

SOCIAL WORK POLICY UPDATE

Summary of our 2012 Legislative Season Protecting and Strengthening the Profession

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The 2012 legislative session was an extremely busy and productive time as the NASW-NYS Policy Team advanced a number of priority issues through the legislature while holding some others at bay. Primarily, our efforts focused on workforce related issues such as the ever evolving implementation issues related to the licensing and practice of the profession, scope of practice protections, workforce development and education.

Veterans Mental Health Training Initiative

In response to membership inquiries several years ago, the Policy Team created and secured legislative funding for the launch of our Veterans Mental Health Training Initiative. Rollout of the initiative by our Program Staff, has since trained more than 1,300 social workers and other mental health providers from across the spectrum of practice settings in veterans specific mental health issues. Now referred to as one of the nations “preeminent training programs” (Army One Source) related to serving the needs of veterans, year three will be expanded and once again funded through a legislative grant. Such an expansion is driven by the fact that recently released studies consistently note that public health authorities anticipate many returning soldiers will initially consult their primary care physicians regarding health problems; however, the diagnosis of PTSD is often missed in primary care settings. In addition, our membership has continued to identify an ongoing interest in the development of high level clinical skills related to serving our veterans, hence, we formed an unprecedented partnership with the NYS Psychiatric Association and the Medical Society of the State of New York to expand the breadth and scope of the project to include comprehensive trainings for primary health and mental health care providers across NY State. The full amount of the legislative appropriation is \$500,000. NASW-NYS will receive \$170,000 and each of our partner organizations will receive \$165,000. Stay tuned for details of year three as they unfold by visiting our website: <http://www.naswnys.org/veterans.html>

Social Work Licensure

Licensure Exemption for Designated State Agencies

As the Chapter has extensively reported on licensure issues for the last decade, many of you are undoubtedly familiar with ongoing attempts by state agencies currently enjoying an exemption from the social work and mental health professions licensure statutes to make such an exemption provision permanent. This year was no different, though the vehicle was a new one...Last year, the Governor appointed a Medicaid Redesign Team charged with identifying potential reductions to the public health program. As a result, a number of subcommittees were assembled and met throughout the summer and fall of 2011, most notably, for our purposes, the Behavioral Health Work Group and a late addition to the process, the Workforce Workgroup. Unfortunately, no representatives of mental health provider organizations, such as NASW, the Psychiatric Association or the Psychological Association were included in these work groups. Much to our frustration, the Workforce Workgroup received a recommendation from the Behavioral Workgroup to pursue a permanent exemption from licensure, however, the NASW NYS and NYC Chapters worked in conjunction with the NYS Society for Clinical Social Work and the LMSW Coalition to push back strongly in opposition. The recommendation was then scaled back to an extension for three years; however, we continued to engage key legislative and executive staff, iterating our position that first and foremost, such discussions were premature as the impacted agencies are exempt until July of 2013 and were in the process of conducting the comprehensive workforce analysis statutorily mandated by the current exemption. Our calls for the continuation of this process were answered and each of the exempt agencies completed their workforce analysis of the estimated impact of licensure implementation on the agency.

In reviewing the agency reports the Chapters determined that further clarification of definitions such as *assessment, counseling and case management* are needed. The Chapters also called for amenability to targeted exemptions, clarification of roles in multi-disciplinary teams, and support for continued education requirements to effectively transition the state workforce into compliance with the social work licensure statute. **You can read the joint NASW-NYS and NYC letter to SED on the exempt agency workforce reports on our website:** <http://naswnys.org/legislative/NYSED%20Exempt%20Agency%20Workforce%20Reports22812.pdf>

Subsequently, the State Education Department (SED) released its draft report of recommendations related to the data culled from the agency reports. After thorough review of the DRAFT SED Report, Chapter policy staff found it to be consistent with many of our concerns and positions such as calling for clarification of practice (especially in relation to “counseling”), it pushes back on broad based permanent exemptions, the allowance of multi disciplinary team members to make clinical determinations, broad based occupational exemptions and calls for civil service title consistency. However, it also recommends “diagnosis” be included in the scope of practice for the other licensed mental health providers which is a major concern for NASW.

