



TO: The Professional Practice Committee

FROM: Douglas E. Lentivech

SUBJECT: Proposed Amendment to the Regulations of the Commissioner of Education Relating to the Duration of Limited Permits for Applicants Seeking Licensure as Mental Health Practitioners under Article 163 of the Education Law

DATE: March 3, 2014

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Board of Regents approve the proposed amendment to sections 79-9.4, 79-10.4, 79-11.4 and 79-12.4 of the Regulations of the Commissioner of Education to implement Chapter 485 of the Laws of 2013, relating to the duration of limited permits for certain applicants for licensure as mental health counselors, marriage and family therapists, creative arts therapists or psychoanalysts?

Reason(s) for Consideration

Required by State statute.

Proposed Handling

The proposed amendment will be presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as a permanent rule at the March 2014 meeting of the Board of Regents. In addition, a second emergency action is necessary to ensure the emergency rule adopted at the December 2013 Regents meeting remains continuously in effect until March 26, 2014, which is the effective date of the adoption of the permanent rule. A copy of the permanent rule, the emergency rule, and a Statement of Facts and Circumstances Which Necessitate

Emergency Action are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Procedural History

The proposed amendment was adopted as an emergency rule at the December Regents meeting, effective December 17, 2013. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on December 31, 2013. Because the December emergency rule will expire on March 16, 2014, a second emergency action is necessary in order to ensure that the emergency rule remains continuously in effect until the permanent rule takes effect on March 26, 2014. Additionally, following the above-referenced publication of the Notice of Proposed Rule Making, the Department received no comments on the proposed amendment. Therefore, an Assessment of Public Comment is not required and no changes to the proposed amendment are needed.

Background Information

An individual seeking licensure in New York State as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst must meet requirements for education, supervised experience and examination, acceptable to the Department. In order to meet the clinical experience requirements in New York State, an applicant for licensure in each of the above-referenced professions needs a limited permit from the Department.

When Article 163 of the Education Law was enacted in 2002, the law authorized the Department to issue a two-year limited permit to an applicant in mental health counseling and a one-year limited permit to an applicant in marriage and family therapy, creative arts therapy, and psychoanalysis, to practice under a qualified supervisor in an authorized setting while meeting the experience and examination requirements. The law and implementing regulations allowed the Department to grant a one-year extension, upon application and payment of fee, to an applicant in any of these professions, if the applicant had made good faith efforts to meet the experience and examination requirements during the initial permit period.

While many applicants were able to complete the required experience in the time periods specified in law, there have been a number of applicants who could not do so. On November 13, 2013, the Governor signed Chapter 485 of the Laws of 2013, which provides applicants in each of these professions a total of four years under a limited permit to meet the experience and examination requirements for licensure. The initial permit will be valid for two years, and the Department may renew the permit for up to two additional one-year periods. The applicant/limited permit holder will continue to practice in a setting that is authorized to provide professional services under a supervisor who is licensed and registered to practice under the Education Law. This will protect the citizens who receive services from these applicants/limited permit holders, while providing additional time for those applicants/limited permit holders to meet the experience and examination requirements for entry into the profession. The new law became effective immediately.

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That subdivision (c) of section 79-9.4, subdivision (c) of section 79-10.4, subdivision (c) of section 79-11.4, and subdivision (c) of section 79-12.4 of the Regulations of the Commissioner of Education be amended, as submitted, effective March 26, 2014; and it is further

VOTED: That subdivision (c) of section 79-9.4, subdivision (c) of section 79-10.4, subdivision (c) of section 79-11.4, and subdivision (c) of section 79-12.4 of the Regulations of the Commissioner of Education be amended, as submitted, effective March 17, 2014, as an emergency action upon a finding by the Board of Regents that such action is necessary for preservation of the public health and general welfare to ensure that the emergency rule adopted at the December 2013 Regents meeting to implement the requirements of Chapter 485 of the Laws of 2013 remains continuously in effect until the effective date of the rule's permanent adoption, so that applicants for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst have up to a total of four years under a limited permit to meet the experience and examination requirements pursuant to statutory requirements.

Timetable for Implementation

The proposed amendment was adopted as an emergency rule at the December 2013 Regents meeting, effective December 17, 2013 and will expire on March 16, 2014. If adopted at the March 2014 Regents meeting, the permanent rule will take effect on March 26, 2014 and the emergency rule will take effect on March 17, 2014.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6501, 6504, 6507, 6508, 8409 of the Education Law, and Chapter 485 of the Laws of 2013

1. Subdivision (c) of section 79-9.4 of the Regulations of the Commissioner of Education is amended, effective March 26, 2014, as follows:

(c) The limited permit in mental health counseling shall be valid for a period of not more than 24 months, provided that the limited permit may be extended for [an] no more than two additional 12 [months] month periods at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements [within the first 24 months] but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement [within the first 24 months], and provided further that the time authorized by such limited permit and subsequent [extension] extensions shall not exceed [36] 48 months total.

2. Subdivision (c) of section 79-10.4 of the Regulations of the Commissioner of Education is amended, effective March 26, 2014, as follows:

(c) The limited permit in marriage and family therapy shall be valid for a period of not more than [12] 24 months, provided that the limited permit may be extended for [an] no more than two additional 12 [months] month periods at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements [within the first 12 months] but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement [within the first 12

months], and provided further that the time authorized by such limited permit and subsequent [extension] extensions shall not exceed [24] 48 months total.

