



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable the Members of the Board of Regents

FROM: Sarah S. Benson *Sarah S. 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 COVID-19 Immunizations

DATE: February 3, 2022

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 COVID-19 immunizations?

Reason(s) for Consideration

Review of policy.

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as a permanent rule at the February 2022 Regents meeting. A copy of the proposed rule is included as Attachment A.

Procedural History

The proposed amendment was presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency

rule at the October 2021 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on November 3, 2021 for a 60-day public comment period. Because the October emergency action was set to expire on January 16, 2022, a second emergency action at the January 2022 meeting, effective January 17, 2022, was necessary to ensure the emergency rule remained continuously in effect until it could be permanently adopted at the February 2022 meeting and take effect as a permanent rule.

Following publication in the State Register, the Department received no comments on the proposed amendment. Therefore, an Assessment of Public Comment is not required and no changes to the proposed amendment are needed. A Notice of Adoption will be published in the State Register on March 2, 2022. Supporting materials for the proposed rule 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 infants, children, and adults from a variety of potentially harmful diseases. To increase immunization rates in New York State, Chapter 221 of the laws of 2002 (codified in Education Law §§6909[4] and [5]) was enacted. It authorizes registered professional nurses to administer immunizations pursuant to a non-patient specific order issued by a licensed physician or a certified nurse practitioner.

In 2005, subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education was adopted, which set forth criteria for administering specifically identified immunizations by a registered professional nurse pursuant to a non-patient specific order and protocol. In 2019, subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education was amended to update criteria for administering identified immunizations by a registered professional nurse pursuant to a non-patient specific order and protocol. The written protocol must, at a minimum, require the registered professional nurse(s) to ensure, among other things, that informed consent for administering the ordered immunizing agent(s) has been obtained pursuant to the criteria in the protocol. See, 8 N.Y.C.R.R. 64.7(a)(3)(ii)(c) (“... (c) informed consent for administering the ordered immunizing agent(s) has been obtained, pursuant to the criteria in the protocol, from the recipient, or when the recipient lacks capacity to consent, a person authorized pursuant to law to consent to health care for the recipient...”). This means that no immunization may be administered without patient consent.

The COVID-19 pandemic continues to be a major public health threat in New York State and, therefore, immunizing persons against COVID-19 remains a top public health priority. To ensure greater access to immunizations against COVID-19, the proposed amendment to subdivision (a) of section 64.7 of the Commissioner’s regulations would allow a registered professional nurse to administer COVID-19

immunizations pursuant to a non-patient specific order issued by a licensed physician or a certified nurse practitioner. The proposed amendment requires that the COVID-19 immunizations be fully approved or authorized for emergency use by the federal Food and Drug Administration (FDA) to immunize persons against COVID-19. It also requires that the COVID-19 immunizations are administered in accordance with applicable FDA requirements and recommendations. These requirements help to ensure that the vaccinations against COVID-19 will be administered as safely as possible. The portions of the regulation which require informed consent remain unchanged with this amendment. The regulation continues to provide that whether in a medical office or a school, a child cannot be vaccinated without written parental consent.

Related Regents Items

October 2021: [Proposed Amendment to 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 COVID-19 Immunizations](https://www.regents.nysed.gov/common/regents/files/1021ppca1.pdf)

(<https://www.regents.nysed.gov/common/regents/files/1021ppca1.pdf>)

January 2022: [Proposed Amendment to 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 COVID-19 Immunizations](https://www.regents.nysed.gov/common/regents/files/122brca11_0.pdf)

(https://www.regents.nysed.gov/common/regents/files/122brca11_0.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 March 2, 2022.

Timetable for Implementation

If adopted at the February 2022 meeting, the proposed rule will become effective as a permanent rule on March 2, 2022.

Attachment A

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, 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, and Human Papilloma Virus[.];

(c) immunizing agents against an infectious disease that causes an epidemic or a community wide outbreak, provided that such immunizing agents are administered as part of a public health program established by the Commissioner of the Department of Health, a County Commissioner of Health, or a County Public Health Director to

immunize persons against the infectious disease during the epidemic or community outbreak of the infectious disease; [and,]

(d) additional immunizing agents approved by resolution of the Board of Regents upon recommendation by the commissioner that such additional immunization agents are safe and effective immunization agents for registered professional nurses to administer to patients, pursuant to a non-patient specific order and protocol as prescribed in this section, after consideration of the recommendations of State and/or nationwide authorities that evaluate the effectiveness and safety of immunization agents, including but not limited to the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services. Such additional immunization agents, which are not specifically enumerated in this subparagraph, may be removed by resolution of the Board of Regents, upon recommendation of the commissioner that such immunization agents are not safe and effective immunization agents for registered professional nurses to administer to patients, pursuant to a non-patient specific order and protocol as prescribed in this section, after consideration of the recommendations of State and/or nationwide authorities that evaluate the effectiveness and safety of immunization agents, including but not limited to the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services; and

(e) vaccines that are fully approved or authorized for emergency use by the federal Food and Drug Administration to provide immunity against COVID-19 and administered in accordance with applicable federal Food and Drug Administration requirements and recommendations.