



# Office of Children and Family Services

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## Informational Letter

<b>Transmittal:</b>	23-OCFS-INF-01
<b>To:</b>	Local Departments of Social Services Commissioners Executive Directors of Voluntary Authorized Agencies Executive Directors of Detention Programs Executive Directors of Domestic Violence Programs Executive Directors for Runaway and Homeless Youth Program
<b>Issuing Division/Office:</b>	Division of Child Welfare and Community Services Division of Youth Development and Partnerships for Success
<b>Date:</b>	January 25, 2023
<b>Subject:</b>	<b>Updates Regarding Changes to Professional Licensure Requirements</b>
<b>Suggested Distribution:</b>	Directors of Social Services Directors of Services Child Welfare Supervisors Child Protective Services Supervisors Foster Care Supervisors Children's Services Caseworkers
<b>Contact Person(s):</b>	See section IV.
<b>Attachments:</b>	

### Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			Part Y of Chapter 57 of the Laws of 2018  Chapter 159 of the Laws of 2021  Chapter 230 of the Laws of 2022  Articles 153, 154 and 163 of the Education Law		

			<p>Education Law section 6512</p> <p>Article 19-G of the Executive Law</p> <p>Title 3 of Article 7 of the Social Services Law (SSL)</p> <p>SSL section 409-e</p> <p>Articles 7, 16, 31 and 32 of the Mental Hygiene Law</p>		
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**I. Purpose**

The purpose of this Informational Letter (INF) is to address provider questions and concerns regarding the impact of the sunset of broad-base exemptions for professional licensure in the field of social work, psychology or mental health counseling in programs or services operated, regulated, funded or approved by the New York State Office of Children and Family Services (OCFS) (broad-base exemption). **These broad-base exemptions ended June 24, 2022.**

**II. Background**

This INF supplements the State Education Department (SED) “Guidelines to Implement Part Y of Chapter 57 of the Laws of 2018”<sup>1</sup> (hereinafter “SED Guidance”). Providers and licensed health care professionals should familiarize themselves with the SED Guidance and other applicable SED scope of practice laws and rules.

SED sets forth the standards in terms of which specific tasks and functions require licensure under certain provisions of the Education Law, namely Articles 153 (psychology), 154 (social work, including licensed clinical and licensed master social workers) and 163 (licensed mental health practitioners, including licensed mental health counselors, licensed marriage and family therapists, and licensed creative arts therapists).

In 2018, Part Y of Chapter 57 of the Laws of 2018 (hereinafter “the enacted legislation”) was enacted to clarify the tasks and functions performed by persons employed by a program or service operated, regulated, funded or approved by the following New York State agencies: Office of Mental Health (OMH), Office for People With Developmental Disabilities (OPWDD), Office of Addiction and Support Services (OASAS), Department of Health (DOH), New York State Office for the Aging (SOFA), Office of Children and Family Services (OCFS), Department of Corrections and Community Supervision (DOCCS), and the Office of Temporary and Disability Assistance

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

(OTDA), and/or a local governmental unit or a social services district that does not require licensure.

The enacted legislation amended and clarified 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 in programs or services operated, regulated, funded, or approved by the aforementioned agencies.

The enacted legislation allows unlicensed individuals to continue to perform many of the direct care tasks and interventions provided in programs and services authorized by OCFS. Additionally, it included provisions to provide a “grandfathering exemption” to persons employed in programs previously covered under the “broad-base exemption.” The grandfathering exemption provides employees with an exemption for as long as they remain employed by such program or accept new employment performing similar tasks by another employer providing the same types of programs and services. An employee with the exemption would be authorized to perform tasks that might otherwise require a professional license in the field of psychology, social work, or licensed mental health practitioner because they were previously employed in a position that allowed them to perform these functions without the otherwise required professional license.

However, it is important to note that provisions in the legislation make clear that every individual who provides a **patient diagnosis** in these programs **must be** licensed to do so. An unlicensed individual, who is not exempt from the licensure requirement but who unlawfully performs a task that would otherwise require a professional license, may be subject to criminal penalties in accordance with Education Law section 6512.

Such legislation was slated to take effect one year following the adoption of regulations on this topic by SED. SED adopted said regulations on June 24, 2020.<sup>2</sup> However, Chapter 159 of the Laws of 2021 provided an additional one-year extension. Accordingly, the provisions took effect on June 24, 2022.

Additionally, Chapter 230 of the Laws of 2022, effective June 24, 2022, allows for mental health practitioners licensed pursuant to Article 163 of the Education Law that met certain requirements to apply to SED to request a “diagnostic privilege.” SED’s granting of a “diagnostic privilege” will allow these mental health practices to lawfully make a diagnosis within their scope of practice.

