



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

TO: Professional Practice Committee

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

SUBJECT: Proposed Amendment of 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: September 1, 2022

AUTHORIZATION(S): *Don McG* *Betty*

SUMMARY

Issue for Decision

Should the Board of Regents adopt the proposed amendment of 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?

Reason(s) for Consideration

Required by State statute (Education Law section 6902[3]), as amended by Part C of Chapter 57 of the Laws of 2022).

Proposed Handling

The proposed amendment will be presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency rule at the September 2022 meeting of the Board of Regents. A copy of the proposed rule and a statement of facts and circumstances justifying emergency action are attached (Attachment A).

Procedural History

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on September 28, 2022, for a 60-day comment period.

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

Background Information

The Nurse Practitioners Modernization Act (L. 2014, c. 56 Part D), effective January 1, 2015, amended 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.

The 2022 Enacted New York State Budget (L. 2022, c. 57, Part C or “Chapter 57”) effective April 1, 2022, included Education Law amendments that expand the Nurse Practitioners Modernization Act by establishing criteria for authorizing qualified nurse practitioners to practice independently. The stated purpose of these amendments is to increase access to needed health care services in New York State as New York State has faced a nursing workforce shortage since the beginning of the COVID-19 pandemic.¹

Chapter 57 amends Education Law §6902 to authorize a nurse practitioner with more than 3,600 hours of qualifying nurse practitioner experience to provide nurse practitioner services without a collaborative practice agreement with a physician or a collaborative relationship with one or more licensed physicians or an Article 28 hospital. Chapter 57 does not affect the Education Law requirement that all nurse practitioners with 3,600 or fewer hours of experience practice in collaboration with a physician qualified in the specialty involved and in accordance with a written practice agreement and written practice protocols.

Therefore, the Department proposes amendments to the Commissioner’s regulations and the Rules of the Board of Regents to implement Chapter 57. Specifically, the Department proposes to amend section 64.5 of the Commissioner’s regulations to establish the criteria for authorizing experienced nurse practitioners to practice independently. Consistent with Chapter 57, to practice independently, a nurse practitioner must have more than 3,600 hours of experience practicing as a licensed or certified nurse practitioner pursuant to the laws of New York State, or any other state, or as a nurse practitioner while employed by the United States Veterans Association, the United States Armed Forces, or the United States Public Health Services.

¹ The Governor declared a statewide disaster emergency due to health care staffing shortages in New York State, which has been in effect since September 27, 2021. Executive Orders issued by the Governor temporarily waived Education Law §6902(3), and any associated regulations, including, but not limited to, 10 NYCRR 64.5, to the extent necessary to a nurse practitioner to provide medical services appropriate to their education, training and experience, without a written practice agreement, or collaborative relationship with a physician, without civil or criminal penalty related to a lack of written practice agreement, or collaborative relationship, with a physician.

Additionally, paragraph (3) of subdivision (a) of section 29.14 of the Rules of the Board of Regents provides 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 relationship requirements of Education Law §6902(3)(b). The proposed amendment removes the language referencing the collaborative relationship requirements of Education Law §6902(3)(b), as Chapter 57 removes such requirements.

Related Regents Items

September 2014: [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](https://www.regents.nysed.gov/common/regents/files/914ppcd2.pdf)
(<https://www.regents.nysed.gov/common/regents/files/914ppcd2.pdf>)

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 and subdivision (a) of section 64.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 13, 2022 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 regulatory provisions with Part C of Chapter 57 of the Laws of 2022, which became effective April 1, 2022.

Timetable for Implementation

If adopted at the September 2022 meeting, the emergency rule will take effect on September 13, 2022. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the January 2023 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. Because the emergency action will expire before the January 2023 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the November 2022 meeting. If adopted at the January 2023 meeting, the proposed rule will become effective as a permanent rule on January 25, 2023.

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

Pursuant to sections 207, 6504, 6507, 6902, and 6910 of the Education Law and Part C of Chapter 57 of the Laws of 2022.

