

ally, the legislative intent of the New York State Elder Law is to improve access to, and availability of, appropriate and cost-effective non-medical support services for older individuals to maximize their ability to age in their community and avoid higher levels of care and publicly financed care.

3. Needs and Benefits: During the COVID-19 crisis, the New York State Office for the Aging is discovering on a continual basis that there are regulatory provisions that require either close personal contact between staff/volunteers and clients, require actions to be taken in timeframes that in certain circumstances may be unrealistic and untenable, or are requirements that could hamper the provision of services to New York State's oldest and most vulnerable population.

As a result of this current crisis, the New York State Office for the Aging (NYSOFA) has found it appropriate to amend its regulations in order to continue to provide services to New York State's oldest and most frail population expeditiously, efficiently, and safely. This proposed rule would not eliminate any of the affected requirements outright, but would provide a degree of flexibility only in instances where strict compliance is impracticable.

4. Costs: This rule would impose no additional costs to the regulated parties, NYSOFA or state and local governments. This rule would simply amend the New York State Office for the Aging's regulations to ensure that New York's oldest and most vulnerable population is receiving the services that they need expeditiously, efficiently, and safely.

5. Paperwork: This rule would not change any of the reporting requirements, forms or other paperwork from what is already required of those administering the programs. This rule would simply amend the New York State Office for the Aging's regulations to ensure that New York's oldest and most vulnerable population is receiving the services that they need expeditiously, efficiently, and safely.

6. Local Government Mandates: This rule would not impose any program, service, duty or responsibility upon any city, county, town, village, school district or other special district. This rule would simply amend the New York State Office for the Aging's regulations to ensure that New York's oldest and most vulnerable population is receiving the services that they need expeditiously, efficiently, and safely.

7. Duplication: There are no laws, rules or other legal requirements that duplicate, overlap or conflict with this rule.

8. Alternatives: The only alternative to this rule that NYSOFA considered was to make more significant changes to the regulation that this rule would amend. NYSOFA determined that keeping the affected requirements in place was important in the delivery of services, but that strict compliance would not be feasible in certain circumstances. This rule simply allows for deviation from certain minor aspects of the requirements in very limited circumstances. This rule would ensure that New York's oldest and most vulnerable population is receiving the services that they need expeditiously, efficiently, and safely, and would do so by making the fewest changes possible to NYSOFA's current regulations.

9. Federal Standards: This rule does not exceed Federal standards.

10. Compliance Schedule: Compliance with this rule will be possible immediately.

#### **Regulatory Flexibility Analysis**

This proposed rule will not have an adverse economic impact on small businesses or local governments, nor will it impose reporting, record keeping or compliance requirements above those already required of small businesses or local governments. This proposed rule would simply amend the New York State Office for the Aging's regulations to afford flexibility in meeting certain requirements—particularly those that require in-person contact and certain timeframes—in instances where strict compliance is not practicable. This will ensure that New York's oldest and most vulnerable population is receiving the services that they need in an efficient and safe manner without unnecessary delay. The subject matter of this proposed rule is such that it will have no economic impact on small businesses or local governments.

#### **Rural Area Flexibility Analysis**

This proposed rule will not have an adverse economic impact on public or private entities in rural areas nor will it impose reporting, record keeping or compliance requirements above those already required by the New York State Office for the Aging on public or private entities in rural areas. This proposed rule would simply amend the New York State Office for the Aging's regulations to afford flexibility in meeting certain requirements—particularly those that require in-person contact and certain timeframes—in instances where strict compliance is not practicable. This will ensure that New York's oldest and most vulnerable population is receiving the services that they need in an efficient and safe manner without unnecessary delay. The subject matter of this proposed rule is such that it will have no economic impact on public or private entities in rural areas.

#### **Job Impact Statement**

The New York State Office for the Aging has determined that this proposed rule will not have a substantial adverse impact on jobs. This proposed rule

would simply amend the New York State Office for the Aging's regulations to afford flexibility in meeting certain requirements—particularly those that require in-person contact and certain timeframes—in instances where strict compliance is not practicable. This will ensure that New York's oldest and most vulnerable population is receiving the services that they need in an efficient and safe manner without unnecessary delay. The subject matter of this proposed rule is such that it will have no impact on jobs or employment opportunities.

