



TO: The Honorable the Members of the Board of Regents

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

SUBJECT: Proposed Amendment to Sections 59.14, 72.2, 74.5, 74.6, 79-9.3, 79-10.3, 79-10.9, 79-11.3, and 79-12.3 and Addition of Sections 72.6, 79-9.9, 79-11.9, 79-12.9 of the Regulations of the Commissioner of Education to Implement Provisions of Part Y of Chapter 57 of the Laws of 2018 Regarding the Practice of the Psychology, Social Work and Mental Health Practitioner Professions

DATE: May 28, 2020

AUTHORIZATION(S): *[Signature]* *Sharon L. Tabor*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents approve the proposed amendment to Sections 59.14, 72.2, , 74.5, 74.6, 79-9.3, 79-10.3, 79-10.9, 79-11.3, and 79-12.3 and addition of Sections 72.6, 79-9.9, 79-11.9, 79-12.9 to the Regulations of the Commissioner of Education to implement provisions of Part Y of Chapter 57 of the Laws of 2018 regarding the practice of the psychology, social work and mental health practitioner professions?

Reason for Consideration

Required by State statute.

Proposed Handling

The proposed amendment will be presented to the Full Board for adoption as a permanent rule at the June 2020 meeting of the Board of Regents. A copy of the proposed rule is included as Attachment A. Supporting materials for the proposed rule are available upon request from the Secretary to the Board of Regents.

Procedural History

The proposed amendment was presented to the Professional Practice Committee for discussion at the February 2020 meeting of the Board of Regents. A Notice of Proposed Rule Making was published in the State Register on February 26, 2020. Following the 60-day public comment period required under the State Administrative Procedure Act, the Department received no comments on the proposed amendment. Therefore, an Assessment of Public Comment is not required and no changes to the proposed amendment are recommended at this time.

Background Information

Chapter 420 of the Laws of 2002 amended Article 154 of the Education Law, effective September 1, 2004, replacing the title-protected Certified Social Worker with the scope- and title-restricted Licensed Master Social Worker (LMSW) and Licensed Clinical Social Worker (LCSW). Chapter 676 of 2002 amended Article 153 to add a restricted scope of practice for psychologists, effective September 1, 2003, and added Article 163 to the Education Law, effective January 1, 2005, to define the licensure and practice of four new professions (mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts), although a license was not required until January 1, 2006.

The 2002 statute restricted the practice of psychotherapy to certain Title VIII professions and included an exemption from licensure until January 1, 2010 for any person in the employ of a program or service that is regulated, operated, funded or approved by certain State or local government agencies. This exemption was intended to avoid disruption to the behavioral health care services provided by government and not-for-profit programs and services. The exemption from licensure under Article 153 (psychology) was subsequently extended and the exemptions from licensure under Articles 154 (social work) and 163 (mental health practitioners) were broadened and extended by the Legislature in subsequent years. The most recent extension of the exemptions was included in Part Y of Chapter 57 of the Laws of 2018 (Part Y), which was enacted as part of the State Budget. Under Part Y, the current licensing exemptions will continue until one year after the Board of Regents adopts regulations to implement the amended law.

The implementation of the licensure laws for social workers, mental health practitioners and psychologists revealed unforeseen and unintended consequences of the law, including uncertainty about what tasks and activities in these settings must be provided by licensed personnel and what types of activities could be provided by unlicensed personnel. The Department worked collaboratively for many years with the impacted state agencies and other stakeholders to address these critical issues. Part Y further clarifies and expands the list of activities that do not require licensure and establishes a permanent exemption for current employees in these exempt settings.

The recommendation of Department staff is to amend the Commissioner's Regulations to clarify:

- settings that do not require a waiver from corporate practice restrictions under Education Law §6503-a and are acceptable settings for completing the experience required for licensure in psychology, social work and mental health practitioners (§7 of Part Y); and
- education and supervision requirements for unlicensed individuals authorized to practice in certain settings without licensure as a psychologist (subdivision (13) of §7605) or mental health practitioner (subdivision (10) of §8410).

These statutory provisions took effect with the Governor's approval of the State Budget in 2018 but the law prohibits the Board of Regents from adopting regulations on a non-emergency basis. Therefore, timely action is appropriate by the Board of Regents.

