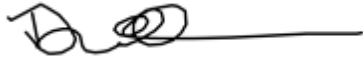






**TO:** The Honorable the Members of the Board of Regents

**FROM:** Douglas E. Lentivech  


**SUBJECT:** Proposed Amendment of Section 62.8 of the Regulations of the Commissioner of Education Relating to the Continuing Education Requirements for Veterinarians and Veterinary Technicians

**DATE:** August 31, 2017

**AUTHORIZATION(S):**  

### SUMMARY

#### Issue for Decision (Consent Agenda)

Should the Board of Regents adopt the revised proposed amendment of section 62.8 of the Regulations of the Commissioner of Education relating to the continuing education requirements for veterinarians and amend paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education to repeal obsolete provisions relating to the proration of the required continuing education requirements for veterinarians and veterinary technicians which were applicable during the initial implementation of such requirements?

#### Reason for Consideration

Required by State statute (L. 2016, Ch. 398) and review of policy.

#### Proposed Handling

The revised proposed amendment will be presented to the Full Board for adoption as a permanent rule at the September 2017 meeting of the Board of Regents. A copy of the revised proposed rule is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

## **Procedural History**

The proposed amendment was initially presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency action at the January 2017 meeting of the Board of Regents. A Notice of Proposed Rule Making was published in the State Register on January 25, 2017, for a 45-day public comment period and a Notice of Emergency Adoption was published in the State Register on February 15, 2017. The Department received multiple comments from one commenter on the proposed amendment.

Although the Department prepared an Assessment of Public Comment, it determined that it needed additional time to review this public comment and clarify the legislative intent of Chapter 398 of the Laws of 2016 to determine whether additional amendments were needed before the final adoption of a permanent rule. Therefore, at the April 2017 Regents meeting, a second emergency action was adopted to ensure that the emergency rule adopted at the January 2017 Regents meeting remained continuously in effect until the effective date of its adoption as a permanent rule. A second Notice of Emergency Adoption was published in the State Register on May 17, 2017.

In response to public comment, as well as to clarify certain requirements, substantial revisions were made to the proposed rule, as discussed in the Revisions to Proposed Rule section below. Therefore, at the June 2017 Regents meeting, the second emergency action was repealed effective June 13, 2017, and the revised proposed rule was adopted on an emergency basis (third emergency), to ensure that the emergency rule, as revised, remained continuously in effect until the effective date of its adoption as a permanent rule. A Notice of Emergency Adoption and Revised Rule Making was published in the State Register on June 28, 2017 for an additional 30-day public comment period.

Because the June 2017 emergency rule was set to expire on August 11, 2017, at the July 2017 Regents meeting, the revised proposed rule was again adopted on an emergency basis (fourth emergency), effective August 12, 2017, to ensure that the emergency rule, as revised, remains continuously in effect until the effective date of its adoption as a permanent rule. A Notice of Emergency Adoption was published in the State Register on August 30, 2017.

Additionally, following the above-referenced publication of the Notice of Emergency Adoption and Revised Rule Making in the State Register on June 28, 2017, the Department received public comment from one commenter. An Assessment of Public Comment is attached, however, no change in the revised proposed rule is recommended at this time.

## **Background Information**

Currently, during each three-year registration period, an applicant for registration as a veterinarian must complete at least 45 hours of continuing education, acceptable to the Department, a maximum of 22 ½ hours of which may be self-instructional coursework. Self-instructional coursework is presently defined as structured study, provided by a

Department approved sponsor, that is based on audio, audio-visual, written, on-line, and/or other media, and does not include live instruction, transmitted in person or otherwise, during which the student may communicate and interact with the instructor and other students.

Chapter 398 of the Laws of 2016, which took effect February 2, 2017, amends subdivision (2) of section 6704-a of the Education Law, by revising the above-referenced self-instructional coursework definition to include free spaying and neutering and other veterinary services in conjunction with a municipality, duly incorporated not-for-profit society for the prevention of cruelty to animals, duly incorporated humane society, or duly incorporated animal protection association or persons who would otherwise be eligible under paragraph (a) of subdivision three of section one hundred seventeen-a of the Agriculture and Markets Law, provided that such services be administered at practices, facilities and properties that are appropriately equipped and staffed to provide such services. Chapter 398 encourages continuing education that also benefits the communities the veterinarians serve by allowing veterinarians to use the triennial registration period requirements to perform community services that would reduce the animal shelter overcrowding that leads to euthanasia, as well as the economic burden for municipalities experiencing growing budget shortfalls.

