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I N   S E N A T E

June 14, 2010

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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:

1     Section 1. Paragraph f of subdivision 1 of section 6503-a of the  
2     education law, as amended by a chapter of the laws of 2010 amending the  
3     education law and other laws relating to the registration of entities  
4     providing certain professional services and the licensure of certain  
5     professions, as proposed in legislative bills numbers S.5921-A and  
6     A.8897-A, is amended to read as follows:  
7     f. Each officer and director of such entity shall provide an attesta-  
8     tion regarding his or her good moral character as required pursuant to  
9     paragraph h of this subdivision. [Such statement shall set forth any  
10    criminal convictions, pending criminal charges, determinations of  
11    professional misconduct, pending charges of professional misconduct, or  
12    any limitations on professional practice.] The commissioner shall be  
13    further authorized to promulgate rules or regulations relating to the  
14    standards of the waiver for entities pursuant to this section. Such  
15    regulations shall include standards relating to the entity's ability to  
16    provide services, the entity's maintenance of patient and business  
17    records, the entity's fiscal policies, and such other standards as may  
18    be prescribed by the commissioner.

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

LBD12280-01-0

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

7 3. Nothing in this section shall be construed to limit the authority  
8 of another state agency to certify, license, CONTRACT or otherwise  
9 authorize an entity applying for a waiver pursuant to this section, if  
10 such state agency is otherwise authorized under another provision of law  
11 to certify, license, CONTRACT or authorize such an entity, nor shall a  
12 waiver pursuant to this section be construed to provide an exemption of  
13 such entity from any certification, licensure, NEED TO CONTRACT or any  
14 other such requirement established BY SUCH STATE AGENCY OR under any  
15 other provision of law. If a state agency determines that such certif-  
16 ication, licensure, CONTRACT or other authorization is required, a waiv-  
17 er pursuant to this section shall not [independently] have the effect of  
18 authorizing the provision of professional services under the jurisdic-  
19 tion of such agency in the absence of certification, licensure, A  
20 CONTRACT or other authorization from such STATE agency, and the depart-  
21 ment shall consult with such agency regarding the need for licensure,  
22 CONTRACTING, certification or authorization [to the extent required in  
23 the regulations of the commissioner]. In determining an application for  
24 a waiver pursuant to this section, the department shall consider as a  
25 factor in such determination any denial of an operating certificate or  
26 other authority to provide the services authorized pursuant to this  
27 section by a New York state or federal agency, political subdivision,  
28 municipal corporation, or local government agency or unit, AND SHALL NOT  
29 APPROVE A WAIVER APPLICATION AUTHORIZING AN ENTITY TO PROVIDE A PROGRAM  
30 OR SERVICES WHERE THE ENTITY OPERATED SUCH A PROGRAM OR PROVIDED SUCH  
31 SERVICES FOR WHICH AN OPERATING CERTIFICATE OR LICENSE IS PENDING, WAS  
32 DISAPPROVED OR WAS REVOKED, OR A WRITTEN AUTHORIZATION OR CONTRACT WAS  
33 TERMINATED FOR CAUSE, BY ONE OF SUCH AGENCIES, EXCEPT UPON APPROVAL OF  
34 SUCH ACTION BY THE APPROPRIATE STATE AGENCY. SUCH STATE AGENCIES SHALL  
35 NOTIFY THE DEPARTMENT, UPON REQUEST AND WITHIN A FIFTEEN DAY PERIOD,  
36 WHETHER A WAIVER APPLICANT HAS BEEN SUBJECT TO SUCH DISAPPROVAL, REVOCATION  
37 OR TERMINATION FOR CAUSE OR HAS A PENDING APPLICATION FOR A LICENSE  
38 OR OPERATING CERTIFICATE.

