

National Association of State Boards of Accountancy. Additionally, the proposed rule makes technical amendments to remove flexibilities concerning the 18-month retention period related to the COVID-19 pandemic and correcting cross-references.

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 rule that it does not adversely affect small businesses or local governments, no further measures were needed to ascertain that fact, and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act, and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed rule will apply to all individuals seeking licensure as a certified public accountant (CPA) in New York State, including those located in the 44 counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square miles or less. The changes to the national CPA licensing exam standards are anticipated to go into effect in or around January 2024.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The purpose of the proposed rule is to evolve with the national licensing examination standards and implement changes that will occur with the Uniform CPA Examination (CPA exam), which will align New York with other jurisdictions. The proposed rule amends section 70.4 of the Commissioner’s regulations to increase the credit retention period for the CPA licensing exam from 18 months to 30 months, and to change the date from which the credit retention period begins from the date the candidate sat for the examination to the date the score is released. These amendments are consistent with the Uniform Accountancy Act which has been adopted by the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy. Additionally, the proposed rule makes technical amendments to remove flexibilities concerning the 18-month retention period related to the COVID-19 pandemic and correcting cross-references.

Since proposed rule provides CPA candidates with more flexibility and opportunities to test, it will not impose any additional reporting or recordkeeping requirements or require any professional services on regulated parties, including those located in rural areas.

3. COSTS:

With respect to individuals seeking CPA licensure from the State Education Department (Department), including those in rural areas, the proposed rule does not impose any additional costs beyond those required by statute. As required by Education Law § 7404(1)(8), applicants for licensure as CPAs must pay a fee of \$220 to the Department for admission to a Department conducted examination and for an initial license, a fee of \$115 for each reexamination, a fee of \$135 for an initial license for persons not requiring admission to a Department conducted examination, and a fee of \$210 for each triennial registration period.

Moreover, pursuant to Education Law § 7404(1)(2), applicants for licensure as a CPA will incur the cost of a bachelor’s or higher degree-level education.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to evolve with the national licensing examination standards and implement changes that will occur with the CPA exam, which will align New York with other jurisdictions. The Department does not anticipate that the proposed rule will have any adverse impact on regulated parties/entities located in rural areas. Therefore, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from statewide organizations representing parties having an interest in the practice of accountancy. These organizations included the State Board for Public Accountancy and professional associations representing CPAs. These groups have members who live or work in rural areas.

Job Impact Statement

The purpose of the proposed rule is to evolve with the national licensing examination standards and implement changes that will occur with the Uniform CPA Examination (CPA exam), which will align New York with other jurisdictions. The proposed rule amends section 70.4 of the Commissioner’s regulations to increase the credit retention period for the CPA licensing exam from 18 months to 30 months, and to change the date from which the credit retention period begins from the date the candidate sat for the examination to the date the score is released. These amendments are consistent with the Uniform Accountancy Act which has been adopted by the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy. Additionally, the

proposed rule makes technical amendments to remove flexibilities concerning the 18-month retention period related to the COVID-19 pandemic and correcting cross-references.

Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities attributable to its adoption or only a positive impact, no affirmative steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement is not required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act, and one has not been prepared.

NOTICE OF ADOPTION

Mental Health Practitioners’ Diagnostic Privilege

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

Filing No. 173

Filing Date: 2024-02-13

Effective Date: 2024-02-28

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

Action taken: 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 and 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.

Text or summary was published in the March 29, 2023 issue of the Register, I.D. No. EDU-13-23-00018-P.

Final rule as compared with last published rule: No changes.

Revised rule making(s) were previously published in the State Register on November 29, 2023.

Text of 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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2027, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

1. COMMENT: A coalition of not-for-profit behavioral health provider agencies (coalition), whose comments comprise the first eleven comments herein, commented that the limit of five diagnostic permittees per supervisor in sections 79-9.4(b), 79-10.4(b) and 79-12.4(b) of the proposed rule is restrictive and should be expanded to 10 permittees and supervision of one hour per week should be reduced to 30 minutes.

RESPONSE: The supervisor to permittee ratio is designed to ensure permittees and the patients that they serve have appropriate supervisor attention. Expanding the number of permittees would overextend supervisors, which is not in the best interest of permittee training or patient safety. This permittees per supervisor limit and supervision requirements are consistent across all the mental health professions.

