



TO: The Professional Practice Committee

FROM: Douglas E. Lentivech

SUBJECT: Amendment of Section 63.9 of the Regulations of the Commissioner of Education, Relating to Administration of Vaccinations by Pharmacists

DATE: September 9, 2013

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Board of Regents amend paragraph (2) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education relating to the administration of vaccinations by pharmacists?

Reason(s) for Consideration

Required by State statute.

Proposed Handling

This matter will come before the Professional Practice Committee and the Board of Regents for action as an emergency measure at the September 2013 meeting of the Board of Regents. A Statement of Facts and Circumstances Which Necessitate Emergency Action is attached.

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on September 11, 2013. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Pharmacists licensed in New York State were first authorized to administer immunizations to prevent influenza and pneumococcal disease in December 2008. In order to administer such immunizations, a pharmacist must be certified by the Department following completion of a satisfactory training program. Since that time, nearly 9,500 registered pharmacists in New York State have received the required certification. Studies reflect improvements in the State's over-all immunization rates, with significant improvements in the rates of immunization against influenza in minority communities. In 2012, vaccinations against acute herpes zoster (shingles) were added to the types of immunizations that appropriately certified pharmacists are authorized to administer.

On July 31, 2013, the Governor signed Chapter 274 of the Laws of 2013, which authorizes pharmacists to immunize patients against meningococcal disease. Pharmacists may administer this immunization pursuant to either patient specific orders or non-patient specific orders, as they may for influenza and pneumococcal disease. The proposed amendment conforms the Commissioner's regulations to the new law by adding the meningococcal vaccination. Both the new law and the proposed amendment to the regulations become effective on October 29, 2013.

The proposed amendment also includes a technical revision to clarify that immunizations performed by certified pharmacists may be administered only to adult patients who are 18 years of age or older.

Recommendation

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

VOTED: That paragraph (2) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education be amended, as submitted, effective October 29, 2013, 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 to timely implement the requirements of Chapter 274 of the Laws of 2013, which authorizes qualified pharmacists to administer meningococcal vaccine, effective October 29, 2013.

Timetable for Implementation

If adopted at the September Regents meeting, the emergency rule would take effect on October 29, 2013, the effective date of the new law. It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at the November Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 45-day public comment period required under the State Administrative Procedure Act.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 6527, 6802 and 6909 of the Education Law, and Chapter 274 of the Laws of 2013

Paragraph (2) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education is amended, effective October 29, 2013, as follows:

(2) Authorized immunization agents. A certified pharmacist who meets the requirements of this section shall be authorized to administer to patients 18 years of age or older:

(i) immunizing agents to prevent influenza, [or] pneumococcal disease or meningococcal disease [to patients 18 years of age or older], pursuant to a patient specific order or a non-patient specific order; and

(ii) ...

8 NYCRR 63.9

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 274 of the Laws of 2013, which amended Education Law sections 6527, 6802, and 6909, to authorize pharmacists who have been certified to administer immunizations to also administer vaccinations to prevent meningococcal disease.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for adoption on a non-emergency basis, after expiration of the required 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), would be the November 18-19, 2013 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the November meeting, would be December 4, 2013, the date a Notice of Adoption would be published in the State Register. However, the provisions of Chapter 274 of the Laws of 2013 will become effective on October 29, 2013.

Emergency action is necessary for the preservation of the public health and general welfare in order to enable the State Education Department to immediately establish requirements to timely implement Chapter 274 of the Laws of 2013, so that certified pharmacists can begin to treat patients in need of this vaccination.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the November 18-19, 2013 meeting of the Board of Regents, after publication in the State Register and expiration of the 45-day public comment period on proposed rule makings required by the State Administrative Procedure Act.