



TO: The Honorable Members of the Board of Regents
FROM: Sarah S. Benson *Sarah S. Benson*
SUBJECT: Proposed Amendment to the Title of Part 61 and Section 61.13 of the Regulations of the Commissioner of Education Relating to the Practice of Registered Dental Assisting
DATE: December 1, 2022
AUTHORIZATION(S): *Tom M. Bellizzi*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents amend the Title of Part 61 and section 61.13 of the Regulations of the Commissioner of Education relating to the practice of registered dental assisting?

Reason(s) for Consideration

Required by State statutes (Chapter 512 of the Laws of 2022 and Chapter 390 of the Laws of 2019).

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at the December 2022 Regents meeting. A copy of the proposed rule (Attachment A) and a statement of facts and circumstances justifying emergency action (Attachment B) are attached.

Procedural History

The proposed amendment was presented to the Professional Practice Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at the October 2022 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rulemaking was published in the State Register on October 19, 2022.

Because the October emergency action will expire on January 1, 2023, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the February 2023 Regents meeting. A Notice of Emergency Adoption will be published in the State Register on January 18, 2023. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Since at least 2007, it has been widely understood that registered dental assisting training programs should train registered dental assistants on how to place and remove temporary restorations. However, the registered dental assisting scope of practice statute was not updated to conform to this practice. Chapter 512 of the Laws of 2022 (Chapter 512), effective immediately, addressed this technical oversight by conforming Education Law §6608 to the existing education standards and training of registered dental assistants.

Therefore, the Department proposes to amend paragraph (17) of subdivision (b) of section 61.13 of the Commissioner's regulations by formally adding the placing and removing of temporary restorations to the list of supportive services that a registered dental assistant can perform. This supportive service may be conducted to assist a licensed dentist in the dentist's performance of dental services while under the direct personal supervision of the licensed dentist. The existing paragraphs (17) and (18) of subdivision (b) of section 61.13 of the Commissioner's regulations will be renumbered as paragraphs (18) and (19), respectively.

Additionally, on October 23, 2019, the Governor signed Chapter 390 (Chapter 390) of the Laws of 2019, which, effective immediately, *inter alia*, amended the Education Law by creating the new title of "registered dental assistant" and eliminating the prior protected title of "certified dental assistant." The prior title of certified dental assistant caused confusion between certification by the Department and the Dental Assisting National Board (DANB). This confusion affected dentists and the general public alike—it even led to unintentional criminal violations for individuals who used the certified dental assistant title in connection with New York State practice. Chapter 390 addressed these issues by changing the protected title of the profession to registered dental assistant and replacing all the references in Article 133 of the Education Law to the prior title of "certified dental assistant" with "registered dental assistant."

The Department also proposes to amend the Title of Part 61 to conform to Chapter 390. In 2020, the Board permanently adopted an amendment to section 29.2 of the Regents Rules and sections 52.26, 61.9, 61.11, 61.12, 61.13 and 61.14 of the Commissioner's regulations to implement Chapter 390 by changing the references, in those sections, from "certified dental assistant" and "certified dental assisting" to "registered dental assistant" and "registered dental assisting." However, due to an inadvertent oversight, the proposed amendment did not change the Title of Part 61 of the Commissioner's regulations from "Dentistry, Dental Hygiene, and Certified Dental Assisting" to "Dentistry, Dental Hygiene, and Registered Dental Assisting." Accordingly,

the Department proposes to amend the Title of Part 61 of the Commissioner's regulations to "Dentistry, Dental Hygiene, and Registered Dental Assisting."

Related Regents Items

February 2020: [Proposed Amendment to Section 29.2 of the Rules of the Board of Regents and Sections 52.26, 61.9, 61.11, 61.12, 61.13 and 61.14 of the Regulations of the Commissioner of Education Relating to the Profession of Registered Dental Assisting](https://www.regents.nysed.gov/common/regents/files/220brca7.pdf)

(<https://www.regents.nysed.gov/common/regents/files/220brca7.pdf>)

October 2022: [Proposed Amendment to the Title of Part 61 and Section 61.13 of the Regulations of the Commissioner of Education Relating to the Practice of Registered Dental Assisting](https://www.regents.nysed.gov/common/regents/files/1022ppca1revised_0.pdf)

(https://www.regents.nysed.gov/common/regents/files/1022ppca1revised_0.pdf)

Recommendation

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

VOTED: That the title of Part 61 and section 61.13 of the Regulations of the Commissioner of Education be amended, as submitted, effective January 2, 2022, as an emergency action, upon a finding of the Board of Regents that such action is necessary for the preservation of the public health and general welfare in order to timely implement the requirements of Chapter 512 of the Laws of 2022 and Chapter 390 of the Laws of 2019, which became effective August 17, 2022 and October 23, 2019, respectively, and to ensure the emergency action taken at the October 2022 meeting remains continuously in effect.

