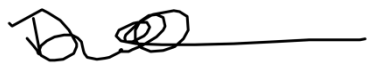






**TO:** The Professional Practice Committee

**FROM:** Douglas E. Lentivech 

**SUBJECT:** Proposed Addition of Section 79-9.8 of the Regulations of the Commissioner of Education Relating to Continuing Education Requirements for Licensed Mental Health Counselors

**DATE:** January 4, 2016

**AUTHORIZATION(S):**  

## SUMMARY

### Issue for Decision

Should the Board of Regents add a new section 79-9.8 to the Regulations of the Commissioner of Education relating to mandatory continuing education requirements for licensed mental health counselors?

### Reason for Consideration

Required by State statute (L. 2013, Ch. 486 and L. 2014, Ch. 15).

### Proposed Handling

The proposed rule will be presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as a permanent rule at the January 2016 meeting of the Board of Regents. A copy of the proposed rule is attached. Supporting materials for the proposed rule are available upon request from the Secretary to the Board of Regents.

### Procedural History

The proposed rule was presented to the Professional Practice Committee for discussion at the October 2015 Board of Regents meeting. A Notice of Proposed Rule Making was published in the State Register on November 10, 2015 for a 45-day public

comment period. Public comments were received from one commenter. An Assessment of Public Comment is attached, however, no change in the proposed rule is proposed recommended at this time.

### **Background Information**

Section 8412 of the Education Law, as added by Chapter 486 of the Laws of 2013, requires licensed mental health counselors to complete 36 hours of mandatory continuing education when registering to practice in New York State, effective January 1, 2017. In order to implement the requirement for continuing education in a timely manner, the law was amended by Chapter 15 of the Laws of 2014 to authorize the Department to promulgate and adopt regulations necessary to implement the law prior to the effective date.

The proposed rule establishes mandatory continuing education requirements and standards for the Department's approval of continuing education providers. The proposed rule requires each licensed mental health counselor to complete 36 hours of continuing education during each three-year registration period. The proposed rule provides a phase-in period in which licensees, whose next registration period is during the first three years after January 1, 2017, will be required to complete only one hour of mandatory continuing education for each month in the registration period after January 1, 2017.

The proposed rule defines acceptable continuing education subjects and other types of educational activities that the Department will accept to satisfy the mandatory continuing education requirements. Acceptable continuing education must contribute to the professional practice of mental health counseling and must be offered by a provider approved by the Department, based upon an application and payment of a fee. Acceptable courses may include, but are not limited to, university and college credit and non-credit courses, and professional development and technical sessions related to the practice of mental health counseling. Other acceptable education activities include: (1) preparing and teaching a course offered by an approved provider of continuing education; (2) preparing and teaching a course, acceptable to the Department, at a higher education institution or psychotherapy institute relating to the practice of mental health counseling; (3) making a technical presentation at a professional conference sponsored by an organization that is an approved provider of continuing education; (4) completing a self-study program offered by a provider approved by the Department; (5) authoring a first-time article published in a peer-reviewed journal or a chapter in a published book; and (6) authoring a first-time book in the practice of mental health counseling.

Organizations or individuals that may apply to offer continuing education to licensed mental health counselors include: higher education institutions; psychotherapy institutes chartered by the Board of Regents; national, state and local professional mental health counselor associations; national organizations of jurisdictional mental health counseling boards; entities operated under an operating certificate issued under the Mental Hygiene law; entities defined in the Public Health law; and individuals with expertise to provide continuing education. In order to become an approved provider, the organization or individual must submit the \$900 fee and an application that meets the

requirements in the proposed addition to the Commissioner's regulations. An approved provider must apply and pay the fee every three years and, if the Department determines a provider is not meeting the standards set forth in the proposed rule, the Department may deny the renewal application or terminate its approval.

