



**TO:** Professional Practice Committee

**FROM:** Sarah S. Benson *Sarah S. Benson*

**SUBJECT:** Proposed Addition of Section 72.6 of the Regulations of the Commissioner of Education Relating to Continuing Education Requirements for Psychologists

**DATE:** December 10, 2020

**AUTHORIZATION(S):** *Tom N. B.* *Betsy M.*

### **SUMMARY**

#### **Issue for Decision**

Should the Board of Regents add a new section 72.6 to the Regulations of the Commissioner of Education relating to mandatory continuing education requirements for licensed psychologists?

#### **Reason for Consideration**

Required by State statute (Chapter 436 of the Laws of 2018).

#### **Proposed Handling**

The proposed amendment is being presented to the Professional Practice Committee for recommendation to the Full Board for adoption at the December 2020 meeting of the Board of Regents. A copy of the proposed rule is attached (Attachment A).

#### **Procedural History**

The proposed amendment was presented to the Professional Practice Committee for discussion at the September 2020 meeting. A Notice of Proposed Rule Making was published in the State Register on September 30, 2020. Following the 60-day comment period required under the State Administrative Procedure Act, the Department received more than 200 comments. An Assessment of Public Comment is included as Attachment B. No changes to the proposed amendment are recommended at this time. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

## **Background Information**

Section 7607 of the Education Law, as added by Chapter 436 of the Laws of 2018 (Chapter 436), requires licensed psychologists to complete 36 hours of mandatory continuing education when registering to practice in New York State, effective January 1, 2021. In order to implement the requirement for continuing education in a timely manner, the law authorizes 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 psychologist 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, 2021 will be required to complete only one hour of mandatory continuing education for each month during such registration period.

The proposed rule defines acceptable continuing education subjects and other types of educational activities that the Department will accept to satisfy the required continuing education requirements. Acceptable continuing education must contribute to the professional practice of psychology and must be offered by a provider approved by the Department, based upon an application and 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 psychology. Other acceptable education activities include: (1) preparing and teaching a course offered by a sponsor 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 psychology; (3) making a technical presentation at a professional conference sponsored by an organization that is a provider of continuing education; (4) completing a self-study program offered by a continuing education provider approved by the Department; (5) authoring a first-time article published in a peer-reviewed journal or a chapter in a published book; (6) authoring a first-time book in the practice of psychology; (7) self-directed independent study in the practice of psychology; or (8) engage in a structured mentoring relationship, as a mentor or mentee, in the practice of psychology.

The proposed rule, consistent with Chapter 436, would not allow a licensee to earn continuing education credit for performing job-related activities, including but not limited to research and supervising an applicant for licensure in psychology or another Title VIII profession.

Organizations that may apply to offer continuing education to psychologists include higher education institutions; psychotherapy institutes chartered by the Board of Regents; national, state and local professional psychology associations; national organizations of jurisdictional psychology boards; or entities operated under an operating certified issued under the Mental Hygiene or Public Health law. In order to become an approved provider, the organization must submit an application and a \$900 fee to the Department. An approved provider must apply for renewal and pay a \$900 fee every three years and, if

the Department determines a provider is not meeting the Department's standards, the Department may deny 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 social workers, licensed under Article 154 and for mental health practitioners licensed under Article 163, for whom continuing education requirements have been in place since January 1, 2015 and January 1, 2017, respectively. The provisions for independent study and mentoring are similar to continuing education rules adopted in the professions of speech-language pathology and audiology and occupational therapy required to register for practice in those Title VIII professions, for whom continuing education requirements have been in place since January 1, 2001 and February 13, 2013, respectively.

### **Related Regents Items**

September 2020: [Proposed Addition of Section 72.6 of the Regulations of the Commissioner of Education Relating to Continuing Education Requirements for Psychologists](https://www.regents.nysed.gov/common/regents/files/920brd3.pdf)

(<https://www.regents.nysed.gov/common/regents/files/920brd3.pdf>)

### **Recommendation**

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

VOTED: That section 72.6 of the Regulations of the Commissioner of Education be amended, as submitted, effective, January 1, 2021.

### **Timetable for Implementation**

If adopted at the December 2020 Regents meeting the permanent rule will take effect on January 1, 2021.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 7600, 7601, 7601-a, 7602, 7603, 7604, 7605, 7606, and 7607 of the Education Law as amended by Chapter 436 of the Laws of 2018

1. Existing section 72.6 of the Regulations of the Commissioner of Education is renumbered section 72.7 and a new section 72.6 is added to read as follows:

§72.6 Continuing education for psychologists.

