.

I. “Encumbered License” means a license in which an Adverse Action restricts the practice of Social Work by the Licensee and said Adverse Action and is reportable to the National Practitioners Data Bank (NPDB).

J. “Encumbrance” means a revocation or suspension of, or any limitation on, the full and unrestricted practice of Social Work licensed and regulated by a Licensing Authority.

K. “Executive Committee” means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the compact and Commission.
L. “Home State” means the Member State that is the Licensee’s primary Domicile.

M. “Impaired Practitioner” means an individual who has a condition(s) that may impair their ability to engage in full and unrestricted practice as a Regulated Social Worker without some type of intervention and may include, but are not limited to, alcohol and drug dependence, mental health impairment, and neurological or physical impairments.

N. “Licensee(s)” means an individual who currently holds an authorization from the State to practice as a Regulated Social Worker.

O. “Licensing Authority” means the board or agency of a Member State, or equivalent, that is responsible for the licensing and regulation of Regulated Social Workers.

P. “Member State” means a state, commonwealth, district, or territory of the United States of America that has enacted the Compact.

Q. “Multistate Authorization to Practice” means a legal authorization, which is equivalent to a license, associated with an Interstate Compact License permitting the practice of Social Work in a Remote State.

R. “Interstate Compact License” means a license to practice as a Regulated Social Worker issued by a Home State Licensing Authority that authorizes the Regulated Social Worker to practice in all party states under a Multistate Authorization to Practice.

S. “Qualifying National Exam” means a national licensing examination developed and administered by a national association of Social Work Licensing Authorities or other competency assessment approved by the Commission.

T. “Regulated Social Worker” means any clinical, master’s or bachelor’s Social Worker licensed by a Member State regardless of the title used by that Member State.

U. “Remote State” means a Member State other than the Home State, where a Licensee is exercising or seeking to exercise the Multistate Authorization to Practice.

V. “Rule(s) of the Commission” means a regulation or regulations duly promulgated by the Commission, as authorized by the compact, that has the force of law.

W. “Scope of Practice” means the procedures, actions, and processes a Regulated Social Worker in a state is permitted to undertake in that state and the circumstances under which the Regulated Social Worker is permitted to undertake those procedures, actions and processes. Such procedures, actions and processes and the circumstances under which they may be undertaken may be established through official means, including, but not limited to, statute, rules
and regulations, case law, and other processes available to the State Regulatory Authority or other government agency.

X. “Single State License” means a Social Work license issued by any state that authorizes practice only within the issuing State and does not include a Multistate Authorization to Practice in any Member State.

Y. “Social Work” or “Social Work Services” means the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities through the care and services provided by a Regulated Social Worker as set forth in the Member State’s statutes and regulations in the State where the services are being provided.

Z. “State” means any state, commonwealth, district, or territory of the United States of America that regulates the practice of Social Work

AA. “Unencumbered License” means a license that authorizes a Regulated Social Worker to engage in the full and unrestricted practice of Social Work.

SECTION 3. STATE PARTICIPATION IN THE COMPACT

A. To be eligible to participate in the compact, a potential Member State must currently meet all of the following criteria:

1. License and regulate clinical, master’s, or bachelor’s categories of Social Work practice.

2. Require applicants for licensure to pass a corresponding Qualifying National Exam for the category of licensure sought as outlined in Section 4.

3. Require applicants for licensure to graduate from a program that is accredited by an accrediting agency recognized by the Council for Higher Education Accreditation, or its successor, or by the United States Department of Education and operated by a college or university recognized by the Licensing Authority and that corresponds to the licensure sought as outlined in Section 4.

4. Require applicants for clinical licensure to complete a period of supervised practice.

5. Have a mechanism in place for receiving, investigating, and adjudicating complaints about Licensees.

B. To maintain membership in the Compact a Member State shall:

1. Participate fully in the Commission’s Data System, including using the Commission’s unique identifier as defined in Rules;

2. Notify the Commission, in compliance with the terms of the Compact and
rules, of any Adverse Action or the availability of Current Significant Investigative Information regarding a Licensee;

3. Implement or utilize procedures for considering the criminal history records of applicants for an initial Interstate Compact License. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that State's criminal records for the sole purpose of affirming or denying eligibility for participation in the Compact;

   a. A member state must utilize or fully implement a criminal background check requirement, within a time frame established by rule of the Commission, by receiving the results of the Federal Bureau of Investigation record search and shall use the results in making licensure decisions/determining eligibility for participation in the Compact.

   b. Communication between a Member State, the Commission and among Member States, through the Data System or otherwise, regarding the verification of any information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a Member State under Public Law 92-544.

