



# 2013 LEGISLATIVE ACTION REPORT

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The 2013 legislative session like so many proceeding it was very hectic however, this year the battle to protect the social work profession and its scope of practice reached new levels. The Chapter found itself facing opposition from organizations employing some of Albany's biggest lobbying firms as well as from the Governor's office on the issue of social work licensure exemptions. We also actively worked on a number of other legislative priority initiatives\* which included securing continuing education requirements, broadening the areas of social work practice, protecting the profession's scope of practice as it relates to diagnosis, and addressing a host of issues spurred by the passage of mandatory reporting requirements for LCSW's in the state's new gun control legislation (NY SAFE Act).

## Social Work Licensure Exemption

To many of our longtime members, this topic area may seem like a broken record, however, I beg your indulgence and ask you to keep reading (perhaps with new eyes), because for better or worse, it is in fact one of THE MOST CRITICAL issues related to the practice of social work. It encompasses how you as a licensed professional practice, the integrity of the practice of social work, where you practice, the worth of your social work education and ultimately the worth of your license and your livelihood.

\***An important note** – referring to an issue as a “priority initiative” means it has met the following criteria and requires a high level of attention. At a minimum the issue has been identified by the chapter membership and leadership as priority issue area; has been initiated by the chapter, or in conjunction with partner organizations such as the Society for Clinical Social Work, and is therefore identified by the legislature as a priority for NASW. Such issues require a consistent presence at the state capitol engaging in meetings with targeted members of the Senate and Assembly, including relevant Committee Chairs, and Committee membership as well as leadership in each of the houses, and requires the chapter to provide the Legislature with research on a rolling basis as per their request; the

facilitation of stakeholder engagement and education; and our constant availability to members of the legislature as the process unfolds.

## 2013 LEGISLATIVE SUCCESSES

- Blocked implementation of PERMANENT Exemption from licensure for State Agencies.
- Secured passage of Continuing Education Requirements
- Prevented YET ANOTHER attempt to repeal the corporate practice waiver that enables certain non-profits to employ licensed mental health professionals.

and entities contracting with such agencies (OMH, OASAS, OCFS, OPWDD and eventually DOCS, DOH and SOFA). The exemption allows unlicensed individuals in these settings to perform tasks that, under the new legislation, would otherwise require that they be performed by a duly licensed professional.

In the years following enactment, this provision has set the stage for what has now become a triennial battle with many stakeholders (most of whom fought alongside NASW in the quest to obtain licensure) who have since taken the position that compliance is too costly and essentially, denounced the need (in many settings) for individuals with a formal social work education and experience, instead pointing to the sufficiency of paraprofessionals (at best) and/or peers to do the work of diagnosing and treating mental illnesses and substance abuse disorders.

This year's battle to continue such a practice was amped up considerably when the governor included language in his proposed budget to allow the temporary exemption to become permanent. **Had this come to fruition, untrained, uneducated individuals would be authorized to provide social work services, including diagnosis and treatment**

**of serious mental and emotional disorders and essentially render the need for licensed social workers in settings across the state so insignificant that the profession could have faced extinction.** The reality of such a provision would mean that none of the aforementioned state agencies, nor any county agency, or non-profit organization contracting with said agencies would ever be required to comply with social work licensure.

NASW-NYS stood with our legislative allies and fought (successfully) around the clock to thwart such an attempt and maintained our position that, the diagnosis and treatment of a mental illness should only be provided by qualified individuals, and that standards of care and professional enforcement mechanisms are embedded in NYS Education Law for the protection of those being served. Wholesale exemption from licensure of individuals in certain settings not only risks the

quality of care for many of our most vulnerable citizens, but also exempts certain providers from compliance with the Rules of the Board of Regents which oversees the licensed professions and holds the ability to enforce professional standards in this state.

The result of our fierce battle with opponents during the 2013 budget negotiations was that NASW-NYS prevented the implementation of a permanent exemption. Instead, a three year extension was passed that requires more comprehensive reporting by exempt agencies detailing the realistic implications of implementation in their respective agencies, and gives said agencies clarification of terms and tasks that require a license (specifically focused on unlicensed multi-disciplinary team member tasks). This accomplishment unquestionably secures the license and scope of practice for LMSW's and LCSW's.