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## State Commission of Correction

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### EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

#### **Medication Assisted Treatment**

**I.D. No.** CMC-43-22-00002-EP

**Filing No.** 834

**Filing Date:** 2022-10-06

**Effective Date:** 2022-10-07

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Proposed Action:** Addition of section 7001.1(g), Part 7011; amendment of sections 7002.6, 7002.9(a)(2) and 7013.7(c) of Title 9 NYCRR.

**Statutory authority:** Correction Law, sections 45(6), (15) and (18)

**Finding of necessity for emergency rule:** Preservation of public health, public safety and general welfare.

**Specific reasons underlying the finding of necessity:** On October 7, 2021, Governor Hochul signed into law legislation (Chapter 432 of the Laws of 2021), which generally serves to allow incarcerated individuals with certain substance use disorders the opportunity to participate in a medication assisted treatment (MAT) program. Subsequent lawmaking (Chapter 432 of the Laws of 2021) postponed the effective date of the legislation to October 7, 2022.

The legislation requires the Office of Addiction Services and Supports (OASAS) to implement, in consultation with the county sheriff and other county governmental units, a jail-based substance use disorder treatment and transition services program that supports the initiation, operation and enhancement of substance use disorder treatment and transition services for persons with substance use disorder who are incarcerated in jails. Services provided by each program must be in accordance with plans developed by the county and approved by the OASAS Commissioner, to include alcohol and substance abuse withdrawal management, medication assisted treatment formulations, group and individual counseling and clinical support, peer support, discharge planning and re-entry and transitional supports.

The addition of subdivision (18) of section 45 of the Correction Law requires the New York State Commission of Correction (SCOC) to establish standards and guidelines for a program of MAT for incarcerated individuals in local correctional facilities equivalent to the program established in state correctional facilities, and to submit an annual report to the Governor and legislative leaders on the effectiveness of the programs established. The legislation imposes numerous and precise requirements on the plan, screening, placement, participation, and other requirements of each local correctional facility's substance use disorder treatment and transition services program. Consequently, the proposed rulemaking is immediately necessary to conform with this enactment and to provide local governments with the rules necessary to comply with the legislation.

For the aforementioned reasons, SCOC finds that immediate adoption of the rule is necessary for the preservation of public safety and general welfare, and that compliance with the rulemaking procedures set forth in State Administrative Procedure Act section 202(1) would be contrary to the public interest. By immediately adopting these regulations, SCOC will be able to ensure that each local correctional facility implement a jail-based substance use disorder treatment and transition services program that supports the initiation, operation and enhancement of substance use disorder treatment and transition services for incarcerated individuals with substance use disorder. Given the upcoming statutory deadline, emer-

agency adoption is needed to require timely compliance with the legislation. Thus, SCOC finds that the regulation must be adopted and implemented effective October 7, 2022 on an emergency basis, and compliance with the minimum periods of notice, public comment and other requirements of State Administrative Procedure Act section 202(1) would be contrary to the public interest.

**Subject:** Medication assisted treatment.

**Purpose:** Set minimum standards for a program of medication assisted treatment in jails.

**Text of emergency/proposed rule:** A new subdivision (g) of section 7000.1 of Title 9 is added to read as follows:

(g) On or before the first day of February of each year, each sheriff, superintendent, commissioner, or other officer in charge of a local correctional facility, in conjunction with the jail physician, shall submit a report to the Commission of Correction detailing the operation, function and effectiveness of the facility's substance use disorder treatment and transition services program during the preceding calendar year. Such report shall be submitted in a form and manner prescribed by the Chair of the Commission.

Section 7002.6 of Title 9 is amended to read as follows:

A medical screening questionnaire shall be administered by facility staff at the time of admission or prior to the placement of an individual [prisoner] in a facility housing unit. Any screening response indicating a history of alcohol or substance abuse shall result in an immediate referral for additional medical screening pursuant to section 7011.5 of this Title.