4. Comply with the Rules of the Commission;

5. Require an applicant to obtain or retain a license in the Home State and meet the Home State’s qualifications for licensure or renewal of licensure, as well as all other applicable Home State laws;

6. Authorize a Licensee holding an Interstate Compact License in any Member State to practice in accordance with the terms of the Compact and Rules of the Commission; and

7. Designate a delegate to participate in the Commission meetings.

C. Home States may charge a fee for granting the Interstate Compact License.

D. An Interstate Compact License issued by a Home State to a resident in that State shall be recognized by all Compact Member States as authorizing Social Work Practice under a Multistate Authorization to Practice corresponding to each category of licensure regulated in the Member State.

SECTION 4. REGULATED SOCIAL WORKER PARTICIPATION IN THE Compact

A. To be eligible for an Interstate Compact License under the terms and provisions of the compact, a Regulated Social Worker, regardless of category must:
1. Hold an active, Unencumbered License in the Home State;
2. Have an active United States Social Security Number, Qualifying National
   Exam Number, or an identifier as determined by the Commission;
3. Pay any applicable fees, including any State fee, for the Interstate Compact
   License;
4. Meet any continuing competence requirements established by the Home
   State;
5. Notify the Home State of any Adverse Action, Encumbrance, or restriction on
   any professional license taken by any Member State or non-Member State
   within 30 days from the date the action is taken.
6. Abide by the laws, regulations, and Scope of Practice in the Member State
   where the client is located.

B. A Regulated Social Worker who is a clinical-category Social Worker must meet the
   following requirements:
   1. Passed a clinical-category Qualifying National Exam. Regulated Social
      Workers holding an active and unencumbered license, who were licensed in a state
      before a qualifying national exam was required, may be exempted from this
      requirement, as provided for by the Rules of the Commission; and
   2. Graduated with a master’s degree, or higher, in Social Work, from a program that
      is accredited by an accrediting agency recognized by the Council for Higher
      Education Accreditation, or its successor, or by the United States Department of
      Education and operated by a college or university recognized by the Licensing
      Authority; and
   3. Completed a period of three thousand hours or two years of full-time
      postgraduate supervised clinical practice.

C. For a Regulated Social Worker who is a master's-category Social Worker:
   1. Passed a master's-category Qualifying National Exam. Regulated Social
      Workers holding an active and unencumbered license, who were licensed in a state
      before a qualifying national exam was required, may be exempted from this
      requirement, as provided for by the Rules of the Commission; and
   2. Graduated with a master’s degree, or higher, in Social Work, from a program that
      is accredited by an accrediting agency recognized by the Council for Higher
      Education Accreditation, or its successor, or by the United States Department of
      Education and operated by a college or university recognized by the Licensing
      Authority.

D. For a Regulated Social Worker who is a bachelor’s-category Social Worker:
   1. Passed a bachelor’s-category Qualifying National Exam. Regulated Social
      Workers holding an active and unencumbered license, who were licensed in a state
      before a qualifying national exam was required, may be exempted from this
      requirement, as provided for by the Rules of the Commission; and
2. Graduated with a bachelor’s degree, or higher, in Social Work, from a program that is accredited by an accrediting agency recognized by the Council for Higher Education Accreditation, or its successor, or by the United States Department of Education and operated by a college or university recognized by the Licensing Authority.

E. The Interstate Compact License for a Regulated Social Worker is subject to the renewal requirements of the Home State. The Regulated Social Worker must maintain compliance with the requirements of Section 4(A).

F. The Regulated Social Worker’s services in a Remote State are subject to that Member State’s regulatory authority. A Remote State may, in accordance with due process and that Member State’s laws, remove a Regulated Social Worker’s Multistate Authorization to Practice in the Remote State for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens.

G. If a Home State license is encumbered, the regulated Social Worker’s Multistate Authorization to Practice shall be deactivated in all Remote States until the Home State license is no longer encumbered.

H. If a Multistate Authorization to Practice is encumbered in a Remote State, the regulated Social Worker’s Multistate Authorization to Practice may be deactivated in that State until the Multistate Authorization to Practice is no longer encumbered.

