
**Department of Health Report on Utilization of Personnel as Required by
Chapters 130 and 132 of the Laws of 2010**

Services Provided by the Department of Health.

The Department of Health (the Department) is responsible for the protection and promotion of the health of the inhabitants of the state (NYS Constitution Article XVII §3). The Department supervises the work and activities of the local boards of health and health officers throughout the state; the registration of births, deaths, and marriages; the reporting and control of disease; the abatement of nuisances affecting or likely to affect public health.

The Department supervises and regulates the sanitary conditions of physical establishments and water in the state. The Department also licenses, supervises, and regulates: maternity hospitals and homes and the occupancy of midwifery; the manufacture, distribution, and use of narcotics; the practice of funeral directing and embalming.

The Department also advises any local unit of government, and the public health officials thereof within the state, in the performance of their official duties and regulates the financial assistance granted by the state in connection with all public health activities; receives and expends funds made available for public health purposes; and administers to the medical and health needs of the ambulant sick and Native Americans.

The Department acts as the single state agency for medical assistance, with responsibility to supervise the plan for medical assistance as required by title XIX of the federal Social Security Act (42 USC 1396, et seq.: grants to states for Medicaid and Children's Health Insurance Program), or its successor, and to adopt regulations as may be necessary to implement this plan.

Nature of Services Provided

The Department provides services directly through several state-run institutions and indirectly through reimbursement for service, approval of private providers, and the issuance of operating certificates and licenses.

Oversight of state-run institutions is done in the Department by the Office of Health Facilities Management (HFM). HFM directs and oversees patient care, research, capital construction, and the fiscal management of the five Department of Health state-owned and operated health care facilities. HFM represents Helen Hayes Hospital and the New York State (NYS) Veterans Homes at Batavia, Montrose, Oxford and St. Albans. When combined, these facilities offer 1,025 certified beds.

The New York State Veterans Homes provide a wide variety of services, care and treatment to New York veterans and their dependents. The homes maintain an average occupancy rate of over 96%. Below are details on the facilities:

1. Batavia: This facility was established in 1995 and is located in Genesee County serving the Western region of New York and has a bed capacity of 126.
2. Montrose: This facility was established in 2001 and is located along the Hudson River in Upper Westchester County. Montrose serves the lower Hudson Valley Region and has a bed capacity of 252.
3. Oxford: This facility was established in 1894 and is located in Central New York. The facility was rebuilt in 2009 and provides 242 beds serving the Southern Tier and Central regions of New York.
4. St. Albans: This facility was established in 1993 and located on the beautifully tree-lined campus of the Federal Veterans Administration hospital. It serves eligible veterans in the greater New York City region with 250 beds.

Helen Hayes Hospital is located in West Haverstraw (Rockland County). Helen Hayes provides innovative and comprehensive care and treatment to patients requiring rehabilitation services on an in-patient basis with 155 beds, as well as on an out-patient basis. The hospital also offers vocational and educational services, along with conducting research and teaching in rehabilitation medicine.

The Department's Office of Health Insurance Programs (OHIP) is charged with running the state's complex Medicaid program, including the two main functions of enrolling individuals in the various Medicaid programs and reimbursing health care service providers for caring for Medicaid beneficiaries. There are fee-for-service models and managed care models used for reimbursement, though the Department is moving towards increasing enrollment in managed care programs. The Division of Financial Planning Policy within OHIP serves as liaison with Office of Mental Health (OMH), Office of People with Developmental Disabilities (OPWDD) and Office of Alcohol and Substance Abuse Services (OASAS) on matters related to Medicaid. OPWDD and OASAS also receive funding through the Medicaid program, though the administration falls under the jurisdiction of those agencies.

Additionally, the Bureau of Early Intervention, which is part of the Office of Public Health within the Department, also provides reimbursement for care providers. The Early Intervention Program is a statewide service delivery system for infants and toddlers (birth to three years) with disabilities and their families. Its mission is to identify and evaluate those children whose healthy development is compromised and provide appropriate interventions to improve child and family development.

The Office of Health Systems Management (OHSM) has oversight over the operating certificates and licenses to providers that fall under the purview of the Department. This oversight focuses on ensuring facilities are meeting legislatively and regulatory established standards before being certified, subsequent inspections, and responding to complaints against the facilities. The regulation of the licensure within the facilities is done in coordination with the State Education Department (SED) and the Department defers to SED on matters pertaining to proper licensure.

Snapshot of the Survey Results

The survey was distributed to the programs and institutions that may have been impacted by the expiration of the exemption. The survey sought to determine if they employed people with licensure that provided certain services that fell with the practice of a licensed profession under Article 153 or 163 of the Education Law. The survey also tried to ascertain what the titles of the individuals that offered these services are. These five services were: assessment/evaluation, diagnosis, assessment-based treatment planning, psychotherapy, and treatment other than psychotherapy.

The Department distributed the survey to institutions under its purview through the Department's health commerce system (HCS). The HCS is a system which the Department utilizes to communicate electronically to institutions, agencies and programs that are funded, regulated or supervised by the Department. Through the HCS an introduction and link to the survey was sent to administrators at Adult Care Facilities, County Departments of Health, Home Health Agencies, Hospice, Hospital, Licensed Home Care Services Agencies (LHCSA) and Nursing Homes.

