



TO: The Honorable the Members of the Board of Regents

FROM: Sarah S. Benson *Sarah S. Benson*

SUBJECT: Proposed Amendment to Subdivision (a) of Section 64.7 of the Regulations of the Commissioner of Education Relating to the Execution by Registered Professional Nurses of Non-Patient Specific Orders to Administer COVID-19 Immunizations

DATE: December 30, 2021

AUTHORIZATION(S): *Donna M. P. Belmont*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment to subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education relating to the execution by registered professional nurses of non-patient specific orders to administer COVID-19 immunizations?

Reason(s) for Consideration

Review of Policy

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at the January 2022 Regents meeting. A copy of the proposed rule and a statement of facts and circumstances justifying emergency action are attached.

Procedural History

The proposed amendment was presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency

rule at the October 2021 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on November 3, 2021 for a 60-day public comment period.

Because the October emergency action will expire on January 16, 2022, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the February Regents meeting. A Notice of Emergency Adoption will be published in the State Register on January 26, 2022. Supporting materials for the proposed rule are available upon request from the Secretary to the Board of Regents.

Background Information

According to the United States Centers for Disease Control and Prevention (CDC), immunization is one of the best ways to protect infants, children, and adults from a variety of potentially harmful diseases. To increase immunization rates in New York State, Chapter 221 of the laws of 2002 (codified in Education Law §§6909[4] and [5]) was enacted. It authorizes registered professional nurses to administer immunizations pursuant to a non-patient specific order issued by a licensed physician or a certified nurse practitioner. In 2005, subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education was adopted, which set forth criteria for administering specifically identified immunizations by a registered professional nurse pursuant to a non-patient specific order and protocol. In 2019, subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education was amended to update criteria for administering identified immunizations by a registered professional nurse pursuant to a non-patient specific order and protocol.

The COVID-19 pandemic continues to be a major public health threat in New York State and, therefore, immunizing persons against COVID-19 remains a top public health priority. To ensure greater access to immunizations against COVID-19, the proposed amendment to subdivision (a) of section 64.7 of the Commissioner's regulations would allow a registered professional nurse to administer COVID-19 immunizations pursuant to a non-patient specific order issued by a licensed physician or a certified nurse practitioner. The proposed amendment requires that the COVID-19 immunizations be fully approved or authorized for emergency use by the federal Food and Drug Administration (FDA) to immunize persons against COVID-19. It also requires that the COVID-19 immunizations are administered in accordance with applicable FDA requirements and recommendations. These requirements help to ensure that the vaccinations against COVID-19 will be administered as safely as possible.

Related Regents Items

October 2021: [Proposed Amendment to Subdivision \(a\) of Section 64.7 of the Regulations of the Commissioner of Education Relating to the Execution by Registered Professional Nurses of Non-Patient Specific Orders to Administer COVID-19 Immunizations](#)

(<https://www.regents.nysed.gov/common/regents/files/1021ppca1.pdf>)

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education be amended, as submitted, effective January 17, 2022, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the public health and general welfare to timely authorize registered professional nurses to execute non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner to administer COVID-19 immunizations in order to enhance the protection of the public health by expanding access to needed COVID-19 immunizations for children and adults during the ongoing COVID-19 pandemic and to ensure that the emergency action taken at the October 2021 meeting remains continuously in effect.

Timetable for Implementation

If adopted as an emergency rule at the January 2022 Regents meeting, the emergency rule will become effective January 17, 2022. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the February 2022 Regents meeting, after publication of the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the February 2022 meeting, the proposed rule will become effective as a permanent rule on March 2, 2022.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 6527, 6902 and 6909 of the Education Law

Subdivision (a) of section 64.7 of the Regulations of the Commissioner of

Education is amended, to read as follows:

(a) Immunizations.

(1) As used in this subdivision:

(i) Immunizing agents means vaccines and immunoglobulin drugs approved by the federal Food and Drug Administration to provide immunity against diseases caused by the infectious agents described in clauses (a) through (e) of this subparagraph.

