



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

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

**SUBJECT:** Proposed Amendment to Section 64.1 of the Regulations of the Commissioner of Education Relating to the Professional Study of Nursing

**DATE:** July 2, 2020

**AUTHORIZATION(S):** *[Signature]* *Sharon L. Tabor*

## SUMMARY

### **Issue for Decision (Consent)**

Should the Board of Regents adopt, as a second emergency action, the proposed amendment to section 64.1 of the Regulations of the Commissioner of Education relating to the professional study of nursing?

### **Reason for Consideration**

Required by State statute (Chapter 502 of the Laws of 2017 and Chapter 380 of the Laws of 2018).

### **Proposed Handling**

The proposed amendment will be presented to the Full Board for adoption as an emergency rule at the July 2020 meeting of the Board of Regents. A copy of the proposed rule and a statement of facts and circumstances justifying the 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 action at the June 2020 meeting of the Board of Regents, effective June 18, 2020. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on

June 24, 2020. Because the June emergency action will expire on September 6, 2020, a second emergency action is necessary to ensure that the emergency rule remains continuously in effect until it can be permanently adopted at the September 2020 Regents meeting and take effect as a permanent rule. Supporting materials are available upon request from the Secretary to the Board of Regents.

### **Background Information**

Chapter 502 of the Laws of 2017 (Chapter 502), also referred to as New York's "BS in 10 Law," amended Education Law §6905 to require registered professional nurses to attain a baccalaureate or higher degree in nursing within ten years of being issued a New York license, in order to register to practice nursing in New York beyond the ten years, effective June 18, 2019. This law was amended by Chapter 380 of the Laws of 2018, which, inter alia, extended the effective date of certain provisions in Chapter 502 until June 18, 2020.

New York's BS in 10 Law exempts certain registered professional nurses from the requirement of attaining a baccalaureate or higher degree in nursing within ten years of being issued a New York license, including: (1) individuals who were issued a license as a registered professional nurse in New York, another state or United States (US) Territory on or before December 18, 2017; (2) any unlicensed graduate professional nurse who was eligible to take the National Council Licensure Examination in New York, another state or US Territory on or before December 18, 2017; (3) any student who entered a baccalaureate or higher degree program preparing registered professional nurses on or before June 18, 2020; (4) any student who entered a program preparing registered professional nurses on or before December 18, 2017; and (5) any student who had an application pending in a program preparing registered professional nurses on or before December 18, 2017.

New York's "BS in 10 Law" allows registered professional nurses who are subject to the baccalaureate or higher degree requirement to apply for a "conditional registration" or "temporary exemption" if they need additional time (beyond the ten years) to complete a baccalaureate or higher degree in nursing. The law authorizes the State Education Department to issue such "conditional registrations" and "temporary exemptions" to allow these registered professional nurses to practice temporarily, while they complete the degree requirement. The law also states that any registered professional nurse who is notified of the denial of a registration for failure to complete the degree requirement and continues to practice may be subject to disciplinary action.

According to the sponsor's memorandum, the purpose of New York's "BS in 10 Law" is to improve registered professional nurse practice in an increasingly complex healthcare system by requiring additional education for licensure. The law is grounded in evidence demonstrating better outcomes when patients receive care from registered professional nurses with baccalaureate degrees or higher in nursing. In addition, the National Advisory Council on Nursing Education and Practice, policy advisors to Congress and the U.S. Secretary of Health and Education, recommended in 2003, that by 2010, two-thirds of nurses should hold a baccalaureate or higher degree. This position was based on their analysis of evolving needs associated with patient care and public

protection. Shorter lengths of stays, higher patient acuity, and more sophisticated technologies and procedures are increasing the complexity of patient care, which in turn places greater demands on nursing competencies. The New York State Board for Nursing, recognizing the evolving needs associated with patient care had unanimously passed a motion in December 2003, recommending that statutory change be sought requiring future licensed registered professional nurses to attain a baccalaureate degree in nursing ten years after initial licensure in order to continue to practice in New York.

The Department proposes to amend section 64.1 of the Commissioner's Regulations to implement New York's "BS in 10 Law". Additionally, the proposed amendment prescribes which baccalaureate or higher degrees are acceptable to the department for satisfying the requirement that registered professional nurses attain a baccalaureate or higher degree in nursing within ten years of licensure in order to continue to practice in New York State and further clarifies the requirements for exemptions and conditional registrations, including the necessity to provide corroborating documentation so the department can accurately ascertain an individual's eligibility for such exemptions and conditional registrations.

