



TO: The Professional Practice Committee

FROM: Douglas E. Lentivech

SUBJECT: Proposed Amendment to the Regulations of the Commissioner of Education Relating to the Duration of Limited Permits for Applicants Seeking Licensure as Mental Health Practitioners under Article 163 of the Education Law

DATE: December 9, 2013

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Board of Regents adopt as an emergency action, the proposed amendment to sections 79-9.4, 79-10.4, 79-11.4 and 79-12.4 of the Regulations of the Commissioner of Education to implement Chapter 485 of the Laws of 2013, relating to the duration of limited permits for certain applicants for licensure as mental health counselors, marriage and family therapists, creative arts therapists or psychoanalysts?

Reason(s) for Consideration

Required by State statute.

Proposed Handling

The proposed amendment will be presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency action at the December 2013 meeting of the Board of Regents. A copy of the proposed amendment and a Statement of Facts and Circumstances Which Necessitate Emergency Action are attached.

Procedural History

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on December 31, 2013. Supporting materials for the proposed amendments are available upon request from the Secretary to the Board of Regents.

Background Information

An individual seeking license in New York State as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst must meet requirements for education, supervised experience and examination, acceptable to the Department. In order to meet the clinical experience requirements in New York State, an applicant for licensure in each of the above-referenced professions needs a limited permit from the Department.

When Article 163 was enacted in 2002, the law authorized the Department to issue a two-year limited permit to an applicant in mental health counseling and a one-year limited permit to an applicant in marriage and family therapy, creative arts therapy, and psychoanalysis, to practice under a qualified supervisor in an authorized setting while meeting the experience and examination requirements. The law and implementing regulations allowed the Department to grant a one-year extension, upon application and payment of fee, to an applicant in any of these professions, if the applicant had made good faith efforts to meet the experience and examination requirements during the initial permit period.

While many applicants were able to complete the required experience in the time periods specified in law, there have been a number of applicants who could not do so. On November 13, 2013, the Governor signed Chapter 485 of the Laws of 2013, which provides applicants in each of these professions a total of four years under a limited permit to meet the experience and examination requirements for licensure. The initial permit will be valid for two years, and the Department may renew the permit for up to two additional one-year periods. The applicant/limited permit holder will continue to practice in a setting that is authorized to provide professional services under a supervisor who is licensed and registered to practice under the Education Law. This will protect the citizens who receive services from these applicants/limited permit holders, while providing additional time for those applicants/limited permit holders to meet the experience and examination requirements for entry into the profession. The new law became effective immediately.

Recommendation

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

VOTED: That subdivision (c) of section 79-9.4, subdivision (c) of section 79-10.4, subdivision (c) of section 79-11.4, and subdivision (c) of section 79-12.4 of the Regulations of the Commissioner of Education be amended, as submitted, effective December 17, 2013, as an emergency action upon a finding by the Board of Regents that such action is necessary for preservation of the public health and general welfare to immediately conform the Regulations of the Commissioner to timely implement the

requirements of Chapter 485 of the Laws of 2013, which provides applicants for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst a total of four years under a limited permit to meet the experience and examination requirements, effective November 13, 2013.

Timetable for Implementation

Since the new law is already in effect, if adopted at the December Regents meeting, the emergency rule would take effect on December 17, 2013. It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at the March Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 45-day comment period required under the State Administrative Procedure Act.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6501, 6504, 6507, 6508, 8409 of the Education Law, and Chapter 485 of the Laws of 2013

1. Subdivision (c) of section 79-9.4 of the Regulations of the Commissioner of Education is amended, effective December 17, 2013, as follows:

(c) 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 [an] no more than two additional 12 [months] 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 [within the first 24 months] 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 [within the first 24 months], and provided further that the time authorized by such limited permit and subsequent [extension] extensions shall not exceed [36] 48 months total.

2. Subdivision (c) of section 79-10.4 of the Regulations of the Commissioner of Education is amended, effective December 17, 2013, as follows:

(c) The limited permit in marriage and family therapy shall be valid for a period of not more than [12] 24 months, provided that the limited permit may be extended for [an] no more than two additional 12 [months] 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 [within the first 12 months] 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 [within the first 12

months], and provided further that the time authorized by such limited permit and subsequent [extension] extensions shall not exceed [24] 48 months total.

3. Subdivision (c) of section 79-11.4 of the Regulations of the Commissioner of Education is amended, effective December 17, 2013, as follows:

(c) The limited permit in creative arts therapy shall be valid for a period of not more than [12] 24 months, provided that the limited permit may be extended for [an] no more than two additional 12 [months] 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 [within the first 12 months] 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 [within the first 12 months], and provided further that the time authorized by such limited permit and subsequent [extension] extensions shall not exceed [24] 48 months total.

4. Subdivision (c) of section 79-12.4 of the Regulations of the Commissioner of Education is amended, effective December 17, 2013, as follows:

(c) The limited permit in psychoanalysis shall be valid for a period of not more than [12] 24 months, provided that the limited permit may be extended for [an] no more than two additional 12 [months] 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 [within the first 12 months] 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 [within the first 12 months],

and provided further that the time authorized by such limited permit and subsequent [extension] extensions shall not exceed [24] 48 months total.

8 NYCRR §§79-9.4, 79-10.4, 79-11.4, and 79-12.4

STATEMENT OF FACTS AND CIRCUMSTANCES

WHICH NECESSITATE EMERGENCY ACTION

The purpose of the proposed amendment is to implement Chapter 485 of the Laws of 2013, which took effect on November 13, 2013. This amendment to the Education Law provides limited permit holders a total of four years to meet the requirements for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst. Prior to the enactment of Chapter 485, the law authorized a maximum duration of three years for a limited permit in mental health counseling and a maximum of two years for a limited permit in marriage and family therapy, creative arts therapy and psychoanalysis. For some applicants, this has been an insufficient time period for them to complete the supervised experience and examination requirements for licensure in these professions. When the limited permit expires, the applicant may no longer practice any of the aforementioned professions or use the restricted title, making it difficult, if not impossible for the applicant to ever qualify for licensure in New York State.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for adoption on a non-emergency basis, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) section 202(1) and (5), would be the March 10-11, 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the March meeting, would be March 26, 2014, the date a Notice of Adoption would be published in the State Register. However, the provisions of Chapter 485 of the Laws of 2013 became effective November 13, 2013.

Emergency action is necessary for the preservation of the public health and general welfare in order to enable the State Education Department to immediately establish requirements to timely implement Chapter 485 of the Laws of 2013, so that applicants for licensure have the ability to obtain additional time to meet the experience and examination requirements for licensure, which will increase the number of licensed professionals qualified to practice mental health counseling, marriage and family therapy, creative arts therapy and psychoanalysis.