



 **N A S W** | NEW YORK STATE CHAPTER
National Association of Social Workers

 **2016** **Legislative
Session Report**

Authored By:

Karin Carreau, MSW
Carreau Consulting

188 WASHINGTON AVENUE ALBANY, NY 12210
(800) 724-6279 | (518) 463-4741



As a representative of the NASW New York State and New York City Chapters, Carreau Consulting continues to move the organizations' policy agenda forward, strategically align the Chapters' legislative priorities, maintain a high level of visibility at the Capitol, and work in collaboration with a number of strategic partners.

While our legislative work continues throughout the year, the pace of such work accelerates in January as the formal session begins. The official first day of session was January 6, followed by the Governor's State of the State Address/Executive Budget Proposal on January 13, 2016, budget negotiations commenced throughout March and then, after a legislative recess in April, the remainder of session focused on non-fiscal issues. As such, NASW members have had representation each and every day at the Capitol that is proactive on a broad range of identified priority issues as well as responsive to legislative initiatives posing a threat to the field of social work. For purposes of this report, the work is broken into three headings: Career Protection, Workforce Development, and Social Justice.

CAREER PROTECTION

SOCIAL WORK LICENSURE EXEMPTION

Prior to last year's budget negotiations, the Chapters worked with impacted agencies, key legislators and their staff, the Executive team and partner organizations to craft language that would lead to the long overdue implementation of the social work licensure statute originally passed in 2002. While stakeholders were engaged in the process all fall, the impacted agencies could not reach a consensus on the best route. As a result, language was included in the Governor's Executive Budget proposal to simply extend the exemption for another five years. Such an outright continuation was

unacceptable to the Chapters and as such, we continued to work with key members of the legislature, the Governor's staff, impacted agencies and stakeholders on language that would mitigate concerns, maintain a standard threshold of education and experience required to deliver social work services, and provide clarifying language for tasks not requiring a license. The negotiations went down to the wire and though we were close to brokering an accord, we all felt additional time was needed. As a result, we agreed to a two-year extension and the Governor's assemblage of a work group (immediately following passage of the budget) to include the NASW Chapters, the Society for Clinical Social Work, the NYS Deans Association, key legislative and State Education Department staff, impacted agencies and stakeholders. In early June, the Governor's staff, as representatives for the impacted agencies, took the first step in the process of creating a document that outlines their areas of concern and need for further clarification. We have offered initial feedback on such document and will be convening a number of internal roundtables over the summer and early fall — with the intention of drafting a final implementation bill to be advanced early in the 2017 session.

EXPANSION OF SERVICE DELIVERY OPTIONS

The Chapters have worked to advance a bill that adds 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. While we were successful in passing the bill through both houses in 2014, the Governor vetoed the bill later in the year (along with two other similar bills). Neither the veto message, nor the Governor's Counsel cited philosophical opposition to the concept of adding LCSWs, but instead, opposition to "piece meal solutions" to a system in need of comprehensive reforms.

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Development of such reforms were completed in late fall by the New York State Workers' Compensation Board (WCB) Business Process Re-Engineering Program—a multi-year effort to “redefine the Workers' Compensation system, improve access to quality medical care, and improve the underlying technology systems that support the organization.” While the program worked toward the development standards, we continued to meet with the WCB and the Executive to advance our LCSW provider initiative. As a result, the Governor's Executive Budget proposal included expansive reform language which contained the addition of Licensed Clinical Social Workers as providers. Unfortunately, the recommended reforms in their entirety, were tabled for further negotiation. Once again, there was no opposition to adding LCSWs as providers. Once budget negotiations ceased, we again met with the WC Board. It is our understanding that they remain engaged with the Governor's staff to alter the reform recommendations, however, no final agreement was reached by session end. As a result, we are considering drafting another stand alone bill that utilizes the framework the Board and Governor's crafted.

LICENSED PROFESSIONS AND ADMINISTRATION OF HEROIN OVERDOSE ANTIDOTE

As part of the broad package of heroin and opioid addiction bills recently passed and signed into law, we worked with the Governor's staff and the legislature to include a provision that would allow LMSWs and LCSWs to administer the life-saving antidote to a heroin overdose. The update to our licensing statute was necessary because without it, such professions are expressly prohibited from administering drug therapy.

PERSEVERING SCHOOL SOCIAL WORK POSITIONS

The Chapters have continued to engage in issues related to school social work. Most recently, such work has focused on the proposed amendments to regulations that sought to alter the title of School Guidance Counselor to that of a much more generic term of School Counselor, and would then authorize such “School Counselors” to provide “individual” and “group” counseling — terms that connote the provision of mental health services. In response, we submitted written comments and proposed clarifying language. As a result, we participated in a State Education Department Stakeholder meeting with representatives of United Federation of Teachers, New York State United Teachers, New York State School Social Work Association, The School Psychologist Association, the Counselors Association, and key members of the Education Department's Pre K-12 Committee. Our concerns appeared to resonate (and in many instances were echoed by other participating stakeholders). We are awaiting a new draft of said proposed regulatory changes. We continued to meet with the appropriate members of the legislature and their staff throughout the session regarding our concerns. As a result, they too have been highly engaged. The issue was recently on a list of topics prioritized for further discussion by the Board of Regents.

