

March 5, 2012

Governor Andrew Cuomo
Executive Chamber
State Capitol
Albany, NY 12224

Chancellor Merryl Tisch
NYS Board of Regents
89 Washington Avenue
Albany, NY 12234

Assembly Speaker Sheldon Silver
Room 932, Legislative Office Building
Albany, NY 12248

Senate Majority Leader Dean Skelos
Room 909, Legislative Office Building
Albany, NY 12247

Dear Governor Cuomo, Majority Leader Skelos, Speaker Silver and Chancellor Tisch:

We, the undersigned organizations, write to urge immediate repeal of the law that makes it a felony for organizations to employ social workers and other licensed mental health professionals. The problems created by this law are particularly severe in underserved communities, where many non-profits use licensed social workers to provide crucial social services to those in need.

In 2002, legislation was passed that established the professions of licensed master social work, licensed clinical social work, licensed mental health counseling, licensed marriage and family therapy, licensed creative arts therapy, licensed psychoanalysis, and licensed psychology, thereby making a range of activities such as psychotherapy and certain types of counseling subject to professional licensure requirements for the first time.

For decades prior to the enactment of these new licensure requirements, countless social service organizations, private entities and government agencies had employed individuals to provide social work, psychotherapy and mental health services. Unbeknownst to many of these entities, however, the State Education Department (SED) interprets Education Law § 6512 to prohibit organizations from employing licensed professionals, and makes it a felony to do so. As a result, the moment that the licensure provision went into effect, thousands of social service and other organizations were violating the law merely by continuing to employ their own workers. Moreover, when new individuals sought to enter these professions by applying for licensure, which requires a demonstration of work experience, SED began denying the applications whenever the prospective licensee had worked for a social service organization or other entity which SED deemed to lack authority to provide such professional services.

As SED began denying applications, the problem of the corporate practice ban finally became apparent. In response, Chapters 130 and 132 of the Laws of 2010 authorized SED to develop and issue waivers to allow not-for-profit entities and educational corporations to continue to employ certain licensed professionals. The waiver would also allow credit hours earned in those settings by prospective licensees to count towards experience qualifications for licensure. Section 6503(a) of the Education Law sets forth the waiver process. The original deadline for entities to file for a waiver was originally June 16, 2011, and was extended to February 1, 2012 at the end of 2011 legislative session.

The waiver process was a well intentioned but grossly inadequate solution to a workforce and care delivery problem, and creates a number of serious problems and unintended consequences. For example, in order to receive a waiver, SED is requiring non-profits to certify that they do not employ other licensed professionals, but some non-profits (like overnight camps) are required by law to employ health professionals. Since these entities cannot apply for a waiver, the organizations have no way to avoid violating the law, other than by firing their employees and going out of business. Moreover, the law provides an exemption for governmental entities only until July 1, 2013, after which they also will be required to seek waivers from SED in order to employ licensed social workers and other mental health professionals.

Absent a change in the law, any social service or other organizations that did not apply for a waiver prior to February 1, 2012 – and we believe there are hundreds of such entities – is committing a felony by continuing to employ licensed social workers and other licensed professionals, and cannot hire such individuals unless and until they receive waivers from SED. This imposes tremendous harm not just on the agencies themselves, but also on the many licensed social workers whose jobs are at risk, or whose employment prospects are now severely curtailed because there is a limited number of organizations that they may now legally work for.

Most importantly, the current system will have a tremendous adverse impact on poor and underserved communities throughout New York State, many of which rely upon local social service organizations to provide crucial assistance to needy residents.

Fortunately, there is a simple solution that will address all these problems – by providing an exemption from corporate practice restrictions for organizations and governmental agencies employing licensed social workers and mental health professionals. Draft legislation that would create such an exemption is attached to this letter. This is not a new idea; indeed, there are numerous exemptions throughout New York State law for hospice organizations, speech pathologists, pharmacists, massage therapists, hospitals, insurance companies, optometrists and health maintenance organizations.

An exemption from the corporate practice ban for organizations that employ licensed social workers and mental health professionals will ensure that that these organizations can retain their qualified staff and offer critical services to the communities they serve. Otherwise, countless organizations will be forced to choose between terminating valued staff members or violating the law.

We urge the swift passage of the attached legislation.

Sincerely,

American Camp Association NY/NJ
ARC XVI Fort Washington
Asian American Federation
Baker Victory Services
Barrier Free Living
Barry and Florence Friedberg JCC

Brooklyn Community Services
Bronx House
Catholic Charities of the Archdiocese of New York
Catholic Charities of Brooklyn & Queens
Catholic Charities of the Diocese of Albany
Catholic Charities of the Diocese of Buffalo
Catholic Charities of the Diocese of Ogdensburg
Catholic Charities of the Diocese of Rochester
Catholic Charities of the Diocese of Rockville Centre
Catholic Charities of the Diocese of Syracuse
Catholic Guardian Society and Home Bureau
Center for Family Representation
Center for Independence of the Disabled, New York
Child and Family Services of Erie County
Children's Aid Society
Children's Home of Kingston
Children's Village
Claremont Neighborhood Centers, Inc.
Coalition for Asian American Children and Families
Coalition of Behavioral Health Agencies
Coalition for the Homeless
Coalition of New York State Alzheimer's Association Chapters
Council of Family and Child Caring Agencies
Cypress Hills Local Development Corporation
East Side House Settlement
Edith and Carl Marks Jewish Community House of Bensonhurst
Family Planning Advocates of New York State
Federation of Protestant Welfare Agencies
F•E•G•S Health and Human Services System
Forestdale
Goddard Riverside Community Center
Good Shepherd Services
Graham Windham
Henry Street Settlement
Hudson Guild
Human Services Council
Independent Living Center of the Hudson Valley, Inc.
Institute for the Puerto Rican/Hispanic Elderly
Jewish Board of Family & Children's Services
Jewish Child Care Association
Jewish Community Center of Staten Island
Jewish Community Council of Canarsie

Jewish Family Service of Orange County
Jewish Federation of Greater Rochester NY
Kingsbridge Heights Community Center
Legal Information for Families Today
Lenox Hill Neighborhood House
Liberty Resources
Little Flower Children and Family Services of New York
Lower East Side Family Union
Lower Eastside Service Center
Martin de Porres Group Homes
MercyFirst
Metropolitan Council on Jewish Poverty
Mid-Island Y JCC
Mosholu Montefiore Community Center
New Directions Youth and Family Services
NYS Council of Catholic Charities Directors
New York State Council for Community Behavioral Healthcare
New York State Camp Directors Association
New York State Rehabilitation Association
North American Family Institute
Northern Manhattan Improvement Corporation
One Stop Senior Services
Parsons Child and Family Center
Queens Community House
Riverdale YM-YWHA
Safe Horizon
School Settlement Association
Seamen's Society for Children and Families
Selfhelp Community Services
Sephardic Community Youth Center
Shorefront YM-YWHA of Brighton-Manhattan Beach
Society for Social Work Leaders in Health Care, New York Metro Chapter
Southeast Bronx Neighborhood Centers
St Catherine's Center for Children
St. John's Home for Boys
St. Nicks Alliance
The Door
UJA-Federation of New York
Union Settlement Association
United Neighborhood Houses
University Settlement
VIP Community Services

Westchester Jewish Community Services
Weston United
YMCA of Greater New York

Enclosure

cc: Howard Glaser, Director of State Operations,
John King, Commissioner of Education
Senator Kenneth LaValle
Assemblymember Deborah Glick