I. Nothing in this Compact shall affect the requirements established by a Member State for the issuance of a Single State License.

SECTION 5: OBTAINING A NEW HOME STATE LICENSE BASED ON AN INTERSTATE COMPACT LICENSE

A. If qualified, a Regulated Social Worker may hold an Interstate Compact License issued by a Home State Licensing Authority, which authorizes the Regulated Social Worker to practice in all Member States under a Multistate Authorization to Practice.

B. If an Interstate Compact License holder with Multistate Authorization to Practice changes primary State of Domicile by moving between two Member States:

1. The Interstate Compact License holder shall file an application for obtaining a new Home State license based on their Interstate Compact License which grants a Multistate Authorization to Practice, pay all applicable fees, and notify the current and new Home Member State in accordance with applicable Rules adopted by the Commission.

2. Upon receipt of an application for obtaining a new Home State license based on the Interstate Compact License which grants a Multistate Authorization to Practice, the new Home Member State may verify that the Regulated Social Worker meets the pertinent criteria outlined in Section 4 via the Data System, without need for primary source verification except for:
i. a Federal Bureau of Investigation fingerprint based criminal background check if not previously performed or updated pursuant to applicable rules adopted by the Commission in accordance with Public Law 92-544;

ii. other criminal background check as required by the new Home State; and

iii. completion of any requisite jurisprudence requirements of the new Home State.

3. The former Home State may convert the former Home State license into a Multistate Authorization to Practice once the new Home State has activated the new Home State license in accordance with applicable Rules adopted by the Commission.

4. Notwithstanding any other provision of this Compact, if the Regulated Social Worker cannot meet the criteria in Section 4, the new Home State may apply its requirements for issuing a new Single State License.

5. The Regulated Social Worker shall pay all applicable fees to the new Home State in order to be issued a new Home State license.

C. If a Regulated Social Worker changes primary State of Domicile by moving from a Member State to a non-Member State, the non-member State criteria shall apply for issuance of a Single State License in the new non-Member State.

D. Nothing in this Compact shall interfere with a Regulated Social Worker’s ability to hold a Single State License in multiple States, however for the purposes of this Compact, a Regulated Social Worker shall have only one Home State license.

E. Nothing in this Compact shall affect the requirements established by a Member State for the issuance of a Single State License.

SECTION 6. MILITARY FAMILIES

Active Duty Military personnel, or their spouse, shall designate a Home State where the individual has a current license in good standing. The individual may retain the Home State designation during the period the service member is on active duty. Subsequent to designating a Home State, the individual may only change their Home State through application for licensure in the new State, or through the process outlined in Section 5.

SECTION 7. ADVERSE ACTIONS

A. In addition to the other powers conferred by State law, a Remote State shall have the authority, in accordance with existing State due process law, to:

1. Take Adverse Action against a Regulated Social Worker’s Multistate Authorization to Practice within that Member State, and issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a Licensing Authority in a Member State for the attendance and testimony of
witnesses or the production of evidence from another Member State shall be
enforced in the latter State by any court of competent jurisdiction, according to
the practice and procedure of that court applicable to subpoenas issued in
proceedings pending before it. The issuing authority shall pay any witness
fees, travel expenses, mileage, and other fees required by the service statutes
of the State in which the witnesses or evidence are located.

2. Only the Home State shall have the power to take Adverse Action against a
Regulated Social Worker’s Home State license

B. For purposes of taking Adverse Action, the Home State shall give the same priority
and effect to reported conduct received from a Member State as it would if the
conduct had occurred within the Home State. In so doing, the Home State shall
apply its own State laws to determine appropriate action.

C. The Home State shall complete any pending investigations of a Regulated Social
Worker who changes primary State of Domicile during the course of the
investigations. The Home State shall also have the authority to take appropriate
action(s) and shall promptly report the conclusions of the investigations to the
administrator of the Data System. The administrator of the Data System shall
promptly notify the new Home State of any Adverse Actions.

D. A Member State, if otherwise permitted by State law, may recover from the
affected Regulated Social Worker the costs of investigations and dispositions of
cases resulting from any Adverse Action taken against that Regulated Social
Worker.

E. A Member State may take Adverse Action based on the factual findings of another
Member State, provided that the Member State follows its own procedures for
taking the Adverse Action.

F. Joint Investigations:

1. In addition to the authority granted to a Member State by its respective
Regulated Social Work practice act or other applicable State law, any Member
State may participate with other Member States in joint investigations of
Licensees.