In addition, we have led work around another school related issue: A bill was introduced in early May that sought to amend the education law, in relation to the establishment of a school certificate title for school mental health practitioners that are licensed under Article 163 of the Education Law (Licensed Marriage and Family Therapists, Licensed Mental Health Counselors, Creative Arts Therapists, and Psychoanalysts).

The New York State and City Chapters, the New York State Society for Clinical Social Work, and the New

York State School Social Workers' Association, collectively responded with a memo in opposition that articulates:

- the critical role School Social Workers serve in our educational system related to addressing the social, emotional, behavioral, and mental health needs of students that are proven barriers to student learning,
- The strong research supporting the efficaciousness of school social work interventions in improving academic and behavioral outcomes, promoting positive school climates, and providing vital student support services by maximizing school based and community resources,
- the in-depth clinical curriculum/education, experience and credentials required of School Social Workers to practice in the district and the lack of such educational or experiential content required for that of the Licensed Marriage and Family Therapists, Licensed Mental Health Counselors, Creative Arts Therapists, and Psychoanalysts.

In addition to the release of our joint memo, legislative meetings were conducted to halt progress of the bill. The bill did not pass. We expect the issue will be live in the upcoming 2017 session and as such, we will continue to represent the concerns of the social work profession.

DIAGNOSIS

In yet another attempt to expand their scope of practice, mental health practitioners licensed under Article 163 of the Education Law had a bill introduced that would allow them to (through a pilot program) expand their scope of practice to include diagnosis in the context of the Veterans Administration and entities they contract with.

Again, based on the fact that such groups have varying degrees of education and experience, not equivalent to the LCSW (the only mental health practitioner other than an MD or PhD licensed psychologist authorized to independently diagnose and treat), and are expressly prohibited from diagnosing (in their own scope of practice). We immediately met with key legislators and their staff to derail the bill. The bill did not advance.

INSURANCE REIMBURSEMENT

Another bill that Article 163 practitioners attempted to advance was an initiative that would require blanket health insurance policies to provide coverage for outpatient treatment by mental health practitioners licensed pursuant to Article 163 of the Education Law. As we articulated in a joint Memo of Opposition with the NYS Psychiatric Association, the NYS Society for Clinical Social Work, and the NYS Psychological Association, current law allows only for such reimbursement to practitioners holding a medical degree, a PhD in psychology, or a Licensed Clinical Social Worker-R (a master's level degree with two examinations and six years of highly prescribed supervised experience in the diagnosis and treatment of mental illnesses). Due to their limitations of their education and training, mental health practitioners are not authorized by Article 163 of the Education Law to diagnose mental illness. In addition, Article 163 stipulates, "It shall be deemed practicing outside the boundaries of his or her professional competence for a person licensed pursuant to this article, in the case of treatment of any serious mental illness, to provide any mental health service for such illness on a continuous and sustained basis without a medical evaluation of the illness by, and consultation with, a physician regarding such illness." The bill did not pass. We will, monitor its movement next session.

LIMITED LIABILITY PARTNERSHIPS

We continued our work on a multi-year campaign to advance legislation to allow licensed mental health professions to form limited liability corporations with other licensed providers. As such, we have a two-pronged approach. We are active members of a coalition of Title VIII licensed professions seeking to advance an omnibus bill authorizing enumerated professions to form LLC's with physicians *and* any other licensed profession. In addition, we have recently had a bill introduced into the Assembly that would allow for the formation of partnerships between the professions of social work, psychology, and psychiatry. We are meeting with potential Senate sponsors. Both of these initiatives are long game uphill battles, but would be a huge opportunity for our members.

HEALTH REPUBLIC

As previously reported, Health Republic, the state's largest cooperative insurer, abruptly closed its doors in November of 2015, leaving providers without reimbursement for services rendered. We immediately reached out to the Department of Financial Services and relayed details of such closure plans to our membership.

In early 2016, Carreau Consulting met with the Department of Financial Services who provided NASW-NYS with an update regarding the process of liquidation, background information leading up to the closure, and a sense of next steps. In late May, we met with the Department once again, to assess the progress and advocate for restitution for our members. As we had reported to our members in May, the liquidation process began in Supreme Court in Manhattan (hearing took place on May 10th). Under Article 74 of the insurance law, DFS applied to the court to begin an order of liquidation which authorizes the superintendent to

liquidate the insurer (in this case, on the basis of insolvency). The Judge did indeed sign the orders, and as a result, DFS will continue to marshal the assets, quantify, adjudicate, and determine the equitable distribution of assets. Under Article 74, the highest priority of restitution is for the administration of the estate, and second, consumer and provider claims. A complicating factor in determining the final pot of dollars to be distributed to administrators, consumers, and providers is the federal government and their pending decision to seek or abandon dollars owed to them (CMS). While DFS has a verbal assurance that CMS will not seek restitution, there is no written order. Furthermore, history in other states has shown that they've sought to recover funds in similar instances. It is expected that claims and counter claims will be filed and the process will not be swift.

