

Testimony prepared for State Education Department Public Hearing
July 30, 2018

Subject: Part Y of Chapter 57 of the Laws of 2018

Good afternoon. My name is Lauri Cole. My colleagues and I represent a working group of 15 membership organizations that represent licensed professions, as well as community-based and peer run agencies who employ thousands of New Yorkers that provide human services to hundreds of thousands of individuals each day. Our agencies operate a vast array of prevention, treatment, and recovery services throughout the OASAS, OPWDD, OMH, and OCFS systems of care. We appreciate this opportunity to share our thoughts regarding one of the most consequential pieces of legislation we have worked on to date – Part Y of Chapter 57 of the Laws of 2018.

We would like to make it very clear to SED (and representatives of the Office of the Professions) that under the current exemption we use licensed staff to diagnose, we have been clinically responsible, we have been providing these services for decades and our outcomes are excellent. The statute, as intended, will allow for continuity of care and will not result in any, albeit unintended, disruption of quality or services.

Our working group speaks with one voice regarding our expectations for the implementation of Part Y and specifically, the drafting and promulgation of regulations pertaining to the statute. Each of us believes the statute as currently written *is unambiguous in its articulation of licensure requirements*. It ensures our workforce can continue to perform their job responsibilities while maintaining the already high quality of care and regulatory standards required of these programs, at no additional costs to taxpayers. As such, we are here today urging the SED to *minimize interpretation of the budget language and follow the statute as it is written when drafting regulations*.

Regarding the process ahead, it is our understanding that regulations will be drafted by SED alongside the relevant State agencies that know our programs and services best and who hold us accountable for our efforts in myriad ways. Beyond this, and before you begin drafting regulations, we urge you to create additional opportunities where you can hear from stakeholders across the State, beginning with employers whose agencies will be directly impacted by the efforts of this body.

This year, as changes to the law were debated, our group worked with one purpose – tirelessly advocating to preserve access to and continuity of care for the individuals we serve each day, without disruption of care or exacerbation of existing staff shortages. Our workforce is our life blood. Our staff are well trained but not well reimbursed. We have serious workforce shortages at every level of our organizations. Our staff do heroic work each day with little thanks. In return, we hold them to incredibly high standards within an intensely regulated and well supervised environment that conforms to all applicable certifications, regulations, and monitoring requirements that remains in compliance with State and national quality of care standards. In addition to State agency certification, our programs are also overseen by the State's Justice Center, OMIG, and OSC.

As the Opioid/Heroin epidemic continues to devastate our local communities, and the incidence of completed suicides continues to rise, we rely heavily on our highly regulated workforce to provide excellent care under the most challenging of circumstances. *Part Y strikes the correct balance as it retains high expectations for the programs and staff working in our settings and especially those who have direct contact with care recipients.*

Historically, there has been a lack of clarity regarding SED licensing requirements and this has made it difficult for us to recruit, stabilize, and preserve our workforce. We believe *Part Y is clear in its clarification and articulation of licensure requirements*. It continues existing statutory and regulatory provisions as well as multiple levels of government oversight required of our programs and services. These requirements and safeguards combine to create an environment that far exceeds the standards of those required of practitioners in private practice setting where clinicians often treat individuals similar to the individuals we serve but (in most cases) without direct supervision or oversight.

Part Y amends various provisions of Education Law, clarifying the functions, tasks and services that can be lawfully performed by individuals who are not licensed psychologists, social workers, or mental health practitioners. It takes pains to identify examples of a broad range of tasks and activities (which do not involve diagnosis of a care recipient) that can be performed by unlicensed staff, all of which are critical to the successful treatment and recovery of the individuals we serve. We are heartened to know that the statute confirms our current practices and continued lawful operations in this regard.

Part Y makes clear that every individual who provides a diagnosis in these programs must be licensed to do so. It also makes clear that the activities and services provided by those with a master's degree in psychology or a master's degree required for licensure under Article 163 of the Education Law, who are working under the appropriate State agencies or a local governmental unit, are not restricted. This provision is vital to our organizations who struggle to recruit and retain talented and highly qualified practitioners willing and able to provide clinical and other services to the individuals we serve. One has only to review the educational requirements combined with the thousands of hours of clinical experience required of LMFTs, LMHCs and other licensed practitioners of the healing arts to know they are equally as qualified as LCSWs in their ability to provide effective care.

One of the most important provisions in the statute is the language that permanently exempts (grandfathers) all persons hired on or before one year from the date the regulations are published in the State Register or adopted, whichever is later, in their current or comparable positions, regardless of whether they remain employed by the same employer. This provision requires each State agency to create and maintain a process to verify employment history of individuals exempt under the subdivision. Without the grandfathering clause, and subsequent data management activities by the relevant State agencies, we would be helpless to prevent massive employee layoffs around the State. This would result in dangerous delays or discontinuation of services to the ever-increasing numbers of New Yorkers seeking our care. Our member organizations are already experiencing dire workforce shortages in all areas of service. Without the grandfathering provision, programs would undoubtedly experience serious confusion relative to who they may be able to hire prior to finalization of SED regulations. This would result in catastrophic and prolonged service interruptions at a moment in time when we can ill afford to lose even one service provider.

The 15 groups represented here today are of one mind in our determination to preserve the highest quality of care already being offered in the programs and services we operate. We are committed to ensuring New Yorkers will continue to have local access to the care they need in a timely manner and at the appropriate level of service. This can only be accomplished by our working together to ensure the clarifications embedded in Part Y are clearly articulated and reinforced by the forthcoming draft regulations. We stand ready to assist SED and the impacted State agencies as we work together to accomplish this goal. We are happy to respond to your questions.

Organizations signed on to this testimony:

New York State Council for Community Behavioral Healthcare, Lauri Cole, Executive Director

New York State Coalition for Children's Behavioral Health, Andrea Smyth, Executive Director

New York State Association of Marriage and Family Therapists, Denise Murphy-McGraw, Consultant

Cerebral Palsy Associations of New York State, Barbara Crosier, VP of Government Relations

The Coalition for Behavioral Health, Jason Lippman, Interim CEO

NY Association of Psychiatric Rehabilitation Services, Harvey Rosenthal, Executive Director

Friends of Recovery - NY, Stephanie Campbell, Executive Director

Mental Health Association of New York State, Glenn Liebman, CEO

Association for Community Living, Antonia Lasicki, Executive Director

Alcohol and Substance Abuse Providers of New York State, John Coppola, Executive Director

InterAgency Council of Developmental Disabilities Agencies, Inc., Winifred Schiff, Associate Executive Director for Legislative Affairs

National Alliance on Mental Illness - NYS, Matthew Shapiro, Associate Director of Public Affairs

Committee of Methadone Program Administrators, Allegra Schorr, Executive Director

Therapeutic Community Association of NY, Norwig DeBye-Saxinger, Executive Director

Developmental Disabilities Alliance of Western NY; John R. Drexelius Jr., Government Relations Counsel