



TO: Professional Practice Committee

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

SUBJECT: Proposed Amendment of Section 61.18 of the Regulations of the Commissioner of Education Relating to the Residency Program Requirement for Dental Licensure

DATE: December 29, 2022

AUTHORIZATION(S): *John M. Bellotti*

SUMMARY

Issue for Decision

Should the Board of Regents adopt the proposed amendment of section 61.18 of the Regulations of the Commissioner of Education relating to the residency program requirement for dental licensure?

Reason for Consideration

Required by State statute (Chapter 613 of the Laws of 2022).

Proposed Handling

The proposed amendment is presented to the Professional Practice Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at its January 2023 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

A Notice of Emergency Adoption and Proposed Rulemaking will be published in the State Register on January 25, 2023, for a 60-day public comment period. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Dentist licensure requirements (Education Law §6604[3]) require applicants to complete a residency program acceptable to the Department to meet the experience requirement for such licensure. It also required that a postdoctoral general practice or specialty dental residency program experience required for licensure be clinically based. Chapter 613 of the Laws of 2022 (Chapter 613), effective November 21, 2022, eliminated the clinically based requirement.

Chapter 613 addresses the fact that accredited dental residency programs in the specialty fields of oral medicine, orofacial pain, and dental public health were excluded from the clinically based experience requirement. Dental school graduates completed two to three years in a residency training, however, could not obtain a license. Chapter 613 eliminated this unnecessary restriction on dental residency programs. It recognizes that the Department assesses all formal outcome assessments evaluating all residencies for dentistry and related specialties. This will expand access to much needed dental services by increasing the number of dentists in New York.

Proposed Amendment

The proposed amendment of section 61.18 of the Commissioner's regulations implements the provisions of Chapter 613 by:

- removing the "clinical" definition;
- removing the requirement that the postdoctoral clinical dental residency program be completed in a nationally accredited "dental facility" for dental teaching purposes. This requirement may now be met by completing such residency program in a community health center or facility that is nationally accredited for teaching purposes;
- adding dental public health, orofacial pain, and oral medicine to the list of accredited residency programs in a dental specialty that can be used for meeting the experience requirement for licensure; and
- removing the requirement that, for each accredited residency program in a specialty of dentistry, at least 50 percent of the accredited residency program consist of clinical training in certain areas.

Additionally, the proposed amendment removes the requirement that the written statement for completion of the residency or specialty program be notarized. Instead, it requires that such written statement attest to the applicant's competence to practice the "completed dental specialty."

Related Regents Items

Not applicable.

Recommendation

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

VOTED: That section 61.18 of the Regulations of the Commissioner of Education be amended, as submitted, effective January 10, 2023, as an emergency action, upon the 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 613 of the Laws of 2022, which became effective November 21, 2022.

Timetable for Implementation

If adopted as an emergency rule at the January 2023 Regents meeting, the emergency rule will become effective January 10, 2023. It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at the May 2023 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. Because the emergency action will expire before the May 2023 Regents meeting, it is anticipated that an additional emergency action will be presented at the March 2023 meeting. If adopted at the May meeting, the proposed rule will become effective as a permanent rule on May 31, 2023.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6506, 6507, 6601 and 6604 of the Education Law and Chapter 613 of the Laws of 2022

1. Section 61.18 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 61.18 Residency program requirement for dental licensure

(a) Definitions. As used in this section:

(1) ...

(2) [Clinical means relating to or involving the direct examination and treatment of patients.

(3)] Competent to practice dentistry means the level of knowledge and skills necessary to perform safely and independently the practice of dentistry consistent with the definition of the practice of dentistry in section 6601 of the Education Law.

(b) Residency program. To be acceptable to the department for purposes of licensure under section 6604 of the Education Law, a residency program shall meet the requirements of this section.

(1) The residency program shall be a postdoctoral [clinical] dental residency program in either general dentistry, or a specialty of dentistry as defined in paragraph (2) of this subdivision, of at least one year's duration in a hospital or [dental] facility accredited for teaching purposes by an acceptable national accrediting body, which is completed successfully by the applicant prior to the submission to the department of the application for licensure.

