

I. Introduction and Overview:

Overview of OCFS: The Office of Children and Family Services (OCFS) is responsible for regulating and providing funding to programs and services involving foster care, adoption and adoption assistance, child protective services including operation of the Statewide Central Register for Child Abuse and Maltreatment, preventive services for children and families, and protective programs for adults. OCFS is also responsible for the functions performed by the State Commission for the Blind and Visually Handicapped and coordinates state government response to the needs of Native Americans on reservations and in communities.

OCFS provides oversight and monitoring of regulated child care (family day care, group family day care, school-age child care and day care centers outside of New York City), legally exempt child care, child care subsidies, child care resource and referrals, and the Advantage After-School Program, which provide services and programs for infants, toddlers, pre-schoolers and school-age children and their families.

OCFS is responsible for all elements of the state's juvenile justice programs, and operates residential facilities, community-based group homes, day-placement centers and reception center programs for juvenile delinquents and juvenile offenders placed in OCFS custody. OCFS regulates and monitors the private residential programs (voluntary agencies) that serve adjudicated Persons in Need of Supervision and juvenile delinquents as well as children in foster care.

OCFS works with the local departments of social services (LDSS) and county and municipal youth bureaus to offer local youth development programs and programs for runaway and homeless youth.

Social services in New York State are locally provided and state supervised. OCFS partners with the LDSS in each county and in the City of New York, as well as numerous not-for-profit organizations statewide to make available the above-listed services. Not-for-profit organizations often contract with the State and with LDSS to provide these services.

The OCFS workforce, LDSS staff and employees of not-for-profit organizations perform diverse tasks and activities in order to meet the varied needs of New York's children and families.

Introduction: Chapters 130 and 132 of the Laws of 2010 extended until July 1, 2013 the broad exemptions to licensing under Articles 154 and 163 of the Education Law for persons in the employ of a program or service operated, regulated, funded or approved by enumerated state

agencies, including OCFS, and also the LDSS. Chapter 132 of the Laws of 2010 also imposed requirements on the State Education Department (SED) and the exempt agencies.

Under bill section 9(b) of Chapter 420 of the Laws of 2002 and bill section 17-a(1) of Chapter 676 of the Laws of 2002, both as amended by bill sections 3 and 4 of Chapter 132 of the Laws of 2010, OCFS and the other exempt agencies are required to submit a report to SED on the utilization of personnel who benefit from the exemption.

The report must include: identification of tasks and activities performed by exempted personnel that are within the scope of licensed practice; tasks and activities that are not within the scope of licensed practice; an analysis of costs associated with employment of only licensed personnel to perform tasks and functions with the scope of licensed practice, including salary costs and costs associated with providing support to unlicensed personnel in obtaining licensure; and an action plan detailing measures through which each such entity shall comply with professional licensure laws by July 1, 2013 and recommendations on alternative pathways towards licensure.

Subsequent to the receipt of this report from each exempt agency and consultation with the state agencies, not-for-profit providers, professional associations, consumers and other key stakeholders, SED must report to the Governor and Legislature with recommendations for statutory and regulatory amendments necessary to fully implement licensure upon the expiration of the exemption. This final report by SED is due July 1, 2012.

Survey of providers: As part of efforts to comply with licensure, each covered state agency surveyed organizations employing persons who are temporarily exempt from licensing and who may be affected by the expiration of this exemption on July 1, 2013. The survey form was developed collaboratively by SED and the exempt agencies and included descriptions and examples of five major functions that are within the scope of professional practice: assessment/evaluation, diagnosis, assessment-based treatment planning, psychotherapy, and other treatment. The survey asked, with respect to each of the five major functions, whether the program provided that function, the number and occupational title of licensed persons in the program performing the function, the number and occupational title of unlicensed persons in the program performing the function, and information on contractors and volunteers performing the function. The survey also sought aggregate information on the overall number, credentials and salary of program staff.

