



**TO:** The Honorable Members of the Board of Regents

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

**SUBJECT:** Proposed Repeal of Section 66.6 and Addition of a New Section 66.6 to the Regulations of the Commissioner of Education Relating to the Continuing Education Requirements for Licensed Optometrists Certified to Prescribe and Use Therapeutic Pharmaceutical Agents

**DATE:** May 4, 2023

**AUTHORIZATION(S):** *Don M. A. Bellotti*

#### **SUMMARY**

#### **Issue for Decision (Consent)**

Should the Board of Regents repeal section 66.6 and add a new section 66.6 to the Regulations of the Commissioner of Education relating to the continuing education requirements for licensed optometrists certified to prescribe and use therapeutic pharmaceutical agents?

#### **Reason for Consideration**

Required by state statute (Section 9 of Chapter 506 of the Laws of 2021).

#### **Proposed Handling**

The proposed amendment is presented to the Full Board for adoption as a permanent rule at the May 2023 Regents meeting. A copy of the proposed rule is included (Attachment A).

#### **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 the January 2023 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on January 25, 2023, for a 60-day public comment period.

Because the January emergency action was set to expire on April 9, 2023, a second emergency action was necessary at the March 2023 meeting to ensure the emergency rule remained continuously in effect until it could be permanently adopted at the May 2023 Regents meeting. A Notice of Emergency Adoption was published in the State Register on April 26, 2023.

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 May 31, 2023. Supporting materials are available upon request to the Secretary of the Board of Regents.

### **Background Information**

Optometrists may, since the enactment of Chapter 517 of the Laws of 1995 (Chapter 517), obtain a specialty certification to use topically applied therapeutic pharmaceutical agents for the treatment or prevention of ocular disease. Pursuant to Education Law §7101-a(2), certified optometrists are held to the same standard of care in the diagnosis and treatment of patients, including the use of pharmaceutical agents, as that degree of skill and proficiency commonly exercised by a physician in the same community. Since Chapter 517's enactment, New Yorkers have had more access to primary eye care services provided by optometrists who have obtained this specialty certification.

Chapter 506 of the Laws of 2021 (Chapter 506) builds upon the authority established in Chapter 517 and authorized licensed and certified optometrists to treat patients with additional topical and oral medications for certain ocular diseases. This amendment aligns New York with the rest of the country that have granted optometrists this flexibility. It also establishes requirements to assist in ensuring that the prescribing optometrists are prepared for this responsibility.

As detailed below, Chapter 506 amends the Education Law by, among other things, requiring licensed optometrists seeking to obtain and/or maintain their certification to prescribe and use oral therapeutic pharmaceutical agents<sup>1</sup> to obtain additional continuing education and complete a course and examination approved by the Department.<sup>2</sup> Additionally, Chapter 506 permits the Department, under certain circumstances, to: issue a conditional registration to an optometrist who fails to meet the continuing education requirements; make an adjustment to the continuing education requirements; and exempt optometrists not engaged in practice from the continuing education requirements. Chapter 506 also establishes fees associated with continuing education.

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<sup>1</sup> Section 1 of Chapter 506, effective October 25, 2023, defines three types of therapeutic pharmaceutical agents: topical therapeutic pharmaceutical agents, therapeutic pharmaceutical agents for the treatment of glaucoma and ocular hypertension, and oral therapeutic pharmaceutical agents.

<sup>2</sup> The applicant would be required to complete the course and pass the examination within five years of the Department's approval of the initial certification course or the initial examination, whichever is later.

Section 9 of Chapter 506, effective January 1, 2023, amends Education Law §7101-a(7) by establishing the new continuing education requirements described above. However, the remainder of Chapter 506's sections are not effective until October 25, 2023.<sup>3</sup>

### **Proposed Amendments**

The proposed amendment repeals the existing section 66.6 of the Commissioner's regulations and adds a new section 66.6 to the Commissioner's regulations. This new provision implements section 9 of Chapter 506 by establishing updated continuing education requirements for licensed optometrists, including applicability of requirements, the number of continuing education hours required, proration, acceptable formal continuing education, types of learning activities, and prohibitions. It also describes how the requirements apply to renewal of certification and for licensees with a lapse in practice and for a conditional registration. Other provisions address the requirements pertaining to continuing education records and the maintenance thereof; the measurement of continuing education studies; the process by which the department will review and approve sponsors of continuing education; and fees associated with continuing education.