The Regents adoption of final regulations after the public comment period mandated by the State Administrative Procedures Act will start the clock on other critical activities related to the license and practice of psychology, social work and mental health practitioners in programs and services across New York. Subdivision (2) of §6 of Part Y states that, not later than 60 days after final adoption of the regulations, the executive agencies together shall issue a single report to the governor, the temporary president of the senate, the speaker of the assembly, and the state education department that may include but not be limited to, all matters where any individual agency objects to or has concerns regarding regulations or guidance issued by the department pursuant to subdivision one of this section; a projected fiscal impact or effect of any regulations or guidance on each executive agency; identification of licensed professions shortage areas under each executive agency; identification of appropriate rate, policy, or legislative changes that may address workforce shortages in licensed professions or access to services; an analysis and identification of the need for resources and investment to fortify the state's mental health workforce; an identification of barriers to hiring licensees and the mechanism and oversight structure used to track individuals that are subject to: subdivision 12 of section 7605 of the education law, subdivision 8 of section 7706 of the Education Law, or subdivision 9 of section 8410 of the Education Law; or any other pertinent information.

Subdivision (3) of §6 of Part Y grants the State Education Department 60 days, after issuance of the report required pursuant to subdivision (2) of §6 of Part Y, to issue a report to the governor, the temporary president of the senate, and the speaker of the assembly on any of the matters identified in subdivision (2) of §6 of Part Y provided that such report may include an analysis of, comments on, or responses to the report issued by subdivision (2) of §6 of Part Y. The governor shall provide to the executive agencies a copy of such report.

Another critical activity tied to the Regents adoption of final regulations regards the exemption from licensure in certain programs and services. One year after the final regulations are adopted, specific provisions in Part Y will require individuals employed in certain programs and services to hold appropriate licensure or authorization. Individuals who are employed in those programs and services on or before the effective date will enjoy an individual, lifetime exemption which must be tracked by the Executive agencies.

Related Regent's Items

January 2020: [Proposed Amendment to Sections 59.14, 72.2, 74.5, 74.6, 79-9.3, 79-10.3, 79-10.9, 79-11.3, and 79-12.3 and Addition of Sections 72.6, 79-9.9, 79-11.9, 79-12.9 of the Regulations of the Commissioner of Education to Implement Provisions of Part Y of Chapter 57 of the Laws of 2018 Regarding the Practice of the Psychology, Social Work and Mental Health Practitioner Professions](https://www.regents.nysed.gov/common/regents/files/220ppcd2.pdf)
(<https://www.regents.nysed.gov/common/regents/files/220ppcd2.pdf>)

Recommendation

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

VOTED: That subdivision (d) of section 59.14, paragraph (1) of subdivision (c) of section 74.5, paragraph (1) of subdivision (a) of section 74.6, subdivision (d) of section 79-9.3, subdivision (d) of section 79-10.3, subdivision (d) of section 79-11.3, subdivision (d) of section 79-12.3 and subdivision (c) of section 72.2 of the Regulations of the Commissioner of Education be amended, and sections 79-9.9, 79-10.9, 79-11.9, 79-12.9 and 72.6 be added, as submitted, effective June 24, 2020.

Timetable for Implementation

If adopted at the June 2020 meeting, the proposed amendment will become effective on June 24, 2020.

AMENDMENTS TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 212, 6501, 6503, 6503-a, 6504, 6506, 6507, 6508, 7601, 7605, 7704, 7705, 7706, 8402 and 8410 of the Education Law and sections 3221 and 4303 of the Insurance Law, and Part Y of Chapter 57 of the Laws of 2018

1. Subdivision (d) of section 59.14 of the Regulations of the Commissioner of Education is amended, as follows:

(d) Entities that do not require a waiver. In accordance section 6503-a of the Education Law, the following entities do not require a waiver under this section:

(1) ...

(2) ...

(3) ...

(4) an institution of higher education providing counseling only to the students, staff, or family members of students and staff of such institution; [or]

(5) any other entity that is otherwise authorized by law to provide such services and only to the extent that services are authorized under any certificates of incorporation or such other organizing documents as may be applicable; or

(6) 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 61 of the Social Services Law.

