STATE OF NEW YORK

5301--B

2021-2022 Regular Sessions

IN SENATE

March 1, 2021

Introduced by Sens. BROUK, BAILEY, BRISPORT, BROOKS, HARCKHAM, HOYLMAN, JACKSON, MANNION, ORTT, REICHLIN-MELNICK, SKOUFIS -- 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 -- recommitted to the Committee on Higher Education in accordance with Senate Rule 6, sec. 8 -- 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 other mental health professionals

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 8402 of the education law, as added by chapter 676 of the laws of 2002, is amended and two new subdivisions 1-a and 4 are added to read as follows:

1. Definition of the practice of mental health counseling. The practice of the profession of mental health counseling is defined as:

(a) the evaluation, assessment, **diagnosis,** amelioration, treatment, modification, or adjustment to a disability, problem, or disorder of behavior, character, development, emotion, personality or relationships by the use of verbal or behavioral methods with individuals, couples, families or groups in private practice, group, or organized settings; and

(b) the use of assessment instruments [~~and~~]**, assessment-based treatment plans,** mental health counseling and psychotherapy to identify, evaluate and treat dysfunctions and disorders for purposes of providing appropriate mental health counseling services.

1-a. Mental health diagnoses. (a) "Diagnosis" in the context of licensed mental health counseling practice shall mean the process of

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

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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.

(b) "Development of assessment-based treatment plans" in the context of licensed mental health counseling practice shall mean the development of 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.

(c) Nothing in this subdivision or in subdivision one or four of this section shall be construed to limit the scope of mental health counseling practice as authorized prior to the effective date of this subdivision. The authority to diagnose shall be authorized only in accordance with the provisions of this article and regulations promulgated by the commissioner.

4. Certificate to diagnose. The commissioner shall issue appropriate certificates to diagnose in accordance with the provisions of this subdivision to those mental health counselors who have satisfactorily completed the following:

(a) Standard pathway. A mental health counselor who has completed the standard pathway shall have:

(i) received a master's or higher degree in mental health counseling from a program registered by the department or determined by the department to be the substantial equivalent thereof, which shall include 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 such 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:

(A) human growth and development;

(B) social and cultural foundations of counseling;

(C) counseling theory, diagnosis, practice and psychopathology;

(D) group dynamics;

(E) lifestyle and career development;

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

(G) research and program evaluation;

(H) professional orientation and ethics;

(I) foundation of mental health counseling and consultation;

(J) clinical instruction; and

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

(ii) completed a minimum of three thousand hours of post-master's supervised experience relevant to the practice of mental health counseling, of which two thousand hours shall be direct client contact hours that 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; or

(b) Alternative pathway. The commissioner shall issue appropriate certificates to mental health counselors licensed prior to the effective date of this subdivision who have completed twelve credit hours of clinical courses of which a minimum of three credit hours shall include content in diagnosis in accordance with the commissioner's regulations.

§ 2. Paragraph (g) of subdivision 3 of section 8402 of the education law, as amended by chapter 210 of the laws of 2004, is amended to read as follows:

(g) Fees: Pay a fee of one hundred seventy-five dollars for an initial license [~~and~~], a fee of one hundred seventy dollars for each triennial registration period, and for the additional authorization for the purpose of diagnosing, a fee of one hundred seventy-five dollars.

§ 3. Subdivision 1 of section 8403 of the education law, as added by chapter 676 of the laws of 2002, is amended and two new subdivisions 1-a and 4 are added to read as follows:

1. Definition of the practice of marriage and family therapy. The practice of the profession of marriage and family therapy is defined as:

(a) the diagnosis, assessment and treatment of nervous and mental disorders, whether affective, cognitive or behavioral, which results in dysfunctional interpersonal family relationships including, but not limited to familial relationships, marital/couple relationships, parent-child relationships, pre-marital and other personal relationships;

(b) the use of mental health counseling, psychotherapy and therapeutic techniques to evaluate and treat marital, relational, and family systems, and individuals in relationship to these systems;

(c) the use of mental health counseling and psychotherapeutic techniques to treat mental, emotional and behavioral disorders and ailments within the context of marital, relational and family systems to prevent and ameliorate dysfunction; and

(d) the use of assessment instruments [~~and~~], mental health counseling and psychotherapy, and assessment-based treatment plans to identify and evaluate and treat dysfunctions and disorders for purposes of providing appropriate marriage and family therapy services.

1-a. Diagnoses. (a) "Diagnosis" in the context of licensed marriage and family therapy practice shall mean 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.

(b) "Development of assessment-based treatment plans" in the context of licensed marriage and family therapy practice shall mean the development of 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.

(c) Nothing in this subdivision or in subdivision one or four of this section shall be construed to limit the scope of marriage and family therapy practice as authorized prior to the effective date of this subdivision. The authority to diagnose shall be authorized only in accordance with the provisions of this article and regulations promulgated by the commissioner.

