



TO: The Honorable Members of the Board of Regents

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

SUBJECT: Proposed Amendment of Section 61.18 of the Regulations of the Commissioner of Education Relating to the Residency Program Requirement for Dental Licensure

DATE: August 31, 2023

AUTHORIZATION(S): *Don McGreevey* *Betty*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of section 61.18 of the Regulations of the Commissioner of Education relating to the residency program requirement for dental licensure?

Reason for Consideration

Required by State statute (Chapter 613 of the Laws of 2022) and review of policy to remove obsolete provisions.

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as a permanent rule at the September 2023 meeting of the Board of Regents. An additional emergency action is also necessary at the September meeting to ensure that the emergency action taken at the June 2023 meeting remains continuously in effect until the effective date of its adoption as a permanent rule. A copy of the proposed rule is included (Attachment A) and statement of facts and circumstances which necessitate emergency action is included (Attachment B).

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 Rulemaking was published in the State Register on January 25, 2023, for a 60-day public comment period.

Because the January 2023 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 can be permanently adopted. A Notice of Emergency Adoption was published in the State Register on April 26, 2023.

Following publication in the State Register, the Department received comment on the proposed amendment. An Assessment of Public Comment is included (Attachment C). The proposed amendment was revised in response to public comment at the May 2023 Regents meeting, and a third emergency action was taken. A Notice of Emergency Adoption and Revised Rule Making was published in the State Register on May 31, 2023, for an additional 45-day public comment period.

Because the May 2023 emergency action was set to expire on July 14, 2023, a fourth emergency action was necessary at the June 2023 meeting to ensure the emergency rule remained continuously in effect until it can be permanently adopted. A Notice of Emergency Adoption was published in the State Register on August 2, 2023.

Because the June 2023 emergency action is set to expire on September 12, 2023, a fifth emergency action is necessary at the September 2023 meeting to ensure the emergency action taken at the June meeting remains continuously in effect until the effective date of its adoption as a permanent rule on September 27, 2023.

Additionally, following the above-referenced publication of the Notice of Emergency Adoption and Revised Rule Making in the State Register on May 31, 2023, the Department received public comment from one commenter. An Assessment of Public Comment is included (Attachment D). No changes to the proposed amendment are recommended at this time.

Notices of Adoption and Emergency Adoption will be published in the State Register on September 27, 2023. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

Dentist licensure requirements (Education Law §6604[3]) require applicants to complete a residency program acceptable to the Department to meet the experience requirement for such licensure. It also required that a postdoctoral general practice or specialty dental residency program experience required for licensure be clinically based. Chapter 613 of the Laws of 2022 (Chapter 613), effective November 21, 2022, eliminated the clinically based requirement.

Chapter 613 addresses the fact that accredited dental residency programs in the specialty fields of oral medicine, orofacial pain, and dental public health were excluded from the clinically based experience requirement. Dental school graduates completed two to three years in a residency training, however, could not obtain a license. Chapter 613 eliminated this unnecessary restriction on dental residency programs. It recognizes that the Department assesses all formal outcome assessments evaluating all residencies for dentistry and related specialties. This will expand access to much needed dental services by increasing the number of dentists in New York.

Original Proposed Amendment

The proposed amendment of section 61.18 of the Commissioner's regulations implements the provisions of Chapter 613 by:

- removing the "clinical" definition;
- removing the requirement that the postdoctoral clinical dental residency program be completed in a nationally accredited "dental facility" for dental teaching purposes. This requirement may now be met by completing such residency program in a community health center or facility that is nationally accredited for teaching purposes;
- adding dental public health, orofacial pain, and oral medicine to the list of accredited residency programs in a dental specialty that can be used for meeting the experience requirement for licensure; and
- removing the requirement that, for each accredited residency program in a specialty of dentistry, at least 50 percent of the accredited residency program consist of clinical training in certain areas.

Additionally, the proposed amendment removes the requirement that the written statement for completion of the residency or specialty program be notarized. Instead, it requires that such written statement attest to the applicant's competence to practice the "completed dental specialty."