The proposed rule also establishes continuing education requirements when there is a lapse in practice, requirements for licensees under conditional registration, and fees for licensees and providers. The proposed rule is modeled after similar mandatory continuing education requirements for licensed master social workers and licensed clinical social workers, for whom continuing education requirements have been in place since January 1, 2015 and for physical therapists and licensed massage therapists, for whom continuing education requirements have been in place since 2009 and 2012, respectively.

### **Recommendation**

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

VOTED: That a new section 79-9.8 of the Regulations of the Commissioner of Education be added, as submitted, effective January 1, 2017.

### **Timetable for Implementation**

If adopted at the January 2016 Regents meeting, the proposed rule will become effective January 1, 2017.

## AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 212, 6504, 6507 and 8412 of the Education Law, Chapter 486 of the Laws of 2013 and Chapter 15 of the Laws of 2014.

Section 79-9.8 of the Regulations of the Commissioner of Education is added, effective January 1, 2017, to read as follows:

### §79-9.8 Continuing education for licensed mental health counselors.

#### (a) Definitions. As used in this section:

(1) Acceptable accrediting agency means an organization accepted by the department as a reliable authority for the purpose of accreditation at the postsecondary level, applying its criteria for granting accreditation in a fair, consistent and nondiscriminatory manner, such as an agency recognized for this purpose by the Council for Higher Education Accreditation.

(2) Higher education institution means a degree-granting postsecondary institution accredited by an acceptable accrediting agency.

(3) Psychotherapy institute means a psychotherapy institute chartered by the Board of Regents, or an institution offering a program which meets the requirements of section 52.35 of this Title.

#### (b) Applicability of requirements.

(1) Each licensed mental health counselor, required under article 163 of the Education Law to register with the department to practice in New York State, shall comply with the mandatory continuing education requirements as prescribed in subdivision (c) of this section, except those licensees exempt from the requirement or who obtain an adjustment to the requirement pursuant to paragraph (2) of this subdivision or who are subject to a different requirement pursuant to this section.

#### (2) Exemptions and adjustments to the requirement.

(i) Exemptions. The following licensees shall be exempt from the continuing education requirements, as prescribed in subdivision (c) of this section:

(a) licensees for the triennial registration period during which they are first licensed to practice as a licensed mental health counselor in New York State; and

(b) licensed mental health counselors who are not engaged in the practice of mental health counseling, as evidenced by not being registered to practice in New York State, except as otherwise prescribed in subdivision (e) of this section to meet the requirements for the resumption of practice in New York State.

(ii) Adjustments to the requirement. An adjustment to the continuing education requirement, as prescribed in subdivision (c) of this section, may be made by the department, provided that the licensee documents good cause that prevents compliance or the department determines otherwise that there is good cause that prevents compliance, which shall include, but not be limited to, any of the following reasons: poor health or a specific physical or mental disability certified by an appropriate health care professional; or extended active duty with the Armed Forces of the United States; or other good cause beyond the licensee's control which in the judgment of the department, makes it impossible for the licensee to comply with the continuing education requirements in a timely manner.

(c) Mandatory continuing education requirement.

(1) General requirement.

(i) During each triennial registration period, meaning a registration period of three years' duration, an applicant for registration shall complete at least 36 hours of continuing education, acceptable to the department, as defined in paragraph (2) of this subdivision. Any licensed mental health counselor whose first registration date following January 1, 2017 occurs less than three years from such date shall complete continuing

education hours on a prorated basis at the rate of one hour of acceptable formal continuing education per month for the period beginning January 1, 2017 up to the first registration date thereafter. Such continuing education shall be completed during the period beginning January 1, 2017 and ending before the first day of the new registration period.

(ii) Proration. Unless otherwise prescribed in this section, during each registration period of less than three years' duration, an applicant for registration shall complete acceptable continuing education, as defined in paragraph (2) of this subdivision and within the limits prescribed in such paragraph, on a prorated basis at a rate of one hour of continuing education per month for such registration period.

(2) Acceptable formal continuing education. To be acceptable to the department, continuing education shall meet the requirements of this paragraph. Such continuing education must be in subjects prescribed in subparagraph (i) of this paragraph and be the types of learning activities prescribed in subparagraph (ii) of this paragraph and subject to the prohibition contained in subparagraph (iii) of this paragraph.

