

STATE OF NEW YORK

5301--A

2021-2022 Regular Sessions

IN SENATE

March 1, 2021

Introduced by Sen. BROUK -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to education requirements and authorization to develop assessment-based treatment plans for certain mental health practitioners; and providing for the repeal of certain provisions upon expiration thereof

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" or "diagnose" 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. "Assessment-based treatment plan" refers to an integrated plan of prioritized interventions, that is based on the diagnosis and psychosocial assessment of a client, to address mental, emotional, behavioral, developmental and addictive disorders, impairments and disabilities, reactions to illnesses, injuries, disabilities and impairments, and social problems.

§ 2. Section 8402 of the education law is amended by adding a new subdivision 4 to read as follows:

4. Licensed mental health counselors licensed after June thirtieth, two thousand twenty-six, and mental health counselors who have satisfied the requirements under section eighty-four hundred two-a of this article may diagnose and develop assessment-based treatment plans.

§ 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.

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

3 (b) Education: Have received an education, including a master's or
4 higher degree in counseling from a program registered by the department
5 or determined by the department to be the substantial equivalent there-
6 of, which shall include the completion of at least twelve credit hours
7 of clinical courses, in accordance with the commissioner's regulations.

8 A person who has received a master's, or equivalent degree in coun-
9 seling, during which they did not complete all twelve credit hours of
10 clinical courses, may satisfy such requirement by completing any remain-
11 ing equivalent post-graduate clinical courses, in accordance with the
12 commissioner's regulations. The graduate coursework shall include, but
13 not be limited to, the following areas:

14 (i) human growth and development;
15 (ii) social and cultural foundations of counseling;
16 (iii) counseling theory and practice and psychopathology;
17 (iv) group dynamics;
18 (v) lifestyle and career development;
19 (vi) assessment and appraisal of individuals, couples and families and
20 groups;
21 (vii) research and program evaluation;
22 (viii) professional orientation and ethics;
23 (ix) foundations of mental health counseling and consultation;
24 (x) clinical instruction; and
25 (xi) completion of a minimum one year supervised internship or practi-
26 cum in mental health counseling;

27 (c) Experience: An applicant shall complete a minimum of three thou-
28 sand hours of post-master's supervised experience relevant to the prac-
29 tice of mental health counseling, two thousand hours of which shall
30 include diagnosis, psychotherapy, and assessment-based treatment plans,
31 satisfactory to the board and in accordance with the commissioner's
32 regulations. Satisfactory experience obtained in an entity operating
33 under a waiver issued by the department pursuant to section sixty-five
34 hundred three-a of this title may be accepted by the department,
35 notwithstanding that such experience may have been obtained prior to the
36 effective date of such section sixty-five hundred three-a and/or prior
37 to the entity having obtained a waiver. The department may, for good
38 cause shown, accept satisfactory experience that was obtained in a
39 setting that would have been eligible for a waiver but which has not
40 obtained a waiver from the department or experience that was obtained in
41 good faith by the applicant under the belief that appropriate authori-
42 zation had been obtained for the experience, provided that such experi-
43 ence meets all other requirements for acceptable experience;

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

46 § 8402-a. Diagnosis privilege; mental health counseling. 1. Applicants
47 for licensure as a mental health counselor who have met the requirement
48 of section eighty-four hundred two of this article shall be authorized
49 to diagnose and develop assessment-based treatment plans without meeting
50 any additional requirements.

51 2. Applicants for license as a mental health counselor who have been
52 issued a limited permit and have successfully completed twelve credit
53 hours of clinical courses, of which may be completed post-graduate, in
54 accordance with the commissioner's regulations, shall be authorized to
55 diagnose and develop assessment-based treatment plans while under super-
56 vision.

1 3. Mental health counselors licensed prior to June thirtieth, two
2 thousand twenty-six, shall be granted the privilege to diagnose and
3 develop assessment-based treatment plans if such mental health counse-
4 lor:

5 (a) Files an application with the department;

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

7 (i) Provides verification of twelve credit hours of clinical course
8 work as defined by the department from a college or university accepta-
9 ble to the department;

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

20 (iii) Provides verification of being licensed as a mental health coun-
21 selor for a minimum of two years; and

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

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

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

29 4. A privilege to diagnose issued under this section shall be valid
30 for the life of the holder, unless revoked, annulled, or suspended by
31 the board of regents. Such privilege shall be subject to the same over-
32 sight and disciplinary provisions as licenses issued under this title.

33 § 5. Section 8403 of the education law is amended by adding a new
34 subdivision 4 to read as follows:

35 4. Licensed marriage and family therapists licensed after June thirti-
36 eth, two thousand twenty-six and marriage and family therapists who have
37 satisfied the requirements under section eighty-four hundred three-a of
38 this article may diagnose and develop assessment-based treatment plans.