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.

(4) Independent study means individualized professional study that is self-initiated, goal-driven learning based on reading and research.

(5) Peer reviewed means reviewed by an individual or individuals who have appropriate educational or other credentials and are recognized experts in the subject which they are reviewing.

(6) Provider of psychology continuing education means an entity approved by the department pursuant to subdivision (i) of this section to offer continuing education.

(7) Mentoring means a one-to-one relationship between a mentor and a mentee, where both are licensed and registered as a psychologist under Article 153 of the Education Law and engage in activities described in clause (c)(2)(ii)(b)(8) of this section.

(b) Applicability of requirements.

(1) Each psychologist, required under Article 153 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 psychologist in New York State; and

(b) psychologists who are not engaged in the practice of psychology, 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.

(c) 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. A minimum of three hours of continuing education shall be course work in the area of professional ethics, including the laws, rules and regulations for practice in New York. Any psychologist whose first registration date following January 1, 2021 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, 2021 up to the first registration date thereafter. Such continuing education shall be completed during the period beginning January 1, 2021 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) Subjects. Acceptable continuing education shall have as its focus one or more of the following subjects that contribute to the professional practice of psychologists as well as in areas of industrial/organizational psychology, research, and teaching:

(a) cross-disciplinary offerings from medicine, law, administration, education and the behavioral sciences which are clearly related to the enhancement of psychology practice, skills and knowledge, and the health, safety, and/or welfare of the public;

(b) observation, description, evaluation, interpretation, and modification of behavior for the purpose of preventing or eliminating symptomatic, maladaptive or undesired behavior; enhancing interpersonal relationships, personal, group, or organizational effectiveness and work and/or life adjustment; and improving behavioral health and/or mental health;

(c) psychological (including neuropsychological) testing and counseling; psychoanalysis; psychotherapy; the diagnosis and treatment of mental, nervous, emotional, cognitive or behavior disorders, disabilities, ailments or illnesses, alcoholism, substance abuse, disorders of habit or conduct, the psychological aspects of physical illness, accident, injury or disability, psychological aspects of learning (including learning disorders); and the use of accepted classification systems;

(d) activities and skills needed for practice, such as communication, intake procedures, assessment and evaluation, treatment planning, prevention, recordkeeping;

(e) clinical interventions/evidence-based models, psychotherapy, and clinical diagnosis;

(f) psychology research, programs, or practice evaluations;

(g) psychology management, administration or social policy;

(h) philosophy and principles of psychology, including theories and concepts of human behavior in the social environment; and

(i) subjects relating to health, safety, and/or welfare of the public, professional rules and regulations, standards of good practice, precautions, law, and/or ethics which contribute to professional practice of psychology as defined in Education Law §7601-a.

(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 (j) 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 psychology 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 or lecture, offered by a provider of continuing education to psychologists, approved pursuant to subdivision (j) 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 or lecture, acceptable to the department, at a higher education institution or psychotherapy institute, as defined in paragraph (a)(2) or (3) of this section, that is a provider of continuing education to psychologists and approved pursuant to subdivision (j) of this section, relating to the practice of psychology, 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 or lecture at a professional conference sponsored by an organization that is a provider of continuing education to psychologists and that is approved pursuant to subdivision (j) 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 programs 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;

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

(7) independent study as defined in paragraph (a)(4) of this section. A licensee who completes independent study to meet the mandatory continuing education requirement shall prepare a narrative account of what was learned and an overall written evaluation of the learning activity. Such licensee shall maintain a copy of the narrative account and written evaluation for six years after completion of this learning activity. Three clock hours of independent study shall equal one continuing competency hour. No more than one-third of the mandatory continuing education requirement may be completed through independent study; or

(8) mentoring or receiving mentoring as a mentee in accordance with the requirements of this clause.

(a) The mentoring shall be a one-to-one relationship between a mentor and a mentee. The mentorship shall provide a minimum of 15 clock hours of direct contact between the mentor and the mentee.

(b) The mentor shall be licensed and registered to practice in New York as a psychologist, pursuant to Article 153 of the Education Law and have at least five years of post-licensure experience in the subject of the mentoring. The mentee shall be licensed and registered as a psychologist pursuant to Article 153 of the Education Law.