(i) Acceptable subjects.

(a) The formal continuing education shall be in professional and clinical skills in accordance with the practice of mental health counseling as defined in section 8402 of the Education Law. Such subjects may include but shall not be limited to: clinical interventions and evidence-based practice; cross-disciplinary offerings from medicine, law, administration, education, behavioral and social sciences related to mental health counseling practice, patient communications, recordkeeping, and matters relating to law and/or ethics which contribute to professional practice in mental health counseling and the health, safety, and/or welfare of the public.

(b) All subject topics must be comparable to those taught in professional education programs in mental health counseling offered by a program that is registered under section 52.32 of the Commissioner's Regulations.

(ii) Types of learning activities. Acceptable continuing education shall be the types of learning activities prescribed in this subparagraph and shall be subject to the limitations prescribed in this subparagraph and subparagraph (iii) of this paragraph.

(a) Courses of learning. Acceptable courses of learning and other education activities must be taken from a provider who has been approved by the department on the basis of an application and fee, pursuant to subdivision (i) of this section. Formal courses of learning shall include but not be limited to, university and college credit and non-credit courses, and professional development programs and technical sessions offered by national, state and local professional associations and other organizations acceptable to the department, and any other organized educational and technical programs related to the practice of mental health counseling that are acceptable to the department.

(b) Other educational activities. Acceptable continuing education shall be the following other educational activities:

(1) preparing and teaching a course offered by a provider of continuing education to licensed mental health counselors, approved pursuant to subdivision (i) of this section, provided that such teaching shall not be acceptable where the licensee has taught the course on more than one occasion without presenting new or revised material. Continuing education hours that may be credited for this activity may include actual instructional time plus preparation time which may be up to two additional hours for each hour of presentation;

(2) preparing and teaching a course, acceptable to the department, at a higher education institution or psychotherapy institute, as defined in paragraphs (2) and (3) of subdivision (a) of this section, relating to the practice of mental health counseling, provided that such teaching shall not be acceptable where the licensee has taught the course on more than one occasion without presenting new or revised material. Continuing education hours that may be credited for this activity may include actual instructional time plus preparation time which may be up to two additional hours for each hour of presentation;

(3) making a technical presentation at a professional conference sponsored by an organization that is a provider of continuing education to licensed mental health counselors and that is approved pursuant to subdivision (i) of this section, provided that such presentation shall not be acceptable where the licensee has presented on the topic on more than one occasion without presenting new or revised material. Continuing education hours that may be credited for this activity shall include actual presentation time, plus preparation time which may be up to two additional hours for each hour of presentation;

(4) completing a self-study program, meaning structured study, offered by a provider approved pursuant to subdivision (i) of this section, that is based on audio, audio-visual, written, on-line, or other media, and does not include live instruction, transmitted in person or otherwise, during which the student may communicate and interact with the instructor and other students. Self-study may comprise no more than twelve hours of continuing education in any three-year registration period, or one-third of the hours for a registration period other than three years;



(5) authoring a first-time article published in a peer-reviewed journal or a chapter in a published book, provided that the amount of continuing education credit awarded for such activity shall be two hours; or

(6) authoring a first-time book in the practice of licensed mental health counseling, provided that the amount of continuing education credit awarded for such activity shall be five hours.

(c) The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement.

(iii) Prohibition.

(a) Any continuing education designed for the sole purpose of personal development, marketing, business practices, and maximizing profits for the practice of a licensed mental health counselor shall not be considered by the department as acceptable continuing education.

(b) Supervision of a licensed mental health counselor, limited permit holder, student or intern in a placement that is part of a license-qualifying program, shall not be considered by the department as acceptable continuing education.

(d) Renewal of registration. At each re-registration, licensed mental health counselors shall certify to the department that they have either complied with the continuing education requirements, as prescribed in this section, or are subject to an exemption or adjustment to such continuing education requirements, as prescribed in subdivision (b) of this section.

