THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

COMMISSIONER OF EDUCATION
PRESIDENT OF THE UNIVERSITY OF THE STATE OF NEW YORK

June 29, 2012

TO: The Honorable Andrew Cuomo, Governor
The Honorable Dean Skelos, Senate President *Pro Tem*
The Honorable Sheldon Silver, Speaker of the Assembly
The Honorable Kenneth LaValle, Chair, Senate Higher Education Committee
The Honorable Deborah Glick, Chair, Assembly Higher Education Committee

RE: The Education Department Report Pursuant to Chapters 130 and 132 of the Laws of 2010

FR: Dr. John B. King, Jr.

It is my pleasure to submit to you the Department's report in regard to the exemption from professional licensure for certain entities and individuals providing services within the scopes of practice of social work, psychology, and mental health practitioners.

The report was prepared with the assistance of the seven agencies that are exempt from the licensing laws until July 1, 2013. Throughout the development of this report, we also sought input from all stakeholders to determine areas of concern, seek feedback on agency proposals, and identify areas that may not have been addressed in the report. While the final report accurately reflects the information received by the Department, the law also allows the commissioners of the exempt agencies to submit statements or alternative recommendations. We have attached to the report the statement submitted by the exempt agencies. We will post the report with attachments and appendices on the OP website (www.op.nysed.gov).

We look forward to working with you in the coming months to consider the need for changes to the law. If you have any questions about the report or wish to schedule follow-up meetings, please contact Deputy Commissioner Douglas E. Lentivech in the Office of the Professions at (518) 486-1765.

C: Valerie Grey, Executive Deputy Commissioner
Douglas E. Lentivech, Deputy Commissioner
David Hamilton, Executive Secretary
Kathleen Doyle, Executive Secretary

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

The Board of Regents oversees the licensure, practice and conduct of 49 professions established under Title VIII of the Education Law. In 2002, New York State enacted laws to restrict the practice of psychotherapy to individuals licensed by the Education Department. Previously, any individual could provide psychotherapy services. While the Education Law had previously authorized the licensure of psychologists and certified social workers and protected those titles, the 2002 legislation:

1. provided a protected scope of practice for psychologists;

2. replaced the single certified social worker license with two new title and scope protected licenses – licensed master social worker and licensed clinical social worker – and established licensure requirements for each;

3. created four new title and scope-protected professions – licensed creative arts therapist, licensed marriage and family therapist, licensed mental health counselor and licensed psychoanalyst – and established licensure requirements for each.

The statutes provided that beginning with the profession of psychology on September 1, 2003 and concluding on January 1, 2006 for the Mental Health Practitioner professions, the practices of the seven professions became restricted to those licensed, otherwise authorized, or exempt. Exemptions, which are established in statute, include students under supervision, other licensed professions and occupations, and individuals in certain settings. In addition, the 2002 statutes enacted an exemption from licensure until January 1, 2010 for individuals in programs and services that are regulated, operated, funded or approved by the Office of Mental Health (OMH), the Office of Mental Retardation and Developmental Disabilities (OMRDD), the Office of Alcohol and Substance Abuse Services (OASAS), or a local government unit as defined in the Mental Hygiene Law[1].

The original exemptions in the 2002 bills had been expanded in 2003 to include individuals in programs that are operated, regulated, funded or approved by the Office of Children and Family Services (OCFS) or a local social services district[2]. The exemption was then extended to July 1, 2013 by chapters 130 and 132 of the Laws of 2010. With regard to the professions of 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).[3] The expansion of the exemptions to these agencies did not apply to the profession of psychology since, in part, this profession contains permanent exemptions for persons employed in salaried positions in

[1] The exemption applied to individuals in programs but restricted the use of the titles established in Articles 153, 154, and 163 (Chapters 420 and 676 of Laws of 2002).
[2] The exemption was authorized by Chapter 433 of Laws of 2003.
[3] The exemption was extended from January 1, 2010 to July 2010 in budget extenders and then extended until July 1, 2013 (Chapters 130 and 132 of Laws of 2010).

governmental entities, and further expansion of the exemption was opposed by the professional associations.

The implementation of these licensure laws revealed many unforeseen and unintended consequences of the law. The State Education Department has worked for several years with stakeholders to address these critical issues, which have included:

- The expiration of the state and local agency exemption on July 1, 2013 will require licensure in order to practice psychology, social work, or the mental health professions in numerous programs operated, regulated, funded or approved by these agencies, unless the programs are otherwise authorized or exempt under the law, e.g., persons employed in salaried positions with job descriptions as psychologists will continue to be exempt in entities operated by state, county and municipal agencies as they have been since 1956. In some cases, the requirement for licensure may have a dramatic impact on the way in which services are delivered to vulnerable populations throughout New York State.

- Many community-based not-for-profit corporations with a long history of providing mental health and social services could no longer lawfully provide counseling or psychotherapy services because they lacked the authority to provide professional services or employ or contract with professionals licensed under Title VIII of the Education Law. Some of these entities fall under the current licensure exemptions, but others may not have been aware of the applicability of the licensing laws. By their action in 2010, the Legislature created a waiver authorization process to address these corporate practice issues in order to maintain access to services by at-risk consumers.

- The implementation of licensure laws raised a variety of other concerns related to what constitutes acceptable experience for licensure in social work and mental health practice, interpretations of scopes of practice, alternative supervision or examination, and other issues which would require changes in law or regulation.

- In considering ways in which to address the many issues that have arisen, it has been necessary, of course, to ensure that the public is adequately protected through effective regulation of licensure, practice, and discipline of the professions.

Since 2008, the Office of the Professions has convened numerous meetings with the stakeholders, including the Executive and Legislative staff, State agencies, professional associations, provider associations and consumers. The goal of Chapters 130 and 132 of the Laws of 2010 was to ensure the continuation of services to at-risk consumers while providing oversight and accountability for professional practice, consistent with the Board of Regents authority, while reaching a resolution of the licensure concerns.

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. The law set forth a process and timelines by which the Education Department, in consultation with the seven exempt agencies and other stakeholders, would complete this report (**Appendix A**).

Collaboration between SED and Exempt Agencies

Data Collection

The law required the exempt agencies to submit to the Commissioner of Education data concerning the functions performed by their workforce and the workforces of the local governmental units and social services districts, as defined in law, over which the agency has regulatory authority. It also required the Department to convene a workgroup of the exempt agencies to review the data and to make recommendations regarding amendments to law, rule or regulation necessary to clarify which tasks and activities must be performed only by licensed or otherwise authorized personnel.

In order to collect information about the service provider workforce and to clarify the tasks and activities that, if not for the exemption, must only be performed by licensed or authorized personnel, the Education Department and the exempt State agencies collaborated on the development and administration of a survey (**Appendix B**). The survey collected information from all entities that were identified as exempt under the regulatory authority of the specified 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 constitute restricted professional practice and of tasks that could be performed by an unlicensed person. The Office of the Professions invited the participation of the exempt programs in the survey and the survey was disseminated by the exempt agencies to their service providers. The respondents accessed the survey through a unique collector for each agency, so that information could be reported individually and collectively. 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. Representatives of the exempt agencies, the Governor's office and the Legislature participated in a meeting on July 7, 2011 where the Education Department provided a summary of the survey results (**Appendix C**) and set forth the form and detail of the reports to be submitted by each agency, as required in law.

In many instances, the survey data indicated that professional services were, in fact, being provided by individuals licensed and registered under Title VIII or authorized (e.g., interns, students and permit holders under supervision) (Table 1). Therefore, the law is "working" in the sense that licensed and registered persons are engaged in activities defined in the Education Law. However, in some cases, without the

exemption, some licensees would require supervision to provide the services and activities, e.g. a LMSW would require supervision by an LCSW to provide psychotherapy. Therefore, it may be necessary to provide clarification regarding the restricted activities and defined scopes of practice (allowed activities) when the exemptions are eliminated so that licensed individuals do not practice beyond their scope.

Table 1. Number of individuals in licensed professions or interns/permit holders who provide restricted services in exempt programs (all agencies included)

Professional Title/License	Assess/ Evaluate	Diagnose	Psycho-therapy	Assess Based Treatment Plg	Other services
LCSW	590	422	497	577	489
LMSW	627	380	494	584	508
Physician	585	566	331	498	367
Psychologist	411	309	303	362	290
MHC, MFT, CAT, LP (Article 163)	331	180	256	289	275
Interns (any profession)	225	126	170	179	168
Nurse Practitioner	219	193	114	185	147
Physician Asst	52	44	17	37	29
*Psychologist employed in gov't	57	44	40	51	45
*CASAC in OASAS	248	178	164	241	229

*these titles are permanently exempt from the licensure laws, therefore all restricted activities are permissible

The data also indicated that unlicensed individuals in occupational titles frequently provide services that would be restricted if not for the exemption (Table 2). The survey did not clarify whether individuals in some titles, e.g., case manager, are also licensed under Title VIII. Assuming that the individuals in these occupational titles do not hold a license or other exemption, Table 2 provides a picture of the individuals who would be affected when the exemption expires on July 1, 2013. In reviewing the data with the exempt agencies, it became clear that additional information is needed from agencies and programs that operate under the 2013 exemption. Some exempt agencies addressed this in the plans that were submitted to the Department, including requests for further clarification of those activities that do not require licensure.

Table 2. Number of individuals in occupational titles providing restricted services in programs that are currently exempt from licensure (only top seven titles reflected, all agencies included)

Occupational Title	Assess/ Evaluate	Diagnose	Psycho-therapy	Assess Based Treatment Plg	Other services
Counselor or Residential Aide	75	34	46	71	94
Applied Behavioral Analyst	133	52	97	143	128
Case Manager	117	24	32	108	101
Unlicensed MSW	291	128	176	238	226
Vocational Counselor	66	12	23	51	58
Certified Rehab Counselor	50	25	22	47	41
Recreation Therapist	30	9	11	27	31

Agency Reports

The exempt agencies utilized the data collected by the Office of the Professions and other data maintained or collected by the agency to develop the plans that are required under Chapters 130 and 132. 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 contain information required under the law, including but not limited to:

- identification of tasks and activities performed by such personnel categorized as tasks and functions that are restricted to licensed personnel and tasks and functions identified as not requiring 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 posted the reports submitted by the exempt agencies on the web: **http://www.op.nysed.gov/surveys/mhpsw/exempt-agencyrpts.htm**. These reports may be reviewed in their entirety on the web, and are not included in this report or the appendices to this report.

