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Via Electronic Mail

David Nocenti, Esq.
New York State Unified Court System
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Re **March 4, 2024: Request for Public Comment on proposed amendments to the Rules of the Supreme Court, Appellate Division, relating to mental health professionals panels**

Dear Mr. Nocenti:

The New York Civil Liberties Union ("NYCLU") respectfully offers the following comments and observations on the proposed amendments to the Rules of the Supreme Court, Appellate Division, relating to mental health professionals panels (the "Proposed Rules"), published on March 4, 2024 by the Office of Court Administration ("OCA") for public comment by June 3, 2024.[1]

OCA has indicated that it has promulgated the Proposed Rules in response to the conclusions and recommendations rendered in a December 2021 report by Governor Kathy Hochul's Blue-Ribbon Commission on Forensic Custody Evaluations (the "Blue Ribbon Commission").[2] Yet the Proposed Rules address only the Blue Ribbon Commission's recommendation that there be statewide uniformity of practice and standards in the Supreme Courts and Family Courts operating across the four Appellate Divisions with respect to mental health professionals panels. While we appreciate the need for uniformity of practice and standards in our state court system, we are concerned that, if promulgated, the Proposed Rules will heighten, rather than reduce or eliminate, the "bias, inequity [and] discrimination and violations of due process" identified by the Blue Ribbon Commission as inherent to the practices relating to mental health evaluations conducted on behalf of Family Court judges.[3]

These comments address the most significantly flawed provisions of the Proposed Rules—those relating to "Access to Evaluation Reports" proposed as 22 NYCRR §§ 623.6, 680.6, 825.6 & 1024.6 ("Proposed Access Rule"). These mental health, or

forensic, evaluation reports often serve as the basis for critical decisions in a family court case, such as whether to release a child to their parent or to keep a child in foster care, whether a parent neglected her child, and even whether to permanently and legally separate a parent from their child. These comments also address underlying issues of bias in mental health evaluations in Family Court that are important for OCA to consider in the adoption of any rules regarding mental health evaluations, as well as the need for training that is in line with best practices and data collection.

The Proposed Access Rule Infringes Upon the Due Process Rights of Parents and Children in Family Court.

We first address the significant due process concerns raised in the Proposed Access Rule and then provide suggested revisions to the Proposed Access Rule. There is no question that due process is required in Family Court proceedings, including in the context of mental health evaluations.[4] Every parent and child has a fundamental right, under both the Federal and New York State Constitutions, to all appropriate due process protections and evidentiary safeguards in all aspects of family court, including concerning mental health evaluations.[5] Such strong due process rights are appropriate where the fundamental liberty interests in family integrity and the care and custody of one's children are at stake—especially in Article 10 proceedings which prolong family separation, which could lead to the termination of parental rights, and which are brought disproportionately against families of color by government actors, including by the Administration for Children's Services in New York City and Child Protective Services statewide.[6]

The Proposed Access Rule contemplates that at least some degree of access to mental health evaluation reports will be the norm, including that the "court shall provide a copy of the evaluation report to each counsel and attorney(s) for the child(ren)."[7] But, the Proposed Access Rule is too limited and thus undermines parents' and children's due process rights.

First, the "recipient" of the evaluation report, including "any party or counsel," must affirm and swear under "penalty of perjury" that they will not "share the report or its contents with any third party, that the report will not be copied or photographed, and that the contents of the report will not be quoted in litigation documents."[8] This prohibits counsel representing clients and self-represented litigants from sharing the contents of the report with their own mental health experts and from contesting or in any way relying on the contents of the mental health evaluation in Family Court proceedings. It would further prohibit briefing or motion practice where the specific focus of the report—the fitness of a parent, for example, based on the status of their mental health—could be the very basis on which a parent's rights are being challenged.

Second, the Proposed Rule conditions how mental health evaluation reports are accessed based on whether or not parties are represented by counsel. In the case of a party who is "self-represented," that person can only "review the evaluation report in the courthouse."[9] This aspect of the rule also gives the Court unbridled discretion to "set other such limitations as may be warranted" for "self-represented" parties who must

come to the Court to review the mental health evaluation, without specifying what those limitations are or could be.[10] Pro se litigants are already at a significant disadvantage as compared to represented litigants. It is extremely burdensome to require a self-represented person to physically come to the courthouse—likely during regular business hours such that the person would be required to take time off work or secure childcare—to review a mental health evaluation report. Likely that individual, if they are even aware that they have a right to review the report, will not see a copy of the mental health evaluation report that may potentially be used against them in their Family Court case.