2. Member States shall share any investigative, litigation, or compliance
materials in furtherance of any joint or individual investigation initiated under
the Compact.

G. If Adverse Action is taken by the Home State against the Interstate Compact
License of a Regulated Social Worker, the Regulated Social Worker’s Multistate
Authorization to Practice in all other Member States shall be deactivated until all
Encumbrances have been removed from the Interstate Compact License. All Home
State disciplinary orders that impose Adverse Action against the license of a
Regulated Social Worker shall include a statement that the Regulated Social
Worker’s Multistate Authorization to Practice is deactivated in all Member States
until all conditions of the decision, order or agreement are satisfied.
H. If a Member State takes Adverse Action, it shall promptly notify the administrator of the Data System. The administrator of the Data System shall promptly notify the Home State and all other Member State’s of any Adverse Actions by Remote States.

I. Nothing in this Compact shall override a Member State’s decision that participation in an Alternative Program may be used in lieu of Adverse Action.

SECTION 8. ESTABLISHMENT OF SOCIAL WORK LICENSURE COMPACT COMMISSION

A. The Compact Member States hereby create and establish a joint governmental agency known as the Social Work Compact Commission:

1. The Commission is a joint governmental agency of the Member States.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. Each Member State shall have and be limited to one (1) delegate selected by that Member State’s Licensing Authority.

2. The delegate shall be either:
   a. A current member of the State Licensing Authority at the time of appointment, who is a Regulated Social Worker or public member of the Licensing Authority; or
   b. An administrator of the Licensing Authority or their designee.

3. Any delegate may be removed or suspended from office as provided by the law of the Member State from which the delegate is appointed.

4. The Member State Licensing Board shall fill any vacancy occurring on the Commission within 60 days.

5. Each delegate shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission.

6. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates’ participation in meetings by telephone or other means of communication.

7. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws or as necessary to effectively implement and administer the terms of the Compact.
The Commission shall have the following powers and duties:

1. Establish the fiscal year of the Commission;
2. Establish bylaws;
3. Maintain its financial records in accordance with the bylaws;
4. Meet and take such actions as are consistent with the provisions of this Compact, rules and bylaws;
5. Promulgate reasonable rules as are authorized by the Compact and which shall be binding to the extent and in the manner provided for in the Compact;
6. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any State Licensing Board to sue or be sued under applicable law shall not be affected;
7. Purchase and maintain insurance and bonds;
8. Borrow, accept, or contract for services of personnel;
9. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and establish the Commission’s personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
10. Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety or conflict of interest;
11. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety or conflict of interest;
12. Sell convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;
13. Establish a budget and make expenditures;
14. Borrow money;
15. Appoint committees, including standing committees composed of Commission members, State regulators, State legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;
16. Provide and receive information from, and cooperate with, law enforcement agencies;
17. Establish and elect an Executive Committee;
18. Determine whether a State’s adopted language is materially different from the
model compact language such that the State would not qualify for participation in the Compact; and

19. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the State regulation of Social Work licensure and practice.

D. The Executive Committee

1. The Executive Committee shall have the power to act on behalf of the Commission according to the terms of this Compact.

2. The Executive Committee shall be composed of up to nine (9) members:
   a. Seven voting members who are elected by the Commission from the current membership of the Commission; and
   b. Up to two (2) ex-officio, nonvoting members from two (2) recognized national social worker organizations.
   c. The ex-officio members will be selected by their respective organizations (and which will rotate terms in alphabetical order of the organizations).

3. The Commission may remove any member of the Executive Committee as provided in bylaws.

4. The Executive Committee shall meet at least annually and as necessary.
   a. Executive Committee meetings shall be open to the public, except that the Executive Committee may meet in a closed, non-public meeting as provided in subsection E below.
   b. The Executive Committee shall give seven days’ notice of its meetings, posted on its website and as determined to provide notice to persons with an interest in the business of the Commission.
   c. The Executive Committee may hold a special meeting in accordance with subsection E below.

5. The Executive Committee shall serve terms set by the bylaws and shall rotate regularly to allow participation by all member states.