Paragraph (2) of subdivision (a) of section 7002.9 of Title 9 is amended to read as follows:

(2) available health services, including physician visits, [and] sick calls and substance use disorder treatment and transition services;

A new Part 7011 of Title 9 is added to read as follows:

Part 7011

Substance Use Disorder Treatment and Transition Services

§ 7011.1 Purpose.

The purpose of this Part shall be to ensure that each local correctional facility implement a jail-based substance use disorder treatment and transition services program that supports the initiation, operation and enhancement of substance use disorder treatment and transition services for incarcerated individuals with substance use disorder.

§ 7011.2 Definitions.

As used in this Part, the following definitions shall apply to the terms listed below:

(a) Commissioner shall mean the Commissioner of the New York State Office of Addiction Services and Supports.

(b) Jail physician shall mean the physician appointed or designated pursuant to section 501 of the Correction Law.

(c) Medication assisted treatment shall mean the treatment of chemical dependence or abuse and concomitant conditions with medications requiring a prescription or order from an authorized prescribing professional.

(d) Chief administrative officer shall mean the highest-ranking official of the facility.

(e) Sheriff shall mean the individual having custody of a local correctional facility pursuant to subdivisions (1) and (2) of section 500-c of the Correction Law.

§ 7011.3 Policy.

Consistent with the requirements of this Part, each facility shall establish and implement policies and procedures for the operation of a substance use disorder treatment and transition services program pursuant to a plan approved by the Commissioner in accordance with section 19.18-c of the Mental Hygiene Law.

§ 7011.4 Plan for providing services.

(a) Services to be provided by a facility's substance use disorder treatment and transition services program shall be in accordance with a plan developed by participating local governmental units, in collaboration with the sheriff, taking into account local needs and available resources.

(b) Any such plan required by subdivision (a) of this section shall include, but not be limited to, the following:

(1) Alcohol, benzodiazepine, heroin and opioid withdrawal management;

(2) At least one formulation of every form of medication assisted treatments approved for the treatment of a substance use disorder by the Federal Food and Drug Administration necessary to ensure that each individual participating in the program receives the particular form found to be the most effective at treating and meeting their individual needs. The Commissioner may allow a facility a limited exemption to providing opioid full agonist treatment medications where the Commissioner determines that no providers that have received the required accreditation are located within a reasonable distance of the facility. A facility that does not have the resources available to meet standards set forth herein may apply to the Commissioner for a limited exception allowing such facility to enter into

an agreement with a community- or jail-based program offering substance use disorder treatment and transition services to provide such services to individuals in the facility. Any such determination shall be reviewed on a regular basis;

(3) Group and individual counseling and clinical support;

(4) Peer support;

(5) Discharge planning; and

(6) Re-entry and transitional supports.

(c) Prior to implementation, the plan required by subdivision (a) of this section shall be approved by the Commissioner.

(d) A copy of the plan required by subdivision (a) of this section, and all amendments and revisions thereof, and any approvals, exemptions and exceptions granted by the Commissioner shall be maintained within the facility by both the chief administrative officer and the jail physician.

§ 7011.5 Program screening, placement and participation.

(a) Without unnecessary delay, but no later than seventy-two (72) hours following a referral, an incarcerated individual shall receive a medical screening to determine if the individual suffers from a substance use disorder for which medication assisted treatment exists.

(b) Following the medical screening, an incarcerated individual who is determined to suffer from a substance use disorder for which medication assisted treatment exists shall be offered placement in the medication assisted treatment program. Placement in such program shall not be mandatory. The offer of placement shall be made in writing, and the decision to accept or deny placement shall be verified by the incarcerated individual's signature and witnessed and signed by an appropriate staff member. If, for any reason, the incarcerated individual is not able to verify, or refuses to verify the decision, the same must be recorded in writing on the offer of placement and witnessed and signed by two (2) appropriate staff members.

(c) Participation in the medication assisted treatment program shall not be unreasonably withheld from a qualified incarcerated individual. An incarcerated individual using medication assisted treatment prior to such individual's incarceration shall be eligible to, upon request by such individual, continue such treatment in the medication assisted treatment program for any period of time during such individual's incarceration.