Public Comments on the Exempt Agency Reports

As required by law, the Commissioner of Education consulted 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 established an online survey to solicit comments from stakeholders and posted the survey link on our website and shared it with a wide range of stakeholders, including programs under the authority of exempt agencies, professional associations, and associations of consumers of services (e.g., Mental Health Associations in counties of New York and the National Alliance on Mental Illness - New York State (NAMI-NYS)). The online survey included the 20 proposals submitted by the seven exempt agencies (**Appendix D**).

Respondents were asked to indicate their agreement or disagreement with each of the following statements in regard to each recommendation:

- Do you agree with the Agency's recommendation;
- The Agency's recommendation is necessary to protect the public;
- The Agency's recommendation adequately protects the public;
- It is important to implement the Agency's recommendation;
- The Agency's recommendation is an affordable approach to providing care;
- The Agency's recommendation balances licensure to protect the public with controlling the cost of professional services; and
- The Agency's recommendation will increase the public's access to professional services.

The respondents could chose from strongly agree, agree, unknown, disagree and strongly disagree to demonstrate agreement or disagreement with each recommendation.

In addition, each respondent had the opportunity to provide open-ended answers to the following statements about each recommendation:

- What changes would you make in the Agency's recommendation?
- Do you believe that the Agency's recommendation will affect the protection of the public in the delivery of professional services and, if so, how?
- If you have specific concerns about the proposal or if you have your own recommendations, please briefly describe them.

At the conclusion of the survey, respondents were given the opportunity to make any final comments and invited to submit a statement or letter to the State Boards. The Department received comments from November 22 through December 30, 2011.

The proposals from the seven exempt agencies typically focused on that agency, although the Office of Mental Health referenced their agency and the other "O" agencies (OPWDD and OASAS) in their proposals. Respondents had the ability to review and comment on proposals from one agency or from all seven, so that a significant number of survey participants "skipped" the chance to comment on one or more agency proposal. Accordingly, the number of respondents varies across the seven exempt agencies.

Description of the respondents. The survey collected minimal demographic information about individuals who responded. Table 3 indicates that 27 percent of those who responded were not licensed in any profession (261/956). The next most frequent respondents identified as a licensed clinical social worker (25% or 239/956). The survey was also completed by individuals who identified as a licensed psychologist (15% or 147/956), licensed creative arts therapist (12% or 115/956) or licensed master social worker (9% or 91/956).

Table 3. Profession, if any, in which respondents are licensed under Title VIII.

If you are licensed under Title VIII of the Education Law, in what profession do you hold the license?	Frequency Percentage
Licensed Master Social Worker	91 (9%)
Licensed Clinical Social Worker	239 (25%)
Licensed Mental Health Counselor	52 (5%)
Licensed Creative Arts Therapist	115 (12%)
Licensed Marriage and Family Therapist	6 (<1%)
Licensed Psychoanalyst	8 (<1%)
Psychologist	147 (15%)
Physician	5 (<1%)
Physician Assistant/Specialist Assistant	1 (<1%)
Registered Professional Nurse	12 (1%)
Nurse Practitioner	1 (<1%)
Other Title VIII profession	18 (1%)
Not licensed in any Title VIII profession	261 (27%)
Answered question	956 (100%)
Skipped question	126

When asked to choose one or more titles that described the respondent, 228 indicated that the survey was being completed on behalf of a provider agency or professional association and 623 indicated it was being completed by a licensed professional (Table 4). The overwhelming majority of respondents provided personal opinions (72% or 761/1044) while 24% (228) indicated the response was on behalf of an organization. It is not possible to compare this sample to the general population of licensed professionals, members of the public, agency representatives, and other stakeholders, who may differ from the respondents. However, the opportunity to comment was shared with the exempt agencies and other stakeholders, posted on the Office of the Professions' website and Facebook page, all of which would suggest that interested parties could have responded, if they were so inclined. For purposes of this report, it will be assumed that there is no bias inherent in the sample that commented on the exempt agency reports.

Table 4. Respondents' self-description of role

Please select the option(s) below that best describes you? (multiple answers allowed)	Frequency (Percent)
a. Consumer or Parent/Guardian of Consumer	23 (2%)
b. Licensed Professional	623 (65%)
c. Student/permit holder in licensed profession	71 (7%)
d. Unlicensed individual providing mental health services	50 (5%)
e. Member of the public	37 (3%)
f. Provider agency	228 (24%)
g. Professional association	41 (4%)
h. Other (please specify)	75
Answered question	950
Skipped question	132

Attitudes toward licensure. The survey also asked respondents to indicate their level of agreement or disagreement on two statements that are related to access to professional services. The first statement was intended to identify the level of agreement with a statement that advocated the same licensure for individuals who provide services that are paid for by the public (e.g., Medicaid) as for those providing services to private-pay consumers. Sixty-eight percent of respondents to this question (571/832) **strongly agreed or agreed** that there should not be such an exemption and only 24% (204/832) strongly disagreed or disagreed.

Question	Strongly agree	Agree	Unknown	Disagree	Strongly disagree	Answered question	Skipped question
The licensing laws should not exempt from licensure individuals who provide services paid for by the public	391 (47%)	180 (26%)	57 (6%)	73 (8%)	131 (15%)	832 (100%)	250

Respondents were given a chance to indicate agreement or disagreement with a statement that measured support for culturally competent practitioners. An increasing concern for agencies and for consumers is whether a provider is of the same cultural background or understands the consumer's cultural background, in order to provide appropriate services. Fifty-six percent of respondents to this question **agreed or agreed strongly with the statement** (472/835) and 32% disagreed or strongly disagreed (271/835). These responses suggest that cultural competence is an important part of professional practice, in the eyes of individuals receiving services.

Question	Strongly agree	Agree	Unknown	Disagree	Strongly disagree	Answered question	Skipped question
When choosing a health or mental health care provider, my primary concern is whether the individual understands my culture and background.	143 (17%)	329 (39%)	92 (11%)	218 (26%)	53 (6%)	835 (100%)	247

Review of Public Responses to Agency Proposals

Office of the Professions staff and members of the State Board for Psychology, State Board for Social Work and State Board for Mental Health Practitioners reviewed the agency plans and the stakeholders' comments. The exempt agency proposals and survey results may be found in **Appendix E** to this report. This review and other comments received from interested parties, form the basis of the Department's conclusions within this 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.

Since the laws apply to professions established under separate articles of the Education Law, the discussion of proposed amendments will be presented in the same manner.

Social Work (Article 154)

In New York, there were 25,159 LMSWs and 25,558 LCSWs licensed and registered to practice as of April 1, 2011. Section 7701 of the law defines the practice of *licensed master social work* (LMSW) and the practice of *licensed clinical social work* (LCSW). Section 7702 of the law identifies additional tasks that may be performed by a licensee but are not, of themselves, restricted activities. That section also restricts the use of the titles Licensed Master Social Worker (LMSW) and Licensed Clinical Social Worker (LCSW) to those licensed or authorized under law.

§ 7701. Definitions.

1. *Practice of licensed master social work.*
    a. *The practice of licensed master social work shall mean the professional application of social work theory, principles, and the methods to prevent, assess, evaluate, formulate and implement a plan of action based on client needs and strengths, and intervene to address mental, social, emotional, behavioral, developmental, and addictive disorders, conditions and disabilities, and of the psychosocial aspects of illness and injury experienced by individuals, couples, families, groups, communities, organizations, and society.*
    b. *Licensed master social workers engage in the administration of tests and measures of psychosocial functioning, social work advocacy, case management, counseling, consultation, research, administration and management, and teaching.*
    c. *Licensed master social workers provide all forms of supervision other than supervision of the practice of licensed clinical social work as defined in subdivision two of this section.*
    d. *Licensed master social workers practice licensed clinical social work in facility settings or other supervised settings approved by the department under supervision in accordance with the commissioner's regulations.*
2. *Practice of clinical social work.*
    a. *The practice of clinical social work encompasses the scope of practice of licensed master social work and, in addition, includes the diagnosis of mental, emotional, behavioral, addictive and developmental disorders and*

disabilities and of the psychosocial aspects of illness, injury, disability and impairment undertaken within a psychosocial framework; administration and interpretation of tests and measures of psychosocial functioning; development and implementation of appropriate assessment-based treatment plans; and the provision of crisis oriented psychotherapy and brief, short-term and long-term psychotherapy and psychotherapeutic treatment to individuals, couples, families and groups, habilitation, psychoanalysis and behavior therapy; all undertaken for the purpose of preventing, assessing, treating, ameliorating and resolving psychosocial dysfunction with the goal of maintaining and enhancing the mental, emotional, behavioral, and social functioning and well-being of individuals, couples, families, small groups, organizations, communities and society.

b. *Diagnosis in the context of licensed clinical social work practice is the process of distinguishing, beyond general social work assessment, between similar mental, emotional, behavioral, developmental and addictive disorders, impairments and disabilities within a psychosocial framework on the basis of their similar and unique characteristics consistent with accepted classification systems.*
c. *Psychotherapy in the context of licensed clinical social work practice is the use of verbal methods in interpersonal relationships with the intent of assisting a person or persons to modify attitudes and behavior which are intellectually, socially, or emotionally maladaptive.*
d. *Development of assessment-based treatment plans in the context of licensed clinical social work practice refers to the development of an integrated plan of prioritized interventions, that is based on the diagnosis and psychosocial assessment of the client, to address mental, emotional, behavioral, developmental and addictive disorders, impairments and disabilities, reactions to illnesses, injuries, disabilities and impairments, and social problems.*

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§ 7702. Authorized practice and the use of the titles "licensed master social *worker" and "licensed clinical social worker".*

1. *In addition to the licensed social work services included in subdivisions one and two of section seventy-seven hundred one of this article, licensed master social workers and licensed clinical social workers may perform the following social work functions that do not require a license under this article, including but not limited to:*
    a. *Serve as a community organizer, planner, or administrator for social service programs in any setting.*
    b. *Provide supervision and/or consultation to individuals, groups, institutions and agencies.*
    c. *Serve as a faculty member or instructor in an educational setting.*
    d. *Plan and/or conduct research projects and program evaluation studies.*
    e. *Maintain familiarity with both professional and self-help systems in the community in order to assist the client in those services when necessary.*
    f. *Assist individuals or groups with difficult day to day problems such as finding employment, locating sources of assistance, organizing community groups to work on a specific problem.*

g. Consult with other agencies on problems and cases served in common and coordinating services among agencies or providing case management.
h. Conduct data gathering on social problems.
i. Serve as an advocate for those clients or groups of clients whose needs are not being met by available programs or by a specific agency.
j. Assess, evaluate and formulate a plan of action based on client need.
k. Provide training to community groups, agencies, and other professionals.
l. Provide administrative supervision.

