

**TESTIMONY SUBMITTED
TO THE
MENTAL HYGIENE JOINT
FISCAL COMMITTEE
OF THE
NEW YORK STATE LEGISLATURE
REGARDING THE 2018-19 EXECUTIVE
BUDGET**

Legislative Office Building

Albany, NY

February 13, 2018

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On Behalf of
National Association of Social Workers – NYS Chapter
National Association of Social Workers – NYC Chapter
The NYS Society for Clinical Social Work
The NYS Association of Deans of the Schools of Social Work

I. INTRODUCTION

I would like to thank the members of this Committee for permitting me to testify before you today. My name is Samantha Howell, and I am the Executive Director for the New York State Chapter of the National Association of Social Workers. Today, I am also here on behalf of our partners, the NYC Chapter of the National Association of Social Workers, The New York State Society for Clinical Social Work, and the New York State Association of Deans of the Schools of Social Work.

Formed in 1955, the National Association of Social Workers (NASW) is the largest membership association for professional social workers in the world. The NYS and NYC Chapters represent approximately 15,000 social workers. Members of NASW make up a significant portion of the social work labor force in New York State and provide a substantial part of social services in the State. Importantly, social workers provide more than half of all care in the mental health field. Social workers provide direct care, and engage in policy development, education, management, and research.

Today's testimony will focus on the need to end the social work licensure exemption that has created a bifurcated system of care and directly negates the quality control measure enacted by the State in 2002.

II. THE ROLE OF SOCIAL WORKERS IN CARE

As iterated in the National Association of Social Workers - Code of Ethics, the primary mission of the social work profession is to enhance human well-being and help meet the basic human needs of all people, with particular attention to the needs and empowerment of people who are vulnerable, oppressed, and living in poverty.¹ A historic and defining feature of social work is the profession's focus on individual wellbeing in a social context and the wellbeing of society. Fundamental to the practice of social work is the recognition of the environmental forces that create, contribute to, and address needs of all people in society and support the strengths that individuals and families use to cope effectively.

Social workers promote social justice and social change with and on behalf of clients (individuals, families, groups, organizations, and communities). Social workers are sensitive to cultural and ethnic diversity and strive to end discrimination, oppression,

¹ https://www.socialworkers.org/LinkClick.aspx?fileticket=ms_ArtLqzel%3D&portalid=0

poverty, and other forms of social injustice. These activities may be in the form of direct practice, community organizing, supervision, consultation, administration, advocacy, social and political action, policy development and implementation, education, and research and evaluation. Social workers seek to enhance the capacity of people to address their own needs. Social workers also seek to promote the responsiveness of organizations, communities, and other social institutions to individuals' needs, social problems, and social determinants of health.

While the above denotes the broad and diverse array of settings in which you will find professional social workers, it also provides a context for the varied and broad set of skills required to practice appropriately and, therefore, reflects the importance that education and experience plays in the development of such skills.

According to the Social Work Policy Institute, social workers are the largest provider of mental health services, providing more services *than all other mental health care providers combined*. While many social workers provide services in private practice settings, the majority of services are offered in community-based agencies, both public and private, and in hospitals, clinics and prisons.

I suspect a social worker has affected each of your lives, whether you know it or not. For me, it was the woman who helped me transition my grandmother into a long-term care facility and explain her condition to my grandfather. And the counselor who taught me how to be a good advocate for my clients, victims and survivors of domestic violence and sexual assault, addicts, and their children. And the members of NASW, who inspire me every day with their dedication and desire to help those in need, despite low salaries, the exemption which devalues their educational training, and misunderstandings of what they do.

III. THE LICENSURE LAW

The profession of social work became one of the state's licensed professions in 2002, with the passage of a statute defining the scopes of practice for the Licensed Master Social Worker (LMSW) and the Licensed Clinical Social Worker (LCSW). The statute was the result of a decade's long collaboration with stakeholders across the spectrum of the mental health field, and carefully defined the breadth and scope of services provided by

each of the licenses in addition to the education and experience requirements sufficient to meet licensing requirements.

Despite being the 49th state to enact social work licensure requirements, New York's requirements are among the most stringent in the country. These requirements were implemented by the legislature because it recognized the importance of having highly qualified individuals diagnosing and treating mental health issues. To be a licensed clinical social worker (LCSW) in New York State, a person must:

- Be of good moral character;
- Be at least twenty-one years of age;
- Have an education that includes a masters degree in social work (M.S.W.) with at least 12 semester hours of clinical coursework acceptable to the Department of Education;
- Have at least three years of post M.S.W. supervised experience in diagnosis, psychotherapy, and assessment-based treatment planning acceptable to the Department of Education;²
- Successfully complete the clinical examination requirements; and
- Complete coursework or training in the identification and reporting of child abuse, offered by a New York State approved provider.