(d) No individual shall be denied participation in the program on the basis of a positive drug screening upon entering custody or upon intake into the program; nor shall any individual receive a disciplinary infraction for such positive drug screening. No individual shall be removed from, or denied participation in the program on the basis of having received any disciplinary infraction before entry into the program, or during participation in the program.

(e) An incarcerated individual may enter into such program at any time during the individual's incarceration, and an individual's request to participate in the program shall result in an immediate referral for additional medical screening pursuant to subdivision (a) of this section.

§ 7011.6 Program requirements.

(a) Each participating incarcerated individual shall work with an authorized specialist to develop an individualized treatment plan, including an appropriate level of counseling and planning for continuity of care upon return to the community.

(b) Decisions regarding type, dosage, or duration of any medication regimen shall be made by a qualified health care professional licensed or certified under Title VIII of the Education Law who is authorized to administer such medication in conjunction with the incarcerated individual.

(c) Such program shall also include conditions for a reentry strategy for incarcerated individuals who have participated in medication assisted treatment. Such strategy shall include, but not be limited to, providing each participating incarcerated individual with information on available treatment facilities in their area, information on available housing and employment resources, and any other information that will assist the incarcerated individual in continued recovery once released. Such program shall also assist the incarcerated individual in Medicaid enrollment, prior to release.

(d) Such program shall provide participating incarcerated individuals preparing for release from the facility with a one-week supply of any necessary medication, where permissible under federal laws and regulations to continue their medication assisted treatment in an effort to prevent relapse.

§ 7011.7 Recordkeeping.

(a) Records detailing each individual's screening, placement and participation, and each participating individual's program required by sections 7011.5 and 7011.6 of this Title including, but not limited to, the offer of placement, individualized treatment plan, medication regimen, conditions for a reentry strategy, and medication supply to released individuals, shall be maintained in writing or electronically, and shall sufficiently report the name of the incarcerated individual, the names of all facility/program staff involved, the date, and the name of the recording individual.

(b) *Contemporary medication administration records shall be maintained for every incarcerated individual receiving medication assisted treatment pursuant to a facility's substance use disorder treatment and transition services program.*

(c) *The jail physician and other designated facility health staff shall retain all records required by this section in the facility, or shall otherwise have the ability to immediately access such records as necessary.*

Subdivision (c) of section 7013.7 of Title 9 is amended to read as follows:

(c) An immediate decision concerning the disposition of each *incarcerated individual* [inmate] shall be made on the basis of information gathered during initial screening and risk assessment. Such disposition may include, but is not limited to, referrals to outside medical and mental health service providers. *Any gathered information indicating a history of alcohol or substance abuse shall result in an immediate referral for additional medical screening pursuant to section 7011.5 of this Title.*

**This notice is intended:** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire January 3, 2023.

**Text of rule and any required statements and analyses may be obtained from:** Deborah Slack-Bean, Associate Attorney, Commission of Correction, Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, New York 12210, (518) 485-2346, email: Deborah.Slack-Bean@scoc.ny.gov

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 60 days after publication of this notice.

#### **Regulatory Impact Statement**

##### (1) Statutory authority:

Subsection (6) of section 45 of the Correction Law authorizes the Commission to promulgate rules and regulations establishing minimum standards for the care, custody, correction, treatment, supervision, discipline, and other correctional programs for all person confined in the correctional facilities of New York State. Subdivision (15) of section 45 of the Correction Law allows the Commission to adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of its functions, powers and duties. Subdivision (18) of section 45 of the Correction Law requires the Commission to establish standards and guidelines for a program of medication assisted treatment for incarcerated individuals in county jails and/or county correctional facilities equivalent to the program established in state correctional facilities and submit an annual report to the Governor and legislative leaders on the effectiveness of the programs established.

##### (2) Legislative objectives:

By vesting the Commission with this rulemaking authority, and recently adding Correction Law section 45(18) to require the Commission to establish standards and guidelines for a program of medication assisted treatment for incarcerated individuals in county jails and/or county correctional facilities equivalent to the program established in state correctional facilities and submit an annual report to the Governor and legislative leaders on the effectiveness of the programs established, the Legislature intended the Commission to promulgate minimum standards consistent with this duty.

