

There are critical workforce shortages in the mental hygiene professions across New York State. The shortages contribute to higher costs to voluntary nonprofit agencies and impede access to care. For decades, the dramatic shortage of licensed mental health practitioners has been “masked” by an exemption to the scope of practice for certain practitioners licensed under Art 163 of the Education Law. That exemption was addressed in Part Y of Chapter of the Laws of 2018 and is due to sunset permanently in June 2020.

The Legislature must act immediately to address a crisis that will ensue in June when the exemption permanently sunsets. The solution is a modernization to the scope of practice and standardization of the Master level educational, clinical training and licensing standards for licensed mental health counselors, licensed marriage and family therapists and licensed psychoanalysts. There are currently over 10,000 of these capable, trained and licensed practitioners working up to their full scope of training in New York State.

History

In 2002, education law provided for the licensing of masters’ social workers, clinical social workers, mental health counselors, marriage and family therapists, psychoanalysts and creative arts therapists. In addition, the 2020 statute enacted an exemption from licensure until January 1, 2010 for “any person in the employ of a program or services that is regulated, operated, funded or approved by” certain state agencies because of the statutory changes recognized variations in the terms used to describe the scope of practice of each of the newly licensed professions. For example, the licensed social work titles included the term “diagnosing” in the law, while the other licensed practitioner titles describe using diagnostic tools (like the Diagnostic Statistical Manual, or DSM) to “identify, evaluate and treat dysfunctions and disorders.”

The discrepancy has resulted in laws extending the exemption in the 2002 law as follows:

- 2010, Chapters 130 and 132 extended the exemption until July 1, 2013
- 2013, Part AA of Chapter 57 of the Laws of 2013
- 2016, Part J of Chapter 59 of the Laws of 2016
- 2018, Part Y of Chapter 57 of the Laws of 2018

Throughout this period, over 40 colleges and universities in New York have been graduating Masters level Art 163 practitioners who are not only taking course work in diagnosing, but working in licensed clinical settings under the supervision of other licensed professionals for between 2,000-3,000 hours to hone their skills before taking their licensing exams. Once licensed, they have been diagnosing mental illnesses in New York State without incident.

At Issue:

Licensed according to Article 163 of the NYS Education Law, the professions of mental health counseling, marriage and family therapy, and psychoanalysis have been fully serving clients in New York for decades.

As of July 1, 2020, the NYS Education Department reports that there are 10,647 licensed mental health practitioners working around the state. These include family therapists, mental health counselors and psychoanalysts licensed by SED. They work side by side with licensed social workers, psychiatrists and psychologists, and as allowed by law, they are permitted the "use of assessment instruments and mental

health counseling and psychotherapy to identify, evaluate and treat dysfunctions and disorders for purposes of providing appropriate mental health counseling services."

According to Part Y of Chapter 57 of the Laws of 2018, in June 2021 any newly graduated Art 163 practitioner will not be permitted to diagnose patients in OMH, OASAS, OCFS or OPWDD settings during their clinical internships which are required to become licensed. The pipeline of incoming mental health practitioners will be cut off, as sites that offer clinical internships will have to select practitioners who will be able to perform a full scope of practice. Without these licensed practitioners, a bottleneck in diagnosing new patients and attesting to their medical necessity for Medicaid services will create a crisis.

Solution:

Mental health provider associations, providers and clinical practice associations have developed a solution that does not include another exemption extension, but instead addresses the discrepancy in the scope of practice descriptions in law. The legislative solution will amend education law, in relation to requirements for licensure of certain mental health practitioners and provide those licensed mental health practitioners to give diagnosis.

The bill will set forth standards of educational coursework, supervised clinical training and licensure examinations that are equal to those included in the licensed clinical social work law. There will be no discrepancy in the preparation of the various licensed practitioners

The modernization of the scope of practice, removal of outdated statutory references and authorization of a standard set of preparatory activities for licensed practitioners will alleviate workforce challenges at voluntary nonprofit agencies and ease access to care barriers.

We urge the Legislature to advance this workforce training and support initiative to address workforce shortages and mental health access challenges immediately as part of the negotiated budget agreement. We present a petition signed by nearly 500 concerned citizens and licensed mental health practitioners who support this request.