### **Related Regents Items**

March 2023: [Proposed Repeal of Section 66.6 and Addition of a New Section 66.6 to the Regulations of the Commissioner of Education Relating to the Continuing Education Requirements for Licensed Optometrists Certified to Prescribe and Use Therapeutic Pharmaceutical Agents](https://www.regents.nysed.gov/sites/regents/files/323brca11.pdf)

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January 2023: [Proposed Repeal of Section 66.6 and Addition of a New Section 66.6 to the Regulations of the Commissioner of Education Relating to the Continuing Education Requirements for Licensed Optometrists Certified to Prescribe and Use Therapeutic Pharmaceutical Agents](https://www.regents.nysed.gov/common/regents/files/123ppca2revised.pdf)

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### **Recommendation**

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

VOTED: That section 66.6 of the Regulations of the Commissioner of Education be repealed and a new section 66.6 of the Regulations of the Commissioner of Education be added, as submitted, effective May 31, 2023.

### **Timetable for Implementation**

If adopted at the May 2023 meeting, the proposed amendment will become effective as a permanent rule on May 31, 2023.

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<sup>3</sup> Implementing regulatory amendments for these provisions of Chapter 506 will be brought before the Board of Regents at a later date.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 7101 and 7101-a of the Education Law and Chapter 506 of the Laws of 2021

1. Section 66.6 of the Regulations of the Commissioner of Education is REPEALED and a new section 66.6 is added to read as follows:

66.6 Continuing education for licensed optometrists certified to use certain therapeutic pharmaceutical agents

(a) Definitions. As used in this section, acceptable accrediting agency means an organization accepted by the department as a reliable authority for the purpose of accreditation at the postsecondary level, applying its criteria for granting accreditation in a fair, consistent and nondiscriminatory manner, such as an agency recognized for this purpose by the United States Department of Education.

(b) Applicability of requirements. (1) Each optometrist, required under article 143 of the Education Law to register with the department to practice in New York State and certified to use topical therapeutic pharmaceutical agents, therapeutic pharmaceutical agents, and/or oral therapeutic pharmaceutical agents, shall comply with the mandatory continuing education requirements as prescribed in subdivision (c) of this section, except those licensees exempt from the requirement or who obtain an adjustment to the requirement pursuant to paragraph (2) of this subdivision or who are subject to a different requirement pursuant to this section.

(2) Exemptions and adjustments to the requirement.

(i) Exemptions. Licensed optometrists who are not engaged in the practice of optometry, as determined by the department, shall be exempt from the continuing

education requirements prescribed in subdivision (c) of this section, upon the filing of a statement with the department declaring such status. Any such licensee who returns to the practice of optometry during the triennial registration period shall notify the department prior to reentering the profession and shall meet the continuing education requirements for the resumption of practice in New York State prescribed in subdivision (e) of this section.

(ii) Adjustments to the requirement. An adjustment to the continuing education requirement, as prescribed in subdivision (c) of this section, may be made by the department, provided that the licensee documents good cause that prevents compliance or the department determines otherwise that there is good cause that prevents compliance, which shall include, but not be limited to, any of the following reasons: poor health or a specific physical or mental disability certified by an appropriate health care professional; or extended active duty with the Armed Forces of the United States; or other good cause beyond the licensee's control which in the judgment of the department, makes it impossible for the licensee to comply with the continuing education requirements in a timely manner.

(c) Mandatory continuing education requirements.

(1) General requirements.

(i) During each triennial registration period, meaning a registration period of three years' duration, an optometrist certified to use topical therapeutic pharmaceutical agents and/or therapeutic pharmaceutical agents for the treatment of glaucoma and ocular hypertension, seeking to apply for registration shall complete at least 36 hours of continuing education, acceptable to the department, as prescribed in paragraph (3) of this subdivision.

(ii) During each triennial registration period, meaning a registration period of three years' duration, an optometrist certified to use oral therapeutic pharmaceutical agents, seeking to apply for registration shall complete at least 18 hours of additional continuing education, acceptable to the department, as prescribed in paragraph (3) of this subdivision.