Third, the Proposed Access Rule prohibits the "client" who is the subject of the report from having a copy. Even though the attorney can "show the report to the client," the client cannot retain a copy for their own records or review.[11] This means that a represented client can only review the report when present with their attorney.[12] This burdens the attorney-client relationship because it limits how much time the client will be allotted to review the report for accuracy. The subject of the report, who is best positioned to identify inaccurate information or deficiencies, should be afforded the opportunity to make a measured review and to take notes to be able to raise potential concerns about the report's content and conclusions to counsel. Lack of client access to the report also could impede the attorney's ability to advise the client about its contents or to effectively contest the report's findings. As promulgated, the Proposed Access Rule would force the attorney to engage in the time-consuming task of either verbally summarizing the report's contents for the client over the phone, setting up a virtual way of temporarily showing the report to the client, or asking the client to come to the attorney's office each time the report needs to be reviewed. This rule is likely to limit the attorney and client's ability to effectively confront the report's recommendation and conclusions, placing the client at an unfair disadvantage in Family Court proceedings.[13]

In addition to the limitations placed on attorneys and litigants, the Proposed Access Rule also continues to restrict or eliminate parents and their counsel from retaining professionals with the expertise to assist with analyzing the contents of the evaluation report.[14] These limitations on access raise serious due process concerns including the inability of parents, children, their counsel, and any potential experts, to adequately and effectively challenge the quality and trustworthiness of evaluation reports that play a critical and often decisive role in shaping a Family Court's decision about a parent's access to their children. New York courts have recognized that individuals in Family Court proceedings have critical due process rights to know and attempt to meet the evidence against them in proceedings that will determine an individual's constitutionally protected right to the care and custody of their child or children.[15] Without the ability to thoroughly examine the report and challenge its contents, the right of individuals in Family Court proceedings to a fair hearing is at best obstructed and at worst denied.

Fourth, the Proposed Access Rule also perpetuates a hearing regime where these evaluation reports will not be subjected to the evidentiary laws and procedures—including adversarial examination and preclusion when appropriate—that underpin the due process protections guaranteed by all other judicial tribunals in New York State.

Permitting robust access to review and challenge evaluation reports is the only way to ensure that the Court's decision ultimately is based upon evidence that is as complete and as reliable as possible. The Proposed Access Rule as written sets the Family Court on a backwards path away from recent progress towards ensuring that appropriate due process standards are afforded to all parties appearing in Family Court settings.[16]

The Proposed Rules Must Be Revised to Comport with Due Process.

We suggest that OCA look to the "court evaluator" role established in M.H.L. Article 81 as a model in considering the due process and evidentiary concerns set forth in these comments. Guardianship proceedings present "high stakes" decision-making by the Guardianship Court judge similar to that conducted by the Family Court judge. Both federal and New York State jurisprudence[17] recognize that an individual's interest in determining the course of their own life is as fundamental a right as a parent's interest in the custody of their children and integrity of their family unit.[18]

As OCA is aware, the Article 81 court evaluator plays a critical role in guardianship proceedings. The Court Evaluator serves as a neutral party and acts as the "eyes and ears" of the Court. Recognizing the nature of proceedings where a person is at risk of loss of fundamental rights, Article 81 affords constitutionally adequate due process protections to the subject of a guardianship proceeding and their counsel. In the Article 81 context, court evaluators must: assess the petition and other pleadings; meet with the parties; conduct a thorough investigation; render a report that is made available, without restriction, to both the Court and the subject of the proceedings and their counsel; render recommendations to the Court; and testify at and be subject to cross examination at a hearing.[19]

We recommend that the Proposed Access Rule be re-written to, at minimum, include the following due process protections:

- Afford the litigants, their counsel, if any, and the attorney for the child or children in all proceedings, the right to obtain a copy of the evaluation report, as well as the raw data, notes and test results, or any other material which creates the evaluator's entire file;
- Afford the litigants, their counsel, if any, and the attorney for the child or children in all proceedings the right to share the evaluation report, as well as the evaluator's entire file, with professionals retained to assist on the case, such as experts;
- Provide that the evaluation report must be subject to cross-examination and the rules of evidence in any hearings or proceedings where the evaluation report forms any basis for decision-making by the Court; and
- Reaffirm the Family Court's power under CPLR 3103 and the Family Court Act 1038(d) to enter into any necessary protective order limiting or conditioning use of or access to the mental health evaluation report or the evaluator's file, should specific circumstances in the case necessitate it.[20]

Family Court Mental Health Evaluations Perpetuate Bias and Inequity.

