



TO: The Professional Practice Committee
FROM: Douglas E. Lentivech

SUBJECT: Proposed Amendment to Section 29.14 of the Rules of the Board of Regents and Section 64.5 of the Regulations of the Commissioner of Education Relating to the Regulation of Nurse Practitioner Practice

DATE: December 8, 2014

AUTHORIZATION(S):



SUMMARY

Issue for Decision

Should the Board of Regents approve the addition of paragraph (3) to subdivision (a) of section 29.14 of the Rules of the Board of Regents and the addition of subdivision (g) to section 64.5 of the Regulations of the Commissioner of Education to implement Part D of Chapter 56 of the Laws of 2014 relating to the regulation of nurse practitioner practice?

Reason for Consideration

Required by State statute (Education Law section 6902[3]), as added by Part D of Chapter 56 of the Laws of 2014).

Proposed Handling

The proposed rule will be presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as a permanent rule at the December 2014 meeting of the Board of Regents. A copy of the proposed rule is attached. Supporting materials for the proposed rule are available upon request from the Secretary of the Board of Regents.

Procedural History

The proposed rule was discussed by the Professional Practice Committee at the September 2014 Board of Regents meeting. A Notice of Proposed Rule Making was published in the State Register on September 10, 2014 for a 45-day public comment period. An Assessment of Public Comment is attached.

Background Information

New York State budget legislation, enacted in 2014, included amendments to the Education Law known as the Nurse Practitioners Modernization Act (L. 2014, c. 56, Part D). The purpose of this law, which will become effective January 1, 2015, is to increase access to needed health care services in New York State, while protecting the public, by amending the Education Law to establish criteria for authorizing qualified nurse practitioners to practice, pursuant to collaborative relationships with one or more licensed physicians or a hospital licensed under Article 28 of the Public Health Law (Article 28 hospital), in lieu of practicing in collaboration with a physician in accordance with a written practice agreement and written practice protocols. This law also amends the Education Law to establish record keeping and documentation requirements for nurse practitioners practicing pursuant to collaborative relationships and establishes specific unprofessional conduct provisions for all nurse practitioners.

The proposed addition of paragraph (3) to subdivision (a) of section 29.14 of the Rules of the Board of Regents establishes that unprofessional conduct in the practice of nursing includes the failure by a nurse practitioner to comply with either the requirements relating to collaboration with a physician as set forth in Education Law §6902(3)(a) or the collaborative relationships requirements of Education Law §6902(3)(b).

The proposed addition of subdivision (g) to section 64.5 of the Regulations of the Commissioner of Education establishes the criteria for authorizing nurse practitioners to practice, pursuant to collaborative relationships with one or more licensed physicians or an Article 28 hospital, in lieu of practicing in collaboration with a physician under a written practice agreement and written practice protocols. Nurse practitioners seeking to practice, pursuant to collaborative relationships, must have more than 3,600 hours of experience practicing as a licensed or certified nurse practitioner which the proposed rule specifies as practice pursuant to the laws of New York State or any other state or as a nurse practitioner while employed by the United States Veteran Association, the United States Armed Forces or the United States Public Health Services. Such nurse practitioners must also communicate, in person, by telephone, or through written means including electronically, with a physician who is qualified to collaborate in the specialty involved, or in the case of an Article 28 hospital, nurse practitioners must communicate with a physician qualified to collaborate in the specialty involved and who has privileges at such hospital, for the purposes of exchanging information, as needed, in order to provide comprehensive patient care and to make referrals, as necessary.

The proposed addition of subdivision (g) to section 64.5 of the Regulations of the Commissioner of Education also establishes several record keeping and documentation requirements for nurse practitioners practicing pursuant to collaborative relationships.

Such nurse practitioners must complete and maintain a form, prescribed by the Department, to which they must attest, that describes their current collaborative relationships. Nurse practitioners must also acknowledge on this form that, if reasonable efforts to resolve any disputes that may arise about a patient's care are not successful, the recommendation of the collaborating physician, or in the case of a collaboration with an Article 28 hospital, the recommendation of the physician qualified to collaborate in the specialty involved and having professional privileges at such hospital, must prevail. This form must be updated as needed and may be subject to review by the Department, upon its request.

In addition to above-referenced form, nurse practitioners must retain documentation in written or electronic form that supports their collaborative relationships.

Finally, since publication of the proposed rule in the State Register, non-substantial revisions were made as follows:

In sections 64.5(g)(1)(i) and 64.5(g)(2)(ii), the term "specialty area involved" was replaced with the term "specialty involved" because the term "specialty involved" is the term used in the statute. These changes were made for the purposes of clarifying the text of the proposed regulation and conforming it to the statute.

