



TO: The Honorable Members of the Board of Regents

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

SUBJECT: Proposed Addition of Sections 63.16 and 60.14, and Subdivision (d) to Section 64.5 of the Regulations of the Commissioner of Education Relating to Dispensing Self-Administered Hormonal Contraceptives

DATE: April 25, 2024

AUTHORIZATION(S): *Tom M. Bell*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents add sections 63.16 and 60.14, and subdivision (d) to section 64.5 of the Regulations of the Commissioner of Education relating to dispensing self-administered hormonal contraceptives?

Reason for Consideration

Required by State statute (Chapter 128 of the Laws of 2023, as amended by Chapter 90 of the Laws of 2024).

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at the May 2024 Regents 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

The proposed amendment was presented to the Professional Practice Committee for discussion at the February 2024 meeting of the Board of Regents. A Notice of Proposed Rule Making was published in the State Register on February 28, 2024, for a 60-day public comment period required under the State Administrative Procedure Act (SAPA).

Subsequently, Chapter 90 of the Laws of 2024 made this law retroactively effective on January 1, 2024. Therefore, emergency action was necessary at the March 2024 meeting to ensure that the proposed rule, which implements such Chapter, was in effect. A Notice of Emergency Adoption was published in the State Register on March 27, 2024.

Because the March 2024 emergency rule will expire on June 9, 2024, a second emergency action is necessary to ensure that the emergency rule remains continuously in effect until it can be permanently adopted at the June 2024 Regents meeting. A Notice of Emergency Adoption will be published in the State Register on June 26, 2024. Supporting materials for the proposed rule are available upon request from the Secretary to the Board of Regents.

Background Information

Chapter 128 of the Laws of 2023, as amended by Chapter 90 of the Laws of 2024, (Chapter 128), effective January 1, 2024, amends the Education Law to allow New York State licensed pharmacists located within the State to dispense self-administered hormonal contraceptives to patients pursuant to non-patient specific orders written by the Commissioner of Health, licensed physicians, or certified nurse practitioners. Chapter 128 is intended to increase access to contraceptive drugs for patients in New York State.

Chapter 128:

- Amends section 6527 of the Education Law by adding a new subdivision (11), which permits a licensed physician to prescribe and order a non-patient specific order to a pharmacist licensed and located in this State, for the dispensing of self-administered hormonal contraceptives to patients, that are approved by the federal Food and Drug Administration (FDA).
- Amends section 6909 of the Education Law by adding a new subdivision (11), which permits a certified nurse practitioner to prescribe and order a non-patient specific order to a pharmacist licensed and located in this State, for dispensing self-administered hormonal contraceptives to patients, that are approved by the FDA.
- Amends section 6802 of the Education Law by adding a new subdivision (29) to define the term “self-administered hormonal contraceptives.”
- Amends section 6801 of the Education Law by adding a new subdivision (9) which provides that:
 - a) a pharmacist licensed and located in the State may execute a non-patient specific order for the dispensing of self-administered hormonal contraceptives that are prescribed or ordered by the Commissioner of Health, a New York State licensed physician, or New York State certified nurse practitioner;
 - b) prior to dispensing self-administered hormonal contraceptives to a patient, and at least every twelve months for returning patients, the pharmacist must provide the patient with a self-screening risk assessment questionnaire, developed by the Commissioner of Health in consultation with the Commissioner of Education, to be reviewed by the pharmacist to identify any known risk factors and assist the patient’s selection of an appropriate self-administered hormonal contraception. The pharmacist

must also provide the patient with a fact sheet developed by the Commissioner of Health, that includes the clinical considerations and recommendations for use of the self-administered hormonal contraceptive, the appropriate method for using such hormonal contraceptive, information on the importance of follow-up health care, health care referral information, and the ability of the patient to opt out of practitioner reporting requirements;

- c) no pharmacist shall dispense self-administered hormonal contraception without receiving training satisfactory to the Commissioner of Education;
 - d) a pharmacist shall notify the patient's primary health care practitioner, unless the patient opts out of such notification, within seventy-two hours of dispensing the self-administered hormonal contraceptive. If the patient does not have a primary health care practitioner, or is unable to provide their contact information, the pharmacist shall provide the patient with a written record of contraceptives dispensed, and advise the patient to consult an appropriate health care practitioner; and
 - e) nothing shall prevent a pharmacist from refusing to dispense a non-patient specific order of a self-administered hormonal contraceptive if, in their professional judgment, potential adverse effects, interactions, or other therapeutic conditions could endanger the health of the patient.
- Adds a new section 267-a to the Public Health Law authorizing the Commissioner of Health to establish a non-patient specific order for dispensing self-administered hormonal contraceptives.
 - Authorizes that any addition, amendment, and/or repeal of any rule or regulation necessary for implementation may be made before the effective date.

