





TO: Professional Practice Committee

FROM: David H. Hamilton 

SUBJECT: Proposed Amendment of Sections 74.1, 74.6, 79-9.3, 79-10.3, 79-11.3 and 79-12.3 and Repeal of Section 74.5 of the Regulations of the Commissioner of Education Relating to Social Work and Mental Health Practitioner Supervision Requirements, Acceptable Accrediting Bodies for Social Work Education Programs, and the Social Work Psychotherapy Privilege

DATE: April 25, 2024

AUTHORIZATION(S): 

SUMMARY

Issue for Discussion

Should the Board of Regents amend sections 74.1, 74.6, 79-9.3, 79-10.3, 79-11.3 and 79-12.3 and repeal section 74.5 of the Regulations of the Commissioner of Education relating to social work and mental health practitioner supervision requirements, acceptable accrediting bodies for social work education programs, and the social work psychotherapy privilege?

Reason for Consideration

Review of policy and required by State statute (Chapter 818 of the Laws of 2022).

Proposed Handling

The proposed amendment will be presented to the Professional Practice Committee for discussion at the May 2024 meeting of the Board of Regents. A copy of the proposed rule (Attachment A) is attached.

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on May 22, 2024, for a 60-day public comment period required under the State Administrative Procedure Act (SAPA). Supporting materials for the proposed rule are available upon request from the Secretary to the Board of Regents.

Background Information

Supervision Requirements:

Applicants for licensure as a Licensed Clinical Social Worker (LCSW), mental health counselor, marriage and family therapist, creative arts therapist, or psychoanalyst must complete supervised experience under a qualified supervisor in an authorized setting. While this supervision must occur in-person, the Department temporarily authorized remote supervision during the state of emergency declared during the COVID-19 pandemic.

There is increased demand for mental health services provided by licensed professionals, including social workers and mental health practitioners. These services may be provided in-person or using technology. However, other than the COVID-19 exception mentioned above, qualified supervisors of applicants completing experience for licensure are required to conduct supervision in-person.

Therefore, the Department proposes to amend the supervision requirements for social workers and mental health practitioners in sections 74.6, 79-9.3, 79-10.3, 79-11.3, and 79-12.3 of the Commissioner's regulations to allow the use of secure technology for these five mental health professions.

This amendment is consistent with regulations for the supervision of psychologists and mental health practitioners earning the diagnostic privilege, adopted by the Board of Regents in March 2022 and June 2022 respectively, that allow an applicant in those professions to receive face-to-face supervision through secure, real-time technology acceptable to the Department, such as videoconferencing.

Acceptable Accrediting Agencies:

Commissioner's regulations §74.1(a) and (b) require an applicant for licensure as a LMSW or LCSW to complete a master's degree of at least 60 semester hours with specified content or, in the determination of the Department, an equivalent program. Subdivision (a) allows the Department to accept coursework from a program accredited by an acceptable accrediting agency. The regulation names the Council on Social Work Education (CSWE). However, the standards of private organizations such as CSWE may change and become inconsistent with New York standards. Additionally, regulations concerning the Professions do not typically name specific organizations. Therefore, the Department proposes to amend this provision to remove the reference to CSWE.

Psychotherapy Privilege:

Effective January 1, 2023, Chapter 818 of the Laws of 2022 eliminated the psychotherapy privilege established under the Insurance Law for certain LCSWs. Therefore, the Department proposes to repeal section 74.5 of the Commissioner's regulations, which established the requirements met by LCSWs seeking this privilege.

Related Regents Items

April 2020: [Proposed Amendments to Sections 52.3, 52.21, 57-4.5, 70.4, 74.6, 75.2, 75.5, 76.2, 79-9.3, 79-10.3, 79-11.3, 79-12.3, 80-1.13, 80-1.5, 80-3.15, 80-4.3, 83.5, 87.2, 87.5, 100.2, 100.4, 100.5, 100.6, 100.10, 100.21, 119.1, 119.5, 125.1, 151-1.4, 154-2.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and addition of Section 279.5 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/sites/regents/files/420bra6.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/420bra6.pdf>)

March 2022: [Proposed Amendment of Sections 52.10, 72.1, 72.2, 72.3, 72.4 and 72.5 and Addition of Section 72.8 to the Regulations of the Commissioner of Education Relating to the Licensure of Psychologists](https://www.regents.nysed.gov/sites/regents/files/322ppca1.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/322ppca1.pdf>)

July 2022: [Proposed Repeal of Sections 79-9.6, 79-10.6, 79-12.6, Addition of New Sections of 79-9.6, 79-10.6, 79-12.6 and Amendment of Sections of 79-9.4, 79-10.4, 79-12.4 of the Regulations of the Commissioner of Education Relating to Mental Health Practitioners' Diagnosis Privilege](https://www.regents.nysed.gov/sites/regents/files/722ppca1.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/722ppca1.pdf>)

Recommendation

Not applicable.