In addition to the due process concerns raised above regarding the Proposed Rules, we encourage OCA to carefully consider the bias and inequities that have long existed in the context of family court mental health evaluations in any rules it promulgates and to take steps to mitigate this bias.

Mental Health evaluations in Family Court are subject to both explicit and implicit bias. Those with lived experience with the Family Court system and those who have spent their careers working within it have observed how mental health evaluations are routinely used in child protective proceedings as a prosecutorial tool to justify family separation, rather than to identify positive supports.[21] The National Council on Disability has cautioned that mental health evaluations in Family Court proceedings are susceptible to various types of cultural biases and often fail to incorporate important contextual information, such as firsthand observations of parenting time.[22] So-called forensic evaluations in custody matters have been widely criticized as scientifically dubious, speculative, arbitrary, and susceptible to the whims of individual evaluators.[23]

The Proposed Rules do not offer anything meaningful to address these concerns. And parts of the Proposed Rules are rooted in and may exacerbate the kinds of disparities seen throughout the Family Court system.[24] The Proposed Rules must allow litigants and the public to lodge concerns about those on the mental health professionals panel—at any time, whether or not the concerns are raised in the context of an ongoing mental health evaluation conducted under a Family Court order[25] or during whatever periodic assessment may be conducted by the Mental Health Professionals Certification Oversight Committee.[26] The Proposed Rules must also significantly expand the enforcement powers of the Oversight Committee and make clear what types of actions might be cause for censure or removal of those on the mental health professionals panel.[27] The Proposed Rules would give the attorney for the child an opportunity to provide input on the necessity and scope of an evaluation,[28] but provide no such opportunity for the parent or their attorney, reinforcing the unfairness that parents often experience in Family Court proceedings and the sense that the primary purpose of such evaluations is to aid parental prosecution. The Proposed Rules must give the parent and/or their attorney the same opportunity to provide input on the necessity and scope of any evaluation.

It has also long been the case that people of color are underrepresented among mental health providers. And mental health training programs and funding sources that seek to reduce disparities by establishing more equitable representation and culturally informed training curricula are in short supply.[29] The Blue Ribbon Commission unanimously recommended that "mandatory and ongoing trainings for qualified mental health evaluators be established."[30] As recommended by the Commission, that training must cover topics that comply with best practices in forensic mental health evaluations and, further, that explicitly covers implicit and explicit bias in mental health evaluations.[31] The Proposed Rules do not address these critical recommendations.

We understand that the precise contours of training and licensure of the clinical staff appointed to serve on the panels of social workers, psychologists and psychiatrists will be set by the Mental Health Professionals Oversight Committee. At a bare minimum, however, the Proposed Rules must mandate that all appointees to both the Mental Health Professionals Oversight Committee[32] and to the Mental Health Professionals Panel must have demonstrated certification, training, knowledge of, and skills in, the culturally competent provision of trauma-informed mental health, alcohol use, and substance use services.[33] Moreover, any version of the Proposed Rules must require that the mandated training of all mental health evaluators comport with science-based best practices in forensic mental health evaluations and explicitly cover implicit and explicit bias in mental health evaluations.[34]

Finally, the Proposed Rules contemplate that the Mental Health Professionals Oversight Committee deliver an annual report to the Chief Administrator of the Courts.[35] The Proposed Rules also direct that the Oversight Committee's report evaluate the operation and training program concerning the Mental Health Professionals Panel and, further, make any recommendations concerning measures to improve the performance of the panel and the training program.[36] These provisions of the Proposed Rules are insufficient to assure rigorous reporting, data collection and analysis of the panel members' performance and efficacy of the training program. The Proposed Rules must contain some level of detail concerning reporting criteria and expectations both for the Oversight Committee's annual report and for the Oversight Committee's evaluation and recommendations process.