39 S 3. Section 9 of chapter 420 of the laws of 2002 amending the educa-  
40 tion law relating to the profession of social work, as amended by a  
41 chapter of the laws of 2010 amending the education law and other laws  
42 relating to the registration of entities providing certain professional  
43 services and the licensure of certain professions, as proposed in legis-  
44 lative bills numbers S.5921-A and A.8897-A, is amended to read as  
45 follows:

46 S 9. A. Nothing in this act shall prohibit or limit the activities or  
47 services on the part of any person in the employ of a program or service  
48 operated, regulated, funded, or approved by the department of mental  
49 hygiene, the office of children and family services, the department of  
50 correctional services, the state office for the aging, the department of  
51 health, or a local governmental unit as that term is defined in article  
52 41 of the mental hygiene law or a social services district as defined in  
53 section 61 of the social services law, provided, however, this section  
54 shall not authorize the use of any title authorized pursuant to article  
55 154 of the education law, except that this section shall be deemed  
56 repealed on July 1, 2013; provided, further, however, that on or before

1 [July 1, 2011, each such state agency, local governmental unit, and  
2 social services district, either individually or on a group basis, shall  
3 submit to the commissioner of education a report on the utilization of  
4 personnel subject to the provisions of this section. Such report shall  
5 include but not be limited to: identification of tasks and activities  
6 performed by such personnel categorized as tasks and functions  
7 restricted to licensed personnel and tasks and functions that do not  
8 require a license under article 154 of the education law; analysis of  
9 costs associated with employing only appropriately licensed or otherwise  
10 authorized personnel to perform tasks and functions that require lisen-  
11 sure under such article 154, including salary costs and costs associated  
12 with providing support to unlicensed personnel in obtaining appropriate  
13 licensure. Such report shall also include an action plan detailing meas-  
14 ures through which each such entity shall, no later than July 1, 2013,  
15 employ only licensed or otherwise authorized personnel to perform tasks  
16 and functions requiring licensure, and shall include plans to assist the  
17 entity's employees to become licensed, recommendations on alternative  
18 pathways toward licensure, information related to reassignment, reap-  
19 pointment, transfer, or reclassification of personnel, and any other  
20 such support necessary to ensure an appropriately licensed workforce.  
21 The commissioner of education shall, after consultation with state agen-  
22 cies, not-for-profit providers, professional associations, consumers,  
23 and other key stakeholders, submit a report to the speaker of the assem-  
24 bly, the temporary president of the senate, and the chairs of the senate  
25 and assembly education committees by July 1, 2012 to recommend any  
26 amendments to law, rule or regulation necessary to fully implement the  
27 requirements for licensure by July 1, 2013.] OCTOBER 1, 2010, EACH STATE  
28 AGENCY IDENTIFIED IN THIS SUBDIVISION SHALL SUBMIT TO THE COMMISSIONER  
29 OF EDUCATION DATA, IN SUCH FORM AND DETAIL AS REQUESTED BY THE COMMIS-  
30 SIONER OF EDUCATION, CONCERNING THE FUNCTIONS PERFORMED BY ITS SERVICE  
31 PROVIDER WORKFORCE AND THE SERVICE PROVIDER WORKFORCE OF THE LOCAL  
32 GOVERNMENTAL UNITS AND SOCIAL SERVICES DISTRICTS AS DEFINED IN THIS  
33 SUBDIVISION OVER WHICH THE AGENCY HAS REGULATORY AUTHORITY. AFTER  
34 RECEIPT OF SUCH DATA, THE COMMISSIONER SHALL CONVENE A WORKGROUP OF SUCH  
35 STATE AGENCIES FOR THE PURPOSE OF REVIEWING SUCH DATA AND ALSO TO MAKE  
36 RECOMMENDATIONS REGARDING AMENDMENTS TO LAW, RULE OR REGULATION NECES-  
37 SARY TO CLARIFY WHICH TASKS AND ACTIVITIES MUST BE PERFORMED ONLY BY  
38 LICENSED OR OTHERWISE AUTHORIZED PERSONNEL. NO LATER THAN JANUARY 1,  
39 2011, AFTER CONSULTATION WITH SUCH WORK GROUP, THE COMMISSIONER SHALL  
40 DEVELOP CRITERIA FOR THE REPORT REQUIRED PURSUANT TO SUBDIVISION B OF  
41 THIS SECTION AND SHALL WORK WITH SUCH STATE AGENCIES BY PROVIDING ADVICE  
42 AND GUIDANCE REGARDING WHICH TASKS AND ACTIVITIES MUST BE PERFORMED ONLY  
43 BY LICENSED OR OTHERWISE AUTHORIZED PERSONNEL.

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

1 OBTAINING APPROPRIATE LICENSURE. SUCH REPORT SHALL ALSO INCLUDE AN  
2 ACTION PLAN DETAILING MEASURES THROUGH WHICH EACH SUCH ENTITY SHALL, NO  
3 LATER THAN JULY 1, 2013, COMPLY WITH PROFESSIONAL LICENSURE LAWS APPLI-  
4 CABLE TO SERVICES PROVIDED AND MAKE RECOMMENDATIONS ON ALTERNATIVE PATH-  
5 WAYS TOWARD LICENSURE.