(1) A licensee who has not satisfied the mandatory continuing education requirements shall not practice until such requirements have been met and the licensee has been issued a registration certificate by the department, except where a licensee

has been issued a conditional registration, as provided for in subdivision (f) of this section.

(2) Continuing education hours taken during one registration period may not be transferred to the subsequent registration period.

(e) Requirement for lapse in practice.

(1) A licensee returning to the practice of licensed mental health counseling after a lapse in practice, as evidenced by not being registered to practice in New York State, whose first registration date after such lapse in practice occurs less than three years from January 1, 2017, shall be required to complete:

(i) at least one hour of acceptable continuing education for each month beginning with January 1, 2017 until the beginning of the new registration period, which shall be completed for a licensee who has not lawfully practiced mental health counseling continuously in another jurisdiction throughout such lapse period, in the 12-month period before the beginning of the new registration period; and for the licensee who has lawfully practiced as a licensed mental health counselor continuously in another jurisdiction throughout such lapse period, in the new registration period or at the option of the licensee in the period beginning 36 months before the commencement of the new registration period and ending at the conclusion of such new registration period; and

(ii) for a licensee who has not lawfully practiced as a licensed mental health counselor continuously in another jurisdiction throughout such lapse period, at least 12 hours of acceptable continuing education in each successive 12-month period of the new registration period; and for a licensee who has lawfully practiced licensed mental health counseling continuously in another jurisdiction throughout such lapse period, the regular continuing education requirement during the new registration period.

(2) Except as prescribed in paragraph (1) of this subdivision for registrations therein specified, a licensee who returns to practice as a licensed mental health counselor after a lapse in practice in which the licensee was not registered to practice in New York State and did not lawfully practice continuously in another jurisdiction throughout the lapse period, shall be required to complete:

(i) the continuing education requirement applicable to the period of time the licensee was registered in the licensee's last registration period;

(ii) at least one hour of acceptable continuing education for each month of lapsed registration up to a maximum 36 hours, which shall be completed in the 12 months before the beginning of the new registration period; and

(iii) at least 12 hours of acceptable continuing education in each succeeding 12-month period, after such registration is reissued, until the next registration date.

(3) Except as prescribed in paragraph (1) of this subdivision for registrations therein specified, a licensee who returns to practice as a licensed mental health counselor after a lapse in practice in which the licensee was not registered to practice in New York State but did lawfully practice mental health counseling continuously in another jurisdiction throughout the lapse period, shall be required to complete:

(i) the continuing education requirement applicable to the period of time the licensee was registered in the licensee's last registration period; and

(ii) at least one hour of acceptable continuing education for each month of lapsed registration up to a maximum of 36 hours, which shall be completed in the new registration period, or at the option of the licensee in the period beginning 36 months before the commencement of the new registration period and ending at the conclusion of the new registration period; and

(iii) the regular continuing education requirement during the new registration period.

(f) Conditional registration.

(1) The department may issue a conditional registration to a licensee who attests to or admits to noncompliance with the continuing education requirements of this section, provided that such licensee meets the following requirements:

(i) the licensee agrees to remedy such deficiency within the conditional registration period;

(ii) the licensee agrees to complete the regular continuing education requirement at the rate of one hour of acceptable continuing education per month during such conditional registration period; and

(iii) the licensee agrees to complete additional continuing education during such conditional registration period, which the department may require to ensure the licensee's proper delivery of professional mental health counseling services consistent with the licensee's practice as a licensed mental health counselor.

(2) The duration of such conditional registration shall not exceed one year and shall not be renewed or extended.

(g) Licensee records. Each licensee subject to the requirements of this section shall maintain, or ensure access by the department to, a record of completed continuing education, which includes: the title of the course if a course, the type of educational activity if an educational activity, the subject of the continuing education, the number of hours of continuing education completed, the provider's name and any identifying number (if applicable), attendance verification if a course, participation verification if another educational activity, a copy of any article or book for which continuing education credit is claimed with proof of publication, and the date and location of the continuing

education. Such records shall be retained for at least six years from the date of completion of the continuing education and shall be made available for review by the department in the administration of the requirements of this section.