Section 7704 of the law sets forth the requirements for licensure as an LMSW and those requirements include: the establishment of good moral character, an application for licensure and fee, completion of a Master of Social Work (MSW) degree acceptable to the Department, and passing the national "masters" examination. The requirements for licensure as an LCSW include the establishment of good moral character, an application and fee, completion of an MSW degree with at least 12 semester hours of clinical content acceptable to the Department, at least 36 months of post-MSW supervised experience in diagnosis, psychotherapy and assessment-based treatment planning acceptable to the Department, and passing the national "clinical" examination.

Proposed Agency Solutions and Stakeholder Reactions

The proposals from the exempt agencies and comments from stakeholders related to Social Work (SW) may be divided into the areas of:

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

SW1. Clarification of practice. The Office for Children and Family Services (OCFS #3) suggested that the laws and/or regulations clarify the difference between the practice of licensed master social work and licensed clinical social work. More than 79% of respondents **(117/148) agreed or strongly agreed** with this recommendation and 11% disagreed or strongly disagreed (17/148). While the law defines certain tasks and activities that are restricted to licensed individuals, not all of these terms are clearly defined in law. For instance, section 7702 defines "psychotherapy" and "diagnosis" within the context of practice as an LCSW. It does not define the term "counseling" when performed by an LMSW, although it can be interpreted to suggest that this is an activity that is different from "psychotherapy" as an LMSW does not require supervision to provide counseling, but may only provide psychotherapy under supervision.

Conclusion. The Board of Regents and the Education Department, with the assistance of the State Board for Social Work, will continue to provide further clarification of terms and functions within the law. In some circumstances, it may be appropriate for the Department to seek amendments to the Education Law to

ensure the practice of the professions is consistent with education and examination requirements to protect the public.

Several agencies requested clarification of those activities that are within the scope of LMSW or LCSW and those that do not require licensure, beyond the listing provided in section 1 of 7702 of the Education Law. OCFS (OCFS #2) and the Office for the Aging (SOFA #1) asked for clarification in regards to "assessment and evaluation" which may include activities that are not restricted under Title VIII, but could be performed by a licensee within the scope of practice. Nearly two-thirds of respondents **(64% or 95/147) expressed agreement or strong agreement** for OCFS #2, versus 25% who expressed disagreement or strong disagreement (37/147). SOFA #1 earned **agreement or strong agreement from 58% of respondents (103/177)** versus strong disagreement or disagreement from 25% (46/177).

In general, assessment and evaluation may be used by a licensed master social worker or licensed clinical social worker in the process of conducting a psychosocial evaluation of the client, which may include measures of social and psychological functioning, as well as relationships with employers, family members and others and general health status. The application of professional knowledge, skills and abilities to interpret demographic or other data may be distinct from the collection of data and information about a client or prospective client. For instance, determination of eligibility for health or social welfare benefits, e.g., Medicaid, Medicare or low-income housing, may require that a prospective client provide demographic information such as height, weight, age, marital status, income, number of children, medications being taken, health concerns, and similar issues.

Conclusion. In the development of the survey that was distributed to programs under the exempt agencies, there was extensive discussion involved in identifying those activities that do not require licensure to complete an assessment or evaluation for purposes that are not part of the practice of the delivery of health or mental health services. Activities that do not require licensure include:

- Having a consumer complete a form that provides demographic information, including housing, employment, income, psychosocial or health status, as part of an "intake"
- Providing a consumer with a paper-and-pencil test to complete, when such test does not require the observation and judgment of a licensed professional and commonly is identified as "self-administered"
- Observing, describing and reporting on the behavior of consumers and, if appropriate gathering information about such things as the person's living situation, health, nutrition and available supports to identify problems and needs.
- Providing case management services to individuals, including but not limited to, developing and implementing a plan to access services including transportation, employment, and housing, and scheduling appointments for the consumer.

These clarifications are examples of the collaboration between the exempt agencies and State Education Department and bode well for future efforts to clarify those activities that are and those that are not restricted under Title VIII.

Section 7702 of the Education Law defines activities that are within the scope of LMSW and LCSW, but which may be provided by an unlicensed person. This has resulted in confusion among employers, licensees, and consumers whether an individual with an MSW degree is practicing the profession as a licensee or not. The law restricts the use of the title to those licensed and registered and the licensee is responsible for practicing within the authorized scope. The Department is committed to working with stakeholders to provide clarification about professional practice and those activities that are performed by unlicensed persons.

SW2. Delegation of professional services. Several of the agencies (OASAS #3 and OPWDD #2), have raised concerns about the effect of licensure on an inter-disciplinary model of assessment, diagnosis, and treatment. In this type of model a licensed individual may head the team and delegate activities to licensed and unlicensed individuals. OASAS suggested that by allowing unlicensed personnel to work with and assist in the delivery of services and, where appropriate, recommend treatment options, subject to the direct supervision and sign-off by licensed practitioners, the multi-disciplinary team offers a proven, cost effective and viable alternative to the traditional private practice model. The survey respondents were closely divided on the OASAS proposal, with **47% expressing agreement or strong agreement (80/169) and 44% expressing disagreement or strong disagreement (76/169) with the proposal**. The OPWDD recommended a detailed review of the activities that are restricted under the Education Law and those tasks that can be delegated to unlicensed persons, to ensure that only licensed or authorized persons provide restricted services after July 1, 2013. Respondents were more definitive regarding the OPWDD proposal with **71% expressing strong agreement or agreement (177/246)** as compared to 21% who stated their disagreement or strong disagreement with OPWDD #2 (53/246).

The Education Law and the Regents Rules define as unprofessional conduct by a licensed professional the delegation of activities that are restricted to an individual who is not authorized, such as, an aide or an unlicensed assistant; in other words a licensee may not delegate restricted activities to an unlicensed person. However, this does not prevent the unlicensed person from engaging in activities that do not require licensure, including the collection of data from and observations of certain behaviors of consumers and clients. As with other functions, there may be data collection and observation that is directly related to professional decision making and is, therefore, restricted to those licensed. Some information that is collected by an unlicensed person may be used by the licensed professional in developing and modifying an appropriate treatment plan and delivering professional services to the client/consumer.

Conclusion. Multi-disciplinary teams of licensed professionals and unlicensed persons are an appropriate way to provide certain services to consumers. However, it is important that the activities assigned to members of the team are consistent with the scope of practice for each team member licensed or authorized under Title VIII, and those who are not so authorized may not engage in restricted activities, even under supervision. The Department and the exempt

agencies may collaborate in defining appropriate roles for unlicensed individuals, such as peer counselors, mental health therapy aides, and others who function as part of a multi-disciplinary team, but who do not make professional determinations.

The Office of Mental Health identified activities that, in their view, do not require licensure. These include assessment; skill building; supported education; supported employment services; recreational and socialization services; discharge planning, advocacy, linkage to social and support services; and respite (short-term child supervision). The Education Department would want to ensure consistent definitions of terms but, as discussed above, it may be possible to reach agreement on activities that do not require licensure, which would reduce the number of individuals who would require licensure under Title VIII, as well as the argument for a broad-based exemption.

OASAS (#4) has also suggested that the Education Law be amended to allow individuals who are defined as "qualified health professionals" in sub-section 800.2 (a) (15) of OASAS regulations, to provide services under supervision that would otherwise be restricted to those licensed and authorized. A majority of respondents **(53% or 83/156) disagreed or strongly disagreed with the proposal**; 42% of respondents agreed or strongly agreed with OASAS #4 (66/146).

Conclusion. At a minimum, the licensing laws require that professional services be provided by individuals who have met threshold qualifications established in law. While agencies may designate qualified staff for their programs, any such regulations should be consistent with Title VIII of the Education Law in regard to qualifications for licensure and the scope of practice, including supervision. The practice and supervision of the professions should be done by individuals who are accountable and qualified under the Education Law to provide services that the law has restricted to licensed persons to ensure the health, safety and welfare of the public.

SW3. Occupational exemptions. Article 154 provides a permanent exemption from licensure for individuals who are licensed in other Title VIII professions (e.g., psychology, nursing, occupational therapy) as well as individuals who are credentialed under any law. The latter includes attorneys, rape crisis counselors, and credentialed alcoholism and substance abuse counselors (CASAC) whose scope of practice includes the practices defined in the Education Law and who are performing or claiming to perform work authorized by the mental hygiene law (section 7706(5)(a)).

OASAS (#1) has suggested that the exemption cited above be expanded to include other credentials issued by that agency for individuals, including the CASAC trainee who provides services under supervision. A **majority of respondents agreed or strongly agreed with this proposal (52% or 115/219)**, while 41% (91/219) expressed disagreement or strong disagreement with OASAS #1. Counsel in OASAS has previously issued a guidance document that defines the trainee as exempt and OASAS is looking for clarification in law or regulation.

Conclusion. There is general agreement with OASAS Counsel's opinion, that a CASAC trainee may complete supervised experience, in settings defined by OASAS in law and regulation, to meet the requirements for the credential, similar to a student in a license-qualifying program or permit holder completing the experience required for licensure under Title VIII. If an agency proposes to create or expand credentials to allow individuals to provide services that would otherwise be restricted, it may be appropriate for the Legislature to enact standards that ensure the health, safety and welfare of patients receiving services from these credentialed individuals.

