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MEMORANDUM IN OPPOSITION

S.1662-B (Skoufis) / A.3523-A (Peoples-Stokes)

AN ACT to amend the education law, in relation to applied behavior analysis

Dear Members of Senate & Assembly,

This legislation would amend State Education Law to authorize applied behavior analysts to provide applied behavioral analysis treatment to any individual (youth or adult) with a behavioral health conditions that “appears” in the Diagnostic and Statistical Manual of Mental Disorders.

The New York State Society for Clinical Social Work (NYSSCSW) opposes the expansion of the Applied Behavioral Analysts scope of practice for the following reasons:

The 2014 New York statute (Chapter 8 of the Laws of 2014) that established the practice of applied behavior analysis and licensure of applied behavior analysts and behavior analyst assistant explicitly requires the diagnosis and prescription or order from a person authorized under Title VIII of State Education Law “for the purpose of providing behavioral health treatment for persons with autism and autism spectrum disorders and related disorders.” Furthermore, the law incorporates a boundary of professional competency stating, “The practice of applied behavior analysis shall ***not*** include diagnosis of a disorder or condition for which ABA may be appropriate, or prescribing or ordering ABA for a particular individual.” (State Education Department interpreted related disorders as “those disorders traditionally diagnosed under the diagnostic classification systems (often one of the volumes of the Diagnostic and Statistical Manual of the American Psychiatric Association), such as, Asperger's Syndrome, Rett Syndrome, Pervasive Developmental Disorders, or Childhood Disintegrative Disorder.” **S.1662-B/A.3523-A is an unsafe expansion of practice for which applied behavior analysts and behavior analyst assistants are not educated and trained.**

One of the requirements for licensure is passing the New York State Autism Exam. This examination is designed to assess whether applied behavior analysts and behavior analyst assistants have obtained the **minimum** level of knowledge and skill to work with individuals diagnosed with autism spectrum disorders or related disorders. The New York State Autism Exam evaluates knowledge and skill level in five content areas as outlined by the State Education Department: (1) Explain characteristics associated with a diagnosis of autism spectrum disorder; (2) Develop systems and support for behavior-analytic services; (3) Extract relevant information from various sources for planning interventions and communicating with consumers; (4) Use research to design, implement, and evaluate behavior-analytic interventions for persons with autism; and, (5) communicate the history of services for persons with autism to consumers and public.

In addition, licensure as an applied behavior analyst requires the completion of 1,500 hours of experience and 1,000 hours of experience for behavior analyst assistants with the State Education Department regulations and coinciding Frequently Asked Questions stating “...the only experience that will be accepted as meeting the experience requirement is experience that involves the provision of applied behavior analysis services to persons diagnosed with autism, autism spectrum disorders or related disorders pursuant to a diagnosis and prescription or order from a person who is licensed or otherwise



authorized, under Title VIII of the Education Law, to provide a diagnosis of autism, autism spectrum disorders or related disorders and to prescribe or order services for the purpose of providing behavioral health treatment.” The State Education Department adds,

“Experience in applied behavior analysis that is provided to persons with any other diagnosis, disorder, or condition ***may not*** be used to meet the 1500 required hours of supervised experience for licensure as a licensed behavior analyst (LBA) or the 1000 required hours of supervised experience for licensure as a certified behavior analyst assistant (CBAA). Additionally, since applied behavior analysis is considered a form of treatment, it may not be provided to persons with any other diagnosis, disorder or condition, or for any other purpose, by persons who are not licensed in a profession found in Title VIII of the Education Law to provide such treatment according to the services and activities found in their scopes of practice or persons who are working outside of an exempt setting.”

This legislation would undo the statutory mechanism and conditions for practice and licensure of applied behavior analysts and behavior analyst assistants, which was predicated upon such treatment being limited to those with autism spectrum disorders and pursuant to a diagnosis and prescription or order from those authorized to provide such a diagnosis pursuant to Title VIII of State Education Law. NYS Insurance Law requirement for coverage of autism also recognizes ABA strictly for treatment of autism per Circular Letter No. 6 (2014) stating “The autism mandate, among other things, includes coverage for 680 hours of applied behavior analysis (“ABA”) treatment per policy or calendar year per covered individual diagnosed with ASD.”

For the above reasons, the NYSSCSW opposes this legislation.

Sincerely,

Marsha Wineburgh

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NYSSCSW, Legislative chair

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