

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Mental Health Practitioners' Diagnostic Privilege

I.D. No. EDU-13-23-00018-P

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

Proposed Action: Amendment of sections 29.15, 79-9.6, 79-10.6 and 79-12.6 of Title 8 NYCRR.

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

Subject: Mental health practitioners' diagnostic privilege.

Purpose: To implement sections 2 and 3 of chapter 230 of the Laws of 2022.

Substance of proposed rule (Full text is posted at the following State website: <http://www.counsel.nysed.gov/rules/full-text-indices>): The proposed amendment implements sections 2 and 3 of chapter 230 as follows:

Clinical Education:

Consistent with Education Law § 8401-a(1)(c), the Department proposes to add new subdivisions 79-9.6(e), 79-10.6(e) and 79-12.6(e) to define clinical content in education programs leading to licensure as an LMHC, LMFT, or LP. The proposed regulation requires that an applicant for the diagnostic privilege must demonstrate satisfactory evidence of receipt of a master's degree or higher in LMHC, LMFT, or LP from a program that includes at least 60-semester hours or the clock-hour equivalent program of study in psychoanalysis. Such program must also contain at least 12 semester hours, or the equivalent, of clinical content acceptable to the Department that prepares the applicant to engage in diagnosis, psychotherapy and assessment-based treatment planning. An applicant who did not complete acceptable clinical content in a license-qualifying program may complete post-graduate coursework acceptable to the Department to remedy any deficiencies.

Experience:

Consistent with Education Law § 8401-a(1)(d), the Department proposes to add new subdivisions 79-9.6(f), 79-10.6(f) and 79-12.6(f) to set forth the experience requirements for the diagnostic privilege. The proposed rule provides two different experience criteria, based upon the applicant's date of licensure in New York:

- An applicant who was licensed on or after June 24, 2024 must submit verification of completion of a supervised experience of at least 2,000 hours of supervised, direct client contact that includes, but is not to be limited to, diagnosis, psychotherapy and the development of assessment-based treatment plans.
- An applicant who was licensed in New York prior to June 24, 2024 must submit an attestation of at least three years of experience engaged in direct client contact that includes diagnosis, psychotherapy and the development of assessment-based treatment plans. The privilege application and fee must be submitted by June 24, 2027.

Application:

Consistent with Education Law § 8401(1) the Department proposes to add new subdivisions 79-9.6(g), 79-10.6(g), and 79-12.6(g) to set forth the application requirements for the diagnostic privilege. Candidates must: (1) submit the application and pay the \$175 fee; (2) submit verification of licensure; (3) cause to be submitted verification of acceptable clinical education; and (4) cause to be submitted verification of supervised experience.

Registration:

Consistent with Education Law § 8401(3) the Department proposes to add new subdivisions 79-9.6(h), 79-10.6(h), and 79-12.6(h) to set forth registration requirements. The proposed rule requires licensees who hold a diagnostic privilege to certify that they continue to meet the requirements for the privilege each triennial registration period. Additionally, the licensee must pay a \$175 fee in addition to the triennial registration fee for licensure. The registration period for a privilege holder is coterminous with his or her license registration.

Privilege Duration and Oversight:

Consistent with Education Law § 8410(3) the Department proposes to add new subdivisions 79-9.6(i), 79-10.6(i), and 79-12.6(i) to set forth provisions regarding duration and oversight of the privilege. The proposed rule provides that a diagnostic privilege is valid for the life of the holder unless revoked, annulled, or suspended by the Board of Regents. Such privilege is subject to the same oversight and disciplinary provisions as licenses issued under Title VIII of the Education Law.

Professional Misconduct:

Consistent with Education Law § 8410(2) the Department proposes to

amend section 29.15 of the Rules of the Board of Regents to provide that it shall constitute unprofessional conduct for a LMHC, LMFT or LP to engage in diagnosis and/or the development of assessment-based treatment plans without a diagnostic privilege. Additionally, such section is amended to implement Education Law § 8407(1), as amended by Chapter 230, to provide that a licensee with the privilege does not require a physician's evaluation of a patient with specified mental health diagnosis.