According to the Department of Education, “[t]he graduate program must include curricular content in the following areas:

- Social work values and ethics;

² <http://www.op.nysed.gov/prof/sw/lcsw.htm>

- Diversity, social justice, and at-risk populations;
- Human behavior in the social environment;
- Social welfare policy and service delivery systems;
- Foundation and advanced social work practice;
- Social work practice evaluation and research;
- A field practicum of at least 900 clock hours in social work integrated with prescribed curricular content; and
- Clinical coursework of at least 12 semester hours that prepares the individual to practice as an LCSW. The courses must include content that emphasizes the person-in-environment perspective and knowledge and skills in the following areas:
 - Diagnosis and assessment in clinical social work practice;
 - Clinical social work treatment; and
 - Clinical social work practice with general and special populations.”³

In addition to the above, an individual seeking LCSW licensure must *also* complete “2000 client contact hours over a continuous period of at least 36 months (three years) and not to exceed 6 calendar years of supervised experience in diagnosis, psychotherapy and assessment-based treatment planning.” ⁴ (emphasis added). Supervision of such work must be provided by a qualified supervisor, which is defined in the Education Law.

³ Id.

⁴ Id.

To become a licensed master social workers (LMSW), an applicant must have an MSW degree from an accredited program, and complete the same academic requirements as for the LCSW except for the 12 semester hours of clinical practice.

The passage of the licensure law was a consumer protection effort; it aimed to ensure that *all* New Yorkers would receive vital mental health services from qualified professionals. It ensured that *only* LCSWs could provide, without supervision, psychotherapy, assessment-based treatment planning, and diagnosis. By contract, an LMSW can provide the same but *only under* the supervision of an LCSW, a licensed psychologist, or a psychiatrist.

IV. THE HISTORY OF THE EXEMPTION

When the 2002 law passed, it included an exemption – through January 1, 2010 – for individuals to practice in programs regulated, operated, or funded by:

- the Office of Mental Health (OMH);
- the former Office of Mental Retardation and Developmental Disabilities now the Office for People with Developmental Disabilities (OPWDD);
- the Office of Alcoholism and Substance Abuse Services (OASAS);
- the Office of Children and Family Services (OCFS);
- the Office of Temporary and Disability Assistance (OTDA);
- the Department of Corrections and Community Supervision (DOCCS);
- the State Office for Aging (SOFA); and

- local mental hygiene or social service districts.⁵

These agencies can hire *anyone* and place him or her in a position providing mental health diagnosis and treatment services. And, according to opponents, they do just that!

As the expiration date of initial exemption grew closer, exempt agencies reported they were not yet compliant and, as such, requested an additional extension. The State granted a five-month extension in the 2009/2010 budget, and a third extension in 2010.⁶ The third extension also mandated that the impacted agencies participate in a comprehensive workforce analysis, conducted by the New York State Education Department and published in 2012.

After review of the State's report, exempt agencies noted continued concerns, resulting in yet another exemption via Chapter 57 of the laws of 2013, pushing the implementation date to July 1, 2016. In response to concerns raised by the exempt agencies in said round of negotiations, and a recognition that a number of necessary tasks provided in exempt agencies abut against the LMSW, language was offered, yet again, to clarify activities not requiring a license.

In 2015, the Office of the Professions at the State Education Department completed yet another mandated workforce analysis. In it, the Department reported that, despite previous statutory clarification, there still existed questions among state agencies regarding tasks and activities not defined in law. The Department also reported that state agencies were still confused about the delegation of professional services, the potential need to provide permanent exemptions for some certified or credentialed individuals whose tasks may overlap with that of a licensed profession, the potential need for alternative pathways to licensure (particularly related to ESL – English as a Second Language), and the potential need to reopen a grand-parenting provision.

⁵ In the statute, as enacted by Chapter 420 of the laws of 2002 and subsequent amendments (Chapter 433 of the Laws of 2003, and Chapter 230 of the Laws of 2004).

⁶ Chapter 130 and 132 of the laws of 2010.

V. THE TIME TO ACT IS NOW – END THE EXEMPTION

In 2016, NASW, and its partner organizations offered language addressing the Department's findings. After months of negotiations, however, the State extended the exemption, yet again, until July 1, 2018.

In the interim, the Administration offered its own draft language regarding the findings and requested our response. Social work stakeholder groups spent six months interviewing Executives and Program Directors of impacted agencies to better understand the realities of service delivery, the continued impediments to compliance, and ongoing challenges faced by providers to offer quality and cost effective services. The Administration's draft language was included in the Executives 2018/19 Budget Proposal, absent our input.

During the almost three decades of negotiations, a continuing concern from the State is expense. But just imagine it: You are taken to a community emergency room after a terrible car wreck. You are in unbearable pain; you suspect your legs are broken. The intake nurse tells you that it was too expensive to hire an orthopedic surgeon, but they have someone on staff who graduated from college in biology and has been working at the hospital for several months. You will be just fine.

