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

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I N A S S E M B L Y

January 21, 2014

Introduced by M. of A. MORELLE -- read once and referred to the Committee on Higher Education

AN ACT to amend the social services law, in relation to the definition of human services professional; to amend the education law, in relation to reporting on the number of individuals engaged in the practice of applied behavior analysis; and to amend chapter 554 of the laws of 2013 amending the education law and other laws relating to applied behavior analysis, in relation to performing the duties of a licensed behavior analyst

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

Section 1. Subdivision 5-a of section 488 of the social services law, as added by section 1 of part B of chapter 501 of the laws of 2012, is amended to read as follows:

5-a. "Human services professional" shall mean any: physician; registered physician assistant; surgeon; medical examiner; coroner; dentist; dental hygienist; osteopath; optometrist; chiropractor; podiatrist; resident; intern; psychologist; registered nurse; licensed practical nurse; nurse practitioner; social worker; emergency medical technician; licensed creative arts therapist; licensed marriage and family therapist; licensed mental health counselor; licensed psychoanalyst; LICENSED BEHAVIOR ANALYST; CERTIFIED BEHAVIOR ANALYST ASSISTANT; licensed speech/language pathologist or audiologist; licensed physical therapist; licensed occupational therapist; hospital personnel engaged in the admission, examination, care or treatment of persons; Christian Science practitioner; school official, which includes but is not limited to school teacher, school guidance counselor, school psychologist, school social worker, school nurse, school administrator or other school personnel required to hold a teaching or administrative license or certificate; social services worker; any other child care or foster care worker; mental health professional; person credentialed by the office of alcoholism and substance abuse services; peace officer; police officer; district attorney or assistant district attorney; investigator employed in the office of a district attorney; or other law enforcement official.

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

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S 2. Section 8807 of the education law is amended by adding four new subdivisions 5, 6, 7 and 8 to read as follows:

5. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO AFFECT OR PREVENT A PERSON WITHOUT A LICENSE OR OTHER AUTHORIZATION PURSUANT TO THIS TITLE FROM PERFORMING ASSESSMENTS, INCLUDING COLLECTING BASIC INFORMATION, GATHERING DEMOGRAPHIC DATA, AND MAKING INFORMAL OBSERVATIONS, FOR THE PURPOSE OF DETERMINING NEED FOR SERVICES UNRELATED TO AN ABA PLAN. FURTHER, LICENSURE OR AUTHORIZATION PURSUANT TO THIS ARTICLE SHALL NOT BE REQUIRED TO CREATE, DEVELOP OR IMPLEMENT A SERVICE PLAN UNRELATED TO AN ABA PLAN. THIS ARTICLE SHALL NOT APPLY TO BEHAVIORAL HEALTH TREATMENTS OTHER THAN ABA THAT MAY BE PROVIDED TO PERSONS WITH AUTISM SPECTRUM DISORDER. A LICENSE UNDER THIS ARTICLE SHALL NOT BE REQUIRED FOR PERSONS TO PARTICIPATE AS A MEMBER OF A MULTI-DISCIPLINARY TEAM TO IMPLEMENT AN ABA PLAN; PROVIDED, HOWEVER, THAT SUCH TEAM SHALL INCLUDE ONE OR MORE PROFESSIONALS LICENSED UNDER THIS ARTICLE OR ARTICLES ONE HUNDRED THIRTY-ONE, ONE HUNDRED FIFTY-THREE, ONE HUNDRED FIFTY-FOUR OR ONE HUNDRED SIXTY-THREE OF THIS CHAPTER; AND PROVIDED FURTHER THAT THE ACTIVITIES PERFORMED BY MEMBERS OF THE TEAM SHALL BE CONSISTENT WITH THE SCOPE OF PRACTICE FOR EACH TEAM MEMBER LICENSED OR AUTHORIZED UNDER THIS TITLE, AND THOSE WHO ARE NOT SO AUTHORIZED MAY NOT ENGAGE IN THE FOLLOWING RESTRICTED PRACTICES: CREATION, MODIFICATION OR TERMINATION OF AN ABA PLAN; DIAGNOSIS OF MENTAL, EMOTIONAL, BEHAVIORAL, ADDICTIVE AND DEVELOPMENTAL DISORDERS AND DISABILITIES; PATIENT ASSESSMENT AND EVALUATING; PROVISION OF PSYCHOTHERAPEUTIC TREATMENT; PROVISION OF TREATMENT OTHER THAN PSYCHOTHERAPEUTIC TREATMENT; AND DEVELOPMENT AND IMPLEMENTATION OF ASSESSMENT-BASED TREATMENT PLANS, AS DEFINED IN SECTION SEVENTY-SEVEN HUNDRED ONE OF THIS TITLE. PROVIDED FURTHER, HOWEVER, THAT NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED AS REQUIRING A LICENSE OR AUTHORIZATION FOR ANY PARTICULAR ACTIVITY OR FUNCTION BASED SOLELY ON THE FACT THAT THE ACTIVITY OR FUNCTION IS NOT LISTED IN THIS SUBDIVISION. PROVIDED FURTHER, HOWEVER, THAT NOTHING IN THIS SUBDIVISION SHALL AUTHORIZE THE DELEGATION OF RESTRICTED ACTIVITIES TO AN INDIVIDUAL WHO IS NOT APPROPRIATELY LICENSED OR AUTHORIZED UNDER THIS TITLE.

6. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED AS PROHIBITING AN EARLY INTERVENTION ABA AIDE, PURSUANT TO REGULATIONS PROMULGATED BY THE COMMISSIONER OF HEALTH, AND ACTING UNDER THE SUPERVISION AND DIRECTION OF A QUALIFIED SUPERVISOR WHO IS LICENSED OR OTHERWISE AUTHORIZED PURSUANT TO TITLE EIGHT OF THIS CHAPTER FROM:

(A) ASSISTING THE SUPERVISOR AND QUALIFIED PERSONNEL WITH THE IMPLEMENTATION OF INDIVIDUAL ABA PLANS;

(B) ASSISTING IN THE RECORDING AND COLLECTION OF DATA NEEDED TO MONITOR PROGRESS;

(C) PARTICIPATING IN REQUIRED TEAM MEETINGS; AND

(D) COMPLETING ANY OTHER ACTIVITIES AS DIRECTED BY HIS OR HER SUPERVISOR AND AS NECESSARY TO ASSIST IN THE IMPLEMENTATION OF INDIVIDUAL ABA PLANS.

PROVIDED HOWEVER, THAT NOTHING IN THIS SUBDIVISION SHALL AUTHORIZE THE DELEGATION OF RESTRICTED ACTIVITIES TO AN INDIVIDUAL WHO IS NOT APPROPRIATELY LICENSED OR OTHERWISE AUTHORIZED UNDER THIS TITLE; PROVIDED FURTHER HOWEVER, THAT IN REGARD TO THE EARLY INTERVENTION PROGRAM ESTABLISHED PURSUANT TO TITLE TWO-A OF ARTICLE TWENTY-FIVE OF THE PUBLIC HEALTH LAW, AN EARLY INTERVENTION ABA AIDE UNDER THE SUPERVISION AND DIRECTION OF A QUALIFIED SUPERVISOR MAY COMPLETE ACTIVITIES NECESSARY TO ASSIST IN THE IMPLEMENTATION OF AN INDIVIDUAL ABA PLAN, PROVIDED THAT SUCH ACTIVITIES DO NOT REQUIRE PROFESSIONAL SKILL OR JUDGMENT.

7. THIS ARTICLE SHALL NOT BE CONSTRUED TO PROHIBIT CARE DELIVERED BY ANY FAMILY MEMBER, HOUSEHOLD MEMBER OR FRIEND, OR PERSON EMPLOYED PRIMARILY IN A DOMESTIC CAPACITY WHO DOES NOT HOLD HIMSELF OR HERSELF OUT, OR ACCEPT EMPLOYMENT, AS A PERSON LICENSED TO PRACTICE APPLIED BEHAVIOR ANALYSIS UNDER THE PROVISIONS OF THIS ARTICLE; PROVIDED THAT, IF SUCH PERSON IS REMUNERATED, THE PERSON DOES NOT HOLD HIMSELF OR HERSELF OUT AS ONE WHO ACCEPTS EMPLOYMENT FOR PERFORMING SUCH CARE.

8. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED AS PROHIBITING PROGRAMS CERTIFIED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES FROM PROVIDING SUBSTANCE USE DISORDER SERVICES FOR PERSONS WITH AUTISM AND AUTISM SPECTRUM DISORDERS AND RELATED DISORDERS.