We also recommend that the Proposed Rules direct the Mental Health Professionals Oversight Committee to ensure ongoing and thorough data collection concerning the performance of the Mental Health Professionals Panel and implementation of the training program, including data concerning, for example, time frames attendant to the conduct of the mental health evaluations, demographic information relating to the families subjected to the mental health evaluation program, the numbers and disposition of evidentiary challenges to reports/recommendations rendered by the mental health professionals to the courts, and the numbers of families where children are removed, or parental rights terminated, based on the reports and recommendations of the mental health professionals conducting court ordered evaluations. Finally, we urge that these detailed annual reports relating to the management, oversight, and monitoring of the Mental Health Professionals Panel program be made publicly available and posted on OCA's website so that parties to Family Court proceedings, their counsel, advocates, and the public can access, and comment on, the Oversight Committee's annual reports and recommendations.

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We appreciate OCA's consideration of these comments. We are available to discuss the reason for these regulations and other alternative legally valid and less restrictive mechanisms by which OCA might accomplish the multiple goals that have

animated the Proposed Rules. Should you have any questions about the issues we have raised here, please contact Beth Haroules at bharoules@nyclu.org or 212-607-3325.

Very truly yours,

/s/ Beth Haroules

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[1] The Proposed Rules will amend existing Part 623 of the Rules of the First Department (22 NYCRR § 623.1, *et seq*.) and existing Part 680 of the Rules of the Second Department (22 NYCRR § 680.1, *et seq*.). The Proposed Rules will amend the Rules of the Third Department (22 NYCRR § 805.1, *et seq*.) by adding a new Part 825 and the Rules of the Fourth Department (22 NYCRR §1000.1, *et seq*.) by adding a new Part 1024. *See* Request for Public Comment, March 4, 2024: Request for Public Comment on proposed amendments to the Rules of the Supreme Court, Appellate Division, Relating to Mental Health Professionals Panels**,** https://ww2.nycourts.gov/rules/comments/index.shtml (last visited May 14, 2024); *see also* Proposed Rules, https://www.nycourts.gov/LegacyPDFS/rules/comments/pdf/MentalHealthProfessionalsPanels.pdf.

[2] Report of the Blue Ribbon Commission on Forensic Custody Evaluations (Dec. 2021), https://ocfs.ny.gov/programs/cwcs/assets/docs/Blue-Ribbon-Commission-Report-2022.pdf ("Blue Ribbon Report"). The Blue Ribbon Report recommendations relate, in part, to the conduct of mental health evaluations, and use of those evaluations, in proceedings conducted by Family Court Judges. As the Blue Ribbon Report notes, under N.Y. Domestic Relations Law §70 and § 240 and under N.Y. Family Court Act § 251 and § 651, New York judges routinely direct mental health evaluations of parties and their children by a court appointed evaluator to aid the court in making a decision. In practice, these evaluations are often referred to as "forensic reports" and, among other things, contain biased and hearsay information based on interviews with parents, relatives, the children, and any other people that the evaluator may believe bears on the mental health of the parties, their alleged parenting deficiencies, and the parties' relationship with each other and their children. The evaluation reports produced by the mental health evaluator are sent directly to the court and are often not shared with the parties, their counsel and their experts, if any.

[3] Blue Ribbon Report, *supra* note 2, at 4.

[4] New York courts have recognized that individuals in Family Court proceedings have critical due process rights to know and attempt to meet the evidence against them in proceedings that will determine an individual's constitutionally protected right to the care and custody of their child or children. *See, e.g.*, *Sandra S. v. Abdul S.*, 30 Misc.3d 797, 802-03 (Fam. Ct. Kings Co. 2010) (citations omitted).

[5] The Due Process Clause requires state actors to provide fair procedures before denying an individual a protected liberty interest, *Zinermon v. Burch*, 494 U.S. 113, 125–26 (1990), and "was intended to prevent government 'from abusing [its] power or employing it as an instrument of oppression,'" *DeShaney v.*

Winnebago County Dep't of Social Services, 489 U.S. 189, 196 (1989) (quoting *Davidson v. Cannon*, 474 U.S. 344, 348 (1986)). The Due Process Clause has also been held to have a substantive component that protects individual liberty against "certain government actions regardless of the fairness of the procedures used to implement them." *Daniels v. Williams*, 474 U.S. 327, 331 (1986).

