

April 29, 2020

**ATTORNEY-CLIENT PRIVILEGED & CONFIDENTIAL
VIA ELECTRONIC MAIL ONLY**

Randy Phelps, PhD
Chief Executive Officer
Give an Hour
E-Mail: rphelps@giveanhour.org

Re: State Relaxations of Licensure Requirements in Response to COVID-19 Pandemic

Dear Randy:

You contacted us for regulatory counsel regarding an arrangement with Aetna to fund Give an Hour's ("GAH") delivery of their usual free mental health services – but via telehealth – to frontline healthcare workers in New York, New Jersey, and Connecticut. The program is set to be launched May 4, 2020. At issue is whether state licensure laws will present a barrier to the ability of GAH's mental health providers, including social workers, psychologists, counselors, and psychiatrists, from around the country, to provide mental health care to medical staff in these three states. As discussed below, we do not believe state licensure laws, as relaxed and waived in response to COVID-19, will hinder the ability of GAH to proceed with this arrangement by the launch date.

New York

New York licensure laws have been suspended via Executive Orders ("EOs") for the following providers, as relevant here: physicians, mental health counselors, marriage and family therapists, licensed clinical social workers, and licensed masters social workers. There is no licensure or registration process required for these providers to begin providing health care services to New York State residents. While some of these licensure suspensions are set to expire in the coming days, we anticipate extensions to accommodate the ongoing need for health care providers.

The following EOs were issued by New York to suspend licensure laws:

- On March 18, 2020, New York Governor Andrew Cuomo issued EO No. 202.5, which suspended licensure laws for physicians "to the extent necessary to allow physicians licensed and in current good standing in any state in the United States to practice

medicine in New York State without civil or criminal penalty related to lack of licensure.” EO 205.5 originally was set to expire on April 17, 2020, but EO 202.14 extended the effective date to May 7, 2020. Further, EO 202.18 extended this suspension to physicians with Canadian medical licenses as well.

- On April 9, 2020, Governor Cuomo issued EO No. 202.15. EO 202.15 suspended licensure laws “to the extent necessary to allow mental health counselors, marriage and family therapists, creative art therapists and psychoanalysts licensed and in current good standing in any state in the United States to practice in New York State without civil or criminal penalty related to lack of licensure[.]” EO 202.15 is valid until May 9, 2020.
- On April 16, 2020, Governor Cuomo issued EO No. 202.18, which suspends licensure laws “to the extent necessary to allow licensed master social workers, licensed clinical social workers, and substantially similar titles licensed and in current good standing in any state in the United States, or in any province or territory of Canada, to practice in New York State without civil or criminal penalty related to lack of licensure[.]” EO 202.18 is valid until May 16, 2020.

We note that psychologists have not been included in the EO licensure laws waivers. However, a COVID-19 FAQs document on the New York State Office of Professions website states, “Unless otherwise modified by an Executive Order, psychologists licensed in other states who wish to engage in telepractice with patients/clients currently residing in New York State may do so utilizing a one-time-only ninety-day temporary exemption to practice psychology without a New York license pursuant to Education Law §7605 (8).” Education Law §7605(8) requires that the psychologist file “with the department evidence that he [or she] has been licensed or certified in another state.” We will contact regulators to confirm whether this submission is required for psychologists amidst COVID-19.

New Jersey

As announced March 20, 2020, New Jersey has created an accelerated licensure application process for out-of-state health care professionals via waivers of a number of regulatory licensure requirements. Healthcare practitioners covered by these waivers include, as relevant here: licensed marriage and family therapists, physicians, licensed professional counselors, psychologists, and social workers.

Under these regulatory waivers, these types of practitioners who hold current healthcare licenses and certifications in good standing in other jurisdictions in the United States, and have been practicing within the last five years, will be able to secure New Jersey licenses by completing a simple form. Healthcare practitioners who complete the accelerated licensure process will be able to provide telemedicine and telehealth services on the same terms as other New Jersey licensees. All applicants for accelerated temporary licensure by reciprocity should send their completed forms to NJtemplicense@dca.njoag.gov. Applications will be reviewed and responded to within 24 hours.

Eligible practitioners will be deemed licensed upon submission of a completed form. The waivers will apply during the COVID-19 public health emergency – no expiration date has been set. However, the licenses themselves are valid for 180 days, with an additional 180-day extension available upon written request.

Connecticut

Connecticut licensure laws have been temporarily suspended via a March 23, 2020 Department of Public Health Order (“Order”) for the following providers, as relevant here: physicians, psychologists, marriage and family therapists, clinical social workers and master social workers, and professional counselors. The Order provides that the requirements for licensure, certification or registration are temporarily suspended for providers “to allow persons who are appropriately licensed, certified or registered in another state or territory of the United States or the District of Columbia, to render temporary assistance in Connecticut within the scope of the profession for which a provider is licensed, certified or registered.”

There is no licensure or registration process required for these providers to begin providing health care services to Connecticut residents. While the Order is valid until May 23, 2020, we anticipate extensions as necessary to accommodate the ongoing need for health care providers.

If you have any subsequent questions about this analysis or state licensure laws, please do not hesitate to contact us.

Sincerely,

Kathleen M. Stratton
Theresa Thompson
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Attachments

New York Executive Order No. 202.5
New York Executive Order No. 202.14
New York Executive Order No. 202.15
New York Executive Order No. 202.18
NYSED Office of Professions COVID-19 FAQs
New Jersey March 20, 2020 Press Release
Connecticut March 23, 2020 Department of Public Health Order