(2) The accredited residency program in a specialty of dentistry shall be in the specialty of endodontics, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, prosthodontics, oral and maxillofacial pathology, oral and maxillofacial radiology, dental anesthesiology, dental public health, orofacial pain, oral medicine, or another specialty of dentistry, as determined by the department[,for which at least 50 percent of the accredited residency program consists of clinical training in one or more of the following areas: general dentistry, endodontics, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, prosthodontics, oral and maxillofacial pathology, oral and maxillofacial radiology, and/or dental anesthesiology].

(3) The accredited residency program shall include a formal written outcome assessment which is acceptable to the department.

(i) ...

(a) an acceptable [notarized] written statement by the residency program director attesting that the applicant has completed successfully the accredited residency program and is in the director's judgment competent to practice dentistry; and

(b) acceptable [notarized] written statement(s) by the residency program director who supervised the dental procedures performed by the applicant, and/or the attending dentist(s) who supervised the dental procedures performed by the applicant if different from the residency program director, attesting that the applicant completed independently, and to generally accepted professional standards for dentistry, two full crowns, two endodontically treated teeth, four restorations (two anterior, two posterior) and one periodontal case during the accredited residency program.

(ii) For an accredited residency program in a specialty of dentistry, as defined in paragraph (2) of this subdivision, the formal written outcome assessment used by the residency program shall be acceptable to the department if it includes an acceptable [notarized] written statement by the residency program director attesting that the applicant has successfully completed the accredited residency program in a specialty of dentistry, as defined in paragraph (2) of this subdivision, and is in the director's judgment competent to practice [dentistry] the completed dental specialty.

(c) ...

(d) ...

8 NYCRR §61.18

STATEMENT OF FACTS AND CIRCUMSTANCES

WHICH NECESSITATE EMERGENCY ACTION

The proposed rule is necessary to implement Chapter 613 of the Laws of 2022, which became effective November 21, 2023. The proposed rule conforms the Commissioner's regulations to Chapter 613, which amends Education Law §6604(3) by removing the requirement that the postdoctoral general practice or specialty dental residency program experience required for dental licensure needs to be clinically based. Chapter 613 was designed to address that fact that certain well-recognized accredited dental residency programs in oral medicine, orofacial pain, and dental public health are excluded from satisfying the experience requirement for dentist licensure because they are not deemed to be 50 percent clinically based specialty residencies. This prevents qualified dental school graduates with accredited residency training from obtaining a license after spending two to three years in a dental specialty program. Chapter 613 eliminates this unnecessary restriction on dental residency programs. It recognizes that the Department is responsible for all formal outcome assessments evaluating all residencies for dentistry and related specialties. This will expand access to much needed dental services by increasing the number of dentists in New York.

The proposed rule implements the provisions of Chapter 613 by:

- removing the "clinical" definition;
- removing the requirement that the postdoctoral clinical dental residency program be completed in a nationally accredited "dental facility" for dental teaching purposes. This requirement may now be met by completing such

residency program in a community health center or facility that is nationally accredited for teaching purposes;

- adding dental public health, orofacial pain, and oral medicine to the list of accredited residency programs in a dental specialty that can be used for meeting the experience requirement for licensure; and
- removing the requirement that, for each accredited residency program in a specialty of dentistry, at least 50 percent of the accredited residency program consist of clinical training in certain areas.

Additionally, the proposed amendment removes the requirement that the written statement for completion of the residency or specialty program be notarized. Instead, it requires that such written statement attest to the applicant's competence to practice the "completed dental specialty."

Since the Board of Regents meets at fixed intervals, the earliest that the proposed rule can be presented for adoption, after expiration of the required 60-day comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the May 15-16, 2023 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the May meeting, would be May 31, 2023 the date the Notice of Adoption would be published in the State Register.

Since Chapter 613 became effective November 21, 2022, emergency action is necessary at the January 2023 meeting, effective January 10, 2023, for the preservation of the public health and general welfare in order to timely implement the provisions of Chapter 613 of the Laws of 2022, which became effective November 21, 2022.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the May 2023 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rule making. However, since the emergency action will expire before the May Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the March 2023 Regents meeting.