### **Related Regent's Items**

June 2020: [Proposed Amendment to Section 64.1 of the Regulations of the Commissioner of Education Relating to the Professional Study of Nursing](https://www.regents.nysed.gov/common/regents/files/620bra6.pdf) (https://www.regents.nysed.gov/common/regents/files/620bra6.pdf)

### **Recommendation**

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

VOTED: That section 64.1 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 7, 2020, 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 immediately conform the Regulations of the Commissioner of Education to the requirements of Chapter 502 of the Laws of 2017 and Chapter 380 of the Laws of 2018, which require licensed registered professional nurses to obtain a baccalaureate degree in nursing ten years after initial licensure in order to continue to practice in New York State unless otherwise exempted and to ensure that the emergency action taken at the June meeting remains in effect until the proposed rule can be permanently adopted.

### **Timetable for Implementation**

If adopted as the July 2020 Regents meeting, the emergency rule will become effective September 7, 2020. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the September 2020 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act.

**Attachment A**

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6506, 6507, 6905 of the Education Law, Chapter 502 of the Laws of 2017 and Chapter 380 of the Laws of 2018.

Section 64.1 of the Regulations of the Commissioner of Education is amended to read as follows:

§64.1 Professional study of nursing.

(a) Registered professional nursing. To meet the professional education requirement for licensure, the applicant shall have graduated from:

(1) ...

(2) ...

(3) ...

(b) Licensed practical nursing. To meet the education requirements for licensure, the applicant shall have graduated from high school or its equivalent, and shall have:

1. ...

2. ...

3. ....

4. ...

(c) Baccalaureate or higher degree requirement for registered professional nurses.

(1) In order to maintain registration as a registered professional nurse in New York State, a registered professional nurse shall attain a baccalaureate or higher degree in nursing within ten years after being issued a registered professional nurse license by the department in accordance with this subdivision. A baccalaureate or higher degree in

nursing is an academic degree in the principles of nursing practice, nursing science, nursing education, nursing administration or nursing leadership, issued by a college or university that is registered by the department or accredited by an accreditation organization acceptable to the department, which may include, but is not limited to:

(i) a Bachelor of Science Degree (BS) with a major in Nursing;

(ii) a Bachelor of Nursing (BN) Degree;

(iii) a Bachelor of Science in Nursing Degree (BSN BScN);

(iv) a Master of Science in Nursing (MSN) Degree;

(v) a Master's Degree in Nursing;

(vi) a Doctor of Nursing Practice Degree (DNP);

(vii) a Doctor of Philosophy Degree (PhD) in Nursing; and

(viii) a Doctor of Nursing Science Degree (DNS, DSN, DNSc).

(2) The following registered professional nurses are exempt from the requirement to attain a baccalaureate or higher degree in nursing within ten years after being issued a registered professional nurse license by the department as set forth in this subdivision:

(i) any individual who was issued an unrestricted license as a registered professional nurse in New York State, another state or United States Territory on or before December 18, 2017;

(ii) any unlicensed graduate professional nurse who was eligible and applied to take the National Council Licensure Examination in New York State, another state or United States Territory on or before December 18, 2017, provided such unlicensed graduate professional nurse has submitted documentation acceptable to the department demonstrating eligibility to take the National Council Licensure Examination on or before such date;

(iii) any student who entered a baccalaureate or higher degree program registered by the department preparing registered professional nurses on or before June 18, 2020, provided such student was enrolled in such program on a continuous basis until completion of such program;

(iv) any student who entered a program preparing registered professional nurses registered by the department on or before December 18, 2017, provided such student was enrolled in such program on a continuous basis until completion of such program;  
and

(v) any student who had an application pending in a program preparing registered professional nurses registered by the department on or before December 18, 2017, provided such student can submit corroborating documentation acceptable to the department, which shall be certified by the higher education institution or institutions at issue, that demonstrates that the student had an application pending with such registered program or programs.

(3) (i) Conditional registration. The department, in its discretion, may issue a conditional registration to a registered professional nurse who fails to complete a baccalaureate or higher degree in nursing as set forth in this subdivision, but who agrees to meet such requirement within one year. The fee for such a conditional registration shall be the same as, and in addition to, the fee for the triennial registration as set forth in section 6905 of the Education Law. The duration of such conditional registration shall be for one year and may be extended, with the payment of a fee as determined by the department, for no more than one additional year. Provided, however, that the duration of such conditional registration may be extended for more than one additional year, with the payment of a fee as determined by the department, where the applicant can show

good cause acceptable to the department for the failure to meet the requirements of this subdivision.

