



Diagnostic Privilege²

By Heather Evans, Hinman Straub Advisors

HOUSEKEEPING

- Please remain on mute unless speaking.
- If for some reason I am not being heard or my connection is poor, please let me know by interrupting me - I may not see a comment in the chat.
- Please place questions in the chat box or the Q&A section.
- After the presentation, we will review the questions from the chat box first then allow people to use the "raise your hand" function and ask questions directly.
- We will share the slides following the presentation.

REVIEW

01

Overview

02

Transition

03

Standard
Pathway

04

Alternative
Pathway

05

Timeframe

06

Next Steps

07

Discussion



OVERVIEW

JUNE 24, 2022

Licensure exemption for exempt programs and services expires

Individuals employed before this date are personally exempt (regardless of licensure status)

Individuals employed after this date are subject to licensure laws

Licensed Mental Health Counselors, Licensed Marriage and Family Therapists and Licensed Psychoanalysts may diagnose and develop assessment-based treatment plans under supervision (expires June 24, 2025)

TEMPORARY EXEMPTION FOR CERTAIN LICENSED PRACTITIONERS

Effective June 24, 2022 - Sunsets June 24, 2025

Nothing contained in this article shall be construed to...

11. Prohibit or limit a mental health counselor, marriage and family therapist, or psychoanalyst licensed and registered pursuant to this article from engaging in diagnosis and the development of assessment-based treatment plans, as defined in section eighty-four hundred one of this article, in a **facility setting or other supervised settings* approved by the department under supervision in accordance with the commissioner's regulations.**

**NOTE: This captures more than previously exempt program and services.*

FACILITY SETTING OR SUPERVISED SETTING (emergency regulations: subdivision (d) of

section 79-9.3)

1. a professional corporation, registered limited liability partnership, or professional service limited liability company authorized to provide services that are within the scope of practice of mental health counseling;
2. a sole proprietorship **owned by a licensee** who provides services that are within the scope of his or her profession and services that are within the scope of practice of mental health counseling;
3. a professional partnership **owned by licensees** who provide services that are within the scope of practice of mental health counseling
4. a program or service operated, regulated, funded, or approved by the department of mental hygiene, the office of children and family services, the department of corrections and community supervision, the office of temporary and disability assistance, the state office for the aging and the department of health or a local governmental unit as that term is defined in section 41.03 of the Mental Hygiene Law or a social services district as defined in section 61 of the Social Services Law;
5. an entity holding a waiver issued by the Department pursuant to section 6503-a or 6503-b of the Education Law to provide services that are within the scope of practice of mental health counseling;
6. a program or facility authorized under federal law to provide services that are within the scope of practice of mental health counseling; or
7. an entity authorized under New York law or the laws of the jurisdiction in which the entity is located to provide services that are within the scope of practice of mental health counseling.
8. the setting in which the experience is gained shall be responsible for the services provided by individuals gaining experience for licensure. The setting shall also be responsible for providing adequate supervision to such individuals and for assigning a qualified supervisor, as defined in this section, to individuals gaining experience for licensure.
9. The setting shall **not be a private practice owned or operated by the applicant.**

PLLC: WHO MAY EMPLOY A LMHC?

Licensed Clinical Social Worker

Licensed Psychologist

Licensed Psychiatrist

Licensed Mental Health Counselor – However, only a LMHC w/privilege could supervise a LMHC, Limited Permit holder or student seeking the privilege.

Acceptable Supervisor *(emergency regulations)*

The supervision shall be provided by:

- a licensed clinical social worker licensed under Article 154 of the Education Law or the equivalent, as determined by the department; or
- a psychologist licensed under Article 153 of the Education Law who was educated and trained in psychotherapy through the completion of a program in psychology registered pursuant to Part 52 of this Title or a program in psychology accredited by the American Psychological Association; or
- a physician licensed under Article 131 of the Education Law who, at the time of the supervision of the applicant, was a diplomate in psychiatry of the American Board of Psychiatry and Neurology, Inc. or had the equivalent training and experience as determined by the department; or
- after June 24, 2022, a mental health counselor licensed and registered under Article 163 of the Education Law who holds the diagnostic privilege authorized under section 8401-a of the Education Law or the equivalent, as determined by the department.

Supervision (emergency regulations)

An applicant shall obtain experience under this section while under the **general supervision** of a qualified supervisor.

The supervisor shall provide an average of one hour per week or two hours every other week of **face-to-face** individual or group supervision wherein such supervisor shall:

- (i) review the applicant's diagnosis and treatment of each client under his or her general supervision; and
- (ii) provide oversight, guidance and direction to the applicant in developing skills in diagnosis, psychotherapy and assessment-based treatment planning.

"General supervision" means that a qualified supervisor shall be available for consultation, diagnosis and evaluation when professional services are being rendered by an applicant and the supervisor shall exercise the degree of supervision appropriate to the circumstances.