The report goes on to make strong cost arguments, suggesting the exempt agencies severely overestimated the number of individuals in need of a license and points to the fact that clarification of tasks requiring a licenses will reduce the number of individuals counted among these assumptions, and counter balanced the salary arguments with the assertion that licensed providers have the ability to draw down Medicaid and Medicare reimbursement. In addition, it suggests continuing education be examined further (citing that 21 out of the 49 licensed professions require such). **To view our response letter to SED go to:** <http://www.naswnys.org/legislative/Final%20SED%20Agency%20Report%20Reponse.pdf>.

Once the final SED report is published, NASW-NYS will work to assemble stakeholders and legislative staff to map out the strategy for what we hope will be the final alterations to the licensure statute. The Chapter would like to give a special note of thanks to David Hamilton, PhD, LMSW, Executive Secretary State Board for Social Work and Mental Health Practitioners at the Office of the Professions for his consistent work to engage NASW-NYS and other stakeholders on these vitally important licensure implementation issues.

Corporate Practice Issue

NASW-NYS has dedicated a considerable amount of energy and resources, in conjunction with the NYS Education Department- Office of the Professions, allied social work organizations, and executives of agencies impacted by the corporate practice statute to resolve this issue. The resulting waiver process, due in large part to our legislative work, was agreed upon by all participants in the Social Work Alliance as an acceptable solution to this unintended consequence of implementing the social work statute (and that of other mental health professionals).

However, several groups (primarily in the New York City) have continued to push back against the waiver application citing its “cumbersome” nature, infringement of privacy issue related to the disclosure of Board member addresses, worries that a number of agencies may have missed the deadline and an issue recently recognized as problematic for some day camps employing nurses. It remains the Chapters position that the waiver process is working effectively and efficiently. To date, nearly 1,400 agencies have applied for the waiver with no reportable or significant issues. However, as matters such as these often do, issuance of said waivers has uncovered a similar issue related to the employment of licensed nurses in non for profit day camps; an issue addressed (ameliorated) by the legislature at the close of the session. In light of the fact that this is the only identified substantive problem with the waiver process, it has been perplexing to see a number of media releases and coverage since the deadline for waiver applications in early February. The accounts promote a misleading picture of the current status of the issue and are subsequently creating unnecessary fear and confusion.

The waiver process is relatively simple. It requires the completion of a four page application (that is much less onerous than the Certificate of Need application required of facilities seeking licensure through a state agency). Although the deadline for applications has indeed passed, the legislation provides a vehicle for those entities that

may have missed the deadline. Such an option, if necessary will be accessible to agencies within the next several weeks. The other issue that seems to be driving discomfort is the requirement that board members of impacted agencies divulge personal information including prior legal offenses as part of their attestation of moral character. While we understand that this may indeed be uncomfortable information to disclose, we must remember what is ultimately at stake... the safety and well being of the individuals served by these agencies who are often the most vulnerable among us. This requirement assures the consumer those members of the governing the board meet a minimum threshold of character and competence and is comparable to that which the licensees themselves must also meet. Lest we forget that this corporate practice law is in place for the purpose of preserving the practice integrity of the licensed professionals the concerned agencies so vehemently wish to employ. Providing consumers with the highest-quality services from licensed professionals is our shared goal. The waiver process assists agencies in accomplishing that purpose.

Protecting a Vital Social Work Practice Setting

NASW-NYS worked in conjunction with the Manhattan District Attorney's Office to secure legislation allowing for the employment of licensed mental health providers in county District Attorney Offices. As you are well aware, New York State law was amended in 2002 and as such established restricted scopes of practice for licensed master social workers (LMSW) and licensed clinical social workers (LCSW). As a result of these laws, said professional services could only be provided by licensed individuals or otherwise authorized individuals (e.g., permit holders and students under supervision) and in entities (e.g., professional businesses, hospitals, public schools) that are authorized to employ licensed professionals or qualified persons. While offering a level of consumer protection, the new statutes had the unintended consequence of prohibiting the provision of professional services in certain non for profit, religious and education corporations. This was, of course, problematic because many community based providers with a long history of providing social work services, were (in many instances, unknowingly) in violation of corporate practice statute. In response, Chapters 130 and 132 of the Laws of 2010 authorized the New York State Education Department to issue waivers to allow qualified entities to provide certain professional services (defined in Articles 153, 154 and 163 of the Education Law). However, the statute did not contemplate the critical services provided in District Attorney's Offices around the state and such offices were not eligible to apply for the waiver.