Many of our members received Hearing Notices in early May and as such, were directed to respond. If they have not, they should contact the court with their claims/concerns.

Two other potential sources of funding for restitution:

- A Guaranty Fund (though not likely, despite the fact that New York is only one of our states without such a safety net), or
- Through the State budget process—in this year's budget there was language articulating the intent to do "something" for providers in the context of the budget, though given the uncertainty (above) a specific number was not appropriated. The language provided the Division of Budget with the authority to create a fund from which settlement dollars will be held. Once there is more clarity regarding the amount—language will follow.

PARITY

NASW has a long history as a key advocate of the state's enactment and implementation of mental health parity legislation. As we celebrate the 10-year anniversary of **Timothy's Law**, we are examining the statutes implementation and as a result have grave concerns. As such, we are working with the New York State Society for Clinical Social Work, the NYS Psychiatric Association, and the NYS Psychological Association to closely examine the settlements between the Attorney General and five insurers (Cigna, Value Options, MVP, Excellus, and Emblem Health) found to be in non-compliance of Timothy's Law. We have, collectively, analyzed the settlements and as a result, drafted language to amend section 210 of the Insurance Law—to require a separate annual report card for MH and SA compliance. The bill was introduced by the Senate Mental Health Committee. This issue has both consumer protection and provider implications and will be a high priority initiative next session.

WORKFORCE DEVELOPMENT

EXPANSION OF THE SOCIAL WORK LOAN FORGIVENESS PROGRAM

For the third and final year in a three-year campaign, we have secured an additional expansion of the state's loan forgiveness program—bring the grand total of the program to just over \$1.7 million for the 2017 cycle. One detail, worthy of note, revolves around process. While the legislature added the increase for the 2017 budget cycle, we will not advocate with the Davison of Budget and the Governor's staff that he “annualizes” the latest

increase in his next 2017/18 executive budget proposal. He has, to date, done so two years running.

VETERANS MENTAL HEALTH TRAINING INITIATIVE (VMHTI)

In conjunction with our partner organizations—the Medical Society of the State of New York (MSSNY) and the New York State Psychiatric Association (NYSPA), we successfully secured ongoing funding for the our one-of-a-kind, nationally recognized Veterans initiative. The final budget included a \$450,000 appropriation for this project and as such, we have begun the process of contracting for Year Five.

SOCIAL JUSTICE ISSUES

JUVENILE JUSTICE REFORM

As a member of the Raise the Age Campaign, NASW has continued to advocate passage of an initiative to Raise the Age of criminal responsibility. While the issue gained an enormous amount of support last year, a deal could not be reached between the houses by session's end, leaving new York to be only one of two states that continues to automatically prosecute 16 and 17 year olds as adults. As an interim step, the Governor issued an Executive Order “directing the Department of Corrections and Community Supervision, in collaboration with the Office of Children and Family Services, to implement a plan to remove minors from adult prisons in the state. The plan, which was developed over the past several months, will transfer all female

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youths and all medium and minimum security classified where they are currently housed, to a juvenile facility. This facility will provide specialized programs of treatment geared for younger offenders, while also ensuring the safety of staff, inmates, and the surrounding community”.

The Governor again, included comprehensive language in his 2016 Executive Budget proposal to: raise the age of juvenile justice from 16 to 18; mandate parental notification upon arrest; mandate proper questioning procedures be followed when a 16- or 17-year-old is arrested; process Juvenile Delinquent cases in Family Court; process Youthful Offenders in a newly created Youth Part of Adult Court; provide for a robust array of diversion, rehabilitative, and reentry services; and provide (though limited) for opportunities of record sealing.

Unfortunately, despite non-stop lobbying efforts, weekly lobby days, and numerous press conferences, editorials, and Letters to the Editors, the legislature again failed to make a unified position. Core advocates are already recalibrating the off session and next session steps.

CONVERSION THERAPY

NASW continues to advocate in favor of a bill that seeks to prohibit mental health professionals from engaging in sexual orientation change efforts with a patient under the age of eighteen years, and expanding the definition of professional misconduct with respect to mental health professionals. While the Governor recently prioritized the issue as well and as such, issued an Executive Order prohibiting public and private health insurers from reimbursing for such “therapies”, statutory or regulatory bans must be instituted. As such, NASW continued to meet with key legislative members and their staff to advance the issue. The bill passed the Assembly,

but remained in the committee in the Senate. The rationale for holding the bill in the upper house is a concern that prohibiting certain modalities of treatment, creates a slippery slope in the future. As a result, it has been recommended that we work with the State Education Department to issue guidance on the matter. Such guidance would (preferably) denote the practice as malpractice. We are currently engaging SED on the matter.



CONTACT INFORMATION

**National Association of Social Workers
New York State Chapter (NASW-NYS)**
188 Washington Avenue
Albany, NY 12210

(800) 724-6279/(518) 463-4741
info@naswnys.org
www.naswnys.org

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ports continuance and growth of
our Advocacy Efforts.**