(c) The mentor and the mentee shall develop written mentee goals that shall be met during the mentorship by the mentee.

(d) The mentor shall develop a written teaching plan that shall guide the mentorship and shall provide for the formal evaluation of the mentee in writing.

(e) The mentee shall prepare a narrative account of what was learned in the mentorship and an overall evaluation of the mentorship.

(f) A licensee who is either a mentor or mentee who completes a mentorship that meets the requirements of this clause shall receive one continuing education hours of credit for each 15 hours in a mentoring relationship, except that no more than one-half of the mandatory continuing education requirement may be completed through either mentoring or receiving mentoring as a mentee, and the mentor or mentee shall not receive credit for activity that is conducted as part of their professional employment.

(g) Each licensee who meets a portion of his or her continuing education requirement through participation in a mentorship either as a mentor or as a mentee shall maintain the following records for a period of six years from the date of the completion of this activity: name of the mentor and mentee, mentee goals, the teaching plan of the mentor, the evaluation of the mentee by the mentor, the narrative account of

the mentee of what was learned, and the evaluation of the mentorship by the mentee or mentor, as applicable.

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

(d) Renewal of registration. At each re-registration, psychologists 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 (c) 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 psychology 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, 2021.

shall be required to complete:

(i) at least one hour of acceptable continuing education for each month beginning with January 1, 2021 until the beginning of the new registration period, which shall be completed for a licensee who has not lawfully practiced psychology 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 psychologist 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 psychologist 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 psychology 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 psychologist 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 the practice of psychology after a lapse in practice in which the licensee was not registered to practice in New York State but did lawfully practice psychology 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 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 psychology services consistent with the licensee's practice as a psychologist.

(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 (c)(2)(ii)(b) of this section or as otherwise prescribed by the department.

(i) Provider approval.

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

(2) An entity eligible to apply for approval to be a provider of continuing education to psychologists 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 psychologist in New York or accredited by the American Psychological Association 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 psychologists;

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

(iii) a national psychology organization or other professional organization that promotes and protects the health, safety and welfare of the public and fosters good

practice in the psychology profession, including specialty boards, acceptable to the department;

(iv) a New York State psychology 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 psychology 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 psychology that promote and protect the health, safety and welfare of the public and fosters good practice in the psychology profession;

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

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

(3) Department review of providers.

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

(ii) An organization 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:

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

(b) is an organized entity, included in paragraph (2) of this subdivision, including but not limited to an institution that offers a graduate program that leads to licensure in psychology; or a national, State, or local psychology organization; a hospital, behavioral health program or program serving persons with developmental disabilities; or another entity that employs psychologists and that meets the requirements of this subdivision;

(c) provides course instructors who are qualified to teach the courses which will be offered, including but not limited to, faculty of a psychology program offered by a higher education institution; or instructors who are specially qualified authorities in activities that are directed at developing and enhancing a licensee's practice as a psychologist, as determined by the department with assistance from the State Board for Psychology, 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, a record of attendance of psychologists in the course if a course; a record of participation of psychologists 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 psychologists. The performance of activities that fall within the restricted scope of practice of the psychology must be done by individuals licensed and registered under article 153 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 \$50 shall be collected from licensees engaged in the practice of psychology in New York State, except for those exempt from the requirement pursuant to subparagraph (c)(2)(i) of this section. This fee shall be in addition to any applicable registration fees required by sections 6507-a and 7603 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 7603 of the Education Law. In addition, such licensees shall pay the \$50 mandatory continuing education fee.

(3) Organizations desiring to offer continuing education to psychologists 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 §72.6

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the September 30, 2020 State Register, the State Education Department received the following comments on the proposed regulation:

1. COMMENT: A psychologist association and the majority of commenters asked that the American Psychological Association (APA) be deemed an approved provider of psychology continuing education (CE) without application or fee. Commenters were also concerned that out-of-state licensees would have to travel to New York (NY) to access CE programs from SED approved providers.

DEPARTMENT RESPONSE: Education Law §7607(3)(b) requires all prospective CE providers to submit an application and pay a fee to the Department, pursuant to the Commissioner's Regulations. This statutory requirement cannot be waived and is consistent with the statutory provisions for prospective social work and mental health CE providers. Therefore, no change to the proposed rule is necessary.