"Face-to-face supervision" means in-person supervision provided, however, that it may also be satisfied by utilizing technology acceptable to the department, including secure video-conferencing to protect confidentiality

JUNE 24, 2024

(two years later)

Applicants may begin to apply for the diagnostic privilege

Standard Pathway

or

Alternative Pathway

Alternative Pathway

Licensed prior to June 24,
2024



Apply for the Privilege
before June 24, 2027

- Be a licensed MHC, MFT or psychoanalyst prior to June 24, 2024;
- Education: 60 semester hour master's degree that **includes 12 semester hours of clinical instruction**;
- Obtain an **attestation by a supervisor** that they have at least 3 years of experience in direct client contact including diagnosis, psychotherapy, and assessment-based treatment planning in a **"facility setting or other supervised setting"**;
- File a form; pay a fee of \$175

Alternative Pathway QUESTIONS

- How is 12 semester hours of clinical instruction defined?
- Who is an appropriate supervisor for the attestation?
- Does the experience itself need to be supervised or is this an administrative supervisor?
- What if the supervisors is no longer “available” to provide the attestation?
- Does the direct client contact hours obtained in a “facility or other supervised setting” obtained as a student (intern) or limited permit holder count towards the 3 years?
- Do the hours/years all need to be obtained under one employer/supervisor?
- What constitutes direct client contact?
- Do I need to satisfy the education requirement before experience is acquired? [Answer: No.]

- File a form; pay a fee of \$175
- Education: 60 semester hour master's degree that includes **12 semester hours of clinical instruction;**
- Experience: 2,000 hours of supervised direct client contact which shall **include but not be limited** to diagnosis, psychotherapy and assessment-based treatment planning.

STANDARD PATHWAY

LMHCS requirement for licensure

- 60 semester hour master's degree - which may or may not have - 12 credit hours of clinical instruction as defined by regulations.
 - *[NOTE: individuals who were grandparented into licensure or who became licensed in the early years may not have the 60 semester hour master's degree.]*
- 3,000 hours of supervised experience, of which a minimum of 1,500 hours shall be direct client contact hours.
 - *[NOTE: Unless the experience was gained in an exempt setting, none of the experience shall include diagnosis or the development of assessment based-treatment planning.]*
- Pass an exam.

Standard Pathway QUESTIONS

- How is 12 semester hours of clinical instruction defined?
- What constitutes direct client contact?
- Do the hours obtained for the license count towards the privilege? How many?
- Do hours diagnosing in an exempt setting count towards the privilege?
- I work in a private practice; how do I obtain supervised experience?

*I want to
become a new
LMHC with
diagnostic
privilege...what
do I do?*

1. Enroll in a 60 semester hour master's degree approved by NYSED as meeting the requirements for **LICENSURE** and **PRIVILEGE**.
2. Upon graduation, apply for a **LIMITED PERMIT**, and complete 3,000 hours of supervised experience of which 2,000 are direct client contact hours including diagnosis and assessment-based treatment planning. (*appropriate supervisor/appropriate location*)
3. Pass an exam.
4. File an application; pay a fee.

*I am already a
LMHC and want
to get the
diagnostic
privilege; what
do I do*?*

Determine if your degree program is a 60 semester hour program with 12 credit hours of clinical instruction.

- *If your program does not meet this requirement, complete any deficiencies.*

Determine if you have 2,000 hours of supervised direct client contact which includes diagnosis and assessment-based treatment planning.

- *If you do not, you may begin to log hours by working in a “facility or other supervised setting” and diagnosing etc. under supervision starting on June 24, 2022 until June 24, 2025.*
- *If you do not, you may apply for a limited permit on June 24, 2024 and begin to log hours by working in a “facility or other supervised setting.”*

File an application; pay a fee.

I currently have a limited permit and want to get the diagnostic privilege; what do I do?*

Determine if your degree program is a 60 semester hour program with 12 credit hours of clinical instruction;

- *If your program does not meet this requirement, complete any deficiencies.*

If you are exempt – because you were employed by a previously exempt program or services – log 2,000 hours of supervised direct client contact which includes diagnosis and assessment-based treatment planning; Make sure your supervisor is an appropriate supervisor for diagnosing.

- OR -

If you are **not** exempt, you may apply for a limited permit towards the privilege starting on June 24, 2024 and begin to log hours by working in a “facility or other supervised setting with an appropriate supervisor. NOTE: You may not diagnose even if supervised until you obtain the limited permit.

Pass an exam; and

File an application; pay a fee.

I am currently a student and want to get the diagnostic privilege; what do I do?*

Determine if your degree program is a 60 semester hour program with 12 credit hours of clinical instruction;

- *If your program does not meet this requirement, complete any deficiencies.*

If you graduate before June 24, 2024, you will obtain a limited permit that only allows you to gain supervised experience for the license NOT the privilege (3,000 w/min of 1,500). You are not permitted to diagnose under this limited permit.

If you graduate after June 24, 2024, and your degree program met the requirements for the license and privilege, you may obtain a limited permit and gain supervised experience for the privilege (3,000 w/min of 2,000). The experience must include diagnosis and assessment-based treatment planning and be supervised appropriately.