OASAS (#2) has proposed to build on the Federal Substance Abuse and Mental Health Services Administration (SAMHSA) to promulgate a scope of practice for the CASACs who work in OASAS programs and facilities. The framework would authorize counselors to engage in certain activities, on the basis of education, professional credential or license, and qualifying work experience. OASAS proposes to develop this framework with guidance from the Education Department to incentivize employers to support unlicensed individuals in earning a credential under the mental hygiene law and/or license under the Education Law. **Sixty-five percent of respondents (110/169) agreed or strongly agreed** with this recommendation; only 31% of respondents (53/169) disagreed or strongly disagreed with the proposal.

Conclusion. The Department could collaborate with OASAS to clarify activities that may be performed by unlicensed individuals who hold a credential from OASAS, with the intent of protecting the public and creating a career track for individuals seeking to provide services in the addictions field.

The Office of Mental Health (OMH) claims to have sufficient oversight mechanism and program supervision in the service delivery system to make the conversion of unlicensed staff to licensed staff unnecessary. While OMH #2 posited that the mental hygiene law sets forth a scheme for the provision of quality behavioral services under the oversight of OMH, OASAS and OPWDD, **71% of respondents expressed disagreement or strong disagreement** (196/273) with the proposal; only 23% agreed or strongly agreed (64/273) with OMH #2. It should be noted that the two recommendations from OMH received the most responses of all proposals submitted by the agencies and the respondents overwhelmingly disagreed with the recommendations.

Conclusion. There is strong disagreement with the OMH #2 proposal and concerns about any exemption to allow unlicensed persons to provide services that the law restricts to individuals licensed or authorized (e.g., students, permit holders and interns under supervision). The statutory restriction on the practice of the professions is to ensure that defined services are provided by qualified individuals, licensed under the Education Law and accountable for their practice.

Sections 7706 (5)(e) and (f) provide an exemption, effective September 1, 2004, for individuals who were performing clinical social work services as an employee of a federal, state, county or municipal government or in any other legal settings, so long as the individual maintains employment in the qualifying position. The exemption is limited to the services provided by the individual on September 1, 2004 and does not authorize

the use of the title “clinical social worker.” Some of the individuals identified in the survey of agency staff may qualify for the exemption, although it would be limited to those who maintained continuous employment in the same title with the same functions since September 1, 2004.

SW4. Alternative pathways. Chapters 130 and 132 of the Laws of 2011 require that agencies provide alternative pathways to licensure as part of their recommendations. The Office for People with Developmental Disabilities (OPWDD) suggested that the law allow for alternative pathways that would allow individuals with demonstrated experience acceptable to SED or individuals with an MSW degree who are working in a case manager, counselor or program aide titles to substitute experience for the licensing examination and/or other licensure requirements. (OPWDD #3). A **majority of respondents (55%) expressed agreement or strong agreement with this proposal** (141/256) although 41% of respondents expressed disagreement or strong disagreement (107/256). The licensing laws that were enacted in 2002 provided for a one-year period of licensure as an LMSW or LCSW without examination, for individuals who met the requirements in law and applied by September 1, 2005.

> **Conclusion.** There is general support for an alternative pathway to licensure but concern that the criteria must be sufficient to ensure that individuals licensed under such pathway meet requirements that are equivalent to those for licensure by examination. The Legislature may wish to establish time-limited alternatives for long-standing practitioners who meet certain requirements for education and experience that ensure the protection of the public.

When reviewing data collected from the exempt programs in 2011, the results indicated that a large number of individuals who were not licensed were employed in titles as a “social worker” or “case manager.” OPWDD (#1) suggested that the Office of the Professions determine why an individual with an MSW degree, who should qualify for licensure as an LMSW, is not appropriately licensed and, based on those findings, implement policies to ensure compliance by July 1, 2013. **Seventy percent of respondents (186/263) agreed or strongly agreed with the proposal**; 23% expressed disagreement or strong disagreement (61/263). Some individuals identified perceived barriers to licensure, including the requirements for education, examination and supervised experience in clinical social work, although these standards are consistent with other jurisdictions. There may be a variety of reasons why individuals with an MSW degree have not sought licensure. Some may not have seen the need for licensure while employed by an exempt agency. Some may be employed in other titles, e.g., case manager, where licensure is not required. Others may have faced barriers to licensure such as failing the examination. Nonetheless, the group of individuals who have seemingly appropriate educational backgrounds is varied and determining the barriers to be resolved would be case specific.

> **Conclusion.** Given adequate resources, the Department could assist the exempt agencies in outreach activities to provide information about licensure to those who hold an appropriate degree but who have not applied for licensure and those who applied for licensure but have not met all requirements. An on-going commitment to licensure within public programs and employer support for

applicants could achieve the goal of licensure for individuals who seek to provide services that are restricted under law.

The Department of Corrections and Community Supervision (DOCCS) has proposed that the Education Law be amended to require this Department to accept the civil service requirements for entry into the Alcohol and Substance Abuse Treatment (ASAT) titles as an alternative pathway to licensure as an LMSW or LCSW (DOCCS #1). By a factor of two to one, respondents rejected this proposal; **50% disagreed or strongly disagreed** (61/120) and 25% agreed or strongly agreed (30/120).

Conclusion. The establishment of an alternative pathway to licensure based on entry to a Civil Service title(s) or other criteria would not protect the public. Instead it would bypass the requirements established in law by the Legislature and Governor to ensure that individuals who are licensed in a profession have met specific requirements for education, examination and experience to protect the health, safety and welfare of consumers.

SW5. Extension of broad-based exemptions from licensure. The licensing law for social work was enacted in 2002, with an effective date of September 1, 2004, to allow time for the Department to promulgate regulations to implement the law. In order to provide additional time for programs under the authority of specific state agencies to comply, the law provided an exemption until January 1, 2010. The agencies that are defined as exempt and the deadline were subsequently amended, so that the current date for compliance is July 1, 2013.

The Office of Mental Health (OMH #1) has proposed a permanent exemption from licensure for programs that are regulated, operated, funded or approved by OMH. As noted earlier, the 329 responses submitted in regard to the OMH proposals exceeded those submitted in regard to proposals from the other exempt agencies. Nearly two-thirds of respondents (65%) **disagreed or strongly disagreed** with this proposal (217/329); only 27% of respondents agreed or strongly agreed with the OMH proposal for a permanent exemption (90/329).

The Office of Children and Family Services (OCFS #1) has proposed a permanent exemption from licensure for individuals in state-operated or state-regulated programs; the exemption would end for state-funded programs. The proposal was greeted with **disagreement or strong disagreement from 62% of respondents (108/173)**; 29% (51/173) agreed or strongly agreed. The State Office for the Aging (SOFA #2) has proposed a permanent exemption to allow programs that are part of the Aging Services Network to utilize unlicensed persons to provide mental health services that are funded by the Older Americans Act. This proposal received **strong agreement or agreement from 59%** of respondents (93/156); 26% disagreed or strongly disagreed with the proposal (41/156).

The survey response indicates strong disagreement with broad-based, permanent exemptions that allow unlicensed individuals in certain programs to provide services that would be restricted outside those publicly financed programs. This is consistent with the overall support for a single-tier standard of licensing that does not

discriminate on the basis of public-funding for services (e.g., Medicaid). It should be noted that there are few exemptions from licensure in other health care settings, so that only licensed physicians, registered professional nurses, licensed physical and occupational therapists, and pharmacists, can provide services that are restricted under the law, often inside the same programs that suggest nullifying the social work, mental health and psychology licensing laws.

Although the licensing laws have been in place for a decade, it would appear that programs under the exempt agencies are not ready to require licensure by the July 1, 2013 deadline. In addition, the implementation of alternative pathways to licensure and further clarification of activities that do or do not require licensure will require time and it is important to avoid disruption in services to vulnerable individuals. Therefore, the Legislature may want to consider ways to ensure a smooth transition for the exempt agencies and the individuals in programs that they regulate, fund or approve to provide services.

> **Conclusion.** There is strong support for ending the permanent exemptions and requiring licensure of individuals who provide professional services in publicly funded programs, as in privately funded programs, to ensure the health, safety and welfare of the public. The Department is ready to collaborate with the Legislature, Executive and other stakeholders, to discuss the timeline for implementing changes in the licensing laws to minimize any disruptions in services and displacement of individuals or programs.

SW6. Civil Service titles. The Department of Civil Service is responsible for establishing titles, defining the requirements for entry to such title, and setting out the functions that may be performed by an individual in such title, including the need for supervision where appropriate. At this time, the Civil Service titles for social workers do not reflect the licensing laws nor are licensed individuals required in many settings or for certain titles. In our discussions with the exempt agencies, we learned of situations in which a licensed individual in a Civil Service title is practicing beyond the scope of practice, such as one LMSW supervising another LMSW providing clinical social work and psychotherapy to sex offenders in State correctional facilities.

> **Conclusion.** Titles should be created and duties set forth by the Department of Civil Service to conform to Title VIII of the Education Law where they do not currently exist, or where there is confusion or lack of specificity within titles. This would include supervision of an individual who is only authorized to practice under supervision, (e.g., LMSW providing clinical services), as well as providing promotional opportunities (e.g., LMSW to LCSW to LCSW Supervisor).

The adoption of Civil Service titles that reflect the Education Law will assist programs operated by the State and local governments in hiring appropriately qualified staff, but will also “flow-down” to the voluntary, not-for-profit sector which may not use Civil Service titles but will have clear direction about qualified practitioners.

DOCCS also suggested that the Civil Service titles be amended to create a “Qualified Health Professional” title and that the CASAC be included in the definition of a QHP

(DOCCS #2). DOCCS asked for consideration of an alternative pathway for entry into the CASAC and QHP titles. **Respondents expressed more disagreement or strong disagreement** (47% or 56/118) than agreement or strong agreement (37% or 44/118) for the proposal. It should be noted that certain state agencies, including OMH and OASAS, define "qualified health professionals" or "qualified mental health professionals" in their regulations (e.g., Section 800.2 of the OASAS regulations) and the individuals who meet such criteria are neither consistent nor are they always licensed or authorized under Title VIII to provide services that may be restricted under the Education Law.

> **Conclusion.** There is disagreement with the proposal to provide an alternative pathway into Civil Service titles, if this substitutes for appropriate licensure under Title VIII of the Education Law. There is agreement that titles and duties established in the Civil Service regulations should be consistent with the standards established for the licensed professions, to ensure that individuals hold an appropriate license based on standards established in the Education Law for education, experience and examination.