Providers in other professions, including social work and mental health, are located across the U.S. and offer courses in-person, live on-line and self-study format. This provides licensees with access to qualified providers, accountable to the Department. Therefore, no change to the proposed rule is necessary.

2. COMMENT: A psychologist association and several individuals recommended that "diversity" be added to the acceptable subject provisions in §72.6(c)(2)(i)(a).

DEPARTMENT RESPONSE: The list of acceptable subjects is a non-exhaustive list, which means that an approved CE provider could offer a course on diversity, as

long as it is related to the practice of psychology. Therefore, no change to the proposed rule is necessary.

3. COMMENT: A psychologist association and several individuals commented that the proposed credits for activities specified in §72.6(c)(2)(ii)(b) should be reconsidered and include clinical supervision. One commenter asked that teaching at the collegiate level be included.

DEPARTMENT RESPONSE: Education Law §7607(3)(b) requires that each licensee complete an “acceptable formal education” which contributes to professional practice. Clinical supervision is part of professional practice by a licensed psychologist and, therefore, not appropriate for CE credit hours. The regulation allows CE credit for teaching courses for the first-time in a college that is an approved psychology CE provider. However, a licensee who teaches the same class every year may not count such activities as CE. The CE credit hours in the proposed rule are consistent with provisions in other health care professions, e.g., social work, mental health practitioners, occupational therapy and speech-language pathology and audiology. Therefore, no change to the proposed rule is necessary.

4. COMMENT: A commenter asked if, as a CE provider approved by APA, he would be considered a Department approved provider.

DEPARTMENT RESPONSE: Education Law §7607(3)(b)(ii) requires each prospective CE provider to submit an application and fee to the Department. An individual or organization approved by the Department may not approve other individuals or organizations; they may, however, contract with qualified persons or entities to provide CE for the approved provider, which is responsible for the content,

curriculum, certificates and record-keeping. Therefore, no change to the proposed rule is necessary.

5. COMMENT: Two psychologist associations and the majority of commenters requested that the Department delay the January 1, 2021 implementation of the law, to allow more time for licensees to complete required CE and the Department to review and approve providers. Some commenters cited the COVID-19 pandemic as a reason to delay implementation, to minimize disruption to practice. Furthermore, commenter(s) requested that the Department accept CE from out-of-state providers taken prior to January 1, 2021 or non-approved providers after that date.

DEPARTMENT RESPONSE: Education Law §7607(2) establishes the January 1, 2021 effective date of the CE requirement. Since this effective date is prescribed in statute, the Department cannot postpone its implementation. This same section prorates the requirement for those licensees with a registration period starting after the effective date. Additionally, a licensee who does not meet the CE requirement may apply for a one-year conditional registration to meet the required hours, as set forth in Education Law §7607(3)(a).

Education Law §7607(2) prohibits the transfer of CE hours taken during one triennium to the subsequent triennium. Therefore, hours completed prior to the effective date of the law are not acceptable toward the requirement.

Due to COVID-19, the Department has provided an adjustment to licensees in all profession with mandatory CE, allowing licensees to complete 100 percent self-study from approved providers prior to May 1, 2021. This policy will apply to psychologists and the date may be extended, depending on the pandemic and providers' ability to offer in-person CE activities. Therefore, no change to the proposed rule is necessary.

6. COMMENT: A psychologist association and many commenters requested the elimination of the one-third cap on self-study CE from Department approved providers.

DEPARTMENT RESPONSE: The proposed rule is in accordance with the authorizing statute and is consistent with the Department's CE regulations and policies in other professions, including social work and mental health practitioners. Live online CE (e.g., webinar or phone conference) that allows for real-time interaction between presenter(s) from a Department approved provider is not limited, as it is considered "live". Therefore, no change to the proposed rule is required.

7. COMMENT: A psychologist association requested clarification on the independent study and mentoring provisions in law and regulation and whether a Department approved provider can collaborate with other individuals and agencies.

DEPARTMENT RESPONSE: The proposed rule is consistent with Education Law §7607 and the Department has provided Frequently Asked Questions on our website ([www.op.nysed.gov/prof/psych/psychcehome.htm](http://www.op.nysed.gov/prof/psych/psychcehome.htm)); those may be updated in response to questions about the implementation of CE requirements, as needed. There is no need to amend the proposed rule regarding acceptable activities as defined in §72.6(c)(2)(ii)(b). An approved provider may offer learning opportunities with other organizations but remains responsible for compliance with applicable laws and regulations, including maintenance of records and producing certificates of completion to attendees. Similarly, an employer may apply to become an approved provider and offer CE to employees and others.

