



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY,
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TO: The Professional Practice Committee

FROM: Douglas E. Lentivech

SUBJECT: Update on the Development of the Department's Report to the Governor and Legislature Related to Implementation of Licensing Laws for Psychologists, Social Workers and Mental Health Practitioners by July 1, 2013

DATE: November 3, 2011

AUTHORIZATION(S):

Summary

Issue for Discussion

The Committee will receive an overview of the plans submitted by certain State agencies and the process by which the Department will consult with those agencies and other stakeholders to develop the report that is due to the Legislature and the Governor by July 1, 2012.

Reason(s) for Consideration

Required by State statute.

Proposed Handling

Office of the Professions staff will provide an update on activities to date, a summary of recommendations received from State agencies, and the plan for soliciting comments from stakeholders prior to the Department's development of the report required under State law.

Background Information

Chapters 420 and 676 of the Laws of 2002 amended the Education Law to define the scope of practice and to establish requirements for licensure as a psychologist, social worker (licensed master social worker or licensed clinical social worker), or mental health practitioner (mental health counselor, marriage and family therapist, creative arts therapist, or psychoanalyst), under Education Law Articles 153, 154 and 163, respectively. The law included an exemption from licensure for individuals in programs that are operated, funded, regulated or approved by the Office of Mental

Health (OMH), the Office for People with Developmental Disabilities (OPWDD), the Office of Alcoholism and Substance Abuse Services (OASAS), or local social services or mental hygiene districts until January 1, 2010.

The exemptions were expanded in 2003 to include the Office of Children and Family Services (OCFS) and then extended to July 1, 2013 by chapters 130 and 132 of the Laws of 2010. With regard to social work and mental health practitioners, chapters 130 and 132 also expanded the exemptions to include the Department of Health (DOH), State Office for the Aging (SOFA), and the Department of Corrections and Community Supervision (DOCCS). The 2010 laws also mandated a report from the State Education Department to the Legislature and the Governor by July 1, 2012 that recommends any changes in law, rules or regulations that are necessary to fully implement the licensing laws by July 1, 2013.

In order to collect the data necessary to develop the required report, the Education Department and the exempt State agencies collaborated on the development and administration of a survey that collected information from organizations that provide services under the regulatory authority of the exempt agencies. The survey collected information regarding the functions performed by licensed and unlicensed staff, the size of the work force, and the salaries paid to licensed and unlicensed staff in those agencies. In developing the survey, the Office of the Professions and the exempt agencies identified five activities (diagnosis, assessment/evaluation, psychotherapy, assessment-based treatment planning, and services other than psychotherapy) that, if not for the exemption, could only be provided by those appropriately licensed or otherwise authorized under law. To assist programs in completing the survey, it provided examples of tasks that would be restricted and of tasks that could be performed by an unlicensed person. More than 2,200 programs completed the online survey, and the Office of the Professions shared the results with each exempt agency in May and June 2011. Utilizing this data, the law then required each exempt agency to submit to the State Education Department a report identifying and addressing issues and costs related to the full implementation of the Article 153, 154 and 163 licensing laws by July 1, 2013. Representatives of the exempt agencies, the Governor's office and the Legislature participated in a July 7, 2011 meeting where the Education Department set forth the form and detail of the reports to be submitted by each agency.

The Office of the Professions has received from each exempt state agency, a report on the utilization of personnel subject to the provisions of the law. These reports include information required under the law, including but not limited to:

- identification of tasks and activities performed by such personnel categorized as tasks and functions restricted to licensed personnel and tasks and functions that do not require a license under Education Law Article 153, 154, or 163;
- analysis of costs associated with employing only appropriately licensed or otherwise authorized personnel to perform tasks and functions that require licensure under Article 153, 154, or 163, including salary costs and costs associated with providing support to unlicensed personnel in obtaining appropriate licensure;

- an action plan detailing measures through which each such entity shall, no later than July 1, 2013, comply with professional licensure laws applicable to services provided; and
- recommendations on alternative pathways toward licensure.

The Education Department has received plans from the exempt agencies and posted the full reports on the Office of the Professions website: www.op.nysed.gov. The law states that the Commissioner of Education shall consult with state agencies, not-for-profit providers, professional associations, consumers, and other key stakeholders regarding the plans submitted by the exempt State agencies. The Office of the Professions has established an online survey to solicit comments from stakeholders and posted the survey link on our website and shared it with various stakeholders.

Staff will review the agency plans and the stakeholders' comments when developing the statutorily-mandated report to the Governor and Legislature that recommends any amendments to law, rule or regulation necessary to fully implement the requirements for licensure. It is our intention to share a draft of that report with this Committee and post the draft online for public comment. We anticipate that in the Spring 2012, the draft will be finalized and shared with the exempt State agencies in order to allow the commissioners of those agencies the opportunity to submit to the Education Department statements or alternative recommendations for inclusion in the report, as required by law. The final report will be submitted to the Governor, the Speaker of the Assembly, the Temporary President of the Senate, and the chairs of the Senate and Assembly Higher Education committees by the statutory deadline of July 1, 2012.

Timetable for Implementation

The Office of the Professions will provide regular reports to this Committee on the development of the report to be submitted by the Education Department by July 1, 2012.