S T A T E O F N E W Y O R K

8178

I N S E N A T E

June 14, 2010

Introduced by COMMITTEE ON RULES -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the education law, chapter 420 of the laws of 2002, amending the education law relating to the profession of social work, chapter 676 of the laws of 2002, amending the education law relating to the practice of psychology, and a chapter of the laws of 2010 amending the education law and other laws relating to the registration of entities providing certain professional services and the licensure of certain professions, as proposed in legislative bills numbers S.5921-A and A.8897-A, in relation to the registration of entities providing certain professional services and the licensure of certain professions

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph f of subdivision 1 of section 6503-a of the education law, as amended by a chapter of the laws of 2010 amending the education law and other laws relating to the registration of entities providing certain professional services and the licensure of certain professions, as proposed in legislative bills numbers S.5921-A and A.8897-A, is amended to read as follows:

f. Each officer and director of such entity shall provide an attestation regarding his or her good moral character as required pursuant to paragraph h of this subdivision. [Such statement shall set forth any criminal convictions, pending criminal charges, determinations of professional misconduct, pending charges of professional misconduct, or any limitations on professional practice.] The commissioner shall be further authorized to promulgate rules or regulations relating to the standards of the waiver for entities pursuant to this section. Such regulations shall include standards relating to the entity's ability to provide services, the entity's maintenance of patient and business records, the entity's fiscal policies, and such other standards as may be prescribed by the commissioner.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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S 2. Subdivision 3 of section 6503-a of the education law, as amended by a chapter of the laws of 2010 amending the education law and other laws relating to the registration of entities providing certain professional services and the licensure of certain professions, as proposed in legislative bills numbers S.5921-A and A.8897-A, is amended to read as follows:

3. Nothing in this section shall be construed to limit the authority of another state agency to certify, license, CONTRACT or otherwise authorize an entity applying for a waiver pursuant to this section, if such state agency is otherwise authorized under another provision of law to certify, license, CONTRACT or authorize such an entity, nor shall a waiver pursuant to this section be construed to provide an exemption of such entity from any certification, licensure, NEED TO CONTRACT or any other such requirement established BY SUCH STATE AGENCY OR under any other provision of law. If a state agency determines that such certification, licensure, CONTRACT or other authorization is required, a waiver pursuant to this section shall not [independently] have the effect of authorizing the provision of professional services under the jurisdiction of such agency in the absence of certification, licensure, A CONTRACT or other authorization from such STATE agency, and the department shall consult with such agency regarding the need for licensure, CONTRACTING, certification or authorization [to the extent required in the regulations of the commissioner]. In determining an application for a waiver pursuant to this section, the department shall consider as a factor in such determination any denial of an operating certificate or other authority to provide the services authorized pursuant to this section by a New York state or federal agency, political subdivision, municipal corporation, or local government agency or unit, AND SHALL NOT APPROVE A WAIVER APPLICATION AUTHORIZING AN ENTITY TO PROVIDE A PROGRAM OR SERVICES WHERE THE ENTITY OPERATED SUCH A PROGRAM OR PROVIDED SUCH SERVICES FOR WHICH AN OPERATING CERTIFICATE OR LICENSE IS PENDING, WAS DISAPPROVED OR WAS REVOKED, OR A WRITTEN AUTHORIZATION OR CONTRACT WAS TERMINATED FOR CAUSE, BY ONE OF SUCH AGENCIES, EXCEPT UPON APPROVAL OF SUCH ACTION BY THE APPROPRIATE STATE AGENCY. SUCH STATE AGENCIES SHALL NOTIFY THE DEPARTMENT, UPON REQUEST AND WITHIN A FIFTEEN DAY PERIOD, WHETHER A WAIVER APPLICANT HAS BEEN SUBJECT TO SUCH DISAPPROVAL, REVOCATION OR TERMINATION FOR CAUSE OR HAS A PENDING APPLICATION FOR A LICENSE OR OPERATING CERTIFICATE.

