






TO: The Professional Practice Committee

FROM: Douglas E. Lentivech


SUBJECT: Proposed Amendment of Section 62.8 of the Regulations of the Commissioner of Education Relating to the Continuing Education Requirements for Veterinarians and Veterinary Technicians

DATE: March 30, 2017

AUTHORIZATION(S):  

SUMMARY

Issue for Decision

Should the Board of Regents adopt as an emergency action, the proposed amendment of section 62.8 of the Regulations of the Commissioner of Education relating to the continuing education requirements for veterinarians and amend paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education to repeal obsolete provisions relating to the proration of the required continuing education requirements for veterinarians and veterinary technicians which were applicable during the initial implementation of such requirements?

Reason for Consideration

Required by State statute (L. 2016, Ch. 398) and review of policy.

Proposed Handling

The proposed amendment will be presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency action at the April 2017 meeting of the Board of Regents. A copy of the proposed rule and a Statement of Facts and Circumstances Which Necessitate Emergency Action is attached.

Procedural History

The proposed amendment was presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency action at the January 2017 meeting of the Board of Regents, effective February 2, 2017. A Notice of Proposed Rule Making was published in the State Register on January 25, 2017, for a 45-day public comment period and a Notice of Emergency Adoption was published in the State Register on February 15, 2017. The Department received multiple comments from one commenter on the proposed amendment.

Currently, the Department is reviewing this public comment to determine whether additional amendments are needed before the final adoption of a permanent rule. In the interim, a second emergency adoption is necessary to ensure that the emergency rule adopted at the January 2017 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

It is anticipated that a Notice of Emergency Adoption will be published in the State Register on May 17, 2017.

A copy of the Assessment of Public Comment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Currently, during each three-year registration period, an applicant for registration as a veterinarian must complete at least 45 hours of continuing education, acceptable to the Department, a maximum of 22 ½ hours of which may be self-instructional coursework. Self-instructional coursework is presently defined as structured study, provided by a Department approved sponsor, that is based on audio, audio-visual, written, on-line, and/or other media, and does not include live instruction, transmitted in person or otherwise, during which the student may communicate and interact with the instructor and other students.

Chapter 398 of the Laws of 2016, which took effect February 2, 2017, amends subdivision (2) of section 6704-a of the Education Law, by revising the above-referenced self-instructional coursework definition to include free spaying and neutering and other veterinary services in conjunction with a municipality, duly incorporated not-for-profit society for the prevention of cruelty to animals, duly incorporated humane society, or duly incorporated animal protection association or persons who would otherwise be eligible under paragraph (a) of subdivision three of section one hundred seventeen-a of the Agriculture and Markets Law, provided that such services be administered at practices, facilities and properties that are appropriately equipped and staffed to provide such services. Chapter 398 encourages continuing education that also benefits the communities the veterinarians serve by allowing veterinarians to use the triennial registration period requirements to perform community services that would reduce the animal shelter overcrowding that leads to euthanasia, as well as the economic burden for municipalities experiencing growing budget shortfalls.

Chapter 398 further amends subdivision (2) of section 6704-a of the Education Law by permitting the Department to offset up to three hours of the requisite number of hours of continuing education by the number of free spaying and neutering services rendered by an applicant, at a rate of one-half of one hour of continuing education for each hour of free spaying and neutering services, provided that a veterinarian shall be required to provide follow-up service for any post-operative complications related to any free spaying or neutering surgery that arise within twenty-four hours of performing any such surgery, and shall also be required to complete the core continuing education requirements that have already been established by the Department in section 62.8 of the Regulations of the Commissioner of Education.

The proposed amendment of paragraph (3) of subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education amends the definition of self-instructional coursework to include the provision of free spaying and neutering and other veterinary services, as long as they satisfy other specified requirements, including, but not limited to, providing such services in conjunction with a municipality, duly incorporated not-for-profit society for the prevention of cruelty to animals, duly incorporated humane society, or duly incorporated animal protection association.

The proposed addition of paragraph (4) to subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education defines other veterinary services as follow-up service(s) for any post-operative complications related to any free spaying or neutering surgery, as defined in paragraph (3) of subdivision (a), that arise within twenty-four hours of performing any such surgery.