(ii) Temporary educational exemption. The department, in its discretion, may issue a temporary educational exemption to a registered professional nurse who is unable to complete the baccalaureate or higher degree in nursing requirement set forth in this subdivision due to a lack of access to educational programs. Registered professional nurses seeking a temporary educational exemption shall provide evidence satisfactory to the department of applying on at least two occasions to a baccalaureate degree program or programs and subsequently being denied access to such program or programs on at least two occasions due to there being a limited number of seats in such program or programs. Temporary educational exemptions issued pursuant to this subdivision shall be for a single two-year period. The fee for a temporary educational exemption shall be the same as, and in addition to, the fee for the triennial registration as set forth in section 6905 of the Education Law.

(iii) Additional provisions regarding conditional registration and temporary educational exemption. A registered professional nurse shall only be eligible for either a conditional registration or a temporary educational exemption as set forth in subparagraphs (i) and (ii) of this paragraph.

(4) Any registered professional nurse who is notified of the denial of a registration for failure to complete the educational requirements set forth in this subdivision and who practices as a registered professional nurse without such registration may be subject to disciplinary proceedings pursuant to section 6510 of the Education law.

**8 NYCRR §64.1**

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

The proposed amendment to section 64.1 of the Regulations of the Commissioner of Education is necessary to implement Chapter 502 of the Laws of 2017 (Chapter 502), which amended the Education Law, effective December 18, 2017, and Chapter 380 of the Laws of 2018 (Chapter 380), effective December 7, 2018, which made technical and substantive amendments to Chapter 502. Chapter 502 requires that licensed registered professional nurses obtain a baccalaureate degree in nursing ten years after initial licensure in order to continue to practice in New York State, unless otherwise exempted. Chapter 380, inter alia, extended the date for implementation of such requirement until June 18, 2020.

The proposed amendment to section 64.1 of the Regulations of the Commissioner of Education implements Chapter 502 and Chapter 380 by adding a new subdivision ( c) requiring registered professional nurses to attain a baccalaureate or higher degree in nursing within ten years of being issued a New York State license, in order to register to practice nursing in New York State beyond the ten years and establishes which degree programs are acceptable to the department. The proposed amendment also provides for exemptions for certain categories of individuals from the requirement for registered professional nurses to attain a baccalaureate degree or higher in nursing within ten years after being issued a registered professional nurse license by the department as codified in Chapters 502 and 380. Further, the proposed amendment establishes the



requirements for the Department to issue conditional registrations and temporary exemptions to registered professional nurses who cannot meet the requirements and need additional time to complete a baccalaureate or higher degree in nursing.

The proposed amendment was presented to the Full Board for adoption as an emergency action at the June 2020 meeting of the Board of Regents, effective June 18, 2020. Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for permanent adoption, after expiration of the required 60-day comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the September 14-15, 2020 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting would be September 30, 2020, the date the Notice of Adoption would be published in the State Register. However, the June emergency rule will expire on September 6, 2020. If the rule were to lapse, it would undermine the intent of Chapter 502 and Chapter 380, which is to require that licensed registered professional nurses obtain a baccalaureate degree in nursing ten years after initial licensure in order to continue to practice in New York State unless otherwise exempted, effective June 18, 2020, and to ensure that the procedures and standards remain continuously in place to implement this requirement.

Therefore, a second emergency action is necessary at the July 2020 meeting for the preservation of the public health and general welfare in order to immediately conform the Regulations of the Commissioner of Education to Chapters 502 of the Laws of 2017 and Chapter 380 of the Laws of 2018, which require that licensed registered professional nurses obtain a baccalaureate degree in nursing ten years after initial licensure in order to continue to practice in New York State unless otherwise exempted, effective June 18,

2020, and to ensure that the procedures and standards are in place relating to such requirement. Additionally, such emergency action is necessary to ensure that the emergency action taken at the June 2020 meeting remains in effect until the proposed rule can be permanently adopted.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the September 2020 Regents meeting, which is the first scheduled meeting after the 60-day public comment period prescribed in SAPA for State agency rule makings.