4. Certificate to diagnose. The commissioner shall issue appropriate certificates to diagnose in accordance with the provisions of this subdivision to those marriage and family counselors who have satisfactorily completed the following:

(a) Standard pathway. A marriage and family counselor who has completed the standard pathway shall have:

(i) received a master's or doctoral degree with a minimum of sixty credit hours in marriage and family therapy from a program registered by the department, or determined by the department to be the substantial equivalent, which shall include 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 such requirement by completing any remaining equivalent post-graduate clinical courses, in accordance with the commissioner's regulations. Such coursework shall include, but not be limited to:

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

(B) diagnosis and psychopathology;

(C) marital and family therapy;

(D) family law;

(E) research;

(F) professional ethics; and

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

(ii) completed a minimum of two thousand hours of post-master's supervised experience relevant to the practice of marriage and family therapy comprised of direct client contact hours including 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;

(b) Alternative pathway. The commissioner shall issue appropriate certificates to marriage and family therapists licensed prior to the effective date of this subdivision who have completed twelve credit hours of clinical courses of which a minimum of three credit hours shall include content in diagnosis in accordance with the commissioner's regulations.

§ 4. Paragraph (g) of subdivision 3 of section 8403 of the education law, as amended by chapter 210 of the laws of 2004, is amended to read as follows:

(g) Fees: Pay a fee of one hundred seventy-five dollars for an initial license [~~and~~], a fee of one hundred seventy dollars for each triennial registration period, and for the additional authorization for the purpose of diagnosing, a fee of one hundred seventy-five dollars.

§ 5. Subdivision 1 of section 8405 of the education law, as added by chapter 676 of the laws of 2002, is amended and two new subdivisions 1-a and 4 are added to read as follows:

1. Definition of the practice of psychoanalysis. The practice of the profession of psychoanalysis is defined as:

(a) the observation, description, evaluation, diagnosis and interpretation of dynamic unconscious mental processes that contribute to the formation of personality and behavior in order to identify and resolve unconscious psychic problems which affect interpersonal relationships and emotional development, to facilitate changes in personality and behavior through the use of verbal and nonverbal cognitive and emotional communication, and to develop adaptive functioning; and

(b) the use of assessment instruments [~~and~~], mental health counseling and psychotherapy, and assessment-based treatment plans to identify, evaluate and treat dysfunctions and disorders for purposes of providing appropriate psychoanalytic services.

1-a. Diagnoses. (a) "Diagnosis" in the context of licensed psychoanalysis practice shall mean the process of distinguishing, beyond a general psychoanalysis 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.

(b) "Development of assessment-based treatment plans" in the context of licensed psychoanalysis practice shall mean the development of 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.

(c) Nothing in this subdivision or in subdivision one or four of this section shall be construed to limit the scope of licensed psychoanalysis practice as authorized prior to the effective date of this subdivision. The authority to diagnose shall be authorized only in accordance with the provisions of this article and regulations promulgated by the commissioner.

4. Certificate to diagnose. The commissioner shall issue appropriate certificates to diagnose in accordance with the provision of this subdivision to those psychoanalysts who have satisfactorily completed the following:

(a) Standard pathway. A psychoanalyst who has completed the standard pathway shall have:

(i) 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 which shall also include the

completion of at least twelve credit hours, or the substantial equivalent, of clinical courses, as determined by the department. An individual who has completed a licensed psychoanalyst program that did not include twelve credit hours, or the substantial equivalent, 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:

(A) personality development;

(B) psychoanalytic theory of psychopathology;

(C) diagnosis, and psychoanalytic theory of psychodiagnosis;

(D) sociocultural influence on growth and psychopathology;

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

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

(G) case seminars on clinical practice;

(H) practice in psychopathology and psychodiagnosis;

(I) professional ethics and psychoanalytic research methodology; and

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

(ii) completed a minimum of two thousand hours of supervised clinical practice relevant to the practice of psychoanalysis comprised of direct client contact hours including diagnosis, psychotherapy, and assessment-based treatment plans satisfactory to the department and in accordance with the commissioner's regulations. This supervised clinical practice may not begin prior to the successful completion of two years of coursework that includes twelve credit hours, or the substantial equivalent, of clinical coursework, as determined by the department. 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; or

(b) Alternative pathway. The commissioner shall issue appropriate certificates to psychoanalysts licensed prior to the effective date of this subdivision who have completed twelve credit hours, or the substantial equivalent, of clinical courses of which a minimum of three credit hours, or the substantial equivalent, shall include content in diagnosis in accordance with the commissioner's regulations.

§ 6. Paragraph (g) of subdivision 3 of section 8405 of the education law, as amended by chapter 210 of the laws of 2004, is amended to read as follows:

(g) Fees: Pay a fee of one hundred seventy-five dollars for an initial license [~~and~~], a fee of one hundred seventy dollars for each triennial registration period, and for the additional authorization for the purpose of diagnosing, a fee of one hundred seventy-five dollars.

