



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

TO: The Honorable Members of the Board of Regents

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

SUBJECT: Proposed Amendment of Section 61.17 of the Regulations of the Commissioner of Education Relating to the Use of Restricted Local Infiltration Anesthesia/Nitrous Oxide Analgesia by Dental Hygienists

DATE: September 22, 2022

AUTHORIZATION(S): *Donna A. Bellizzi*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of section 61.17 of the Commissioner's Regulations relating to the use of restricted local infiltration anesthesia/nitrous oxide analgesia by dental hygienists?

Reason for Consideration

Required by statute (Chapter 198 of the Laws of 2022).

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as a permanent rule at its October 2022 meeting. A copy of the proposed rule is included (Attachment A).

Procedural History

The proposed amendment was presented to the Professional Practice Committee for discussion and to the Full Board for adoption as an emergency rule at the June 2022 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rulemaking was published in the State Register on June 29, 2022.

Because the June emergency action was set to expire on September 11, 2022, a second emergency action was necessary at the July 2022 Regents meeting to ensure the emergency rule remained continuously in effect until it can be permanently adopted at the October 2022 Regents meeting. A Notice of Emergency Adoption was published in the State Register on July 27, 2022.

Following the 60-day public comment period required under the State Administrative Procedure Act, the Department received no comments on the proposed amendment. Therefore, an Assessment of Public Comment is not required and no changes to the proposed amendment are needed. A Notice of Adoption will be published in the State Register on October 19, 2022. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

On May 9, 2022, the Governor signed Chapter 198 of the Laws of 2022 (Chapter 198), which was effective immediately. This law amended the Education Law §6605-b to allow dental hygienists to use local infiltration and nitrous oxide anesthetic modalities to assist dentists in performing any dental service. By allowing dental hygienists, with anesthesia certification, to anesthetize patients for any dental service, access to care will be improved because this will enable dentists to work more efficiently, see more patients and reduce waiting times for patients.

In order to meet the requirements for anesthesia certification, dental hygienists receive ample education and training. Since 2003, dental hygienists, with anesthesia certificates, have been authorized to anesthetize patients undergoing dental hygiene procedures. In order to obtain restricted anesthesia certification, an applicant must be licensed and currently registered in New York State or applying concurrently for licensure. Any dental hygiene service, from scaling and root planing to teeth cleaning can be performed under local infiltration and/or nitrous oxide analgesia. These modalities are used with patients who cannot tolerate any type of scaling without anesthesia or patients who are nervous and anxious. The ability of hygienists to provide anesthetic services helps them to administer better care because patients are more comfortable.

Therefore, the Department proposes to amend section 61.17 of the Commissioner's regulations to implement Chapter 198. Specifically, paragraph (1) of subdivision (b) of such section would be amended to remove the restriction that dental hygienists can only use local infiltration anesthesia and nitrous oxide for dental hygiene procedures.

Related Regents Items

June 2022: [Proposed Amendment of Section 61.17 of the Regulations of the Commissioner of Education Relating to the Use of Restricted Local Infiltration Anesthesia/Nitrous Oxide Analgesia by Dental Hygienists](https://www.regents.nysed.gov/common/regents/files/622ppca1_revised.pdf)
(https://www.regents.nysed.gov/common/regents/files/622ppca1_revised.pdf)

Recommendation

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

VOTED: That paragraph (1) of subdivision (b) of section 61.17 of the Regulations of the Commissioner of Education be amended, as submitted, effective October 19, 2022.

Timetable for Implementation

If adopted at the October 2022 meeting, the proposed amendment will become effective on October 19, 2022.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 6605-b, 6606, 6607 of the Education Law and Chapter 198 of the Laws of 2022.

1. Paragraph (1) of subdivision (b) of section 61.17 of the Regulations of the Commissioner of Education is amended, to read, as follows:

(1) A licensed dental hygienist shall not administer or monitor nitrous oxide analgesia or local infiltration anesthesia in the practice of dental hygiene without being issued a dental hygiene restricted local infiltration anesthesia/nitrous oxide analgesia certificate in accordance with the requirements of this section, except that such administration or monitoring of nitrous oxide analgesia or local infiltration anesthesia by a licensed dental hygienist who is certified under this section must be under the personal supervision of a licensed dentist, as defined in subdivision (a) of this section[,and in conjunction with the performance of dental hygiene procedures authorized by section 6606 of the Education Law].