OCFS distributed the survey to all LDSS, voluntary agencies providing residential services to children, juvenile detention facilities, child care resource and referral agencies who distributed the survey to child care providers, OCFS operated residential facilities, and not-for-profit contractors and organizations that provide domestic violence services or preventive services.

Statistics on response to survey:

Completed surveys were received for 249 programs. Some organizations submitted multiple survey responses because the program operates several distinct programs for children and families. As previously described, OCFS sent the survey to a wide variety of organizations. Some organizations, such as child day care centers, did not provide any of the five major functions. Other organizations, such as the OCFS operated facilities, employ professional staff to provide some or all of these five major functions. Unfortunately, the survey did not require responders to identify their organization or program type, so it is difficult to know what the response rate was among the various organization types and whether the responses represented a valid sampling.

The overall survey results show that a large proportion of surveys were completed by programs that do not provide any of the five major functions in question.

- 42% of responders do not provide “assessment/evaluation”
- 69% do not provide “diagnosis”
- 70% do not provide “psychotherapy”
- 56% do not provide “treatment other than psychotherapy”
- 55% do not provide “assessment-based treatment planning”

In addition, for those programs whose survey indicated that they do provide one or more of the five major functions, it is unclear that the responders fully understood the survey definitions. For example, the term “assessment” is frequently used in the field of child welfare, but does not have the same meaning as “assessment” in the field of mental health or developmental disabilities. Child and family services caseworkers routinely conduct child safety assessments and risk assessments. Caseworkers also routinely assess the strengths and needs of families and recommend services based on that assessment. These functions are not “assessment/evaluation” as contemplated in the survey. The survey definition of “assessment/evaluation” focuses on use of psycho-social methods to determine a diagnosis and course of treatment. However, 58% of the 249 programs responded that they do provide assessment/evaluation and that approximately 2,500 (out of a reported total of 3,000) employees in these programs engaged in assessment/evaluation. Another survey category, “treatment other than psychotherapy”, had such a vague definition that some survey takers responded yes they provided this function since they do provide some services to families and children, and those services are not psychotherapy. The survey itself acknowledged the difficulty in defining this phrase in a way that distinguished between restricted and non-restricted activities.

Among the responders who indicated that they did provide some of the five major functions, were programs that are not under the purview of OCFS, but who received an OCFS survey. For example, the program description variable includes responses such as “OMH Congregate Care

Level II Community Residence”, “provides services to individuals with developmental disabilities”, “mental health case management . . . for persons ages 18 and older with serious mental illness”, “adult recovery community residence licensed by OASAS” and “outpatient chemical dependency program.” These survey responses should have been collected and counted by OMH, OPWDD or OASAS, not OCFS.

The survey also used numerous similar occupational titles to classify staff from various organizations. For example, a case worker, unlicensed social worker and social work case worker may engage in similar activities, but different organizations use different occupational titles to describe these activities. The survey treats them as three separate occupational titles.

Percentage/number of responders’ employees, volunteers, contractors providing each of the functions surveyed (with any appropriate caveats) – and whether the individuals were currently licensed or not:

Because of the afore-mentioned problems with the survey administration and definitions, any statistics calculated from these survey responses would not be an accurate or valid representation of the use of licensed or unlicensed staff by OCFS-affiliated agencies. Instead, OCFS believes that a discussion of the types of services provided by specific types of OCFS-affiliated agencies and the OCFS regulations regarding staff qualifications would be more helpful in understanding the scope and issues raised by eliminating all exemptions on the use of unlicensed staff to provide specific services.

Snapshot of Staffing:

- 1. Survey results on use of licensed individuals (and occupational titles) to provide five major functions in OCFS facilities and programs.*

OCFS-operated juvenile justice facilities –

The law does not propose to eliminate the exemption for government-employed psychologists and SED has reviewed the job description for Youth Counselors (YC’s) and found that these individuals are not subject to licensure. Therefore, OCFS is not addressing the use of unlicensed psychologists and the use of YC’s in OCFS –operated facilities.