Recommendation

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

VOTED: That subdivision (a) of section 29.14 of the Rules of the Board of Regents is amended, and subdivision (g) of section 64.5 of the Regulations of the Commissioner of Education is added, as submitted, effective January 1, 2015.

Timetable for Implementation

If adopted at the December 2014 Regents meeting, the proposed rule will take effect on January 1, 2015, which is the effective date of Part D of Chapter 56 of the Laws of 2014.

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS AND THE
REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 6509 and 6902 of the Education Law and Part D of Chapter 56 of the Laws of 2014

1. Subdivision (a) of section 29.14 of the Rules of the Board of Regents is amended, effective January 1, 2015, to read as follows:

(a) Unprofessional conduct in the practice of nursing shall include all conduct prohibited by sections 29.1 and 29.2 of this Part, except as provided in this section, and shall also include the following:

(1) ...

(2) ...

(3) Failure by a nurse practitioner to comply with either the requirements relating to collaboration with a physician of paragraph (a) of subdivision (3) of section 6902 of the Education Law or the collaborative relationships requirements of paragraph (b) of subdivision (3) of section 6902 of the Education Law.

2. Subdivision (g) of section 64.5 of the Regulations of the Commissioner of Education is added, effective January 1, 2015, to read as follows:

(g) Collaborative relationships.

(1) Definitions. As used in this subdivision:

(i) Collaborative relationships shall mean that a nurse practitioner communicates, in person, by telephone, or through written means including electronically, with a physician who is qualified to collaborate in the specialty involved, or in the case of a hospital, the nurse practitioner communicates with a physician qualified to collaborate in the specialty involved and who has privileges at such hospital, for the purposes of

exchanging information, as needed, in order to provide comprehensive patient care and to make referrals, as necessary.

(ii) Physician shall mean a New York State licensed and registered physician.

(iii) Hospital shall mean a hospital as defined by Public Health Law section 2801(1).

(2) Notwithstanding any provision in this section to the contrary and insofar as authorized by Education Law section 6902(3)(b), in lieu of complying with the requirements relating to collaboration with a physician, collaborative practice agreements and practice protocols as set forth in subdivisions (a), (b), (c), (d) and (e) of this section, a nurse practitioner may have collaborative relationships, with one or more physicians or a hospital, as such terms are defined in paragraph (1) of this subdivision, provided that the following criteria are met:

(i) The nurse practitioner shall have more than three thousand six hundred hours of experience practicing as a licensed or certified nurse practitioner pursuant to the laws of New York or any other state or as a nurse practitioner while employed by the United States Veterans Administration, the United States Armed Forces or the United States Public Health Service.

(ii) The nurse practitioner shall complete and maintain a form, prescribed by the department, to which the nurse practitioner shall attest, that describes the nurse practitioner's current collaborative relationships. The nurse practitioner shall also acknowledge on the form that if reasonable efforts to resolve any dispute that may arise with the collaborating physician, or, in the case of a collaboration with a hospital, with a physician qualified to collaborate in the specialty involved and having professional privileges at such hospital, about a patient's care are not successful, the

recommendation of the physician shall prevail. The form shall be updated as needed and may be subject to review by the department, upon its request.

(iii) In addition to the form required by subparagraph (ii) of this paragraph, the nurse practitioner shall maintain documentation in written or electronic form that supports his or her collaborative relationships.

8 NYCRR §§29.14 and 64.5

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the September 10, 2014 State Register, the Department received the following comments:

1. COMMENT:

A nursing organization expressed support for the proposed regulations and commended the Department's diligent efforts to date. The commenter noted the history, education and training of nurse practitioners, as well as prior legislation that established scope of practice for nurse practitioners. The commenter further stated that over the years, it has become clear that a signed written practice agreement was an impediment to a nurse practitioner's ability to practice.

The commenter stated that the proposed regulations clearly define "collaborative relationships" in a manner that is consistent with the new law and appropriately clarify which nurse practitioners are eligible to practice pursuant to a collaborative relationship in lieu of practicing in collaboration with a physician pursuant to a written practice agreement and written practice protocols. The commenter also stated that the proposed regulations provide additional detail about what documentation a nurse practitioner must maintain as evidence of compliance with the new collaborative relationship standard and restates that failure to comply with either this new standard or with the standard of practicing in collaboration with a physician pursuant to a written practice agreement and written practice protocols, constitutes professional misconduct.

The commenter stated that the proposed regulations aptly reference the statutory requirement that a nurse practitioner "complete and maintain a form, created by the department, that describes . . . current collaborative relationships," and addresses

issues pertaining to dispute resolution. The commenter further stated that it looks forward to continuing to work with the Department to develop the form.

