

February 26, 2013

Hon. Andrew M. Cuomo, Governor
Executive Chamber
New York State Capitol
Albany, New York 12224

Hon. Dean Skelos, Co-Leader
NYS Senate
Room 909, Legislative Office Building
Albany, New York 12247

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

Hon. Jeff Klein, Co-Leader
NYS Senate
Room 913, Legislative Office Building
Albany, New York 12247

Hon. Andrea Stewart-Cousins, Democratic Leader
NYS Senate
Room 907, Legislative Office Building
Albany, New York 12247

Hon. Brian Kolb, Minority Leader
NYS Assembly
Room 933, Legislative Office Building
Albany, NY 12248

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

RE: Social Work and Mental Health Professions Unlicensed Practice Exemption, Corporate Practice Waiver and Scope of Practice

Dear Governor Cuomo, Speaker Silver, Minority Leader Kolb, Senators Skelos, Klein and Stewart-Cousins, and Chancellor Tisch:

We, the undersigned organizations, write to urge comprehensive action this year to address the many problems arising from the licensure of social workers and other mental health professionals. Specifically, we support:

- Governor Cuomo's proposed permanent extension of the unlicensed practice exemption, with an amendment to include the NYS Office of Temporary and Disability Assistance and the United States Department of Housing and Urban Development
- Legislation replacing the corporate practice prohibition that makes it a felony for organizations to employ licensed social workers and other licensed mental health professionals without statutory authorization, as well as the corporate practice waiver program, with an exemption from the corporate practice ban for these professions
- Legislation narrowing the restricted scopes of practice for social work and other mental health professions to clarify those activities that may be performed without a license and to preserve the jobs of unlicensed professionals and para-professionals across the human services sector.

Background

There are three core and inter-related issues that have generated proposals to change requirements relating to social work and the other mental health professions: the impending expiration of the unlicensed practice exemptions on July 1, 2013; the corporate practice prohibition; and problems with

the breadth of the scope of practice definitions.

These issues have created considerable turmoil in the human services community and require statutory changes in order to avert the costly expense of replacing unlicensed workers with only those possessing licenses, and the bureaucratic mess that has accompanied the waiver program given the widespread employment of social workers and other mental health professionals in the human services sector. We embrace the following solutions:

- With respect to the unlicensed practice exemption, we support the Executive Budget proposal for a permanent exemption, and its expansion to include a broader array of entities that are operated, regulated, funded or approved by various entities (including the NYS Office of Temporary and Disability Assistance and the United States Department of Housing and Urban Development) in order to preserve the jobs of unlicensed personnel working in, for example, homeless shelters, after school programs, and programs that support families and seniors. In the absence of this extension, the cost of compliance with this unfunded mandate would exceed \$325 million per year for agencies losing the exemption, and many millions more for those that should have been but were not included in the exemption to begin with.
- With respect to corporate practice, licensed social workers and other licensed mental health professionals should be granted the same exemption from the legal restriction on their employment that some other professions (like optometrists and audiologists) have. We support legislation to establish this exemption and repeal the corporate practice waiver for social work and the other mental health professions. Over 100 organizations signed on in support of this legislation in a similar letter to legislative and government leaders last year. This letter is on behalf of roughly three hundred organizations from across the state.
- With respect to scope of practice, clarification and revision of the activities that fall within the restricted scopes of practice for licensed social work and the other mental health professions is necessary. Activities that may fall both within restricted scopes and at the same time be widely performed by unlicensed professionals and para-professionals include diagnosis, counseling, assessment, evaluation, treatment, case management, care management, support, psycho-education, and service planning to name a few. The restricted scopes must be much more narrowly drawn in order to clarify those activities that may be performed without a license and to preserve the jobs of unlicensed professionals and para-professionals across the human services sector.

The problems created by the unlicensed practice prohibitions, the corporate practice ban, and the broad scopes of practice for social work and the other mental health professions are particularly severe in rural and underserved communities, where often due to workforce shortages, many non-profits employ licensed social workers as well as unlicensed professionals and para-professionals to provide crucial social services to those in need.