S 3. Section 13 of chapter 554 of the laws of 2013, amending the education law and other laws relating to applied behavior analysis, is amended to read as follows:

S 13. a. Nothing in this act shall be construed as prohibiting a person [from performing the duties of a licensed behavior analyst or a certified behavior analyst assistant, in the course of such employment, if such person is] employed OR RETAINED by programs licensed, certified, operated, APPROVED, REGISTERED or funded and regulated by the office for people with developmental disabilities, THE OFFICE OF CHILDREN AND FAMILY SERVICES, or the office of mental health FROM PERFORMING THE DUTIES OF A LICENSED BEHAVIOR ANALYST OR A CERTIFIED BEHAVIOR ANALYST ASSISTANT IN THE COURSE OF SUCH EMPLOYMENT OR RETENTION; provided, however, that this section shall not authorize the use of any title authorized pursuant to article 167 of the education law; and provided further, however, that this section shall be deemed repealed on July 1, [2018] 2020.

b. ON OR BEFORE SEPTEMBER 1, 2016, THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, THE OFFICE OF CHILDREN AND FAMILY SERVICES, AND THE OFFICE OF MENTAL HEALTH SHALL JOINTLY SUBMIT TO THE GOVERNOR, THE COMMISSIONER OF EDUCATION, THE SPEAKER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE, AND THE CHAIRS OF THE SENATE AND ASSEMBLY HIGHER EDUCATION COMMITTEES A REPORT ON THE NUMBER OF INDIVIDUALS EMPLOYED OR RETAINED IN EXEMPT PROGRAMS LICENSED, CERTIFIED, OPERATED, APPROVED, REGISTERED, OR FUNDED AND REGULATED BY SUCH AGENCIES ON JULY 1, 2016 WHO ARE PROVIDING SERVICES THAT WOULD OTHERWISE BE RESTRICTED TO THOSE LICENSED OR AUTHORIZED UNDER ARTICLE 167 OF THE EDUCATION LAW; AND THE OCCUPATIONAL TITLE OF INDIVIDUALS WHO ON JULY 1, 2016 ARE NOT LICENSED OR OTHERWISE AUTHORIZED UNDER TITLE 8 OF THE EDUCATION LAW, AND WHO ARE ENGAGED IN THE PRACTICE OF APPLIED BEHAVIOR ANALYSIS FOR THE PURPOSE OF PROVIDING BEHAVIORAL HEALTH TREATMENT FOR PERSONS WITH AUTISM SPECTRUM DISORDERS AND RELATED DISORDERS.

C. On or before September 1, [2016] 2018, the office for people with developmental disabilities, THE OFFICE OF CHILDREN AND FAMILY SERVICES, and the office of mental health [as identified in subdivision a of this section that licenses, certifies, operates or funds and regulates programs that employ individuals to provide services that would otherwise be restricted to individuals licensed or authorized under article 167 of the education law,] shall submit to the commissioner of education, in such form and detail as requested by such commissioner, data in relation to: the number of individuals employed OR RETAINED in exempt programs licensed, certified, operated, APPROVED, REGISTERED or funded and regulated by [the office for people with developmental disabilities] SUCH AGENCIES on July 1, [2016] 2018 who are providing services that would otherwise be restricted to those licensed or authorized under article 167 of the education law; and the occupational title of individuals who on July 1, [2016] 2018 are not licensed or otherwise authorized

under title 8 of the education law, and who are engaged in the practice of applied behavior analysis for the purpose of providing behavioral health treatment for persons with autism and autism spectrum disorders and related disorders.

[c.] D. The commissioner of education, after receipt of this data and in consultation with the office for people with developmental disabilities, THE OFFICE OF CHILDREN AND FAMILY SERVICES, and the office of mental health, not-for-profit providers, professional associations, consumers and other key stakeholders, shall prepare a report that recommends changes in any laws, rules or regulations necessary to ensure appropriate licensure or other authorization of individuals providing services that are within the restricted practice of professions licensed or otherwise authorized under article 167 of the education law. The report shall include an estimate of the fiscal impact of any such recommended changes and, to the extent practicable, how such recommendations will result in improved outcomes. The commissioner of education shall submit the 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 January 1, [2017] 2019. The commissioners of the agencies identified in subdivision a of this section shall be provided an opportunity to include statements or alternative recommendations in such report.

S 4. This act shall take effect on the same date and in the same manner as chapter 554 of the laws of 2013, takes effect.