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I N   A S S E M B L Y

January 21, 2014

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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:

1     Section 1. Subdivision 5-a of section 488 of the social services law,  
2     as added by section 1 of part B of chapter 501 of the laws of 2012, is  
3     amended to read as follows:  
4     5-a. "Human services professional" shall mean any: physician; regis-  
5     tered physician assistant; surgeon; medical examiner; coroner; dentist;  
6     dental hygienist; osteopath; optometrist; chiropractor; podiatrist;  
7     resident; intern; psychologist; registered nurse; licensed practical  
8     nurse; nurse practitioner; social worker; emergency medical technician;  
9     licensed creative arts therapist; licensed marriage and family thera-  
10    pist; licensed mental health counselor; licensed psychoanalyst; LICENSED  
11    BEHAVIOR ANALYST; CERTIFIED BEHAVIOR ANALYST ASSISTANT; licensed  
12    speech/language pathologist or audiologist; licensed physical therapist;  
13    licensed occupational therapist; hospital personnel engaged in the  
14    admission, examination, care or treatment of persons; Christian Science  
15    practitioner; school official, which includes but is not limited to  
16    school teacher, school guidance counselor, school psychologist, school  
17    social worker, school nurse, school administrator or other school  
18    personnel required to hold a teaching or administrative license or  
19    certificate; social services worker; any other child care or foster care  
20    worker; mental health professional; person credentialed by the office of  
21    alcoholism and substance abuse services; peace officer; police officer;  
22    district attorney or assistant district attorney; investigator employed  
23    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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1 S 2. Section 8807 of the education law is amended by adding four new  
2 subdivisions 5, 6, 7 and 8 to read as follows:

3 5. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO AFFECT OR PREVENT A  
4 PERSON WITHOUT A LICENSE OR OTHER AUTHORIZATION PURSUANT TO THIS TITLE  
5 FROM PERFORMING ASSESSMENTS, INCLUDING COLLECTING BASIC INFORMATION,  
6 GATHERING DEMOGRAPHIC DATA, AND MAKING INFORMAL OBSERVATIONS, FOR THE  
7 PURPOSE OF DETERMINING NEED FOR SERVICES UNRELATED TO AN ABA PLAN.  
8 FURTHER, LICENSURE OR AUTHORIZATION PURSUANT TO THIS ARTICLE SHALL NOT  
9 BE REQUIRED TO CREATE, DEVELOP OR IMPLEMENT A SERVICE PLAN UNRELATED TO  
10 AN ABA PLAN. THIS ARTICLE SHALL NOT APPLY TO BEHAVIORAL HEALTH TREAT-  
11 MENTS OTHER THAN ABA THAT MAY BE PROVIDED TO PERSONS WITH AUTISM SPEC-  
12 TRUM DISORDER. A LICENSE UNDER THIS ARTICLE SHALL NOT BE REQUIRED FOR  
13 PERSONS TO PARTICIPATE AS A MEMBER OF A MULTI-DISCIPLINARY TEAM TO  
14 IMPLEMENT AN ABA PLAN; PROVIDED, HOWEVER, THAT SUCH TEAM SHALL INCLUDE  
15 ONE OR MORE PROFESSIONALS LICENSED UNDER THIS ARTICLE OR ARTICLES ONE  
16 HUNDRED THIRTY-ONE, ONE HUNDRED FIFTY-THREE, ONE HUNDRED FIFTY-FOUR OR  
17 ONE HUNDRED SIXTY-THREE OF THIS CHAPTER; AND PROVIDED FURTHER THAT THE  
18 ACTIVITIES PERFORMED BY MEMBERS OF THE TEAM SHALL BE CONSISTENT WITH THE  
19 SCOPE OF PRACTICE FOR EACH TEAM MEMBER LICENSED OR AUTHORIZED UNDER  
20 THIS TITLE, AND THOSE WHO ARE NOT SO AUTHORIZED MAY NOT ENGAGE IN THE  
21 FOLLOWING RESTRICTED PRACTICES: CREATION, MODIFICATION OR TERMINATION OF  
22 AN ABA PLAN; DIAGNOSIS OF MENTAL, EMOTIONAL, BEHAVIORAL, ADDICTIVE AND  
23 DEVELOPMENTAL DISORDERS AND DISABILITIES; PATIENT ASSESSMENT AND EVALU-  
24 ATING; PROVISION OF PSYCHOTHERAPEUTIC TREATMENT; PROVISION OF TREATMENT  
25 OTHER THAN PSYCHOTHERAPEUTIC TREATMENT; AND DEVELOPMENT AND IMPLEMENTA-  
26 TION OF ASSESSMENT-BASED TREATMENT PLANS, AS DEFINED IN SECTION SEVEN-  
27 TY-SEVEN HUNDRED ONE OF THIS TITLE. PROVIDED FURTHER, HOWEVER, THAT  
28 NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED AS REQUIRING A LICENSE OR  
29 AUTHORIZATION FOR ANY PARTICULAR ACTIVITY OR FUNCTION BASED SOLELY ON  
30 THE FACT THAT THE ACTIVITY OR FUNCTION IS NOT LISTED IN THIS SUBDIVI-  
31 SION. PROVIDED FURTHER, HOWEVER, THAT NOTHING IN THIS SUBDIVISION SHALL  
32 AUTHORIZE THE DELEGATION OF RESTRICTED ACTIVITIES TO AN INDIVIDUAL WHO  
33 IS NOT APPROPRIATELY LICENSED OR AUTHORIZED UNDER THIS TITLE.