2. Paragraph (1) of subdivision (c) of section 74.5 of the Regulations of the Commissioner of Education is amended as follows:

(1) Acceptable setting. The experience shall be completed in a setting acceptable to the Department, as described in [this paragraph] subdivision (a) of section 74.6 of this Part, which may include a practice owned or operated by the applicant. [An acceptable setting shall mean:

(i) a professional service corporation, registered limited liability partnership, or professional service limited liability company authorized to provide services that include psychotherapy;

(ii) a sole proprietorship owned by a licensee who provides services that are within the scope of his or her profession and services that are within the scope of psychotherapy;

(iii) a professional partnership owned by licensees who provide services that include psychotherapy;

(iv) a hospital or clinic authorized under article 28 of the Public Health Law to provide services that include psychotherapy;

(v) a program or facility authorized under the Mental Hygiene Law to provide services that include psychotherapy;

(vi) a program or facility authorized under federal law to provide services that include psychotherapy; or

(vii) an entity defined as exempt from the licensing requirements or otherwise authorized under New York law or the laws of the jurisdiction in which the entity is located to provide services that include psychotherapy.]

3. Paragraph (1) of subdivision (a) of section 74.6 of the Regulations of the Commissioner of Education is amended, as follows:

(1) An acceptable setting shall mean:

(i)...

(ii) ...

(iii) ...

(iv) [a hospital or clinic authorized under article 28 of the Public Health Law to provide services that are within the scope of practice of licensed clinical social work] 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 61 of the Social Services Law;

(v) [a program or facility authorized under the Mental Hygiene Law to provide services that are within the scope of practice of licensed clinical social work] an entity holding a waiver issued by the Department pursuant to section 6503-a or 6503-b of the Education Law to provide services that are within the scope of practice of licensed clinical social work;

(vi) ...

(vii)

4. Subdivision (d) of section 79-9.3 of the Regulations of the Commissioner of Education is amended, as follows:

(d) Setting for the experience. For a setting for the experience to be acceptable to the Department, it shall meet the following requirements:

(1) the setting shall be a location at which legally authorized individuals provide services that constitute the practice of mental health counseling, as defined in section 8402(1) of the Education Law. For purposes of this section, an acceptable setting shall be:

(i) ...

(ii) ...

(iii) ...

(iv) [a hospital or clinical authorized under article 28 of the Public Health Law to provide services that are within the scope of practice of mental health counseling] 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 61 of the Social Services Law;

(v) [a program or facility authorized under the Mental Hygiene Law to provide services that are within the scope of practice of mental health counseling.] an entity holding a waiver issued by the Department pursuant to section 6503-a or 6503-b of the Education Law to provide services that are within the scope of practice of mental health counseling;

(vi) a program or facility authorized under federal law to provide services that are within the scope of practice of mental health counseling; or

(vii) an entity [identified as exempt from the licensing requirements or otherwise] authorized under New York law or the laws of the jurisdiction in which the entity is located to provide services that are within the scope of practice of mental health counseling;

5. The Regulations of the Commissioner of Education are amended by adding a new section 79-9.9, to read as follows:

§79-9.9 Supervision of certain persons authorized to practice mental health counseling in certain settings.

(a) For purposes of this section, supervision shall mean that the licensed supervisor is available for consultation, assessment and evaluation, has authorized such individual to provide the services, and exercises the degree of supervision appropriate to the circumstances.

(b) In accordance with section 8402(2) of the Education Law, such individual may use the title “mental health counselor” but may not use the title “licensed mental health counselor” or any other designation tending to imply that the person is licensed to practice mental health counseling.

(c) In accordance with subdivision (10) of section 8410 of the Education Law, an individual who is employed 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 government 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, who holds a master’s or higher degree in counseling to meet the professional education requirement

for licensure as a mental health counselor, as prescribed in section 52.32 of this Part, shall be permitted to perform activities and services within the scope of practice of mental health counseling as defined in subdivision (1) of section 8402 of the Education Law, under the supervision of a psychologist, licensed clinical social worker, or mental health counselor, licensed and registered to practice pursuant to Articles 153, 154 or 163 of the Education Law, respectively.

6. Subdivision (d) of section 79-10.3 of the Regulations of the Commissioner of Education is amended, as follows:

(d) Setting for the experience. For a setting for the experience to be acceptable to the Department, it shall meet the following requirements:

(1) the setting shall be a location at which legally authorized individuals provide services that constitute the practice of marriage and family therapy, as defined in section 8403(2) of the Education Law. For purposes of this section, an acceptable setting shall be:

(i) ...

(ii) ...

(iii) ...

