

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.

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## Education Department

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### 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.

Subdivision (c) of 79-9.6, 79-10.6, and 79-12.6 of the Commissioner's regulations defines an acceptable setting as described in subdivision (d) of 79-9.3, 79-10.3 and 79-12.3 of the Commissioner's regulations.

Subdivision (d) of 79-9.6, 79-10.6, and 79-12.6 of the Commissioner's regulations defines supervision of experience under the general supervision of a qualified supervisor, as defined in those subdivisions, which state the following:

(1) The supervisor shall provide an average of one hour per week or two hours every other week of face-to-face individual or group supervision when the supervisor shall:

(i) review the applicant's diagnosis and treatment of each client under his or her general supervision; and  
(ii) provide oversight, guidance and direction to the applicant in development skills in diagnosis, psychotherapy and assessment-based treatment planning.

(2) The supervisor shall be authorized to diagnose, provide psychotherapy and assessment-based treatment plans and shall be licensed and registered to practice in New York as a:

(i) licensed clinical social worker under Article 154; or  
(ii) psychologist licensed under Article 153; or  
(iii) physician licensed under Article 131 and a diplomate in psychiatry of the American Board of Psychiatry and Neurology; or  
(iv) after June 24, 2022 a licensed mental health counselor with the privilege may supervise an applicant in mental health counseling; a licensed marriage and family therapist with the privilege may supervise an applicant in marriage and family therapy; and a licensed psychoanalyst with the privilege may supervise an applicant in psychoanalysis.

<sup>1</sup>Sections 2 and 3 of Chapter 230 become effective June 24, 2024. These sections will be addressed in subsequent proposed amendments to the Commissioner's regulations.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-30-22-00010-EP, Issue of July 27, 2022. The emergency rule will expire December 5, 2022.

**Text of rule and any required statements and analyses may be obtained from:** Kirti Goswami, Education Department, Office of Counsel, 89 Washington Avenue, Room 112EB, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

#### Regulatory Impact Statement

##### 1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and the practice of the professions.

Subdivision (3) of section 8401 of the Education Law, as added by Chapter 230 of the Laws of 2022, defines the term "diagnosis."

Subdivision (4) of section 8401 of the Education Law, as added by Chapter 230 of the Laws of 2022, defines the term "development of assessment-based treatment plans."

Section 8402 of the Education Law defines the practice of mental health counseling.

Section 8403 of the Education Law defines the practice of marriage and family therapy.

Section 8405 of the Education Law defines the practice of psychoanalysis.

Section 8409 of the Education Law, as amended by Chapter 230 of the Laws of 2022, authorizes the Department to issue limited diagnostic permits to applicants, in the mental health counseling, marriage and family therapy and psychoanalysis professions, who are gaining experience for the diagnostic privilege.

Subdivision (11) of section 8410 of the Education Law, as added by Chapter 230 of the Laws of 2022, authorizes licensed mental health counselors, licensed marriage and family therapists and licensed psychoanalysts to diagnose and develop assessment-based treatment plans through June 24, 2025, in certain settings approved by the Department.

Section 8401-a, as added by Chapter 230 of the Laws of 2022, establishes a process for eligible licensed mental health counselors, licensed marriage and family therapists, and licensed psychoanalysts to apply to the Department for the issuance of a privilege to diagnosis and develop assessment-based treatment plans, effective June 24, 2024.

##### 2. LEGISLATIVE OBJECTIVES:

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 psychoana-

lysts (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.

This Chapter amends section 8401 of the Education Law by adding a new subdivision (3), which defines the term "diagnosis" and a new subdivision (4), which defines the term "development of assessment-based treatment plans." Chapter 230 also adds a new section 8401-a to the Education Law which, effective June 24, 2024, establishes a process and requirements for eligible LMHCs, LMFTs and LPs, to apply to the Department for the issuance of a privilege to diagnose and to develop assessment-based treatment plans.

Additionally, Chapter 230 amends:

- Subdivision (1) of Education Law § 8407 (boundaries of professional competency), effective June 24, 2024, to recognize licensed professionals who have obtained the diagnostic privilege from the Department.

