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:

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 and organizations approved by APA should be accepted 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. Additional comments suggested that the $900 fee for providers seeking approval be waived or reduced and, furthermore, asked if individuals or organizations currently approved by APA would need to apply for approval in New York.

RESPONSE: Education Law § 7607(3)(b)(ii) requires prospective providers, including national organizations, to submit an application and fee to become an approved provider. The law does not allow an approved provider to approve other individuals or organizations, as that power is reserved to the Department. The $900 triennial fee is the same fee charged to providers in the majority of professions with mandatory CE.

COMMENT: The psychologist association and individuals asked that implementation of psychologist CE be delayed for at least 6 months to allow time for compliance, including the review and approval of providers, and in response to the COVID-19 pandemic.

RESPONSE: The January 1, 2021 effective date is established in law and cannot be changed by the Department. Education Law § 7607(3)(a) permits the Department to grant an adjustment for cause to licensees who cannot meet the requirements. Psychologists will benefit from the blanket COVID related CE adjustment given to licensed professionals that allow 100% of the required CE to be completed as self-study from approved providers.

COMMENT: The psychologist association suggested that “diversity” be added to the acceptable subject provisions in § 72.6(c)(2)(i)(a).
RESPONSE: The list of subjects is not exhaustive and, if related to the practice of psychology, diversity could be an acceptable subject under the proposed rule.

COMMENT: The psychologist association and some commenters asked that the CE credit awarded to activities specified in § 72.6(c)(2)(ii)(b) be increased and amended to include clinical supervision, pro bono activities and teaching collegiate courses.

RESPONSE: The activities specified in the rule and the assigned credit hours are consistent with CE regulations in other health professions. Professional practice, including supervision, teaching and pro bono service are not authorized CE activities in the enabling law. A licensee may earn credit for developing and delivering a course for the first time in a higher education institution approved to offer psychology CE.

COMMENT: Several commenters requested clarification about independent study, mentoring, and other activities that may be acceptable CE activities.

RESPONSE: It is not necessary or appropriate to specify such details in regulation. The Department has provided Frequently Asked Questions (FAQs) online to assist licensees and providers. These will be updated throughout implementation of the law.

COMMENT: Several commenters asked that courses taken from APA or other providers prior to the effective date of the CE requirement be acceptable to satisfy it.

RESPONSE: Education Law § 7607(2) prohibits the transfer of CE hours taken during one triennium to another. Therefore, hours completed prior to January 1, 2021 and from non-approved providers, are not acceptable.

COMMENT: Some commenters asked for elimination of the cap on self-study courses from approved providers. Additional comments asked for a cap of 36 hours for a licensee returning to practice in NY after January 1, 2021.
RESPONSE: The proposed rules are consistent with the law and regulations in other behavioral health professions with mandatory CE and do not require amendment. The Department may grant an adjustment in certain cases, as allowed under § 7607(1)(b).

COMMENT: Commenters asked if a licensee must complete 3 hours of course work on ethics and for practice in NY during a registration period less than 36 months. A commenter asked that the law be amended to delete “for practice in New York” from § 7607(2) and the Department provide links to books on laws and ethics.

RESPONSE: § 7607(2) requires coursework in each triennial period, therefore, it does not apply to periods less than 3 years. The Department cannot endorse publications but applicable sections of Education Law, Commissioners Regulations and Regents Rules are available at www.op.nysed.gov/title8/. The law can only be amended by legislative action, not by regulations or policy.

COMMENT: One commenter suggested changes in the information retained by providers under § 72.6(i)(3).

RESPONSE: The required information is consistent with regulations in other professions with mandatory CE and allows the Department to audit an approved provider to verify compliance.

COMMENT: One commenter asked if the provision in § 72.6(i)(3)(vi) would prohibit demonstrations or re-enactments during a CE course.

RESPONSE: The provision, which is consistent with other professions with mandatory CE, does not prohibit demonstrations or re-enactments. It does prevent the practice of the profession by a person who is not licensed or authorized in NY, which is defined as a felony in Education Law § 6512.

COMMENT: One commenter expressed concern that individuals with disabilities will have difficulty accessing CE activities.

RESPONSE: Education Law § 7607(1)(b) allows the Department to grant an adjustment to a licensee with a documented health condition. An
adjustment is not a waiver of CE requirements based on the licensee’s age, years of experience or the cost of CE compliance. A licensee who needs additional time to complete CE may apply for a 12-month conditional registration, under Education Law § 7607(2).

COMMENT: A commenter asked if Independent Study, as defined in § 72.6(a)(4) requires prior approval by the Department.

RESPONSE: There is no such requirement; the licensee is responsible for documenting the learning for their records, subject to audit by the Department.

COMMENT: A licensee, who completed CE from a non-approved provider prior to the effective date, stated that he/she will request reimbursement for such courses if they are not accepted.

RESPONSE: The law takes effect on January 1, 2021 and, starting on that date, each psychologist must complete acceptable CE from Department-approved providers or other allowed activities to meet the requirement. Neither CE activities completed prior to the effective date nor courses taken from non-approved providers on or after that date, will be acceptable to meet the CE requirements for triennial registration.

COMMENT: A group of commenters asked for the definition of “first-time” author or presenter, as used in § 72.6(c)(2)(i) and whether it referred to the lead author or presenter.

RESPONSE: A licensee may only receive credit for the first-time publication of an article or book or a presentation, as defined in the rule, on and 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 triennial registration period.

COMMENT: Several commenters expressed concerns about the cost of CE compliance and one suggested delaying implementation of the CE requirement until free CE is available.

RESPONSE: Department-approved providers set the CE fees for their offerings and may offer special rates, discounts or incentives.
Additionally, a licensee may earn CE credit through other educational activities, as defined in § 72.6(b).

COMMENT: One commenter “heard” that CE courses from organizations in other professions, e.g., nursing and medicine, are not acceptable and urged acceptance of such courses.

RESPONSE: All providers, including qualified individuals and organizations in other professions, must submit the application, pay the $900 provider fee and meet the requirements in Education Law § 7607(3)(b)(ii) and § 72.6(i) of the proposed rule.