



TO: The Honorable Members of the Board of Regents

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

SUBJECT: Proposed Amendment of Section 52.12 of the Regulations of the Commissioner of Education Relating to the Requirements for Clinical Education and Simulation Experience in Nursing Education Programs

DATE: November 30, 2023

AUTHORIZATION(S): *Don McGreevey* *Betsy M...*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment to section 52.12 of the Regulations of the Commissioner of Education relating to the requirements for clinical education and simulation experience in nursing education programs?

Reason for Consideration

Required by State statute (Chapter 134 of the Laws of 2023).

Proposed Handling

The proposed amendment will be presented to the Full Board for adoption as an emergency rule at the December 2023 meeting. A copy of the proposed rule (Attachment A) and a statement of facts and circumstances justifying the 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 2023 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on November 1, 2023, for a 60-day public comment period.

Because the October 2023 emergency action will expire on January 14, 2024, a second emergency action is necessary to ensure 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. A copy of the proposed rule is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Chapter 134 of the Laws of 2023 (Chapter 134), effective November 11, 2023, requires nursing education programs leading to a certificate or degree to include clinical education or its equivalent, as defined and determined by the Commissioner's regulations. Defining clinical education and determining common principles upon which it shall be offered serves to protect the public by ensuring that all graduates of licensure qualifying nursing education programs have common clinical learning experiences and meet comparable standards.

Chapter 134 also allows one-third of such clinical education to be completed through simulation experience.¹ Simulation experience is defined in law as planned learning experiences that represent actual or potential situations in clinical nursing practice that allow participants to develop or enhance clinical nursing competencies and provide an opportunity to respond to realistic situations in simulated environments. Chapter 134 further requires that, for simulation experience to be acceptable to the Department, it must:

- be designed, guided and supervised by program faculty and program staff with appropriate and relevant training, certification, or accreditation, who may be assisted or supported by experts in simulation, in a nursing skills or clinical laboratory setting;
- include continued professional development opportunities for program faculty and program staff in simulation methods and best practices;
- utilize theory-based, evidence-based, and standards-driven pedagogy;
- require active student engagement in guided skills practice with instructional feedback;
- include formative and summative assessments of well-articulated competencies appropriate to the role and responsibilities of the learner;
- use various types of fidelity² through equipment and practice to replicate substantial aspects of clinical nursing practice and utilize relevant equipment and technologies as appropriate to the desired learning outcomes;
- maintain continued compliance with program registration standards; and
- respond to innovations or emerging educational needs pursuant to regulation.

¹ To meet a particular educational need, the Commissioner may allow more than one-third of such clinical education or clinical training to be met through simulation experience.

² Fidelity refers to the level of realism in the learning experience and how closely it replicates actual clinical nursing practice. It is a characteristic of the design of the learning experience and not a property of the equipment and/or technology used. A simulated experience may, for example, be high fidelity and use little to no technology if the real-world nursing experience is designed to replicate a low technology practice.

Chapter 134 ensures that simulation experiences for the purposes of clinical education in nursing are clinically rich, hands-on/minds-on, faculty-planned and faculty-guided patient-care experiences that take advantage of technologies in ways that replicate authentic nursing practice. Under this definition, teacherless, online-only, self-study format is not acceptable simulation experience for meeting clinical education requirements.

Lastly, Chapter 134 requires the Commissioner to establish an expedited process for institutions seeking a curriculum change to implement simulation experiences.

Proposed Amendment

The proposed amendment to section 52.12 of the Commissioner's regulations implements Chapter 134 by:

- establishing a definition and core requirements for clinical education across all licensure-qualifying nursing education programs;
- establishing common patient-care experience requirements for all programs that lead to licensure as a practical nurse or registered professional nurse;
- providing existing programs with one year to come into compliance with the definition and the common patient-care experience requirements for clinical education;
- requiring any newly proposed programs to meet the clinical education definition and patient-care experience requirements as a condition of registration;
- including the statutory requirement that simulation experience be acceptable to the Department;
- establishing that, subject to the approval of the Department, up to one-third of a program's total clinical education hours may be met through simulation experience while providing the Commissioner with the authority to approve more than one-third of such clinical training or clinical education to be met through simulation experience if warranted to meet particular educational needs, and;
- providing for an expedited process for institutions seeking a curriculum change to implement one-third of their existing clinical education hours through simulation experience. This expedited process will be available on or before November 11, 2023, and based upon each program's currently approved clinical education component.