8. COMMENT: A psychologist association suggested there will be an insufficient number of Department approved CE providers to offer CE to NY licensees and urged

acceptance of other providers or courses taken in 2020 from non-approved providers, particularly due to the 90-day processing time for review of prospective providers.

DEPARTMENT RESPONSE: Education Law §7607(3)(b) requires licensees to take courses from Department approved providers. Several hundred organizations have been approved to offer CE in NY for social work and mental health practitioners, and many are seeking approval to offer CE to psychologists. These applications and others are currently under review and, when approved, providers will be listed on the Department site. Applications will be accepted and reviewed on an on-going basis. Therefore, no change to the proposed rule is necessary.

9. COMMENT: A psychologist association and some commenters suggested that the CE requirements for those returning to practice after January 1, 2021 be simplified and capped at 36 hours.

DEPARTMENT RESPONSE: Education Law §7607(1) requires a licensee to complete required CE on or after January 1, 2021. Therefore, an individual returning to practice in NY after that date will need CE for the period starting with that date to the start of the new registration period. This is consistent with the law and procedures for social workers and mental health practitioners, which are not capped, to ensure licensees are competent to practice in NY. Therefore, no change to the proposed rule is necessary.

10. COMMENT: A psychologist association and others requested clarification as to whether a licensee must complete at least 3 hours of CE in ethics in a period less than 36 months, pursuant to Education Law §7607(2).

DEPARTMENT RESPONSE: The Education Law requires such course work in any triennial period. Since the pro-rated periods, as well as conditional registrations, are

less than 36 months, a licensee would not be required to complete 3 hours during that registration period.

11. COMMENT: One commenter requested that the 36 hours of required CE be prorated for part-time practitioners or reduced for older licensees.

DEPARTMENT RESPONSE: The law requires each licensee to complete the same requirement, whether they practice full or part-time and regardless of their years of experience. This protects the consumer by requiring each licensee to maintain competence with evolving practice. Therefore, no change to the proposed rule is necessary.

12. COMMENT: One commenter asked for clarification of the term “first-time” as used in section 72.6(c)(2)(i) and whether it is the first-author named in a publication, book or presentation.

DEPARTMENT RESPONSE: CE is intended to provide a licensee with new learning activities. Therefore, a licensee may only receive credit for the first-time an article or book is published, or a presentation delivered, after January 1, 2021. If the article, book or presentation is substantially revised in the future, it could be acceptable to meet the CE requirement during that period.

13. COMMENT: Several commenters expressed concern about the cost of CE compliance, and one suggested delayed implementation until free CE is available for licensed psychologists.

DEPARTMENT RESPONSE: An approved provider sets the fees for CE and may offer special rates to members, alumni, and others. Additionally, a licensee may meet CE requirements through acceptable activities, as defined in Education Law §72.6(c)(2)(ii). Education Law §7607(1)(b) allows the Department to grant an

adjustment—not an extension or waiver—to the CE requirement to a licensee who cannot meet the requirement due to good cause, as determined by the Department, which does not include the cost of compliance. Therefore, no change to the proposed rule is necessary.

14. COMMENT: A commenter expressed concern that self-study from approved providers is limited and concern with the hours for independent study since pursuant to the proposed rule a licensee is eligible for one-hour of CE credit for every three hours of such study. The commenter requested more flexibility.

DEPARTMENT RESPONSE: Self-study courses, offered by Department approved providers, meet the same requirements for all learning activities, including acceptable subjects, qualified presenters and learning objectives, with the addition of post-test examinations to demonstrate competence. Independent study, as defined in §72.6 (b)(7), is not subject to those same requirements that ensure consistency and appropriateness. The Department will only review such learning as part of a random audit, rather than prior review of such learning activities. Additionally, the credit hours for independent study are consistent with other provisions in other health care professions, e.g., occupational therapy and speech-language pathology and audiology. Therefore, no change to the proposed rule is necessary.

15. COMMENT: A psychologist association suggested that psychologists should receive CE credit for engaging in *pro bono* activities, such as “evaluations for indigent populations, asylum evaluations, *pro bono* supervisions and treatment in relation to those activities.”