The proposed amendment of subparagraph (i) of paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education provides that, for an applicant for registration as a veterinarian, the Department may offset up to three hours of the requisite number of hours of continuing education by the number of free spaying and neutering services rendered by an applicant, at a rate of one-half of one hour of continuing education for each hour of free spaying and neutering services, provided that a veterinarian shall be required to provide follow-up service for any post-operative complications related to the surgery that arise within twenty-four hours of performing the surgery, and shall also be required to complete the core requirements established by the Department. The proposed amendment further provides that any such services shall be considered part of the maximum of 22 ½ hours of self-instructional coursework, which an applicant may complete, per each three-year registration period, to satisfy the 45 hours of continuing education requirement. The proposed amendment moves the general continuing education requirement provisions for applicants for registration as veterinary technicians to a new subparagraph (ii) of paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education. The proposed amendment would also repeal certain regulatory provisions relating to the proration of the required continuing education requirements for veterinarians and veterinary technicians which were applicable during the initial implementation process of the continuing education requirements for these two veterinary medicine professions, as those provisions no longer have any application.

The proposed amendment of subparagraphs (ii) and (iii) of paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education

reflects the renumbering of these subparagraphs as subparagraphs (iii) and (vi), respectively.

The proposed amendment to subdivision (g) of section 62.8 of the Regulations of the Commissioner of Education adds a requirement that an applicant for registration as a veterinarian seeking to satisfy a portion of his or her continuing education requirements by providing free spaying and neutering services shall maintain, on a form prescribed by the Department, and ensure access by the Department to, a record of all the free spaying and neutering services provided by the applicant, as well as any follow-up services for any post-operative complications related to any free spaying or neutering surgery that arise within twenty-four hours of performing any such surgery. Such records shall be retained for at least six years from the date of completion of the continuing education and shall be made available for review by the Department in the administration of the requirements of this section. The proposed amendment also separates subdivision (g) of section 62.8 of the Regulations of the Commissioner of Education into paragraphs (1) and (2).

Related Regents Items

<http://www.regents.nysed.gov/common/regents/files/117ppca1.pdf>

Recommendation

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

VOTED: That paragraph (3) of subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education, paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education, and subdivision (g) of section 62.8 of the Regulations of the Commissioner of Education be amended, and paragraph (4) of subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education be added, as submitted, effective May 1, 2017, 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 conform the Regulations of the Commissioner of Education to timely implement the requirements of Chapter 398 of the Laws of 2016, which provides that applicants for registration as veterinarians may satisfy up to three hours of their 45 hours of required triennial continuing education by providing free spaying and neutering and other veterinary services.

Timetable for Implementation

The proposed amendment was adopted as an emergency rule at the January 9-10, 2017 Regents meeting, effective February 2, 2017. The January 2017 emergency rule will expire on April 30, 2017. If adopted at the April 2017 Regents meeting, the second emergency rule will take effect on May 1, 2017 and remain in effect for 60 days. If the proposed rule is revised based on public comment received, the Department anticipates that the proposed revised amendment would be presented for adoption as a permanent rule at the July 2017 Regents meeting, and would become effective on August 2, 2017. If necessary, it is anticipated that an additional emergency action would be presented for adoption at the June 2017 Regents meeting.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, and 6704-a of the Education Law and Chapter 398 of the Laws of 2016

1. Paragraph (3) of subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education is amended, as follows:

(3) Self-instructional coursework means structured study, provided by a sponsor approved pursuant to subdivision (i) of this section, that is based on audio, audio-visual, written, on-line, and/or other media, and does not include live instruction, transmitted in person or otherwise, during which the student may communicate and interact with the instructor and other students and may include free spaying and neutering and other veterinary services in conjunction with a municipality, duly incorporated not-for-profit society for the prevention of cruelty to animals, duly incorporated humane society, or duly incorporated animal protection association or persons who would otherwise be eligible under paragraph (a) of subdivision three of section one hundred seventeen-a of the agriculture and markets law, provided that such services be administered at practices, facilities and properties that are appropriately equipped and staffed to provide such services.

2. Paragraph (4) of subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education is added, as follows:

(4) Other veterinary services means follow-up service(s) for any post-operative complications related to any free spaying or neutering surgery, as defined in paragraph (3) of this subdivision, that arise within twenty-four hours of performing any such surgery.

3. Paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education is amended, as follows:

(1) General Requirement.