2. COMMENT: The coalition suggested establishing a user-friendly portal that lists the permittees registered under each licensee so that supervisors and provider agencies can easily see the filled and available slots and can log-in to remove or add permittees. The coalition further opined that supervisor licensees should be able to remove permittees from their licenses, asserting that this duty presently falls solely on the permittee, which can dramatically slow down the process of supervisors taking on new permittees.

RESPONSE: While the Department appreciates the commenter’s suggestion, the Department currently accepts changes in permits submitted by an applicant/permittee or a supervisor. Therefore, no changes are required.

3. COMMENT: The coalition suggested a change to allow licensed mental health practitioners (MHPs) with three or more years of post-license experience to apply for and receive the diagnostic privilege without going back to school, in alignment with the social work licensure expectations for clinical licenses, as long as they have 12 hours of clinical coursework.

RESPONSE: Chapter 230 of the Laws of 2022 (Chapter 230) requires receipt of a master’s degree or higher in LMHC, LMFT of at least 60-semester hours, or the clock-hour equivalent program of study in psychoanalysis from an LP institute. Since not all master’s programs require 60 semester hours, additional study may be required. No change is required.

4. COMMENT: The coalition suggested that the MHP diagnostic privilege should align more closely with licensed clinical social worker diagnostic privilege regulations.

RESPONSE: The proposed amendments for MHPs' diagnostic privilege are consistent with the requirements of Chapter 230, the applicable State law. No changes are required.

5. COMMENT: The coalition suggested setting aside funds for tuition assistance and loan forgiveness for MHPs, who will now be required to go back to graduate school. The coalition further suggested a state partnership with accredited colleges or universities who can provide virtual classes for MHPs to access at a subsidized rate.

RESPONSE: While the commenter's suggestion is appreciated, it is beyond the scope of Chapter 230. No change is required.

6. COMMENT: The coalition commented that section 29.15 of the proposed amendment should be amended to clarify that those covered under the grandfathering provision will be held harmless from professional misconduct through June 24, 2025, in accordance with Education Law § 8410(11).

RESPONSE: The Department cannot make such a representation as a practitioner without the privilege or an exemption who engages in restricted activities, could be charged with practicing beyond their scope of practice under State law. No change is required.

7. COMMENT: The coalition states that Education Law § 8407(1) and the proposed amendments to section 29.15 of the Rules of the Board of Regents indicate that misconduct applies to a professional diagnosing and developing assessment-based treatment plans "without a diagnostic privilege." The coalition suggests that this language could be interpreted to mean that misconduct would apply to a professional engaging in such activities with a limited diagnostic permit under supervision who is gaining experience for the full privilege. The commenter asked that section 29.15 of the proposed rule be revised to ensure that a professional with a limited diagnostic permit cannot be charged with misconduct for diagnosing and developing assessment-based treatment plans under supervision.

RESPONSE: The Department recognizes that a practitioner with a limited permit will be diagnosing and assessment-based treatment planning while being supervised by a practitioner who has the applicable privilege or is engaging in diagnosis and assessment-based treatment planning within their scope of practice. This is consistent with the Education Law and does not constitute misconduct.

8. COMMENT: The coalition commented that the development of assessment-based treatment plans by LMHCs and LMFTs is within the current scope of practice for each license, which specifically authorizes MHPs to assess, evaluate, and treat (Education Law § 8402-8403). Therefore, the coalition urges the Department to remove assessment-based treatment plans from section 29.15 of the proposed rule to ensure that licensed LMHCs and LMFTs are not penalized for developing such plans in accordance with well-established scope of practice parameters.

RESPONSE: Under the proposed regulations, consistent with Chapter 230, licensed professionals who diagnose and develop assessment-based treatment plans without the privilege to do so are subject to misconduct under section 29.5. No change is required.

9. COMMENT: The coalition commented on the perceived burden of the \$175 fee for the privilege on top of the existing \$175 triennial fee for registration, especially if this fee will be charged at every triennial renewal. The coalition requests clarification that the privilege fee is only charged upon initial application, as it was for LCSW-Rs. The coalition asserts that a triennial fee of \$350 is overly burdensome and incongruent with fees charged for other licensed professionals.

RESPONSE: Chapter 230 establishes the \$175 fee for the initial privilege and the same fee every three years to register and makes the fee coterminous with the licensee's registration to practice the profession. No change is required.