Rebuttal: Bifurcation of Care Argument is a Red Herring

Claims by the social work associations in support of ending the unlicensed practice exemption are untrue. The associations claim that extension of the unlicensed practice exemption would create a bifurcated system of unequal care, and at the same time, propose a compromise that would advantage licensed social workers at the expense of other licensed professionals and unlicensed professionals and paraprofessionals alike. It is their compromise, not Governor Cuomo's solution that would cause a

bifurcated and unequal system of care.

The social work associations claim that the exemption perpetuates a bifurcated system of care in which privately insured individuals have access to licensed psychotherapists while Medicaid recipients do not. This is absolutely untrue. Commercial insurance plans covered by Timothy's Law are required to provide access to Article 31 clinic services, in addition to individual mental health treatment services.

Article 31 clinics are exempt from the social work licensure law, but they are still available to and used by individuals with commercial insurance in New York State. In fact, one of the reasons that individuals with commercial insurance may be less likely to avail themselves of Article 31 clinic services is that they are statistically less likely to suffer from the severe and debilitating mental illnesses than Medicaid recipients - those very illnesses that require the higher level of care of an Article 31 clinic.

The social work associations propose that *only* social workers be hired in currently exempt settings: The social work associations' "compromise" position appears to only benefit social workers. Their position paper advises that only individuals licensed under Article 154 of the Education Law should be hired by exempt agencies after July 1, 2013 – to the exception of physicians, psychologists, licensed mental health counselors, nurses, CASACs, and paraprofessionals. This is an unreasonable and unrealistic proposition that would greatly benefit the marketability of social workers while preventing the hiring of qualified professional and paraprofessional staff, and forcing state-licensed programs to curtail services.

Furthermore, we already have a shortage of licensed social workers in New York State; the associations' proposal would make this situation far worse, and severely limit access to care in the public mental health system.

If the Legislature is concerned about the potential for a bifurcated system of care, the Governor's proposal merits their support. The social work associations' proposal would actually create bifurcation rather than remedy it.

Conclusion

The simple no-cost solutions we support will address all of these problems.

Draft amendments to the Article VII language in the 2013-2014 Executive Budget proposal that provides for a permanent extension of the unlicensed practice exemption and waiver application requirements, to include the NYS Office of Temporary and Disability Assistance and the United States Department of Housing and Urban Development is attached.

Draft legislation to replace the corporate practice waiver with an exemption is also 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.

By approving these two pieces of legislation, New York can resolve the most pressing problems involving the corporate practice and unlicensed practice problems and create the time needed to

undertake the complex task of reworking and narrowing the restricted scopes of practice for social work and the other mental health professions.

We urge the swift adoption of the attached legislation. Please feel free to contact Shelly Nortz at snortz@cfthomeless.org or Patricia Gallo Goldstein at pgoldstein@coalitionny.org should you have any questions.

Sincerely,

AABR
Abbott House
Ability Beyond Disability
Abilities First, Inc.
ACHIEVE – NYSARC, Inc – Broome-Tioga
County Chapter
ACLD
Action For A Better Community
ADD
Addiction Treatment Providers Association
Addictions Care Center of Albany
AHRC – NYC
AIDS Center of Queens County, Inc.
Aid to the Developmentally Disabled, Inc.
AIM Services, Inc.
Alcoholism & Substance Providers of NYS
Allegany ARC
American Camp Association NY/NJ
Anderson Center for Autism
Andrus
ANIBIC
Another Step, Inc.
Arbor Housing and Development
ARC of Onondaga
Arc of Westchester
Aspire of Western New York
Association for Community Living
Astor Home for Children
Barrier Free Living
Bleuler Psychotherapy Center, Inc.
Block Institute
Boys Town New York, Inc.
Bronx House, Inc.
BronxWorks, Inc.
Brookhaven Memorial Hospital Medical
Center
Brooklyn Community Services
CAMBA
Camp Venture, Inc.
Cardinal Hayes Home for Children