The purpose of this INF is to provide OCFS programs with guidance on the impact of the enacted legislation on the various activities that occur within its relevant programs.<sup>3</sup>

### III. Program Implications

#### A. Functions That Do Not Require Licensure

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<sup>2</sup> Available here: <http://www.counsel.nysed.gov/common/counsel/files/rulesandregs/terms-social-work-exempt-settings.pdf>.

<sup>3</sup> Please note that this legislation did **not** alter existing scopes of practice for licensed professionals, other exemptions in State Education Law that 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.

Listed below are some examples of specific tasks that do not involve the diagnosis of a patient, are critical services provided by governmental and community-based organizations, and do **not** require licensure under this statute:

1. Detention Services: Specific examples of detention services performed by non-licensed staff at detention centers that OCFS oversees in titles such as chief executive officer, supervisor, supervisor of detention workers, certified social workers, social workers, and caseworkers include, but are not limited to, the following:

- Operating non-secure, secure, and specialized secure detention services to provide the temporary care and custody of youth who have been alleged or adjudicated delinquent and youth alleged or sentenced as a juvenile offender or adolescent offender through the youth part
- Providing case management and support to youth being held in a detention facility and for their families
- Meeting the daily living needs of youth in facilities
- Meeting the educational and recreational needs of youth in facilities

2. Domestic Violence Services: “Prevention and residential services for victims of domestic violence” involve various counseling, without clinical diagnosis, for persons who have experienced domestic violence. Specific examples of domestic violence services performed by state and non-profit, non-licensed staff at programs regulated by OCFS in titles such as case managers, advocates, financial skills trainers, employment counselors, immigration specialists, prevention educators, housing specialists and community educators include, but are not limited to, the following:

- Directly operating residential domestic violence programs that provide emergency shelter services to, and meet the daily living needs of, victims of domestic violence and their children
- Providing community education and outreach about the availability of local domestic violence services
- Providing victims of domestic violence with referrals and/or information on the availability of other local services that may be of benefit to the victim or the victim’s child(ren)
- Operating a 24-7 telephone crisis hotline to take calls pertaining to domestic violence
- Assisting victims of domestic violence in understanding what domestic violence is and threats that an abuser may pose to them
- Assisting victims of domestic violence who remain in their homes with an abuser in developing safety plans
- Assisting and advocating on behalf of victims of domestic violence in applying for and/or obtaining orders of protection and/or public assistance benefits
- Assisting victims of domestic violence in identifying barriers that may exist to achieving financial stability or self-sufficiency following a separation from an abuser and how to address such barriers

3. Services for Runaway and Homeless Youth: Some examples of services for runaway and homeless youth performed by non-licensed staff at programs regulated by OCFS in titles such as

runaway and homeless youth coordinator, director, and case manager include, but are not limited to, the following:

- The direct provision of residential crisis services in shelters for runaway and homeless youth
- Providing case management services
- Providing independent living, life skills, and employability training to youth
- Providing assistance to homeless youth in obtaining housing
- Making referrals for other services
- Providing assistance to homeless youth in obtaining public assistance or other benefits

4. Foster Care, Adoption, and Child Care Services: Some examples of foster care, adoption, and child care services include work performed by non-licensed staff at programs licensed and regulated by OCFS or local departments of social services overseen by OCFS in titles such as: caseworker, senior caseworker, casework supervisor, grade B supervisor, grade A supervisor, permanency planning specialist, case planner, primary service provider, supervisor of child care, child care worker I, child care worker II, director of social work services, supervisor of social work services, social worker I, social worker II, social worker III, director of institution, director of recreation and paraprofessional staff aides including, but not limited to, the following:

- Arrangement of court-ordered services for a family in accordance with a court-approved permanency goal
- Supervising visitation of children in foster care with parents or siblings, or arranging for transportation of parents or children to and from specified services
- Providing case management services for children in foster care or receiving preventive or other services under the Close to Home initiative
- Conducting adoption home studies
- Certifying or approving foster homes
- Conducting family assessments
- Making referral for services
- Coordinating the provision of services for children and families
- Documenting family compliance with case plans
- Arranging for or making case work contracts
- Providing independent living services and life skills training to children in foster care
- Assisting children or their parents in obtaining public assistance or other benefits
- Assisting children and their parents obtain housing
- Providing direct supervision to children in congregate care
- Assisting children in foster care in applying for college
- Preparing reports to the family court
- Maintaining the official case record for the family

5. Case Management and Case Planning Pursuant to OCFS' regulations (for foster care and preventive services): A case manager, pursuant to the applicable OCFS regulations, is the employee of a social services district that is responsible for the following:

- Authorizing the provision of services by the social services district

- Determining eligibility for preventive and foster care services
- Monitoring casework contacts and approving Family Assessment Service Plans (FASPs). FASPs are required to be completed by local departments of social services staff for families receiving preventive or foster care services pursuant to Social Services Law § 409-e.