(a) In the case of adults, vaccines against the following infectious diseases:

Hepatitis A, Hepatitis B, Influenza, Pneumococcus, Diphtheria, Tetanus, Measles, Mumps, Rubella, Varicella, Polio, Pertussis, Human Papilloma Virus, Meningococcus, and Herpes Zoster;

(b) In the case of infants and children under the age of 18, vaccines against the following infectious diseases: Diphtheria, Tetanus, Pertussis, Measles, Mumps, Rubella, Varicella, Haemophilus Influenzae Type b (Hib), Polio, Hepatitis B, Hepatitis A, Influenza, Meningococcus, Pneumococcus, Rotavirus, and Human Papilloma Virus[.];

(c) immunizing agents against an infectious disease that causes an epidemic or a community wide outbreak, provided that such immunizing agents are administered as part of a public health program established by the Commissioner of the Department of Health, a County Commissioner of Health, or a County Public Health Director to

immunize persons against the infectious disease during the epidemic or community outbreak of the infectious disease; [and,]

(d) additional immunizing agents approved by resolution of the Board of Regents upon recommendation by the commissioner that such additional immunization agents are safe and effective immunization agents for registered professional nurses to administer to patients, pursuant to a non-patient specific order and protocol as prescribed in this section, after consideration of the recommendations of State and/or nationwide authorities that evaluate the effectiveness and safety of immunization agents, including but not limited to the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services. Such additional immunization agents, which are not specifically enumerated in this subparagraph, may be removed by resolution of the Board of Regents, upon recommendation of the commissioner that such immunization agents are not safe and effective immunization agents for registered professional nurses to administer to patients, pursuant to a non-patient specific order and protocol as prescribed in this section, after consideration of the recommendations of State and/or nationwide authorities that evaluate the effectiveness and safety of immunization agents, including but not limited to the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services; and

(e) vaccines that are fully approved or authorized for emergency use by the federal Food and Drug Administration to provide immunity against COVID-19 and administered in accordance with applicable federal Food and Drug Administration requirements and recommendations.

Attachment B

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH
NECESSITATE EMERGENCY ACTION

The COVID-19 pandemic continues to be a major public health threat both statewide and nationally. Accordingly, immunizing persons against COVID-19 remains a top public health priority. The proposed amendment is necessary to ensure greater access to immunizations against COVID-19, as permitted by Education Law §6909. This law allows registered professional nurses to administer immunizations pursuant to non-patient specific orders issued by a licensed physician or a certified nurse practitioner in accordance with the Commissioner's regulations. The proposed amendment to subdivision (a) of section 64.7 of the Commissioner's regulations will permit a registered professional nurse to administer COVID-19 immunizations pursuant to a non-patient specific order issued by a licensed physician or a certified nurse practitioner. Allowing more registered professionals nurses to administer COVID-19 immunizations pursuant to a non-patient specific order and protocol will protect more New Yorkers from this harmful and potentially deadly disease.

The proposed amendment was presented to the Professional Practice Committee for recommendation to the Full board for adoption as an emergency rule at the October 2021 meeting of the Board of Regents, effective October 19, 2021. Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for regular (non-emergency) adoption, after expiration of the required 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) section 202(1) and (5), would be the February 2022 Regents meeting.

Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the February 2022 meeting, would be March 2, 2022, the date a Notice of Adoption would be published in the State Register. However, emergency adoption is necessary to maximize the potential health benefits of increasing access to COVID-19 vaccinations in New York State.

However, the emergency rule will expire on January 16, 2021. Therefore, a second emergency action is necessary at the January 2022 Regents meeting for preservation of the public health and general welfare in order to enable the State Education Department to immediately implement the proposed amendment to authorize registered professional nurses to execute non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner to administer COVID-19 immunizations in order to expand access to needed COVID-19 immunizations for children and adults during the ongoing COVID-19 pandemic and to ensure that the emergency action taken at the October 2021 meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed amendment will be presented for permanent adoption at the February 2022 Regents meeting, which is the first scheduled meeting after the expiration of the 60-day public comment period mandated by SAPA for state agency rule making.