S 3. Section 9 of chapter 420 of the laws of 2002 amending the education law relating to the profession of social work, as amended by a chapter of the laws of 2010 amending the education law and other laws relating to the registration of entities providing certain professional services and the licensure of certain professions, as proposed in legislative bills numbers S.5921-A and A.8897-A, is amended to read as follows:

S 9. A. Nothing in this act shall prohibit or limit the activities or services on the part of any person in the employ of a program or service operated, regulated, funded, or approved by the department of mental hygiene, the office of children and family services, the department of correctional services, the state office for the aging, the department of health, or a local governmental unit as that term is defined in article 41 of the mental hygiene law or a social services district as defined in section 61 of the social services law, provided, however, this section shall not authorize the use of any title authorized pursuant to article 154 of the education law, except that this section shall be deemed repealed on July 1, 2013; provided, further, however, that on or before

[July 1, 2011, each such state agency, local governmental unit, and social services district, either individually or on a group basis, shall submit to the commissioner of education a report on the utilization of personnel subject to the provisions of this section. Such report shall include but not be limited to: identification of tasks and activities performed by such personnel categorized as tasks and functions restricted to licensed personnel and tasks and functions that do not require a license under article 154 of the education law; analysis of costs associated with employing only appropriately licensed or otherwise authorized personnel to perform tasks and functions that require licensure under such article 154, including salary costs and costs associated with providing support to unlicensed personnel in obtaining appropriate licensure. Such report shall also include an action plan detailing measures through which each such entity shall, no later than July 1, 2013, employ only licensed or otherwise authorized personnel to perform tasks and functions requiring licensure, and shall include plans to assist the entity's employees to become licensed, recommendations on alternative pathways toward licensure, information related to reassignment, reappointment, transfer, or reclassification of personnel, and any other such support necessary to ensure an appropriately licensed workforce. The commissioner of education shall, after consultation with state agencies, not-for-profit providers, professional associations, consumers, and other key stakeholders, submit a report to the speaker of the assembly, the temporary president of the senate, and the chairs of the senate and assembly education committees by July 1, 2012 to recommend any amendments to law, rule or regulation necessary to fully implement the requirements for licensure by July 1, 2013.] OCTOBER 1, 2010, EACH STATE AGENCY IDENTIFIED IN THIS SUBDIVISION SHALL SUBMIT TO THE COMMISSIONER OF EDUCATION DATA, IN SUCH FORM AND DETAIL AS REQUESTED BY THE COMMISSIONER OF EDUCATION, CONCERNING THE FUNCTIONS PERFORMED BY ITS SERVICE PROVIDER WORKFORCE AND THE SERVICE PROVIDER WORKFORCE OF THE LOCAL GOVERNMENTAL UNITS AND SOCIAL SERVICES DISTRICTS AS DEFINED IN THIS SUBDIVISION OVER WHICH THE AGENCY HAS REGULATORY AUTHORITY. AFTER RECEIPT OF SUCH DATA, THE COMMISSIONER SHALL CONVENE A WORKGROUP OF SUCH STATE AGENCIES FOR THE PURPOSE OF REVIEWING SUCH DATA AND ALSO TO MAKE RECOMMENDATIONS REGARDING AMENDMENTS TO LAW, RULE OR REGULATION NECESSARY TO CLARIFY WHICH TASKS AND ACTIVITIES MUST BE PERFORMED ONLY BY LICENSED OR OTHERWISE AUTHORIZED PERSONNEL. NO LATER THAN JANUARY 1, 2011, AFTER CONSULTATION WITH SUCH WORK GROUP, THE COMMISSIONER SHALL DEVELOP CRITERIA FOR THE REPORT REQUIRED PURSUANT TO SUBDIVISION B OF THIS SECTION AND SHALL WORK WITH SUCH STATE AGENCIES BY PROVIDING ADVICE AND GUIDANCE REGARDING WHICH TASKS AND ACTIVITIES MUST BE PERFORMED ONLY BY LICENSED OR OTHERWISE AUTHORIZED PERSONNEL.