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

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

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

1 SECTION OVER WHICH THE AGENCY HAS REGULATORY AUTHORITY. AFTER RECEIPT OF  
2 SUCH DATA, THE COMMISSIONER SHALL CONVENE A WORKGROUP OF SUCH STATE  
3 AGENCIES FOR THE PURPOSE OF REVIEWING SUCH DATA AND ALSO TO MAKE RECOM-  
4 MENDATIONS REGARDING AMENDMENTS TO LAW, RULE OR REGULATION NECESSARY TO  
5 CLARIFY WHICH TASKS AND ACTIVITIES MUST BE PERFORMED ONLY BY LICENSED OR  
6 OTHERWISE AUTHORIZED PERSONNEL. NO LATER THAN JANUARY 1, 2011, AFTER  
7 CONSULTATION WITH SUCH WORKGROUP, THE COMMISSIONER SHALL DEVELOP CRITE-  
8 RIA FOR THE REPORT REQUIRED PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVI-  
9 SION AND SHALL WORK WITH SUCH STATE AGENCIES BY PROVIDING ADVICE AND  
10 GUIDANCE REGARDING WHICH TASKS AND ACTIVITIES MUST BE PERFORMED ONLY BY  
11 LICENSED OR OTHERWISE AUTHORIZED PERSONNEL.

12 1. ON OR BEFORE JULY 1, 2011, EACH SUCH STATE AGENCY, AFTER CONSULTA-  
13 TION WITH LOCAL GOVERNMENTAL UNITS AND SOCIAL SERVICES DISTRICTS AS  
14 DEFINED IN SUBDIVISION A OF THIS SECTION OVER WHICH THE AGENCY HAS REGU-  
15 LATORY AUTHORITY, SHALL SUBMIT TO THE COMMISSIONER OF EDUCATION A REPORT  
16 ON THE UTILIZATION OF PERSONNEL SUBJECT TO THE PROVISIONS OF THIS  
17 SECTION. SUCH REPORT SHALL INCLUDE BUT NOT BE LIMITED TO: IDENTIFICATION  
18 OF TASKS AND ACTIVITIES PERFORMED BY SUCH PERSONNEL CATEGORIZED AS TASKS  
19 AND FUNCTIONS RESTRICTED TO LICENSED PERSONNEL AND TASKS AND FUNCTIONS  
20 THAT DO NOT REQUIRE A LICENSE UNDER ARTICLE 153 OR 163 OF THE EDUCATION  
21 LAW; ANALYSIS OF COSTS ASSOCIATED WITH EMPLOYING ONLY APPROPRIATELY  
22 LICENSED OR OTHERWISE AUTHORIZED PERSONNEL TO PERFORM TASKS AND FUNC-  
23 TIONS THAT REQUIRE LICENSURE UNDER SUCH ARTICLE 153 OR 163, INCLUDING  
24 SALARY COSTS AND COSTS ASSOCIATED WITH PROVIDING SUPPORT TO UNLICENSED  
25 PERSONNEL IN OBTAINING APPROPRIATE LICENSURE. SUCH REPORT SHALL ALSO  
26 INCLUDE AN ACTION PLAN DETAILING MEASURES THROUGH WHICH EACH SUCH ENTITY  
27 SHALL, NO LATER THAN JULY 1, 2013, COMPLY WITH PROFESSIONAL LICENSURE  
28 LAWS APPLICABLE TO SERVICES PROVIDED AND MAKE RECOMMENDATIONS ON ALTER-  
29 NATIVE PATHWAYS TOWARD LICENSURE.

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

40 S 5. Section 15 of a chapter of the laws of 2010 amending the educa-  
41 tion law and other laws relating to the registration of entities provid-  
42 ing certain professional services and the licensure of certain  
43 professions, as proposed in legislative bills numbers S.5921-A and  
44 A.8897-A, is renumbered section 16 and a new section 15 is added to read  
45 as follows:

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

54 S 6. Section 16 of a chapter of the laws of 2010 amending the educa-  
55 tion law and other laws relating to the registration of entities provid-  
56 ing certain professional services and the licensure of certain

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

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

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