STATE OF NEW YORK

3221

2021-2022 Regular Sessions

IN SENATE

January 28, 2021

Introduced by Sen. HELMING -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to requirements for licensure of certain mental health practitioners and providing certain mental health practitioners authority to give diagnosis

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 a new subdivision 3 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.

§ 2. Subdivision 2 of section 8402 of the education law, as added by chapter 676 of the laws of 2002, is amended to read as follows:

2. Practice of mental health counseling and use of the titles "mental health counselor" and "licensed mental health counselor". **(a)** Only a person licensed or exempt under this article shall practice mental health counseling or use the title "mental health counselor". Only a person licensed under this article shall use the title "licensed mental health counselor" or any other designation tending to imply that the person is licensed to practice mental health counseling.

(b) Mental health counselors who have obtained the diagnosis privilege set forth in section eighty-four hundred two-a of this article may diagnose mental, emotional, behavioral, addictive and developmental disorders and disabilities and of the psychosocial aspects of illness, injury, disability and impairment undertaken within a psychosocial framework.

§ 3. Paragraphs (b) and (c) of subdivision 3 of section 8402 of the education law, paragraph (b) as added by chapter 676 of the laws of 2002

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

LBD07110-01-1

and paragraph (c) as amended by chapter 130 of the laws of 2010, are amended to read as follows:

(b) Education: Have received an education, including a master's or higher degree in counseling from a program registered by the department or determined by the department to be the substantial equivalent thereof, **which includes the completion of at least twelve credit hours of clinical courses,** in accordance with the commissioner's regulations. **A person who has received a master's, or equivalent degree in counseling, during which they did not complete all twelve credit hours of clinical courses, may satisfy this requirement by completing any remaining equivalent post-graduate clinical courses, in accordance with the commissioner's regulations.** The graduate coursework shall include, but not be limited to, the following areas:

(i) human growth and development;

(ii) social and cultural foundations of counseling;

(iii) counseling theory and practice and psychopathology;

(iv) group dynamics;

(v) lifestyle and career development;

(vi) assessment and appraisal of individuals, couples and families and groups;

(vii) research and program evaluation;

(viii) professional orientation and ethics;

(ix) foundations of mental health counseling and consultation;

(x) clinical instruction; and

(xi) completion of a minimum one year supervised internship or practicum in mental health counseling;

(c) Experience: An applicant shall complete a minimum of three thousand hours of post-master's supervised experience relevant to the practice of mental health counseling**, two thousand hours of which shall include diagnosis, psychotherapy, and assessment-based treatment plans,** satisfactory to the board and in accordance with the commissioner's regulations. Satisfactory experience obtained in an entity operating under a waiver issued by the department pursuant to section sixty-five hundred three-a of this title may be accepted by the department, notwithstanding that such experience may have been obtained prior to the effective date of such section sixty-five hundred three-a and/or prior to the entity having obtained a waiver. The department may, for good cause shown, accept satisfactory experience that was obtained in a setting that would have been eligible for a waiver but which has not obtained a waiver from the department or experience that was obtained in good faith by the applicant under the belief that appropriate authorization had been obtained for the experience, provided that such experience meets all other requirements for acceptable experience;

§ 4. The education law is amended by adding a new section 8402-a to read as follows:

§ 8402-a. Diagnosis privilege; mental health counseling. 1. Applicants licensed on January first, two thousand twenty-six or thereafter are authorized to diagnose, as provided in paragraph (b) of subdivision two of section eighty-four hundred two of this article, and as defined in subdivision three of section eighty-four hundred one of this article without meeting any additional requirements.

2. Applicants for license as a mental health counselor who have been issued a limited permit after successfully completing the requirements of paragraph (b) of subdivision three of section eighty-four hundred two of this article, which includes twelve credit hours of clinical courses, are authorized to diagnose as provided in paragraph (b) of subdivision

two of section eighty-four hundred two of this article, and as defined in subdivision three of section eighty-four hundred one of this article, while under supervision.