[6] Indisputably a parent's interest in the custody of their children and integrity of their family unit is one of the oldest and most fundamental liberty interests recognized by law. *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000) (citing cases); *see also Kia P. v. McIntyre*, 235 F3d 749, 758 (2d Cir. 2002) (tracing the extensive jurisprudence establishing "the interest of a parent in the custody of his or her children as a fundamental, constitutionally protected liberty interest"); *Matter of Bennett v. Jeffreys*, 40 N.Y.2d 543, 546 (1976) (parent has right to "care and custody of child, superior to that of all others, in the absence of surrender, abandonment, persistent neglect, unfitness, disruption of custody over an extended period of time or other extraordinary circumstances"). Likewise, "[c]hildren have a parallel constitutionally protected liberty interest in not being dislocated from the emotional attachments that derive from the intimacy of daily family association." *Southerland v. City of New York*, 680 F.3d 127, 142 (2d Cir. 2012) (citing *Tenenbaum v. Williams*, 193 F.3d 581, 593 (2d Cir. 1999)). *See, e.g.*, NYCLU, *Racism at Every Stage: Data Shows How NYC's Administration for Children's Services Discriminates Against Black and Brown Families* (June 2023), https://www.nyclu.org/report/racism-every-stage-data-shows-how-nycs-administration-childrens-services-discriminates; Alison Peebles, *When Permanency is Permanent Separation: In the Family Regulation System, a Temporary Removal Fast Tracks Terminating Parents' Rights*, 31 J. L. and Pol'y 197 (2023). Available at: https://brooklynworks.brooklaw.edu/jlp/vol31/iss2/6.

[7] 22 NYCRR §§ 623.6(a), 680.6(a), 825.6(a) and 1024.6(a).

[8] 22 NYCRR §§ 623.6(c), 680.6(c), 825.6(c) and 1024.6(c).

[9] 22 NYCRR §§ 623.6(b), 680.6(b), 825.6(b) and 1024.6(b).

[10] *Id.*

[11] 22 NYCRR §§ 623.6(a), 680.6(a), 825.6(a) and 1024.6(a).

[12] Note that the Proposed Access Rule also requires the attorney to return "the copy of the report . . . to the court" after the end of a litigation. *Id.* This could infringe upon the attorney-client relationship as protected by the First and Sixth Amendments to the United States Constitution because it places additional administrative burdens upon attorneys representing clients for whom mental health evaluations are ordered. In many cases, these attorneys have high caseloads, and requiring attorneys to purge client files and return them to a particular court part is likely to take attorneys away from other pressing litigation tasks, for this client or for other clients. The Proposed Access Rule is silent as to whether a court can impose sanctions on counsel for their failure to return the document. This provision may also implicate the ethical obligations of counsel to retain certain client documents. In its Opinion 2010-1, the New York City Bar Association Committee on Professional and Judicial Ethics classified as subject to indeterminate retention documents "that a lawyer knows or should know may still be necessary or useful to the client, perhaps in the assertion of a defense in a matter for which the applicable limitations period has not expired." See Formal Opinion 2010-01: Use of Client Engagement Letters To Authorize the Return or Destruction of Client Files at the Conclusion of a Matter (October 15, 2010) https://www.nycbar.org/reports/formal-opinion-2010-01-use-of-client-engagement-letters-to-authorize-the-return-or-destruction-of-client-files-at-the-conclusion-of-a-matter/. We have been unable to locate caselaw addressing whether a mental health evaluation report, in whole or in part, constitutes the sort of material that "may still be necessary or useful to the client" that must be retained by counsel.

[13] Placing any additional burdens on the attorney-client relationship in the context of mental health evaluation reports also could raise concerns about an attorney's ability to effectively counsel their clients. *See People v. Oliveras*, 21 N.Y.3d 339, 347 (2013) (failure to investigate critical documents concerning litigant's mental condition constituted ineffective assistance of counsel).

[14] Evaluation reports can be complex and contain facts, medical, scientific and/or other data, and conclusions of an evaluator drawn from data amassed by the evaluator in their investigation. Evaluation reports often will contain hearsay, subjective information and/or biased or inaccurate information collected by the evaluator during their investigation. Thorough evaluation and analysis of an evaluation report requires an assessment and presentation of defects, which necessarily requires the investment of time, as well as legal and expert resources. In order to challenge the accuracy of the report on the facts, data and on the conclusions, and to prepare for an effective cross-examination of the evaluator, the parties and their counsel must have complete access to the report with the ability to share it with professionals retained to assist them, including those with expertise to help analyze the report.