## SOCIAL WORK MANDATORY CONTINUING EDUCATION (SB4637/AB6703)

Since the continuing education provision was extracted in the final budget negotiations related to licensure, a considerable amount of attention was focused in the months following passage of the budget on securing a continuing education mandate for the profession of social work. I worked closely with the Chairs of the Senate and Assembly Higher Education Committees, Senator LaValle and Assembly member Glick and Assemblyman Gary Pretlow, to redraft the language as a stand-alone (outside of the budget) bill. Once introduced, efforts focused on advancing it through various legislative committees such as Higher Education, Finance, and Codes, and finally to the floor of each house for a vote. The bill was finally voted on and passed as the last bill on the last calendar of the 2013 regular session! Many thanks to our bill sponsors and champions, Senator LaValle, Assemblyman Pretlow and Assemblywoman Glick as well as their staff, each of whom, provided great assistance and stewardship throughout this process. The bill is currently awaiting delivery to the Governor's desk, where we are hopeful it will be signed, making NY State the last in the nation to require continuing education for licensed social workers.

Once signed, the enactment date is January 1, 2015. Henceforth social workers will be required to begin completing 36 hours of continuing credit hours during the three year triennial license re-registration period. In the meantime, NASW-NYS will be working with the State Education Department on the implementation details of the program and fortifying our already robust continuing education infrastructure with the goal of offering such hours to members at a significant savings. In addition, as a membership benefit, we will offer (free of charge) a tracking system of individual credits completed.

## LIMITED LIABILITY COMPANY (LLC) BILL (AB 3910 / SB PENDING)

This legislation 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, both

rural and urban. As the health and mental health care delivery systems evolve, it has become apparent that similarly licensed inter-professional practice models offer an efficacious and cost effective means of service delivery. Currently in New York State, such partnerships are prohibited, however, given the new thrust behind care coordination it seems appropriate to revise legislation that is not in keeping with emerging trends in service delivery. NASW-NYS worked side by side with the NY State Society for Clinical Social Work on this initiative all session. Unfortunately, it did not gain the traction we were hoping for, however, it will remain as a high priority issue in the 2014 legislative session.

## **ADDING LCSWS AS QUALIFIED PROVIDERS UNDER WORKERS COMPENSATION LAW (AB5299 / SB2360)**

NASW-NYS in collaboration with the NYS Clinical Society sought the passage of legislation to broaden the areas of social work practice by adding Licensed Clinical Social Workers to the list of qualified mental health care providers authorized to deliver mental health services under the state's Workers Compensation program. Currently, the only providers under the workers' compensation Law that may deliver mental health services to injured workers are physicians and licensed psychologists, however, lack of access to such qualified mental health care providers (especially in rural areas) requires an expansion of the pool of providers.

As iterated in the bills' memo, "New York State has a long history of providing health care consumers with the freedom of choosing from a number of qualified health care service providers. Currently, licensed clinical social workers are eligible to receive reimbursement for the mental health services they provide to persons covered by (1) a variety of federal government health insurance plans, including the Federal Employees Health Benefits Program(FEHB), which covers 10 million federal employees, retirees and their dependents, the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) which is now referred to as Tricare and serves approximately 5.5 million beneficiaries, and Medicare, which has authorized clinical social workers to provide mental health services since 1990 and (2) essentially all managed behavioral health plans regionally and nationally as well as all group insurance plans in New York State. As such, licensed clinical social workers are currently eligible providers of mental health services to federal and state employees, and the dependents of military personnel stationed in New York, as well as to the many citizens of our state whose medical expenses are covered by managed behavioral and group health insurance plans. This bill would grant the same access to mental health service providers for job-related injuries under the workers' compensation Law that is now available for an insured individual's non job-related injuries."

Though the bills made their way through a number of committees in each house, it was held up in the Senate's Finance Committee due to concerns that it would create a fiscal implication for the state. We however, contend that is not the case, as it does not seek to broaden eligible services but instead, assists the state in stocking an adequate network of service providers required to deliver mental health treatment. We will continue to work the issue in the coming session.