3. Those licensed prior to January first, two thousand twenty-five, shall be granted the privilege to diagnose as provided in paragraph (b) of subdivision two of section eighty-four hundred two of this article, and as defined in subdivision three of section eighty-four hundred one of this article, if the licensee fulfills the following requirements:

(a) Files an application with the department;

(b) Is licensed and registered as a mental health counselor; and:

(i) Provides verification of twelve credit hours of clinical course work as defined by the department from a college or university acceptable to the department; or

(ii) Provides verification of a minimum of two years of employment as a licensed mental health counselor by a licensed supervisor or colleague on forms acceptable to the department, in a program or service operated, regulated, funded, or approved by the department of mental hygiene, the office of children and family services, the office of temporary and disability assistance, the department of corrections and community supervision, the state office for the aging, the department of health, or a local governmental unit as that term is defined in article forty-one of the mental hygiene law or a social services district as defined in section sixty-one of the social services law; or

(iii) Provides verification of being licensed as a licensed mental health counselor for a minimum of two years; and

(1) Provides documentation of at least six credit hours of clinical coursework as defined by the department from a college or university acceptable to the department; or

(2) Provides documentation of at least twelve hours of continuing education in clinical coursework subject to section eighty-four hundred twelve-a of this article; and

(c) Pays a fee to the department of two hundred twenty dollars.

4. A privilege to diagnose 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.

§ 5. Subdivision 2 of section 8403 of the education law, as added by chapter 676 of the laws of 2002, is amended to read as follows:

2. Practice of marriage and family therapy and use of the titles "marriage and family therapist" and "licensed marriage and family therapist". (a) Only a person licensed or exempt under this article shall practice marriage and family therapy or use the title "marriage and family therapist". Only a person licensed under this article shall use the titles "licensed marriage and family therapist", "licensed marriage therapist", "licensed family therapist" or any other designation tending to imply that the person is licensed to practice marriage and family therapy.

(b) Marriage and family therapists who have obtained the diagnosis privilege set forth in section eighty-four hundred three-a of this article may diagnose mental, emotional, behavioral, addictive and developmental disorders and disabilities and of the psychosocial aspects of illness, injury, disability and impairment undertaken within a psychosocial framework.

§ 6. Paragraphs (b) and (c) of subdivision 3 of section 8403 of the education law, paragraph (b) as added by chapter 676 of the laws of 2002

and paragraph (c) as amended by chapter 130 of the laws of 2010, are amended to read as follows:

(b) Education: Have received a master's or doctoral degree in marriage and family therapy from a program registered by the department, or determined by the department to be the substantial equivalent, **which includes the completion of at least twelve credit hours of clinical coursework** in accordance with the commissioner's regulations or a graduate degree in an allied field from a program registered by the department and graduate level coursework determined to be equivalent to that required in a program registered by the department. **A person who has received a master's, or equivalent degree in marriage and family therapy, during which they did not complete all twelve credit hours of clinical courses, may satisfy this requirement by completing any remaining equivalent post-graduate clinical courses, in accordance with the commissioner's regulations.** This coursework shall include, but not be limited to:

(i) the study of human development, including individual, child and family development;

(ii) psychopathology;

(iii) marital and family therapy;

(iv) family law;

(v) research;

(vi) professional ethics; and

(vii) a practicum of at least three hundred client contact hours;

(c) Experience: The completion of at least [~~one~~] **two** thousand [~~five hundred~~] client contact hours of supervised clinical experience, by persons holding a degree from a master's or doctoral program, or the substantial equivalent, in accordance with the commissioner's regulations or the completion of at least [~~one~~] **two** thousand [~~five hundred~~] client **contact** hours of supervised post-master's clinical experience in marriage and family therapy satisfactory to the department in accordance with the commissioner's regulations. **The two thousand client contact hours shall include diagnosis, psychotherapy and assessment based treatment plans.** Satisfactory experience obtained in an entity operating under a waiver issued by the department pursuant to section sixty-five hundred three-a of this title may be accepted by the department, notwithstanding that such experience may have been obtained prior to the effective date of such section sixty-five hundred three-a and/or prior to the entity having obtained a waiver. The department may, for good cause shown, accept satisfactory experience that was obtained in a setting that would have been eligible for a waiver but which has not obtained a waiver from the department or experience that was obtained in good faith by the applicant under the belief that appropriate authorization had been obtained for the experience, provided that such experience meets all other requirements for acceptable experience;

§ 7. The education law is amended by adding a new section 8403-a to read as follows:

§ 8403-a. Diagnosis privilege; marriage and family therapist. 1. Applicants for license as a marriage and family therapist who were licensed on January first, two thousand twenty-six or thereafter are authorized to diagnose, as provided in paragraph (b) of subdivision two of section eighty-four hundred three of this article, and as defined in subdivision three of section eighty-four hundred one of this article without meeting any additional requirements.