##### (3) Needs and benefits:

On October 7, 2021, Governor Hochul signed into law legislation (Chapter 432 of the Laws of 2021), which generally serves to allow incarcerated individuals with certain substance use disorders the opportunity to participate in a medication assisted treatment (MAT) program. Subsequent lawmaking (Chapter 432 of the Laws of 2021) postponed the effective date of the legislation to October 7, 2022.

The legislation requires the Office of Addiction Services and Supports (OASAS) to implement, in consultation with the county sheriff and other county governmental units, a jail-based substance use disorder treatment and transition services program that supports the initiation, operation and enhancement of substance use disorder treatment and transition services for persons with substance use disorder who are incarcerated in jails. Services provided by each program must be in accordance with plans developed by the county and approved by the OASAS Commissioner, to include alcohol and substance abuse withdrawal management, medication assisted treatment formulations, group and individual counseling and clinical support, peer support, discharge planning and re-entry and transitional supports.

The addition of subdivision (18) of section 45 of the Correction Law requires the New York State Commission of Correction (SCOC) to establish standards and guidelines for a program of MAT for incarcerated individuals in local correctional facilities equivalent to the program established in state correctional facilities, and to submit an annual report to the Governor and legislative leaders on the effectiveness of the programs established. The legislation imposes numerous and precise requirements on the plan, screening, placement, participation, and other

requirements of each local correctional facility's substance use disorder treatment and transition services program. Consequently, the proposed rulemaking is immediately necessary to conform with this enactment and to provide local governments with the rules necessary to comply with the legislation.

##### (4) Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: None. As set forth above, a jail's establishment and operation of a substance use disorder treatment and transition services program was required by recent legislation. Compliance with the proposed rule will not result in any additional costs to county and municipal agencies operating such jails.

b. Costs to the agency, the State and local governments for the implementation and continuation of the rule: None. The regulation does not apply to state agencies or governmental bodies. As set forth above in subdivision (a), there would not be any additional costs to local governments.

c. This statement detailing the projected costs of the rule is based upon the Commission's oversight and experience relative to the operation and function of adult jails.

##### (5) Local government mandates:

The rulemaking mirrors recent legislation that requires the establishment and operation of a substance use disorder treatment and transition services program in local correctional facilities, effective October 7, 2022.

##### (6) Paperwork:

The rulemaking requires that records be maintained, in writing or electronically, of each incarcerated individual's screening, placement and participation in the program, to include an individualized treatment plan, medication regimen, conditions for a reentry strategy, and medication supply upon release. Although this rule does not constitute an additional recordkeeping requirement, it does reaffirm existing regulations of 9 NYCRR § 7010.2(j) that adequate health service and medical records of incarcerated individuals be maintained to include diagnosis, medication/treatment prescribed, and medication administered.

##### (7) Duplication:

The rule conforms to recent legislation that requires the establishment and operation of a substance use disorder treatment and transition services program in local correctional facilities, effective October 7, 2022.

##### (8) Alternatives:

Given the legislation that requires the establishment and operation of a substance use disorder treatment and transition services program in local correctional facilities, the Commission did not see any alternative to promulgating conforming regulations.

##### (9) Federal standards:

There are no applicable minimum standards of the federal government.

##### (10) Compliance schedule:

Each local jurisdiction is expected to be able to achieve compliance with the proposed rule effective October 7, 2022.

#### **Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not required pursuant to subdivision three of section 202-b of the State Administrative Procedure Act because the rule does not impose an adverse economic impact on small businesses or local governments. The proposed rule seeks only to conform regulations to recent legislation that requires local correctional facilities to operate a substance use disorder treatment and transition services program pursuant to a plan approved by the Commissioner of the Office of Addiction Services and Supports in accordance with section 19.18-c of the mental hygiene law. The proposed rule does not impose any new mandates on local facilities, just reiterates the program planning, screening, placement and participation requirements added to the Correction Law and Mental Hygiene Law. Consequently, the rule will not have an adverse impact on small businesses or local governments, nor impose any additional significant reporting, record keeping, or other compliance requirements on small businesses or local governments.