Timetable for Implementation

If adopted as an emergency rule at the December 2022 Regents meeting, the emergency rule will become effective on January 2, 2023. It is anticipated that the proposed amendment will be presented for permanent adoption at the February 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. If adopted at the February 2023 meeting, the proposed amendment will become effective as a permanent rule on March 1, 2023.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 6808 of the Education Law, Chapter 512 of the Laws of 2022 and Chapter 390 of the Laws of 2019.

1. The title of Part 61 of the Regulations of the Commissioner of Education is amended, as follows:

DENTISTRY, DENTAL HYGIENE, AND [CERTIFIED] REGISTERED DENTAL ASSISTING

2. Subdivision (b) of section 61.13 of the Regulations of the Commissioner of Education is amended, as follows:

(b) The practice of registered dental assisting shall include the following supportive services to a licensed dentist while under the direct personal supervision of the licensed dentist:

- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .
- (5) . . .
- (6) . . .
- (7) . . .
- (8) . . .
- (9) . . .
- (10) . . .
- (11) . . .

(12) . . .

(13) . . .

(14) . . .

(15) . . .

(16) . . .

(17) placing and removing temporary restorations;

(18) taking x-rays in accordance with the requirements of section 3515(4)(c) of the Public Health Law; and

[(18)] (19) other dental supportive services authorized by the licensed dentist while the registered dental assistant is under the direct personal supervision of the licensed dentist, provided that such other dental supportive services are not excluded in subdivision (c) of this section.

8 NYCRR Title of Part 61 and §61.13

STATEMENT OF FACTS AND CIRCUMSTANCES

WHICH NECESSITATE EMERGENCY ACTION

The proposed rule is necessary to implement Chapter 512 of the Laws of 2022 (Chapter 512), which became effective August 17, 2022, and Chapter 390 of the Laws of 2019 (Chapter 390), which became effective October 23, 2019. This proposed rule conforms the Commissioner's regulations to Chapter 512, which amended the Education Law, to allow registered dental assistants to place and remove temporary restorations, and Chapter 390, which amended the Education Law, by creating the new legally protected title of "registered dental assistant" and eliminating the prior protected title of "certified dental assistant."

In 2020, a proposed amendment to §29.2 of the Regents Rules and §§52.26, 61.9, 61.11, 61.12, 61.13 and 61.14 of the Commissioner's regulations was permanently adopted to implement Chapter 390 by changing the references, in those sections, from "certified dental assistant" and "certified dental assisting" to "registered dental assistant" and "registered dental assisting." However, due to an inadvertent oversight, the proposed amendment did not change the Title of Part 61 of the Commissioner's regulations from "Dentistry, Dental Hygiene, and Certified Dental Assisting" to "Dentistry, Dental Hygiene, and Registered Dental Assisting." Accordingly, the proposed rule amends the Title of Part 61 of the Commissioner's regulations to "Dentistry, Dental Hygiene, and Registered Dental Assisting."

The proposed amendment was presented to the Professional Committee for recommendation to the Full Board for adoption as an emergency rule at the October

2022 meeting of the Board of Regents, effective October 4, 2022. Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for adoption, after expiration of the required 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the February 2023 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date for the proposed rule, if adopted at the February meeting, would be March 1, 2022, the date the Notice of Adoption would be published in the State Register. However, Chapter 520 became effective August 17, 2022 and Chapter 390 became effective October 23, 2019.

However, the emergency rule will expire on January 1, 2023. Therefore, a second emergency action is necessary at the December 2022 meeting for the preservation of the public health and general welfare in order to enable the State Education Department to timely implement the requirements of Chapter 512, which added the placing and removing of temporary restorations to the list of supportive services that a registered dental assistant can perform to assist a licensed dentist in the dentist's performance of dental services, while under the direct personal supervision of the licensed dentist to help ensure the health, safety and welfare of the public by improving access to these types of dental services, and Chapter 390, which created the new legally protected title of "registered dental assistant" and eliminated the prior protected title of "certified dental assistant", and to ensure that the emergency action taken at the October 2022 meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed rule will be presented for adoption as a

permanent rule at the February 2023 Regents meeting, which is the first scheduled meeting after the expiration of the 60-day public comment period prescribed in SAPA for State agency rule makings.