The DOCCS (#3) recommended that regulations be amended to develop waivers in regard to the percentages of staff defined as Qualified Health Professionals (QHP) to address staffing considerations when DOCCS sites are identified for certification by the Office of Alcoholism and Substance Abuse Services. Nearly one half of respondents **(48% or 52/108) disagreed or strongly disagreed** with this proposal; 25% agreed or strongly agreed with DOCCS #3 (27/108).

> **Conclusion.** The recommendation seems to be directed at OASAS and their regulations. As stated previously, the public has expressed disagreement with proposals that would waive appropriate licensure or standards for supervision that place the health, safety and welfare of the public at risk.

Mental Health Practitioners (Article 163).

Chapter 676 of the Laws of 2002 defined the scope of practice for the professions of mental health counseling, marriage and family therapy, creative arts therapy, and psychoanalysis in Article 163 of the Education Law.

§8402. Mental health counseling.

1. *Definition of the practice of mental health counseling. The practice of the profession of mental health counseling is defined as:*
    a. *the evaluation, assessment, amelioration, treatment, modification, or adjustment to a disability, problem, or disorder of behavior, character, development, emotion, personality or relationships by the use of verbal or behavioral methods with individuals, couples, families or groups in private practice, group, or organized settings; and*
    b. *the use of assessment instruments and mental health counseling and psychotherapy to identify, evaluate and treat dysfunctions and disorders for purposes of providing appropriate mental health counseling services.*

§8403. Marriage and family therapy.

1. *Definition of the practice of marriage and family therapy. The practice of the profession of marriage and family therapy is defined as:*
    a. *the assessment and treatment of nervous and mental disorders, whether affective, cognitive or behavioral, which results in dysfunctional interpersonal family relationships including, but not limited to familial relationships, marital/couple relationships, parent-child relationships, pre-marital and other personal relationships;*
    b. *the use of mental health counseling, psychotherapy and therapeutic techniques to evaluate and treat marital, relational, and family systems, and individuals in relationship to these systems;*
    c. *the use of mental health counseling and psychotherapeutic techniques to treat mental, emotional and behavioral disorders and ailments within the context of marital, relational and family systems to prevent and ameliorate dysfunction; and*
    d. *the use of assessment instruments and mental health counseling and psychotherapy to identify and evaluate dysfunctions and disorders for purposes of providing appropriate marriage and family therapy services.*

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§8404. Creative arts therapy.

1. *Definition of the practice of creative arts therapy. The practice of the profession of creative arts therapy is defined as:*
    a. *the assessment, evaluation, and the therapeutic intervention and treatment, which may be either primary, parallel or adjunctive, of mental, emotional, developmental and behavioral disorders through the use of the arts as approved by the department; and*
    b. *the use of assessment instruments and mental health counseling and psychotherapy to identify, evaluate and treat dysfunctions and disorders for purposes of providing appropriate creative arts therapy services.*

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§8405. Psychoanalysis.

1. *Definition of the practice of psychoanalysis. The practice of the profession of psychoanalysis is defined as:*
    a. *the observation, description, evaluation, and interpretation of dynamic unconscious mental processes that contribute to the formation of personality and behavior in order to identify and resolve unconscious psychic problems which affect interpersonal relationships and emotional development, to facilitate changes in personality and behavior through the use of verbal and nonverbal cognitive and emotional communication, and to develop adaptive functioning; and*
    b. *the use of assessment instruments and mental health counseling and psychotherapy to identify, evaluate and treat dysfunctions and disorders for purposes of providing appropriate psychoanalytic services.*

The requirements for licensure vary among the four professions, but all require a masters or higher degree with course content specified in statute and acceptable to the

Department, supervised experience acceptable to the Department, application and fee, good moral character, and passing an appropriate examination.

Proposed Agency Solutions and Stakeholder Reactions

The proposals from the exempt agencies and comments from stakeholders related to the Mental Health Practitioners (MHP) may be divided into the areas of:

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

MHP1. Clarification of practice. There was support from the exempt agencies to provide clarification about the practice of the professions. Since the enactment of the laws to license individuals under Article 163, a major concern of the professional associations, educators, and employers, as well as of the Department, has been the absence of the term "diagnosis" within the scope of practice for each of the four professions. While the law authorizes a licensee to complete an assessment and evaluation and to use accepted classification systems, including the Diagnostic and Statistical Manual (DSM) of the American Psychiatric Association, it does not specify "diagnosis." In discussions with the professional associations, educators, and exempt agencies, it has been pointed out that the absence of this term has a negative effect on employment opportunities and may create an artificial shortage of qualified professionals.

The Office of the Professions has reviewed the education requirements (masters or higher degree) including specified course work in the assessment, evaluation and treatment of individuals, couples and families, including psychopathology and the use of the DSM. An applicant for licensure must complete supervised internships in the practice of the profession as part of the degree program, as well as post-degree supervised practice under licensed professionals, and pass a clinical examination. These requirements are similar to other mental health professions, including the LMSW and LCSW, who often practice side-by-side with individuals licensed as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst.

> **Conclusions**. There is agreement that "diagnosis" is a function that could be appropriately provided by individuals licensed under Article 163, although this term is not included in the scope of practice for each profession. The Legislature could provide clarity by amending Article 163 to define diagnosis within the practice of the professions or provide guidance that an interpretation of the existing language to include diagnosis would be consistent with the legislative intent.

The Board of Regents and the Education Department, in conjunction with the State Board for Mental Health Practitioners, has the responsibility to clarify the practice of the professions, to reflect the training and preparation received by individuals entering these professions. This can provide increased access to services for individuals in all parts of

New York, and hold accountable under the Education Law and Regents Rules those individuals who provide services without appropriate education, experience or training.

MHP 2. Delegation of professional services. The issues identified in the social work section would apply to the delegation of services provided under Article 163. There are no further comments or recommendations at this time.

MHP 3. Occupational exemptions. Article 163 contains the same occupational exemptions as those discussed in regard to social work (Article 154), therefore, the same comments would apply and are not repeated here.

MHP 4. Alternative pathways. Chapter 676 of the Laws of 2002 allowed the Department to license individuals on or after January 1, 2005 but did not require a license until January 1, 2006, to allow the Department to license qualified persons. This includes those who met "special provisions" as authorized by law and in regulations promulgated by the Department. There were 2,254 individuals licensed and registered to practice in the professions starting in September 2005 and ending on April 1, 2006, compared to 7,420 as of April 1, 2011:

April 1, 2006		April 1, 2011	
Mental Health Counseling	1,250	Mental Health Counseling	4,456
Marriage and Family Therapy	181	Marriage and Family Therapy	820
Creative Arts Therapy	463	Creative Arts Therapy	1,340
Psychoanalyst	360	Psychoanalyst	804

There is consensus that many individuals in exempt agencies have not applied for licensure, due to the continuing exemptions. Therefore, the ending of the exemption may disenfranchise those individuals and programs, particularly if the long-time practitioner does not meet the current requirements for licensure.

> **Conclusion**. A significant number of long-time practitioners did not seek licensure, particularly under the special provisions in 2005 and, now must be appropriately licensed by the time the exemptions expire. As in the social work professions, there is agreement that appropriate standards for education and experience should be established as part of a time-limited, alternative pathway to licensure to avoid disruptions in the work force.

MHP 5. Extension of broad-based exemptions from licensure. The same concerns and issues that were expressed in regard to social work would apply to the mental health practitioners. This includes a commitment from the Department to work with stakeholders to collaborate in addressing practice questions raised by the exempt agencies and other stakeholders.

MHP 6. Civil Service titles. Since the four professions of mental health counseling, marriage and family therapist, creative arts therapist and psychoanalyst did not exist prior to 2006, the Civil Service titles do not include these professions. This has presented challenges to state agencies and programs, as well as the voluntary providers, in determining the services to be provided by individuals in these new

professions. In many cases, a licensee is placed in a social work or recreation therapy title, for instance, because those were used prior to the establishment of these professions.

> **Conclusion**. There is agreement that the Department of Civil Service should revise job titles to reflect the new professions established in Article 163 and require an applicant to be licensed in order to hold a Civil Service position, in order to ensure the health, safety and welfare of the public.

The creation of appropriate titles will provide opportunities for qualified licensees seeking to provide services in state or local government programs, as well as in the voluntary not-for-profit sector.

Psychology (Article 153)

Chapter 676 of the Laws of 2002 provided a scope of practice in law for licensed psychologists; from 1959, the practice had been defined in regulation, and in 1984 specifically included the practice of psychotherapy. The functions and tasks of some other professions, e.g. social work, may include some of the activities that fall within the broad scope of practice of psychology. Licensure as a psychologist requires an applicant to be of good moral character, submit the application and fee, document the completion of a doctoral degree, acceptable to the department, complete supervised experience acceptable to the Department and pass the national examination. There were 12,283 psychologists licensed and registered to practice as of April 1, 2011. This figure does not include those authorized to practice as certified school psychologists or under Civil Service titles in the exempt state agencies, which would raise the figure by up to 4,000.

§7601-a. Definition of the practice of psychology.

1. *The practice of psychology is the observation, description, evaluation, interpretation, and modification of behavior for the purpose of preventing or eliminating symptomatic, maladaptive or undesired behavior; enhancing interpersonal relationships, personal, group or organizational effectiveness and work and/or life adjustment; and improving behavioral health and/or mental health. The practice includes, but is not limited to psychological (including neuropsychological) testing and counseling; psychoanalysis; psychotherapy; the diagnosis and treatment of mental, nervous, emotional, cognitive or behavioral disorders, disabilities, ailments or illnesses, alcoholism, substance abuse, disorders of habit or conduct, the psychological aspects of physical illness, accident, injury or disability, psychological aspects of learning (including learning disorders); and the use of accepted classification systems.*
2. *The term "diagnosis and treatment" means the appropriate psychological diagnosis and the ordering or providing of treatment according to need. Treatment includes, but is not limited to counseling, psychotherapy, marital or family therapy, psychoanalysis, and other psychological interventions, including verbal, behavioral, or other appropriate means as defined in regulations promulgated by the commissioner.*

Proposed Agency Solutions and Stakeholder Reactions

The proposals from the exempt agencies and comments from stakeholders related to Psychology (P) may be divided into the areas of:

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
7. new professions

P1. Clarification of practice. No changes were suggested, however, concern was noted about the potential impact of changes to related professions and the need to ensure such proposals to not have an unintended adverse impact on the practice of psychology.