[15] *See, e.g., Sandra S. v. Abdul S.,* 30 Misc.3d 797, 802-03 (Fam. Ct. Kings Co. 2010) (citations omitted).
[16] The halting process by which the Family Court "gained due process standards, moving closer to other judicial tribunals," was recently explored by Professor Merril Sobie at Pace University Elisabeth Haub School of Law in the New York Law Journal. *See The Family Court is Just Another Court—Or is It?*, New York Law Journal (Apr. 26, 2024), https://www.law.com/newyorklawjournal/2024/04/26/the-family-court-is-just-another-court-or-is-it/.
[17] *See Schloendorff v. Society of New York Hospital*, 211 N.Y. 125 (1914).
[18] The appointment of a guardian divests autonomy from a person over matters related to their person and property and deprives the person of fundamental rights, such as the right to vote, marry and freely associate with others. *See*, *e.g.*, Sheila Shea & Carol Pressman, *Guardianship: A Civil Rights Perspective*, NYSBA Journal (Sept. 2018), https://nysba.org/NYSBA/Publications/Bar%20Journal/Guardianship%20A%20Civil%20Rights%20Perspective.pdf.
[19] *See* M.H.L. § 81.09.
[20] The Court has always had the authority to issue protective orders to protect against disclosure of confidential information. *See* CPLR 3103 (protective orders); FCA 1038(d) (protective orders in family court context). The Court also always has had the authority to hold those who violate protective orders in contempt of court. *See* N.Y. Judiciary Law § 750, *et seq*. (outlining state court's contempt power).
[21] Angela Olivia Burton, Esq. & Angeline Montauban, *Toward Community Control of Child Welfare Funding: Repeal the Child Abuse Prevention and Treatment Act and Delink Child Protection from Family Well-Being*, 11 Colum. J. Race & L. 639 (July 2021), https://journals.library.columbia.edu/index.php/cjrl/article/view/8747/4497.
[22] U.S. National Council on Disability, *Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children*, 129-48 (Sept. 27, 2012), https://www.ncd.gov/report/rocking-the-cradle-ensuring-the-rights-of-parents-with-disabilities-and-their-children/.
[23] *See, e.g.*, Roy Lubit, *Recognizing and Avoiding Bias to Improve Child Custody Evaluations: Convergent Data Are Not Sufficient for Scientific Assessment*, 18 J. of Fam. Trauma, Child Custody & Child Dev. 3 (Apr. 2021), https://www.tandfonline.com/doi/full/10.1080/26904586.2021.1901635.
[24] The restrictions on access to evaluations, discussed above, further reinforce the mistrust and suspicion that parents are often viewed with within the Family Court system and contribute to the perception many litigants hold that the system is designed to work against them.
[25] *See* §§ 623.5(b), 623.9, 623.10, 680.5(b), 680.9, 680.10, 825.5(b), 825.9, 825.10, 1024.5(b), 1024.9 & 1024.10.
[26] 22 NYCRR §§ 623.9, 680.9, 825.9 & 1024.9.
[27] The Proposed Rules merely contemplate that either the Presiding Justices may remove, or the Mental Health Professionals Certification Oversight Committee may recommend removal, of members of the mental health professionals panel. 22 NYCRR §§ 623.10, 680.10, 825.10 & 1024.10.
[28] 22 NYCRR §§ 623.5(a), 680.5(a), 825.5(a) & 1024.5(a).
[29] *See, e.g.*, Office of the Surgeon General, Center for Mental Health Services & National Institute of Mental Health, *Mental Health: Culture, Race, and Ethnicity, A Supplement to Mental Health: A Report of the Surgeon General* (Aug. 2001), https://www.ncbi.nlm.nih.gov/books/NBK44243/.
[30] Blue Ribbon Report, *supra* note 2, at 9.
[31] *Id.*
[32] *See* 22 NYCRR §§ 623.3(c), 680.3(c), 825.3(c) & 1024.3(c).
[33] A new subsection establishing these eligibility criteria should be added to 22 NYCRR §§ 623.2, 680.2, 825.2 & 1024.2.
[34] A new subsection establishing these eligibility criteria should be added to §§ 623.4(a), 680.4(a), 825.4(a) & 1024.4(a).
[35] *See* 22 NYCRR §§ 623.11, 680.11, 825.11 & 1024.11.
[36] *Id*.