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

Data, views or arguments may be submitted to: Sarah S. Benson, Deputy Commissioner, NYS Education Department, Office of the Professions, 89 Washington Avenue, 2nd Floor EB, West Wing, Albany, NY 12234, (518) 486-1727, email: REGCOMMENTS@nysed.gov

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

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-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.

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 diagnose and develop assessment-based treatment plans, effective June 24, 2024. Paragraph (1)(c) of section 8401-a of the Education Law defines acceptable clinical education for the diagnostic privilege. Paragraph (1)(d) of section 8401-a of the Education Law defines acceptable experience in diagnosis, psychotherapy and assessment-based treatment plans for the diagnostic privilege. Paragraph (1)(e) of section 8401-a of the Education Law, establishes the fee for the diagnostic privilege. Subdivision (2) of section 8401-a of the Education Law states that a mental health counselor, marriage and family therapist or psychoanalyst who engages in diagnosis and the development of assessment-based treatment plans without the diagnostic privilege may be charged with professional misconduct under section 6509 of the Education Law. Subdivision (3) of section 8401-a of the Education Law establishes the triennial registration requirement for the diagnostic privilege and oversight by the Board of Regents.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above statutory authority and is necessary to implement 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. Sections 2 and 3 of Chapter 230 take effect June 30, 2024, while the rest of such Chapter became effective June 24, 2022.

Section 2 of Chapter 230 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.

Section 3 of 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.

The proposed amendments to sections 79-9.6, 79-10.6 and 79-12.6 of the Commissioner's regulations implement the provisions of Chapter 230 by:

- Adding subdivisions 79-9.6(e), 79-10.6(e) and 79-12.6(e) to clarify acceptable clinical content in education for applicants for the diagnostic privilege in mental health counseling, marriage and family therapy and psychoanalysis, respectively.
- Adding subdivisions 79-9.6(f), 79-10.6(f) and 79-12.6(f) to define acceptable experience in diagnosis, psychotherapy and assessment-based treatment plans for mental health counselors, marriage and family therapists and psychoanalysts, respectively, seeking the privilege.
- Adding subdivisions 79-9.6(g), 79-10.6(g) and 79-12.6(g) to set forth the application requirements for the diagnostic privilege available to mental health counselors, marriage and family therapists and psychoanalysts, who shall submit the application and \$175 fee with verification of licensure, acceptable clinical education and acceptable experience.
- Adding subdivisions 79-9.6(h), 79-10.6(h) and 79-12.6(h) to set forth the triennial registration requirements for the diagnostic privilege available to mental health counselors, marriage and family therapists and psychoanalysts, respectively. The licensee must submit a certification and \$175 fee, along with the application and fee for registration of one's license. The registration period for the privilege is coterminous with the registration period for the holder's license.
- Adding subdivisions 79-9.6(i), 79-10.6(i) and 79-12.6(i) to set forth the application duration of the diagnostic privilege available to mental health counselors, marriage and family therapists and psychoanalysts. The privilege is valid for the life of the holder, unless revoked, annulled or suspended by the Board of Regents.
- Amending section 29.15 of the Rules of the Board of Regents to provide that it shall be unprofessional conduct for a LMHC, LMFT or LP to engage in diagnosis and/or the development of assessment-based treatment plans without a diagnostic privilege. Additionally, such section is amended to provide that a licensee with the privilege does not require a physician's evaluation of a patient with specified mental health diagnoses.

3. NEEDS AND BENEFITS:

The purpose of the proposed rule is to implement Chapter 230. It is the Department's understanding that the intent of Chapter 230 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.

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 \$175 privilege fee, required by subdivision (1)(e) of Education Law § 8401-a. 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 beyond those imposed my statute.

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, rather the privilege is permissive. For LMHCs, LMFTs and LPs, who choose to obtain this privilege, they would be required to submit an application for the diagnostic privilege to the Department, pay the \$175 fee prescribed by section 8401-a(1)(3) of the Education Law, and 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 LMHC, LMFT or LP.