(2) Proration. (i) Any licensed optometrist certified to administer oral therapeutic pharmaceutical agents whose first registration date following January 1, 2023 occurs less than three years from such date shall complete continuing education hours on a prorated basis at the rate of one and one-half hours of acceptable formal continuing education per month for the period beginning January 1, 2023 up to the first registration date thereafter. Such continuing education shall be completed during the period beginning January 1, 2023 and ending before the first day of the new registration period.

(ii) During each registration or certification period of less than three years duration, an applicant shall complete acceptable continuing education, as prescribed in paragraph (3) of this subdivision, on a prorated basis at the rate of one hour of continuing education per month for those certified to administer topical therapeutic pharmaceutical agents and/or therapeutic pharmaceutical agents for the treatment of glaucoma and ocular hypertension and, for those certified to administer oral therapeutic pharmaceutical agents, on a prorated basis at the rate of one and one-half hour of continuing education per month for such registration or certification period.

(3) Acceptable formal continuing education. To be acceptable to the department, continuing education shall meet the requirements of this paragraph. Such continuing education must be in subjects prescribed in subparagraph (i) of this paragraph and be

the types of learning activities prescribed in subparagraph (ii) of this paragraph and subject to the prohibition contained in subparagraph (iii) of this paragraph.

(i) Subjects.

(a) Acceptable continuing education of a licensee certified to use topical therapeutic pharmaceutical agents and/or therapeutic pharmaceutical agents for the treatment of glaucoma and ocular hypertension shall be in the area of ocular disease and pharmacology and may include both didactic and clinical components.

(b) Acceptable continuing education of a licensee certified to use oral therapeutic pharmaceutical agents shall be in the area of systemic disease with ocular involvement and related therapeutic treatments and may include both didactic and clinical components.

(ii) (a) Types of learning activities. Acceptable continuing education shall be the types of learning activities prescribed in this subparagraph and shall be subject to the limitations prescribed in this subparagraph and subparagraph (iii) of this paragraph.

(b) Courses of learning. Acceptable continuing education shall be courses of learning offered by a sponsor approved by the department pursuant to subdivision (i) of this section.

(1) For optometrists certified for topical therapeutic pharmaceutical agents and/or therapeutic pharmaceutical agents for the treatment of glaucoma and ocular hypertension, at least 27 hours of continuing education in a registration period shall consist of live instruction in a formal course of study offered by a sponsor approved by the department pursuant to subdivision (i) of this section, during which the student must be able to communicate and interact with the instructor and other students. Up to nine hours of such continuing education in a registration period may be completed through a

self-study program, meaning 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 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.

(2) For optometrists certified for oral therapeutic pharmaceutical agents, in addition to meeting the continuing education prescribed in subclause (1) of this clause, such optometrists shall also complete at least 18 hours of such continuing education in a registration period shall consist of live instruction in a formal course of study offered by a sponsor approved by the department pursuant to subdivision (i) of this section, during which the student must be able to communicate and interact with the instructor and other students. Up to nine hours of such continuing education in a registration period may be completed through a self-study program, meaning 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 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.

(iii) Prohibition. Any continuing education designed for the sole purpose of personal development, marketing, business practices, and maximizing profits for the practice of a licensed optometrist shall not be considered as acceptable continuing education by the department.

(4) Continuing education programs must be approved in advance by the department. Continuing education programs shall be deemed approved if they are offered by a sponsor who is approved pursuant to subdivision (i) of this section and



meet the requirements of acceptable continuing education pursuant to paragraph (3) of this subdivision.

(d) Renewal of certification.

(1) At each re-registration, licensed optometrists shall certify to the department that they have either complied with the continuing education requirements, as prescribed in subdivision (c) of this section, or are subject to an exemption or adjustment to such continuing education requirements, as prescribed in subdivision (b) of this section.

(2) A licensee who has not satisfied the mandatory continuing education requirements shall not practice until such requirements have been met and the licensee has been issued a registration certificate by the department, except where a licensee has been issued a conditional registration, as provided for in subdivision (f) of this section.

(3) Continuing education hours taken during one registration period may not be transferred to the subsequent registration period.

(e) Requirement for lapse in practice.