(h) Measurement of continuing education study. Continuing education credit shall be granted only for acceptable continuing education, as prescribed in subdivision (c) of this section. For continuing education courses, a minimum of 50 minutes shall equal one continuing education hour of credit. For credit-bearing university or college courses, each semester-hour of credit shall equal 15 continuing education hours of credit, and each quarter-hour of credit shall equal 10 continuing education hours of credit. Continuing education credit for other educational activities shall be awarded as described in clause (b) of subparagraph (ii) of paragraph (2) of subdivision (c) of this section or as otherwise prescribed by the department.

(i) Provider approval.

(1) An entity or individual seeking approval by the department as a provider of continuing education to licensed mental health counselors in the form of courses of learning or self-study programs shall submit the fee prescribed in paragraph (3) of subdivision (j) of this section and meet the requirements of paragraphs (2) and (3) of this subdivision.

(2) An entity or individual eligible to apply for approval to be a provider of continuing education to licensed mental health counselors includes, but is not limited to:

(i) a higher education institution that offers programs that are registered pursuant to Part 52 of this Title as leading to licensure as a licensed mental health counselor in New York or accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) or a higher education institution that is accredited by an acceptable accrediting agency and that offers graduate coursework that is directly

related to the enhancement of practice, skills and knowledge of licensed mental health counselors;

(ii) a psychotherapy institute, as defined in paragraph (3) of subdivision (a) of this section that offers coursework that is directly related to the enhancement of practice, skills and knowledge of licensed mental health counselors;

(iii) a national mental health counselor organization or other professional organization that promotes and protects the health, safety and welfare of the public and fosters good practice in the mental health counseling profession, including specialty boards, acceptable to the department;

(iv) a New York State mental health counselor organization, acceptable to the department, that is incorporated or otherwise organized in New York State that promotes and protects the health, safety and welfare of the public and fosters good practice in the mental health counseling profession in the State of New York as a whole and/or a region of the State of New York;

(v) a national organization of jurisdictional boards of mental health counseling that promote and protect the health, safety and welfare of the public and fosters good practice in the mental health counseling profession;

(vi) an entity operated under an operating certificate appropriately issued in accordance with articles 16, 31 or 32 of the Mental Hygiene Law;

(vii) an entity, hospital or health facility defined in section 2801 of the Public Health Law; or

(viii) an individual with expertise to provide continuing education to New York State licensed mental health counselors.

(3) Department review of providers.

(i) The department shall conduct a review of providers that apply for approval to offer continuing education to licensed mental health counselors.

(ii) An organization or individual desiring to offer continuing education shall submit, with the fee as set forth in subdivision (j) of this section, an application for advance approval as a provider at least 90 days prior to the date of the commencement of such continuing education that documents that the organization or individual:

(a) will offer courses of learning or self-study programs in one or more of the subjects prescribed for acceptable continuing education in subparagraph (i) of paragraph (2) of subdivision (c) of this section;

(b) is an organized entity or individual, included in paragraph (2) of this subdivision, including but not limited to an institution that offers a graduate program that leads to licensure in mental health counseling; or a national, State, or local mental health counseling organization; or a hospital, behavioral health program or program serving persons with developmental disabilities; or another entity that employs licensed mental health counselors and possesses the expertise to offer courses/educational activities; or an individual with expertise to provide continuing education to New York State licensed mental health counselors; or an organization desiring to provide continuing education to New York State licensed mental health counselors; or an organization that proposes to offer courses of learning or self-study programs to licensed mental health counselors; or an organized educational entity with expertise in mental health counseling education and practice; and that meets the requirements of this subdivision;

