



TO: The Honorable Members of the Board of Regents
FROM: Sarah S. Benson *Sarah S. Benson*
SUBJECT: Proposed Amendment of Section 64.1 of the Regulations of the Commissioner of Education Relating to Education Requirements for Licensure as a Registered/Practical Nurse
DATE: August 31, 2023
AUTHORIZATION(S): *Tom M. P. Bellotti*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of section 64.1 of the Regulations of the Commissioner of Education relating to the education requirements for licensure as a registered professional nurse and licensed practical nurse?

Reason for Consideration

Review of Policy.

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 April 2023 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on May 3, 2023, for a 60-day public comment period.

Because the April emergency action was set to expire on July 16, 2023, a second emergency action was necessary at the June 2023 Regents meeting to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the September Regents meeting. 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 14, 2023, a third 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.

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. 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

Education Law §§ 6905(2) and 6906(2) requires that an individual must have received an education in accordance with the Commissioner's regulations in order to obtain licensure as a registered professional nurse (RN) or licensed practical nurse (LPN).

Registered Professional Nursing

Section 64.1(a) of the Commissioner's regulations prescribes the educational requirements for an individual seeking a license as an RN, requiring that they have graduated from: (1) a registered program approved by the Department, (2) a program in nursing approved by the licensing authority of another state, territory or possession of the U.S., or (3) a general nursing course (two academic years in length) in a country outside the U.S. that is satisfactory to the Department and certified by that other jurisdiction as being preparation for practice as an RN.

While NYS programs must be registered with the Department and programs completed abroad must be found satisfactory by the Department, under current regulations, nursing programs completed in other states are sufficient to meet the professional education requirement so long as the programs are approved by the licensing authority of the state in which it is offered. There is no requirement that these out-of-state programs meet specific standards or be satisfactory to the Department. Staff-identified trends and recent events related to alleged fraud at multiple out-of-state nursing schools call into question the legitimacy and rigor of some out-of-state schools. This highlights the fact that the Department would benefit from explicit authority to reject an applicant's education should the Department determine that an out-of-state program or any part thereof is not satisfactory to the Department.

Licensed Practical Nursing

Section 64.1(b) of the Commissioner's regulations prescribes the educational requirements for an individual seeking a license as an LPN. Specifically, applicants shall have graduated high school or its equivalent, and must have: (1) graduated from a program in nursing registered by the Department or approved by the licensing authority of another state, territory, or possession of the U.S.; (2) completed a program determined by the Department to be equivalent to the programs registered by the Department or approved by the licensing authority of another state; (3) graduated from a program in practical nursing of at least nine months in a country outside the U.S. that is satisfactory to the Department and is certified by the licensing authority of that country as being preparation for practice as a licensed practical nurse; or (4) graduate from a general nursing course in a country outside the U.S. that is satisfactory to the Department and is certified by the licensing authority of that country as being preparation for practice as a professional nurse.

Similar to the educational requirements noted in section 64.1(a) for RNs, there is no requirement that approved out-of-state programs for LPNs meet specific standards or be satisfactory to the Department.

The proposed amendment to section 64.1 of the Commissioner's regulations would add language that allows the Department to reject out-of-state nursing programs approved by the licensing authority of another state if a nursing program or any part thereof is determined not to be satisfactory to the Department. This ability will improve the Office of Professions' ability to protect the public.

Related Regents Items

April 2023: [Proposed Amendment of Section 64.1 of the Regulations of the Commissioner of Education Relating to Education Requirements for Licensure as a Registered/Practical Nurse](https://www.regents.nysed.gov/sites/regents/files/423ppca1revised.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/423ppca1revised.pdf>)

June 2023: [Proposed Amendment of Section 64.1 of the Regulations of the Commissioner of Education Relating to Education Requirements for Licensure as a Registered/Practical Nurse](https://www.regents.nysed.gov/sites/regents/files/623brca14.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/623brca14.pdf>)

Recommendation

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

VOTED: That section 64.1 of the Commissioner's Regulations be amended, as submitted, effective September 15, 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, safety, and general welfare in order to immediately permit the Department to reject out-of-state nursing programs approved in the original jurisdiction if a nursing program is determined to be unsatisfactory to the department, and to ensure the emergency action taken at the June 2023 meeting remains continuously in effect.