## **NY SAFE ACT AMENDMENTS (SB2230 / AB2388)**

As has been highly publicized, the Governor's Safe Ammunition and Firearms Act passed during the first week of the regular 2013 legislative session. Of the many components of the Act, the statute created a new section in the Mental Hygiene Law, Section 9.46, requiring mental health professionals, defined as, Physicians, Psychologists, Registered Nurses, and Licensed Clinical Social Workers, who determine, through their "reasonable professional judgment," that a patient who is likely to engage in conduct that would result in serious harm to self or others, be reported to local mental health officials. While NASW-NYS is not opposing nor offering a commentary related to the need for stricter gun control in New York State, we were, and remain concerned about the mechanics of the mental health reporting requirements and the potential liability for our members.

Our peer organizations representing each of the mental health providers articulated in the SAFE Act are equally concerned and as such, we worked conjunction with the NYS Psychiatric Association, the Medical Society for the State of NY, the NYS Society for Clinical Social Work, the NYS Psychological Association, and the NYS Nurses Association to request the following amendments to the new section 9.46 of the Mental Hygiene Law:

- The SAFE Act names Physicians, Psychologists, Registered Nurses, and Licensed Clinical Social Workers, as mandated reporters (specific to this legislation), however we and our partner organizations (including the nurses) contend that the term "mental health professional" should only be applied to those professions statutorily authorized and educationally equipped to independently diagnose a mental illness. The scope of

practice for registered nurses or unlicensed psychologists does not meet the threshold of either and in light of this we request an amendment altering the language to authorize psychiatric nurse practitioners to make a report under 9.46 given that they are registered nurses who have obtained additional advanced education and experience in psychiatry and can make a diagnosis necessary for a report.

- Under the Health Insurance and Portability Accountability Act (HIPAA), a threshold has been established to authorize the disclosure of protected health information to an endangered person or law enforcement official in the event that such provider deems their patient to be a “serious and imminent danger to self or others.” Current language in the SAFE ACT mandates providers disclose protected health information to the local mental hygiene office under the much lower threshold of “likely to engage in conduct that would result in harm to self or others,” creating a discrepancy between federal and state statute. Our recommended amendments seek to provide congruency between HIPAA standards and SAFE Act provisions by aligning the reporting thresholds and protocol for such a report, and authorizing that in the event such a report is made, it be done so in a manner consistent with procedures currently in place that seek to immediately prevent or lessen said threat.
- The standard for indemnity related to the protection of professional liability established in the SAFE Act is less than adequate in that it purports to protect mandated reporters through its “reasonable and good faith” language, however, we fear such language leaves the door wide open to legal interpretation (or a jury in a civil case), as to what constitutes “reasonable and good faith.” Although this law is less inclusive than that of the Child Abuse reporting requirements, the standard we are seeking (“absent malice or intentional misconduct”), is similar to the indemnification for the reporters of child abuse. Each of the professions enumerated in our recommended amendments required to report dangerousness are also required to report child abuse. Again, we seek a level of continuity between the SAFE Act and standard reporting procedures.

## Implementation of the Affordable Care Act

As the implementation of the Affordable Care Act nears (though some provisions were recently postponed until 2015), I have been an active member of the state's Regional Health Exchange Advisory Committee advocating for the inclusion of social workers, identifying opportunities for social work participation and working in conjunction with our National office to educate members regarding the roll out. Up to date information on the launching of the NY Health Benefit Exchange is available at: [www.nystateofhealth.ny.gov](http://www.nystateofhealth.ny.gov)

## NASW Health Care Reform Member Resources:

[www.socialworkers.org/advocacy/healthcarereform/default.asp](http://www.socialworkers.org/advocacy/healthcarereform/default.asp)

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### Legislative Measures Opposed by NASW-NYS

In addition to the above noted initiatives we've championed, NASW-NYS has also opposed a number of bills such as **SB2900 / AB3625**, which sought to expand the scope of practice for Licensed Mental Health Counselors, Licensed Marriage and Family Therapists, Creative Arts Therapists and Psychoanalysts to include diagnosis. We also opposed another attempt to repeal the corporate practice waiver implemented three years ago to allow non-for-profit corporations to employ licensed mental health professionals.