Most of the staff in OCFS facilities are in Youth Division Aide, Teacher, Cook, and Clerical positions and do not engage any of the five major functions. OCFS is hiring LMSW, Psychologists (some licensed), and Psychiatrists to provide services involving the five major functions.

2. *Survey results on use of licensed individuals (and occupational titles) to provide five major functions in agencies under OCFS exemption.*

Local departments of social services (LDSS) -

SED letter to NYPWA -

In May of 2010, SED provided a letter to the New York Public Welfare Association (NYPWA), which is an organization representing New York's 58 LDSS. In the letter, SED interpreted whether caseworker duties, as described in sample job descriptions provided by LDSS, were restricted to licensed persons under Articles 154 and 163 of the Education Law. SED determined that LDSS caseworkers would not have to be licensed or otherwise authorized to provide the services in these job descriptions. Therefore OCFS is not addressing the use of unlicensed caseworkers by LDSS.

Most staff who work with families in LDSS are caseworkers, case managers, or case planners.

- Case managers are employees of the LDSS with responsibility to authorize the provision of services, to approve client eligibility determinations and approve family assessments and service plans.
- Case planners are the caseworkers with primary responsibility for providing or coordinating and evaluating the provision of services to the family. Case planning includes referring the child and family to providers of services as needed, and delineating the roles of the various service providers. The case planner also coordinates among all of the caseworkers assigned to the case so that a single family assessment and service plan is developed. Case planning responsibility also includes documenting client progress and adherence to the service plan in the uniform case record.

Voluntary agencies operating residential facilities for children –

OCFS regulates residential programs for children including group emergency foster care, group homes and institutions.

- Group emergency foster care programs must have the ability to conduct diagnostic evaluations to assess each child and family's service needs and make recommendations regarding the most appropriate service plan for the child and family. OCFS regulations require that the evaluation be conducted by a certified social worker, or a social worker under the supervision of a certified social worker, and a licensed psychiatrist or psychologist. A diagnostic evaluation includes a child and family assessment, psychological or psychiatric and medical evaluations, and assessment of the educational placement needs of the child. These programs also provide case planning.
- Group homes must employ a person to supervise the group home program who is a professionally trained social worker, a person with experience in child welfare, or a person holding a master's degree in a related field who is in the employ of the agency.

- OCFS regulations on institutions require each institution to provide staff and services necessary for the health and safety and proper care and treatment of child in care. Institutional personnel may include a director of social work services, who is required to have a master's degree in social work or graduation from an accredited school of social work and a minimum of two year's social work experience in a supervisory capacity; supervisor of social work services, who also must have a master's degree in social work or graduation from an accredited school of social worker and a minimum of three year's experience, at least one of which under qualified supervision in the field of child welfare; and social worker I, II and III titles.
- OCFS regulations require a social worker I to be a college graduate, who is pursuing or intends to pursue within a reasonable time, graduate study in social work. A social worker I may carry casework or group work responsibilities with children and families and may be responsible for the planning and coordination of all services and resources affecting children and their families, but always functions under the direct supervision of a person who has completed two years of graduate study from an accredited school of social work.
- A social worker II must be a college graduate with at least one year of graduate study in social work. He or she performs casework or group work with children and families and may be responsible for planning and coordination of all services and resources affecting children and their families, but always functions under the direct supervision of a person who has completed two years of graduate study from an accredited school of social work.
- A social worker III must have completed two years of graduate study from an accredited school of social work and is responsible for the planning and coordination of services to child and families and may supervise individuals in social worker II and I titles.
- OCFS estimates that there are nearly 2,200 full time equivalent positions in titles categorized as social worker 1 and over 710 full time equivalent positions in titles categorized as social worker II. 97 voluntary agencies reported having a director or supervisor of social services position. OCFS uses the social worker 1 and social worker II categories for voluntary agency staff employed in all levels of residential care including group homes, emergency group homes and institutions.

