

6395

I N S E N A T E

January 21, 2014

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

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;

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

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1 district attorney or assistant district attorney; investigator employed
2 in the office of a district attorney; or other law enforcement official.

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

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

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

41 (A) ASSISTING THE SUPERVISOR AND QUALIFIED PERSONNEL WITH THE IMPE-
42 MENTATION OF INDIVIDUAL ABA PLANS;

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

45 (C) PARTICIPATING IN REQUIRED TEAM MEETINGS; AND

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

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

1 ASSIST IN THE IMPLEMENTATION OF AN INDIVIDUAL ABA PLAN, PROVIDED THAT
2 SUCH ACTIVITIES DO NOT REQUIRE PROFESSIONAL SKILL OR JUDGMENT.

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

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

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

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

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

44 C. On or before September 1, [2016] 2018, the office for people with
45 developmental disabilities, THE OFFICE OF CHILDREN AND FAMILY SERVICES,
46 and the office of mental health [as identified in subdivision a of this
47 section that licenses, certifies, operates or funds and regulates
48 programs that employ individuals to provide services that would other-
49 wise be restricted to individuals licensed or authorized under article
50 167 of the education law,] shall submit to the commissioner of educa-
51 tion, in such form and detail as requested by such commissioner, data in
52 relation to: the number of individuals employed OR RETAINED in exempt
53 programs licensed, certified, operated, APPROVED, REGISTERED or funded
54 and regulated by [the office for people with developmental disabilities]
55 SUCH AGENCIES on July 1, [2016] 2018 who are providing services that
56 would otherwise be restricted to those licensed or authorized under

1 article 167 of the education law; and the occupational title of individ-
2 uals who on July 1, [2016] 2018 are not licensed or otherwise authorized
3 under title 8 of the education law, and who are engaged in the practice
4 of applied behavior analysis for the purpose of providing behavioral
5 health treatment for persons with autism and autism spectrum disorders
6 and related disorders.
7 [c.] D. The commissioner of education, after receipt of this data and
8 in consultation with the office for people with developmental disabili-
9 ties, THE OFFICE OF CHILDREN AND FAMILY SERVICES, and the office of
10 mental health, not-for-profit providers, professional associations,
11 consumers and other key stakeholders, shall prepare a report that recom-
12 mends changes in any laws, rules or regulations necessary to ensure
13 appropriate licensure or other authorization of individuals providing
14 services that are within the restricted practice of professions licensed
15 or otherwise authorized under article 167 of the education law. The
16 report shall include an estimate of the fiscal impact of any such recom-
17 mended changes and, to the extent practicable, how such recommendations
18 will result in improved outcomes. The commissioner of education shall
19 submit the report to the governor, the speaker of the assembly, the
20 temporary president of the senate, and the chairs of the senate and
21 assembly higher education committees by January 1, [2017] 2019. The
22 commissioners of the agencies identified in subdivision a of this
23 section shall be provided an opportunity to include statements or alter-
24 native recommendations in such report.
25 S 4. This act shall take effect on the same date and in the same
26 manner as chapter 554 of the laws of 2013, takes effect.