(i) During each three-year registration period, meaning a registration period of a three years' duration, an applicant for registration as a veterinarian shall complete at least 45 hours of continuing education, acceptable to the department, as defined in paragraph (2) of this subdivision, a maximum of 22 1/2 hours of which may be self-instructional coursework acceptable by the department. Furthermore, for an applicant for registration as a veterinarian, the department may offset up to three hours of the requisite number of hours of continuing education required, pursuant to subdivision (2) of section 6704-a of the education law, by the number of free spaying and neutering services rendered by such an applicant, at a rate of one-half of one hour of continuing education for each hour of free spaying and neutering services, provided that such services satisfy the requirements of subparagraph (i) of paragraph (a) of subdivision (2) of section 6704-a of the Education Law, that the veterinarian shall be required to provide follow-up service for any post-operative complications related to the surgery that arise within twenty-four hours of performing the surgery, and shall also be required to complete the core requirements established by the department. Any such hours shall be considered part of the maximum of 22 1/2 hours of self-instructional coursework, which an applicant may complete, per each three-year registration period, to satisfy the 45 hours of continuing education requirement. Such veterinarians are otherwise required to complete the core requirements for veterinary continuing education established by the department as described in this section.

(ii) During each three-year registration period, meaning a registration period of three years' duration, an applicant for registration as a veterinary technician shall

complete 24 hours of continuing education, acceptable to the department, as defined in paragraph (2) of this subdivision, a maximum of 12 hours of which may be self-instructional coursework acceptable to the department. [Any licensed veterinarian or veterinary technician whose first registration date following January 1, 2011 occurs less than three years from that date, but on or after January 1, 2012, shall complete continuing education hours on a prorated basis at the rate of 1 1/4 hours per month, in the case of a veterinarian, and 40 minutes per month, in the case of a veterinary technician, for the period beginning January 1, 2012 up to the first registration date thereafter. Such continuing education shall be completed during the period beginning January 1, 2010 and ending before the first day of the new registration period.]

~~[(ii)]~~(iii) During each triennial registration period, at least two hours of the required continuing education credits shall focus on the use, misuse, documentation, safeguarding and prescribing of controlled substances.

~~[(iii)]~~(iv) Proration. Unless otherwise prescribed in this section, during each registration period of less than three years' duration, an applicant for registration shall complete acceptable continuing education, as defined in paragraph (2) of this subdivision and within the limits prescribed in such paragraph, on a prorated basis at a rate of 1 1/4 hours in the case of a veterinarian and 40 minutes per month in the case of a veterinary technician.

4. Subdivision (g) of section 62.8 of the Regulations of the Commissioner of Education is amended, as follows:

(g) Licensee records.

(1) Each licensee subject to the requirements of this section shall maintain, or ensure access by the department to, a record of completed continuing education, which includes: the title of the course if a course, the type of educational activity if other than a

course of learning, the subject of the continuing education course or activity, the number of hours of continuing education completed, the sponsor's name and any identifying number (if applicable), attendance verification if a course, verification of participation if another educational activity, and the date and location of the continuing education. Such records shall be retained for at least six years from the date of completion of the continuing education and shall be made available for review by the department in the administration of the requirements of this section. A sponsor's failure to satisfy its obligations under subdivision (i) of this section shall not relieve a licensee of his or her obligation to provide evidence of participation in a continuing education activity for which credit is claimed.

(2) Each applicant for registration as a veterinarian seeking to offset up to three hours of the required number of hours of continuing education, pursuant to subdivision (2) of section 6704-a of the education law, by the number of free spaying and neutering services rendered by such an applicant, shall maintain, on a form prescribed by the department, and ensure access by the department to, a record of all the free spaying and neutering services provided by the applicant, as well as any follow-up services for any post-operative complications related to any free spaying or neutering surgery, as defined in paragraph (3) of subdivision (a) of this section, that arise within twenty-four hours of performing any such surgery. Such records shall be retained for at least six years from the date of completion of the continuing education and shall be made available for review by the department in the administration of the requirements of this section.

