



**TO:** The Honorable Members of the Board of Regents  
**FROM:** Sarah Benson *Sarah A. Benson*  
**SUBJECT:** Proposed Amendment of Subdivision (a) of Section 64.7 of the Regulations of the Commissioner of Education Relating to the Execution by Registered Professional Nurses of Non-Patient Specific Orders to Administer Immunizing Agents Against Respiratory Syncytial Virus

**DATE:** November 30, 2023

**AUTHORIZATION(S):** *Don McGreevey* *Betsy Maloney*

### **SUMMARY**

#### **Issue for Decision (Consent)**

Should the Board of Regents adopt the proposed amendment of subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education relating to the execution by registered professional nurses of non-patient specific orders to administer immunizing agents against Respiratory Syncytial Virus?

#### **Reason for Consideration**

Review of Policy.

#### **Proposed Handling**

The proposed amendment is presented to the Full Board for adoption as an emergency rule at the December 2023 meeting of the Board of Regents, 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 action at the October 2023 meeting of the Board of Regents. A notice of Emergency Action and Proposed Rule Making was published in the State Register on November 1, 2023, for a 60-day public comment period.

Because the October emergency rule will expire on January 14, 2024, a second emergency action is necessary to ensure that the emergency rule remains continuously in effect until it can be permanently adopted at the February 2024 Regents meeting. A Notice of Emergency Adoption will be published in the State Register on January 31, 2024. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

## **Background Information**

According to the United States Centers for Disease Control and Prevention (CDC), immunization is one of the best ways to protect against a variety of potentially harmful diseases. In 2005, subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education was adopted, which established the criteria for administering specifically identified immunizations by a registered professional nurse pursuant to a non-patient specific order and protocol as permitted by Education Law §6909.<sup>1</sup> This law allows registered professional nurses to administer immunizations pursuant to non-patient specific orders issued by a licensed physician or a certified nurse practitioner in accordance with the Commissioner's regulations.

The proposed amendment authorizes registered professional nurses to immunize infants, children, and adults against Respiratory Syncytial Virus (RSV) in accordance with CDC recommendations. RSV is a common respiratory virus that usually causes mild, cold-like symptoms. RSV can be serious, however, and infants and older adults are more likely to develop severe RSV and need hospitalizations. RSV is a public health threat in New York State and immunizing vulnerable persons against RSV is a public health priority. Vaccines are now available to protect older adults from severe RSV and new immunizing agents are available to protect infants and young children from severe RSV.

The CDC currently recommends that adults 60 years of age and older receive a single dose of RSV vaccine using shared clinical decision-making (SCDM). Under SCDM, the decision whether to vaccinate a patient is individually based and informed by discussions between the patient and health care provider (including registered professional nurses). With respect to infants and young children, the CDC recommends immunizations of all infants younger than 8 months old born during or entering their first RSV season and recommends immunizations for infants and children 8-19 months old, who are at increased risk for severe RSV disease and are entering their second RSV season.<sup>2</sup>

To ensure greater access to immunizations against RSV, the proposed amendment to subdivision (a) of section 64.7 of the Commissioner's regulations would allow a registered professional nurse to administer RSV immunizations pursuant to a non-patient specific order issued by a license physician or a certified nurse practitioner. The proposed amendment, if adopted as an emergency measure, will expand access to RSV immunization beginning with this year's RSV season. Allowing more registered professional nurses to administer additional seasonal RSV immunizations would protect more people from this potentially harmful and potentially fatal disease.

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<sup>1</sup> In 2018, subdivision (a) of section 64.7 was amended to update the criteria for administering identified immunizations in this manner and, a further amendment authorized registered professional nurses to administer vaccines against COVID-19 pursuant to a non-patient specific order and protocol.

<sup>2</sup> RSV seasons typically begin in the late fall to early winter.

Therefore, the Department recommends that subdivision (a) of section 64.7 of the Commissioner's regulations be amended to enhance the protection of the public health by expanding access to needed immunizing agents against RSV for infants, children, and adults.