Chapter 398 further amends subdivision (2) of section 6704-a of the Education Law by permitting the Department to offset up to three hours of the requisite number of hours of continuing education by the number of free spaying and neutering services rendered by an applicant, at a rate of one-half of one hour of continuing education for each hour of free spaying and neutering services, provided that a veterinarian shall be required to provide follow-up service for any post-operative complications related to any free spaying or neutering surgery that arise within twenty-four hours of performing any such surgery, and shall also be required to complete the core continuing education requirements that have already been established by the Department in section 62.8 of the Regulations of the Commissioner of Education.

The proposed amendment of paragraph (3) of subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education amends the definition of self-instructional coursework to include the provision of free spaying and neutering and other veterinary services, as long as they satisfy other specified requirements, including, but not limited to, providing such services in conjunction with a municipality, duly incorporated not-for-profit society for the prevention of cruelty to animals, duly incorporated humane society, or duly incorporated animal protection association, or persons who would otherwise be eligible under paragraph (a) of subdivision three of section one hundred seventeen-a of the Agriculture and Markets Law.

The proposed addition of paragraph (4) to subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education defines other veterinary services as follow-up service(s) for any post-operative complications related to any free spaying or neutering surgery, as defined in paragraph (3) of subdivision (a), that arise within twenty-four hours of performing any such surgery.

The proposed amendment of paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education adds a new clause (a) of subparagraph (i) which provides that, for an applicant for registration as a veterinarian, the Department may offset up to three hours of the requisite number of hours of continuing education by the number of free spaying and neutering services rendered by an applicant, at a rate of one-half of one hour of continuing education for each hour of free spaying and neutering services, provided that a veterinarian shall be required to provide follow-up service for any post-operative complications related to the surgery that arise within twenty-four hours of performing the surgery, and shall also be required to complete the core requirements established by the Department. The proposed amendment further provides that, although any such hours shall be considered part of the maximum of 22 1/2 hours of self-instructional coursework, which an applicant may complete, per each three-year registration period, to satisfy the 45 hours of continuing education requirement, they shall be exempt from the continuing education requirements of subdivision (4) of section 6704-a of the Education Law and paragraph (2) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education. The proposed amendment moves the general continuing education requirement provisions for applicants for registration as veterinary technicians to a new subparagraph (ii) of paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education. The proposed amendment would also repeal certain regulatory provisions relating to the proration of the required continuing education requirements for veterinarians and veterinary technicians which were applicable during the initial implementation process of the continuing education requirements for these two veterinary medicine professions, as those provisions no longer have any application.

The proposed amendment of subparagraphs (ii) and (iii) of paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education reflects the renumbering of these subparagraphs as subparagraphs (iii) and (vi), respectively.

The proposed amendment to subdivision (g) of section 62.8 of the Regulations of the Commissioner of Education adds a requirement that an applicant for registration as a veterinarian seeking to satisfy a portion of his or her continuing education requirements by providing free spaying and neutering services shall maintain, on a form prescribed by the Department, and ensure access by the Department to, a record of all the free spaying and neutering services provided by the applicant, as well as any follow-up services for any post-operative complications related to any free spaying or neutering surgery that arise within twenty-four hours of performing any such surgery. Such records shall be retained for at least six years from the date of completion of the continuing education and shall be made available for review by the Department in the administration of the requirements of this section. The proposed amendment also separates subdivision (g) of section 62.8 of the Regulations of the Commissioner of Education into paragraphs (1) and (2).

### **Revisions to Proposed Rule**

**Since the publication of a Notice of Proposed Rule Making in the State Register on January 25, 2017, a Notice of Emergency Adoption on February 15,**

**2017 and a second Notice of Emergency Adoption on May 17, 2017, the proposed rule was revised in response to public comment and to clarify certain requirements, as follows:**

- Section 62.8(c)(1)(i) has been revised to add a new clause (a) which includes clarification that, although the provision of free spaying and/or neutering services and other related follow-up services by veterinarians shall be considered part of the maximum of 22 ½ hours of self-instructional coursework, which an applicant may complete, per each three-year registration period, to satisfy the 45 hours of continuing education requirement, as long as they satisfy other specified requirements, they shall be exempt from the continuing education requirements of subdivision (4) of section 6704-a of the Education Law and paragraph (2) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education.

**Related Regents Items**

January 2017: Proposed Amendment of Section 62.8 of the Regulations of the Commissioner of Education Relating to the Continuing Education Requirements for Veterinarians and Veterinary Technicians.

April 2017: Proposed Amendment of Section 62.8 of the Regulations of the Commissioner of Education Relating to the Continuing Education Requirements for Veterinarians and Veterinary Technicians.