B. ON OR BEFORE JULY 1, 2011, EACH SUCH STATE AGENCY, AFTER CONSULTATION WITH LOCAL GOVERNMENTAL UNITS AND SOCIAL SERVICES DISTRICTS AS DEFINED IN SUBDIVISION A OF THIS SECTION OVER WHICH THE AGENCY HAS REGULATORY AUTHORITY, SHALL SUBMIT TO THE COMMISSIONER OF EDUCATION A REPORT ON THE UTILIZATION OF PERSONNEL SUBJECT TO THE PROVISIONS OF THIS SECTION. SUCH REPORT SHALL INCLUDE BUT NOT BE LIMITED TO: IDENTIFICATION OF TASKS AND ACTIVITIES PERFORMED BY SUCH PERSONNEL CATEGORIZED AS TASKS AND FUNCTIONS RESTRICTED TO LICENSED PERSONNEL AND TASKS AND FUNCTIONS THAT DO NOT REQUIRE A LICENSE UNDER ARTICLE 154 OF THE EDUCATION LAW; ANALYSIS OF COSTS ASSOCIATED WITH EMPLOYING ONLY APPROPRIATELY LICENSED OR OTHERWISE AUTHORIZED PERSONNEL TO PERFORM TASKS AND FUNCTIONS THAT REQUIRE LICENSURE UNDER SUCH ARTICLE 154, INCLUDING SALARY COSTS AND COSTS ASSOCIATED WITH PROVIDING SUPPORT TO UNLICENSED PERSONNEL IN

OBTAINING APPROPRIATE LICENSURE. SUCH REPORT SHALL ALSO INCLUDE AN ACTION PLAN DETAILING MEASURES THROUGH WHICH EACH SUCH ENTITY SHALL, NO LATER THAN JULY 1, 2013, COMPLY WITH PROFESSIONAL LICENSURE LAWS APPLICABLE TO SERVICES PROVIDED AND MAKE RECOMMENDATIONS ON ALTERNATIVE PATHWAYS TOWARD LICENSURE.

C. THE COMMISSIONER OF EDUCATION SHALL, AFTER RECEIPT OF THE REPORT REQUIRED UNDER THIS SECTION, AND AFTER CONSULTATION WITH STATE AGENCIES, NOT-FOR-PROFIT PROVIDERS, PROFESSIONAL ASSOCIATIONS, CONSUMERS, AND OTHER KEY STAKEHOLDERS, SUBMIT A REPORT TO THE GOVERNOR, THE SPEAKER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE, AND THE CHAIRS OF THE SENATE AND ASSEMBLY HIGHER EDUCATION COMMITTEES BY JULY 1, 2012 TO RECOMMEND ANY AMENDMENTS TO LAW, RULE OR REGULATION NECESSARY TO FULLY IMPLEMENT THE REQUIREMENTS FOR LICENSURE BY JULY 1, 2013. OTHER STATE AGENCY COMMISSIONERS SHALL BE PROVIDED AN OPPORTUNITY TO INCLUDE STATEMENTS OR ALTERNATIVE RECOMMENDATIONS IN SUCH REPORT.

S 4. Subdivision b of section 17-a of chapter 676 of the laws of 2002 amending the education law relating to the practice of psychology, as amended by a chapter of the laws of 2010 amending the education law and other laws relating to the registration of entities providing certain professional services and the licensure of certain professions, as proposed in legislative bills numbers S.5921-A and A.8897-A, is amended to read as follows:

b. This section shall be deemed repealed July 1, 2013 provided, however, that on or before [July 1, 2011, each such state agency, local governmental unit, and social services district, either individually or on a group basis, shall submit to the commissioner of education a report on the utilization of personnel subject to the provisions of this section. Such report shall include but not be limited to: identification of tasks and activities performed by such personnel categorized as tasks and functions restricted to licensed personnel and tasks and functions that do not require a license under article 153 or 163 of the education law; analysis of costs associated with employing only appropriately licensed or otherwise authorized personnel to perform tasks and functions that require licensure under such article 153 or 163, including salary costs and costs associated with providing support to unlicensed personnel in obtaining appropriate licensure. Such report shall also include an action plan detailing measures through which each such entity shall, no later than July 1, 2013, employ only licensed or otherwise authorized personnel to perform tasks and functions requiring licensure, and shall include plans to assist the entity's employees to become licensed, recommendations on alternative pathways toward licensure, information related to reassignment, reappointment, transfer, or reclassification of personnel, and any other such support necessary to ensure an appropriately licensed workforce. The commissioner of education shall, after consultation with state agencies, not-for-profit providers, professional associations, consumers, and other key stakeholders, submit a report to the speaker of the assembly, the temporary president of the senate, and the chairs of the senate and assembly higher education committees by July 1, 2012 to recommend any amendments to law, rule or regulation necessary to fully implement the requirements for licensure by July 1, 2013.] OCTOBER 1, 2010, EACH STATE AGENCY IDENTIFIED IN SUBDIVISION A OF THIS SECTION SHALL SUBMIT TO THE COMMISSIONER OF EDUCATION DATA, IN SUCH FORM AND DETAIL AS REQUESTED BY THE COMMISSIONER OF EDUCATION, CONCERNING THE FUNCTIONS PERFORMED BY ITS SERVICE PROVIDER WORKFORCE AND THE SERVICE PROVIDER WORKFORCE OF THE LOCAL GOVERNMENTAL UNITS AND SOCIAL SERVICES DISTRICTS AS DEFINED IN SUBDIVISION A OF THIS

SECTION OVER WHICH THE AGENCY HAS REGULATORY AUTHORITY. AFTER RECEIPT OF SUCH DATA, THE COMMISSIONER SHALL CONVENE A WORKGROUP OF SUCH STATE AGENCIES FOR THE PURPOSE OF REVIEWING SUCH DATA AND ALSO TO MAKE RECOMMENDATIONS REGARDING AMENDMENTS TO LAW, RULE OR REGULATION NECESSARY TO CLARIFY WHICH TASKS AND ACTIVITIES MUST BE PERFORMED ONLY BY LICENSED OR OTHERWISE AUTHORIZED PERSONNEL. NO LATER THAN JANUARY 1, 2011, AFTER CONSULTATION WITH SUCH WORKGROUP, THE COMMISSIONER SHALL DEVELOP CRITERIA FOR THE REPORT REQUIRED PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVISION AND SHALL WORK WITH SUCH STATE AGENCIES BY PROVIDING ADVICE AND GUIDANCE REGARDING WHICH TASKS AND ACTIVITIES MUST BE PERFORMED ONLY BY LICENSED OR OTHERWISE AUTHORIZED PERSONNEL.

1. ON OR BEFORE JULY 1, 2011, EACH SUCH STATE AGENCY, AFTER CONSULTATION WITH LOCAL GOVERNMENTAL UNITS AND SOCIAL SERVICES DISTRICTS AS DEFINED IN SUBDIVISION A OF THIS SECTION OVER WHICH THE AGENCY HAS REGULATORY AUTHORITY, SHALL SUBMIT TO THE COMMISSIONER OF EDUCATION A REPORT ON THE UTILIZATION OF PERSONNEL SUBJECT TO THE PROVISIONS OF THIS SECTION. SUCH REPORT SHALL INCLUDE BUT NOT BE LIMITED TO: IDENTIFICATION OF TASKS AND ACTIVITIES PERFORMED BY SUCH PERSONNEL CATEGORIZED AS TASKS AND FUNCTIONS RESTRICTED TO LICENSED PERSONNEL AND TASKS AND FUNCTIONS THAT DO NOT REQUIRE A LICENSE UNDER ARTICLE 153 OR 163 OF THE EDUCATION LAW; ANALYSIS OF COSTS ASSOCIATED WITH EMPLOYING ONLY APPROPRIATELY LICENSED OR OTHERWISE AUTHORIZED PERSONNEL TO PERFORM TASKS AND FUNCTIONS THAT REQUIRE LICENSURE UNDER SUCH ARTICLE 153 OR 163, INCLUDING SALARY COSTS AND COSTS ASSOCIATED WITH PROVIDING SUPPORT TO UNLICENSED PERSONNEL IN OBTAINING APPROPRIATE LICENSURE. SUCH REPORT SHALL ALSO INCLUDE AN ACTION PLAN DETAILING MEASURES THROUGH WHICH EACH SUCH ENTITY SHALL, NO LATER THAN JULY 1, 2013, COMPLY WITH PROFESSIONAL LICENSURE LAWS APPLICABLE TO SERVICES PROVIDED AND MAKE RECOMMENDATIONS ON ALTERNATIVE PATHWAYS TOWARD LICENSURE.