Juvenile detention services –

Juvenile detention is temporary care and maintenance away from home for children held pending an Article 3 or 7 proceeding in Family court or a juvenile offender proceeding in criminal court. Juvenile detention may be operated by a county government or by a not-for-profit agency. OCFS regulations require detention facilities to provide educational, medical services and child care and treatment. Institutional settings are required to have one social

work staff per 15 children. Social work staff must be graduates of accredited colleges with two years of experience working with children.

Voluntary agencies operating non-residential preventive programs –

“Preventive services” are supportive and rehabilitative services to children and families for the purpose of: averting placement of a child into foster care; enabling a child in foster care to return to his or her family at an earlier time than otherwise possible; or reducing the likelihood that a child who has left foster care will return to care. These programs generally provide case management and case planning.

- Case management is the responsibility of the LDSS to authorize the provision of preventive services, to approve the client eligibility determination according to regulatory criteria and to approve service plans.
- Case planning is assessing the need for, providing or arranging for, coordinating and evaluating the provision of these preventive services needed by a child and his or her family to prevent disruption of the family or to help a child in foster care return home sooner. Case planning includes referring the child and family to other services as needed, including education counseling and training, vocational diagnosis and training, employment counseling, therapeutic and preventive medical care and treatment, health counseling and health maintenance services, vocational rehabilitation, housing services, speech therapy and legal services. Case planning responsibility also includes documenting client progress and adherence to the plan in the uniform case record.

Preventive programs also provide clinical services. Clinical services include assessment, diagnosis, testing, psychotherapy and specialized therapies. Clinical services must be provided by a person who has received a master’s degree in social work, a licensed psychologist, a licensed psychiatrist or other recognized therapist in human services.

Information about unlicensed individuals providing five major functions in exempt settings:

There are likely to be some unlicensed individuals who are qualified for licensure engaging in the practice of licensed social work in exempt settings. These individuals may not have acted (or may not yet have been qualified) during the limited time period when a qualified individual could become a LMSW without taking an examination or paying a licensing fee.

Discuss any limitations in this data:

As previously discussed in the section “Statistics on response to survey”, the limitations of the survey data include problems with survey administration and survey definitions. Survey administration problems resulted in some agency respondents completing surveys about programs that not under the purview of OCFS, but rather are OMH or OPWDD affiliated programs. In addition, many surveys were completed by agencies not expected to provide any of the professional services, such as day care providers.

Survey definition problems were of two types. First, the terms “assessment” and “evaluation” have different meanings in child welfare than the definitions used in the survey. It is likely that some respondents used incorrect definitions of the services while answering the survey questions. In addition, the use of numerous different occupational titles (e.g., case worker, unlicensed social worker, social work case worker) to classify staff that may do the same type of work in different organizations, made the responses difficult to interpret.

All of these problems, limitations and misunderstandings make the data collected by the survey questionable at best and most likely invalid.

Costs:

Salaries associated with employing licensed or otherwise authorized personnel to provide services that are restricted to professionals -

Survey responders reported a mean salary of \$47,318 for LCSW’s and \$43,281 for LMSW’s. The largest numbers of responders without professional licenses were individuals with the title social worker (109) or case manager (67). The reported mean salary for unlicensed social workers was \$34,597 and the mean salary for case managers was \$28, 837. Case management is not an activity requiring a license.

OCFS or other support of unlicensed persons obtaining appropriate licensure -

The fiscal year 2011-12 Local Assistance appropriation for family and children’s services was \$82 million less than the 2010-11 appropriation. This cut in funding was largely borne by the same community based not-for-profits that may be compelled to hire a \$43,000 LMSW instead of employing a \$34,000 social worker once the exemption expires on July 1, 2013. OCFS does not anticipate that fiscal year 2012-13 appropriations will enable either OCFS or the LDSS to provide financial support to unlicensed persons in obtaining licensure.