Related Regents Items

October 2023: [Proposed Amendment of Section 52.12 of the Regulations of the Commissioner of Education Relating to the Requirements for Clinical Education and Simulation Experience in Nursing Education Programs](https://www.regents.nysed.gov/sites/regents/files/1023ppca3.pdf)

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Recommendation

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

VOTED: That section 52.12 of the Regulations of the Commissioner of Education be added, 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 in order to timely implement the provisions of Chapter 134 of the Laws of 2023, which became effective November 11, 2023, and to ensure that 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 Regents meeting, the emergency rule will become effective January 15, 2024. It is anticipated that the proposed amendment will be presented to the Board of Regents 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 February 28, 2024.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6506, 6507, 6905, 6906, 6910, 6911, and 6912 of the Education Law and Chapter 134 of the Laws of 2023.

1. Section 52.12 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 52.12. Nursing.

(a) Definitions. As used in this section:

(1) *Clinical education or clinical training* shall mean planned practice-based learning experiences designed for the purpose of developing proficiency in the provision of safe and effective patient care, specific to the role and level of licensure or certification that the program leads to and shall adhere to the standards of this section. Simulated experience which meet the requirements of this section is a form of clinical education or clinical training.

(2) *Simulation experience* shall mean planned learning experiences that represent actual or potential situations in clinical nursing practice and shall adhere to the standards of this section. Such learning experiences allow participants to develop or enhance clinical nursing competencies and provide an opportunity to analyze and respond to realistic situations in a simulated environment.

(b) *Programs* [which prepare for admission to licensing examinations] *that meet the education requirements for licensure as a registered professional nurse or licensed practical nurse.*

(1) The curriculum for a program [preparing for admission to the licensing examination for] that meets the education requirements for licensure as a registered professional nurse shall meet the following standards:

(i)

(ii)

(iii)

(2) The curriculum for a program [preparing for admission to the licensing examination for] that meets the education requirements for licensure as a licensed practical nurse shall meet the following standards:

(i) The curriculum offered by an agency or institution other than a college shall be a minimum [or] of nine months in length.

(ii) The curriculum offered by a college shall be a minimum [or] of two semesters or the equivalent in length.

(3) Clinical [facilities] education.

(i) All programs registered under this subdivision shall include clinical education or clinical training that meet the conditions set forth in subdivision (d) of this section and shall include patient care experiences and/or exposures to patients/populations across the lifespan and continuum of care. This shall include, but not be limited to, experience with:

(a) adult patients in an acute care setting;

(b) pediatric patients;

(c) patients receiving treatment for acute and chronic psychiatric, behavioral, and/or cognitive conditions; and

(d) maternal/newborn, postpartum and/or pregnant patients.

(ii) subject to the approval of the department, a percentage of a program's total number of hours of clinical education may be met through simulation experience within the limits set forth in paragraph (2) of subdivision (d) of this section provided, however, that no patient/population experience required under subparagraph (i) of this paragraph may be met solely through simulation experience.

[A written contract or agreement shall be executed between the institution conducting the nursing program and the cooperating clinical facility or agency, shall be signed by the responsible officer or each party, and shall set forth the responsibilities of each party.]

[(b)] (c) Programs and courses in nursing other than those that prepare for [admission to a licensing examination] licensure.

(1) Nurse practitioner programs.

(i)

(ii)

(iii)

(iv) Curriculum. The curriculum shall include, in addition to the requirements of subdivision (c) of section 52.2 [(c)] of this [Title] Part:

(a) classroom and [supervised] clinical education designed to prepare nurse practitioners in the areas of diagnosis of illness and physical conditions and the performance of therapeutic and corrective measures within a specialty area of practice;

(b) ...

(c) a preceptorship experience, supervised by a nurse practitioner, certified nurse midwife, or physician practicing in the specialty area of the program, of at least one semester in length or its equivalent.

(v)

(2)

(3) Clinical nurse specialist education programs.

(i)

(ii)

(iii) Curriculum. The curriculum shall include, in addition to the requirements of subdivision (c) of section 52.2[(c)] of this [Title] Part, clinical [practice] education of at least five hundred hours which is supervised by a clinical nurse specialist, nurse practitioner or physician practicing in the specialty area of the clinical nurse specialist program.

(iv)

(d) Clinical Education.

(1) All programs registered under subdivisions (b) and (c) of this section for purposes of meeting the education requirements set forth in Article 139 of the Education Law shall include dedicated hours of clinical education or clinical training, or the equivalent, satisfactory to the department. Clinical education or clinical training shall:

(i) be planned and guided by program faculty sufficiently qualified to guide clinical education;

(ii) include experiential learning opportunities that require students to apply knowledge, skills, and judgment to the practice of nursing;

(iii) ensure each student has regular and substantive patient care experiences which shall include direct patient care and may also include indirect patient care experiences;

(iv) be of sufficient depth, breadth, and duration to ensure students have a reasonable opportunity to develop identified practice competencies necessary for safe and effective practice at the level of licensure or certification for which the program leads;

(v) ensure that each student, as a requirement for program completion, demonstrates proficiency in identified competencies through performance-based assessments assessed by program faculty;

(vi) be adequately supervised by program faculty and/or preceptors; and

(vii) include a written contract or agreement executed between the institution conducting the nursing program and any cooperating clinical facility or agency, which shall be signed by the responsible officer of each party and shall set forth the responsibilities of each party.