2. THE COMMISSIONER OF EDUCATION SHALL, AFTER RECEIPT OF THE REPORTS REQUIRED UNDER THIS SECTION, AND AFTER CONSULTATION WITH STATE AGENCIES, NOT-FOR-PROFIT PROVIDERS, PROFESSIONAL ASSOCIATIONS, CONSUMERS, AND OTHER KEY STAKEHOLDERS, SUBMIT A REPORT TO THE GOVERNOR, THE SPEAKER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE, AND THE CHAIRS OF THE SENATE AND ASSEMBLY HIGHER EDUCATION COMMITTEES BY JULY 1, 2012 TO RECOMMEND ANY AMENDMENTS TO LAW, RULE OR REGULATION NECESSARY TO FULLY IMPLEMENT THE REQUIREMENTS FOR LICENSURE BY JULY 1, 2013. OTHER STATE AGENCY COMMISSIONERS SHALL BE PROVIDED AN OPPORTUNITY TO INCLUDE STATEMENTS OR ALTERNATIVE RECOMMENDATIONS IN SUCH REPORT.

S 5. Section 15 of a chapter of the laws of 2010 amending the education law and other laws relating to the registration of entities providing certain professional services and the licensure of certain professions, as proposed in legislative bills numbers S.5921-A and A.8897-A, is renumbered section 16 and a new section 15 is added to read as follows:

S 15. NOT-FOR-PROFIT ENTITIES WHICH PROVIDE PROGRAMS AND SERVICES FOR WHICH AN EXEMPTION RELATING TO THE PROFESSIONS IS PROVIDED PURSUANT TO SECTIONS THIRTEEN AND FOURTEEN OF THIS ACT SHALL NOT BE REQUIRED TO RECEIVE A WAIVER PURSUANT TO SECTION 6503-A OF THE EDUCATION LAW, AS ESTABLISHED PURSUANT TO SECTION ONE OF THIS ACT, AND FURTHER SUCH ENTITIES SHALL BE CONSIDERED TO BE APPROVED SETTINGS FOR THE RECEIPT OF SUPERVISED EXPERIENCE FOR THE PROFESSIONS GOVERNED BY ARTICLES 153, 154 AND 163 OF THE EDUCATION LAW.

S 6. Section 16 of a chapter of the laws of 2010 amending the education law and other laws relating to the registration of entities providing certain professional services and the licensure of certain

professions, as proposed in legislative bills numbers S.5921-A and A.8897-A, as renumbered by section five of this act is amended to read as follows:

S 16. This act shall take effect immediately; provided that [if this act shall have become a law after June 1, 2010,] sections thirteen [and], fourteen AND FIFTEEN of this act shall take effect immediately and shall be deemed to have been in full force and effect on and after June 1, 2010 AND SUCH SECTIONS SHALL BE DEEMED REPEALED JULY 1, 2013; provided further that the amendments to section 9 of chapter 420 of the laws of 2002 amending the education law relating to the profession of social work made by section thirteen of this act shall repeal on the same date as such section repeals; provided further that the amendments to section 17-a of chapter 676 of the laws of 2002 amending the education law relating to the practice of psychology made by section fourteen of this act shall repeal on the same date as such section repeals.

S 7. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2010 amending the education law and other laws relating to the registration of entities providing certain professional services and the licensure of certain professions, as proposed in legislative bills numbers S.5921-A and A.8897-A, takes effect.