

Alert

New Waiver Procedures for Nonprofits to Hire Licensed Professionals

May 10, 2011

New York nonprofit corporations must apply for a waiver from the New York State Education Department (the "department") to employ certain licensed professions. The New York State Education Law restricts the practice of a profession to individuals who are licensed or otherwise authorized to provide professional services and to entities that are authorized to employ licensed professionals or qualified persons. Therefore, until recently, New York did not allow a licensed professional (such as a social worker or therapist) to offer their professional services as an employee of a nonprofit.¹ A recent amendment to the Education Law allows the Department's Office of the Professions to issue waivers allowing nonprofits and education corporations to employ certain licensed professionals.

Section 6503-a of the Education Law authorizes the department to issue a waiver from the corporate practice requirement to not-for-profit, religious or education corporations that were in existence on the effective date of the law, June 18, 2010.² Waivers may be obtained to employ licensed master social workers, licensed clinical social workers, licensed mental health counselors, licensed marriage and family therapists, licensed creative arts therapists, licensed psychoanalysts and licensed psychologists to practice in an educational or non-for-profit setting.

Organizations must submit an Application for Waiver (Form CE) by June 16, 2011³ and may continue to provide services until the application is approved or denied. Once the department determines that all necessary information has been received, a determination about the waiver application will be made within 90 days. If an application is denied by the department, the organization must stop providing professional services in New York. If an application is successful, the waiver is good for three years and must be renewed. If the organization changes locations, it must notify the department within 30 days of any change in the name or address of the organization. The organization must notify the department within 60 days of any other change in information provided in the application. There is no fee for the waiver application.

¹ Note that a certified school psychologist differs from a licensed psychologist, and may not be barred by the corporate practice restriction. Under Article 153, Section 7605 of the Education Law, a certified school psychologist (one who is not licensed, but holds a certificate in school psychology) may be employed in exempt settings including federal, state, county or municipal agencies, other political subdivisions, or a chartered elementary or secondary school. We are seeking confirmation of this interpretation.

² The waiver form indicates that organizations formed after that date "may be asked to submit additional information regarding the need for services."

³ The statute provides that the following organizations do not have to apply for a waiver: (i) organizations which receive authorization through an operating certificate from the state, federal or local government, such as an entity with an operating certificate issued under Article 28 of the Public Health law or Articles 16, 31, or 32 of the Mental Hygiene Law; (ii) a university faculty practice corporation; (iii) institutions of higher education authorized to provide programs leading to licensure in medicine, nursing, psychology, social work or mental health professions; (iv) institutions of higher education providing counseling to only their students, staff or family members of students or staff; and (v) entities otherwise authorized by law to provide such services.

The application form asks for the date that the organization was formed under the Not-For-Profit Corporation Law, Education Law or Religious Corporations Law and for background information about the organization, the individuals submitting the application and a description of the services the organization will provide. If services are provided at a location other than the address noted on the application form, the organization must also submit a Request for Additional Setting (Form CE-2). The application must be accompanied by a moral character attestation for each director/trustee and each officer, including the home address, phone number, and email address for each such person (Form CE-1). The entity must also submit (i) a certificate of good standing from the Secretary of State, County Clerk or Education Department, as applicable; (ii) a copy of the entity's certificate of incorporation; and (iii) a copy of any negative action by an authorizing agency, if any.

Copies of the applications, instructions and frequently asked questions are available at <http://www.op.nysed.gov/waiver-corporate-practice.htm>. Lawyers Alliance for New York will be presenting a webinar in the next few weeks on this new law. Additionally, Lawyers Alliance has a research call hotline which non-profit organizations may call with questions: (212) 219-1800, ext. 224.

Authored by [Mark E. Brossman](#), [Daniel L. Greenberg](#) and [Donna Lazarus](#).

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

New York

Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
+1 212.756.2000
+1 212.593.5955 fax

Washington, DC

Schulte Roth & Zabel LLP
1152 Fifteenth Street, NW, Suite 850
Washington, DC 20005
+1 202.729.7470
+1 202.730.4520 fax

London

Schulte Roth & Zabel International LLP
Heathcoat House, 20 Savile Row
London W1S 3PR
+44 (0) 20 7081 8000
+44 (0) 20 7081 8010 fax

www.srz.com

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