Pass an exam; and

File an application; pay a fee.

I am currently licensed and exempt because I was employed by an exempt program or service before June 24, 2022...

I am a counselor educator and do not see patients/clients....

I am a counselor educator and do not see patients/clients but currently teach diagnosis.....

I am a counselor educator and currently supervise the internship program.....

I own a private practice...

What are my options?

No one is required to obtain the diagnostic privilege unless they want to independently diagnose and develop assessment-based treatment plans in any setting.

If you are exempt, you do not need the diagnostic authority as you are not restricted by licensure scope of practice laws. However, your employer may require you to have the privilege to continue diagnosing, etc. If you leave your employment and do not go to a similar program or service, you are no longer exempt and may not diagnose.

Teaching diagnosis is not the practice of diagnosis. Teaching is not restricted. You do not need the privilege to teach diagnosis. However, if you want to diagnose, you need the privilege and need to meet ALL the requirements of the privilege.

Only a person authorized to diagnose may supervise the act of diagnosis. If as supervisor, you are supervising the program, not the service, you do not need to have the privilege. If you are the supervisor for the service - meaning that you are responsible for the care of the patient/client - then you must have the privilege to supervise diagnosing. To obtain the privilege you must meet ALL the requirement of the privilege.

If you do not need to diagnose for your private practice, you do not need to obtain the privilege. If you want to diagnose, you must meet ALL the requirements for the privilege. However, you may not obtain supervised experience in your own private practice.

Limited Permit

The department may issue a limited permit to an applicant who meets all qualifications for licensure, except the examination and/or experience requirements, **or to an applicant who is gaining experience for the diagnostic privilege,** in accordance with regulations promulgated therefor.

Limited Permit (diagnostic privilege)

1. Meet all the requirements for the mental health counselor diagnostic privilege prescribed in section 8401-a of the Education Law, including, but not limited to, **licensure and registration** in New York State as a mental health counselor **except for the education and/or experience** requirements required for the diagnostic privilege; and
2. In specific employment setting (see slide)
3. Supervised (see slide)
 - a. No supervisor shall supervise more than 5 limited diagnostic permit holders.
 - b. Experience is under "general supervision".
 - c. The supervisor is responsible for "appropriate oversight of all services provided by a limited diagnostic permit holder.
4. The permit is valid for 24 months. The applicant may request two additional 12 month periods at the discretion of the Department.

JUNE 24, 2025

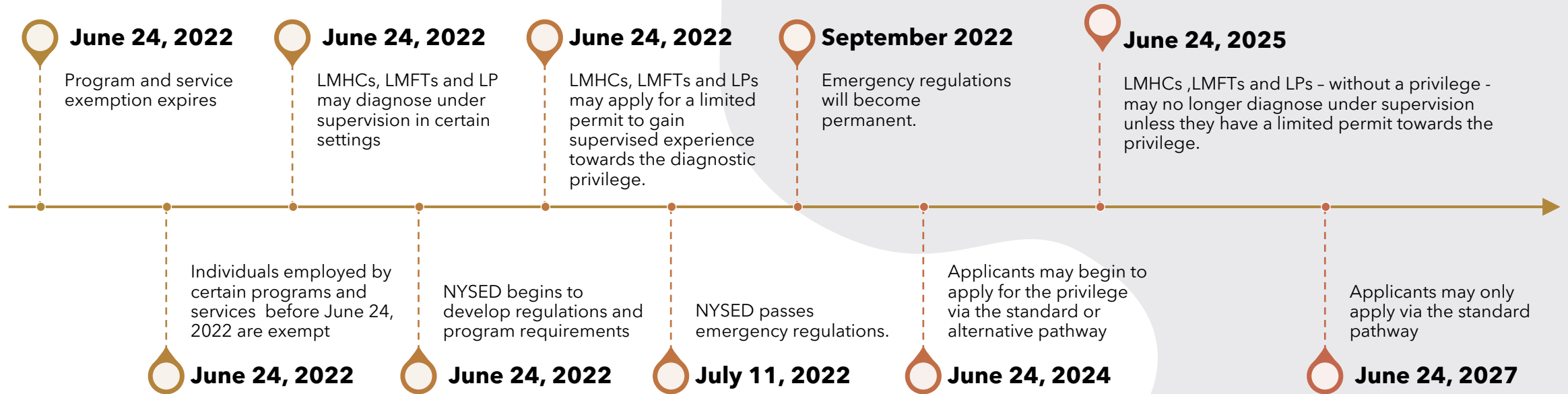
LMHCs, LMFTs and LPs who do not have the privilege may no longer diagnose or develop assessment-based treatment plans if supervised unless they are a student in a program approved as leading to the privilege or have a limited permit that allows them to gain experience towards the privilege.



JUNE 24, 2027

The Alternative Pathway expires. All applicants for the diagnostic privilege must meet the standard pathway to receive the privilege to diagnose and develop assessment-based treatment plans.

TIMELINE*amended



NEXT STEPS

MORE REGULATIONS ARE NEEDED.





DISCUSSION