June 2017: Proposed Amendment of Section 62.8 of the Regulations of the Commissioner of Education Relating to the Continuing Education Requirements for Veterinarians and Veterinary Technicians.

July 2017: Proposed Amendment of Section 62.8 of the Regulations of the Commissioner of Education Relating to the Continuing Education Requirements for Veterinarians and Veterinary Technicians.

**Recommendation**

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

VOTED: That paragraph (3) of subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education, paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education, and subdivision (g) of section 62.8 of the Regulations of the Commissioner of Education be amended, and paragraph (4) of subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education be added, as submitted, effective September 27, 2017.

**Timetable for Implementation**

If adopted at the September Regents meeting, the revised proposed rule will become effective on September 27, 2017.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, and 6704-a of the Education Law and Chapter 398 of the Laws of 2016

1. Paragraph (3) of subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education is amended, as follows:

(3) Self-instructional coursework means structured study, provided by a sponsor approved pursuant to subdivision (i) of this section, that is based on audio, audio-visual, written, on-line, and/or other media, and does not include live instruction, transmitted in person or otherwise, during which the student may communicate and interact with the instructor and other students and may include free spaying and neutering and other veterinary services in conjunction with a municipality, duly incorporated not-for-profit society for the prevention of cruelty to animals, duly incorporated humane society, or duly incorporated animal protection association or persons who would otherwise be eligible under paragraph (a) of subdivision three of section one hundred seventeen-a of the agriculture and markets law, provided that such services be administered at practices, facilities and properties that are appropriately equipped and staffed to provide such services.

2. Paragraph (4) of subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education is added, as follows:

(4) Other veterinary services means follow-up service(s) for any post-operative complications related to any free spaying or neutering surgery, as defined in paragraph (3) of this subdivision, that arise within twenty-four hours of performing any such surgery.

3. Paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education is amended, as follows:

(1) General Requirement.

(i) During each three-year registration period, meaning a registration period of a three years' duration, an applicant for registration as a veterinarian shall complete at least 45 hours of continuing education, acceptable to the department, as defined in paragraph (2) of this subdivision, a maximum of 22 1/2 hours of which may be self-instructional coursework acceptable by the department.

(a) For an applicant for registration as a veterinarian, the department may offset up to three hours of the requisite number of hours of continuing education required, pursuant to subdivision (2) of section 6704-a of the education law, by the number of free spaying and neutering services rendered by such an applicant, at a rate of one-half of one hour of continuing education for each hour of free spaying and neutering services, provided that such services satisfy the requirements of subparagraph (i) of paragraph (a) of subdivision (2) of section 6704-a of the Education Law, that the veterinarian shall be required to provide follow-up service for any post-operative complications related to the surgery that arise within twenty-four hours of performing the surgery, and shall also be required to complete the core requirements established by the department. Although any such hours shall be considered part of the maximum of 22 1/2 hours of self-instructional coursework, which an applicant may complete, per each three-year registration period, to satisfy the 45 hours of continuing education requirement, they shall be exempt from the requirements of subdivision (4) of section 6704-a of the education law and paragraph (2) of this subdivision. Such veterinarians are otherwise required to complete the core requirements for veterinary continuing education

established by the department as described in subparagraph (i) of paragraph (1) of this subdivision.

(ii) During each three-year registration period, meaning a registration period of three years' duration, an applicant for registration as a veterinary technician shall complete 24 hours of continuing education, acceptable to the department, as defined in paragraph (2) of this subdivision, a maximum of 12 hours of which may be self-instructional coursework acceptable to the department. [Any licensed veterinarian or veterinary technician whose first registration date following January 1, 2011 occurs less than three years from that date, but on or after January 1, 2012, shall complete continuing education hours on a prorated basis at the rate of 1 1/4 hours per month, in the case of a veterinarian, and 40 minutes per month, in the case of a veterinary technician, for the period beginning January 1, 2012 up to the first registration date thereafter. Such continuing education shall be completed during the period beginning January 1, 2010 and ending before the first day of the new registration period.]

~~[(ii)]~~(iii) During each triennial registration period, at least two hours of the required continuing education credits shall focus on the use, misuse, documentation, safeguarding and prescribing of controlled substances.

~~[(iii)]~~(iv) Proration. Unless otherwise prescribed in this section, during each registration period of less than three years' duration, an applicant for registration shall complete acceptable continuing education, as defined in paragraph (2) of this subdivision and within the limits prescribed in such paragraph, on a prorated basis at a rate of 1 1/4 hours in the case of a veterinarian and 40 minutes per month in the case of a veterinary technician.