> **Conclusion.** The Legislature has established requirements for licensure in each of the 49 professions that ensure public protection through standards for entry to the profession, competent practice within the authorized scope and oversight by the Board of Regents to hold the licensee accountable for professional services provided directly or under supervision. There is agreement that any changes in law or regulation should minimize disruptions in service and protect the health, safety and welfare of the public.

P2. Delegation of professional services. The issues identified in the social work section would apply to the delegation of services provided under Article 153. There are no further comments or recommendations at this time.

P3. Occupational exemptions. Section 7605 of The Education Law states that nothing in the licensing law for psychologists shall "be construed to affect or prevent the activities, services, and use of the title of psychologist, or any derivation thereof, on the part of a person in the employ of a federal, state, county or municipal agency, or other political subdivision, or a chartered elementary or secondary school or degree-granting educational institution insofar as such activities and services are a part of the duties of his salaried position." This exemption does not expire.

> **Conclusion.** There is agreement that this long-standing exemption should remain, since it has applied solely to persons who are salaried employees of entities that are operated by state, federal, regional or municipal agencies where such persons commonly hold a minimum of a master's degree or higher in psychology and whose job descriptions define their services; this has existed since 1956 without evidence of harm.

This exemption does not extend to individuals who are employed in programs operated by the voluntary sector. OPWDD #4 proposes to extend this exemption to those programs, creating a permanent exemption for individuals employed in certain titles in

public or private agencies. There was **slightly more agreement and strong agreement (47% or 116/243)** than disagreement or strong disagreement with this proposal (41% or 100/243).

> **Conclusion.** The extension of the exemption to not-for-profit providers could be seen as a waiver of licensure in all settings for individuals who receive services through the OPWDD and, therefore, the Department is concerned that this recommendation is not in the public interest.

P4. Alternative pathways. When Chapter 676 took effect on September 1, 2003, there were no changes in the requirements for licensure or the creation of an alternative pathway since the only change in the law was the addition of the scope and a section on limited permits. The State Board for Psychology has suggested that if an alternative pathway was established, those with a doctoral degree in psychology, and a certain number of years of experience, including an attestation of competency from the applicant's supervisor(s), and no history of discipline could be licensed without examination, if all requirements are met by a date established in law.

> **Conclusion.** The law should provide an alternative pathway, for a limited time period, for individuals who meet all requirements for licensure as a psychologist, as described above, except examination.

This would be consistent with other efforts to provide a time-limited alternative pathway to licensure for long-time practitioners who may not meet the current requirements/examination for licensure in the profession but whose work has been declared competent by a supervisor(s).

P5. Extension of broad-based exemptions from licensure. The same issues and concerns that were raised in regard to the social work professions would apply in regard to psychology. The health, safety and welfare of the public is served best when individuals providing services have met requirements for licensure and are accountable to the public for their actions

P6. Civil Service titles. The Department would support efforts to provide appropriate titles and requirements for Civil Service titles. As noted earlier, the long-standing regulation of psychology and the exemption in section 7605 of the Education law have resulted in a relatively clear understanding of the requirements and practice of psychology in agencies operated by government entities subject to Civil Service or federal oversight.

P7. New profession. The OPWDD (#5) has recommended that the Education law be amended to provide licensure as a behavioral health practitioner for an individual with appropriate education, experience and examination. OPWDD suggests that the appropriate education would include a master's in psychology. This proposal is based in part on the need 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. There was **agreement or strong agreement with the proposal from 54%** of respondents (132/241) and 33% expressed disagreement or strong disagreement (80/241). While some individuals with the BCBA may hold

licensure under Title VIII, many providers have earned a master's in psychology and would not qualify for licensure as a psychologist or mental health counselor.

Conclusion. The requirements for licensure under Title VIII in each profession include specific education, examination and, in many cases supervised experience that reflect the practice of the specific 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. Nonetheless, this is an issue that would require legislation to establish, and, it is also one that requires much more discussion.

Cost Considerations

Chapters 130 and 132 of the Laws of 2010 require that the plans submitted by the exempt agencies include estimates of the costs of licensure, including costs associated with employing only licensed or authorized personnel to perform tasks and functions that require licensure under Article 154, 153 or 163 and the cost associated with providing support for individuals who are seeking appropriate licensure. OMH, OASAS, OPWDD and OCFS made an assumption that individuals in existing job titles would all require licensure as a Licensed Clinical Social Worker and/or a salary equal to the average LCSW salary.

The cost-estimates and projections made by the agencies assume a worst-case scenario, including the replacement of unlicensed staff with licensees earning thousands of dollars more each year. In reviewing the agencies' projections, we have focused on factors identified early in this report that will mitigate the effect on existing staff and salaries. These factors include clarification of duties that do not require licensure (e.g., case management) and those individuals who will continue to be exempt under the law (e.g., CASAC) so that there would be no fiscal increase to retain those staff members. A more realistic cost estimate could be developed by considering these factors. It is worthy of note that the expanded use of licensed professionals as part of the multi-disciplinary team may increase third-party reimbursement for services and result in a revenue-neutral implementation, if not the possibility of revenue increases after July 1, 2013.

Agency	Basis of cost estimates from the exempt agencies
OMH	$9,236 differential between salary paid to currently unlicensed staff and $47,275 average of LMSW and LCSW salary
OASAS	$16,253 differential between salary paid to currently unlicensed staff and $47,690 LCSW salary
OPWDD	Cost to replace unlicensed staff with an LMSW, starting at $44,000 or replace an ABSS with licensed psychologist at $76,000
OCFS	Estimate $10,000 differential between unlicensed social worker and LMSW
DOH	None indicated as DOH expects programs to employ licensed staff.
SOFA	$14,331 difference between case manager and licensed professional
DOCCS	$52,555 difference between employees and the need to contract with appropriately licensed individuals

Conclusion. The assumption that currently unlicensed staff would have to be licensed as an LCSW or another profession and paid a salary that is equivalent to the $47,000 average is not supported by the data. When the Legislature enacts licensure, it is to establish minimum standards for education, examination and experience for those who will provide services that are restricted under the law; it is not guarantee of increased salaries.

The agencies utilized data collected in the 2011 survey of programs that are regulated, funded or approved by the exempt agencies to estimate the number of unlicensed staff who are, in the words of OASAS, "at-risk" of replacement or displacement if the exemption expires on July 1, 2013. Data collected by SED indicated that more than 2,000 individuals may provide one or more of the five services (diagnosis, assessment/evaluation, psychotherapy, assessment-based treatment planning, and services other than psychotherapy) that would be restricted to licensed or authorized persons when the exemption expires on July 1, 2013. This data, supplemented with other data collected by exempt agencies, was then multiplied by the costs cited above, to project the cumulative cost of licensure. The table below shows the estimated cost, based on survey data, and projections submitted by the agencies, based on multiplying the estimated cost by a factor of two or more.

Agency	Number	Fiscal impact	Agency Projection
OMH	2,523	$23.3 million adjustment	Additional 2,523 in approved programs and 4,254 in operated (Total $85.8M)
OASAS	2,330	$37.8 million replacement	Additional $36.6m recruitment
OPWDD	N/A	$66 million for LMSW and $21 million for psychology	Est. 3x as many staff for $198 & $63 million = $261
OCFS	N/A	None provided	Estimate
SOFA	471	$6.75 million	None provided
DOCCS	68	$3.57 million	Add $2.02 million payment to OMH for staffing; total $5.6 m
DOH	N/A	N/A	None provided

Most of the cost assumptions are based on either replacing unlicensed staff with an LCSW or establishing licensure for new professions and paying the same salary as the LCSW. A careful reading of this report will affirm that functions such as case management do not require licensure, so that a significant number of unlicensed staff will not require replacement by a licensed professional. Therefore, SOFA would not incur their projected $6.75 million cost of complying with licensure laws; other agencies estimates would be similarly reduced by clarifying those services that do not require licensure.

Prior to July 1, 2013, the exempt agencies should evaluate the services provided in programs under their authority and clarify in regulation and policy those activities that can only be performed by licensed or authorized persons, in consultation with the State Education Department. This may require that licensed persons assume some tasks that are performed by unlicensed persons under the exemption and vice-versa, that licensed persons delegate activities that are not restricted (e.g., case management) to qualified, unlicensed persons. This will ensure compliance with the laws that restrict the practice

to licensed and authorized persons and minimize the chance of un-necessary displacement of other direct care staff.

The exempt agency reports also suggest that many of the services that would be restricted to a licensed or authorized person can only be provided by an LCSW or licensed psychologist. This assumption does not consider the role of other mental health practitioners licensed under Article 163 who are authorized by law to provide similar services, including psychotherapy. As noted earlier in the report, the Department has concluded that the scope of practice for those professions could be clarified to define and include "diagnosis" within the practice of each profession since the current language of the article is ambiguous regarding the authority to diagnose. Legislative clarification could clarify the role of mental health practitioners in the professional workforce.

OMH used the SED survey data to identify more than 20 occupational titles that provide one or more of the five services that would be restricted after July 1, 2013. They used the salary reported for the 591 persons employed in those titles to calculate a total cost of $22,641,813 and an average salary of $38,039. This average salary was then subtracted from $47,275 (the average salary for LMSW and LCSW) to establish the $9,236 "differential" between unlicensed and licensed staff. OASAS used a similar methodology, using the average salary for 2,330 individuals in seven titles, to calculate a total salary of $73,246,902 for that portion of the OASAS work force "at-risk" of replacement. OASAS then calculated an average LCSW salary of $47,600 and assumed that all 2,330 staff would be replaced by an LCSW at that salary, for a total cost of $111,117,700, or an annual differential of $37,870,798. As discussed above, these numbers assume a fact pattern that does not exist, namely, a requirement that every unlicensed person must be replaced by an LCSW after July 1, 2013.