Proposed Amendment

The proposed addition of section 63.16 of the Commissioner's regulations implements Chapter 128 for pharmacists by:

- adopting the definition of "self-administered hormonal contraceptives" as set forth in Chapter 128;
- establishing that a pharmacist licensed and located in New York State may execute a non-patient specific order to dispense self-administered hormonal contraceptives as set forth in sections 6527, 6801, and 6909 of the Education Law;
- setting forth the competency requirements for training deemed satisfactory to the Commissioner of Education;
- establishing the requirement that pharmacists dispensing self-administered hormonal contraceptives, pursuant to non-patient specific orders, maintain documentation of their successful completion of the training (such documentation shall be available for review by the Department upon request);

- establishing the standards, procedures, and reporting requirements for pharmacists located in New York State for dispensing self-administered hormonal contraceptives pursuant to non-patient specific order; and
- establishing that nothing shall prevent a pharmacist from refusing to dispense a self-administered hormonal contraceptive to a patient, pursuant to non-patient specific order, if in their professional judgment, potential adverse effects, interactions, or other therapeutic complications could endanger the health of the patient.

The proposed addition of section 60.14 of the Commissioner’s regulations implements Chapter 128 for the practice of medicine by:

- adopting the definition of “self-administered hormonal contraceptives” as set forth in Chapter 128;
- establishing that a licensed physician may issue a written non-patient specific order and protocol for a licensed pharmacist located in this State to dispense self-administered hormonal contraceptives to patients in New York State; and
- setting forth the requirements for written non-patient specific orders and protocols for the dispensing of self-administered hormonal contraceptives issued by physicians.

Finally, the proposed amendments implement Chapter 128 for nursing by:

- adopting the definition of “self-administered hormonal contraceptives” as set forth in Chapter 128;
- establishing that a certified nurse practitioner may issue a written non-patient specific order and protocol for a licensed pharmacist located in this State to dispense self-administered hormonal contraceptives to patients in New York State; and
- setting forth the requirements for written non-patient specific orders and protocols for the dispensing of self-administered hormonal contraceptives issued by certified nurse practitioners.

Related Regents Items

March 2024: [Proposed Addition of Sections 63.16 and 60.14, and Subdivision \(d\) to Section 64.5 of the Regulations of the Commissioner of Education Relating to Dispensing Self-Administered Hormonal Contraceptives](https://www.regents.nysed.gov/sites/regents/files/324brca10.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/324brca10.pdf>)

February 2024: [Proposed Addition of Sections 63.16 and 60.14, and Subdivision \(d\) to Section 64.5 of the Regulations of the Commissioner of Education Relating to Dispensing Self-Administered Hormonal Contraceptives](https://www.regents.nysed.gov/sites/regents/files/224ppcd1.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/224ppcd1.pdf>)

Recommendation

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

VOTED: That sections 63.16 and 60.14, and subdivision (d) to section 64.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective June 10, 2024, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare and public health to immediately implement Chapter 128 of the Laws of 2023, which per Chapter 90 of the Laws of 2024, became effective January 1, 2024, and to ensure that the emergency action taken at the March 2024 meeting remains continuously in effect.

Timetable for Implementation

If adopted as an emergency rule at the May 2024 Regents meeting, the emergency rule will become effective June 10, 2024. It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at the June 2024 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 June Regents meeting. If adopted at the June 2024 meeting, the proposed rule will become effective as a permanent rule on June 26, 2024.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 6527, 6801, 6806, 6902 and 6909 of the Education Law and Chapter 128 of the Laws of 2023.