A case planner, pursuant to the applicable OCFS regulations, is the caseworker with the primary responsibility for

- coordinating and evaluating the services provided to a family receiving foster care or preventive services. This often includes services that are required to be provided to a child or their family by family court.

6. Multidisciplinary Teams and Treatment Plans: The legislation provides that unlicensed persons on multidisciplinary teams in certain programs may assist in the development and/or implementation of behavioral health services or treatment plans. The covered programs include: OCFS operated juvenile justice programs (Article 19-G of the Executive Law), residential programs for children under Title 3 of Article 7 of the Social Services Law, or programs under the auspices of OMH, OPWDD, and OASAS that are governed by Articles 7, 16, 31, and 32 of the Mental Hygiene Law.

The legislation clarifies that the “diagnosis of mental, emotional, behavioral, addictive and developmental disorders and disabilities; patient assessment and evaluating; the provision of psychotherapeutic treatment; the provision of treatment other than psychotherapeutic treatment; or independently developing and implementing assessment-based treatment plans” are reserved for licensed individuals, consistent with the scope of practice.

The term “assist” includes, but is not limited to, the following functions performed by an individual who has obtained the training and experience by the applicable state oversight agency to perform such tasks:

- Helping an individual with the completion of forms or questionnaires
- Reviewing existing case records and collecting background information about an individual, which may be used by the licensed professional or multidisciplinary team
- Gathering and reporting information about previous behavioral health interventions, hospitalizations, documented diagnosis, or prior treatment for review by the licensed professional and multidisciplinary team
- Discussing with the individual their situation, needs, concerns, and thoughts to help identify services that support the individual’s goals, independence, and quality of life
- Providing advice, information, and assistance to individuals and family members to identify needs and available resources in the community to help meet the needs of the individual or family member
- Engaging in immediate and long-term problem solving, engaging in the development of social skills, or providing general help in areas including, but not limited to, housing, employment, child care, parenting, community-based services, and finances
- Distributing paper copies of self-administered tests for the individual to complete when such tests do not require the observation and judgment of a licensed professional

- Monitoring treatment by the collection of written and/or observational data in accordance with the treatment plan and providing verbal or written reports to the multidisciplinary team
- Identifying gaps in services and coordinating access to or arranging services for individuals such as home care, community-based services, housing, employment, transportation, child care, vocational training, or health care
- Offering education programs that provide information about disease identification and recommended treatments that may be provided, and how to access such treatment
- Reporting on behavior, actions, and responses to treatment by collecting written and/or observational data as part of a multidisciplinary team
- Using de-escalation techniques consistent with appropriate training
- Performing assessments using standardized, structured interview tools or instruments
- Directly delivering services outlined in the service plan that are not clinical in nature but have been tailored to an individual based on any diagnoses such individual may have received from a licensed professional
- Advocating with educational, judicial, or other systems to protect an individual's rights and access to appropriate services

#### B. Tracking Eligibility for Legacy (Grandfathering) Provisions

The enacted legislation requires the state oversight agencies, including OMH, OASAS, OPWDD, and OCFS, to maintain a process to verify employment histories of individuals who are exempt under legacy provisions. The affected agencies have developed a verification process with a form and instructions that providers may choose to integrate into their employment processes for this purpose. This form and its instructions are available online at [Office of Children and Family Services | Home | OCFS \(ny.gov\)](#) and are searchable by the form's name: New York State Professional Licensure Exemption Form.

Please note that New York State Education Law does not require state agencies to verify an individual's employment history for individuals to rely on this exemption.

**When onboarding new employees, programs will be required to perform their own employment verification activities to determine if candidates for employment are exempted under this provision.**

#### C. Frequently Asked Questions (FAQs)

The following FAQs have been developed to address licensed or certified provider and practitioner questions related to the impact of the sunset of the Social Work Exemption provisions on OCFS program operations. Programs should disregard other OCFS guidance or FAQ documents that contain information that has not been updated or that conflicts with this guidance.