DEPARTMENT RESPONSE:

The Department appreciates the support as it works to both protect the public and provide greater access to health care for New Yorkers.

2. COMMENT:

Another nursing organization expressed support for the proposed regulations because it supports the principle of amending the collaborative agreement regulations to ensure access to care for New Yorkers and the proposed regulations are consistent with statute.

The commenter also noted the history, education, and experience of nurse practitioners.

The commenter further stated that, although it would prefer an earlier working draft of the regulations because it believes that they provided greater clarity, it acknowledged that the revision to allow attestation of an agreement with a physician/physicians or health care agency by the “experienced” nurse practitioner is a more practical approach.

DEPARTMENT RESPONSE:

The Department appreciates the support as it works to both protect the public and provide greater access to health care for New Yorkers.

3. COMMENT:

One commenter, on behalf of several medical organizations, objected to language that would permit a nurse practitioner to have collaborative relationships with one or more physicians who are qualified to collaborate in the “specialty area involved”. The commenter noted that Education Law §6902(3)(b) requires a nurse practitioner to

have collaborative relationships with one or more physicians qualified to collaborate in the “specialty involved.” The commenter claimed that collaboration in the “specialty area involved” in the proposed regulations is much broader than collaboration in the “specialty involved” in statute. The commenter further stated that: (1) a nurse practitioner practicing family medicine or a community health nurse practitioner should not be permitted to collaborate with a gastroenterologist; (2) an acute care nurse practitioner should not be allowed to collaborate with an anesthesiologist; and (3) a psychiatric nurse practitioner should not be allowed to collaborate with a non-psychiatrist.

DEPARTMENT RESPONSE:

The Department disagrees with the commenter’s interpretation of Education Law §6902(3)(b) and the proposed regulation as it would prohibit a nurse practitioner from collaborating with physicians who practice outside of the specialty area of practice of the nurse practitioner, which would undermine the nurse practitioner’s ability to provide well-coordinated quality health care. However, since publication of the proposed rule, non-substantial revisions were made as follows:

In sections 64.5(g)(1)(i) and 64.5(g)(2)(ii), the term “specialty area involved” was replaced with the term “specialty involved” because the term “specialty involved” is the term used in the statute.

These changes were made to clarify the proposed regulation and conform it to statute. These nonsubstantial changes will have no impact on the Department’s interpretation of statute or regulation.

4. COMMENT:

One commenter, on behalf of several medical organizations, indicated that the definition of “collaborative relationship” in Education Law §6902(3)(b), needs extensive

clarification in the proposed regulations. The commenter stated that greater specificity is needed as to what is meant by “exchanging information” and “to provide comprehensive patient care.”

DEPARTMENT RESPONSE:

Education Law §6902(3)(b) defines “collaborative relationships” as when a nurse practitioner communicates with a physician qualified to collaborate in the specialty involved for the purpose of exchanging information to provide comprehensive patient care and to make referrals, as necessary. The proposed regulatory language is identical to the statute except that it states that physicians must be “qualified to collaborate in the specialty area involved”. The Department believes that the proposed definition as either originally drafted or revised to remove references to the word “area” is sufficiently clear and references to “exchanging information” and “comprehensive patient care” are not vague. However, since publication of the proposed rule, non-substantial revisions were made to replace “specialty area involved” with “specialty involved” because “specialty involved” is used in statute. These nonsubstantial changes were made for the purposes of clarifying the proposed regulation and conforming it to statute.

The Department disagrees with the commenter’s position that greater specificity is needed as to what is meant by “exchanging information” and “to provide comprehensive patient care”, as those terms are used in the statutory definition of “collaborative relationship.” Therefore, no changes are necessary. However, the commenter’s suggestions are noted and may be addressed in future guidance.

5. COMMENT:

One commenter, on behalf of several medical organizations, claimed that the proposed regulation would allow a nurse practitioner from any other state or a nurse

practitioner employed by the U.S. Veterans Administration, U.S. Armed Forces or U.S. Public Health Service to practice in a collaborative relationship with a physician without a written practice agreement. The commenter stated that Education Law §6902(3)(b) requires nurse practitioners to be certified under Education Law §6910 and have practiced for more than 3,600 hours (as a nurse practitioner certified in New York State). The commenter recommended deleting references to other states, the U.S. Veterans Administration, U.S. Armed Forces and U.S. Public Health Service to make the proposed regulations consistent with the implementing statute.

