



TO: The 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: September 3, 2020

AUTHORIZATION(S): *Billy...*

SUMMARY

Issue for Discussion

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 will be presented to the Professional Practice Committee for discussion at the September 2020 meeting of the Board of Regents. A copy of the proposed rule is attached (Attachment A).

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on September 30, 2020. 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 certificate 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 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 and registered 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.

Timetable for Implementation

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption at the December 2020 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the December meeting the proposed rule will become effective 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. The Regulations of the Commissioner of Education is amended by adding a new section 72.6 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.

(j) 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.