



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY,
NY 12234

TO: The Professional Practice Committee

FROM: Douglas E. Lentivech

SUBJECT: Proposed Amendment to section 59.14 of the Regulations of the Commissioner of Education, Relating to Waivers from Corporate Practice Restrictions for Certain Not-for-Profit and Educational Corporations to Provide Services under Articles 154 or 163 of the Education Law or Psychotherapy Services as Defined in Section 8401(2) of the Education Law and Services Authorized and Provided under Articles 131, 139 or 153 of the Education Law

DATE: September 2, 2011

AUTHORIZATION(S):

Summary

Issue for Decision

Should the Regents amend paragraphs (1) and (2) of subdivision (c) of section 59.14 of the Regulations of the Commissioner of Education, relating to waivers from corporate practice restrictions for certain entities to provide services under Articles 154 or 163 of the Education Law or psychotherapy services as defined in section 8401(2) of the Education Law and services authorized and provided under Articles 131, 139 or 153 of the Education Law?

Reason(s) for Consideration

Required by State statute.

Proposed Handling

The proposed amendment is before the Professional Practice Committee for approval and will be presented to the Full Board for adoption as an emergency measure

at its September 2011 meeting. A statement of facts and circumstances justifying the emergency action is attached.

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on September 14, 2011. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

Background Information

Chapters 130 and 132 of the Laws of 2010 amended the Education Law to address critical issues relating to the authority of certain entities to employ licensed master social workers (LMSW), licensed clinical social workers (LCSW), licensed mental health counselors (LMHC), licensed marriage and family therapists (LMFT), licensed creative arts therapists (LCAT), licensed psychoanalysts (LP), and licensed psychologists, and to provide services within the scopes of practice of those professions. The Board of Regents had advocated for these amendments to allow qualified entities to overcome existing corporate practice prohibitions that prevented them from providing such services, as they had for many years. Chapters 130 and 132 added Education Law section 6503-a to authorize the Department to issue waivers to enable such entities to provide services to individuals, families, groups and communities by employing individuals licensed or otherwise authorized to practice under Title VIII of the Education Law.

Under the 2010 legislation, applicants were required to submit waiver applications no later than 120 days after they were posted on the Department's website. The applications were posted on February 16, 2011 and an entity that submitted the application by June 16, 2011 could continue to provide services while the application was evaluated by the State Board. Chapter 187 of the Laws of 2011, which was signed on July 21, 2011 to become effective immediately, amended section 6503-a of the Education Law to extend, until February 1, 2012, the date by which such applications must be submitted. As before, an entity may continue to provide services until the application is approved or denied by the Department. If the application is denied by the Department, the entity must cease providing professional services. This amendment will allow additional time for entities that were not initially aware of the waiver requirement to submit the waiver application.

The proposed amendment is being presented for adoption as an emergency measure to conform the Commissioner's regulations to the statutory change in the deadline for the submission of waiver applications. This will enable the Department to update the applications and continue efforts to notify entities that may qualify for a waiver.

Recommendation

VOTED: That paragraphs (1) and (2) of subdivision (c) of section 59.14 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 20, 2011, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the public health and general welfare to immediately conform the regulation to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011, and thereby ensure that there is adequate time for eligible entities providing social work, psychological, and mental health practitioner services to apply for a waiver from corporate practice prohibitions and for the application to be processed by the Office of Professions, consistent with statutory requirements.

Timetable for Implementation

If adopted as an emergency measure at the September 2011 Regents meeting, the proposed amendment will become effective September 20, 2011. The regulations will be published for a 45-day period of public comment, and it is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the November 2011 Regents meeting.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ADOPTION

The proposed amendment of section 59.14 of the Commissioner's regulations is necessary to conform the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011. Chapter 187 was signed on July 21, 2011 to provide additional time for certain not-for-profit corporations and education corporations to apply to the Department for a waiver from restrictions on corporate practice for professional services provided under Articles 154 and 163 of the Education Law and psychotherapy services under section 8401(2) of the Education Law and authorized and provided under Articles 131, 139 or 153 of the Education Law.

Consistent with the statute, the proposed amendment extends to February 1, 2012 the the date by which an entity must apply for a waiver. In order for the Department to comply with the new deadline and develop, publish and review the applications required under the new law in a timely manner, the regulations must be adopted on an emergency basis.

An emergency action is necessary for the preservation of the public health and general welfare to immediately conform section 59.14 of the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011, and thereby ensure that there is adequate time for eligible entities providing social work, psychological, and mental health practitioner services to apply for a waiver from corporate practice prohibitions and for the application to be processed by the Office of Professions, consistent with statutory requirements.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the November 2011 Regents meeting, after publication in the State Register and expiration of the 45-day public comment period on proposed rule makings required by the State Administrative Procedure Act.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6501, 6503, 6503-a, 6504, 6506, 6507, 6508, 6509, 6510, and 6511 of the Education Law and Chapter 187 of the Laws of 2011.

Paragraphs (1) and (2) of subdivision (c) of section 59.14 of the Regulations of the Commissioner of Education are amended, effective September 20, 2011, as follows:

(1) To provide the services described in subdivision (a) of this section, an eligible entity shall have [obtained a waiver from] applied to the department for a waiver no later than [July] February 1, 2012. The department may[, however,] issue a waiver to a qualified entity after July 1, 2012, regardless of the date on which the entity was created, upon a demonstration of need for the entity's services satisfactory to the department (e.g., the entity provides services to an underserved population or in a shortage area).

(2) [Within 120 days after the posting of the application form on the department's website,] No later than February 1, 2012, any entity described in subdivision (b) of this section providing services described in subdivision (a) of this section on or after June 18, 2010, shall submit an application for a waiver on forms prescribed by the commissioner. Upon submission of an application for a waiver under this section, the entity may continue to operate and provide services until the department either denies or approves the entity's application.