2. Applicants for license as a marriage and family therapist who have been issued a limited permit after successfully completing the require-

ments of paragraph (b) of subdivision three of section eighty-four hundred three of this article, which includes twelve credit hours of clinical courses, are authorized to diagnose as provided in paragraph (b) of subdivision two of section eighty-four hundred three of this article, and as defined in subdivision three of section eighty-four hundred one of this article, while under supervision.

3. Those licensed as a marriage and family therapist prior to January first, two thousand twenty-six, shall be granted the privilege to diagnose as provided in paragraph (b) of subdivision two of section eighty-four hundred three of this article, and as defined in subdivision three of section eighty-four hundred one of this article, if the licensee fulfills the following requirements:

(a) Files an application with the department;

(b) Is licensed and registered as a marriage and family therapist; and:

(i) Provides verification of twelve credit hours of clinical coursework as defined by the department from a college or university acceptable to the department; or

(ii) Provides verification of a minimum of two years of employment as a licensed marriage and family therapist by a licensed supervisor or colleague on forms acceptable to the department, in a program or service operated, regulated, funded, or approved by the department of mental hygiene, the office of children and family services, the office of temporary and disability assistance, the department of corrections and community supervision, the state office for the aging, the department of health, or a local governmental unit as that term is defined in article forty-one of the mental hygiene law or a social services district as defined in section sixty-one of the social services law; or

(iii) Provides verification of being licensed as a licensed marriage and family therapist for a minimum of two years and:

(1) Provides documentation of at least six credit hours of clinical coursework as defined by the department from a college or university acceptable to the department; or

(2) Provides documentation of at least twelve hours of continuing education in clinical coursework subject to section eighty-four hundred twelve-a of this article; and

(c) Pays a fee to the department of two hundred twenty dollars.

4. A privilege to diagnose 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.

§ 8. Subdivision 2 of section 8405 of the education law, as added by chapter 676 of the laws of 2002, is amended to read as follows:

2. Practice of psychoanalysis and use of the titles "psychoanalyst" and "licensed psychoanalyst". (a) Only a person licensed or exempt under this article shall practice psychoanalysis or use the title "psychoanalyst". Only a person licensed under this article shall use the title "licensed psychoanalyst" or any other designation tending to imply that the person is licensed to practice psychoanalysis.

(b) Psychoanalysts who have obtained the diagnosis privilege as set forth in section eighty-four hundred five-a of this article may diagnose mental, emotional, behavioral, addictive and developmental disorders and disabilities and of the psychosocial aspects of illness, injury, disability and impairment undertaken within a psychosocial framework.

§ 9. Paragraphs (b) and (c) of subdivision 3 of section 8405 of the education law, paragraph (b) as added by chapter 676 of the laws of 2002 and paragraph (c) as amended by chapter 130 of the laws of 2010, are amended to read as follows:

(b) Education: Have received a master's degree or higher from a degree-granting program registered by the department or the substantial equivalent and have completed a program of study registered by the department in a psychoanalytic institute chartered by the board of regents or the substantial equivalent as determined by the department. The program of study in a psychoanalytic institute shall include course-work substantially equivalent to coursework required for a master's degree in a health or mental health field of study **and shall also include the completion of at least twelve credit hours of clinical courses. An individual who has completed a licensed psychoanalyst program that did not include twelve credit hours of clinical courses may satisfy this requirement by completing any remaining equivalent post-graduate clinical courses, in accordance with the commissioner's regulations**. The coursework shall include, but not be limited to, the following areas:

(i) personality development;

(ii) psychoanalytic theory of psychopathology;

(iii) psychoanalytic theory of psychodiagnosis;

(iv) sociocultural influence on growth and psychopathology;

(v) practice technique (including dreams and symbolic processes);

(vi) analysis of resistance, transference, and countertransference;

(vii) case seminars on clinical practice;

(viii) practice in psychopathology and psychodiagnosis;

(ix) professional ethics and psychoanalytic research methodology; and

(x) a minimum of three hundred hours of personal analysis and one hundred fifty hours of supervised analysis;

(c) Experience: Have completed a minimum of [~~fifteen hundred~~] **two thousand** hours of supervised clinical practice **which shall include diagnosis, psychotherapy, and assessment-based treatment plans** satisfactory to the department and in accordance with the commissioner's regulations. Satisfactory experience obtained in an entity operating under a waiver issued by the department pursuant to section sixty-five hundred three-a of this title may be accepted by the department, notwithstanding that such experience may have been obtained prior to the effective date of such section sixty-five hundred three-a and/or prior to the entity having obtained a waiver. The department may, for good cause shown, accept satisfactory experience that was obtained in a setting that would have been eligible for a waiver but which has not obtained a waiver from the department or experience that was obtained in good faith by the applicant under the belief that appropriate authorization had been obtained for the experience, provided that such experience meets all other requirements for acceptable experience;