Revisions to the Proposed Amendment

Following the 60-day public comment period, and in response to public comment, the Department revised the proposed amendment at the May 2023 meeting by removing obsolete provisions contained in section 61.19(b)(3)(i) and (ii) regarding the formal written outcome assessment that accredited residency programs must include. These provisions have been removed since the procedures listed in it are no longer necessary as accrediting standards are now substantially more stringent. However, the revised proposed amendment adds language to section 61.18(b)(3) of the Commissioner's regulations to continue to require that the assessment include a written statement by the residency program director attesting that the applicant has successfully completed the accredited residency program and is, in the director's judgment, competent to practice general dentistry or a specialty of dentistry.

Related Regents Items

January 2023: [Proposed Amendment of Section 61.18 of the Regulations of the Commissioner of Education Relating to the Residency Program Requirement for Dental Licensure](#)

(<https://www.regents.nysed.gov/sites/regents/files/123ppca1.pdf>)

March 2023: [Proposed Amendment of Section 61.18 of the Regulations of the Commissioner of Education Relating to the Residency Program Requirement for Dental Licensure](https://www.regents.nysed.gov/sites/regents/files/323brca10.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/323brca10.pdf>)

May 2023: [Proposed Amendment of Section 61.18 of the Regulations of the Commissioner of Education Relating to the Residency Program Requirement for Dental Licensure](https://www.regents.nysed.gov/sites/regents/files/523ppca1.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/523ppca1.pdf>)

June 2023: [Proposed Amendment of Section 61.18 of the Regulations of the Commissioner of Education Relating to the Residency Program Requirement for Dental Licensure](https://www.regents.nysed.gov/sites/regents/files/623brca13.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/623brca13.pdf>)

Recommendation

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

VOTED: That section 61.18 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 13, 2023, as an emergency action, upon the finding by the Board of Regents that such action is necessary for the preservation of the public health and general welfare in order to timely implement the provisions of Chapter 613 of the Laws of 2022, which became effective November 21, 2022, and to ensure that the emergency action taken at the June 2023 meeting remains continuously in effect.

VOTED: That section 61.18 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 27, 2023.

Timetable for Implementation

If adopted at the September 2023 meeting, the emergency rule will become effective September 13, 2023, and the proposed rule will become effective as a permanent rule on September 27, 2023.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6506, 6507, 6601 and 6604 of the Education Law and Chapter 613 of the Laws of 2022.

1. Section 61.18 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 61.18 Residency program requirement for dental licensure

(a) Definitions. As used in this section:

(1) ...

(2) [Clinical means relating to or involving the direct examination and treatment of patients.

(3)] Competent to practice dentistry means the level of knowledge and skills necessary to perform safely and independently the practice of dentistry consistent with the definition of the practice of dentistry in section 6601 of the Education Law.

(b) Residency program. To be acceptable to the department for purposes of licensure under section 6604 of the Education Law, a residency program shall meet the requirements of this section.

(1) The residency program shall be a postdoctoral [clinical] dental residency program in either general dentistry, or a specialty of dentistry as defined in paragraph (2) of this subdivision, of at least one year's duration in a hospital or [dental] facility accredited for teaching purposes by an acceptable national accrediting body, which is completed successfully by the applicant prior to the submission to the department of the application for licensure.

(2) The accredited residency program in a specialty of dentistry shall be in the specialty of endodontics, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, prosthodontics, oral and maxillofacial pathology, oral and maxillofacial radiology, dental anesthesiology, dental public health, orofacial pain, oral medicine, or another specialty of dentistry, as determined by the department[,for which at least 50 percent of the accredited residency program consists of clinical training in one or more of the following areas: general dentistry, endodontics, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, prosthodontics, oral and maxillofacial pathology, oral and maxillofacial radiology, and/or dental anesthesiology].

(3) The accredited residency program shall include a formal written outcome assessment which is acceptable to the department, which shall include a written statement by the residency program director attesting that the applicant has successfully completed the accredited residency program as defined in this section, and is, in the director's judgment, competent to practice general dentistry or a specialty of dentistry.