#### **Rural Area Flexibility Analysis**

A rural area flexibility analysis is not required pursuant to subdivision four of section 202-bb of the State Administrative Procedure Act because the rule does not impose an adverse impact on rural areas. The proposed rule seeks only to conform regulations to recent legislation that requires local correctional facilities to operate a substance use disorder treatment and transition services program pursuant to a plan approved by the Commissioner of the Office of Addiction Services and Supports in accordance with section 19.18-c of the mental hygiene law. Consequently, it will not impose an adverse economic impact on rural areas, nor impose any additional significant record keeping, reporting, or other compliance requirements on private or public entities in rural areas.

#### **Job Impact Statement**

A job impact statement is not required pursuant to subdivision two of section 201-a of the State Administrative Procedure Act because the rule will

not have a substantial adverse impact on jobs and employment opportunities, as apparent from its nature and purpose. The proposed rule seeks only to conform regulations to recent legislation that requires local correctional facilities to operate a substance use disorder treatment and transition services program pursuant to a plan approved by the Commissioner of the Office of Addiction Services and Supports in accordance with section 19.18-c of the mental hygiene law. As such, there will be no impact on jobs and employment opportunities.

## Education Department

### EMERGENCY RULE MAKING

#### Mental Health Practitioners' Diagnosis Privilege

**I.D. No.** EDU-30-22-00010-E

**Filing No.** 836

**Filing Date:** 2022-10-07

**Effective Date:** 2022-10-10

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Repeal of sections 79-9.6, 79-10.6, 79-12.6; addition of new sections 79-9.6, 79-10.6, 79-12.6; amendment of sections 79-9.4, 79-10.4 and 79-12.4 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207, 6504, 6507, 8401, 8401-a, 8402, 8403, 8405, 8409, 8410; L. 2022, ch. 230

**Finding of necessity for emergency rule:** Preservation of public health and general welfare.

**Specific reasons underlying the finding of necessity:** The proposed rule is necessary to implement Sections (1), (4) and (5) of Chapter 230 of the Laws of 2022 (Chapter 230), which became effective June 24, 2022. The proposed rule conforms the Commissioner's regulations to Sections (1), (4) and (5) of Chapter 230, which amended the Education Law by defining "diagnosis" and "development of assessment-based treatment plans"; authorizing the Department to issue limited permits to applicants who are gaining experience for the diagnostic privilege; and authorizing licensed mental health counselors, licensed marriage and family therapists and licensed psychoanalysts in certain settings approved by the Department to diagnose and develop assessment-based treatment plans through June 24, 2025.

The proposed amendment was presented to the Professional Practice Committee for recommendation to the Full Board for adoption as an emergency rule at the July 2022 meeting of the Board of Regents, effective July 12, 2022. Since the Board of Regents meets at fixed intervals, the earliest that the proposed rule can be presented for adoption, after expiration of the required 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the November 14-15, 2022 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the November meeting, would be November 30, 2022, the date the Notice of Adoption would be published in the State Register. However, Sections (1), (4), and (5) of Chapter 230 became effective June 24, 2022. This necessitated an emergency rule to be adopted at the July 2022 meeting of the Board of Regents.

However, the emergency rule will expire on October 9, 2022. Therefore, a second emergency action is necessary at the September 2022 meeting for the preservation of the public health and general welfare in order to enable the State Education Department to timely implement the requirements of Sections (1), (4), and (5) of Chapter 230, which, among other things, defines "diagnosis" and "development of assessment-based treatment plans"; authorizes the Department to issue limited permits to applicants who are gaining experience for the diagnostic privilege; and authorizes licensed mental health counselors, licensed marriage and family therapists and licensed psychoanalysts in certain settings approved by the Department to diagnose and develop assessment-based treatment plans through June 24, 2025, in order to address the critical workforce shortages in the mental health professions by ensuring that programs and services providing addiction and mental health services to children, adults and communities have the appropriate staff to provide comprehensive services, including diagnosis and to ensure that the emergency action taken at the July 2022 meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the November 2022 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rule making.