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 (Chapter 230). Therefore, 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:

It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the July 2023 Regents meeting. If adopted at the July 2023 Regents meeting, the proposed rule will become effective as a permanent rule on August 2, 2023. It is anticipated that regulated parties will be able to comply with the proposed rule on its effective date. Effective August 2, 2023, a LMHC, LMFT or LP may submit the application, fee and all required documentation for the diagnostic privilege, which may not be issued until June 24, 2024, pursuant to Chapter 230 of the Laws of 2022.

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. Sections 2 and 3 of Chapter 230 take effect June 30, 2024, while the rest of Chapter 230 took effect June 24, 2022. 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 79-9.6, 79-10.6 and 79-12.6 of the Commissioner's regulations implement the provisions of Chapter 230 by requiring a Mental Health Counselor, Marriage and Family Therapist or Psychoanalyst licensed and registered in New York to demonstrate:

- Completion of a 60-semester hour, or the equivalent, master's degree or higher which includes at least 12 hours of clinical content, acceptable to the Department, that prepares the applicant to engage in diagnosis, psychotherapy and assessment-based treatment planning.
- Provide attestation of at least three years of experience engaged in direct client contact that includes diagnosis, psychotherapy and assessment-based treatment plans for an applicant licensed in New York prior to June 24, 2024 and submits the privilege application and fee by June 24, 2027 or at least 2,000 hours of supervised, direct client contact that includes, but is not limited to, diagnosis, psychotherapy and assessment-based treatment plans, by an individual licensed on or after June 24, 2024.
- Submit the diagnosis privilege application and \$175 fee, as well as verification of licensure, acceptable clinical education and acceptable experience.
- Submit the triennial registration application and \$175 for the diagnostic privilege, in addition to the triennial registration and fee for licensure. The registration period for the diagnostic privilege is coterminous with the license registration.
- The privilege is valid for the life of the holder, unless revoked, annulled or suspended by the Board of Regents.
- Section 29.15 of the Regents Rules is amended to provide that it shall be unprofessional conduct for a LMHC, LMFT or LP to engage in diagnosis and/or the development of assessment-based treatment plans without a diagnostic privilege. Additionally, a licensee with the privilege does not require a physician's evaluation of a patient with specified mental health diagnoses.

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.

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. Sections 2 and 3 of Chapter 230 take effect June 30, 2024, while the rest of Chapter 230 took effect June 24, 2022. 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 79-9.6, 79-10.6 and 79-12.6 of the Commissioner's regulations implement the provisions of Chapter 230 by requiring a Mental Health Counselor, Marriage and Family Therapist or Psychoanalyst licensed and registered in New York to demonstrate:

- Completion of a 60-semester hour, or the equivalent, master's degree or higher which includes at least 12 hours of clinical content, acceptable to the Department, that prepares the applicant to engage in diagnosis, psychotherapy and assessment-based treatment planning.

- Provide attestation of at least three years of experience engaged in direct client contact that includes diagnosis, psychotherapy and assessment-based treatment plans for an applicant licensed in New York prior to June 24, 2024 and submits the privilege application and fee by June 24, 2027 or at least 2,000 hours of supervised, direct client contact that includes, but is not limited to, diagnosis, psychotherapy and assessment-based treatment plans, by an individual licensed on or after June 24, 2024.

- Submit the diagnosis privilege application and \$175 fee, as well as verification of licensure, acceptable clinical education and acceptable experience.

- Submit the triennial registration application and \$175 for the diagnostic privilege, in addition to the triennial registration and fee for licensure. The registration period for the diagnostic privilege is coterminous with the license registration.

- The privilege is valid for the life of the holder, unless revoked, annulled or suspended by the Board of Regents.

- Section 29.15 of the Regents Rules is amended to provide that it shall be unprofessional conduct for a LMHC, LMFT or LP to engage in diagnosis and/or the development of assessment-based treatment plans without a diagnostic privilege. Additionally, a licensee with the privilege does not require a physician's evaluation of a patient with specified mental health diagnoses.

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.

Job Impact Statement

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. Sections 2 and 3 of Chapter 230 take effect June 30, 2024, while the rest of Chapter 230 took effect June 24, 2022. 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 79-9.6, 79-10.6 and 79-12.6 of the Commissioner's regulations implement the provisions of Chapter 230 by requiring a Mental Health Counselor, Marriage and Family Therapist or Psychoanalyst licensed and registered in New York to demonstrate:

- Completion of a 60-semester hour, or the equivalent, master's degree or higher which includes at least 12 hours of clinical content, acceptable to the Department, that prepares the applicant to engage in diagnosis, psychotherapy and assessment-based treatment planning.