6. The Executive Committee shall have the following duties and responsibilities:
   a. Oversee the day-to-day activities of the administration of the compact including enforcement and compliance with the provisions of the compact, its rules and bylaws, and other duties as deemed necessary;
   b. Recommend to the entire Commission changes to the Rules or bylaws, changes to this Compact legislation, fees paid by Compact Member States such as annual dues, and any Commission Compact fee charged to Licensees for the Privilege to Practice;
   c. Ensure Compact administration services are appropriately provided, contractual or otherwise;
d. Prepare and recommend the budget

e. Maintain financial records on behalf of the Commission;

f. Monitor Compact compliance of Member States and provide compliance reports to the Commission;

g. Establish additional committees as necessary; and

h. Other duties as provided in Rules or bylaws.

E. Meetings of the Commission

1. All meetings of the full Commission shall be open to the public, and public notice of meetings shall be given in the same manner as required under the Rulemaking provisions in Section 11 except that the Commission may meet in a closed, non-public meeting as provided in subsection E-3 below. Committee meetings shall be open to the public, and public notice of same shall be given in accordance with the bylaws.

   a. Public notice for all meetings of the full Commission of meetings shall be given in the same manner as required under the Rulemaking provisions in Section 11, except that the Commission may hold a special meeting as provided in subsection E-1-b below.

   b. The Commission may hold a special meeting when it must meet to conduct emergency business by giving 48 hours’ notice to all commissioners, on the Commission’s website, and other means as provided in the Commission’s rules. The Commission’s legal counsel shall certify that the Commission’s need to meet qualifies as an emergency.

2. All meetings of the full Commission shall be open to the public, and public notice of meetings shall be given in the same manner as required under the Rulemaking provisions in Section 11. Committee meetings shall be open to the public, and public notice of same shall be given in accordance with the bylaws.

3. The Commission or the Executive Committee or other committees of the Commission may convene in a closed, non-public meeting if the Commission or Executive Committee or other committees of the Commission must discuss:

   a. Non-compliance of a Member State with its obligations under the Compact;

   b. The employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the Commission’s internal personnel practices and procedures;

   c. Current, threatened, or reasonably anticipated litigation;

   d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

   e. Accusing any person of a crime or formally censuring any person;
Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

disclosure of investigative records compiled for law enforcement purposes;

disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or

4. Matters specifically exempted from disclosure by federal or Member State statute. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission’s legal counsel shall certify that the meeting may be closed and shall reference each relevant exempting provision.

5. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

F. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each Member State or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a Rule binding upon all Member States.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the Member States, except by and with the authority of the Member State.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws.
However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person’s intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

SECTION 9. DATA SYSTEM

A. The Commission shall provide for the development, maintenance, operation, and utilization of a coordinated database and reporting system containing licensure, Adverse Action, and Current Significant Investigative Information on all licensed individuals in Member States.

B. Notwithstanding any other provision of State law to the contrary, a Member State shall submit a uniform data set to the Data System on all individuals to whom this
Compact is applicable as required by the Rules of the Commission, including:

1. Identifying information;
2. Licensure data;
3. Adverse Actions against a license or an Interstate Compact License and information related thereto;
4. Non-confidential information related to Alternative Program participation;
5. Any denial of application for licensure, and the reason(s) for such denial;
6. Current Significant Investigative Information; and
7. Other information that may facilitate the administration of this Compact, as determined by the Rules of the Commission.

C. Current Significant Investigative Information pertaining to a Licensee in any Member State will only be available to other Member States.

D. The records and information provided to a Member State pursuant to this Compact or through the Data System, when certified by the Commission or an agent thereof, shall constitute the authenticated business records of the Commission, and shall be entitled to any associated hearsay exception in any relevant judicial, quasi-judicial or administrative proceedings in a Member State.

E. The Commission shall promptly notify all Member States of any Adverse Action taken against a Licensee or an individual applying for a license. Adverse Action information pertaining to a Licensee in any Member State will be available to any other Member State.

F. Member States contributing information to the Data System may designate information that may not be shared with the public without the express permission of the contributing State.

G. Any information submitted to the Data System that is subsequently required to be expunged by the laws of the Member State contributing the information shall be removed from the Data System.

SECTION 10. RULEMAKING

A. The Commission shall promulgate reasonable Rules in order to effectively and efficiently implement and administer the purposes and provisions of the Compact. A Rule shall be invalid and have no force or effect only if a court of competent jurisdiction holds that the Rule is invalid because the Commission exercised its rulemaking authority in a manner that is beyond the scope and purposes of the Compact, or the powers granted hereunder, or based upon another applicable standard of review.