8 NYCRR §62.8

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement Chapter 398 of the Laws of 2016, which amends subdivision (2) of section 6704-a of the Education Law, and took effect on February 2, 2017. Currently, during each three-year registration period, an applicant for registration as a veterinarian must complete at least 45 hours of continuing education, acceptable to the Department, a maximum of 22 ½ hours of which may be self-instructional coursework. Self-instructional coursework is presently defined as structured study, provided by a Department approved sponsor, that is based on audio, audio-visual, written, on-line, and/or other media, and does not include live instruction, transmitted in person or otherwise, during which the student may communicate and interact with the instructor and other students. Chapter 398 amends subdivision (2) of section 6704-a of the Education Law, by revising the above-referenced self-instructional coursework definition to include free spaying and neutering and other veterinary services in conjunction with a municipality, duly incorporated not-for-profit society for the prevention of cruelty to animals, duly incorporated humane society, or duly incorporated animal protection association or persons who would otherwise be eligible under paragraph (a) of subdivision three of section one hundred seventeen-a of the Agriculture and Markets Law, provided that such services be administered at practices, facilities and properties that are appropriately equipped and staffed to provide such services.

Chapter 398 further amends subdivision (2) of section 6704-a of the Education Law by permitting the Department to offset up to three hours of the requisite number of hours of continuing education by the number of free spaying and neutering services

rendered by an applicant, at a rate of one-half of one hour of continuing education for each hour of free spaying and neutering services, provided that a veterinarian shall be required to provide follow-up service for any post-operative complications related to the surgery that arise within twenty-four hours of performing the surgery, and shall also be required to complete the core triennial continuing education requirements established by the Department.

Chapter 398 encourages continuing education that also benefits the communities the veterinarians serve by allowing veterinarians to use the triennial registration period to perform community services that would reduce the animal shelter overcrowding that leads to euthanasia, as well as the economic burden for municipalities experiencing growing budget shortfalls.

The proposed amendment was adopted as an emergency action at the January 9-10, 2017 Regents meeting and became effective on February 2, 2017. However, since the publication of a Notice of Proposed Rule Making in the State Register on January 25, 2017 and a Notice of Emergency Adoption on February 15, 2017, the Department received multiple comments from one public commenter on the proposed amendment. The Department is reviewing this public comment to determine whether additional amendments are needed before the final adoption of a permanent rule. In the interim, a second emergency adoption is necessary to ensure the emergency rule adopted at the January 2017 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule or until the effective date of a revised rule's adoption as a permanent rule.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for adoption, after expiration of the required 45-day comment period provided for in State Administrative Procedure Act (SAPA) sections

202(1) and (5), and a determination by the Department as to whether additional amendments are needed before final adoption of a permanent rule, would be the May 8-9, 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment (if no revisions are made to the proposed amendment), if adopted at the May 2017 meeting would be May 24, 2017, the date a Notice of Adoption would be published in the State Register. If the Department determines that further revisions are needed based on the public comment received, it is anticipated that the proposed rule will be presented for adoption as a permanent rule at the July 17-18, 2017 meeting of the Board of Regents, with an effective date of August 2, 2017. However, the January 2017 emergency rule will expire on April 30, 2017.

Therefore, emergency action is necessary at the April 2017 Regents meeting for the preservation of the public health and general welfare in order to enable the State Education Department to immediately establish the requirements to implement Chapter 398 of the Laws of 2016, so that applicants for registration as veterinarians have the ability satisfy up to three hours of their required triennial 45 hours of continuing education, as long as it meets specified statutory requirements, by providing free spaying and neutering services and other veterinary services, which will encourage such applicants to consider participating in continuing education that also benefits the communities the veterinarians serve by allowing veterinarians to use the triennial registration period to perform community services that would reduce the animal shelter overcrowding that leads to euthanasia, as well as the economic burden for municipalities experiencing growing budget shortfalls.

8 NYCRR §62.8

ASSESSMENT OF PUBLIC COMMENT

Since the publication of a Notice of Proposed Rule Making in the State Register on January 25, 2017 and a Notice of Emergency Adoption on February 15, 2017, the State Education Department received the following comments:

1. COMMENT:

An association of veterinarians expressed that, as it previously noted in its opposition memo to the legislation, the Department has defined continuing education as “continued competency,” while spaying and neutering animals is considered a basic service which a licensed veterinarian may provide, and one in which they are trained during veterinary school. The association of veterinarians states that, “[o]n its face, these regulations, and the legislation upon which they are modeled, fail the core definition of continuing education.”

DEPARTMENT RESPONSE:

The Department notes the association of veterinarians’ opposition to the legislation which necessitates the promulgation of the proposed regulation. However, the proposed amendment is both consistent with the statute and necessary to conform 8 NYCRR §62.8 to the changes made to the Education Law by Chapter 398 of the Laws of 2016.

