



TO: The Professional Practice Committee

FROM: Sarah Benson *Sarah D. Benson*

SUBJECT: Proposed Amendment 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 Provide Certain Emergency Medical Services and Administer Pregnancy Tests

DATE: November 30, 2023

AUTHORIZATION(S): *Don McG... Bell...*

SUMMARY

Issue for Decision

Should the Board of Regents adopt the proposed amendment 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 provide certain emergency medical services and administer pregnancy tests?

Reason for Consideration

Required by State statute (Chapter 193 of the Laws of 2023).

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 action 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

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on December 27, 2023 for a 60-day public comment period. Supporting materials for the proposed rule are available upon request from the Secretary to the Board of Regents.

Background Information

Chapter 193 of the Laws of 2023 (Chapter 193), which became effective July 19, 2023, authorizes RNs to provide certain emergency medical services that expedite the detection of life-threatening medical conditions and related medical interventions. Specifically, Chapter 193 authorizes registered professional nurses (RNs) to execute a non-patient specific order and protocol, ordered or prescribed by a licensed physician or a certified nurse practitioner, to administer: (1) electrocardiogram tests to detect signs and symptoms of acute coronary syndrome; (2) blood glucose tests to evaluate acute mental status changes in persons with suspected hypoglycemia; (3) tests and intravenous lines to a person who meets severe sepsis and septic shock criteria; and (4) pregnancy tests. Chapter 193 further requires RNs to execute these non-patient specific orders and protocols in accordance with the Commissioner's regulations. These emergency medical services, as recognized in Chapter 193, do not supplant the authority of the attending practitioner, the hospital, and Health Department regulations.

Chapter 193 authorizes RNs to provide emergency medical services that expedite the detection of these life-threatening medical conditions and expedite medical intervention for them. In accordance with this new law these emergency medical services to be provided by an RN do not supplant the authority of the attending practitioner, the hospital, and Health Department regulations.

Proposed Amendment

The proposed amendment implements Chapter 193 by adding a new subdivision (i) to section 64.7 of the Commissioner's regulations, which:

1. defines emergency medical services and standing orders;
2. requires the RN who provides emergency medical care pursuant to a standing order to be (i) certified in cardio-pulmonary resuscitation, basic life support or more advanced life support by the American Red Cross, the American Heart Association, or an equivalent organization acceptable to the department, that provides cardio-pulmonary resuscitation or life support training programs; or (ii) trained in or credentialed in basic or more advanced life support in a hospital if the registered professional nurse works in the hospital;
3. requires that the written non-patient specific order for the administration of emergency medical services by an RN contain the following information:
 - the name, license number and signature of the licensed physician or certified nurse practitioner who ordered or prescribed the non-patient specific order and protocol;
 - the name of the medical conditions for which care is ordered and specific emergency medical service(s) to be provided;

- a protocol for administering the ordered emergency medical care or a specific reference to a separate written protocol for administering the ordered emergency medical care;
- the period of time that the order is effective, including the beginning and ending dates;
- a description of the person(s) to be treated; and
- the name and license number of the registered professional nurse(s) authorized to execute the standing order or the name of the entity that employs or contracts with registered professional nurses to execute the standing order, provided that: (1) the registered professional nurses execute the standing order only in the course of such employment or pursuant to a contract; and (2) that the entity is legally authorized to employ or contract with registered professional nurses to provide nursing services.

The proposed addition of a new subdivision (i) to section 64.7 of the Commissioner's regulations also establishes that the written protocol must, at a minimum, require RNs to ensure that:

1. each potential patient is assessed, pursuant to criteria in the protocol, for conditions that would qualify or preclude them from receiving the ordered medical service(s);
2. consent for administering the ordered medical services(s) is obtained from the patient if the patient is capable of providing it;
3. instructions necessary to provide the ordered emergency medical care are provided;
4. any recommendations for follow up care are described in accordance with the criteria in the protocol;
5. the recipient of the medical care is transferred to a general hospital for follow-up care in accordance with criteria in the protocol, if emergency medical care is provided outside of a hospital; and
6. the administration of the ordered medical services are documented in the patient's medical record in accordance with the criteria in the protocol.

The proposed amendment also implements Chapter 193 by adding a new subdivision (j) to section 64.7 of the Commissioner's regulations that:

1. includes a definition of pregnancy test;

2. requires that the written non-patient specific order for the administration of a pregnancy test by an RN must contain the following information:
 - the name, license number and signature of the licensed physician or certified nurse practitioner who orders or prescribes the non-patient specific order and protocol;
 - the name of the pregnancy test to be administered;
 - a protocol for administering the ordered pregnancy test or a specific reference to a separate written protocol for administering the ordered pregnancy test;
 - the period of time that the order is effective, including the beginning and ending dates;
 - a description of the persons to be treated; and
 - the name and license number of the registered professional nurse(s) authorized to execute the non-patient specific order and protocol to administer the pregnancy test, or the name of the entity that employs or contracts with registered professional nurses to execute the non-patient specific order and protocol only in the course of such employment or pursuant to such contract and provided further that the entity is legally authorized to employ or contract with registered professional nurses to provide nursing services.