1. The Regulations of the Commissioner of Education are amended by adding a new section 63.16 to read as follows:

Section 63.16 Dispensing Self-Administered Hormonal Contraceptives

(a) Definitions. As used in this section, self-administered hormonal contraceptives, means self-administered contraceptive medications or devices approved by the federal Food and Drug Administration to prevent pregnancy by using hormones to regulate or prevent ovulation, and includes oral hormonal contraceptives, hormonal contraceptive vaginal rings and hormonal contraceptive patches.

(b) Pursuant to sections 6527, 6801, and 6909 of the Education Law, a pharmacist licensed and located in this state may execute a non-patient specific order to dispense self-administered hormonal contraceptives provided that:

(1) the pharmacist has successfully completed training in the dispensing of self-administered hormonal contraceptives, satisfactory to the commissioner;

(2) the non-patient specific order is prescribed or ordered by the commissioner of health, a physician licensed in this state, or a nurse practitioner certified in this state; and

(3) the self-administered hormonal contraceptive is approved by the federal Food and Drug Administration to prevent pregnancy by using hormones to regulate or prevent ovulation and includes oral hormonal contraceptives, hormonal contraceptive vaginal rings and hormonal contraceptive patches and is being dispensed to the patient for such purpose.

(c) Requirements.

(1) A pharmacist licensed and located in this state shall not dispense self-administered hormonal contraceptives to patients pursuant to a non-patient specific order without receiving training satisfactory to the commissioner. Training that is satisfactory to the commissioner shall entail the completion of instruction in the dispensing of self-administered hormonal contraceptives that provides:

(i) knowledge of the menstrual cycle, including the different menstrual cycle phases and hormonal functions;

(ii) knowledge of the various contraceptive methods, medications and devices, including both self-administered and non-self-administered contraceptives and devices. Such overview shall also include the pharmacology and mechanisms of actions for the various contraceptives and devices available on the market;

(iii) knowledge of the precautions and contraindications in the use of hormonal contraceptives; and

(iv) knowledge of the various techniques required to counsel and adequately screen patients for the dispensing of an appropriate self-administered hormonal contraceptive if applicable.

(2) Pharmacists that dispense self-administered hormonal contraceptives to patients pursuant to a non-patient specific order are required to maintain documentation of their successful completion of the training prescribed in paragraph (1) of this subdivision. Such documentation shall be available for review by the department upon request.

(d) Standards, procedures and reporting requirements for the dispensing of self-administered hormonal contraceptives pursuant to a non-patient specific order.

(1) Prior to dispensing self-administered hormonal contraceptives to a patient and at a minimum of every twelve months thereafter for each returning patient, the licensed pharmacist shall:

(i) Provide the patient with a self-screening risk assessment questionnaire, developed by the commissioner of health in consultation with the commissioner, to be reviewed by the pharmacist to identify any known risk factors and assist the patient's selection of an appropriate self-administered hormonal contraceptive; and

(ii) Provide the patient with a fact sheet, developed by the commissioner of health, that includes, but is not limited to, the clinical considerations and recommendations for use of the self-administered hormonal contraceptive, the appropriate method for using such self-administered hormonal contraceptive, information on the importance of follow-up health care, health care referral information, and the ability of the patient to opt out of practitioner reporting requirements.

(2) A licensed pharmacist shall notify the patient's primary health care practitioner, unless the patient opts out of such notification, within 72 hours of dispensing a self-administered hormonal contraceptive, that such self-administered hormonal contraceptive has been dispensed. Such notification may occur via electronic transmission or facsimile. If the patient does not have a primary health care practitioner or is unable to provide contact information for their primary health care practitioner, the pharmacist shall provide the patient with a written record of the self-administered hormonal contraceptives dispensed and advise the patient to consult an appropriate health care practitioner.

(3) A licensed pharmacist shall:

(i) maintain records of the dispensing of the self-administered hormonal contraception, in accordance with section 6810(5) of the Education Law; and

(ii) maintain or ensure the maintenance of a copy of the non-patient specific order which authorizes the pharmacist to dispense self-administered hormonal contraception in accordance with the requirements of this section.