Cardinal McCloskey Community Services
Catholic Charities Community Services
Catholic Charities Community Services of
Orange County
Catholic Charities Disabilities Services
Catholic Charities Neighborhood Services,
Inc.
Catholic Charities of the Archdiocese of New
York
Catholic Charities of Brooklyn & Queens
Catholic Charities of Broome County
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 Family Center - Rochester
Catholic Guardian Society and Home Bureau
Cayuga Centers
Cazenovia Recovery Systems, Inc.
CDS Monarch
Center for Independence of the Disabled,
New York
Center for Urban Community Services, Inc.
Central New York Services, Inc.
Cerebral Palsy Associations of NYS
Chemung ARC
Child and Family Services
Chinese American Planning Council
Citizen Advocates, Inc.
Claddagh Commission
Coalition for the Homeless
Coalition of Hispanic Family Services
Coalition of New York State Alzheimer's
Association Chapters
Community HealthCare Network

Community Maternity Services
Community Recovery Center, Rome
Memorial Hospital
Concern For Independent Living
Consortium of Alcoholism and Substance
Abuse Services of the Finger Lakes
Council of Family and Child Caring Agencies
COARC
Community Mainstreaming Associates
Community Resource Center for the
Developmentally Disabled, Inc.
Community Services for the Developmentally
Disabled
Credo Community Center
Crystal Run Village, Inc.
CWI, Inc.
Cypress Hills Local Development
Corporation
Department of Education Diocese of
Brooklyn
DePaul Community Services, Inc.
DePaul Developmental Services
Developmental Disabilities Alliance of
Western New York
Developmental Disabilities Institute
Devereux Foundation
Donovan House
Dutchess County ARC
East End Disability Associates
East Side House Settlement
Edith and Carl Marks Jewish Community
House of Bensonhurst
Edwin Gould Services for Children and
Families
Elmcrest Children's Center
EPIC Long Island (The Epilepsy Foundation
of Long Island)
Epilepsy Foundation Counseling Center
Episcopal Social Services
Evelyn Douglin Center for Serving People in
Need, Inc.
Exceptional Family Resources
Family Empowerment Council
Family Residences and Essential Enterprises,
Inc.
Farnham Family Services
Federation of Mental Health Services
Federation of Organizations
Federation of Protestant Welfare Agencies

F•E•G•S Health and Human Services
Forestdale, Inc.
Gateway Community Industries, Inc.
Gay Men's Health Crisis
Genesee ARC
Goddard Riverside Community Center
Good Shepherd Services
Goodwill Industries of Greater New York and
Northern New Jersey, Inc.
Greystone Programs, Inc.
Hamilton Madison House
Hartley House
Hawthorne Foundation, Inc.
Head Injury Association
HeartShare
Helen Keller Services
Herkimer ARC
Hillside Family of Agencies
Hispanic Senior Acton Council
HOGAR, INC.
Hope House, Inc.
Horizon Health Services
Horizon Village, Inc.
Housing & Services, Inc.
Human Development Services of Westchester
(HDSW)
Human Services Council
Human Technologies Corporation
Huther-Doyle Memorial Institute, Inc.
Ibero American Action League
Independence Residences, Inc.
Independent Group Home Living Program,
Inc.
Insight House Chemical Dependency
Services, Inc.
Institute for Community Living, Inc.
Institutes of Applied Human Dynamics
InterAgency Council
Interborough Developmental and
Consultation Center, Inc.
Inwood House
JASA
J-Cap
Jefferson Rehabilitation Center
Jewish Board of Family and Children's
Services
Jewish Child Care Association
Jewish Family Service of Buffalo & Erie
County