§ 7. 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.

§ 8. 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; 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 chapter~~].

§ 9. 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; 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~~].

§ 10. 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; 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 assess-

ment 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 title~~].

§ 11. Subdivision 9 of section 8410 of the education law, as amended by chapter 159 of the laws of 2021, is amended to read as follows:

9. Notwithstanding any other provision of law to the contrary, nothing in this article shall be construed to prohibit or limit the activities or services provided under this article by any person who is employed or who commences employment 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 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 sixty-one of the social services law on or before two years from the date that the regulations issued in accordance with section six of part Y of chapter fifty-seven of the laws of two thousand eighteen appear in the state register or are adopted, whichever is later. Such prohibitions or limitations shall not apply to such employees for as long as they remain employed by such programs or services and whether they remain employed by the same or other employers providing such programs or services. Provided however, that any person who commences employment in such program or service after such date and performs services that are restricted under this article shall be appropriately licensed or authorized under this article. Each state oversight agency shall create and maintain a process to verify employment history of individuals exempt under this subdivision. **Provided, however, that notwithstanding any other provision of law to the contrary, licensed mental health counselor, licensed marriage and family therapist, and licensed psychoanalyst 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 governmental unit as defined by section 41.03 of the mental hygiene law or a social services district as defined by section sixty-one of the social services law prior to June twenty-fourth, two thousand twenty-two may diagnose and develop assessment-based treatment plans as long as they remain employed by such programs, provided however, such licensed mental health counselor, licensed marriage and family therapist and licensed psychoanalyst is required to hold a certificate to diagnose by the commissioner two years after the effective date of the chapter of the laws of two thousand twenty-two that amended this subdivision.**

§ 12. Subdivision 8 of section 7706 of the education law, as amended by chapter 159 of the laws of 2021, is amended to read as follows:

8. Notwithstanding any other provision of law to the contrary, nothing in this article shall be construed to prohibit or limit the activities or services provided under this article by any person who is employed or who commences employment 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 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 sixty-one of the social services law on or before two years from the date that the regulations issued in accordance with section six of part Y of chapter fifty-seven of the laws of two thousand eighteen appear in the state register or are adopted, whichever is later. Such prohibitions or limitations shall not apply to such employees for as long as they remain employed by such programs or services and whether they remain employed by the same or other employers providing such programs or services. Provided however, that any person who commences employment in such program or service after such date and performs services that are restricted under this article shall be appropriately licensed or authorized under this article. Each state oversight agency shall create and maintain a process to verify employment history of individuals exempt under this subdivision. **Provided, however, that notwithstanding any other provision of law to the contrary, licensed mental health counselor, licensed marriage and family therapist, and licensed psychoanalyst 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 governmental unit as 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 prior to June twenty-fourth, two thousand twenty-two may diagnose and develop assessment-based treatment plans as long as they remain employed by such programs, provided however, such licensed mental health counselor, licensed marriage and family therapist and licensed psychoanalyst is required to hold a certificate to diagnose by the commissioner two years after the effective date of the chapter of the laws of two thousand twenty-two that amended this subdivision.**

§ 13. Subdivision 12 of section 7605 of the education law, as amended by chapter 159 of the laws of 2021, is amended to read as follows:

12. Notwithstanding any other provision of law to the contrary, nothing in this article shall be construed to prohibit or limit the activities or services provided under this article by any person who is employed or who commences employment 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 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 sixty-one of the social services law on or before two years from the date that the regulations issued in accordance with section six of part Y of chapter fifty-seven of the laws of two thousand eighteen appear in the state register or are adopted, whichever is later. Such prohibitions or limitations shall not apply to such employees for as long as they remain employed by such programs or services and whether they remain employed by the same or other employers providing such programs or services. Provided, however, that any person who commences employment in such program or service after such date and performs services that are restricted under this article shall be appropriately licensed or authorized under this article. Each state oversight agency shall create and maintain a process to verify employment history of individuals exempt under this subdivision. **Provided, however, that notwithstanding any other provision of law to the contrary, licensed mental health counselor, licensed marriage and family therapist, and licensed psychoanalyst 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 governmental unit as 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 prior to June twenty-fourth, two thousand twenty-two may diagnose and develop assessment-based treatment plans as long as they remain employed by such programs or services and whether they remain employed by the same or other employers providing such programs or services, provided however, such licensed mental health counselor, licensed marriage and family therapist and licensed psychoanalyst is required to hold a certificate to diagnose by the commissioner two years after the effective date of the chapter of the laws of two thousand twenty-two that amended this subdivision.

§ 14. This act shall take effect on first day of the eighteenth full month after it shall have become a law; provided, however that sections eleven, twelve and thirteen of this act shall take effect on June 24, 2022. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on or before its effective date are authorized to be made and completed on or before such effective date.