(4) Nothing in this section shall prevent a pharmacist from refusing to dispense a non-patient specific order of self-administered hormonal pursuant to this section if, in their professional judgment, potential adverse effects, interactions or other therapeutic complications could endanger the health of the patient

2. The Regulations of the Commissioner of Education are amended by adding a new section 60.14 to read as follows:

Section 60.14 Non-patient specific orders to dispense self-administered hormonal contraceptives

(a) As used in this section, self-administered hormonal contraceptives means self-administered oral hormonal contraceptive medications or devices approved by the federal Food and Drug Administration to prevent pregnancy by using hormones to regulate or prevent ovulation, and includes oral hormonal contraceptives, hormonal contraceptive vaginal rings and hormonal contraceptive patches.

(b) A licensed physician may issue a written non-patient specific order and protocol for a licensed pharmacist to dispense self-administered hormonal contraceptives to patients in New York State, provided that the requirements of this section are met.

(c) Order and protocol.

(1) The non-patient specific order shall include, at a minimum, the following:

(i) the name, license number and signature of the licensed physician who issues the non-patient specific order and protocol;

(ii) the name and dose of the specific drug(s) or the name of specific medical device to be dispensed;

(iii) a protocol for dispensing the self-administered hormonal contraceptives or a specific reference to a separate written protocol for dispensing the self-administered hormonal contraceptives, which shall meet the requirements of paragraph (2) of subdivision (c) of this section.

(iv) the period of time that the order is effective, including the beginning and ending dates;

(v) a description of the group(s) of persons who may receive the dispensed self-administered hormonal contraceptives; and,

(vi) the name and license number of each licensed pharmacist authorized to execute the non-patient specific order and protocol or the name and address of the New York State licensed pharmacy that employs or contracts with the licensed pharmacist(s) to execute the non-patient specific order and protocol.

(2) The written protocol, incorporated into the order prescribed in paragraph (1) of subdivision (c) of this section shall, at a minimum, require the licensed pharmacist to:

(i) provide the patient with a self-screening risk assessment questionnaire, developed by the commissioner of health in consultation with the commissioner, to be reviewed by the pharmacist to identify any known risk factors and assist the patient's selection of an appropriate self-administered hormonal contraceptive;

(ii) provide the patient with a fact sheet, developed by the commissioner of health, that includes but is not limited to, the clinical considerations and recommendations for use of the self-administered hormonal contraceptive, the appropriate method for using such self-administered hormonal contraceptive, information on the importance of follow-

up health care, health care referral information, and the ability of the patient to opt out of practitioner reporting requirements;

(iii) notify the patient's primary health care practitioner, unless the patient opts out of such notification, within seventy-two hours of dispensing a self-administered hormonal contraceptive, that such self-administered hormonal contraceptive has been dispensed. Such notification may occur via electronic transmission or facsimile. If the patient does not have a primary health care practitioner or is unable to provide contact information for their primary health care practitioner, the pharmacist shall provide the patient with a written record of the self-administered hormonal contraceptives dispensed and advise the patient to consult an appropriate health care practitioner;

(iv) offer or provide in writing, the names and addresses of hospitals or other health providers that offer follow-up care, which shall be identified in the protocol; and

(vi) document the pharmacy services provided as described in this paragraph and maintain the documentation in accordance with sections 29.2(a)(3), 63.6(b)(7), and 63.6(b)(8) of this Title.

3. Section 64.5 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (d) to read as follows:

(d) Non-patient specific orders to dispense self-administered hormonal contraceptives

(1) As used in this subdivision, self-administered hormonal contraceptives means self-administered oral hormonal contraceptive medications or devices approved by the federal Food and Drug Administration to prevent pregnancy by using hormones to regulate or prevent ovulation, and includes oral hormonal contraceptives, hormonal contraceptive vaginal rings and hormonal contraceptive patches.

(2) A certified nurse practitioner may issue a written non-patient specific order and protocol for a licensed pharmacist to dispense self-administered hormonal contraceptives, provided that the requirements of this subdivision are met.

(3) Order and protocol.

(i) The non-patient specific order shall include, at a minimum, the following:

(a) the name, license number and signature of the certified nurse practitioner who issues the non-patient specific order and protocol;

(b) the name and dose of the specific drug(s) or the name of specific medical device to be dispensed;

(c) a protocol for dispensing the self-administered hormonal contraceptives or a specific reference to a separate written protocol for dispensing the self-administered hormonal contraceptives, which shall meet the requirements of subparagraph (ii) of this paragraph;

(d) the period of time that the order is effective, including the beginning and ending dates;

(e) a description of the group(s) of persons who may receive the dispensed self-administered hormonal contraceptives; and,

(f) the name and license number of each licensed pharmacist authorized to execute the non-patient specific order and protocol or the name and address of the New York State licensed pharmacy that employs or contracts with the licensed pharmacist(s) to execute the non-patient specific order and protocol.