The Department reviewed the titles used to calculate salaries (see Table 5) and found that some of the individuals, e.g., a psychologist employed by a government entity or a CASAC, are permanently exempt under the law and would not require licensure. Still other titles, e.g., case manager, case worker, prevention counselor, youth counselor, etc., provide services that do not require licensure under the law. The agencies identified unlicensed social workers, social work case workers and social work case managers, who may hold an MSW degree but are not licensed. While there is a permanent exemption from licensure for individuals in a clinical social work title on September 1, 2004, for as long as the individual stays in that position and provides the same services, others may qualify for licensure but have not been licensed. It was suggested elsewhere in the report that it is important to determine why these individuals are not licensed, to develop strategies and interventions that can assist them in attaining appropriate licensure.

Conclusion. The Legislature established seven mental health professions (psychology, social work and mental health practitioners) to ensure public protection and expand access to psychotherapy and related services for individuals, families and groups. The laws also establish requirements for licensure, to ensure that practitioners meet minimum requirements for entry to practice in any setting, including one operated or regulated by a State agency,

and to ensure that the licensees are accountable for their services under the Education Law and Regents Rules. There may be increased costs associated with the use of licensed personnel, but the continued clarification of activities that do not require licensure can minimize these costs and reduce the possibility of reactionary reductions in the workforce.

Table 5. Titles identified in OMH programs that may be affected by licensure

Title	Number	Mean Salary	Total	Notes
ABAS	4	$37,250.00	$149,000.00	5
CARECO	7	38,643.00	270,501.00	2
CASAC	47	35,996.00	1,691,812.00	1
CASEMGR	67	30,656.00	2,053,952.00	2
CASEW	11	34,365.00	378,015.00	2
CRC	20	41,112.00	822,240.00	2
CSRESAID	27	25,730.00	694,710.00	2
MHTA	16	36,633.00	586,128.00	2
NBCC__COU	4	27,000.00	108,000.00	5
Other -LI	84	52,014.00	4,369,176.00	4
Other 1	59	35,618.00	2,101,462.00	4
Other2	20	32,723.00	654,460.00	4
Other3	3	39,407.00	118,221.00	4
Other4	1	27,787.00	27,787.00	4
PREVCSLR	4	32,000.00	128,000.00	2
PSYCHGOV	16	59,973.00	959,568.00	1
RECTH	17	36,943.00	628,031.00	2
REHABTH	6	42,929.00	257,574.00	2
SERVCOOR	8	31,546.00	252,368.00	2
SW	109	40,386.00	4,402,074.00	3
SWCASE	12	36,859.00	442,308.00	3
SWCSEW	7	38,548.00	269,836.00	3
YOUTHCSL	21	23,507.00	493,647.00	2
VOCSLR	21	37,283.00	782,943.00	2
	591	$874,908.00	$22,641,813.00	
Avg. Unlic. Salary		$38,039.48		
Avg. of LMSW & LCSW Salary		$47,275.50		
Salary Differential		$9,236.02		

Notes:

1. Individuals in these titles have a permanent exemption, within the authority of law
2. Services provided by these titles do not require licensure
3. Individuals in social work titles on 9/1/2004 may continue providing same services if qualifications in law are satisfied.
4. Category is not defined so impossible to identify and clarify services and “Other-licensed” would include persons who are licensed and not affected by law.
5. Individuals may be eligible for licensure as LMHC and/or another profession

The cost estimates provided by the agencies predicted higher costs, e.g., to employ a licensed clinical social worker to supervise LMSWs. While the LCSW may have a higher cost, estimated at $9,000 by the agencies, this calculation does not include the revenues that would be accessed under Medicare, Medicaid and private insurance for the provision of psychotherapy services. If the LCSW provided 20 direct client contact hours of psychotherapy each week for 48 weeks (960 hours) and the agency received $20/hour of reimbursement, this would bring $19,200 into the agency, which is double the cost increase estimated by OMH. The estimate of 20 hours/week of direct psychotherapy would still leave the LCSW sufficient time to provide an hour or more of supervision to permit holders completing the experience for licensure. Therefore, overall, the estimated costs of licensure would be offset by the revenue generated through services provided by the licensed professional, permit holder and student intern, as allowed by regulations from OMH and OASAS (Part 599 for OMH and Part 822 for OASAS). It is also necessary to consider whether providing services by licensed or credentialed professionals may reduce the overall cost of treatment by more effective or efficient practices that shorten the period of care or reduce or prevent recidivism and relapse.

Support for licensure. The law directs the exempt agencies to address the costs associated with providing support to unlicensed personnel in obtaining appropriate licensure. Several of the agencies raised concerns about the cost of a graduate degree in social work, mental health counseling or a related field as well as the challenges that would face workers trying to complete such a degree while employed. OASAS provided estimates of the costs that would be incurred if an individual sought the CASAC credential to provide services in an OASAS agency under the permanent exemption.

Article 154 provides an exemption for individuals who were employed by a government or not-for-profit agency on September 1, 2004 to provide services that would otherwise be restricted to an LCSW but allows those individuals to continue providing the same services in the same position; if the person leaves employment, the exemption would be “lost”. OCFS suggested that the licensing laws be amended to include a similar provision that takes effect on July 1, 2013, to allow long-time employees to stay in their current positions.

Conclusion. There are financial and logistical barriers that face employees in completing the education, training and experience that may be required for licensure or credential. The Department is willing to work with the exempt agencies and licensure-qualifying programs, to explore distance learning and other formats that may facilitate the education process for individuals who choose to seek licensure in social work or another profession. The Legislature and Executive may wish to expand existing loan forgiveness and scholarship programs that provide incentives to new graduates to provide services in under-served communities.

The staffing patterns of exempt programs that responded to the 2011 SED survey indicate that there are individuals in occupations that are not presently licensed under the Education Law. As noted elsewhere, the Department received suggestions to consider licensure of rehabilitation counselors, bachelor’s level social workers or others who provide specific services under the supervision of a licensee, master’s education

psychologist assistants and Board-certified Behavior Analysts who provide services to children with autism. If these professions were established with scopes of practice and/or if the laws authorized a time-limited period of licensure under special provisions (e.g., substituting experience for examination), this could move unlicensed staff from "at-risk" into the licensed professions, authorized to provide services after the exemption, as noted in the OPWDD recommendations. However, any decision to create new professions is complex and must be made by the Legislature based on their assessment of various factors including available educational programs, numbers of potential licensees, overlap with existing professional scopes, and the need for public protection.

The direct costs of licensure are borne by individuals who complete graduate education programs to prepare for practice and then apply for licensure through the Education Department. The Education Department uses the application and registration fees to conduct the review and evaluation of an applicant's qualifications; to receive, investigate and prosecute complaints of unprofessional conduct or illegal practice to protect the public; and to support the activities of 29 State Boards and committees that assist in the license, practice and discipline of the professions. The fees for licensure and registration in these professions are found in Table 6; the registration fee is paid every three years, after initial licensure.

Table 6. Fees for licensure, registration and examination in 7 professions

Profession	**Application**	**Permit**	**Triennial registration**	**Examination fee paid to vendors**	**Total**
Psychology	$115	$70	$179	$519	$883
LMSW	$115	$70	$179	$230	$594
LCSW	$115	$70	$179	$260	$624
LCAT	$175	$70	$196	$235 (ATCB) $220 (CBMT) $780 (Narrative)	$676 $661 $1,221
LMFT	$175	$70	$196	$245	$686
LMHC	$175	$70	$196	$200	$641
LP	$175	$70	$196	$780 (Narrative)	$1,221

The costs for licensure are paid by the individual, although these costs may be reimbursed by an employer. While unlicensed staff would not incur the costs for licensure and registration, these unlicensed staff may qualify for credentials, e.g., CASAC, that would impose costs on the individual and/or the employer. If licensure were to be established for other professions, it would be reasonable to expect similar costs to the applicant, although fees would be established by the Legislature in law.

Areas in Need of Further Study

The reports submitted by the exempt agencies generated many responses, including some proposals that were not part of the agency reports or within the parameters defined in Chapters 130 and 132 of the Laws of 2012. These issues are briefly identified below and the Department could provide additional information, upon request.

- **Continuing education**. The Education Law mandates that licensees in 21 of the 49 professions complete continuing education, acceptable to the Department, as a condition of the triennial registration to practice. There is no requirement for continuing education by individuals licensed as social workers or mental health practitioners. It was suggested that Articles 154 and 163, respectively, be amended to require a licensee to complete continuing education for registration. The Department generally does not oppose such requirements, if the law includes resources to implement the process of reviewing and registering providers and monitoring compliance by licensees.

- **Workforce planning**. It was suggested that the Legislature establish a process by which the State can estimate the needs for social workers and other licensed professionals in the coming decades. The aging of the baby boomers and returning veterans from the wars in Afghanistan and Iraq are just two factors in the increasing need for health and mental health professionals. At this time, the Department collaborates with the Center for Health Workforce Studies at the University at Albany to collect data from licensees in medicine, nursing, dentistry and midwifery when they register. If this were expanded by the Legislature to include social workers, mental health practitioners and psychologists, additional resources would be necessary to implement the process.

- **Privileged communication**. When the licensing laws were implemented, the legislation did not include amendments to other sections of law that affect professional practice of health professions. It may be appropriate to consider amending the CPLR to extend privileged communication to individuals in the four mental health professions, similar to the protections provided to patients of social workers in section 4508 of the CPLR and psychologists in section 4507 of the CPLR.

- **Limited permits.** The law authorizes the Department to issue a two-year limited permit to an applicant in mental health counseling and a one-year permit to an applicant in marriage and family therapy, creative arts therapy, and psychoanalysis. The Department may provide a single, one-year extension to an applicant who has not yet met the experience and examination requirements for licensure. A significant number of applicants find it difficult to meet the requirements in the allotted time. It may be appropriate to consider an amendment to section 8409 of Education Law to allow the Department to extend a limited permit for two, one-year periods.

- **New professions**. The Department received comments about the possibility of licensing an individual with a bachelor's of social work degree (BSW) who is authorized under Article 154 to provide certain services under the supervision of an LMSW or LCSW. There is a national examination for licensure and 39 jurisdictions in the U.S. license the BSW. The Department would participate in discussions about any new profession.

- The Department also received comments about the possibility of establishing licensure for Psychology Assistant at the master's level, similar to the Physician Assistant licensure in medicine, where licensees would work under the

supervision of a licensed psychologist, but would be able to provide services in the generic practice of psychology to meet many needs. There is a national examination that is used in other States and several states that have various forms of such licensure. The Department would participate in discussions about any new profession.

