



TO: Professional Practice Committee

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

SUBJECT: Proposed Amendment of Sections 77.4, 77.5, and 77.10 of the Regulations of the Commissioner of Education Relating to the Profession of Physical Therapy

DATE: November 30, 2023

AUTHORIZATION(S): *Don M. A. Bellizzi*

SUMMARY

Issue for Decision

Should the Board of Regents adopt the proposed amendment of sections 77.4, 77.5, and 77.10 of the Regulations of the Commissioner of Education relating to the profession of physical therapy.

Reason for Consideration

Required by State statute (Chapter 511 of the Laws of 2022).

Proposed Handling

The proposed amendment will be presented to the Professional Practice Committee for discussion and recommendation 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 the emergency action (Attachment B) are attached.

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on December 27, 2023, and a Notice of Emergency Adoption will be published in the State Register on March 6, 2024. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Currently, physical therapy assistant is a certified profession. However, physical therapy assistants are more equivalent to a licensed profession because: (1) they must meet statutorily defined educational and examination requirements; and (2) they have a defined scope of practice performing physical therapy modalities under the supervision and direction of a physical therapist.

To address this situation, on August 17, 2022, the Governor signed into law Chapter 511 of the Laws of 2022 (Chapter 511), which becomes effective February 17, 2024. Chapter 511 will amend the Education Law by updating the practice of physical therapy assistants from a credentialed to licensed profession and creating the new legally protected title of “licensed physical therapist assistant” and eliminating the prior protected title of “certified physical therapist assistant.”

Proposed Amendment

The proposed amendment of the Commissioner’s regulations implements Chapter 511 by replacing the prior protected title of “certified physical therapy assistant” with the protected title of “licensed physical therapist assistant.”

Related Regents Items

Not applicable.

Recommendation

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

VOTED: That sections 77.4, 77.5, and 77.10 of the Regulations of the Commissioner of Education be amended, as submitted, effective February 17, 2024, 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 in order to timely implement the provisions of Chapter 511 of the Laws of 2022, which becomes effective February 17, 2024.

Timetable for Implementation

If adopted at the December 2023 Regents meeting, the emergency rule will take effect on February 17, 2024. It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at the April 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 April meeting, the proposed rule will become effective as a permanent rule on May 1, 2024.

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

Pursuant to sections 207, 6504, 6507, 6738, 6739, 6740, and 6742-a of the
Education Law and Chapter 511 of the Laws of 2022.

1. Section 77.4 of the Regulations of the Commissioner of Education is amended
to read as follows:

Section 77.4 Professional study for physical therapy assistants.

To meet the professional education requirements for [certification] licensure, the
applicant shall present evidence of:

(a) completion of a two-year college program for physical therapist assistants
[registered] licensed by the department or accredited by a national accreditation agency
which is satisfactory to the department; or (b) ...

2. Section 77.5 of the Regulations of the Commissioner of Education is amended
to read as follows:

There shall be no experience required beyond that required as a component of
an educational program for physical therapist assistants [registered] licensed by the
department.

3. Section 77.10 of the Regulations of the Commissioner of Education is
amended to read as follows:

Section 77.10. Continuing education for physical therapists and physical therapist
assistants

(a) ...

(b) Applicability of requirements.

(1) Each licensed physical therapist and [certified] licensed physical therapist assistant, required under article 136 of the Education Law to register with the department to practice in New York State, shall comply with the mandatory continuing education requirements as prescribed in subdivision (c) of this section, except those licensees exempt from the requirement or who obtain an adjustment to the requirement pursuant to paragraph (2) of this subdivision or who are subject to a different requirement pursuant to this section.

(2) Exemptions and adjustments to the requirement.

(i) Exemptions. The following licensees shall be exempt from the continuing education requirements, as prescribed in subdivision (c) of this section:

(a) licensees for the triennial registration period during which they are first licensed to practice as a physical therapist or [certified] licensed physical therapist assistant in New York State; and

(b) licensed physical therapists or [certified] licensed physical therapist assistants who are not engaged in the practice of physical therapy, as evidenced by not being registered to practice in New York State, except as otherwise prescribed in subdivision (e) of this section to meet the requirements for the resumption of practice in New York State.

(ii) ...

(c) Mandatory continuing education requirement.

(1) General requirement.

(i) During each triennial registration period, meaning a registration period of three years' duration, an applicant for registration shall complete at least 36 hours of continuing education, acceptable to the department, as defined in paragraph (2) of this subdivision. Any licensed physical therapist or [certified] licensed physical therapist

assistant whose first registration date following September 1, 2009 occurs less than three years from that date, but on or after January 1, 2010, shall complete continuing education hours on a prorated basis at the rate of one-half hour of acceptable formal continuing education per month for the period beginning January 1, 2010 up to the first registration date thereafter. Such continuing education shall be completed during the period beginning September 1, 2009 and ending before the first day of the new registration period.

(ii) ...

(2) ...

(d) Renewal of registration. At each re-registration, licensed physical therapists and [certified] licensed physical therapist assistants shall certify to the department that they have either complied with the continuing education requirements, as prescribed in this section, or are subject to an exemption or adjustment to such continuing education requirements, as prescribed in subdivision (b) of this section.

(e)...

(f)...

(g)...

(h)...

(i) Sponsor approval

(1) To be approved by the department, sponsors of continuing education to licensed physical therapists and [certified] licensed physical therapist assistants in the form of courses of learning or self-study programs shall meet the requirements of either paragraph (2) or (3) of this subdivision.

(2) ...

(3) ...

(j) Fees.

(1) ...

(2) ...

(3) Organizations desiring to offer continuing education to licensed physical therapists and/or [certified] licensed physical therapist assistants based upon a department review, pursuant to paragraph (i)(3) of this section, shall submit an application fee of \$900 with the application requesting the issuance of a permit from the department to become an approved sponsor of a formal continuing education program. A fee of \$900 shall accompany an application for a three-year renewal of the permit.

STATEMENT OF FACTS AND CIRCUMSTANCES
WHICH NECESSITATE EMERGENCY ACTION

The proposed rule is necessary to implement Chapter 511 of the Law of 2022 (Chapter), which becomes effective February 17, 2024. Chapter 511 will amend the Education Law by updating the practice of physical therapy assistants from a credentialed to licensed profession and creating the new legally protected title of “licensed physical therapist assistant” and eliminating the prior protected title of “certified physical therapist assistant.” The proposed rule implements Chapter 511 by amending sections 77.4, 77.5, and 77.10 of the Commissioner’s Regulations implements by replacing the prior protected title of “certified physical therapy assistant” with the protected title of “licensed physical therapist assistant.”

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for permanent adoption, after the expiration of the required 60-day comment period as provided for in sections 201(1) and 201(5) of the State Administrative Procedure Act (SAPA), would be the April 2024 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the April meeting, would be May 1, 2024, the date the Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary at the December 2023 meeting, effective February 17, 2024, for the preservation of the public health and general welfare to timely implement the provisions of Chapter 511, which becomes effective February 17, 2024.

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