For more than a quarter of a century, District Attorney's Offices have employed social workers to provide counseling, crisis intervention, and support to victims, witnesses, and people who have been impacted by crime or the criminal justice system. This intervention recognizes that victims and witnesses often require easily accessed, specialized services in order to process, and move forward from, sometimes horrific crimes. Victims in an otherwise inherently adversarial system often benefit substantially from clinical support, and the fast intervention of forensic professionals provides victims and witnesses with valuable connections to long-term, outside clinical services that can help them continue the path to healing. The bill passed both houses and will soon be delivered to the Governor for signature.

Social Workers as Approved Providers Under Workers Compensation

NASW-NYS is continuing our work with the NYS Society for Clinical Social Work to engage key members of the legislature on a bill to include LCSW's as eligible providers of treatment under the Workers' compensation program. While early indicators suggested a positive outcome, a number of concerns were raised at the end of the session, stalling the bills traction. We will pursue the issue again in the 2013 session.

Insurance Reimbursement

Licensed Mental Health Counselors (LMHC) sought a legislative mandate for third party reimbursement. We actively opposed such an initiative based on the grounds that only a LCSW-R, psychologists, and psychiatrists enjoy such a mandate in the insurance law and LMHC does not have comparable experience. Chapter staff engaged key members of the legislature and as such the bill was held, effectively squashing its chances to advance this session. A separate bill seeking to mandate third party reimbursement for all four (4) licensed mental health practitioners (including licensed mental health counselors, licensed marriage and family therapists, licensed creative arts therapists and psychoanalysts), was, for the same reasons as the aforementioned bill, actively

opposed and as such, failed to gain traction during this legislative session, though we expect the initiative will resurface next year.

LLC Issue

NASW-NYS worked collaboratively with the New York State Society for Clinical Social Work to introduce a bill that would allow Licensed Clinical Social Workers, Licensed Creative Arts Therapists, Licensed Marriage and Family Therapists, Licensed Mental Health Counselors and Licensed Psychoanalysts to form a single corporate structure as a means of promoting inter-professional practice and improved mental health care for patients, families and communities. Assemblyman Pretlow is carrying the bill in the lower house. We have not yet discussed with potential Senate sponsors as we are in the formative stages of this process, but stay tuned next session as we expect it will be an issue of priority as it provides yet another option for members of our profession to practice.

Rehabilitation Counseling

Rehabilitation counselors have been seeking licensure since 1997 and though we have monitored the legislation yearly, it has never gained any momentum, until this session. While the Chapter is not opposed to the notion of licensure for such a profession, it opposed this specific legislation as drafted because it was both vague and overreaching in its proposed definition of the practice of Rehabilitation Counseling.

One section in particular raised a number of concerns as it sought to define the practice of *“rehabilitation counseling”* as a *“systematic process which assists persons with physical, mental, developmental, cognitive, and emotional disabilities to achieve their personal, career, and independent living goals in the most integrated setting possible through the application of the counseling process.”* It goes on to articulate the counseling process as including the task of *“diagnosis and treatment planning”* neither of which is specifically defined though given the reference to *“mental disabilities”* the language essentially authorizes rehabilitation counselors to engage in the diagnosis and subsequent treatment of mental illnesses and its associated disorders. The diagnosis of a mental illness is a serious task and one that should only be completed by practitioners with a highest degree of clinical training and experience. Currently, only Licensed Clinical Social Workers, Licensed Psychologists, Physicians and Psychiatric Nurse Practitioners are authorized to independently engage in the practice of diagnostics related to mental illness. Further, such authorization is only afforded to said clinicians upon the completion of rigorous, highly prescribed and supervised post graduate experience requirements have been met (all of which have been articulated in statute and regulation). A.967/S.6092 fails to define such post graduate experience prescriptives or supervision requirements.