Or, perhaps after a long day at the Capitol, you are in that same accident while driving home and are charged with vehicular manslaughter. But, rather than get a skilled attorney, you are told that continuously rising expenses have made it impossible to make attorneys available for most cases. So, you will be assigned a law grad who has failed the bar exam several times but has been working in the office for a few years. Again, you will be just fine.

In no other setting, do we allow unlicensed individuals to perform those tasks reserved for the profession. Why should we allow this practice for people who have their clients' mental health in their hands?

You, of course, do not have to worry about this bifurcated system of care because the health insurance provided by New York State *requires* that you see a licensed mental health professional for diagnosis and treatment. But, your constituents should be very concerned about this injustice, as it disproportionately impacts the impoverished, immigrants, communities of colors, and negatively affect population health.

While we are sensitive to the concern raised by the state agencies regarding the price tag associated with full compliance to the licensing law, we cannot, in good faith, abandon the most vulnerable consumer seeking services in impacted agencies. Any citizen, seeking mental health services, despite their socio economic strata, deserve access to educated, experienced, qualified licensed professional, when warranted. With that in mind, we have attempted to strike a sound balance between quality care and access to services.

In many instances, we reached a comfort level with the Executive's proposed language as it relates to many tasks not requiring a license. There remain a number of outstanding areas of concern, however, and, as such, we offer the following recommendations:

- Add a section that requires a mental health screening tool (similar to that used in primary care settings) be utilized for each individual interacting with the denoted settings.
- Include a grand-parenting window to permit MSWs with at least two years of documented, SUPERVISED experience to become licensed at the LMSW level.⁷
- Case management services (particularly initial assessments, reassessments, delivery of services plans, and referral services) should be reviewed by a licensee, ensuring that such measures are informed by proper training, education, and experience.
- An appropriately licensed CLINICAL supervisor must directly supervise clinical services performed by an LMSW.
- A licensee must provide adoption investigations, as per federal requirements.
- And, finally, the changes should be implemented on July 1, 2018. The exemption has been in place for 16 years and pushing implementation back another two years,

⁷ Should the Executive proposal leave all currently employed, unlicensed employees unharmed when implementation finally happens, the grand-parenting provision is moot.

as proposed, is akin to yet another extension.

VI. THE NEED FOR A FINANCIAL INVESTMENT

Given the Executive's long-standing commitment to quality care, it is imperative that our proposed amendments be enacted *in conjunction with* a financial investment in the social work profession. Such a commitment will serve to strengthen the fiber of our state's health and mental healthcare delivery systems by providing incentives and opportunities for highly qualified individuals to serve our most vulnerable populations. Specifically, we are seeking:

- \$4 million dollar Loan Forgiveness Program for the social workers working in a currently exempt setting in an effort to mitigate the reportedly high rates of staff turnover in exempt agencies. Such an initiative would not supplant the current loan forgiveness program available to a broader array of social workers.
- \$18 million incentive program for currently exempt agencies to increase the number of licensed social workers available to provide supervision. This will provide a stronger career track and reduce reported staff turnover. Based on the Executive's budget estimation that the cost of full compliance with the social work licensing law would be \$360 million we have estimated that to hire a sufficient number of licensed supervisors in key service sectors that the Governor's office has identified would be 5% of this amount, or \$18 million.⁸
- \$500,000 for the development and distribution of culturally sensitive and ESL test preparation to assist those who are vulnerable to, or have already, failed the licensure exam.
- \$250,000 for the development and implementation of a workforce data collection survey to be utilized (upon mandate) by the New York State Education Department

⁸ The cost was arrived at by assuming supervisors comprise 10% of the staff reflected in the total amount. It was further assumed that only 50% of the supervisors would needed to be replaced by licensed staff.

at registration and re-registration of all Article 154 licensees.⁹ This data will help us better understand where licensees work and where gaps persist.

VII. CONCLUSION

Continued exemption from licensure for individuals in certain settings not only risks the quality of care for many of our most vulnerable citizens, but also exempts certain providers from compliance with the Rules of the Board of Regents, which oversees the licensed professions and holds the ability to enforce professional standards in this state. We must not continue to entertain the conversation of whether to license or not; rather, we must work together to employ creative solutions that will create a highly competent, culturally diverse workforce across the spectrum of delivery systems. We must not continue to encourage a bifurcated system of care, whereby consumers seeking care from the public service system are served by unlicensed individuals, while you and I can access the best of care from highly qualified individuals. We contend that, if enacted in tandem with the current Executive language, these changes will provide those receiving care through impacted agencies with access to licensed professionals when warranted.

Sixteen years is ample time to implement a statute based on consumer protection. We would never entertain such a concept in other licensed professions because we know that such educational and training requirements ensure quality services. It is time for the State to comply with its own laws. It is time to protect our communities, invest in our social workers and end the exemption.

Dated: February 12, 2018

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⁹ Licensed Clinical Social Workers and Licensed Master Social Workers