4. Subdivision (g) of section 62.8 of the Regulations of the Commissioner of Education is amended, as follows:

(g) Licensee records.

(1) Each licensee subject to the requirements of this section shall maintain, or ensure access by the department to, a record of completed continuing education, which includes: the title of the course if a course, the type of educational activity if other than a course of learning, the subject of the continuing education course or activity, the number of hours of continuing education completed, the sponsor's name and any identifying number (if applicable), attendance verification if a course, verification of participation if another educational activity, and the date and location of the continuing education. Such records shall be retained for at least six years from the date of completion of the continuing education and shall be made available for review by the department in the administration of the requirements of this section. A sponsor's failure to satisfy its obligations under subdivision (i) of this section shall not relieve a licensee of his or her obligation to provide evidence of participation in a continuing education activity for which credit is claimed.

(2) Each applicant for registration as a veterinarian seeking to offset up to three hours of the required number of hours of continuing education, pursuant to subdivision (2) of section 6704-a of the education law, by the number of free spaying and neutering services rendered by such an applicant, shall maintain, on a form prescribed by the department, and ensure access by the department to, a record of all the free spaying and neutering services provided by the applicant, as well as any follow-up services for any post-operative complications related to any free spaying or neutering surgery, as defined in paragraph (3) of subdivision (a) of this section, that arise within twenty-four

hours of performing any such surgery. Such records shall be retained for at least six years from the date of completion of the continuing education and shall be made available for review by the department in the administration of the requirements of this section.

## 8 NYCRR §62.8

### ASSESSMENT OF PUBLIC COMMENT

Since the publication of a Notice of Emergency Adoption and Revised Rule Making was published in the State Register on June 28, 2017, the State Education Department received the following comment:

#### 1. COMMENT:

An association of veterinarians stated that, although paragraph (4) of subdivision (a) of the revised proposed regulations does provide some guidance regarding the “other veterinary services” mentioned in paragraph (3), in comments previously submitted by the association, there was concern expressed regarding the ambiguity of that phrase despite the definition provided in the proposed regulation. The association of veterinarians further states that the Department’s response to its previous comment indicates a willingness to provide further guidance should clarification become necessary, which the association of veterinarians welcomes, but it would like to offer additional comments on that point. The association of veterinarians feels that “other veterinary services” should be defined not just as follow-up services for post-operative complications, but as any services rendered in relation to the procedure within the 24-hour period surrounding the spaying or neutering. The association of veterinarians maintains that this would include treatment and services provided such as a pre-operative physical examination, peri- and post-operative examinations, and any assessment

attendant to the procedure. The association of veterinarians states that services provided for any post-operative complications should certainly be part of the definition, but it feels that some of the aforementioned services should be captured in the definition as well, to ensure that licensed veterinarians are providing a full and appropriate range of care to the animals being spayed or neutered.

The association of veterinarians feels that, in addition to guaranteeing the appropriate scope of care, further articulating the services to be included in “other veterinary services” will provide licensed veterinarians clearer guidance on calculating the time allowed for providing these services. In addition, the association of veterinarians maintains that veterinarians performing a free spay or neuter and logging it as continuing education should include not just the time for the surgery, but all of the time they devote to a surgical case. It also states that, in the past, failure to provide adequate services to a patient has resulted in disciplinary action against licensed veterinarians in New York State; additional expression of the services to be provided would be a step toward avoiding that type of oversight.

#### DEPARTMENT RESPONSE:

As the Department stated, in its response to the association of veterinarians’ previous comments on this issue, the Department will take its suggestion, regarding possibly enumerating which “types of services” would constitute “other veterinary services” for continuing education purposes, under consideration and it may issue guidance regarding these types of services if the Department determines that such clarification is necessary in the future. Thus, no changes to the revised proposed rule are necessary at this time.

Additionally, it should be noted that some of the association of veterinarians' suggestions as to what types of services should be included in the "other veterinary services" appear to be beyond the scope of the statutory authority. Pursuant to Education Law §6704-a(2)(a)(ii), veterinarians, if they want to offset a portion of their required triennial continuing education requirements by providing free spaying and/or neutering services, are "required to provide follow-up service for any post-operative complications related to the surgery that arise within twenty-four hours of performing the surgery. . . ." These follow up services constitute "other veterinary services" for purposes of the revised proposed rule and the association of veterinarians' suggestion that the "other veterinary services" definition include pre-, peri, and post-operative examinations and any assessments, appears to be beyond the scope of the aforementioned statutory authority.