In addition, an examination of the various rehabilitation counseling curriculum offered in New York State suggests a lack of educational coursework specific to the study of diagnosis and treatment of mental illnesses and associated disorders but instead, a more broadly based curricula related to the etiology of *“behavioral disorders”* (a term not to be mistaken for, nor used interchangeably with the term *“mental illness”*) and general counseling. Again, this is of grave concern to the profession of social work.

Chapter staff was directly engaged by key members of the legislature on the issue. The bill was held, effectively terminating its chances of passage this year.

Kendra’s Law

As a result of a highly sensationalized attack on a NYC police officer by an individual suffering from schizophrenia, the legislature was under heightened pressure to modify Kendra’s Law and make it permanent (midway through its review and study). As noted in our memo of opposition... *“While we understand the impetus driving such an initiative was to ensure a level of continuity of care through the provision of services to individuals with a severe mental illness who have a history of hospitalizations, we contend that involuntary hospitalizations or outpatient treatment is a serious matter and not one that should be driven by tabloid sensationalism but careful consideration that strikes a delicate balance between the safety of community members and consumer rights to self determination. We are gravely concerned with a number of provisions in the bill language that would, if enacted, erode the likelihood of maintaining such equilibrium. Primary among our concerns is the provision that usurps clinician decision making*

ability and transfers such a role to the program coordinators. The bill seeks to amend Mental Hygiene Law (MHL) 7.17 (f) to require that AOT program coordinators monitor local programs concerning expiring AOT orders, a measure that fundamentally changes the role of the program coordinator from one of monitoring and oversight to one of operational responsibility. Currently, health care professionals make such decisions on the local level and do so through the employment of evidence based practices and clinical judgment. An amendment such as this would essentially delegate clinical decision making to a State employee who has had no contact with the patient.

Additionally, the bill seeks to amend MHL 9.48 to require quarterly reports submitted by AOT program directors to the program coordinators include information on any expired AOT court orders, including the determination made as to whether to petition for renewal, the basis for such determination, and the court's disposition of the renewal petition. Thus creating a statutory presumption in favor of AOT extensions without showing clinical need or value, again, usurping clinician input; a dangerous precedent.

Further, as we have monitored the evolution of debate related to Kendra's Law, it is our recollection that the legislature rejected an initiative to make the measure permanent in 2010, and instead, merely extended it based on broad agreement among stakeholders that further review of AOT implementation was necessary. An independent study conducted by Duke University echoes this sentiment, concluding that while the AOT Program improves a range of important outcomes for its recipients, results and uses of AOT differ substantially around the State and as such "further study is necessary" to explore the differences in uses of AOT in different parts of the state.

Finally, midstream modifications to the statute while the state is currently undergoing a comprehensive restructuring of its healthcare service delivery system through the implementation of health homes would seemingly disregard a key component of such initiative - the engagement, care coordination and treatment of individuals with serious mental illness; hence, given the statute is firmly in place until the 2015 sunset, we respectfully urged members of the legislature to stay the course, continue its careful deliberations and information gathering and in doing so, balance the needs of all New Yorkers."

Chapter policy staff have been specifically engaged by a number of stakeholders on the issue and as such assisted with the engagement of key legislative members. The bill was not passed in either house.