2. COMMENT:

An association of veterinarians comments on the proposed amendment of 8 NYCRR §62.8(a)(3), which contains the definition of “self-instructional coursework” that is used throughout the proposed amendment by stating that “[w]hile the language inserted does closely match that which was put forth in legislation, there is inherent confusion in this section by including the language surrounding offering spaying and neutering

services, which are medical procedures, in the defined section dealing with coursework.” The association of veterinarians further asserts that “[t]he conventional understanding and definition of ‘coursework’ does not include medical procedures, but instead, as the remainder of the section notes, “coursework” is meant to include ‘structured study’ only.”

DEPARTMENT RESPONSE:

Effective February 2, 2017, Chapter 398 of the Laws of 2016 amended Education Law 6704-a(2)(a)(i) to state that self-instructional coursework may include free spaying and neutering and other veterinary services in conjunction with a municipality, duly incorporated not-for-profit society for the prevention of cruelty to animals, duly incorporated humane society, or duly incorporated animal protection association or persons who would otherwise be eligible under Agriculture and Markets Law §117-a(3)(a), provided that such services be administered at practices, facilities and properties that are appropriately equipped and staffed to provide such services. The self-instructional coursework definition contained in both the proposed amendment of 8 NYCRR §62.8(a)(3) and the proposed amendment to other parts of 8 NYCRR §62.8 are consistent with the statute. Thus, no changes to the proposed amendment are necessary.

3. COMMENT:

An association of veterinarians states that, although the proposed addition of 8 NYCRR §62.8(a)(4) provides some welcome additional guidance regarding the “other veterinary services” mentioned in the proposed amendment of the self-instructional coursework definition in 8 NYCRR §62.8(a)(3), the association feels that this language “does not entirely cure the ambiguity of the phrase.” The association of veterinarians suggests that, in order to ensure that veterinarians are obtaining continuing education

credits only for services associated with spay and neutering procedures, it might be helpful to enumerate which types of services might qualify.

DEPARTMENT RESPONSE:

The Department will take the association of veterinarians' suggestion, regarding possibly enumerating which "types of services" would constitute "other veterinary services" for continuing education purposes, under consideration and it may issue guidance regarding these types of services should clarification be necessary in the future.

4. COMMENT:

An association of veterinarians states that 8 NYCRR §62.8(1)(c) establishes the general requirement for continuing education based on Education Law §6704-a and that Education Law §6704-a(2) establishes the parameters of the continuing education requirement by mandating that an applicant for registration shall complete a minimum of 45 hours of acceptable formal continuing education. However, the association of veterinarians asserts that the definition of "acceptable formal continuing education" in Education Law §6704-a(4) is understood to mean only formal programs of learning which are offered by sponsors of veterinary continuing education approved by the Department. The association of veterinarians maintains that it is not apparent from the language of the proposed regulation that the provision of free spay and neutering services would qualify as a formal program of learning. The association of veterinarians further asserts that, while the proposed regulation explicitly notes that spaying and neutering services are to be provided in conjunction with a municipality, duly incorporated not-for-profit society for the prevention of cruelty to animals, duly incorporated humane society, or duly incorporated animal protection association, it does not appear that any of those entities would qualify as "sponsors of veterinary continuing education as approved by the [D]epartment".

DEPARTMENT RESPONSE:

The Department is reviewing the veterinarians association's above-referenced comment to determine whether additional amendments are needed before the final adoption of a permanent rule.

5. COMMENT:

An association of veterinarians notes that the proposed amendment of 8 NYCRR §62.8(g) requires that records of any free spay and neutering services provided by licensed veterinarians for continuing education purposes must be maintained on a "form prescribed by the [D]epartment." The association of veterinarians then suggests that it may be helpful to the veterinary community to see stated in regulations, what information will be required to be recorded on the form, so that veterinarians might ensure that their current medical records also meet those reporting requirements.

DEPARTMENT RESPONSE:

The Department has developed and posted on its Veterinary Medicine webpage, an Attestation of Veterinarian's Provision of Free Spaying and/or Neutering Services for Continuing Education Credit form for these purposes, which can be found at: <http://www.op.nysed.gov/prof/vetmed/vetcosn.pdf>. This form, as well as other guidance on the Veterinary Medicine webpage, advises licensed veterinarians what information is required to be recorded on this form for continuing education purposes. Therefore, no changes in these proposed regulatory provisions are necessary at this time.