



TO: The Honorable Members of the Board of Regents

FROM: David H. Hamilton *David H. Hamilton*

SUBJECT: Proposed Amendment of Sections 52.26 and 61.13 of the Regulations of the Commissioner of Education Relating to the Application of Topical Fluoride Varnish by Registered Dental Assistants

DATE: March 27, 2025

AUTHORIZATION(S): *Dom N. B.* *Betty M.*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of sections 52.26 and 61.13 of the Regulations of the Commissioner of Education relating to the application of topical fluoride varnish by registered dental assistants?

Reason for Consideration

Required by State statute (Chapter 457 of the Laws of 2024).

Proposed Handling

The proposed rule is submitted to the Full Board for adoption as a permanent rule at the April 2025 Regents meeting. A copy of the proposed rule (Attachment A) is attached.

Procedural History

The proposed amendment was presented to the Professional Practice Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at its December 2024 meeting, effective December 10, 2024. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on December 24, 2024, for a 60-day public comment period. Because the December 2024 emergency action was set to expire on March 9, 2025, a second emergency action was necessary at the February 2025 Regents meeting, effective March 10, 2025, to ensure that the emergency rule remained continuously in effect until it could be permanently adopted.

and take effect as a permanent rule. A Notice of Emergency Adoption was published in the State Register on March 26, 2025.

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. If adopted at the April 2025 meeting, a Notice of Adoption will be published in the State Register on April 23, 2025. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

Fluoride varnish is a topical solution that remineralizes teeth and aids in preventing tooth decay. Like fluoridated toothpaste, fluoride varnish is used on the surface of the teeth. It strengthens the enamel making it more resistant to acids that cause decay. Fluoride varnish is painted on all surfaces of the teeth with a small brush. It adheres to the teeth when it comes in contact with saliva in the mouth. Generally, it takes less than two minutes to apply and requires no special equipment or extensive training to master the technique.

Health care professionals currently authorized to provide fluoride varnish in this State include dentists, dental hygienists, physicians, nurse practitioners, registered nurses, and physician assistants.

Applying topical fluoride varnish to the teeth of young children is proven to reduce dental disease. Studies show that children who receive topical fluoride varnish every three months have fewer cavities than those who receive it less often or not at all. Topical fluoride varnish application is also the standard of care for pediatric offices and New York State Medicaid. Limited access to care results in too few children in New York State currently receiving such treatment.

On November 15, 2024, Chapter 457 of the Laws of 2024 (Chapter 457) was signed into law, effective immediately, to increase access to topical fluoride varnish for children. Chapter 457 adds registered dental assistants¹ to the list of health care professionals who are authorized to apply topical fluoride varnish to patients of all ages. Allowing additional health care professionals to apply fluoride varnish is expected to increase flexibility in offices and provide more opportunities to incorporate this service into visits.

Proposed Amendment

The proposed amendment of the Commissioner's regulations implements the provisions of Chapter 457 by:

- amending section 52.26 of the Commissioner's regulations to add applying topical fluoride varnish to the clinical content areas required for registered dental assisting education programs;

¹ Chapter 457 also adds licensed practical nurses to the list of health care professionals who are authorized to apply topical fluoride varnish to patients.

- amending section 61.13 of the Commissioner's regulations to add applying topical fluoride varnish to the types of supportive services a dentist may authorize a registered dental assistant to perform; and
- amending section 61.13 of the Commissioner's regulations to add the application of topical fluoride varnish to the procedures allowed be performed by registered dental assistants, even though the procedure is a service that dental hygienists may perform.

Related Regents Items

[December 2024: Proposed Amendment of Sections 52.26 and 61.13 of the Regulations of the Commissioner of Education Relating to the Application of Topical Fluoride Varnish by Registered Dental Assistants](https://www.regents.nysed.gov/sites/regents/files/1224ppca1.pdf)

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[February 2025: Proposed Amendment of Sections 52.26 and 61.13 of the Regulations of the Commissioner of Education Relating to the Application of Topical Fluoride Varnish by Registered Dental Assistants](https://www.regents.nysed.gov/sites/regents/files/225brca8revised.pdf)

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Recommendation

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

VOTED: That sections 52.26 and 61.13 of the Regulations of the Commissioner of Education be amended as, submitted, effective April 23, 2025.

Timetable for Implementation

If adopted at the April 2025 meeting, the proposed rule will become effective as a permanent rule on April 23, 2025.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 6608 of the Education Law and Chapter 457 of the Laws of 2024.

1. Subparagraphs (iii) through (v) of paragraph (3) of subdivision (a) of section 52.26 of the Regulations of the Commissioner of Education are renumbered subparagraphs (iv) through (vi) and a new subparagraph (iii) is added to read

(iii) applying topical fluoride varnish;

2. Paragraphs (18) and (19) of subdivision (b) of section 61.13 of the Regulations of the Commissioner of Education are renumbered paragraphs (19) and (20) and a new paragraph (18) is added to read as follows:

(18) applying topical fluoride varnish;

3. Paragraph (5) of subdivision (c) of section 61.13 of the Regulations of the Commissioner of Education is amended to read as follows:

(5) dental supportive services prescribed in section 61.9 of this Part which are services that a dental hygienist may perform, unless such services are expressly permitted as dental supportive services in paragraphs (b)(1) through [(17)] (19) of this section; and