**Subject:** Mental health practitioners' diagnosis privilege.

**Purpose:** To implement chapter 230 of the Laws of 2022 relating to mental health practitioners' diagnosis privilege.

**Substance of emergency rule (Full text is posted at the following State website: <http://www.counsel.nysed.gov/rules/full-text-indices>):** Background: The proposed rule implements Chapter 230 of the Laws of 2022 (Chapter 230), which allows licensed mental health counselors (LMHCs), licensed marriage and family therapists (LMFTs) and licensed psychoanalysts (LPs) to earn a diagnostic privilege by meeting specified requirements. These professions did not previously have the authority to diagnose. Except for two provisions that take effect June 30, 2024,<sup>1</sup> Chapter 230 is immediately effective. The proposed amendments will conform the Commissioner's with the provisions of Chapter 230. The following is a summary of the changes in the proposed rule:

1. Limited Permits for Licensure and Limited Diagnostic Permits for Mental Health Counseling, Marriage and Family Therapy and Psychoanalysis

The proposed amendments to sections 79-9.4, 79-10.4 and 79-12.4 of the Commissioner's regulations establish the requirements for a limited permit for licensure and a limited diagnostic permit in mental health counseling, marriage and family therapy and psychoanalysis, respectively. The fee for each limited permit or limited diagnostic permit is \$70.

Subdivision (a) of sections 79-9.3, 79-10.3 and 79-12.3 of the Commissioner's regulations allow supervised practice in an authorized setting by an applicant for licensure as a mental health counselor, marriage and family therapist, or psychoanalyst, while meeting the experience and/or examination requirements for licensure. Qualified supervisors and authorized settings are defined in sections 79-9.3, 79-10.3 and 79-12.3 of the Commissioner's regulations.

Subdivision (b) of sections 79-9.3, 79-10.3 and 79-12.3 of the Commissioner's regulations sets out the requirements for a limited diagnostic permit for a mental health counselor, marriage and family therapist or psychoanalyst as follows:

(1) the applicant seeking to complete the clinical education and/or supervised experience for the privilege authorized by section 8401-a of the Education Law must:

(i) submit the application for the diagnostic permit and the \$175 application fee;

(ii) meet all requirement prescribed in section 8401-a of the education Law, including license and registration in New York as a mental health counselor, marriage and family therapist or psychoanalyst; and

(iii) be under the supervision of a supervisor acceptable to the Department in accordance with sections 79-9.6, 79-10.6 or 79-12.6 of the Commissioner's regulations.

(2) the permit shall be issued for specific employment settings, acceptable to the Department in accordance with sections 79-9.6, 79-10.6 or 79-12.6 of the Commissioner's regulations and under a qualified supervisor, acceptable to the Department:

(i) the supervisor shall be responsible for appropriate oversight of all services provided by a limited diagnostic permit holder under his or her general supervision; and

(ii) no supervisor shall supervise more than five limited permit holders of any type at one time.

(3) the limited diagnostic permit shall be valid for not more than 24 months, provided it may be extended for no more than two additional 12-month periods at the discretion of the Department, if the Department determines the limited permit holder is making progress toward the education and/or experience requirements and submits the permit renewal application and \$70 fee. The total time under a diagnostic permit may not exceed 48 months.

2. Diagnostic Privilege for Mental Health Counseling, Marriage and Family Therapy and Psychoanalysis

Sections 79-9.6, 79-10.6 and 79-12.6 of the Commissioner's regulations are repealed and new sections 79-9.6, 79-10.6 and 79-12.6 are added to establish the requirements to be met by LMHCs, LMFTs or LPs who are completing supervised experience in diagnosis and assessment-based treatment planning under the exemption in Education Law § 8410(11).

Subdivision (a) Sections 79-9.6, 79-10.6 and 79-12.6 of the Commissioner's regulations defines terms used in the regulations, including (1) diagnosis, (2) development of assessment-based treatment plans, (3) General supervision and (4) face-to-face supervision provided in-person or utilizing technology acceptable to the Department.

Subdivision (b) of 79-9.6, 79-10.6, and 79-12.6 of the Commissioner's regulations clarifies that a LMHC, LMFT, or LP, licensed and registered in New York, may engage in diagnosis and the development of assessment-based treatment plans in accordance with those sections.