- There are a number of bills in the Legislature to create licensure for individuals who would provide services that are related to mental health counselors, marriage and family therapists, creative arts therapists, and psychoanalysts, as well as social work and psychology. The Department has not taken a position on these bills, which would require legislative action in order to regulate:
    - Biofeedback therapy (A.3012)
    - Genetic counseling (A.5641/S.3514)
    - Therapeutic Recreation Specialists (A.674/S.4561)
    - Rehabilitation Counseling (S.6092 and A.967-A)
    - Vision Rehabilitation Services (A.8576/S.3880-A)

  Some of these groups, e.g., rehabilitation counseling, were considered for licensure in 2002, but were not included in Chapter 676 of the Laws of 2002. When exempt programs responded to the survey in 2011 regarding the services provided by individuals who may or may not be licensed, some of the titles above were identified as unlicensed persons providing services under the exemption. The Legislature may wish to consider whether any of these professions should be included in legislation to address the need for appropriately trained staff in the agencies and programs.

Next Steps

This document was presented to the exempt State agencies to provide an opportunity for the commissioners of those agencies to submit to the Education Department statements or alternative recommendations for inclusion in the report, as required by law; their comments are attached. The final report has been 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 for appropriate action prior to the July 1, 2013 expiration of the exemption.

Attachments:
Appendix A – Chapters 130 and 132 of the Laws of 2010
Appendix B – Survey for exempt programs regarding practice
Appendix C – Results of survey of exempt programs
Appendix D – Survey for public comments on agency proposals
Appendix E – Results of request for public comments on proposals
Appendix F – Statements from provider & professional associations

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State of New York

Department of Corrections and Community Supervision
Department of Health
Office for the Aging
Office of Alcoholism and Substance Abuse Services
Office of Children and Family Services
Office of Mental Health
Office for People With Developmental Disabilities

June 28, 2012

Dr. John B. King, Jr.
Commissioner of Education
New York State Education Department
89 Washington Avenue
Albany, New York 12234

Dear Commissioner King:

Thank you for the opportunity to review the Report prepared by the New York State Education Department pursuant to Chapters 130 and 132 of the Laws of 2010. This statement is being provided on behalf of all the undersigned agencies.

Respectfully submitted,

Brian Fischer, Commissioner
Department of Corrections
and Community Supervision

Nirav R. Shah, M.D., M.P.H., Commissioner
Department of Health

Greg Olsen, MSW, Director
Office for the Aging

Gladys Carrión, Esq., Commissioner
Office of Children and Family Services

Arlene González-Sánchez, Commissioner
Office of Alcoholism and
Substance Abuse Services

Michael F. Hogan, Ph.D., Commissioner
Office of Mental Health

Courtney Burke, Commissioner
Office for People With
Developmental Disabilities

Executive Summary

This joint statement is submitted by the Department of Corrections and Community Supervision (DOCCS), Department of Health (DOH), Office for the Aging (OFA), Office of Alcoholism and Substance Abuse Services (OASAS), Office of Children and Family Services (OCFS), Office of Mental Health (OMH) and Office for People With Developmental Disabilities (OPWDD), pursuant to Chapters 130 and 132 of the Laws of 2010, related to the impact of licensure on the following seven mental health professions: psychology, clinical social work, master social work, creative arts therapy, marriage and family therapy, mental health counselors and psychoanalysis.

This document presents an overview of the issues that warrant further consideration. Specifically addressed are the following topic areas:

- Regulatory Assurance / Public Protection
- Innovations / System Change
- Fiscal Issues
- Other Factors

History

This policy issue has its genesis in Chapters 420 and 676 of the Laws of 2002. These Chapters defined the professional practices for licensure of seven mental health professions and restricted the practices of psychotherapy to licensees in those professions, as well as physicians, physician assistants, and registered nurses and nurse practitioners.

The 2002 statutes enacted an exemption from licensure until January 1, 2010 for individuals working in programs and services that are regulated, operated, funded or approved by OMH, OPWDD, OASAS, or a local government unit as defined in the Mental Hygiene Law. The original exemptions were expanded by Chapter 433 of the Laws of 2003 to include individuals served in programs approved by the OCFS or a Local Social Services District.

Enactment of Chapters 130 and 132 of the Laws of 2010, which extended the exemption to July 1, 2013, broadened the exemption to include the DOH, OFA, and DOCCS.

Regulatory Assurance / Public Protection

Each impacted state agency is mission driven and serves the needs of New Yorkers by overseeing the delivery of quality services directly or through a network of highly regulated providers. Additionally, all are committed to addressing concerns related to quality of care. Programs licensed, regulated, or funded by the State agencies are subject to oversight, monitoring and regulation. Pursuant to federal and State law and regulation, State agencies provide individuals under their care with protections and require that those charged with the care and treatment of individuals are trained. Programs must comply with detailed requirements established in such agency's regulations, and, if funded by Medicaid, also are required to comply with the standards established by the Centers for Medicare and Medicaid Services and applicable Medicaid regulations.

Oversight by the State agencies is performed in several ways, including by regulation, prior approval and review, inspection and certification, background checks, enforcement, and other state and federal oversight. Agencies also have quality assurance mechanisms, which, by design, operate independently of programs and the provision of services that perform certification reviews and ongoing surveys of State and voluntary provider facilities and programs to monitor compliance with applicable federal and State regulations and related policies. These certification and oversight requirements support high quality care that in many respects exceeds those services provided by private licensed practitioners.

In addition to direct oversight, many programs operated or licensed by the agencies receive additional oversight from:

- New York State Department of Health;
- Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services (audits and inspections);
- U.S. Department of Justice;
- New York State Office of Medicaid Inspector General;
- New York State Office of State Comptroller (program audits);
- The New York State Justice Center for the Protection of People with Special Needs (effective June 30, 2013);
- private certification agencies including The Joint Commission and the Commission on Accreditation of Rehabilitation Facilities; and/or,
- New York State Family Court.

In addition to regulation, compliance and oversight, agencies are focused on the provision of quality services. This is accomplished in a variety of ways, including the following:

- **Multidisciplinary Teams:** Many licensed and funded programs are structured to build in quality control through the use of multi-disciplinary teams. These teams are composed of a range of staff, including psychiatrists, licensed and experienced therapists, and trained un-licensed peers. The strength of the teams is enhanced by strong supervision and final sign-off by experienced and appropriately licensed team members. Teams use a multi-disciplinary approach to establish treatment objectives, in consultation with the recipient of treatment. Professional staff on the team have overall responsibility for treatment plan implementation.
- **Standards of Care**: State agencies that license or operate clinical programs have Standards of Care which are essential for access to and quality of care for persons served by licensed clinics that provide services. These standards are based on regulatory requirements and must be incorporated into the policies of these licensed clinics and be applied consistently throughout the state. They highlight expectations for, among other areas, staffing, case loads, training and best practices.
- **Incident Reporting:** Incident management regulations require the development, implementation and ongoing monitoring of incident management programs by individual providers, and offer additional protections for the health and safety of clients and enhance their quality of care.

- **Mental Hygiene Legal Service (MHLS):** The Office of Court Administration funds MHLS to represent, protect and advocate for the rights of people who reside in, or are alleged to be in need of care and treatment in, facilities which provide services for persons with mental disabilities.
- **The Justice Center for the Protection of People with Special Needs:** This landmark legislation was introduced at the request of Governor Cuomo and passed in the 2012 legislative session. It will provide a number of even greater protections for persons who receive services from the public health and behavioral health sector.

Innovations / System Change

The impact of allowing the expiration of the exemption should be analyzed against the back drop of the efforts currently being undertaken by the agencies. For example, the State agencies and the networks they oversee are leading system changes and innovations that are nationally recognized. The behavioral health and health care systems are undergoing significant improvements to promote high quality care, including the ongoing transition to care coordination by health homes and behavioral health organizations as approved by the Medicaid Redesign Team (MRT). Future discussion should take into account the changes underway in the State's service delivery systems, particularly the innovations taking place in New York's health and human services systems. These systems are in the midst of enormous, rapid-paced changes that have the potential to dramatically improve outcomes for New Yorkers, decrease costs and improve the quality of care for all our citizens. Current trends and improvements to the service delivery framework may require flexibility in the parameters used to govern our professions that serve as the foundation for our health and human services workforce.

OPWDD plans to initiate major programmatic and financial advances in its service delivery system through the implementation of the "People First Waiver." These system changes will allow OPWDD to more accurately determine a person's needs for services through a care management model and provide individualized services to best meet those needs.

The new waiver will also allow OPWDD to review how well the current services, including behavioral and mental health services, meet the needs of people with developmental disabilities, and what can be done to promote better personal outcomes for persons who receive these services and their families.

Through the People First Waiver, OPWDD plans to update and improve how a person's needs are assessed so that a person with greater needs will receive appropriately greater levels of service.

Fiscal Issues

The SED Report noted that overall costs may be lower than the costs that were projected by the State agencies and that were reported by an MRT workgroup on this topic because licensed professionals may shorten the period of care or reduce or prevent recidivism and relapse. On the other hand, it is not clear that the existing oversight, regulation, licensing, and performance standards required by the State, as well as the ongoing transition to the provision of care

coordination by health homes and behavioral health organizations as approved by the MRT, are insufficient to ensure high quality care that prevents recidivism, relapse and unnecessary care.

Additional information from SED is needed to determine whether their analysis takes into account factors including the cost of recruitment, selection and training of new employees and unemployment insurance and related costs for State and NFP employees who may be removed from employment because they cannot achieve the required licensing standards. Associated costs could easily exceed the amount estimated by SED.

SED also noted that the costs of allowing the exemption to lapse could be lower than projected if agencies bill Medicaid, Medicare and private insurance. However, charging increased fees and additional billable services does not reduce costs – it simply shifts who would pay for the additional costs.

Other Factors

- While a survey is helpful in receiving input, and the views of professionals and related organizations are valuable, they should not be viewed in isolation as the conclusions may only represent a narrow perspective and may not present a balanced view without further analysis.

- A position-by-position review of civil service and NFP titles should be conducted since they appear to be associated with the care and treatment of individuals that could be considered protected by SED. Such services may fall within the scopes of practice of mental health professions associated with specific civil service titles.

- The future demands for licensed practitioners should be measured to ensure the delivery of needed care matches such demand.