



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

TO: The Honorable Members of the Board of Regents

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

SUBJECT: Proposed Amendment of Section 61.17 of the Regulations of the Commissioner of Education Relating to the Use of Restricted Local Infiltration Anesthesia/Nitrous Oxide Analgesia by Dental Hygienists

DATE: June 30, 2022

AUTHORIZATION(S): *Donna Bellizzi*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of section 61.17 of the Commissioner's Regulations relating to the use of restricted local infiltration anesthesia/nitrous oxide analgesia by dental hygienists?

Reason(s) for Consideration

Required by statute (Chapter 198 of the Laws of 2022).

Proposed Handling

The proposed amendment will be presented to the Full Board for adoption as an emergency rule at the July 2022 meeting of the Board of Regents. A copy of the proposed rule (Attachment A) and a statement of facts and circumstances justifying the emergency action (Attachment B) are attached.

Procedural History

The proposed rule was presented to the Professional Practice Committee for discussion and to the Full Board for adoption as an emergency rule at its June 2022 Regents meeting, effective June 14, 2022. A Notice of Emergency Adoption and

Proposed Rulemaking was published in the State Register on June 29, 2022, for a 60-day public comment period.

Because the June emergency action will expire on September 11, 2022, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the October 2022 Regents meeting. A Notice of Emergency Adoption will be published in the State Register on July 27, 2022. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

On May 9, 2022, the Governor signed Chapter 198 of the Laws of 2022 (Chapter 198), which was effective immediately. This law amended the Education Law §6605-b to allow dental hygienists to use local infiltration and nitrous oxide anesthetic modalities to assist dentists in performing any dental service. By allowing dental hygienists, with anesthesia certification, to anesthetize patients for any dental service, access to care will be improved because this will enable dentists to work more efficiently, see more patients and reduce waiting times for patients.

In order to meet the requirements for anesthesia certification, dental hygienists receive ample education and training. Since 2003, dental hygienists, with anesthesia certificates, have been authorized to anesthetize patients undergoing dental hygiene procedures. In order to obtain restricted anesthesia certification, an applicant must be licensed and currently registered in New York State or applying concurrently for licensure. Any dental hygiene service, from scaling and root planing to teeth cleaning can be performed under local infiltration and/or nitrous oxide analgesia. These modalities are used with patients who cannot tolerate any type of scaling without anesthesia or patients who are nervous and anxious. The ability of hygienists to provide anesthetic services helps them to administer better care because patients are more comfortable.

Therefore, the Department proposes to amend section 61.17 of the Commissioner's regulations to implement Chapter 198. Specifically, paragraph (1) of subdivision (b) of such section would be amended to remove the restriction that dental hygienists can only use local infiltration anesthesia and nitrous oxide for dental hygiene procedures.

Related Regents Items

June 2022: [Proposed Amendment of Section 61.17 of the Regulations of the Commissioner of Education Relating to the Use of Restricted Local Infiltration Anesthesia/Nitrous Oxide Analgesia by Dental Hygienists](https://www.regents.nysed.gov/common/regents/files/622ppca1_revised.pdf)
(https://www.regents.nysed.gov/common/regents/files/622ppca1_revised.pdf)

Recommendation

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

VOTED: That paragraph (1) of subdivision (b) of section 61.17 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 12, 2022, as an emergency action, upon a finding by the Board of Regents that such an action is necessary for the preservation of the public health and the general welfare in order to timely implement the requirements of Chapter 198 of the Law of 2022, which became effective June 14, 2022 and to ensure that the emergency action taken at the June 2022 meeting remains continuously in effect.

Timetable for Implementation

If adopted at the July 2022 Regents meeting, the emergency rule will become effective September 12, 2022. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the October 2022 Regents meeting, after publication in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the October 2022 meeting, the proposed rule will become effective as a permanent rule on October 19, 2022.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 6605-b, 6606, 6607 of the Education Law and Chapter 198 of the Laws of 2022.

1. Paragraph (1) of subdivision (b) of section 61.17 of the Regulations of the Commissioner of Education is amended, to read, as follows:

(1) A licensed dental hygienist shall not administer or monitor nitrous oxide analgesia or local infiltration anesthesia in the practice of dental hygiene without being issued a dental hygiene restricted local infiltration anesthesia/nitrous oxide analgesia certificate in accordance with the requirements of this section, except that such administration or monitoring of nitrous oxide analgesia or local infiltration anesthesia by a licensed dental hygienist who is certified under this section must be under the personal supervision of a licensed dentist, as defined in subdivision (a) of this section[,and in conjunction with the performance of dental hygiene procedures authorized by section 6606 of the Education Law].

8 NYCRR §61.17

**STATEMENT OF FACTS AND CIRCUMSTANCES
WHICH NECESSITATE EMERGENCY ACTION**

The proposed rule is necessary to implement Chapter 198 of the Laws of 2022 (Chapter 198), which became effective May 9, 2022. This proposed rule conforms the Commissioner's regulations to Chapter 198, which amended the Education Law, by removing the restriction that dental hygienists can only use local infiltration anesthesia and nitrous oxide for dental hygiene procedures to permit dental hygienists to use these modalities to assist a dentist in performing any dental service.

The proposed amendment was presented to the Professional Practice Committee for recommendation to the Full Board for adoption as an emergency rule at the June 2022 meeting of the Board of Regents, effective June 14, 2022. Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for adoption, after expiration of the required 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the October 2022 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date for the proposed rule, if adopted at the October meeting, would be October 19, 2022, the date the Notice of Adoption would be published in the State Register. However, Chapter 198 became effective May 9, 2022. This necessitated an emergency rule to be adopted at the June 2022 meeting of the Board of Regents.

However, the emergency rule will expire on September 11, 2022. Therefore, a second emergency action is necessary at the July meeting for the preservation of the public health and general welfare in order to enable the State Education Department to timely implement the requirements of Chapter 198, which allows dental hygienists to use local infiltration anesthesia and nitrous oxide to assist dentists in performing any dental service to help ensure the health, safety and welfare of the public by improving access to dental services to that require the use of these modalities and to ensure that the emergency action taken at the June 2022 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 October 2022 Regents meeting, which is the first scheduled meeting after the expiration of the 60-day public comment period prescribed in SAPA for State agency rule makings.