39 § 6. Paragraphs (b) and (c) of subdivision 3 of section 8403 of the
40 education law, paragraph (b) as added by chapter 676 of the laws of 2002
41 and paragraph (c) as amended by chapter 130 of the laws of 2010, are
42 amended to read as follows:

43 (b) Education: Have received a master's or doctoral degree in marriage
44 and family therapy from a program registered by the department, or
45 determined by the department to be the substantial equivalent, which
46 shall include the completion of at least twelve credit hours of clinical
47 coursework, in accordance with the commissioner's regulations or a grad-
48 uate degree in an allied field from a program registered by the depart-
49 ment and graduate level coursework determined to be equivalent to that
50 required in a program registered by the department. A person who has
51 received a master's or equivalent degree in marriage and family therapy
52 during which they did not complete all twelve credit hours of clinical
53 courses, may satisfy this requirement by completing any remaining equiv-
54 alent post-graduate clinical courses, in accordance with the commission-
55 er'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]~~ 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]~~ 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. Such 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 licensure as a marriage and family counselor who have met the requirements of section eighty-four hundred three of this article shall be authorized to diagnose and develop assessment-based treatment plans without meeting any additional requirements.

2. Applicants for license as a marriage and family therapist who have been issued a limited permit and have successfully completed twelve credit hours of clinical courses, in accordance with the commissioner's regulations, shall be authorized to diagnose and develop assessment-based treatment plans while under supervision.

3. A marriage and family therapist licensed before June thirtieth, two thousand twenty-six, shall be authorized to diagnose and develop assessment-based treatment plans if such marriage and family therapist:

(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;

(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 such term is defined by 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. Section 8405 of the education law is amended by adding a new subdivision 4 to read as follows:

4. Licensed psychoanalysts licensed after June thirtieth, two thousand twenty-six and psychoanalysts who have satisfied the requirements under section eighty-four hundred five-a of this article may diagnose and develop assessment-based treatment plans.

§ 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 coursework 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 such 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 diag-

nosis, 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; psychoanalysts. 1. Applicants for licensure as a psychoanalyst who have met the requirement of section eighty-four hundred five of this article shall be authorized to diagnose and develop assessment-based treatment plans without meeting any additional requirements.

2. Applicants for license as a psychotherapist who have been issued a limited permit and have successfully completed twelve credit hours of clinical courses, of which may be completed post-graduate, in accordance with the commissioner's regulations, shall be authorized to diagnose and develop assessment-based treatment plans while under supervision.

3. A psychoanalyst licensed prior to June thirtieth, two thousand twenty-six, shall be granted the privilege to diagnose and develop assessment-based treatment plans if such psychoanalyst:

(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 coursework as defined by the department from a college, university, or institute acceptable to the department;

(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 such term is defined by article forty-one of the mental hygiene law, or a social services district as defined by 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. Subparagraph (i) of paragraph (c) of subdivision 8 of section 8410 of the education law, as amended by section 5 of part Y of chapter 57 of the laws of 2018, is amended to read as follows:

(i) Prevent a person without a license from participating as a member of a multi-disciplinary team to assist in the development of or implementation of a behavioral health services or treatment plan; provided that such team shall include one or more professionals licensed under this article or articles one hundred thirty-one, one hundred thirty-nine, one hundred fifty-three or one hundred fifty-four of this ~~[chapter]~~ title; and provided, further, that the activities performed by members of the team shall be consistent with the scope of practice for each team member licensed or authorized under this title ~~[VIII of this chapter]~~, and those who are not so authorized may not engage in the following restricted practices: the diagnosis of mental, emotional, behavioral, addictive and developmental disorders and disabilities; patient assessment and evaluating; the provision of psychotherapeutic treatment; the provision of treatment other than psychotherapeutic treatment; or independently developing and implementing assessment-based treatment plans as defined in section seventy-seven hundred one and section eight thousand one of this ~~[chapter]~~ title.

§ 13. Subparagraph (i) of paragraph (c) of subdivision 7 of section 7706 of the education law, as amended by section 4 of part Y of chapter 57 of the laws of 2018, is amended to read as follows:

(i) Prevent a person without a license from participating as a member of a multi-disciplinary team to assist in the development of or implementation of a behavioral health services or treatment plan; provided that such team shall include one or more professionals licensed under this article or articles one hundred thirty-one, one hundred thirty-nine, one hundred fifty-three or one hundred sixty-three of this ~~[chapter]~~ title; and provided, further, that the activities performed by members of the team shall be consistent with the scope of practice for each team member licensed or authorized under this title ~~[VIII of this chapter]~~, and those who are not so authorized may not engage in the following restricted practices: the diagnosis of mental, emotional, behavioral, addictive and developmental disorders and disabilities; patient assessment and evaluating; the provision of psychotherapeutic treatment; the provision of treatment other than psychotherapeutic treatment; or independently developing and implementing assessment-based treatment plans as defined in section seventy-seven hundred one of this article and section eight thousand one of this title.