Cost and practical obstacles to licensure -

- If the mean salaries reported in the survey are a valid representation of the field, the salary of a LMSW is nearly \$10,000 higher than an unlicensed social worker. It is unclear how not-for-profit organizations would absorb an increase in personnel expenditures without cutting back on overall employment and services.
- The reported salaries for individuals without a license range from a low of approximately \$25,000 for a youth counselor to a high of \$53,000 for unlicensed government psychologists. It would be difficult for many of these individuals to pay SED’ examination and licensing fees much less the tuition and other costs of obtaining a master’s degree in social work.

- There are few colleges and universities in New York State where individuals may obtain their master's degree in social work while continuing to work.

Implementation and Conclusions:

The state agency will provide an action plan with measures by which the agency shall, by July 1, 2013, comply with professional licensure laws applicable to services provide in State-operated and in state-funded, approved and regulated programs.

- OCFS is complying with the professional licensure laws in its new hires. OCFS is hiring LMSW's, LCSW's, Social Work Supervisors and mental health practitioners such as Psychologists, Nurse Practitioners in Psychiatry, and Psychiatrists to provide professional services in OCFS-operated facilities. OCFS currently employs 22 individuals in the title LMSW 2. 12 of the 22 are LMSW and 10 are LCSW. OCFS employs four individuals in the Social Work Supervisor 1 title who also are LMSW and one Social Work Supervisor 3 who is a LCSW.
- OCFS has received guidance from SED that based on the job description, Youth Counselors in OCFS operated facilities do not engage activities which require a professional license.
- OCFS is reviewing its regulations applicable to authorized agencies (residential facilities for children licensed by OCFS), programs for victims of domestic violence and other programs that may provide professional services to children and families for any changes needed to reflect licensure requirements. The local departments of social services (LDSS) have received guidance from SED based on case worker job descriptions, that LDSS case workers do not engage in activities which require professional licensure.
- When issuing contracts for services to children and families OCFS will consider inclusion of a requirement that persons providing professional services must have the appropriate license.
- Formal enforcement of licensure requirements are within the purview of SED.

Recommendations for amendments to statutes, rules and regulations:

- Provide a permanent exemption for state operated or regulated programs as the regulatory oversight structure provides safeguards for consumers. The exemption for programs that are merely funded by one of the exempted agencies would be discontinued. Regulated residential programs (voluntary agencies) for children, for example, are a large portion of those providers who benefit from the current OCFS exemption. It is unproven that licensure of voluntary agency staff would enhance the quality of services. As part of OCFS oversight of these programs, OCFS conducts case

reviews, makes quarterly monitoring visits and investigates any allegations of child abuse and maltreatment. The focus should be shifted to the practitioners who were the reason for the 2002 enactment of licensing requirements. The legislation was meant for private practitioners who were unregulated and unsupervised and for whom licensing is desirable in order to bill insurance/Medicaid for services. An unintended consequence of the 2002 legislation was that it also impacted on government agencies and regulated not-for-profits.

- Permit an unlicensed individual to work under appropriate licensed supervision in a setting that is regulated by a state agency. Require that the unlicensed individual have a combination of education, experience and supervision.
- Similar to the original legislation which provided a permanent exemption for unlicensed individuals providing clinical social work services on the effective date of the legislation, provide a permanent exemption for unlicensed persons providing clinical social work services upon the expiration of the temporary exemption on July 1, 2013, for the period they maintain such employment and limited to the services provided before the expiration of the temporary exemption.
- Provide more clarity in statute/regulation on activities that are and are not within the restricted scopes of practice. Based on the survey results, many people appeared to misunderstand the restricted practice of assessment and evaluation. More OCFS survey responders indicated that they provided assessment and evaluation than any of the other five activities and more of these responders said that they were unlicensed than said they were licensed.
- Provide more clarity in statute/regulation on the differences between activities that may be performed by a LMSW and those that are permissible only for a LCSW.

Any other information deemed appropriate to assist SED in compiling its report to the Governor and Legislature –

OCFS looks forward to continuing collaborative efforts with SED, other affected state agencies, providers and consumers to determine a feasible licensing structure and appropriate exemptions.