- Provide attestation of at least three years of experience engaged in direct client contact that includes diagnosis, psychotherapy and assessment-based treatment plans for an applicant licensed in New York prior to June 24, 2024 and submits the privilege application and fee by June 24, 2027 or at least 2,000 hours of supervised, direct client contact that includes, but is not limited to, diagnosis, psychotherapy and assessment-based treatment plans, by an individual licensed on or after June 24, 2024.

- Submits the diagnosis privilege application and \$175 fee, as well as verification of licensure, acceptable clinical education and acceptable experience.

- Submit the triennial registration application and \$175 for the diagnostic privilege, in addition to the triennial registration and fee for licensure. The registration period for the diagnostic privilege is coterminous with the license registration.

- The privilege is valid for the life of the holder, unless revoked, annulled or suspended by the Board of Regents.

- Section 29.15 of the Regents Rules is amended to provide that it shall be unprofessional conduct for a LMHC, LMFT or LP to engage in diagnosis

and/or the development of assessment-based treatment plans without a diagnostic privilege. Additionally, a licensee with the privilege does not require a physician's evaluation of a patient with specified mental health diagnoses.

The proposed amendment will not have a substantial adverse impact on jobs and employment opportunities. Rather, 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.

State Board of Elections

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Procedures for Failure to File Enforcement Proceedings

I.D. No. SBE-13-23-00004-P

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

Proposed Action: Addition of section 6218.13 to Title 9 NYCRR.

Statutory authority: Election Law, sections 3-102(1), (17) and 3-104(8)

Subject: Procedures for failure to file enforcement proceedings.

Purpose: Establishes expedited procedure for exclusively failure to file proceedings.

Text of proposed rule: A new section 6218.13 is added to read as follows:

6218.13 Special Provisions For Failure to File Adjudications

(a) *The Chief Enforcement Counsel may present a list of committees and candidates who have allegedly failed to file a particular campaign finance disclosure report or reports required to be filed pursuant to title one of article fourteen of the election law for administrative adjudication pursuant to this Part, and each such aggregation of non-filers shall be considered a single matter for purposes of this Part when the sole allegation of the report of the Chief Enforcement Counsel with respect to each committee or candidate is a failure to make one or more timely campaign disclosure filings.*

(b) *Such failure to file list shall be accompanied with an affirmation or affidavit averring: (1) that the records of the state board of elections demonstrate that such committee or candidates on the failure to file list have not filed the required report or reports as of the time the list was submitted by the Chief Enforcement Counsel; and (2) the Chief Enforcement Counsel's office provided notice of non-filing to the committees and candidates on the list in substantial compliance with Election Law § 14-108(5) and notwithstanding such notice the filing was not made within five days of the committees' or candidates' receipt thereof.*

(c) *If a hearing officer is not appointed to the failure to file matter within five business days from the transmittal of the failure to file listing from the Chief Enforcement Counsel, such non appointment shall constitute non-production of a list of eligible hearing officers for such appointment. The Chief Enforcement Counsel may, when no appointment is made, proceed in accordance with Election Law § 3-104(5) to commence a proceeding to compel the filing of the delinquent campaign finance disclosure reports and seek civil penalties for non-filing as provided for by law.*

(d) *This section shall apply exclusively to allegations of failure to file a required campaign financial disclosure report pursuant to title one of article fourteen of the election law.*

Text of proposed rule and any required statements and analyses may be obtained from: Brian L. Quail, Esq., State Board of Elections, 40 North Pearl Street, Suite 5, Albany, NY 12207-2729, (518) 474-2063, email: brian.quail@elections.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

This new section regulates an internal procedure of the New York State Board of Elections designed to expedite the failure to file proceedings process. Accordingly, the rule provides no new substantive requirement on any person or entity.

Regulatory Flexibility Analysis

When it is apparent from the nature and purpose of the rule that it will not have any economic impact on nor any regulatory implications for small