### **Related Regents Items**

October 2023: [Proposed Amendment of Subdivision \(a\) of Section 64.7 of the Regulations of the Commissioner of Education Relating to the Execution by Registered Professional Nurses of Non-Patient Specific Orders to Administer Immunizing Agents Against Respiratory Syncytial Virus](https://www.regents.nysed.gov/sites/regents/files/1023ppca1.pdf)  
(<https://www.regents.nysed.gov/sites/regents/files/1023ppca1.pdf>)

### **Recommendation**

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

VOTED: That subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education be amended, as submitted, effective January 15, 2024, as an emergency action, upon a finding that such action is necessary for the preservation of the public health and general welfare to immediately improve New Yorkers' access to Respiratory Syncytial Virus immunizations and to ensure the emergency action taken at the October 2023 meeting remains continuously in effect.

### **Timetable for Implementation**

If adopted as an emergency rule at the December 2023 meeting, the emergency rule will become effective January 15, 2024. It is anticipated that the proposed amendment will be presented for permanent adoption at the February 2024 Regents meeting, after publication in the State Register and the expiration of the 60-day public comment period required under the State Administrative Procedures Act. If adopted at the February meeting, the proposed rule will become effective as a permanent rule on February 28, 2024.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 6527, 6902, and 6909 of the Education Law.

Subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education is amended to read as follows:

(a) Immunizations.

(1) As used in this subdivision:

(i) Immunizing agents means vaccines and immunoglobulin drugs approved by the federal Food and Drug Administration to provide immunity against diseases caused by the infectious agents described in clauses (a) through (e) of this subparagraph.

(a) In the case of adults, vaccines against the following infectious diseases: Hepatitis A, Hepatitis B, Influenza, Pneumococcus, Diphtheria, Tetanus, Measles, Mumps, Rubella, Varicella, Polio, Pertussis, Human Papilloma Virus, Meningococcus, Respiratory Syncytial Virus, and Herpes Zoster;

(b) In the case of infants and children under the age of 18, vaccines against the following infectious diseases: Diphtheria, Tetanus, Pertussis, Measles, Mumps, Rubella, Varicella, Haemophilus Influenzae Type b (Hib), Polio, Hepatitis B, Hepatitis A, Influenza, Meningococcus, Pneumococcus, Rotavirus, Respiratory Syncytial Virus, and Human Papilloma Virus;

(c) . . .

(d) . . . .

(e) . . .

**8 NYCRR § 64.7**

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH  
NECESSITATE EMERGENCY ACTION

**Respiratory Syncytial Virus (RSV)** is a common respiratory virus that usually causes mild, cold-like symptoms. Most people recover in a week or two, but RSV can cause serious infections in others. Infants and older adults are more likely to develop severe RSV and need hospitalization. Vaccines are now available to protect older adults from severe RSV and immunizing agents are now available to protect infants and young children from severe RSV. RSV is a public health threat to New York State and, therefore, immunizing vulnerable persons against RSV is a public health priority.

The proposed amendment is necessary to ensure greater access to immunizations against RSV, as permitted by Education Law § 6909. This law allows registered professional nurses to administer immunizations pursuant to non-patient specific orders issued by a licensed physician or a certified nurse practitioner in accordance with the Commissioner's regulations. The proposed amendment to subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education will allow a registered professional nurse to administer RSV vaccines to a pursuant to a non-patient specific order issued by a licensed physician or a certified nurse practitioner. Allowing more registered professionals nurses to administer additional RSV immunizations pursuant to a non-patient specific order and protocol will protect more people for this potentially harmful and potentially fatal disease.

The proposed amendment was presented to the Professional Practice Committee for recommendation to the Full Board for adoption as an emergency rule at the October 2023 meeting of the Board of Regents, effective October 17<sup>th</sup>, 2023. Since

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 February 2024 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the February meeting, would be February 28, 2024, the date a Notice of Adoption would be published in the State Register. However, emergency adoption is necessary to maximize the potential health benefits of increasing access to RSV vaccinations in New York State.

However, the emergency rule will expire on January 14, 2024. Therefore, a second emergency action is necessary at the December 2023 meeting, effective January 15, 2024, for preservation of the public health and general welfare to immediately improve New Yorkers' access to Respiratory Syncytial Virus immunizations and to ensure the emergency action taken at the October 2023 meeting remains continuously in effect.

It is anticipated that the proposed amendment will be presented for permanent adoption at the February 2024 Regents meeting, which is the first scheduled meeting after the expiration of the 60-day public comment period mandated by SAPA for state agency rule making.