3. Subdivision (c) of section 79-11.4 of the Regulations of the Commissioner of Education is amended, effective March 26, 2014, as follows:

(c) The limited permit in creative arts therapy shall be valid for a period of not more than [12] 24 months, provided that the limited permit may be extended for [an] no more than two additional 12 [months] month periods at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements [within the first 12 months] but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement [within the first 12 months], and provided further that the time authorized by such limited permit and subsequent [extension] extensions shall not exceed [24] 48 months total.

4. Subdivision (c) of section 79-12.4 of the Regulations of the Commissioner of Education is amended, effective March 26, 2014, as follows:

(c) The limited permit in psychoanalysis shall be valid for a period of not more than [12] 24 months, provided that the limited permit may be extended for [an] no more than two additional 12 [months] month periods at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements [within the first 12 months] but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement [within the first 12 months],

and provided further that the time authorized by such limited permit and subsequent [extension] extensions shall not exceed [24] 48 months total.

8 NYCRR §§79-9.4, 79-10.4, 79-11.4, and 79-12.4

STATEMENT OF FACTS AND CIRCUMSTANCES
WHICH NECESSITATE EMERGENCY ACTION

The purpose of the proposed amendment is to implement Chapter 485 of the Laws of 2013, which took effect on November 13, 2013. This amendment to the Education Law provides limited permit holders a total of four years to meet the requirements for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst. Prior to the enactment of Chapter 485, the law authorized a maximum duration of three years for a limited permit in mental health counseling and a maximum of two years for a limited permit in marriage and family therapy, creative arts therapy and psychoanalysis. For some applicants, this has been an insufficient time period for them to complete the supervised experience and examination requirements for licensure in these professions. When the limited permit expires, the applicant may no longer practice any of the aforementioned professions or use the restricted title, making it difficult, if not impossible for the applicant to ever qualify for licensure in New York State.

The proposed amendment was adopted as an emergency action at the December 16-17, 2013 Regents meeting, effective December 17, 2013, and has now been adopted as a permanent rule at the March 10-11, 2014 Regents meeting. Pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment is March 26, 2014, the date a Notice of Adoption will be published in the State Register. However, the December emergency rule will expire on March 17, 2014. If the rule were to lapse, some applicants for licensure would be unable to obtain additional time to meet the experience and examination requirements for licensure before their limited permits expire. Once a limited permit expires, the applicant may no

longer practice any of the aforementioned professions, which could make it difficult, if not impossible for such an applicant to ever qualify for licensure in New York State. To avoid the adverse effects of a lapse in the emergency rule, a second emergency action at the March 2014 Regents meeting is necessary for the preservation of the public health and general welfare to ensure that the proposed rule adopted by emergency action at the December Regents meeting to implement the requirements of Chapter 485 of the Laws of 2013 remains continuously in effect until the effective date of its permanent adoption, so that applicants for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst have up to a total of four years under a limited permit to meet the experience and examination requirements pursuant to statutory requirements.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6501, 6504, 6507, 6508, 8409 of the Education Law, and Chapter 485 of the Laws of 2013

1. Subdivision (c) of section 79-9.4 of the Regulations of the Commissioner of Education is amended, effective March 17, 2014, as follows:

(c) The limited permit in mental health counseling shall be valid for a period of not more than 24 months, provided that the limited permit may be extended for [an] no more than two additional 12 [months] month periods at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements [within the first 24 months] but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement [within the first 24 months], and provided further that the time authorized by such limited permit and subsequent [extension] extensions shall not exceed [36] 48 months total.

2. Subdivision (c) of section 79-10.4 of the Regulations of the Commissioner of Education is amended, effective March 17, 2014, as follows:

(c) The limited permit in marriage and family therapy shall be valid for a period of not more than [12] 24 months, provided that the limited permit may be extended for [an] no more than two additional 12 [months] month periods at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements [within the first 12 months] but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement [within the first 12

months], and provided further that the time authorized by such limited permit and subsequent [extension] extensions shall not exceed [24] 48 months total.

3. Subdivision (c) of section 79-11.4 of the Regulations of the Commissioner of Education is amended, effective March 17, 2014, as follows:

(c) The limited permit in creative arts therapy shall be valid for a period of not more than [12] 24 months, provided that the limited permit may be extended for [an] no more than two additional 12 [months] month periods at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements [within the first 12 months] but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement [within the first 12 months], and provided further that the time authorized by such limited permit and subsequent [extension] extensions shall not exceed [24] 48 months total.

4. Subdivision (c) of section 79-12.4 of the Regulations of the Commissioner of Education is amended, effective March 17, 2014, 2013, as follows:

(c) The limited permit in psychoanalysis shall be valid for a period of not more than [12] 24 months, provided that the limited permit may be extended for [an] no more than two additional 12 [months] month periods at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements [within the first 12 months] but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement [within the first 12 months],

and provided further that the time authorized by such limited permit and subsequent [extension] extensions shall not exceed [24] 48 months total.