

# STATE OF NEW YORK

9449

## IN SENATE

May 27, 2022

Introduced by Sen. BROUK -- 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 diagnostic privilege; 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:

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

3 3. "Diagnosis" means the process of distinguishing, beyond a general  
4 assessment, between similar mental, emotional, behavioral, develop-  
5 mental, and addictive disorders, impairments, and disabilities within a  
6 psychosocial framework on the basis of their similar and unique charac-  
7 teristics consistent with accepted classification systems.

8 4. "Development of assessment-based treatment plans" means the devel-  
9 opment of an integrated plan of prioritized interventions, that is based  
10 on the diagnosis and psychosocial assessment of the client, to address  
11 mental, emotional, behavioral, developmental, and addictive disorders,  
12 impairments, and disabilities.

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

15 § 8401-a. Diagnostic privilege. 1. For issuance of a privilege to  
16 diagnose and develop assessment-based treatment plans, as defined in  
17 section eighty-four hundred one of this article, the applicant shall  
18 fulfill the following requirements:

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

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

22 (c) Education: Verify the completion of a sixty semester hour  
23 master's degree or higher, or the clock hour equivalent program of study  
24 in a psychoanalytic institute, that includes completion of a core  
25 curriculum which includes at least twelve semester hours or clock hour  
26 equivalent of clinical courses that prepares the applicant to diagnose  
27 and develop assessment-based treatment plans acceptable to the depart-

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

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1 ment. A person who has received a master's or higher degree during which  
2 they did not complete the required hours, may satisfy such requirement  
3 by completing the equivalent post-graduate courses in accordance with  
4 the commissioner's regulations;

5 (d) Experience: (i) Have completed at least two thousand hours of  
6 supervised, direct client contact that shall include, but not be limited  
7 to, diagnosis, psychotherapy and the development of assessment-based  
8 treatment plans, as defined in section eighty-four hundred one of this  
9 article, satisfactory to the department.

10 (ii) Subparagraph (i) of this paragraph shall not apply to a mental  
11 health counselor, marriage and family therapist, or psychoanalyst who  
12 was licensed prior to June twenty-fourth, two thousand twenty-four, and  
13 who provides attestation, on a form prescribed by the department, from a  
14 supervisor in a facility setting or other supervised setting approved by  
15 the department under supervision in accordance with the commissioner's  
16 regulations, that such licensee has at least three years of experience  
17 engaged in direct client contact that shall include diagnosis, psychoth-  
18 erapy and the development of assessment-based treatment plans. Such  
19 licensee shall submit an application to the department within three  
20 years of the effective date of this section.

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

23 2. A mental health counselor, marriage and family therapist or psycho-  
24 analyst who engages in diagnosis and the development of assessment-based  
25 treatment plans without a privilege may be charged with professional  
26 misconduct under section sixty-five hundred nine of this title.

27 3. A privilege issued under this section shall be valid for the life  
28 of the holder, unless revoked, annulled, or suspended by the board of  
29 regents. Such a privilege shall be subject to the same oversight and  
30 disciplinary provisions as licenses issued under this title. The holder  
31 of a privilege issued under this section shall register with the depart-  
32 ment as a privilege holder in the same manner and subject to the same  
33 provisions as required of a licensee pursuant to section sixty-five  
34 hundred two of this title, provided that, at the time of each registra-  
35 tion, the privilege holder shall certify that he or she continues to  
36 meet the requirements for the privilege set forth in this section. The  
37 fee for such registration shall be one hundred seventy-five dollars. The  
38 registration period for a privilege holder shall be coterminous with his  
39 or her registration under this article.

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

42 1. It shall be deemed practicing outside the boundaries of his or her  
43 professional competence for a person licensed pursuant to this article,  
44 in the case of treatment of any serious mental illness, to provide any  
45 mental health service for such illness on a continuous and sustained  
46 basis without a medical evaluation of the illness by, and consultation  
47 with, a physician regarding such illness, unless such licensed profes-  
48 sional has been issued a privilege to diagnosis and develop assessment-  
49 based treatment plans by the department. Such medical evaluation and  
50 consultation shall be to determine and advise whether any medical care  
51 is indicated for such illness. For purposes of this section, "serious  
52 mental illness" means schizophrenia, schizoaffective disorder, bipolar  
53 disorder, major depressive disorder, panic disorder, obsessive-compul-  
54 sive disorder, attention-deficit hyperactivity disorder and autism.

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

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

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

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

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