- 1. Q: New York State Education Law indicates that unlicensed individuals or individuals not appropriately licensed can “assist” in the development and implementation of behavioral health treatment or services plans. A definition of “assist” includes, but is not limited to, the performance of tasks such as “directly delivering services outlined in the service plan that are not clinical in nature but have been tailored to an individual based on any diagnoses such individual may**

**have received from a licensed professional.”<sup>4</sup> Does this mean that only licensed individuals can perform clinical activities?**

**A: NO.** Under the new exemption provisions, assisting may include the performance of clinical tasks directed by appropriately licensed individuals and under appropriate clinical supervision, depending on the unlicensed or inappropriately licensed individual’s training and experience.

**2. Q: Can licensed mental health practitioners do assessments and create, revise and execute treatment plans based on a clinical diagnosis in OCFS certified programs?**

**A: Yes.** Licensed mental health practitioners can continue to perform all the activities within their current scopes of practice, including but not limited to assessment, evaluation, counseling, and psychotherapy to identify, evaluate, and treat dysfunctions and disorders. Assessment and treatment planning activities in OCFS-certified programs are not limited to the act of diagnosis or done for the sole purpose of establishing or confirming an individual’s diagnosis, but rather as part of a broader person-centered treatment planning process.

**3. Q: Can unlicensed individuals create treatment plans in OCFS programs?**

**A:** The enacted legislation allows unlicensed individuals to participate as part of multidisciplinary teams and assist licensed professionals on such teams to develop and implement behavioral health treatment or services plans. While unlicensed individuals may contribute to the development of such plans in OCFS programs, such plans are required to be reviewed and approved by an appropriately licensed individual who is a part of the multidisciplinary team and retains clinical responsibility for the services provided to service recipients.

**4. Q: What does the term “multidisciplinary team” mean for purposes of the new exemption provisions in programs and services?**

**A:** The provisions regarding “multidisciplinary team” referenced above applies only to the following programs under OCFS auspices:

- Those operating pursuant to Article 19-G of the Executive Law. This includes the following:
  - Detention programs
  - OCFS-operated juvenile justice facilities
- Those governed by Title 3 of Article 7 of the Social Services Law. This includes residential programs for children and voluntary authorized agencies that provide residential care to children.

The term “multidisciplinary team” refers to the regulated environment of a program under the jurisdiction of OCFS, wherein staffing plans, including supervision for all staff providing

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<sup>4</sup> See New York State Education Law §§ 7605(10)(c)(ii)(14), 7706(7)(c)(ii)(14), 8410(8)(c)(ii)(14).



direct care to service recipients provided by licensed professionals, are subject to the approval of OCFS as a part of the licensing or certification process.

**5. Q: Which disciplines/licensure levels will be permitted to conduct intake assessments that yield a clinical diagnosis?**

**A:** The intake and assessment process include the collection of information from the individual receiving services, collaterals, or referral source/historical documentation. While the intake process will require the program to ensure that an individual meets medical necessity criteria and is appropriate for services, it is not done solely for the purposes of establishing or confirming an individual's diagnosis. All the SED restricted activities, including diagnosis, should be performed only by staff operating within scope of practice, and under appropriate supervision where required by the Education Law or SED regulations. Unlicensed individuals functioning as a part of a multidisciplinary team may also assist the licensed staff to perform the intake and assessment process. Since diagnosis is only one part of an intake and assessment process and may be carried over from previous assessments or treatment plans, OCFS does not require documentation that merely includes or references a diagnosis to be signed by specific practitioners or direct care staff who create records.

**6. Q: What documentation changes will result after the sunset of the social work exemption provisions?**

**A:** If they have not done so already, OCFS programs should adopt policies and procedures to ensure appropriate supervision is provided to exempt individuals, including unlicensed staff, providing services in their programs. Such policies and procedures may provide for supervision to be documented through supervision policies and procedures, cosigners on certain documentation where required, or more generally in the individual's treatment plan or other service records.

**7. Q: Do the new exemption provisions change how OCFS programs bill for services?**

**A: No.** OCFS programs should continue to bill for services that meet the agency's regulatory requirements and guidance, as well as Medicaid billing rules for services rendered to Medicaid beneficiaries. Note that even though Medicaid and other payor claims may contain an individual's diagnosis, which relates to their need for the services rendered, claims themselves do not constitute evidence and are not an attestation that the attending or referring practitioner(s) listed on the claim actually performed the act of diagnosis. For Medicaid, claims should include the National Provider Identifier (NPI) of an enrolled practitioner who rendered the service or retains clinical responsibility for the services rendered.

#### **IV. Contact**

Any questions concerning this release should be directed to the appropriate regional office, Division of Child Welfare and Community Services:

Buffalo Regional Office - Amanda Darling (716) 847-3145  
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