JM Murray Center, Inc.
Job Path, Inc.
Keon Center
Lake Shore Behavioral Health Horizon
Village
Lakeside House
Lakeview Mental Health Services, Inc.
LaSalle School
LDA Life and Learning Services
Learning Disabilities Association of New
York State
Learning Disabilities Association of Western
New York
Leake and Watts
Lexington Center (Fulton County Chapter
NYSARC, Inc.)
Liberty Resources, Inc.
Life's WORC
Lincoln Hall
Lincoln Square Neighborhood Center
Little Flower Children and Family Services of
New York
Little Sisters of the Assumption -Family
Health Services
Living Resources
Long Island Adolescent and Family Services
Lower East Side Family Union
Lower Eastside Service Center
Martin DePorres Group Homes
Mental Health Association in Ulster County
Mental Health Association of Columbia
Green
MercyFirst
Mercy Haven, Inc
Mercyhome
Mid-Erie Counseling and Treatment Services
Mill Neck Services
Mohawk Opportunities, Inc.
Mosholu Montefiore Community Center
Mountain Lake Services
Multi County Community Development Corp.
NAMI – NYC Metro
New Alternatives for Children
New Directions Youth & Family Services
New Horizons Resources
New York Foundling
New York Psychotherapy and Counseling
Center
New York State Camp Directors Association

New York State Council for Community
Behavioral Healthcare
New York State Rehabilitation Association
North American Family Institute
North Country Behavioral Healthcare
Network
Northeast Parent and Child
Northern Manhattan Improvement
Corporation
North Shore Child and Family Guidance
Center (LI)
NYSARC
NYS Association of Community and
Residential Agencies
NYS Council of Catholic Charities Directors
Occupations, Inc.
Onondaga Community Living
Ontario ARC
Opengate, Inc.
Oswego County Opportunities, Inc.
Outreach
Palladia, Inc.
Parsons Child and Family
Pathways, Inc.
Paul J. Cooper Center for Human Services,
Inc.
Peninsula Counseling Center
People, Inc.
Phoenix Frontier, Inc.
Pibly Residential Programs, Inc.
Plus Group Homes
PRALID
Project Renewal, Inc.
PSCH
Queens Parent Resource Center, Inc.
Recovery Net
Rehabilitation Support Services, Inc.
Rivershore, Inc.
Safe Horizon
Safe Space
Salvation Army Syracuse
Samaritan Village, Inc.
Samuel Filed YM & YWHA – CAPE
Saratoga Bridges
Sauti Yetu
SCO Family of Services
Schenectady ARC
Schoharie County Chapter, NYSARC Inc.
Search for Change, Inc.

Services for the Underserved, Inc.
Sinergia, Inc.
Southeast Nassau Guidance Center
Southern Tier Independence Center
South Shore Association for Independent Living, Inc. (SAIL)
Spaulding Support Services
Spence-Chapin Services to Families and Children
Springbrook
St. Anne Institute
St. Catherine's Center for Children
St. Dominic's Home
St. John's Residence
St. Joseph's Villa of Rochester
St. Lawrence NYSARC
St. Vincent's Services
Staten Island Mental Health Society
Student Assistance Services Corporation
Sullivan ARC
Supportive Housing Network of New York
The Adirondack Arc
The Alternative Living Group, Inc.
The ARC of Livingston-Wyoming
The ARC of Monroe County
The ARC of Oneida-Lewis
The ARC of Rensselaer County
The ARC of Schuyler
The ARC of Steuben
The Association for Rehabilitative Case Management and Housing, Inc. (ACMH)
The Center for Developmental Disabilities
The Center for Family Support, Inc.
The Charlton School
The Child Center of New York
The Children's Aid Society
The Children's Home of Jefferson County
The Children's Home of Kingston
The Children's Home of Poughkeepsie
The Children's Home of the Wyoming Conference
The Children's Village
The Coalition of Behavioral Health Agencies, Inc.
The Eden II Programs
The Guidance Center of Westchester
The Guild for Exceptional Children, Inc.