DEPARTMENT RESPONSE:

Education Law §6902(3)(b) will allow a New York State certified nurse practitioner who has been “practicing for more than three thousand six hundred hours” to practice and have collaborative relationships in lieu of practicing pursuant to a written practice agreement with a collaborating physician (if the nurse practitioner meets additional criteria in statute). To implement this statutory provision, the proposed regulations would allow a New York State certified nurse practitioner to meet the 3,600 hour experience requirement by practicing as a licensed or certified nurse practitioner pursuant to the laws of New York or another state or practicing as a nurse practitioner while employed by the U.S. Veterans Administration, U.S. Armed Forces or U.S. Public Health Service. The Department disagrees with the commenter’s interpretation of the law and the proposed regulations. The proposed regulations would not allow nurse practitioners to practice in New York State unless they are New York State certified nurse practitioners. The Department believes that it is a reasonable interpretation of the implementing statute to allow a New York State certified nurse practitioner to meet the 3,600 hour experience requirement by practicing as a licensed or certified nurse practitioner pursuant to the laws of New York or another state or practicing as a nurse

practitioner while employed by the U.S. Veterans Administration, U.S. Armed Forces or U.S. Public Health Service. Furthermore, the proposed regulations are consistent with New York's policy of not imposing barriers to professional practice in New York by members of the U.S. Armed Forces, their families or veterans.

6. COMMENT:

One commenter, on behalf of several medical organizations, noted that while Education Law §6902(3)(b) requires nurse practitioners to “complete and maintain a form, created by the department ... that describes [their] collaborative relationships,” the proposed regulation fails to illuminate as to what information should be included on the form. The commenter urged the addition of relevant details to help describe a collaborative relationship. The commenter also urged the addition of a provision that would require nurse practitioners to update the form relating to collaborative relationships “with each nurse practitioner re-registration”.

DEPARTMENT RESPONSE:

The Department prefers to have flexibility in the future to revise the form without having to amend regulations. The Department also believes that it is unnecessary to include content requirements for the form in regulation beyond what is explicitly required by statute. However, the commenter's suggestions about what types of information should be included in the form are noted and will be considered as the Department develops the form.

The statute does not explicitly authorize the Department to require a nurse practitioner to update the form when registering with the Department. The Department believes the requirement that a nurse practitioner ensure the form is up-to-date, is reasonable. Therefore, no changes are necessary.

7. COMMENT:

One commenter, on behalf of several medical organizations, recommended that the proposed regulations denote the obligations of the nurse practitioner to his or her patients when a collaborative relationship with a physician is terminated.

DEPARTMENT RESPONSE:

The Education Law and Commissioner's Regulations currently require a nurse practitioner to practice pursuant to a written practice agreement with a collaborating physician. In cases where a written practice agreement terminates, the nurse practitioner is legally required to enter into another written practice agreement with a collaborating physician to continue practicing. Current laws, regulations, and Department guidance do not explicitly impose any other specific obligations on a nurse practitioner with respect to their patients when a practice agreement terminates.

Similarly, newly enacted Education Law §6902(3)(b) does not require the Commissioner to specify the obligations imposed on a nurse practitioner, such as informing his or her patients, when a collaborative relationship with a physician is terminated. This law defines "collaborative relationships" as when a nurse practitioner communicates with a physician for the purpose of exchanging information to provide comprehensive patient care and to make referrals, as necessary. Nurse practitioners are authorized to have collaborative relationships with multiple physicians and these relationships may start and end without any disruption in the nurse practitioner's practice or any harm to patients. The Department believes that it would be impractical to impose specific obligations on nurse practitioners, such as contacting all of their patients each time a collaborative relationship with a physician terminates; moreover, it also would not have an impact on the quality of care that a nurse practitioner provides to patients. Nevertheless, the Department will take the comment under advisement and may consider issuing guidance should the need arise.

8. COMMENT:

“While the statute specifically states that the failure to comply with the requirements found in this paragraph [Education Law §6902(3)(b)] by a nurse practitioner who is not complying with such provisions of paragraph (a) of Sec. 6902 shall be subject to professional misconduct provisions set forth in article one hundred thirty of this article, the proposed regulation fails to amend 8 NYCRR Part 29.14 to add a subsection (3) making it professional misconduct for a nurse practitioner who fails to adhere to the requirements of Section 6902[(3)](b) of the Education Law subject to professional misconduct.”

DEPARTMENT RESPONSE:

The Department disagrees with this reading of the proposed regulation. The proposed addition of paragraph (3) to subdivision (a) of §29.14 of the Regents’ Rules establishes that unprofessional conduct in the practice of nursing includes the failure by a nurse practitioner to comply with either the requirements relating to collaboration with a physician in Education Law §6902(3)(a) or the collaborative relationships requirements of Education Law §6902(3)(b).