Justice Center Initiative

In what appears to be yet another Herculean task, Governor Cuomo recently engaged advocates around the state (including (NASW-NYS) on an initiative to overhaul the system caring for those with developmental and mental health issues. The measure comes in the form of a highly public campaign and mammoth bill that creates an agency specifically focused on oversight of entities (both private and state funded) serving those with developmental disabilities. The *Justice Center* will have purview over the Office for People with Developmental Disabilities (OPWDD), Office of Mental Health (OMH), as well as the Offices of Children and Family Services (OCFS) and Alcohol and Substance Abuse Service, (OASAS) and the Departments of Health (DOH) and Education (SED). In addition, it will abolish the Commission on Quality Care (CQC), create a 24 hour hotline, beef up investigation processes, hold staff accountable for the reporting of abuse, develop a register of those employees found guilty of abuse, begin criminal history background checks for people applying to be an employee or volunteer at impacted agencies, develop codes of conduct for all staff and increase and enhance staff training.

While we theoretically supported the measure, the Chapter's policy staff worked in conjunction with the NYS Psychiatric Association, the NYS Society for Clinical Social Work and the NYS Psychological Association to offer a slight language variation related to access of clinical records. The bill passed with great fanfare in the last week of session.

LGBT Health Care Equity

The Gender Expression Non-Discrimination Act (GENDA) seeks to outlaw discrimination based on gender identity or expression and subject offenses regarding gender identity or expression to New York's hate crimes law. Policy Staff continues to support this initiative as part of our efforts to address lesbian, gay, bisexual and transgender (LGBT) health and human services disparities in NYS; working together with stakeholder

organizations such as the Empire State Pride Agenda and the New York State LGBT Health and Human Services Network.

Health Benefit Exchange

After numerous attempts to reach agreement on New York State's Health Benefit Exchange within the context of the budget, Governor Cuomo decided to move ahead and establish New York's Exchange through Executive Order. The creation of a health benefit insurance exchange is mandated as part of The Patient Protection and Affordable Care Act and the Health Care Education and Reconciliation Act of 2012 (ACA). Each state is required to establish and implement an exchange market by 2014. Given the aggressive timeline of the ACA, the Governor's order charges the Department of Health, in conjunction with the Department of Financial Services and other state agencies, in taking the necessary steps to create and operate the Exchange. Under such order, the Department is required to convene regional advisory committees, comprised of consumer advocates, small business consumer representatives, health care providers, agents, brokers, insurers, labor organizations, other appropriate stakeholders, and members of the general public to solicit advice and recommendations on the establishment and operations of the exchange. New York's Exchange must be approved by the federal government by January 2013, so the timeframe for the regional advisory committees to meet and conduct their work is short. Policy Staff will be submitting a request to the Governor's office to be selected as a stakeholder member and will continue to work with Health Care for All New Yorkers (HCFANY), HCFANY's Children, Youth, and Families Task Force, and other stakeholder groups such as the Whole Health Coalition to shepherd in affordable high quality healthcare for all and make recommendation as the stakeholder process unfolds and as more information becomes available. (Numerous studies are currently underway to help guide the State in defining the navigator program, establishing essential health benefit benchmarks, developing consumer assistance and outreach strategies and more.)

New York's newly created Exchange is expected to significantly drive down health insurance coverage expenses for individuals, small businesses, and local governments by creating a comparative marketplace where qualified individuals and businesses can choose among competing health insurance plans. Through the anticipated cost savings and the facilitation of enrollment in health coverage over one million New Yorkers (conservatively) who are currently uninsured are expected to gain coverage.

School Social Worker Workforce Issue

For the past several years NASW-NYS has advocated for the retention of school social work positions in districts across NYS. The Chapter has continued these efforts in a number of districts including the Schalmont CSD and East Ramapo CSD, while exploring options of a legislative solution to unqualified and unlicensed staff performing school social work services and scope protected clinical tasks. In addition, the Chapter is exploring the viability of launching an educational campaign to market the valuable work that school social workers provide.

Additionally, on April 20, 2012 Governor Cuomo established the New NY Education Reform Commission through Executive Order No. 44; bringing together a myriad of stakeholders to reform the state's education system in order to improve performance in the classroom. The Commission will examine the current structure of the state's education system including teacher recruitment and performance, student achievement, education funding and costs, parent and family engagement, problems facing high-need districts, and the best use of technology in the classroom. Chapter policy staff will engage key members of the new commission to explore ways that the school social worker workforce issue can be addressed within the context of the Commission's work.