(1) A licensee returning to the practice of optometry after a lapse in practice, as evidenced by not being registered to practice in New York State, whose first registration date after such lapse in practice occurs less than three years from January 1, 2023 shall be required to complete:

(i) at least one hour of acceptable continuing education for each month that the licensee was not registered to practice for a licensee certified to use topical therapeutic pharmaceutical agents and/or therapeutic pharmaceutical agents for the treatment of glaucoma and ocular hypertension or at least one and one-half hours of acceptable

continuing education for each month that a licensee was not registered to practice for a licensee certified to use oral therapeutic pharmaceutical agents from January 1, 2023 until the beginning of the new registration period.

(a) For a licensee who has not lawfully practiced optometry continuously in another jurisdiction throughout such lapse period, such continuing education shall be completed in the 12-month period before the beginning of the new registration period.

(b) For a licensee who has lawfully practiced as a licensed optometrist continuously in another jurisdiction throughout such lapse period, such continuing education shall be completed in the new registration period or, at the option of the licensee, in the period beginning 36 months before the commencement of the new registration period and ending at the conclusion of such new registration period; and

(ii) (a) for a licensee who has not lawfully practiced as a licensed optometrist continuously in another jurisdiction throughout such lapse period, at least 12 hours of acceptable continuing education in each successive 12-month period of the new registration period for a licensee certified to use topical therapeutic pharmaceutical agents and/or therapeutic pharmaceutical agents for the treatment of glaucoma and ocular hypertension or at least 18 hours of acceptable continuing education for a licensee certified to use oral therapeutic pharmaceutical agents; or

(b) for a licensee who has lawfully practiced optometry continuously in another jurisdiction throughout such lapse period, the regular continuing education requirement described in subdivision (c) of this section during the new registration period.

(2) Except as prescribed in paragraph (1) of this subdivision for registrations therein specified, a licensee who returns to practice as a licensed optometrist after a lapse in practice in which the licensee was not registered to practice in New York State

and did not lawfully practice continuously in another jurisdiction throughout the lapse period, shall be required to complete:

(i) the continuing education requirement applicable to the period of time the licensee was registered in the licensee's last registration period;

(ii) at least one hour of acceptable continuing education for each month of lapsed registration up to a maximum 36 hours if certified to use topical therapeutic pharmaceutical agents and/or therapeutic pharmaceutical agents for the treatment of glaucoma and ocular hypertension or a maximum of 54 hours if certified to use oral therapeutic pharmaceutical agents. Such continuing education shall be completed in the 12 months before the beginning of the new registration period; and

(iii) at least 12 hours of acceptable continuing education in each succeeding 12-month period if certified to use topical therapeutic pharmaceutical agents and/or therapeutic pharmaceutical agents for the treatment of glaucoma and ocular hypertension or 18 hours if certified to use oral therapeutic pharmaceutical agents, after such registration is reissued, until the next registration date.

(3) Except as prescribed in paragraph (1) of this subdivision for registrations therein specified, a licensee who returns to the practice of optometry after a lapse in practice in which the licensee was not registered to practice in New York State but did lawfully practice optometry continuously in another jurisdiction throughout the lapse period, shall be required to complete:

(i) the continuing education requirement applicable to the period of time the licensee was registered in the licensee's last registration period;

(ii) at least one hour of acceptable continuing education if certified to use topical therapeutic pharmaceutical agents and/or therapeutic pharmaceutical agents for the

treatment of glaucoma and ocular hypertension and one-and-one-half hours if certified to use oral therapeutic pharmaceutical agents for each month of lapsed registration up to a maximum of 36 hours. Such continuing education shall be completed in the new registration period or, at the option of the licensee, in the period beginning 36 months before the commencement of the new registration period and ending at the conclusion of the new registration period; and

(iii) the regular continuing education requirement during the new registration period.

(f) Conditional registration.

(1) The department may issue a conditional registration to a licensee who attests to or admits to noncompliance with the continuing education requirements of this section, provided that such licensee meets the following requirements:

(i) the licensee agrees to remedy such deficiency within the conditional registration period;

(ii) the licensee agrees to complete the regular continuing education requirement at the rate of one hour of acceptable continuing education per month during such conditional registration period; and

(iii) the licensee agrees to complete additional continuing education during such conditional registration period, which the department may require to ensure the licensee's proper delivery of optometric services consistent with the licensee's practice.

(2) The duration of such conditional registration shall not exceed one year and shall not be renewed or extended.

(g) Licensee records.