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

39 (A) ASSISTING THE SUPERVISOR AND QUALIFIED PERSONNEL WITH THE IMPE-  
40 LEMENTATION OF INDIVIDUAL ABA PLANS;

41 (B) ASSISTING IN THE RECORDING AND COLLECTION OF DATA NEEDED TO MONI-  
42 TOR PROGRESS;

43 (C) PARTICIPATING IN REQUIRED TEAM MEETINGS; AND

44 (D) COMPLETING ANY OTHER ACTIVITIES AS DIRECTED BY HIS OR HER SUPERVI-  
45 SOR AND AS NECESSARY TO ASSIST IN THE IMPLEMENTATION OF INDIVIDUAL ABA  
46 PLANS.

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

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

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

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

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

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

42 C. On or before September 1, [2016] 2018, the office for people with  
43 developmental disabilities, THE OFFICE OF CHILDREN AND FAMILY SERVICES,  
44 and the office of mental health [as identified in subdivision a of this  
45 section that licenses, certifies, operates or funds and regulates  
46 programs that employ individuals to provide services that would other-  
47 wise be restricted to individuals licensed or authorized under article  
48 167 of the education law,] shall submit to the commissioner of educa-  
49 tion, in such form and detail as requested by such commissioner, data in  
50 relation to: the number of individuals employed OR RETAINED in exempt  
51 programs licensed, certified, operated, APPROVED, REGISTERED or funded  
52 and regulated by [the office for people with developmental disabilities]  
53 SUCH AGENCIES on July 1, [2016] 2018 who are providing services that  
54 would otherwise be restricted to those licensed or authorized under  
55 article 167 of the education law; and the occupational title of individ-  
56 uals who on July 1, [2016] 2018 are not licensed or otherwise authorized

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

5 [c.] D. The commissioner of education, after receipt of this data and  
6 in consultation with the office for people with developmental disabili-  
7 ties, THE OFFICE OF CHILDREN AND FAMILY SERVICES, and the office of  
8 mental health, not-for-profit providers, professional associations,  
9 consumers and other key stakeholders, shall prepare a report that recom-  
10 mends changes in any laws, rules or regulations necessary to ensure  
11 appropriate licensure or other authorization of individuals providing  
12 services that are within the restricted practice of professions licensed  
13 or otherwise authorized under article 167 of the education law. The  
14 report shall include an estimate of the fiscal impact of any such recom-  
15 mended changes and, to the extent practicable, how such recommendations  
16 will result in improved outcomes. The commissioner of education shall  
17 submit the report to the governor, the speaker of the assembly, the  
18 temporary president of the senate, and the chairs of the senate and  
19 assembly higher education committees by January 1, [2017] 2019. The  
20 commissioners of the agencies identified in subdivision a of this  
21 section shall be provided an opportunity to include statements or alter-  
22 native recommendations in such report.

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