



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: September 3, 2020

AUTHORIZATION(S): *[Signatures]*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt, as a permanent rule, 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 a permanent rule at the September 2020 meeting of the Board of Regents. A copy of the proposed rule is 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 was set to expire on September 6, 2020, it was necessary to adopt a second emergency action at the July 2020 regents

meeting, effective September 7, 2020, 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. Following the 60-day public comment period required under the State Administrative Procedure Act the Department received numerous comments on the proposed amendment, included as Attachment B. No changes to the proposed amendment are recommended at this time. 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>)

July 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/720brca15.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 30, 2020.

Timetable for Implementation

If adopted as the September 2020 Regents meeting, the proposed amendment will become effective September 30, 2020.

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.

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Emergency Action and Proposed Rule Making in the State Register on June 24, 2020, the State Education Department received the following comments:

1. COMMENT:

Many commenters applaud the Department's overall efforts 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 and expressed approval of the regulations as drafted to implement the statutory requirements and intent of Chapter 502 of the Laws of 2017 and Chapter 380 of the Laws of 2018.

DEPARTMENT RESPONSE:

No response is necessary, as the comments are supportive.

2. COMMENT:

Commenters expressed concerns relative to the exemption language as contained in the proposed regulations stating that the exemption requirement for "any student who had an application pending in a program preparing registered professional nurses" should be clarified and suggested that there are many points in the admissions process that occurs over time where an application could be considered to be pending and given certain record retention schedules maintained by colleges, it may be difficult for a registered nurse to prove in ten years that he or she had an application "pending" prior to the required deadline.

DEPARTMENT RESPONSE:

While the Department is sympathetic to the commenter's concerns, the rulemaking implements the specific requirements of the statute and is necessary to conform the Regulations of the Commissioner to Chapter 502 of the Laws of 2017 and Chapter 380 of the Laws of 2018. The Department will issue guidance and best practices for this initiative and anticipates updating such guidance and best practices in the future, as necessary. Thus, no revisions are necessary.

3. COMMENT:

Commenters expressed concern relative to the temporary educational exemption requirements which provides that a Registered professional nurses seeking such exemption must "provide evidence of applying to a baccalaureate degree program and subsequently being denied access to such program on at least two occasions due there being a limited number of seats" since, according to this commenter, many denial letters do not include specific information as to the reason for a denial and therefore, such a requirement is unrealistic.

DEPARTMENT RESPONSE:

While the Department is sympathetic to the commenter's concerns, the rulemaking implements the specific requirements of the statute and is necessary to conform the Regulations of the Commissioner to Chapter 502 of the Laws of 2017 and Chapter 380 of the Laws of 2018. The Department will issue guidance and best practices for this initiative and anticipates updating such guidance and best practices in the future, as necessary. Thus, no revisions are necessary.

4. COMMENT:

Commenters wrote that the New York State Archives Records Retention and Disposition Schedule CO-2 requires community colleges to retain admissions records for applicants who are accepted for 6 years after graduation or date of last attendance. Consequently, it may be difficult for a registered nurse to prove in ten years that he or she had an application “pending” on December 18, 2017.

DEPARTMENT RESPONSE:

See response to Comment #3.