B. The Rules of the Commission shall have the force of law in each Member State, provided however that where the Rules of the Commission conflict with the laws of the Member State that establish the Member State’s Scope of Practice as held by a
court of competent jurisdiction, the Rules of the Commission shall be ineffective in that State to the extent of the conflict.

C. The Commission shall exercise its Rulemaking powers pursuant to the criteria set forth in this Section and the Rules adopted thereunder. Rules shall become binding as of the date specified in each Rule.

D. If a majority of the legislatures of the Member States rejects a Rule or portion of a Rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within four (4) years of the date of adoption of the Rule, then such Rule shall have no further force and effect in any Member State.

E. Rules shall be adopted at a regular or special meeting of the Commission.

F. Prior to adoption of a proposed Rule, the Commission shall hold a public hearing and allow persons to provide oral and written comments, data, facts, opinions, and arguments.

G. Prior to adoption of a proposed Rule by the Commission, and at least thirty (30) days in advance of the meeting at which the Commission will hold a public hearing on the proposed Rule, the Commission shall provide a Notice of Proposed Rulemaking:

1. On the website of the Commission or other publicly accessible platform;
2. To persons who have requested notice of the Commission’s notices of proposed rulemaking, and
3. In such other way(s) as the Commission may by Rule specify.

H. The Notice of Proposed Rulemaking shall include:

1. The time, date, and location of the public hearing at which the Commission will hear public comments on the proposed Rule and, if different, the time, date, and location of the meeting where the Commission will consider and vote on the proposed Rule;
2. If the hearing is held via telecommunication, video conference, or other electronic means, the Commission shall include the mechanism for access to the hearing in the Notice of Proposed Rulemaking;
3. The text of the proposed Rule and the reason therefor;
4. A request for comments on the proposed Rule from any interested person; and
5. The manner in which interested persons may submit written comments.

I. All hearings will be recorded. A copy of the recording and all written comments and documents received by the Commission in response to the proposed Rule shall be available to the public.

J. Nothing in this section shall be construed as requiring a separate hearing on each Rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

K. The Commission shall, by majority vote of all members, take final action on the
The Commission may adopt changes to the proposed Rule provided the changes do not enlarge the original purpose of the proposed Rule. The Commission shall provide an explanation of the reasons for substantive changes made to the proposed Rule as well as reasons for substantive changes not made that were recommended by commenters. The Commission shall determine a reasonable effective date for the Rule. Except for an emergency as provided in Section 11.L, the effective date of the rule shall be no sooner than 30 days after issuing the notice that it adopted or amended the Rule.

Upon determination that an emergency exists, the Commission may consider and adopt an emergency Rule with [24 or 48] hours’ notice, with opportunity to comment, provided that the usual Rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the Rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the Rule. For the purposes of this provision, an emergency Rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;
2. Prevent a loss of Commission or Member State funds;
3. Meet a deadline for the promulgation of a Rule that is established by federal law or rule; or
4. Protect public health and safety.

The Commission or an authorized committee of the Commission may direct revisions to a previously adopted Rule for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a Rule. A challenge shall be made in writing and delivered to the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

No Member State’s rulemaking requirements shall apply under this compact.

SECTION 11. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive, legislative, and judicial branches of State government in each Member State shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact’s purposes and intent. The provisions of
this Compact and the Rules promulgated hereunder shall have standing as
statutory law.

2. All courts shall take judicial notice of the Compact and the Rules in any judicial
or administrative proceeding in a Member State pertaining to the subject matter
of this Compact which may affect the powers, responsibilities, or actions of the
Commission.

3. The Commission shall be entitled to receive service of process in any such
proceeding and shall have standing to intervene in such a proceeding for all
purposes. Failure to provide service of process to the Commission shall render
a judgment or order void as to the Commission, this Compact, or promulgated
Rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a Member State has defaulted in the
performance of its obligations or responsibilities under this Compact or the
promulgated Rules, the Commission shall:

   a. Provide written notice to the defaulting State and other Member
      States of the nature of the default, the proposed means of curing the
      default and/or any other action to be taken by the Commission; and

   b. Provide remedial training and specific technical assistance regarding
      the default.

C. If a State in default fails to cure the default, the defaulting State may be terminated
from the Compact upon an affirmative vote of a majority of the Member States, and
all rights, privileges and benefits conferred by this Compact may be terminated on
the effective date of termination. A cure of the default does not relieve the
offending State of obligations or liabilities incurred during the period of default.