10. COMMENT: The coalition indicates, based on a previous Assessment of Public Comment published in the November 29, 2023 State Register that the Department intends to produce all forms and documents once the Regulation is adopted. With only five months until professionals can begin applying for the privilege, the coalition urges the expeditious adoption of the rule and the prompt release of documents, forms, and related materials.

RESPONSE: The documents identified by the commenter will be made available soon after the implementing regulations are permanently adopted. No change is required.

11. COMMENT: The coalition commented that, if supervision can be split between two different supervisors (e.g., allowing an LMHC without the privilege to continue a permittee's supervision for the purposes of the license, and an LCSW to supervise for just the privilege), this would effectively cut the available supervision slots in half.

RESPONSE: An applicant may hold one permit authorizing supervised practice in multiple settings under more than one supervisor if approved by the Department. A supervisor is responsible for each patient seen by a

permit holder under supervision as well as training the permit holder. The permittee limit and supervision requirements are consistent across all the mental health professions to ensure public safety. The law allows different individuals to serve as supervisors for the diagnosis and assessment-based treatment work. The availability of supervisors will increase over time, as additional licensees qualify for the privilege. No change is required.

12. COMMENT: A commenter proposed that the Department first award the privilege to existing practitioners to ensure there are an appropriate number of qualified supervisors to provide supervision to graduates.

RESPONSE: While the commenter's suggestion is reasonable, this approach is not contemplated by Chapter 230. Applications are otherwise reviewed and processed by Department staff in the order they are received. Thus, no change is required.

13. COMMENT: A commenter suggested waiving the supervision requirement for licensed practitioners because there are thousands of practitioners operating in agencies and private practice throughout New York State who will struggle to secure diagnostic supervision to meet this requirement. The commenter acknowledged the Department's previous response that this credential is not required to practice; however, that commenter indicates that the privilege is necessary to receive reimbursement and qualify to supervise future applicants.

RESPONSE: While the Department acknowledges the validity of these concerns, Chapter 230 requires supervised experience for a licensed practitioner to obtain the privilege, and the proposed rule is consistent with this requirement.

14. COMMENT: An association of psychoanalytic education programs opined that the current language requires a master's or higher degree in psychoanalysis to obtain the privilege. New York State's licensure-qualifying LP programs do not award master's degrees, but rather a post-master's certificate. If the privilege does not accept a post-master's certificate, this threatens the long-term viability of psychoanalytic education programs approved by the Department.

RESPONSE: Chapter 230 requires applicants for the privilege in psychoanalysis, mental health counseling and marriage and family therapy to demonstrate receipt of a master's or higher degree of 60 semester hours or the clock hour equivalent in the case of psychoanalytic programs. Admission to a psychoanalytic program requires an earned master's or higher degree in any field—and licensure requires completion of the psychoanalytic program defined in law and regulation. Thus, graduates must necessarily hold a master's degree with required coursework in psychoanalysis. This will be clarified in guidance for applicants and programs. No change is required.

15. COMMENT: A psychoanalytic association asks whether the Department will accept all experience that a licensed psychoanalyst has gained toward licensure toward the 2,000-hour diagnostic privilege requirement, including experience in psychoanalysis and psychotherapy supervised by a licensed psychoanalyst that does not have the diagnostic privilege.

RESPONSE: Supervised experience for the privilege, including experience that qualifies for licensure, should be submitted to the Department by the applicant's supervisor(s) and/or attestor(s) for consideration. The Department will review this experience to determine if it meets the requirements in law and regulation for supervised practice, which must include, but is not limited to, diagnosis and assessment-based treatment planning under a qualified supervisor in an authorized setting. The Department's application and instructions will make these requirements clear. No change is required.

NOTICE OF ADOPTION

Use of the Term University

I.D. No. EDU-44-23-00016-A

Filing No. 172

Filing Date: 2024-02-13

Effective Date: 2024-02-28

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

Action taken: Amendment of section 3.29 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 and 216

Subject: Use of the term university.

Purpose: Allows for the use of the term university by private colleges and teaching hospitals/academic medical centers that meet certain criteria.

Text or summary was published in the November 1, 2023 issue of the Register, I.D. No. EDU-44-23-00016-P.

Final rule as compared with last published rule: No changes.