VOTED: That section 64.1 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 15, 2023, and the proposed rule will become effective as a permanent rule on September 27, 2023.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6506, 6507, 6905, and 6906 of the Education Law.

1. Subdivision (a) of section 64.1 of the Regulations of the Commissioner of Education is amended to read as follows:

(a) Registered professional nursing. To meet the professional education requirement for licensure, the applicant shall have graduated from:

(1) ...

(2) a program in nursing approved by the licensing authority in another state, territory or possession of the United States as preparation for practice as a registered professional nurse unless such program or any part thereof has been determined not to be satisfactory to the department; or

(3) ...

2. Subdivision (b) of section 64.1 of the Regulations of the Commissioner of Education is amended to read as follows:

(b) Licensed practical nursing. To meet the education requirements for licensure, the applicant shall have graduated from high school or its equivalent, and shall have:

(1) graduated from a program in nursing registered by the department or approved by the licensing authority in another state, territory, or possession of the United States as preparation for practice as a licensed practical nurse unless such program or any part thereof has been determined not to be satisfactory to the department;

(2) ...

(3) ...

(4)

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The proposed rule eliminates the discrepancy in the manner in which nursing programs from other states are treated when it comes to satisfying the educational requirements for licensure as a registered professional nurse or licensed practical nurse.

To satisfy the education requirement necessary for licensure as a registered professional nurse (RN) or licensed practical nurse (LPN) in New York, for those individuals graduating from a nursing program in a different state, current regulation only requires graduation from a nursing program approved by another state's licensing authority. While the regulation does allow for the satisfaction of the educational requirements for nurse licensure by graduating from a school registered with the department or foreign nursing programs that are "satisfactory to the department," there is no similar requirement that a nursing program approved by the licensing authority of another state within the United States (or a territory/possession thereof) be registered with the department or be satisfactory to the department.

Staff have identified concerning trends with some out of state nursing schools. Additionally, a recent Federal investigation and series of indictments regarding the issuance of fraudulent nursing programs credentialed and approved by various institutions in Florida highlight the dangers presented by this regulatory loophole. "Operation Nightingale" uncovered an alleged scheme involving numerous Florida-based schools that provided more than 7,600 fake diplomas and transcripts¹ to

¹ <https://oig.hhs.gov/newsroom/media-materials/nightingale/>

individuals that would eventually go on to seek licensure within the nursing profession in other states, including New York. The State of Florida Commission for Independent Education has determined that some of the implicated schools were operated in a manner contrary to the public health and welfare.

The ability of an individual to satisfy the education requirements for licensure as a RN or LPN by simply graduating from an out-of-state nursing program approved in another state makes New York susceptible to individuals trying to take advantage of the current educational standards and oversight in other states, which may be less stringent than those in New York. This puts New York citizens and employing institutions at risk. The proposed regulatory amendments close the loophole in the educational requirements for nursing by providing that nursing programs or any part thereof approved by another state that are determined not to be satisfactory to the department may not be used by an applicant to satisfy the education requirements for licensure as a nurse in New York.

The proposed amendment was presented to the Professional Practice Committee for recommendation to the Full Board for adoption as an emergency rule at the April 2023 meeting of the Board of Regents and became effective April 18, 2023.

Because the April 2023 emergency action was set to expire on July 16, 2023, a second emergency action was necessary at the June 2023 meeting, effective July 17, 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 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 September 2023 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the September 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 14, 2023. Therefore, a third emergency action is necessary at the September 2023 meeting, effective September 15, 2023, for the preservation of the public health, safety, and general welfare in order to immediately permit the Department to reject out-of-state nursing programs approved in the original jurisdiction if a nursing program is determined to be unsatisfactory to the department, 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 60-day public comment period mandated by SAPA for state agency rule making.