The Department received 65 responses from the survey distributed. Of the 65 respondents eight indicated they were operated by the Department, 52 indicated they were regulated by the Department, 13 indicated they were funded by the Department, 34 indicated they were approved by the Department, and 55 indicated they were licensed by the Department.

Amongst the programs and institutions surveyed 43 responded that assessment/evaluation was provided in their program. The vast majority of these appeared to be licensed individuals, with the largest group being 'Other licensed professionals.' However, there were 28 respondents that employed a combined total of 34 individuals that were unlicensed social workers in the activity of assessment and evaluation, two of which were under the employment of a state-operated facility.

Amongst the programs and institutions surveyed 37 responded that diagnosis is provided in their program. Most of this was provided by doctors (MDs) (31) and nurse practitioners (NPs) (20). Two of the respondents employed a total of three unlicensed social workers that provided this service. Two respondents indicated that they employ recreational therapists who provide diagnosis. Combined these two respondents had five recreational therapists that provide this service. However, from the data it cannot be determined if these recreational therapists have any other licensure which may qualify them for diagnosing individuals, or if these recreational therapists were part of a team under the supervision of a licensed individual.

Amongst the programs and institutions surveyed 30 responded that psychotherapy is provided in their program. Most of this was provided by Licensed Clinical Social Workers (10), Licensed Master Social Workers (7), and Psychoanalysts (18). Three of the respondents employed a total of six unlicensed social workers that provided this service. Additionally, two respondents employed eight total Credentialed Alcohol and Substance Abuse Counseling (CASACs).

Amongst the programs and institutions surveyed 39 responded that assessment-based treatment planning is provided in their program. Many of these services were provided by licensed individuals including; MDs (26), NPs (17), Licensed Clinical Social Workers (16), Licensed Master Social Workers (20), and Psychoanalysts (20). Sixteen of the respondents employed a total of thirty unlicensed social workers that provided this service although from the data we cannot be certain if they have any other licensure which may qualify them for diagnosing individuals or they were part of a team under the supervision of a licensed individual. Amongst

the sixteen one respondent stated they were operated by the Department, and employed two individuals to perform this service that were unlicensed social workers.

Amongst the programs and institutions surveyed 42 responded that treatment other than psychotherapy is provided in their program. This was a broad category, especially since the institutions and programs surveyed predominately provide medical care. However, most of this was provided by licensed individuals including: MDs (16), NPs (12), Licensed Clinical Social Workers (18), Licensed Master Social Workers (17), Psychoanalysts (15), and other licensed professionals (65). Twelve of the respondents employed a total of twenty one unlicensed social workers that provided this service.

The Department has also conducted qualitative analysis regarding the impact of the exemption on its state-operated Veterans Homes. This is in addition to the information attained from them through the survey instrument. Through discussions with these homes the Department learned that patient care is conducted using a team model. The team is composed of health care providers with different qualifications and skill sets. Some of the activities performed by team members fall under the list of activities restricted under the Chaptered legislation, and some of which is conducted by unlicensed providers.

However, these teams are always headed by a licensed individual, including but not limited to, a physician, nurse practitioner/physician assistant, licensed master social worker, or licensed clinical social worker. All must authorize and approve of activities undertaken by unlicensed individuals. Therefore the individuals that may perform activities without a license do not do so independently, and are closely supervised when they do. These unlicensed staff performs auxiliary functions such as observation and reporting. The Department concluded that the licensure of the head of these teams, their level of control over decision making regarding the restricted services, and the supportive nature of the unlicensed staff makes them not in violation of the language of the law once the exemption expires.

Implications and Implementation

The Department does not have recommendations to put forth regarding the exemption of specific titles. The survey results did not reveal any need, from the Department's perspective, for individuals without proper licensure to receive continued exemption under this law. Any instances of unlicensed individuals providing services outside their scope of practice appeared to be limited to specific instances and did not reveal any trends that indicate that if the exemption for the Department is lifted there would be a problem within the health workforce that falls primarily under the Department's authority. It is the position of the Department that these situations can be ameliorated with increased education of facilities on the law and possible oversight. The Department is willing to work with SED on such measures going forward.

Costs

The Department does not believe it will bear any additional costs associated with the expiration of the exemption. All FTEs, part-time workers, and contract workers that the Department employs to deliver direct services to individuals should be in compliance with the existing law. No additional staff will be needed when the exemption ends. When the law was initially implemented in 2002, and there was no exemption for the Department, we did not experience any financial burden as a result of that implementation. The Department anticipates that when the exemption ceases it will again experience no fiscal burden.

Since this law does not affect Medicaid reimbursement levels for services, any changes facilities need to make would have no impact on the Medicaid program from the perspective of the Department. The cost and utilization of services should not be impacted by the loss of the exemption. Any impacts in costs of providing services associated with attaining proper licensure of individuals would be borne by the service providers, who in the opinion of the Department, should have been in compliance with this legislation since 2002.

Conclusion and recommendation

The Department does not believe any actions are necessary to amend the law and defers to agencies that are being impacted by this legislation for further recommendations. The Department looks forward to working with SED and other agencies in the future to ensure compliance with this legislation.