



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**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:** July 6, 2017

**AUTHORIZATION(S):**

## SUMMARY

### Issue for Decision (Consent Agenda)

Should the Board of Regents adopt as an emergency action, 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 an emergency action at the July 2017 meeting of the Board of Regents. A copy of the revised proposed rule and a Statement of Facts and Circumstances Which Necessitate Emergency Action are attached.

## **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, remains 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.

Supporting materials are available upon request from the Secretary to the Board of Regents.

## **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 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, 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.

## **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 August 12, 2017, 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 conform the Regulations of the Commissioner of Education to timely implement the requirements of Chapter 398 of the Laws of 2016, which provides that applicants for registration as veterinarians may satisfy up to three hours of their 45 hours of required triennial continuing education by providing free spaying and neutering and other veterinary services.

## **Timetable for Implementation**

The proposed amendment was initially adopted as an emergency rule at the January 2017 Regents meeting and took effect on February 2, 2017, which was the effective date the statute. The proposed rule was readopted as an emergency rule at the April 2017 Regents meeting, and revised and adopted as an emergency rule at the June 2017 Regents meeting. The June 2017 emergency rule will expire on August 11, 2017. If the Regents adopt the revised proposed amendment as an emergency rule at the July 2017 Regents meeting, it will become effective on August 12, 2017 and remain in effect for 60 days. It is anticipated that the revised proposed rule will be presented for permanent adoption at the September 2017 Regents meeting after expiration of the 30-day public comment period required under the State Administrative Procedure Act, and take effect 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

### STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement Chapter 398 of the Laws of 2016, which amends subdivision (2) of section 6704-a of the Education Law, and took effect on February 2, 2017. 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 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 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 the surgery that arise within twenty-four hours of performing the surgery, and shall also be required to complete the core triennial continuing education requirements established by the Department.

Chapter 398 encourages continuing education that also benefits the communities the veterinarians serve by allowing veterinarians to use the triennial registration period 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.

The proposed amendment was adopted as an emergency action at the January 9-10, 2017 Regents meeting and became effective on February 2, 2017. Since the publication of a Notice of Proposed Rule Making in the State Register on January 25, 2017 and a Notice of Emergency Adoption on February 15, 2017, the Department received multiple comments from one commenter and subsequently determined that it needed additional time to review this public comment to determine whether additional amendments were needed before the final adoption of a permanent rule. Therefore, at the April 3-4, 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. After publication in the State Register of the second Notice of Emergency Adoption on May 17, 2017, the proposed rule was revised in response to public comment and to clarify certain requirements. Thereafter, at the June 12-13, 2017 Regents meeting, the second emergency action was repealed effective June 13, 2017, and the revised proposed

amendment was adopted on an emergency basis (third emergency), 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 and Revised Rule Making was published in the State Register on June 28, 2017 for an additional 30-day public comment period.

Because the Board of Regents meets at fixed intervals, the earliest the revised proposed amendment can be presented for adoption, after expiration of the required 30-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(4-a), would be the September 11-12, 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the revised proposed amendment, if adopted at the September meeting would be September 27, 2017, the date a Notice of Adoption would be published in the State Register. However, the June 2017 emergency rule will expire on August 11, 2017.

Therefore, a fourth emergency action is necessary at the July 2017 Regents meeting for the preservation of the public health and general welfare in order to enable the State Education Department to immediately establish the requirements to implement Chapter 398 of the Laws of 2016, so that applicants for registration as veterinarians have the ability satisfy up to three hours of their required triennial 45 hours of continuing education, as long as it meets specified statutory requirements, by providing free spaying and neutering services and other veterinary services, which will encourage such applicants to consider participating in continuing education that also benefits the communities the veterinarians serve by allowing veterinarians to use the triennial registration period 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.

It is anticipated that the revised proposed rule will be presented for adoption as a permanent rule at the September 11-12, 2017 meeting of the Board of Regents, which is the first scheduled meeting after publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register and expiration of the 30-day public comment period as required by State Administrative Procedure Act section 202(4-a).