D. Termination of membership in the Compact shall be imposed only after all other
means of securing compliance have been exhausted. Notice of intent to suspend
or terminate shall be given by the Commission to the governor, the majority and
minority leaders of the defaulting State’s legislature, and each of the Member
States.

E. Upon the termination of a State’s membership from this Compact, that State shall
immediately provide notice to all Licensees within that State of such termination.
The terminated State shall continue to recognize all licenses granted pursuant to
this Compact for a minimum of six (6) months after the date of said notice of
termination.

F. A State that has been terminated is responsible for all assessments, obligations,
and liabilities incurred through the effective date of termination, including
obligations that extend beyond the effective date of termination.

G. The Commission shall not bear any costs related to a State that is found to be in
default or that has been terminated from the Compact, unless agreed upon in
writing between the Commission and the defaulting State.
H. The defaulting State may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney’s fees.

I. Dispute Resolution

1. Upon request by a Member State, the Commission shall attempt to resolve disputes related to the Compact that arise among Member States and between member and non-Member States.

2. The Commission shall promulgate a Rule providing for both mediation and binding dispute resolution for disputes as appropriate.

J. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and Rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a Member State in default to enforce compliance with the provisions of the Compact and its promulgated Rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney’s fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or State law.

SECTION 12. DATE OF IMPLEMENTATION OF THE SOCIAL WORK COMPACT COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the seventh Member State. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of Rules. Thereafter, the Commission shall meet and exercise Rulemaking powers necessary to the implementation and administration of the Compact.

B. Any State that joins the Compact subsequent to the Commission’s initial adoption of the Rules shall be subject to the Rules as they exist on the date on which the Compact becomes law in that State. Any Rule that has been
previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that State.

C. Any Member State may withdraw from this Compact by enacting a statute repealing the same.
   1. A Member State’s withdrawal shall not take effect until six (6) months after enactment of the repealing statute.
   2. Withdrawal shall not affect the continuing requirement of the withdrawing State’s Social Work Licensing Board to comply with the investigative and Adverse Action reporting requirements of this act prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any Social Work licensure agreement or other cooperative arrangement between a Member State and a non-Member State that does not conflict with the provisions of this Compact.

E. This Compact may be collectively amended by the Member States. No amendment to this Compact shall become effective and binding upon any Member State until it is enacted into the laws of all Member States.

SECTION 13. CONSTRUCTION AND SEVERABILITY

A. This Compact and the Commission’s rulemaking authority shall be liberally construed so as to effectuate the purposes, and the implementation and administration of the Compact. Provisions of the Compact expressly authorizing or requiring the promulgation of Rules shall not be construed to limit the Commission’s rulemaking authority solely for those purposes.

B. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is held by a court of competent jurisdiction to be contrary to the constitution of any Member State, a State seeking participation in the Compact, or of the United States, or the applicability thereof to any government, agency, person or circumstance is held to be unconstitutional by a court of competent jurisdiction, the validity of the remainder of this Compact and the applicability thereof to any other government, agency, person or circumstance shall not be affected thereby.

C. Notwithstanding subsection B of this section, the Commission may deny a State’s participation in the Compact or, in accordance with the requirements of Section 12.B, terminate a Member State’s participation in the Compact, if it determines
that a constitutional requirement of a Member State is, or would be with respect to
a State seeking to participate in the Compact, a material departure from the
Compact. Otherwise, if this Compact shall be held to be contrary to the
constitution of any Member State, the Compact shall remain in full force and effect
as to the remaining Member States and in full force and effect as to the Member
State affected as to all severable matters.

SECTION 14. BINDING EFFECT OF COMPACT AND OTHER LAWS

A. A Licensee providing services in a Remote State under the Privilege to Practice
shall adhere to the laws and regulations, including Scope of Practice, of the
Remote State.

B. Nothing herein prevents the enforcement of any other law of a Member State that
is not inconsistent with the Compact.

C. Any laws in a Member State in conflict with the Compact are superseded to the
extent of the conflict.

D. Any lawful actions of the Commission, including all Rules and bylaws properly
promulgated by the Commission, are binding upon the Member States.

E. All permissible agreements between the Commission and the Member States are
binding in accordance with their terms.

F. In the event any provision of the Compact exceeds the constitutional limits
imposed on the legislature of any Member State, the provision shall be ineffective
to the extent of the conflict with the constitutional provision in question in that
Member State.