

# STATE OF NEW YORK

6008--E

2021-2022 Regular Sessions

## IN ASSEMBLY

March 4, 2021

Introduced by M. of A. BRONSON, GALLAGHER, LUNSFORD, McDONALD, BARRETT, FORREST, CLARK, STECK, SANTABARBARA, DAVILA, MEEKS, ABINANTI, BURDICK, GUNTHER, WALSH, REILLY, ZINERMAN, STERN, JACKSON, MITAYNES, O'DONNELL, SIMON, HUNTER, HEVESI, JENSEN, STIRPE, WALLACE, ANDERSON, JEAN-PIERRE, McMAHON, FAHY, GALEF, BURKE -- Multi-Sponsored by -- M. of A. BYRNES, SILLITTI -- read once and referred to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Higher Education in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Higher Education in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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1 on the diagnosis and psychosocial assessment of the client, to address  
2 mental, emotional, behavioral, developmental, and addictive disorders,  
3 impairments, and disabilities.

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

6 § 8401-a. Diagnostic privilege. 1. For issuance of a privilege to  
7 diagnose and develop assessment-based treatment plans, as defined in  
8 section eighty-four hundred one of this article, the applicant shall  
9 fulfill the following requirements:

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

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

13 (c) Education: Verify the completion of a sixty semester hour  
14 master's degree or higher, or the clock hour equivalent program of study  
15 in a psychoanalytic institute, that includes completion of a core  
16 curriculum which includes at least twelve semester hours or clock hour  
17 equivalent of clinical courses that prepares the applicant to diagnose  
18 and develop assessment-based treatment plans acceptable to the depart-  
19 ment. A person who has received a master's or higher degree during which  
20 they did not complete the required hours, may satisfy such requirement  
21 by completing the equivalent post-graduate courses in accordance with  
22 the commissioner's regulations;

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

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

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

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

45 3. A privilege issued under this section shall be valid for the life  
46 of the holder, unless revoked, annulled, or suspended by the board of  
47 regents. Such a privilege shall be subject to the same oversight and  
48 disciplinary provisions as licenses issued under this title. The holder  
49 of a privilege issued under this section shall register with the depart-  
50 ment as a privilege holder in the same manner and subject to the same  
51 provisions as required of a licensee pursuant to section sixty-five  
52 hundred two of this title, provided that, at the time of each registra-  
53 tion, the privilege holder shall certify that he or she continues to  
54 meet the requirements for the privilege set forth in this section. The  
55 fee for such registration shall be one hundred seventy-five dollars. The

1 registration period for a privilege holder shall be coterminous with his  
2 or her registration under this article.

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

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

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

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

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

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

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