§ 10. The education law is amended by adding a new section 8405-a to read as follows:

§ 8405-a. Diagnosis privilege. 1. Applicants licensed on January first, two thousand twenty-five or thereafter are authorized to diagnose as provided in paragraph (b) of subdivision two of section eighty-four hundred five of this article and further defined in subdivision three of section eighty-four hundred one of this article without meeting any additional requirements.

2. Applicants for license as a psychoanalyst who have been issued a limited permit after successfully completing the requirements of para-

graph (b) of subdivision two of section eighty-four hundred five of this article, which includes twelve credit hours of clinical courses are authorized to diagnose as provided in paragraph (b) of subdivision three of section eighty-four hundred five of this article, and as defined in subdivision three of section eighty-four hundred one of this article while under supervision.

3. For those licensed prior to January first, two thousand twenty-five, shall be granted the privilege to diagnose as provided in paragraph (c) of subdivision one of section eighty-four hundred five of this article, and further defined in subdivision three of section eighty-four hundred one of this article if the licensee fulfills the following requirements:

(a) Files an application with the department;

(b) Is licensed and registered as a psychoanalyst; and

(i) Provides verification of twelve credit hours of clinical course work as defined by the department from a college, university, or institute acceptable to the department; or

(ii) Provides verification of a minimum of two years of employment as a licensed psychoanalyst by a licensed supervisor or colleague on forms acceptable to the department, in a program or service operated, regulated, funded, or approved by the department of mental hygiene, the office of children and family services, the office of temporary and disability assistance, the department of corrections and community supervision, the state office for the aging, the department of health, or a local governmental unit as that term is defined in article forty-one of the mental hygiene law or a social services district as defined in section sixty-one of the social services law; or

(iii) Provides verification of being licensed as a licensed psychoanalyst for a minimum of three years; and

(1) Provides documentation of at least six credit hours of clinical coursework as defined by the department from a college, university, or institute acceptable to the department; or

(2) Provides documentation of at least twelve hours of continuing education in clinical coursework subject to section eighty-four hundred twelve-a of this article; and

(c) Pays a fee to the department of two hundred twenty dollars.

4. A privilege to diagnose 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.

§ 11. Subdivision 2 of section 8409 of the education law, as amended by chapter 485 of the laws of 2013, is amended to read as follows:

2. Limited permits shall be for [~~two~~] three years; such limited permits may be renewed, at the discretion of the department, for up to two additional one year periods.

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

11. Notwithstanding any provision of law to the contrary, nothing in this section shall be construed to prohibit or limit the activities or services provided under this article on the part of any person who, upon the effective date of this subdivision, is in the employ of a program or service, as defined in this article, for the period during which such person maintains employment in such program or service. This section shall not authorize the use of any title authorized pursuant to this article by any such employed person, except as otherwise provided by

this article respectively. Provided however, that any person who commences employment in such program or service on or after July first, two thousand twenty-one and performs services that are restricted under this article shall be appropriately licensed or authorized under this article.

§ 13. The education law is amended by adding a new section 8412-a to read as follows:

§ 8412-a. Continuing education for diagnosis privilege. 1. Continuing education required in clause two of subparagraph (iii) of paragraph (b) of subdivision three of section eighty-four hundred two-a of this article shall:

(a) Be offered by a provider approved by the department pursuant to paragraph (b) of subdivision three of section eighty-four hundred twelve of this article; and

(b) In addition to meeting the standards set forth in paragraph (a) of subdivision three of section eighty-four hundred twelve of this article, be determined by the department as providing clinical content in the following areas:

(i) Diagnosis in clinical practice;

(ii) Assessment based treatment; or

(iii) Clinical practice with general and special populations.

2. The department shall maintain a list of continuing education approved by the department as meeting the requirements of this section.

3. A separate continuing education approval application fee, as determined by the department, shall be applied to providers seeking approval of continuing education that meets the requirements of this section.

§ 14. This act shall take effect one year after it shall have become a law, provided that sections four, seven and ten of this act shall take effect January 1, 2026. 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.