[(i) For an accredited residency program in general dentistry, the formal written outcome assessment used by the residency program shall be acceptable to the department if it includes:

(a) an acceptable notarized written statement by the residency program director attesting that the applicant has completed successfully the accredited residency program and is in the director's judgment competent to practice dentistry; and

(b) acceptable notarized written statement(s) by the residency program director who supervised the dental procedures performed by the applicant, and/or the attending

dentist(s) who supervised the dental procedures performed by the applicant if different from the residency program director, attesting that the applicant completed independently, and to generally accepted professional standards for dentistry, two full crowns, two endodontically treated teeth, four restorations (two anterior, two posterior) and one periodontal case during the accredited residency program.

(ii) For an accredited residency program in a specialty of dentistry, as defined in paragraph (2) of this subdivision, the formal written outcome assessment used by the residency program shall be acceptable to the department if it includes an acceptable [notarized] written statement by the residency program director attesting that the applicant has successfully completed the accredited residency program in a specialty of dentistry, as defined in paragraph (2) of this subdivision, and is in the director's judgment competent to practice dentistry.]

(c) ...

(d) ...

8 NYCRR §61.18

STATEMENT OF FACTS AND CIRCUMSTANCES
WHICH NECESSITATE EMERGENCY ACTION

The proposed rule is necessary to implement Chapter 613 of the Laws of 2022, which became effective November 21, 2023. The proposed rule conforms the Commissioner's regulations to Chapter 613, which amends Education Law §6604(3) by removing the requirement that the postdoctoral general practice or specialty dental residency program experience required for dental licensure needs to be clinically based. Chapter 613 was designed to address that fact that certain well-recognized accredited dental residency programs in oral medicine, orofacial pain, and dental public health are excluded from satisfying the experience requirement for dentist licensure because they are not deemed to be 50 percent clinically based specialty residencies. This prevents qualified dental school graduates with accredited residency training from obtaining a license after spending two to three years in a dental specialty program. Chapter 613 eliminates this unnecessary restriction on dental residency programs. It recognizes that the Department is responsible for all formal outcome assessments evaluating all residencies for dentistry and related specialties. This will expand access to much needed dental services by increasing the number of dentists in New York.

The proposed rule implements the provisions of Chapter 613 by:

- removing the "clinical" definition;
- removing the requirement that the postdoctoral clinical dental residency program be completed in a nationally accredited "dental facility" for dental teaching purposes. This requirement may now be met by completing such

residency program in a community health center or facility that is nationally accredited for teaching purposes;

- adding dental public health, orofacial pain, and oral medicine to the list of accredited residency programs in a dental specialty that can be used for meeting the experience requirement for licensure; and
- removing the requirement that, for each accredited residency program in a specialty of dentistry, at least 50 percent of the accredited residency program consist of clinical training in certain areas.

Additionally, the proposed amendment removes the requirement that the written statement for completion of the residency or specialty program be notarized. Instead, it requires that such written statement attest to the applicant's competence to practice the "completed dental specialty."

The proposed amendment was presented to the Professional Practice Committee for recommendation to the Full Board for adoption as an emergency rule at the January 2023 Regents meeting and became effective January 10, 2023.

Because the January 2023 emergency action was set to expire on April 9, 2023, a second emergency action was necessary at the March 2023 meeting, effective April 10, 2023, to ensure the emergency rule remained continuously in effect until it could be permanently adopted.

Following the 60-day public comment period, and in response to public comment, at its May 2023 the Department made substantial revisions to the proposed amendment by removing obsolete provisions contained in section 61.19(b)(3)(i) and (ii) regarding the formal written outcome assessment that accredited residency programs must

include. Additionally, a third emergency action was taken effective May 16, 2023 to make the revised rule immediate effective on an emergency basis.

Because the May 2023 emergency action was set to expire on July 14, 2023, a fourth emergency action was necessary at the June 2023 meeting, effective July 15, 2023, to ensure the emergency rule remained continuously in effect until it could be permanently adopted.