1. Paragraph (3) of subdivision (a) of section 29.14 of the Rules of the Board of Regents is amended to read as follows:

(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. Section 64.5 of the Regulations of the Commissioner of Education is amended to read as follows:

64.5 Nurse practitioner practice

(a) Collaborative Practice

(1) A nurse practitioner who has three thousand six hundred or fewer 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 shall practice in collaboration with a physician qualified in the specialty involved and in accordance with a written practice agreement and written practice protocols.

(2) Practice agreements and practice protocols shall be maintained in the practice setting of the nurse practitioner and collaborating physician and shall be available to the department for inspection.

[(b)] (3) Practice agreements shall include provisions for referral and consultation, coverage for emergency absences of either the nurse practitioner or collaborating physician, resolution of disagreements between the nurse practitioner and collaborating physician regarding matters of diagnosis and treatment, and the review of patient records at least every three months by the collaborating physician; and may include such other provisions as determined by the nurse practitioner and collaborating physician to be appropriate.

[(c)] (4) Protocols shall identify the area of practice to be performed by the nurse practitioner in collaboration with the physician and shall reflect accepted standards of nursing and medical practice. Protocols shall include provisions for case management, including diagnosis, treatment, and appropriate recordkeeping by the nurse practitioner; and may include such other provisions as are determined by the nurse practitioner and collaborating physician to be appropriate. Such protocols may be updated periodically.

[(d)] (5) The department in its discretion or upon request of a nurse practitioner or collaborating physician may review practice protocols for the purpose of insuring that they are in conformance with accepted medical and nursing practice and with the statutes and regulations governing the practice of medicine, nursing, and the prescribing of drugs, and may render an opinion which shall be binding upon the parties to the protocol. A practice and protocol committee designated by the Deputy Commissioner for the Professions shall review practice protocols and shall recommend

findings as to their adequacy and conformity with current accepted medical and nursing practice. If the department determines that a protocol is inadequate or contrary to current accepted medical and nursing practice it shall communicate that determination, and the reasons therefor, to the nurse practitioner to the collaborating physician in writing. The nurse practitioner and collaborating physician shall conform to accepted medical and nursing practice immediately, and shall submit a revised protocol within 30 days of receipt of the department's determination, unless an extension of time is requested and granted by the department. Continuation of practice in violation of the determination shall constitute unprofessional conduct by either or both licensees.

[(e)](6) An appeal from a determination that a practice protocol is inadequate or contrary to current accepted medical and nursing practice may be taken within 30 days after receipt of the notice of determination by a petition setting forth the reasons for the appeal, and signed by both the nurse practitioner and the collaborating physician. Such joint appeal shall be filed with the Division of Professional Licensing Services and determined by the Committee on the Professions whose determination shall be final.

[(f)](7) In addition to the requirements of section 6810 of the Education Law, prescription forms used by nurse practitioners shall be printed with the name, nurse practitioner certificate number, office address, and office telephone number of the nurse practitioner.

[(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.]

(b) Independent Practice. A nurse practitioner who has 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 shall not be required to practice in collaboration with a physician qualified in the specialty involved and in accordance with a written practice agreement and written practice protocols as set forth in subdivision (a) of this section.

[(h)](c) Orders to dispense drugs to prevent human immunodeficiency virus (HIV) infection.

(1) ...

(2) ...

(3)

8 NYCRR §§ 29.14 and 64.5

STATEMENT OF FACTS AND CIRCUMSTANCES
WHICH NECESSITATE EMERGENCY ACTION

The Nurse Practitioners Modernization Act (L. 2014, c. 56 Part D), effective January 1, 2015, amended 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.

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Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for regular (non-emergency) adoption, after expiration of the required 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) section 202(1) and (5), would be the January 2023 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the January 2023 meeting, would be January 25, 2023, the date a Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary at the September 2022 Regents meeting for preservation of the public health and general welfare in order to immediately conform regulatory provisions with Part C of Chapter 57 of the Laws of 2022, which became effective April 1, 2022

It is anticipated that the proposed amendment will be presented for permanent adoption at the January 2023 Regents meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rule making. However, since the emergency action will expire before the January 2023 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the November 2022 Regents meeting.