Timetable for Implementation

It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at the September 2024 Regents meeting, after publication in the State Register and the expiration of the 60-day public comment period required under the State Administrative Procedures Act. If adopted at the September 2024 meeting, the proposed rule will become effective as a permanent rule on September 25, 2024.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 7701, 7704, 8402, 8403, 8404 and 8405 of the Education Law and Chapter 818 of the Laws of 2022.

1. Subparagraph (v) of paragraph (1) of subdivision (c) of section 74.6 of the Regulations of the Commissioner of Education is amended to read as follows:

(v) the supervisor provides at least one hundred hours of [in-person] face-to-face individual or group clinical supervision, distributed appropriately over the period of the supervised experience. [The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of this subparagraph that cannot be successfully completed due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.] Face-to-face supervision may utilize technology acceptable to the Department, including secure video conferencing to protect confidentiality.

2. Subparagraph (v) of paragraph (1) of subdivision (d) of section 74.6 of the Regulations of the Commissioner of Education is amended to read as follows:

(v) the supervisor provides at least two hours per month of [in-person] face-to-face individual or group clinical supervision. [The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of this subparagraph that cannot be successfully completed due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.] Face-to-face supervision may utilize technology acceptable to the Department, including secure video conferencing to protect confidentiality.

3. Paragraphs (1) and (3) of subdivision (c) of section 79-9.3 of the Regulations of the Commissioner of Education are amended to read as follows to reads as follows:

(1) An applicant shall obtain experience under this section while under the general supervision of a qualified supervisor. General supervision shall mean that a qualified supervisor shall be available for consultation, assessment and evaluation when professional services are being rendered by an applicant and the supervisor shall exercise the degree of supervision appropriate to the circumstances. The supervisor shall provide an average of one hour per week or two hours every other week of [in-person] face-to-face individual or group supervision wherein the supervisor of such experience shall:

(i) ...

(ii) ...

(3) [The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of paragraph (1) of this subdivision that cannot be successfully completed due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.] Face-to face supervision may utilize technology acceptable to the Department, including secure video conferencing to protect confidentiality.

4. Paragraphs (1) and (3) of subdivision (d) of section 79-10.3 of the Regulations of the Commissioner of Education are amended to read as follow:

(1) An applicant shall obtain experience under this section while under the general supervision of a qualified supervisor. General supervision shall mean that a qualified supervisor shall be available for consultation, assessment and evaluation when professional services are being rendered by an applicant and the supervisor shall exercise the degree of supervision appropriate to the circumstances. The supervisor

shall provide an average of one hour per week or two hours every other week of [in-person] face-to-face individual or group supervision wherein the supervisor shall:

(i) ...

(ii) ...

(3) [The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of paragraph (1) of this subdivision that cannot be successfully completed due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.] Face-to-face supervision may utilize technology acceptable to the Department, including secure video conferencing to protect confidentiality.

5. Paragraphs (1) and (3) of subdivision (c) of section 79-11.3 of the Regulations of the Commissioner of Education are amended to read as follows:

(1) An applicant shall obtain experience under this section while under the general supervision of a qualified supervisor. General supervision shall mean that a qualified supervisor shall be available for consultation, assessment and evaluation when professional services are being rendered by an applicant and the supervisor shall exercise that degree of supervision appropriate to the circumstances. The supervisor shall provide at least one hour per week or four hours per month of [in-person] face-to-face individual or group supervision wherein the supervisor shall:

(i) ...

(ii) ...

(3) [The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of this paragraph (1) of this subdivision that cannot be successfully completed due to the State of Emergency declared by the Governor

pursuant to an Executive Order for the COVID-19 crisis.] Face-to-face supervision may utilize technology acceptable to the Department, including secure video conferencing to protect confidentiality.

6. Paragraphs (1) and (3) of subdivision (c) of section 79-12.3 of the Regulations of the Commissioner of Education are amended to read as follows:

(1) An applicant shall obtain experience under this section while under the general supervision of a qualified supervisor. General supervision shall mean that a qualified supervisor shall be available for consultation, assessment and evaluation when professional services are being rendered by an applicant and the supervisor shall exercise the degree of supervision appropriate to the circumstances. The supervisor shall provide an average of one hour per week or two hours every other week of [in-person] face-to-face individual or group supervision wherein the supervisor shall:

(i) ...

(ii) ...

(3) [The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of paragraph (1) of this subdivision that cannot be successfully completed due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.] Face-to-face supervision may utilize technology acceptable to the Department, including secure video conferencing to protect confidentiality.

7. Paragraph (a) of section 74.1 of the Commissioner's Regulations is amended to read as follows:

(a) As used in this section, acceptable accrediting agency shall mean 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 of

social work programs in a fair, consistent, and nondiscriminatory manner[, such as the Council on Social Work Education, its successors, or an equivalent agency].

8. Section 74.5 of the Commissioner's Regulations is REPEALED.