DEPARTMENT RESPONSE: *Pro bono publico* is a Latin phrase, translated as “for the public good” which describes activities performed without payment or

recompense. Awarding CE credit for such activities would be inconsistent with the Education Law; therefore, no change in the proposed rule is appropriate.

16. COMMENT: A licensee commented that courses taken from APA prior to implementation of the law must be acceptable and, if not, the commenter expects a refund from the Department for all fees paid.

DEPARTMENT RESPONSE: Education Law states courses must be taken from Department approved providers and Education Law §7607(2) states that credits taken in one triennial registration period may not be transferred to a subsequent period. Courses taken prior to January 1, 2021 are not acceptable for satisfying licensees' CE requirements and the Department is not subject to reimbursing the commenter.

17. COMMENT: One commenter "heard" that organizations in other professions, e.g., nursing and medicine, courses are not acceptable for NY licensees and urged acceptance of such courses.

DEPARTMENT RESPONSE: All providers must be Department approved to offer CE to psychologists in NY. There are no CE requirements for nurses or physicians under NY Education Law. Professional organizations in other professions may apply to become approved providers for psychologists.

18. COMMENT: One commenter suggested out-of-state licensees will have to travel to NY to complete CE, creating a burden, asserting that a majority of approved providers will be located in NY.

DEPARTMENT RESPONSE: Approved providers may be located in any jurisdiction and offer courses in-person, online, or through self-study in NY or any other location. Therefore, no change is needed.

19. COMMENT: One commenter asked for the “for practice in New York” to be eliminated from Education Law §7607(2) regarding course work in ethics and that a link to books on NY law and ethics in the practice of psychology be provided by the Department.

DEPARTMENT RESPONSE: Statutes can only be amended by the Legislature, not by regulation or policy. The Department cannot endorse books or publications, therefore, links to specific publications is not allowed. However, the Education Law, Commissioner’s Regulations and Regents Rules that define the license, practice and discipline of more than 50 professions, including psychology, have been online at [www.op.nysed.gov/title8/](http://www.op.nysed.gov/title8/) since the 1990s to assist licensees in knowing and following the law.

20. COMMENT: One commenter finds the requirement for providers to retain the subject of a course unnecessary and should be eliminated from the information that must be retained by the Department approved provider.

DEPARTMENT RESPONSE: The language is consistent with regulations applicable to CE providers in other professions and, along with other data, must be submitted by providers when requested by the Department, as specified in Commissioner’s Regulations §72.6(i)(3).

21. COMMENT: A commenter asked whether the provision in §72.6(i)(3)(vi) prohibits a person, who is not a NY licensed psychologist, from participating in re-enactments or demonstrations by approved providers?

DEPARTMENT RESPONSE: The proposed rule does not prohibit demonstrations of techniques. However, similar to other professions, it does prohibit an

unlicensed person from practicing psychology on a patient as part of the CE activity.

Education Law §6512 defines the unlicensed practice of a profession in NY as a felony.

22. COMMENT: One commenter asked if Independent Study must receive prior approval by the Department.

DEPARTMENT RESPONSE: Independent Study, as defined in the proposed rule, is not something that is offered by an approved CE provider. It is the responsibility of the licensee to document the learning for their records, subject to audit by the Department.

23. COMMENT: A psychologist association and several individuals expressed concern that the \$900 application fee for prospective CE providers proposed in §72.6(j)(3) may result in a shortage of qualified entities and individuals seeking to offer CE.

DEPARTMENT RESPONSE: The proposed \$900 fee is the same amount charged to prospective CE providers in 26 of the 31 other professions with mandatory CE and is only required to be paid every three years. Education Law §7607(3)(b) requires prospective CE providers to submit an application and pay a fee to the Department, pursuant to the Commissioner's Regulations. Department approved CE providers may charge licensees fees to attend their CE offering, which should more than offset their \$900 triennial fee. The proposed fee is consistent with Department policy and the statute. Therefore, no change to the proposed rule is necessary.

24. COMMENT: An individual expressed concern that disabilities will affect the ability of some licensees to complete the required CE activities.

DEPARTMENT RESPONSE: Education Law §7607(1)(b) allows the Department, in its discretion, to adjust the requirement due to specified situations, including reasons

of health. However, an adjustment, such as 100 percent self-study, should not be confused with a waiver of CE requirements or additional time to meet the requirements; the latter of which is available through a conditional registration, authorized by Education Law §7607(2). Therefore, no change to the proposed rule is necessary.