(iv) [a hospital or clinical authorized under article 28 of the Public Health Law to provide services that are within the scope of practice of marriage and family therapy] 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 61 of the Social Services Law;

(v) [a program or facility authorized under the Mental Hygiene Law to provide services that are within the scope of practice of mental health counseling.] an entity holding a waiver issued by the Department pursuant to section 6503-a or 6503-b of the Education Law to provide services that are within the scope of practice of marriage and family therapy;

(vi) ...

(vii) an entity [identified as exempt from the licensing requirements or otherwise] authorized under New York law or the laws of the jurisdiction in which the entity is located to provide services that are within the scope of practice of marriage and family therapy;

7. The Regulations of the Commissioner of Education are amended by adding a new section 79-10.9, to read as follows:

§79-10.9 Supervision of certain persons authorized to practice marriage and family therapy in certain settings.

(a) For purposes of this section, supervision shall mean that the licensed supervisor is available for consultation, assessment and evaluation, has authorized such individual to provide the services, and exercises the degree of supervision appropriate to the circumstances.

(b) In accordance with section 8403(2) of the Education Law, such individual may use the title “marriage and family therapist” but may not use the title “licensed marriage and family therapist”, “licensed family therapist” or any other designation tending to imply that the person is licensed to practice marriage and family therapy.

(c) In accordance with subdivision (10) of section 8410 of the Education Law, an individual who is employed 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 government 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, who holds a master's or doctoral degree in marriage and family therapy to meet the professional education requirement for licensure as a marriage and family therapist, as prescribed in section 52.33 of this Part, shall be permitted to perform activities and services within the scope of practice of marriage and family therapy as defined in subdivision (1) of section 8403 of the Education Law, under the supervision of a psychologist, licensed clinical social worker, or marriage and family therapist, licensed and registered to practice pursuant to Articles 153, 154 or 163 of the Education Law, respectively.

8. Subdivision (d) of section 79-11.3 of the Regulations of the Commissioner of Education is amended, as follows:

(d) Setting for the experience. For a setting for the experience to be acceptable to the Department, it shall meet the following requirements:

(1) the setting shall be a location at which legally authorized individuals provide services that constitute the practice of creative arts therapy, as defined in section 8404(1) of the Education Law. For purposes of this section, an acceptable setting shall be:

- (i) ...
- (ii) ...

(iii) ...

(iv) [a hospital or clinical authorized under article 28 of the Public Health Law to provide services that are within the scope of practice of creative arts therapy] 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 61 of the Social Services Law;

(v) [a program or facility authorized under the Mental Hygiene Law to provide services that are within the scope of practice of creative arts therapy.] an entity holding a waiver issued by the Department pursuant to section 6503-a or 6503-b of the Education Law to provide services that are within the scope of practice of creative arts therapy;

(vi) ...

(vii) an entity [identified as exempt from the licensing requirements or otherwise] authorized under New York law or the laws of the jurisdiction in which the entity is located to provide services that are within the scope of practice of creative arts therapy;

9. The Regulations of the Commissioner of Education are amended by adding a new section 79-11.9, to read as follows:

§79-11.9 Supervision of certain persons authorized to practice creative arts therapy in certain settings.

(a) For purposes of this section, supervision shall mean that the licensed supervisor is available for consultation, assessment and evaluation, has authorized such

individual to provide the services, and exercises the degree of supervision appropriate to the circumstances.

(b) In accordance with section 8404(2) of the Education Law, such individual may use the title “creative arts therapist” but may not use the title “licensed creative arts therapist” or any other designation tending to imply that the person is licensed to practice creative arts therapy.

(c) In accordance with subdivision (10) of section 8410 of the Education Law, an individual who is employed 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 government 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, who holds a master’s or doctoral degree in creative arts therapy to meet the professional education requirement for licensure as a creative arts therapist, as prescribed in section 52.34 of this Part, shall be permitted to perform activities and services within the scope of practice of creative arts therapy as defined in subdivision (1) of section 8404 of the Education Law, under the supervision of a psychologist, licensed clinical social worker, or creative arts therapist, licensed and registered to practice pursuant to Articles 153, 154 or 163 of the Education Law, respectively.

10. Subdivision (d) of section 79-12.3 of the Regulations of the Commissioner of Education is amended, as follows:

(d) Setting for the experience. For a setting for the experience to be acceptable to the Department, it shall meet the following requirements:

(1) the setting shall be a location at which legally authorized individuals provide services that constitute the practice of psychoanalysis, as defined in section 8405(1) of the Education Law. For purposes of this section, an acceptable setting shall be:

(i) ...

