




TO: The Professional Practice Committee
FROM: Douglas E. Lentivech

SUBJECT: Proposed Amendment to Section 29.14 of the Rules of the Board of Regents and Section 64.5 of the Regulations of the Commissioner of Education Relating to the Regulation of Nurse Practitioner Practice

DATE: September 8, 2014

AUTHORIZATION(S):



SUMMARY

Issue for Discussion

Should the Board of Regents approve the addition of paragraph (3) to subdivision (a) of section 29.14 of the Rules of the Board of Regents and the addition of subdivision (g) to section 64.5 of the Regulations of the Commissioner of Education to implement Part D of Chapter 56 of the Laws of 2014 relating to the regulation of nurse practitioner practice?

Reason for Consideration

Required by State statute (Education Law section 6902(3), as added by Part D of Chapter 56 of the Laws of 2014).

Proposed Handling

The proposed rule will come before the Professional Practice Committee for discussion at the September 2014 meeting of the Board of Regents.

Procedural History

A Notice of Proposed Rulemaking will be published in the State Register on September 10, 2014. A copy of the proposed rule is attached. Supporting materials for

the proposed rule are available upon request from the Secretary of the Board of Regents.

Background Information

New York State budget legislation, enacted in 2014, included amendments to the Education Law known as the Nurse Practitioners Modernization Act (L. 2014, c. 56, Part D). The purpose of this law, which will become effective January 1, 2015, is to increase access to needed health care services in New York State, while protecting the public, by amending the Education Law to establish criteria for authorizing qualified nurse practitioners to practice, pursuant to collaborative relationships with one or more licensed physicians or a hospital licensed under Article 28 of the Public Health Law (Article 28 hospital), in lieu of practicing in collaboration with a physician in accordance with a written practice agreement and written practice protocols. This law also amends the Education Law to establish record keeping and documentation requirements for nurse practitioners practicing pursuant to collaborative relationships and establishes specific unprofessional conduct provisions for all nurse practitioners.

The proposed addition of paragraph (3) to subdivision (a) of section 29.14 of the Rules of the Board of Regents establishes that unprofessional conduct in the practice of nursing includes the failure by a nurse practitioner to comply with either the requirements relating to collaboration with a physician as set forth in Education Law §6902(3)(a) or the collaborative relationships requirements of Education Law §6902(3)(b).

The proposed addition of subdivision (g) to section 64.5 of the Regulations of the Commissioner of Education establishes the criteria for authorizing nurse practitioners to practice, pursuant to collaborative relationships with one or more licensed physicians or an Article 28 hospital, in lieu of practicing in collaboration with a physician under a written practice agreement and written practice protocols. Nurse practitioners seeking to practice, pursuant to collaborative relationships, must have more than 3,600 hours of experience practicing as a licensed or certified nurse practitioner which the proposed rule specifies as practice pursuant to the laws of New York State or any other state or as a nurse practitioner while employed by the United States Veteran Association, the United States Armed Forces or the United States Public Health Services. Such nurse practitioners must also communicate, in person, by telephone, or through written means including electronically, with a physician who is qualified to collaborate in the specialty area involved, or in the case of an Article 28 hospital, nurse practitioners must communicate with a physician qualified to collaborate in the specialty area involved and who has privileges at such hospital, for the purposes of exchanging information, as needed, in order to provide comprehensive patient care and to make referrals, as necessary.

The proposed addition of subdivision (g) to section 64.5 of the Regulations of the Commissioner of Education also establishes several record keeping and documentation requirements for nurse practitioners practicing pursuant to collaborative relationships. Such nurse practitioners must complete and maintain a form, prescribed by the Department, to which they must attest, that describes their current collaborative relationships. Nurse practitioners must also acknowledge on this form that, if

reasonable efforts to resolve any disputes that may arise about a patient's care are not successful, the recommendation of the collaborating physician, or in the case of a collaboration with an Article 28 hospital, the recommendation of the physician qualified to collaborate in the specialty area involved and having professional privileges at such hospital, must prevail. This form must be updated as needed and may be subject to review by the Department, upon its request.

In addition to above-referenced form, nurse practitioners must retain documentation in written or electronic form that supports their collaborative relationships.

Timetable for Implementation

It is anticipated that the proposed rule will be presented for adoption at either the November or December 2014 Regents meeting. If adopted in either November or December, the proposed rule would become effective January 1, 2015, which is the effective date of Part D of Chapter 56 of the Laws of 2014.

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS AND THE
REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 6509 and 6902 of the Education Law and Part D of Chapter 56 of the Laws of 2014

1. Subdivision (a) of section 29.14 of the Rules of the Board of Regents is amended, effective January 1, 2015, to read as follows:

(a) Unprofessional conduct in the practice of nursing shall include all conduct prohibited by sections 29.1 and 29.2 of this Part, except as provided in this section, and shall also include the following:

(1) ...

(2) ...

(3) Failure by a nurse practitioner to comply with either the requirements relating to collaboration with a physician of paragraph (a) of subdivision (3) of section 6902 of the Education Law or the collaborative relationships requirements of paragraph (b) of subdivision (3) of section 6902 of the Education Law.

2. Subdivision (g) of section 64.5 of the Regulations of the Commissioner of Education is added, effective January 1, 2015, to read as follows:

(g) Collaborative relationships.

(1) Definitions. As used in this subdivision:

(i) Collaborative relationships shall mean that a nurse practitioner communicates, in person, by telephone, or through written means including electronically, with a physician who is qualified to collaborate in the specialty area involved, or in the case of a hospital, the nurse practitioner communicates with a physician qualified to collaborate in the specialty area involved and who has privileges at such hospital, for the purposes

of exchanging information, as needed, in order to provide comprehensive patient care and to make referrals, as necessary.

(ii) Physician shall mean a New York State licensed and registered physician.

(iii) Hospital shall mean a hospital as defined by Public Health Law section 2801(1).

(2) Notwithstanding any provision in this section to the contrary and insofar as authorized by Education Law section 6902(3)(b), in lieu of complying with the requirements relating to collaboration with a physician, collaborative practice agreements and practice protocols as set forth in subdivisions (a), (b), (c), (d) and (e) of this section, a nurse practitioner may have collaborative relationships, with one or more physicians or a hospital, as such terms are defined in paragraph (1) of this subdivision, provided that the following criteria are met:

(i) The nurse practitioner shall have more than three thousand six hundred hours of experience practicing as a licensed or certified nurse practitioner pursuant to the laws of New York or any other state or as a nurse practitioner while employed by the United States Veterans Administration, the United States Armed Forces or the United States Public Health Service.

(ii) The nurse practitioner shall complete and maintain a form, prescribed by the department, to which the nurse practitioner shall attest, that describes the nurse practitioner's current collaborative relationships. The nurse practitioner shall also acknowledge on the form that if reasonable efforts to resolve any dispute that may arise with the collaborating physician, or, in the case of a collaboration with a hospital, with a physician qualified to collaborate in the specialty area involved and having professional privileges at such hospital, about a patient's care are not successful, the

recommendation of the physician shall prevail. The form shall be updated as needed and may be subject to review by the department, upon its request.

(iii) In addition to the form required by subparagraph (ii) of this paragraph, the nurse practitioner shall maintain documentation in written or electronic form that supports his or her collaborative relationships.