- Education Law § 8409 to authorize the Department to issue limited permits to applicants who are gaining experience for the diagnostic privilege; and

- Education Law § 8410 to authorize LMHCs, LMFTs and LPs to diagnose and develop assessment-based treatment plans through June 24, 2025, in certain settings approved by the Department.

The proposed amendments to sections 79-9.4, 79-10.4 and 79-12.4 of the Commissioner's regulations implement the provisions of Chapter 230 by:

- establishing the requirements for the Department's issuance of limited diagnostic permits to applicants for the diagnostic privilege in mental health counseling, marriage and family therapy and psychoanalysis;

- allowing applicants, with limited diagnostic permits, to practice under a qualified supervisor in an authorized setting, while they gain the required experience for the diagnostic privilege;

- authorizing applicants with limited diagnostic permits, who are licensed on or after June 24, 2024, to engage in supervised practice while meeting the additional requirements for the diagnostic privilege; and

- changing the titles of sections 79-9.4, 79-10.4 and 79-12.4 from limited permits to limited permits for licensure and limited diagnostic permits.

Additionally, the proposed amendment implements Chapter 230 by repealing current sections 79-9.6, 79-10.6 and 79-12.6 of the Commissioner's regulations and adding new sections 79-9.6, 79-10.6 and 79-12.6 which:

- 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);

- define the terms "diagnosis," "assessment-based treatment planning" and "general supervision" of the licensee providing those services;

- define an acceptable setting, as defined in sections 79-9.3, 79-10.3 and 79-12.3 of the Commissioner's regulations, for the practice of mental health counseling, marriage and family therapy and psychoanalysis, respectively; and

- define acceptable supervisors of clinical experience in diagnosis and assessment-based treatment planning for LMHCs, LMFTs and LPs, such as licensed clinical social workers, psychologists or psychiatrists or, after June 24, 2024, LMHCs, LMFTs or LPs who hold the diagnostic privilege pursuant to Education Law § 8401-a.

##### 3. NEEDS AND BENEFITS:

The purpose of the proposed rule is to increase the number of licensed mental health professionals authorized to diagnose in order to address critical workforce shortages and ensure 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. The proposed rule is necessary to conform the Commissioner's regulations to Chapter 230.

##### 4. COSTS:

(a) Costs to State government: The proposed rule implements statutory requirements and establishes standards as directed by statute and will not impose any additional costs on State government beyond those imposed by the statutory requirements.

(b) Costs to local government: There are no additional costs to local government.

(c) Cost to private regulated parties: There are no mandatory costs to private regulated parties because LMHCs, LMFTs and LPs are not required to obtain the diagnostic privilege. However, for LMHCs, LMFTs and LPs seeking to obtain this privilege, they will have to submit to the Department an application with the \$70 fee, required by section 8409(3) of the Education Law, for a limited diagnostic permit in order to gain the education and/or experience requirements for such permit.<sup>2</sup> Such LMHCs, LMFTs and LPs may also have to incur education related costs to obtain the education necessary to obtain the diagnostic privilege. The cost of such education is incalculable because applicants' educational backgrounds may vary.

(d) Cost to the regulatory agency: There are no additional costs to the Department.

**5. LOCAL GOVERNMENT MANDATES:**

The proposed rule does not impose any program service, duty, responsibility, or other mandate on local governments.

**6. PAPERWORK:**

The proposed rule does not impose any paperwork mandates because it does not require LMHCs, LMFTs and LPs to obtain the diagnostic privilege. For LMHCs, LMFTs and LPs, who choose to obtain this privilege, they would be required to submit an application for the limited diagnostic permit to the Department and pay the \$70 fee prescribed by section 8409(3) of the Education Law; meet all the requirements prescribed in section 8401-a of the Education Law, including, but not limited to, licensure and registration in New York as a LMHCs, LMFTs or LPs, except for the education and/or experience requirements required for the diagnostic privilege; and be under the supervision of a supervisor acceptable to the Department in accordance with the requirements prescribe in the proposed rule.

**7. DUPLICATION:**

There is no other state or federal requirements on the subject matter of the proposed rule. Therefore, the amendment does not duplicate other existing state or federal requirements.

**8. ALTERNATIVES:**

The proposed rule implements statutory requirements. There are no significant alternatives to the proposed rule and none were considered.

