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:

Section 1. Section 8401 of the education law is amended by adding two new subdivisions 3 and 4 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.

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

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

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

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

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

(c) Education: Verify the completion of a sixty semester hour master's degree or higher, or the clock hour equivalent program of study in a psychoanalytic institute, that includes completion of a core curriculum which includes at least twelve semester hours or clock hour equivalent of clinical courses that prepares the applicant to diagnose 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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ment. A person who has received a master's or higher degree during which they did not complete the required hours, may satisfy such requirement by completing the equivalent post-graduate courses in accordance with the commissioner's regulations;

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

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

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

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

3. A privilege 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. The holder of a privilege issued under this section shall register with the department as a privilege holder in the same manner and subject to the same provisions as required of a licensee pursuant to section sixty-five hundred two of this title, provided that, at the time of each registration, the privilege holder shall certify that he or she continues to meet the requirements for the privilege set forth in this section. The fee for such registration shall be one hundred seventy-five dollars. The registration period for a privilege holder shall be coterminous with his or her registration under this article.

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

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

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

1. The department may issue a limited permit to an applicant who meets all qualifications for licensure, except the examination and/or experience requirements, **or to an applicant who is gaining experience for the diagnostic privilege,** in accordance with regulations promulgated therefor.

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

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

§ 6. This act shall take effect June 24, 2022; provided however, that sections two and three of this act shall take effect June 24, 2024; provided, further, that the provisions of section five of this act shall expire and be deemed repealed June 24, 2025. 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.