(ii) ...

(iii) ...

(iv) [a hospital or clinical authorized under article 28 of the Public Health Law to provide services that are within the scope of practice of psychoanalysis] 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 61 of the Social Services Law;

(v) [a program or facility authorized under the Mental Hygiene Law to provide services that are within the scope of practice of psychoanalysis.] an entity holding a waiver issued by the Department pursuant to section 6503-a or 6503-b of the Education Law to provide services that are within the scope of practice of psychoanalysis;

(vi) ...

(vii) an entity [identified as exempt from the licensing requirements or otherwise] authorized under New York law or the laws of the jurisdiction in which the entity is located to provide services that are within the scope of practice of psychoanalysis;

11. The Regulations of the Commissioner of Education are amended by adding a new section 79-12.9, to read as follows:

§79-12.9 Supervision of certain persons authorized to practice psychoanalysis in certain settings.

(a) For purposes of this section, supervision shall mean that the licensed supervisor is available for consultation, assessment and evaluation, has authorized such individual to provide the services, and exercises the degree of supervision appropriate to the circumstances.

(b) In accordance with section 8405(2) of the Education Law, such individual may use the title “psychoanalyst” but may not use the title “licensed psychoanalyst” or any other designation tending to imply that the person is licensed to practice psychoanalysis.

(c) In accordance with subdivision (10) of section 8410 of the Education Law, an individual who is employed 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 government 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, who holds a master’s or higher degree in any field that is registered by the Department pursuant to this Part and holds an advanced certificate in psychoanalysis that meets the professional education requirement for licensure as a psychoanalyst, as prescribed in section 52.35 of this Part, shall be permitted to perform activities and services within the scope of practice of psychoanalysis as defined in subdivision (1) of section 8405 of the Education

Law, under the supervision of a psychologist, licensed clinical social worker, or psychoanalyst, licensed and registered to practice pursuant to Articles 153, 154 or 163 of the Education Law, respectively.

12. Subdivision (c) of section 72.2 of the Regulations of the Commissioner of Education is amended, as follows:

(c) Setting. For a setting to be acceptable, it shall meet the following requirements:

(1) The setting shall provide services defined in the practice of psychology, as set forth in section 7601-a of the Education Law. This may include, but is not limited to:

(i) a professional corporation, registered limited liability partnership, or professional service limited liability company authorized to provide services that are within the scope of practice of psychology;

(ii) a sole proprietorship owned by a licensee who provides services that are within the scope of his or her profession and services that are within the scope of practice of psychology;

(iii) a professional partnership owned by licensees who provide services that are within the scope of practice of psychology;

(iv) 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 61 of the Social Services Law;

(v) an entity holding a waiver issued by the Department pursuant to section 6503-a or 6503-b of the Education Law to provide services that are within the scope of practice of psychology;

(vi) a program or facility authorized under federal law to provide services that are within the scope of practice of psychology; or

(vii) an entity authorized under New York law or the laws of the jurisdiction in which the entity is located to provide services that are within the scope of practice of psychology;

(2)

(3)

(4)

13. The Regulations of the Commissioner of Education are amended by adding a new section 72.6, to read as follows:

§72.6 Supervision of certain persons authorized to practice psychology in certain settings.

(a) For purposes of this section, supervision shall mean that the licensed supervisor is available for consultation, assessment and evaluation, has authorized such individual to provide the services, and exercises the degree of supervision appropriate to the circumstances.

(b) In accordance with section 7601 of the Education Law, such individual may use the title “psychologist” or describe his or her services by use of the words “psychologist”, “psychology” or “psychological” in connection with his or her practice.

(c) In accordance with subdivision (13) of section 7605 of the Education Law, an individual who is employed 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 government 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, who holds a master's level degree in psychology or the equivalent as determined by the Department, working under the supervision of a psychologist licensed and registered to practice pursuant to Article 153 of the Education Law, shall be permitted to perform activities and services within the scope of practice of psychology as defined in section 7601-a of the Education Law.

(d) For purposes of this section, a masters level degree in psychology is earned through completing a program that is registered by the Department pursuant to Part 52 of this Title or a program accredited by an organization accepted by the Department as a reliable authority for the purpose of accrediting psychology programs, having accreditation standards that are substantially equivalent to the requirements for programs registered pursuant to Part 52 of this Title, and applying its criteria for granting accreditation of psychology programs in a fair, consistent, and nondiscriminatory manner.