



Office for People With Developmental Disabilities

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To: OPWDD Licensed, Certified or Otherwise Authorized Providers
From: NYS Office for People With Developmental Disabilities
Date: October 7, 2022
Re: The effect of the change in State Education Department (SED) licensing exemption laws on activities performed within programs and services regulated, certified, operated, funded or approved by OPWDD

The following guidance is intended to address provider questions and concerns regarding the impact of the sunset of the Social Work, Psychology and Mental Health Practitioner exemption provisions on the operations of OPWDD authorized programs and services. The sunset of the broad-based scope of practice exemption was effective June 24, 2022. This guidance supplements Guidance issued by the State Education Department entitled “Guidelines to Implement Part Y of Chapter 57 of the Laws of 2018”¹ (hereinafter “SED Guidance”) and assumes providers and licensed health care professionals are familiar with the SED Guidance and other applicable SED scope of practice laws and rules.

As a part of the state fiscal year 2019 budget,² New York State enacted legislation to amend and clarify the licensing exemptions originally enacted in 2002 related to the practices of psychology, social work, mental health counseling, marriage and family counseling, creative arts therapy, and psychoanalysis by individuals employed in programs or service operated, regulated, funded, or approved by agencies within the department of mental hygiene. The legislation allows unlicensed individuals to continue to perform many of the tasks and interventions provided in programs and services authorized by OPWDD. The purpose of this memorandum is to provide OPWDD providers and employees of such providers with guidance on the impact of the enacted legislation on the various activities that occur within these programs. Please note that this legislation did not alter existing scopes of practice for licensed professionals, other exemptions in the State Education Law which may be applicable to the activities of unlicensed individuals, or any rules regarding the supervised practice of limited permit holders. These topics will not be addressed in this memorandum.

The enacted legislation amended and clarified the social work, psychology and mental health practitioner licensing exemption provisions in three ways:

1. Newly enacted exemption provisions codify current practices and continue to allow unlicensed individuals to independently perform an array of supportive and recovery-oriented services, including home and community-based services for both adults and children, residential rehabilitation, peer support, and skill development services. For example, this would include informal observations, screening, psychosocial rehabilitation, restorative services and peer services.
2. Newly enacted exemption provisions allow unlicensed individuals to participate as part of

¹ See “Guidelines to Implement Part Y of Chapter 57 of the Laws of 2018,” available at <http://www.op.nysed.gov/surveys/mhpsw/guidelines-implement-%20party-chapter57-laws%20of%202018.pdf>

² Pt. Y of Ch.57 of N.Y. Laws of 2018.

multi-disciplinary teams and assist licensed professionals on such teams to develop and implement behavioral health treatment or services plans. The new provisions specify that where one or more appropriately licensed professionals is a member of the multi-disciplinary team that is providing services, other professionals or unlicensed individuals on the team may assist the appropriately licensed professionals who are acting within their lawful scope(s) of practice to provide services, including clinical treatment. Team members to whom this exemption applies include professionals with different scopes of practice, unlicensed individuals who are working under appropriate supervision to obtain experience required for licensure, or others performing services at the direction of a licensed professional, under supervision appropriate to the individual's level of education and experience. In settings regulated by the agencies within the department of mental hygiene, multi-disciplinary team composition and functionality may be prescribed by regulation and is subject to the oversight of the applicable executive agency. The legislation also allows certain unlicensed masters level practitioners to perform tasks which would otherwise require licensure when supervised by certain licensed practitioners.

3. The enacted legislation also provided for the so-called "grandparenting" of individuals who were employed or commence employment in a program or service operated, regulated, funded, or approved by OPWDD or another human services agency³ on or before June 24, 2022, enabling such individuals to practice under the original 2002 broad based scope of practice exemption as long as they remain employed in settings by such agencies. Additional guidance regarding establishing eligibility under this exemption and the process for the verification of such employees' employment history will be issued separately.

Effective June 24, 2022, there are five specific clinical activities within the scopes of practices of psychology, social work, and mental health counseling that may only be performed by appropriately licensed or permitted professionals or exempt individuals, including individuals who are exempt under the grandparenting provisions. These restricted activities include: (1) the diagnosis of mental, emotional, behavioral, addictive and developmental disorders and disabilities; (2) patient assessment and evaluation; (3) the provision of psychotherapeutic treatment; (4) the provision of treatment other than psychotherapeutic treatment; and (5) the development and implementation of assessment-based treatment plans. As required by the legislation, in 2018, the New York State Education Department issued guidance for impacted service providers regarding these activities. OPWDD programs should review this guidance and any subsequent amendments thereto.

Tracking the Eligibility of Employees Subject to the Grandparenting Provisions

The enacted legislation requires the State oversight agencies, including OPWDD, to maintain a process to verify the employment history of individuals who are exempt under the grandparenting provisions. The affected agencies are working diligently to establish a verification process with forms and instructions that providers and employees of such providers may choose to integrate into their employment processes for the purpose of allowing such grandparented unlicensed employees to continue to avail themselves of the broad-based scope of practice exemption. These forms and instructions will be disseminated in the near future. When onboarding new employees after June 24, 2022, providers must perform their own employment verification activities to determine if candidates for employment are exempted under this provision.

³ The exemption also applies to individuals employed in a program or service operated, regulated, funded, or approved by OPWDD, OCFS, DOCCS, OTDA, NYSOFA, DOH, or a or a local governmental unit as that term is defined in section 41.03 of the mental hygiene law or a social services district as defined in section sixty-one of the social services law.