**9. FEDERAL STANDARDS:**

Since there are no applicable federal standards, the proposed rule does not exceed any minimum federal standards for the same or similar subject areas.

**10. COMPLIANCE SCHEDULE:**

The proposed rule will take effect as an emergency rule on July 12, 2022. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the November 2022 Regents meeting. If adopted at the November 2022 Regents meeting, the proposed rule will become effective as a permanent rule on November 30, 2022. It is anticipated that regulated parties will be able to comply with the proposed rule on its effective date.

<sup>1</sup>Sections 2 and 3 of Chapter 230 become effective June 24, 2024. These sections will be addressed in subsequent proposed amendments to the Commissioner’s regulations.

<sup>2</sup>Applicants for the limited diagnosis permit must also meet all the requirements prescribed in section 8401-a of the Education Law.

**Regulatory Flexibility Analysis**

The purpose of the proposed rule is to implement Chapter 230 of the Laws of 2022 (Chapter 230), which, among other things, 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. Permitting LMHCs, LMFTs and LPs to obtain a diagnostic privilege will increase the number of licensed mental health professionals authorized to diagnose, which will address critical workforce shortages and ensure 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.

The proposed amendments to sections 79-9.4, 79-10.4 and 79-12.4 of the Commissioner’s regulations implement the provisions of Chapter 230 by:

- establishing the requirements for the Department’s issuance of limited diagnostic permits to applicants for the diagnostic privilege in mental health counseling, marriage and family therapy and psychoanalysis;
- allowing applicants, with limited diagnostic permits, to practice under a qualified supervisor in an authorized setting, while they gain the required experience for the diagnostic privilege;
- authorizing applicants with limited diagnostic permits, who are licensed on or after June 24, 2024, to engage in supervised practice while meeting the additional requirements for the diagnostic privilege; and
- changing the titles of sections 79-9.4, 79-10.4 and 79-12.4 from limited permits to limited permits for licensure and limited diagnostic permits.

Additionally, the proposed amendment implements Chapter 230 by repealing current sections 79-9.6, 79-10.6 and 79-12.6 of the Commissioner’s regulations and adding new sections 79-9.6, 79-10.6 and 79-12.6 which:

- 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);
- define the terms “diagnosis,” “assessment-based treatment planning” and “general supervision” of the licensee providing those services;

- define an acceptable setting, as defined in sections 79-9.3, 79-10.3 and 79-12.3 of the Commissioner’s regulations, for the practice of mental health counseling, marriage and family therapy and psychoanalysis, respectively; and

- define acceptable supervisors of clinical experience in diagnosis and assessment-based treatment planning for LMHCs, LMFTs and LPs, such as licensed clinical social workers, psychologists or psychiatrists or, after June 24, 2024, LMHCs, LMFTs or LPs who hold the diagnostic privilege pursuant to Education Law § 8401-a.

The proposed rule does not impose any new reporting, recordkeeping, or other compliance requirements on local governments or have any adverse economic impact on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will not adversely affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required, and one has not been prepared.

<sup>1</sup>Sections 2 and 3 of Chapter 230 become effective June 24, 2024. These sections will be addressed in subsequent proposed amendments to the Commissioner’s regulations.

**Rural Area Flexibility Analysis**

The purpose of the proposed rule is to implement Chapter 230 of the Laws of 2022 (Chapter 230), which, among other things, 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. Permitting LMHCs, LMFTs and LPs to obtain a diagnostic privilege will increase the number of licensed mental health professionals authorized to diagnose, which will address critical workforce shortages and ensure 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.

The proposed amendments to sections 79-9.4, 79-10.4 and 79-12.4 of the Commissioner’s regulations implement the provisions of Chapter 230 by:

- establishing the requirements for the Department’s issuance of limited diagnostic permits to applicants for the diagnostic privilege in mental health counseling, marriage and family therapy and psychoanalysis;
- allowing applicants, with limited diagnostic permits, to practice under a qualified supervisor in an authorized setting, while they gain the required experience for the diagnostic privilege;
- authorizing applicants with limited diagnostic permits, who are licensed on or after June 24, 2024, to engage in supervised practice while meeting the additional requirements for the diagnostic privilege; and
- changing the titles of sections 79-9.4, 79-10.4 and 79-12.4 from limited permits to limited permits for licensure and limited diagnostic permits.