Finally, the proposed amendment requires that the written protocol must, at minimum, require RNs to ensure that:

1. each potential recipient is screened pursuant to criteria in the protocol, for conditions that would qualify or preclude them from receiving the ordered pregnancy test;
2. informed consent for administering the ordered pregnancy test or disclosing the test(s) results to a third party (if applicable) has been obtained pursuant to the criteria in the protocol;
3. any recommendations for follow up care are disclosed in accordance with the criteria in the protocol; and
4. the administration of the ordered pregnancy test is documented in the recipient's medical record in accordance with the criteria in the protocol.

Related Regents Items

Not applicable.

Recommendation

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

VOTED: That section 64.7 of the Regulations of the Commissioner of Education be amended, as submitted, effective December 12, 2023, 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 to timely conform the Commissioner's regulations to implement the requirements of Chapter 193 of the Laws of 2023, which became effective July 19, 2023.

Timetable for Implementation

If adopted as an emergency rule at the December 2023 meeting, the emergency rule will become effective on December 12, 2023. It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at the April 2024 meeting, after publication in the State Register and the expiration of the 60-day public comment period required under the State Administrative Procedure Act. Because the action will expire before the April 2024 meeting, it is anticipated that an additional emergency action will be presented for adoption at the February 2024 Regents meeting. If adopted at the April meeting, the proposed rule will become effective May 1, 2024.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 6527, 6902, and 6909 of the Education Law and Chapter 193 of the Laws of 2023.

1. The title of Section 64.7 of the Regulations of the Commissioner of Education is amended to read as follows:

64.7 [Administration of immunizations, emergency treatment of anaphylaxis, tuberculosis tests, human immunodeficiency virus (HIV) tests, opioid related overdose treatments, hepatitis C tests and screening for syphilis, gonorrhea, COVID-19, influenza and/or chlamydia infections] Provision of certain medical services pursuant to non-patient specific orders and protocols

2. Section 64.7 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (i) to read as follows:

(i) Emergency medical care.

(1) As used in this subdivision:

(i) *Hospital* means a general hospital as defined in subdivision 10 of section 2801 of the public health law.

(ii) *Standing order* means a written non-patient specific order and protocol prescribed or ordered by a licensed physician or certified nurse practitioner for providing emergency medical care to patients.

(iii) *Patient* means a person receiving medical care in a hospital or from another health care provider.

(v) *Emergency medical care* means medical care that is ordered or prescribed to expedite the detection of signs and symptoms of certain emergency medical conditions

in patients or expedite medical intervention for emergency medical conditions or suspected emergency medical conditions. Such emergency medical care includes:

(a) administering an electrocardiogram to detect electrocardiographic changes and/or arrhythmias associated with acute coronary syndrome, as set forth in a standing order;

(b) administering point-of-care tests that are approved by the United States Food and Drug Administration to determine blood glucose levels in patients with suspected hypoglycemia for the purpose of evaluating acute mental status changes, as set forth in a standing order;

(c) administering tests, which may include laboratory or point-of-care tests that are approved by the United States Food and Drug Administration or the department of health, to patients who meet criteria for severe sepsis and septic shock as set forth in a standing order; and

(d) establishing peripheral venous access on patients who meet severe sepsis and septic shock criteria as set forth in a standing order.

(2) A registered professional nurse may provide emergency medical care pursuant to a standing order, provided that the requirements of this subdivision are met.

The registered professional nurse shall:

(i) be certified in cardio-pulmonary resuscitation, basic life support or more advanced life support by the American Red Cross, the American Heart Association, or an equivalent organization, acceptable to the department, which provides cardio-pulmonary resuscitation or life support training programs; or

(ii) be trained in or credentialed in basic or more advanced life support in a hospital if the registered professional nurse works in the hospital.

(3) Standing order.

(i) The standing order shall include, at a minimum:

(a) the name, license number and signature of the licensed physician or certified nurse practitioner who orders or prescribes the standing order;

(b) the name of the medical condition(s) for which the emergency medical care is ordered or prescribed to screen for;

(c) the name of the specific laboratory or point of care test(s), other medical test(s), or medical procedure(s) to be performed;

(d) a protocol for providing the ordered emergency medical care or a specific reference to a separate written protocol for providing the ordered emergency medical care, which shall meet the requirements of subparagraph (ii) of this paragraph;

(e) the period of time that the order is effective, including the beginning and ending dates;

(f) a description of the group(s) of patients or persons who may receive the ordered emergency medical care; and

(g) the name and license number of the registered professional nurse(s) authorized to execute the standing order or the name of the entity that employs or contracts with registered professional nurses to execute the standing order, provided that the registered professional nurses execute the standing order only in the course of such employment or pursuant to such contract and provided further that the entity is legally authorized to employ or contract with registered professional nurses to provide nursing services.