§ 14. Subparagraph (i) of paragraph (c) of subdivision 10 of section 7605 of the education law, as amended by section 2 of part Y of chapter 57 of the laws of 2018, is amended to read as follows:

(i) A person without a license from participating as a member of a multi-disciplinary team to assist in the development of or implementation of a behavioral health services or treatment plan; provided that such team shall include one or more professionals licensed under this article or articles one hundred thirty-one, one hundred thirty-nine, one hundred fifty-four or one hundred sixty-three of this ~~[chapter]~~ title;

1 and provided, further, that the activities performed by members of the
2 team shall be consistent with the scope of practice for each team member
3 licensed or authorized under this title [~~VIII of this chapter~~], and
4 those who are not so authorized may not engage in the following
5 restricted practices: the diagnosis of mental, emotional, behavioral,
6 addictive and developmental disorders and disabilities; patient assess-
7 ment and evaluating; the provision of psychotherapeutic treatment; the
8 provision of treatment other than psychotherapeutic treatment; or inde-
9 pendently developing and implementing assessment-based treatment plans
10 as defined in section seventy-seven hundred one and section eight thou-
11 sand one of this title.

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

14 11. Prohibit or limit the activities or services on the part of any
15 person in the employ of a program or service operated, regulated, fund-
16 ed, or approved by the department of mental hygiene, the office of chil-
17 dren and family services, the office of temporary and disability assist-
18 ance, the department of corrections and community supervision, the state
19 office for the aging, the department of health, or a local governmental
20 unit as such term is defined in article forty-one of the mental hygiene
21 law, or a social services district as defined in section sixty-one of
22 the social services law, provided, however, this subdivision shall not
23 authorize the use of any license authorized pursuant to this article.

24 § 16. Section 7706 of the education law is amended by adding a new
25 subdivision 9 to read as follows:

26 9. Prohibit or limit the activities or services on the part of any
27 person in the employ of a program or service operated, regulated, fund-
28 ed, or approved by the department of mental hygiene, the office of chil-
29 dren and family services, the office of temporary and disability assist-
30 ance, the department of corrections and community supervision, the state
31 office for the aging, the department of health, or a local governmental
32 unit as such term is defined in article forty-one of the mental hygiene
33 law, or a social services district as defined in section sixty-one of
34 the social services law, provided, however, this subdivision shall not
35 authorize the use of any license authorized pursuant to article one
36 hundred sixty-three of this title.

37 § 17. Section 7605 of the education law is amended by adding a new
38 subdivision 14 to read as follows:

39 14. The activities or services on the part of any person in the employ
40 of a program or service operated, regulated, funded, or approved by the
41 department of mental hygiene, the office of children and family
42 services, the office of temporary and disability assistance, the depart-
43 ment of corrections and community supervision, the state office for the
44 aging, the department of health, or a local governmental unit as such
45 term is defined in article forty-one of the mental hygiene law, or a
46 social services district as defined in section sixty-one of the social
47 services law, provided, however, this subdivision shall not authorize
48 the use of any license authorized pursuant to article one hundred
49 sixty-three of this title.

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

52 § 8412-a. Continuing education for diagnosis privilege. 1. Continuing
53 education required under clause two of subparagraph (iii) of paragraph
54 (b) of subdivision three of section eighty-four hundred two-a of this
55 article shall:

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

4 (b) Be determined by the department as providing clinical content in
5 the following areas:

6 (i) Diagnosis in clinical practice;

7 (ii) Assessment based treatment; or

8 (iii) Clinical practice with general and special populations.

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

11 3. A separate continuing education approval application fee, as deter-
12 mined by the department, shall be applied to providers seeking approval
13 of continuing education that meets the requirements of this section.

14 § 19. This act shall take effect one year after it shall have become a
15 law, provided, however, that:

16 (a) sections three, six and nine of this act shall take effect June
17 30, 2026; and

18 (b) sections fifteen, sixteen and seventeen of this act shall take
19 effect June 24, 2021 and shall expire January 1, 2024 when upon such
20 date the provisions of such sections shall be deemed repealed.

21 Effective immediately, the addition, amendment and/or repeal of any
22 rule or regulation necessary for the implementation of this act on or
23 before its effective date are authorized to be made and completed on or
24 before such effective date.