Additionally, the proposed amendment implements Chapter 230 by repealing current sections 79-9.6, 79-10.6 and 79-12.6 of the Commissioner’s regulations and adding new sections 79-9.6, 79-10.6 and 79-12.6 which:

- 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);
- define the terms “diagnosis,” “assessment-based treatment planning” and “general supervision” of the licensee providing those services;
- define an acceptable setting, as defined in sections 79-9.3, 79-10.3 and 79-12.3 of the Commissioner’s regulations, for the practice of mental health counseling, marriage and family therapy and psychoanalysis, respectively; and
- define acceptable supervisors of clinical experience in diagnosis and assessment-based treatment planning for LMHCs, LMFTs and LPs, such as licensed clinical social workers, psychologists or psychiatrists or, after June 24, 2024, LMHCs, LMFTs or LPs who hold the diagnostic privilege pursuant to Education Law § 8401-a.

Chapter 230 does not provide any exceptions from the statutory requirements for obtaining the diagnostic privilege for LMHCs, LMFTs or LPs in rural areas. Thus, the proposed amendment does not adversely impact entities in rural areas of New York State because all New York State LMHCs, LMFTs or LPs must comply with the same requirements. Accordingly, no further steps were needed to ascertain the impact of the proposed amendment on entities in rural areas and none were taken. Thus, a rural flexibility analysis is not required, and one has not been prepared.

<sup>1</sup>Sections 2 and 3 of Chapter 230 become effective June 24, 2024. These sections will be addressed in subsequent proposed amendments to the Commissioner’s regulations.

**Job Impact Statement**

It is not anticipated that the propose rule will impact jobs or employment opportunities. This is because the proposed amendment 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.

This Chapter amends section 8401 of the Education Law by adding a new subdivision (3), which defines the term “diagnosis” and a new subdivision (4), which defines the term “development of assessment-based treatment plans.” Chapter 230 also adds a new section 8401-a to the Education Law which, effective June 24, 2024, establishes a process and requirements for eligible LMHCs, LMFTs and LPs, to apply to the Department for the issuance of a privilege to diagnose and to develop assessment-based treatment plans.

Additionally, Chapter 230 amends:

- Subdivision (1) of Education Law § 8407 (boundaries of professional competency), effective June 24, 2024, to recognize licensed professionals who have obtained the diagnostic privilege from the Department.
- Education Law § 8409 to authorize the Department to issue limited permits to applicants who are gaining experience for the diagnostic privilege; and
- Education Law § 8410 to authorize LMHCs, LMFTs and LPs to diagnose and develop assessment-based treatment plans through June 24, 2025, in certain settings approved by the Department.

The proposed amendments to sections 79-9.4, 79-10.4 and 79-12.4 of the Commissioner’s regulations implement the provisions of Chapter 230 by:

- establishing the requirements for the Department’s issuance of limited diagnostic permits to applicants for the diagnostic privilege in mental health counseling, marriage and family therapy and psychoanalysis;
- allowing applicants, with limited diagnostic permits, to practice under a qualified supervisor in an authorized setting, while they gain the required experience for the diagnostic privilege;
- authorizing applicants with limited diagnostic permits, who are licensed on or after June 24, 2024, to engage in supervised practice while meeting the additional requirements for the diagnostic privilege; and
- changing the titles of sections 79-9.4, 79-10.4 and 79-12.4 from limited permits to limited permits for licensure and limited diagnostic permits.

Additionally, the proposed amendment implements Chapter 230 by repealing current sections 79-9.6, 79-10.6 and 79-12.6 of the Commissioner’s regulations and adding new sections 79-9.6, 79-10.6 and 79-12.6 which:

- 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);
- define the terms “diagnosis,” “assessment-based treatment planning” and “general supervision” of the licensee providing those services;
- define an acceptable setting, as defined in sections 79-9.3, 79-10.3 and 79-12.3 of the Commissioner’s regulations, for the practice of mental health counseling, marriage and family therapy and psychoanalysis, respectively; and

define acceptable supervisors of clinical experience in diagnosis and assessment-based treatment planning for LMHCs, LMFTs and LPs, such as licensed clinical social workers, psychologists or psychiatrists or, after June 24, 2024, LMHCs, LMFTs or LPs who hold the diagnostic privilege pursuant to Therefore, any impact on jobs or employment opportunities created by the proposed amendment is attributable to the statutory requirements, not the proposed amendment, which simply conforms the Commissioner’s regulations to the requirements of the statute.