(c) provides course instructor(s) who are qualified to teach the courses which will be offered, including but not limited to: faculty of a licensed mental health counseling program offered by a higher education institution; or instructor(s) who are specially

qualified authorities in activities that are directed at developing and enhancing a licensee's practice as a licensed mental health counselor, as determined by the department with assistance from the State Board for Mental Health Practitioners, to conduct such courses;

(d) has a method of assessing the learning of participants, and describes such method; and

(e) will maintain records for at least six years from the date of completion of coursework, which shall include, but shall not be limited to, the name and curriculum vitae of the faculty or instructor(s), a record of attendance of licensed mental health counselors in the course if a course; a record of participation of licensed mental health counselors in the self-instructional coursework if self-instructional coursework; an outline of the course, date and location of the course, and the number of hours for completion of the course. In the event an approved provider discontinues operation, the governing body of such provider shall notify the department and shall transfer all records as directed by the department.

(iii) Providers that are approved by the department pursuant to the requirements of this paragraph shall be approved for a three-year term.

(iv) The department may conduct site visits of, or request information from, a provider approved pursuant to the requirements of this paragraph to ensure compliance with such requirements, and a provider shall cooperate with the department in permitting such site visits and in providing such information.

(v) A determination by the department that a provider approved pursuant to the requirements of this paragraph is not meeting the standards set forth in this paragraph shall result in the denial or termination of the approved status of the provider.



(vi) Prohibition: Presenters of didactic instruction may be persons who are not licensed by the State of New York as licensed mental health counselors. The performance of activities that fall within the restricted scope of practice of the licensed mental health counselor must be done by individuals licensed and registered under article 163 of the Education Law, or those otherwise authorized by law to perform such activities, when the continuing education occurs in the State of New York.

(i) Fees.

(1) At the beginning of each registration period, a mandatory continuing education fee of \$45 shall be collected from licensees engaged in the practice of mental health counseling in New York State, except for those exempt from the requirement pursuant to subparagraph (i) of paragraph (2) of subdivision (b) of this section. This fee shall be in addition to any applicable registration fees required by sections 6507-a and 8402 of the Education Law.

(2) Licensees applying for a conditional registration, pursuant to the requirements of subdivision (f) of this section, shall pay a fee that is the same as and in addition to, any applicable fee for the triennial registration required by sections 6507-a and 8402 of the Education Law. In addition, such licensees shall pay the \$45 mandatory continuing education fee.

(3) Organizations or individuals desiring to offer continuing education to licensed mental health counselors shall submit an application fee of \$900 with the application requesting the issuance of a permit from the department to become an approved provider of a formal continuing education program. A fee of \$900 shall accompany an application for a three-year renewal of the permit.

## 8 NYCRR §79-9.8

### ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the November 10, 2015 State Register, the State Education Department received the following comments:

1. COMMENT:

One commenter recommends that individuals, who are licensed in more than one profession established under Article 163 of the Education Law (e.g., mental health counseling and marriage and family therapy), be allowed to use a course they had taken to satisfy the continuing education (CE) requirements of one profession to satisfy the CE requirements of another profession(s). The commenter recommended a single consolidated provider application for qualified entities that seek to offer CE to more than one of the mental health practitioner (MHP) professions.

DEPARTMENT RESPONSE:

Education Law §8412(3)(b) requires licensees to complete CE courses from a Department approved provider. The commenter's recommendation is consistent with the language and intent of the statute and the proposed rules. The Department will take under consideration the commenter's recommendation to allow a prospective CE provider to submit one application and fee for approval to offer courses to one or more of the MHP professions. However, such courses must be consistent with the profession-specific requirements for each of the MHP professions for which the provider is seeking to offer courses, and would not be acceptable for individuals licensed in another profession established in the Education Law outside of Article 163 (e.g., licensed clinical social work), unless the provider applies and meets the requirements to become an approved provider for that profession under applicable provisions of the Education Law

and Regulations of the Commissioner of Education (e.g., for licensed clinical social work, Education Law §7710[3][b] and 8 NYCRR §74.10[c][3][ii]).

The Department appreciates the comment and notes that no changes are necessary to implement these regulatory provisions.