(ii) The written protocol, incorporated into the order prescribed in subparagraph (i) of this paragraph, shall, at a minimum, require the licensed pharmacist to:

(a) provide the patient with a self-screening risk assessment questionnaire, developed by the commissioner of health in consultation with the commissioner, to be

reviewed by the pharmacist to identify any known risk factors and assist the patient's selection of an appropriate self-administered hormonal contraceptive;

(b) provide the patient with a fact sheet, developed by the commissioner of health, that includes but is not limited to, the clinical considerations and recommendations for use of the self-administered hormonal contraceptive, the appropriate method for using such self-administered hormonal contraceptive, information on the importance of follow-up health care, health care referral information, and the ability of the patient to opt out of practitioner reporting requirement;

(c) notify the patient's primary health care practitioner, unless the patient opts out of such notification, within seventy-two hours of dispensing a self-administered hormonal contraceptive, that such self-administered hormonal contraceptive has been dispensed. Such notification may occur via electronic transmission or facsimile. If the patient does not have a primary health care practitioner or is unable to provide contact information for their primary health care practitioner, the pharmacist shall provide the patient with a written record of the self-administered hormonal contraceptives dispensed and advise the patient to consult an appropriate health care practitioner;

(d) offer or provide in writing, the names and addresses of hospitals or other health providers that offer follow-up care, which shall be identified in the protocol; and

(e) document the pharmacy services provided as described in this subparagraph and maintain the documentation in accordance with sections 29.2(a)(3), 63.6(b)(7), and 63.6(b)(8) of this Title.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH
NECESSITATE EMERGENCY ACTION

Chapter 128 of the Laws of 2023, as amended by Chapter 90 of the Laws of 2024 (Chapter 128), effective January 1, 2024, amends the Education Law to allow New York State licensed pharmacists located within the State to dispense self-administered hormonal contraceptives to patients pursuant to non-patient specific orders issued by the Commissioner of Health, licensed physicians, or certified nurse practitioners. Chapter 128 is intended to increase access to contraceptive drugs for patients in New York State.

The proposed amendment implements Chapter 128 by, among other things:

- adopting the definition of “self-administered hormonal contraceptives” as set forth in Chapter 128;
- setting forth the competency requirements for pharmacist training deemed satisfactory to the Commissioner of Education;
- establishing the requirement that pharmacists dispensing self-administered hormonal contraceptives, pursuant to non-patient specific orders, maintain documentation of their successful completion of the training (such documentation shall be available for review by the Department upon request);
- establishing the standards, procedures, and reporting requirements for pharmacists located in New York State for dispensing self-administered hormonal contraceptives pursuant to non-patient specific order; and
- establishing that nothing shall prevent a pharmacist from refusing to dispense a self-administered hormonal contraceptive to a patient, pursuant to non-patient specific order, if in their professional judgment, potential adverse effects,

interactions, or other therapeutic complications could endanger the health of the patient; and

- setting forth the requirements for written non-patient specific orders and protocols for the dispensing of self-administered hormonal contraceptives issued by physicians and nurse practitioners.

The proposed amendment was presented to the Professional Practice Committee for recommendation to the Full Board for adoption as an emergency rule at the March 2024 meeting of the Board of Regents, effective March 12, 2024. Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency) action after expiration of the 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the June 2024 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the June 2024 meeting, would be June 26, 2024, the date the Notice of Adoption would be published in the State Register.

Therefore, emergency action was necessary at the March 2024 meeting, effective March 12, 2024, for the public health and preservation of the general welfare and public health in order to immediately implement Chapter 128, which became effective January 1, 2024.

However, the emergency rule will expire on June 9, 2024. Therefore, a second emergency action is necessary at the May 2024 meeting for the preservation of the public health and general welfare to conform the Commissioner's regulation to implement the requirements of Chapter 128, as well as ensure that the emergency action at the March 2024 meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the June 2024 Regents meeting, which is the first scheduled meeting after the 60-day public comment period prescribed in SAPA for State agency rule makings.