

Executive Summary to the Draft Report to the Legislature and the Executive Pursuant to Chapters 130 and 132 of the Laws of 2010

Physicians, psychologists, certified social workers and nurses have provided psychotherapy within their practice for many years. However, the practice of psychotherapy was not restricted to licensed or authorized individuals until recently. In 2002, legislation was enacted to define professional practice and establish requirements for licensure as a mental health counselor, marriage and family therapist, creative arts therapist, and psychoanalyst, licensed master social worker, licensed clinical social worker and psychologist and, more importantly, to restrict the practice of psychotherapy to licensees in those professions, as well as physicians, physician assistants, and registered nurses and nurse practitioners. The law also provided an exemption from licensure until January 1, 2010 for individuals in programs that are operated, regulated, funded or approved by certain state agencies¹. Chapters 130 and 132 (**Appendix A**²) of the Laws of 2010 extended the exemption until July 1, 2013³ and required the State Education Department to provide a report to the Governor and the Legislature by July 1, 2012 that recommends any changes in laws, rules or regulations necessary to fully implement the licensing laws by July 1, 2013.

The Department collaborated with the exempt agencies identified in law to identify the functions performed by licensed and unlicensed staff in the programs over which the exempt agency has jurisdiction, as well as the size of the workforce and salaries paid to licensed and unlicensed staff. The Office of the Professions (OP) and exempt agencies identified and defined 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 persons licensed or authorized under law. A survey was developed to provide examples of restricted activities and those that do not require licensure and distributed to the programs under the exempt agencies (**Appendix B**). The results of the survey were shared with the exempt agencies in July 2011 and provided the basis for plans developed by the exempt agencies and submitted to OP by October 1, 2011 (**Appendix C**).

The agency plans were posted on the OP website and comments were solicited from stakeholders, using an online survey, to determine the general level of agreement or disagreement with the agency proposals and to invite other comments (**Appendix D**). The Office of the Professions (OP), with the assistance of the State Boards, has reviewed the proposals and the survey responses from stakeholders, including consumers (**Appendix E**). OP has organized the proposals and public comments in the following areas:

1. clarification of practice
2. delegation of professional services
3. occupational exemptions
4. alternative pathways
5. extension of broad-based exemptions from licensure
6. Civil Service titles

¹ The exemption applied to individuals in programs under the authority of the Office of Mental Health, Office for People with Developmental Disabilities and Office of Alcoholism and Substance Abuse Services, or mental hygiene districts but restricted the use of the titles established in Articles 153, 154, and 163 (Chapters 420 and 676 of Laws of 2002). The exemption was extended to include the Office for Children and Family Services and local social service districts in 2003 (Chapter 433 of Laws of 2003).

² Appendices are included with the full report and are referenced here for information.

³ The exemption was extended for psychology (153) and was extended and expanded to include the Department of Health, Department of Corrections and Community Supervision, and State Office for the Aging for social work (154) and mental health practitioners (Chapters 130 and 132 of Laws of 2010).

7. new professions.

The following conclusions are based on the review of proposals and comments, as well as prior determinations by the Department and Board of Regents in regard to professional practice and public protection:

- **Clarification of practice.** There is strong agreement with the need for clarification of certain terms within the practice. The Board of Regents and the Education Department, with the assistance of the State Boards for the Professions, is committed to working in consultation with appropriate stakeholders, to provide this clarification. In certain cases, the Legislature may be able to clarify the intent of the law to ensure the health, safety and welfare of the public.
- **Delegation of professional services.** Respondents strongly disagreed with the assertion that program oversight by a government agency, e.g., OMH, is sufficient to allow unlicensed persons to provide professional services under supervision. There was support for multi-disciplinary teams that are based on a clear definition of roles for licensed and for unlicensed persons, to provide comprehensive care in a safe and effective manner.
- **Occupational exemptions.** There was agreement that targeted exemptions in the law, including those for credentialed alcoholism and substance abuse counselors and rape crisis counselors are appropriate for certain programs, where the services are closely supervised by licensees. However, there was strong disagreement with proposals to extend the current exemption for certain psychologists, who practice in governmental agencies, to not-for-profit providers, as this was seen as a pathway to unlicensed practice when providing services to certain clients.
- **Alternative pathways.** There was moderate agreement with proposals to establish time-limited alternative pathways to licensure in the seven professions. Any such pathways should require an applicant to demonstrate appropriate education and experience, to avoid the possibility of unqualified persons becoming licensed and placing the health, safety and welfare of the public at risk.
- **Extension of broad-based exemptions from licensure.** The majority of respondents strongly disagreed with the proposal to make the broad-based exemptions permanent. There was strong agreement that public protection is best assured if licensed individuals provide restricted services, regardless of whether the services are paid for by private or public sources.
- **Civil Service titles.** There was agreement that Civil Service titles should be based on the requirements for licensure and be consistent with licensing laws, including scope of practice to ensure public protection, and that holding a Civil Service position is not a sufficient basis for a professional license.
- **New profession.** There has been significant consideration and discussion of the nature and requirements that the establishment of a new profession would involve, including OPWDD's suggestion that a profession be established requiring a master's in psychology, in part to authorize the practice of individuals with Board-Certification as a Behavioral Analyst (BCBA) who currently provide services to children with autism or other disorders under the exemption. This is an issue that would require legislation to establish, and it is also one that requires much more discussion.

- **Cost considerations.** It was suggested in certain proposals that licensure could impose a multi-million dollar cost on public and private service providers. However, this assumes that every employee requires licensure, although many services could, in fact, lawfully be performed by unlicensed persons. When considering the minimal costs for licensure and registration in relation to the increased reimbursement provided for professional services, the net costs would seem to be negligible.

This draft report will be shared with the stakeholders and exempt agencies and may be revised in response to comments. The document will be shared with the exempt agencies in June 2012 so that the commissioners of the exempt agencies can submit any comments or alternative recommendations for inclusion in the final document.