The House of the Good Shepherd
The Independent Living Association, Inc.
The Institute for the Puerto Rican Elderly
The Jewish Guild for the Blind
The Mental Health Association of New York City
The Mental Health Association of Westchester County, Inc.
The PAC Program
The Puerto Rican Family Institute
The Otsego Chapter, NYSARC, Inc.
Therapeutic Communities Association of New York, Inc.
The Shield Institute
The Way Back, Inc.
Toomey Residential and Community Services
Transitional Living Services of Northern New York
Transitional Services Association, Inc.
Trinity Alliance of the Capital Region
UJA-Federation of New York
Ulster-Greene ARC
Unique People Services
United Cerebral Palsy Association of Greater Suffolk
United Cerebral Palsy Association of Nassau County, Inc.
United Community Centers
United Neighborhood Houses
Union Settlement Association
Unique People Services
Unity House of Cayuga County, Inc.
Unity House of Troy, Inc.
University Consultation Center
University Settlement Society of New York
Upper Manhattan Mental Health Center, Inc.
Vanderheyden Hall
Venture House
Warren Washington Association for Mental Health
Westchester Jewish Community Services
Weston United
WHEDco
Wildwood Programs, Inc.
YAI
YWCA of Greater Rochester

Enclosure

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

Section 6503-a of the education law is hereby REPEALED and replaced by a new section 6503-a to read as follows:

§ 6503-a. Exemption for entities providing certain professional services.

1. Notwithstanding any laws to the contrary, an entity may employ or contract with a licensed professional to provide: (i) services provided under article one hundred fifty-four or one hundred sixty-three of this title for which licensure would be required; or (ii) services constituting the provision of psychotherapy as defined in subdivision two of section eighty-four hundred one of this title and authorized and provided under article one hundred thirty-one, one hundred thirty-nine, or one hundred fifty-three of this title.

2. Such services may be provided either directly through the entity's employees or indirectly by contract with individuals or professional entities duly licensed, registered, or authorized to provide such services.

Article VII excerpt on Social Work and licensed mental health professions.

25 § 98. Section 9 of chapter 420 of the laws of 2002 amending the educa-
26 tion law relating to the profession of social work, as amended by chap-
27 ter 132 of the laws of 2010, is amended to read as follows:

01/20/13 390 12571-01-3

1 § 9. [a.] Nothing in this act shall prohibit or limit the activities
2 or services on the part of any person in the employ of a program or
3 service operated, regulated, funded, or approved by the department of
4 mental hygiene, the office of children and family services, **THE OFFICE OF TEMPORARY
AND DISABILITY ASSISTANCE**, the depart-
5 ment of [correctional services] corrections and community supervision,
6 the state office for the aging, the department of health, **THE UNITED STATES
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**, or a local
7 governmental unit as that term is defined in article 41 of the mental
8 hygiene law or a social services district as defined in section 61 of
9 the social services law, provided, however, this section shall not
10 authorize the use of any title authorized pursuant to article 154 of the
11 education law[, except that this section shall be deemed repealed on
12 July 1, 2013; provided, further, however, that on or before October 1,
13 2010, each state agency identified in this subdivision shall submit to
14 the commissioner of education data, in such form and detail as requested
15 by the commissioner of education, concerning the functions performed by
16 its service provider workforce and the service provider workforce of the
17 local governmental units and social services districts as defined in
18 this subdivision over which the agency has regulatory authority. After
19 receipt of such data, the commissioner shall convene a workgroup of such
20 state agencies for the purpose of reviewing such data and also to make
21 recommendations regarding amendments to law, rule or regulation neces-
22 sary to clarify which tasks and activities must be performed only by
23 licensed or otherwise authorized personnel. No later than January 1,
24 2011, after consultation with such work group, the commissioner shall
25 develop criteria for the report required pursuant to subdivision b of
26 this section and shall work with such state agencies by providing advice
27 and guidance regarding which tasks and activities must be performed only
28 by licensed or otherwise authorized personnel....]