The proposed amendment will not have a substantial impact on jobs and employment opportunities. However, it is anticipated that it may result in an increase in the numbers of LMHCs, LMFTs and/or LPs in this State. Because it is evident from the nature of the proposed rule will have no impact on jobs or employment opportunities attributable to its adoption or only potentially a positive impact, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

<sup>1</sup>Sections 2 and 3 of Chapter 230 become effective June 24, 2024. These sections will be addressed in subsequent proposed amendments to the Commissioner’s regulations.

#### Assessment of Public Comment

The agency received no public comment.

## Commission on Ethics and Lobbying in Government

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

#### Adjudicatory Proceedings and Appeals Procedures for Matters Under the Commission’s Jurisdiction

**I.D. No.** ELG-43-22-00010-EP

**Filing No.** 840

**Filing Date:** 2022-10-11

**Effective Date:** 2022-10-11

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

**Proposed Action:** Amendment of Part 941 of Title 19 NYCRR.

**Statutory authority:** Executive Law, section 94(1)(a), (5)(a), (10) and (11)

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

**Specific reasons underlying the finding of necessity:** The regulatory amendments are necessary to streamline the investigative process and thereby facilitate the expeditious and efficient performance of the Commission on Ethics and Lobbying in Government’s (“Commission”) investigative and enforcement duties as set forth in Section 94 of the Executive Law. This will allow the Commission to delegate power and authority, including the authority to administer oaths and affirmations, subpoena witnesses, and compel testimony and the production of records, to the Commission’s Executive Director to investigate potential violations of the relevant and applicable provisions of the Public Officers Law, Civil Service Law, and Legislative Law by persons or entities subject to the Commission’s jurisdiction, and authorize the Executive Director and Commission staff to make confidential inquiries, including with the use of otherwise confidential information, in connection with preliminary reviews and investigations conducted pursuant to Subsection 94(10)(d) of the Executive Law.

The emergency rule is necessary for the general welfare to enforce ethics laws that are critical matters of public interest. Therefore, upon Emergency Adoption, these amendments will take effect immediately.

**Subject:** Adjudicatory proceedings and appeals procedures for matters under the Commission’s jurisdiction.

**Purpose:** To streamline and advance the investigative process and thereby facilitate the expeditious and efficient performance of the Commission on Ethics and Lobbying in Government’s investigative and enforcement duties as set forth in section 94 of the Executive Law.

**Text of emergency/proposed rule:** Pursuant to the authority vested in section 94 of the Executive Law, Part 941 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon filing as an Emergency Adoption and upon publication of a Notice of Adoption in the New York State Register, to add a new section 941.3-a to read as follows:

*Section 941.3-a Subpoenas and other process; delegation.*

(a) In accordance with Executive Law § 94(10)(c), and to facilitate the expeditious and efficient performance of its duties under section 94 of the Executive Law, the Commission on Ethics and Lobbying in Government (“COELIG” or “the Commission”) may by majority vote delegate to the Executive Director the power and the authority to administer oaths or affirmations, to subpoena witnesses, compel their attendance and testimony, and to require the production of any books or records that the Commission or the Executive Director may deem relevant or material when, pursuant to Executive Law § 94(10), the Commission or COELIG staff decides to conduct an investigation necessary to carry out the provisions of Executive Law § 94 or to elevate a preliminary review of any complaint or referral received or initiated by COELIG into an investigation pursuant to Executive Law § 94(10)(f).

(b) Any delegation made pursuant to subdivision (a) shall be in writing and shall:

(i) specify whether it is general or limited to a specifically stated subject matter; transaction or transactions, complaint, referral or staff, or Commission-initiated matter; and

(ii) require that the chair of the Commission be notified prior to the issuance of any subpoena by the Executive Director pursuant thereto, and