Since the Board of Regents meets at fixed intervals, the earliest that the proposed revised rule can be presented for permanent adoption, after expiration of the 45-day comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(4a), would be the September 2023 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September 2023 meeting, would be September 27, 2023, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire on September 12, 2023. Therefore, a fifth emergency action is necessary at the September 2023 meeting, effective September 13, 2023, for the preservation of the public health and general welfare in order to timely implement the provisions of Chapter 613 of the Laws of 2022, which became effective November 21, 2022, and to ensure the emergency action taken at the June 2023 meeting remains continuously in effect.

The proposed rule is also being presented to the Board of Regents for adoption as a permanent rule at the September 2023 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by SAPA for state agency rule making.

ASSESSMENT OF PUBLIC COMMENT

Since the publication of a Notice of Emergency Adoption and Proposed Rule Making in the January 25, 2023 State Register, the State Education Department (Department) received the following comment on the proposed amendment. These comments were previously published as part of the May and June 2023 Regents item:

1. Comment: An Association representing dentists in New York State stated that it supported the proposed amendment, which reflected the intent of Chapter 613 of the Laws of 2022. However, it requested that the Department consider removing provisions contained in section 61.18(b)(3)(i)(b) of the Commissioner's regulations concerning accrediting standards because they are obsolete and unnecessary.

RESPONSE: The Department appreciates the supportive comments on the proposed amendment. The Department agrees that the above referenced provision of the Commissioner's regulations should be removed. Accordingly, the Department has revised the proposed amendment to remove the provisions contained in section 61.19(b)(3)(i) and (ii) of the Commissioner's regulations regarding the formal written outcome assessment. However, the Department has added language to ensure that the revised proposed amendment to section 61.18(b)(3) of the Commissioner's regulations maintains the requirement that the assessment include a written statement by the residency program director attesting that each applicant has successfully completed the accredited residency program and is, in the director's judgment, competent to practice general dentistry or a specialty of dentistry.

8 NYCRR §61.18

ASSESSMENT OF PUBLIC COMMENT

Since the publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on May 31, 2023, the State Education Department received the following public comment on the proposed rule:

COMMENT: An association representing New York State (NYS) community health centers (association) expresses strong support for the proposed rule because it will allow postdoctoral dental residency programs to be completed in a community health center (CHC). The association also states that the proposed rule will help ameliorate the dental workforce challenges CHCs are facing and expand access to dental services by attracting dental residents to underserved areas.

Additionally, the association states that CHCs play a crucial role in providing and expanding access to dental care. CHCs are often the only source of affordable and accessible dental care in their communities, especially for individuals covered by Medicaid or the uninsured since private practices often refuse to treat these patients. However, according to the association, despite their efforts, CHCs struggle to meet the overwhelming demand for dental care. CHCs face challenges expanding access to dental care due to dental workforce shortages and inability to compete with private practices for a limited pool of dental providers.

The association applauds the NYS Legislature and the Department for recognizing the importance removing restrictions in order to expand access to dental care. By removing the requirement that a dental residency program experience be clinically based in order to obtain a license, NY's health centers will now have access to

a previously untapped dental workforce and may increase the number of dentists working at their centers. In addition, the association states that permitting CHCs to host dental residency programs will enable CHCs to identify, train, and retain dental students that live in medically underserved areas, increasing the likelihood that they will stay in the community over the long term.

The association states that there is an urgent and growing need for greater investments in the dental workforce and expansion efforts to ensure equitable access to dental care for all New Yorkers, particularly in underserved communities which are experiencing dental care deserts. According to the association, the proposed rule will have a positive impact on CHCs and the communities they serve. Because by allowing dental residency programs to be completed in CHCs, CHCs will have access to additional dental workforce to meet community needs.

DEPARTMENT RESPONSE: The Department appreciates the supportive comments as it works to improve access to dental services in NYS. Since the comment is supportive, no changes to the proposed rule are required.