(ii) The written protocol, incorporated into the standing order prescribed in subparagraph (i) of this paragraph, shall, at a minimum, ensure that:

(a) each potential recipient of ordered emergency medical care is assessed, pursuant to measurable criteria in the protocol, for conditions that would qualify or preclude them from receiving the ordered emergency medical care;

(b) consent to provide the ordered emergency medical care pursuant to criteria in the protocol if the potential recipient is capable of providing it or from a person authorized by law to consent to health care on behalf of the potential recipient, if immediately available;

(c) instructions necessary for providing the ordered emergency medical care;

(d) any follow up actions to be undertaken by the registered professional nurse are described, including, but not limited to, disclosing test results to a third party or the recipient of the ordered test;

(e) when ordered emergency medical care is provided outside of a hospital, the recipient of the medical care is transferred to a general hospital for follow-up care in accordance with criteria in the protocol; and

(f) the provision of the ordered emergency medical care is documented in the patient's medical record and the documentation relating to the ordered emergency medical care is maintained in accordance with section 29.2(a)(3) of this Title.

(iii) Nothing in this subdivision shall construed to authorize a registered professional nurse to determine or rule out any medical diagnosis or determine any medical treatment to be provided.

(iv) Nothing in this subdivision shall be construed to delay access to medical services to be provided by a licensed physician, or emergency transportation to a hospital.

3. Section 64.7 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (j) to read as follows:

j. Pregnancy tests.

(1) As used in this subdivision, pregnancy test means a laboratory or point-of-care test that is approved by the United States Food and Drug Administration to determine pregnancy.

(2) A registered professional nurse may administer a pregnancy test pursuant to a non-patient specific order and protocol prescribed or ordered by a licensed physician or a certified nurse practitioner, provided that the requirements of this subdivision are met.

(3) Order and protocol.

(i) The order shall include, at a minimum:

(a) the name, license number and signature of the licensed physician or certified nurse practitioner who orders or prescribes the non-patient specific order and protocol;

(b) the name of the specific pregnancy test to be administered;

(c) a protocol for administering the ordered pregnancy test or a specific reference to a separate written protocol administering the ordered pregnancy test, which shall meet the requirements of subparagraph (ii) of this paragraph;

(d) the period of time that the order is effective, including the beginning and ending dates;

(e) a description of the group(s) of persons to be tested; and

(f) the name and license number of the registered professional nurse(s) authorized to execute the non-patient specific order and protocol to administer the pregnancy test, or the name of the entity that employs or contracts with registered professional nurses to execute the non-patient specific order and protocol only in the course of such employment or pursuant to such contract and provided further that the

entity is legally authorized to employ or contract with registered professional nurses to provide nursing services.

(ii) The written protocol, incorporated into the order prescribed in subparagraph (i) of this paragraph, shall, at a minimum, ensure that:

(a) each potential recipient is screened, pursuant to criteria in the protocol, for conditions that would qualify or preclude them from receiving the ordered pregnancy test;

(b) informed consent for administering the ordered pregnancy test or disclosing the test results to a third party (if applicable) has been obtained pursuant to criteria in the protocol from the recipient or when the recipient lacks capacity to consent, a person authorized by law to consent to health care for the recipient;

(c) any follow up actions to be undertaken by the registered professional nurse are described, including, but not limited to, disclosing test results to a third party or the recipient of the ordered test; and

(d) the administration of the ordered pregnancy tests is documented in the recipient's medical record in accordance with criteria in the protocol, and that documentation relating to the pregnancy test is maintained in accordance with section 29.2(a)(3) of this Title.

STATEMENT OF FACTS AND CIRCUMSTANCES
WHICH NECESSITATE EMERGENCY ACTION

The proposed rule is necessary to implement Chapter 193 of the Laws of 2023 (Chapter 193), which became effective on July 19, 2023. Chapter 193 authorizes registered professional nurses execute a non-patient specific order and protocol, ordered or prescribed by a licensed physician or a certified nurse practitioner for administering: (a) electrocardiogram tests to detect signs and symptoms of acute coronary syndrome; (b) blood glucose tests to evaluate acute mental status changes in persons with suspected hypoglycemia; (c) tests and intravenous lines to a person that meet severe sepsis and septic shock criteria; and (d) pregnancy tests. Chapter 193 further requires registered professional nurses to execute these non-patient specific orders and protocol in accordance with the Commissioner's regulations.

The proposed amendment implements Chapter 193 by adding new subdivisions (i) and (j) to section 64.7 of the Commissioner's regulations. The proposed addition of new subdivision (i) includes definitions of emergency medical services and standing orders and establishes the information requirements for written non-patient specific orders for the administration of emergency medical services by registered professional nurses (RNs). The proposed addition of a new subdivision (i) to section 64.7 of the Commissioner's regulations also establishes the minimum information requirements for the written protocol. The proposed addition of a new subdivision (j) to section 64.7 of the Commissioner's regulations implements Chapter 193 by including a definition of pregnancy test and establishes the information requirements that the written non-patient specific order for the administration of a pregnancy test by an RN must contain. The proposed addition of a new subdivision (j) to section 64.7 of the Commissioner's

regulations also establishes the minimum information requirements for the written protocol under which an RN can administer a pregnancy test.

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 December 12, 2023, for the preservation of the public health and general welfare to timely implement the provisions of Chapter 193, which became effective July 19, 2023.

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. However, since the emergency action will expire before the April Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the February 2024 Regents meeting.