(1) Each licensee subject to the requirements of this section shall maintain a record of completed continuing education, which includes: the title of the course, the type of educational activity if an educational activity, the subject of the continuing education, the number of hours of continuing education completed, the sponsor's name and identifying number (if applicable), attendance verification, and the date and location of the continuing education. The Department has the right to access the above records whether maintained by a sponsor or third party.

(2) 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.

(h) Measurement of continuing education study. Continuing education credit shall be granted only for acceptable continuing education as prescribed in subdivision (c) of this section. For continuing education courses, a minimum of 50 minutes of study shall equal one continuing education hour of credit. For credit-bearing university or college courses, each semester-hour of credit shall equal 15 continuing education hours of credit, and each quarter-hour of credit shall equal 10 continuing education hours of credit.

(i) Sponsor approval.

(1) A sponsor may only deliver a continuing education course if it is approved by the department under the circumstances described in paragraph (2) or (3) of this subdivision.

(2) Sponsors of continuing education courses in the form of courses of learning or self-study programs shall be approved if the sponsor submits an application to the department and is:

(i) a post-secondary institution authorized to offer programs in optometry leading to licensure registered pursuant to Part 52 of this Title or accredited by an acceptable accrediting agency; or

(ii) a national organization of jurisdictional boards of optometry that promotes and protects the health, safety and welfare of the public and fosters good practice of optometry that have standards for approving sponsors of continuing education that include, but are not limited to, standards that are equivalent to the standards prescribed in paragraph (3) of this subdivision.

(3) Department review of sponsors.

(i) All sponsors that do not meet the criteria described in paragraph (2) of this subdivision must be reviewed by the department prior to the delivery of continuing education to licensed optometrists.

(ii) An organization desiring to offer continuing education based upon a department review under this paragraph shall submit, with the fee as set forth in paragraph (j)(3) of this section, an application for advance approval as a sponsor at least 90 days prior to the date of the commencement of such continuing education. In the application, the organization must demonstrate that it:

(a) will offer courses of learning or self-study programs in one or more of the subjects prescribed for acceptable continuing education in subparagraph (c)(3)(i) of this section;

(b) has expertise in the professional areas that will be taught;

(c) provides course instructors who are qualified to teach the courses that will be offered, such as faculty of an optometry program offered by a higher education

institution or instructors who are specially qualified authorities in the subject area as determined by the department;

(d) offers a method for assessing the learning of participants; and

(e) will maintain records for at least six years from the date of completion of coursework, which shall include, but shall not be limited to, the name and curriculum vitae of the faculty, a record of attendance of optometrists in the course if a course, a record of participation of optometrists in the self-instructional coursework if self-instructional coursework, an outline of the course, date and location of the course, and the number of hours for completion of the course.

(iii) A course that is approved by the department pursuant to the requirements of this paragraph may be offered as long as departmental approval is maintained by the sponsor.

(iv) Sponsors that are approved by the department pursuant to the requirements of this paragraph shall be approved for a three-year term.

(v) The department may conduct site visits of, or request information from, a sponsor approved pursuant to the requirements of this paragraph to ensure compliance with such requirements. A sponsor shall cooperate with the department in permitting such site visits and in providing such information.

(vi) If the department determines that an approved sponsor is not meeting the standards set forth in this paragraph, the department may revoke the sponsor's approved status.

(vii) If an approved sponsor discontinues operation, the governing body of such sponsor shall notify the department and transfer continuing education records as directed by the department.

(j) Fees

(1) At the beginning of each registration period, a mandatory continuing education fee of \$45 shall be collected from licensees engaged in the practice of optometry in New York State, except for those exempt from the requirement pursuant to subparagraph (b)(2)(i) of this section. This fee shall be in addition to any applicable registration fees required by section 7104 of the Education Law.

(2) Licensees applying for a conditional registration, pursuant to the requirements of subdivision (f) of this section, shall pay a fee that is the same as, and in addition to, any applicable fee for the triennial registration required by section 7104 of the Education Law. In addition, such licensees shall pay the \$45 mandatory continuing education fee.

(3) Organizations desiring to offer continuing education to licensed optometrists based upon a department review, pursuant to paragraph (i)(3) of this section, shall submit an application fee of \$900 with the application requesting the issuance of a permit from the department to become an approved sponsor of a formal continuing education program. A fee of \$900 shall accompany an application for a three-year renewal of the permit.