(2) Subject to the approval of the department, registered programs may deliver one-third of such clinical education or clinical training through simulation experience in accordance with the requirements of this subparagraph, provided however, nothing in this subparagraph shall reduce the minimum in-person or direct care requirements established by programmatic accreditors and certifying bodies. Simulation experience acceptable to the department for the purposes clinical education or clinical training shall:

(i) be designed, guided and supervised by program faculty and program staff with appropriate and relevant training, certification or accreditation, who may be assisted or supported by experts in simulation, in a nursing skills or clinical simulation laboratory setting;

(ii) include continued professional development opportunities for program faculty and program staff in simulation methods and best practices;

(iii) utilize theory-based, evidence-based, and standards-driven pedagogy;

(iv) require active student engagement in guided skills practice with instructional feedback;

(v) include formative and summative assessments of well-articulated competencies appropriate to the role and responsibilities of the learner;

(vi) use various types of fidelity through equipment and practice to replicate substantial aspects of clinical nursing practice and utilize relevant equipment and technologies as appropriate to the desired learning outcomes;

(vii) maintain continued compliance with the standards of program registration;
and

(viii) respond to innovations or emerging educational needs, pursuant to regulation.

(3) Expedited process for requesting approval to implement simulation experience pursuant to subparagraph (2) of this section.

(i) Registered programs seeking to implement simulation experience as described in paragraph (2) of this subdivision shall submit a request for a curriculum change to the department.

(a) The curriculum change form used for this purpose shall be prescribed by the department and shall include the following information:

(1) a clear identification of the current number of clinical education or training hours by course and a brief description of how these hours are delivered; and

(2) the number of proposed hours of clinical education that will be met through simulation by course and a brief description of how those hours meet each of the requirements set forth in this section.

(b) For programs that are not in substantial compliance with department program requirements, the department may request additional information and materials.

(ii) The department shall act upon a program's submission to implement simulation experiences within twenty business days of receipt of a complete and properly submitted form.

(4) Notwithstanding paragraph (2) of this subdivision, to meet a particular educational need as determined by the commissioner, the commissioner may approve that more than one-third of such clinical training or clinical education may be met through simulation experience.

(e) (1) All programs registered on or before November 11, 2023:

(i) shall have until November 11, 2024 to conform their existing clinical education to the requirements set forth in subparagraph (i) of paragraph (3) of subdivision (b) and paragraph (1) of subdivision (d) of this section; and

(ii) shall be eligible, beginning November 11, 2023, for approval to offer one-third of their currently approved clinical education hours through simulation experience pursuant to paragraphs (2) and (3) of subdivision (d) of this section.

(2) All new programs registered after November 11, 2023 shall meet all of the requirements for clinical education set forth in this section as a condition of registration.

8 NYCRR § 52.12

**STATEMENT OF FACTS AND CIRCUMSTANCES
WHICH NECESSITATE EMERGENCY ACTION**

The proposed amendment is necessary conform section 52.12 of the Commissioner's regulations to Chapter 134 of the Laws of 2023 (Chapter 134), which effective November 11, 2023, requires nursing education programs leading to a certificate or degree education programs to include clinical education as defined and determined by the Commissioner's pursuant to regulations. Defining clinical education and determining common principles upon which it shall be offered through Commissioner's regulations will ensure that all graduates of licensure qualifying nursing education programs will have common clinical learning experiences and meet comparable standards, which will protect the public by ensuring that applicants for licensure as registered professional nurses, nurse practitioners and licensed practical nurses or certification as a clinical nurse specialists have the minimum competency necessary for such licensure and/or certification. Chapter 134 also allows one-third of such clinical education to be completed through simulation experience.³ Simulation experience is defined in law as planned learning experiences that represent actual or potential situations in clinical nursing practice, that allow participants to develop or enhance clinical nursing competencies and provide an opportunity to respond to realistic situations in simulated environments.

³ To meet a particular educational need the Commissioner may allow more than one-third of such clinical education or clinical training to be met through simulation experience.

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 November 11, 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, the emergency rule will expire 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 timely implement the provisions of Chapter 134 of the Laws of 2023, which became effective November 11, 2023 and to ensure that the emergency action taken at the October 2023 meeting remains continuously in effect until it can be permanently adopted at the February 2024 Regents meeting.

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.