

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 2803 of the Public Health Law, section 405.4 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) is hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Subparagraph (ii) of paragraph (1) of subdivision (f) of section 405.4 is amended to read as follows:

(ii) [except for individuals eligible for licensure under section 6528 of the State Education Law,] a graduate of a foreign medical school who enrolled in such medical school after October 1, 1983 shall have completed the clinical component of a program of medical education which:

(a) included no more than 12 weeks of clinical clerkships in a country other than the country in which the medical school is located; or

(b) included clinical clerkships of greater than 12 weeks in a country other than the country in which the medical school is located [if], provided:

(1) the clinical clerkships were offered by a medical school approved by the State Education Department for the purposes of clinical clerkships; or

(2) the individual subsequently completed a post-graduate training program approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, and the individual is eligible to complete additional training in a postgraduate fellowship program.

Paragraph (2) of subdivision (g) of Section 405.4 is amended to read as follows:

(2) (i) physicians who possess limited permits to practice medicine issued by the New York State Education Department pursuant to section 6525 of the State Education Law if such physicians are under the supervision of a physician licensed and currently registered to practice medicine in the State of New York, and if the physicians possessing limited permits are:

[(i)] (a) graduates of a medical school [offering a medical program accredited by the Liaison Committee on Medical Education or the American Osteopathic Association, or] registered with the State Education Department or accredited by an accrediting organization acceptable to the State Education Department, and have satisfactorily completed one year of graduate medical education in a postgraduate training program accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, or their predecessors or successors [or an equivalent accrediting agency acceptable to the State Education Department];
or

[(ii)] (b) graduates of a foreign medical school, defined as those schools which are not accredited or registered by the State Education Department pursuant to clause (a) of this subparagraph, and have satisfactorily completed three years of graduate medical education in a postgraduate training program accredited by the Accreditation Council for Graduate Medical Education [or], the American Osteopathic Association, or the Committee on Accreditation of Canadian Medical Schools, or their predecessors or successors [or an equivalent accrediting agency acceptable to the State Education Department; or];

[(iii)] graduates of a foreign medical school who have satisfactorily completed three years in a postgraduate training program and who are receiving advanced training as part of an official

exchange visitor program approved by the United States Information Agency and the Educational Commission for Foreign Medical Graduates (ECFMG);]

(ii) if the physician possessing the limited permit has not completed a postgraduate training program of a satisfactory length or accreditation, as set forth in subparagraph (i) of this paragraph, but such physician will be a member of the workforce of a public hospital licensed under article 28 of the Public Health Law, such physician shall be permitted to provide patient care services within such hospital. Provided, however, that such limited permit holder must be directly supervised by a physician licensed and currently registered to practice medicine in the State of New York, who is credentialed by the hospital in the field in which the limited permit holder is practicing, and who is responsible for monitoring and supervising the limited permit holder in the same manner as required for supervision and monitoring of postgraduate trainees pursuant to paragraph (3) of subdivision (f) of this section. For the purposes of this subdivision, a public hospital shall mean a general hospital operated by a county, municipality, or public benefit corporation;

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) section 2803 authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner of Health (Commissioner), to implement the purposes and provisions of PHL Article 28 and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection of the health of the residents of the State by promoting the efficient provision and proper utilization of high quality health services at a reasonable cost.

Needs and Benefits:

Needs and Benefits of Proposed Amendments to Section 405.4(f):

Under 10 NYCRR section 405.4(f), a post-graduate trainee (intern or resident) may practice medicine in a hospital under licensing exemptions set forth in Education Law section 6526. 10 NYCRR section 405.4(f)(1)(ii)(b) contains special requirements for graduates of foreign medical schools to engage in such a post-graduate training program, including setting forth the “12-week rule.” Specifically, under this provision, if the graduate of the foreign medical school had a clinical clerkship of greater than 12 weeks in a country other than the country where their medical school was located, then the clinical clerkship must have been in a “a medical school approved by the State Education Department for the purposes of clinical clerkships.”

There are currently only 17 international medical schools approved by the State Education Department (SED) “for the purposes of clinical clerkships.” If a medical school is not one of these 17 schools approved by SED for the purposes of clinical clerkships, and a graduate of that medical school received more than 12 weeks of clerkship education in another country to complete the requirements for the applicant’s medical education degree, that graduate is barred from enrolling in any post-graduate training program that includes providing patient care services in a New York teaching hospital.

The proposed amendment to section 405.4(f)(1)(ii)(b) would allow individuals who subsequently completed a post-graduate training program approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, and who is eligible to complete additional training in a postgraduate fellowship program, to meet the “12-week” exception to graduate medical education that occurs outside of the US. Considering severe physician staffing shortages throughout the State, this proposed revision is necessary to expand the number of sufficiently educated and trained physicians who can practice in post-graduate training programs in New York State hospitals.

Needs and Benefits of Proposed Amendments to Section 405.4(g):

10 NYCRR section 405.4(g)(2) allows an unlicensed physician to provide medical services in a general hospital under a limited permit to practice medicine, issued by SED pursuant to Education Law section 6525 if SED determines that the applicant meets criteria for issuance of a limited permit and appropriate levels of supervision and oversight are in place.

Section 405.4(g)(2) requires additional years of post-graduate training, beyond what is required for a limited permit under Education Law section 6525, in order for a holder of an SED-issued “limited permit” to provide care in a “general hospital,” with the number of years of post-

graduate training dependent on whether the limited permit holder graduated from a foreign or domestic medical school. Public Health Law section 2801(10) defines “general hospital” as a facility that provides medical and surgical services primarily to in-patients under 24-hour supervision of a physician. The term “general hospital” does not include a “residential health care facility, public health center, diagnostic center, treatment center, out-patient lodge, dispensary and laboratory or central service facility serving more than one institution.”

Currently, section 405.4(g)(2) imposes additional years of training for limited permit holders, specifically one year for domestic medical graduates and three years for international (foreign) medical graduates, as a condition of working in a New York State hospital. This requirement was originally intended to ensure that international students’ educations were equivalent to those of physicians educated in the United States. As a result, hospitals hiring doctors to meet patient needs often must turn away otherwise qualified applicants to maintain compliance with the regulation. These candidates, if unable to work in New York State hospitals, may seek employment in other states or in other types of health care settings where the extra years of experience are not required.

SED already considers training and experience before approving and issuing limited permits; however, SED does not screen candidates for their eligibility to work in hospitals. In addition, limited permit holders working in other settings in New York State, such as nursing homes and psychiatric hospitals, are not required to have these additional years of training. As such, there is inconsistency in the standards required of limited permit holders with equivalent background and training, making limited permit holders less likely to be utilized in hospitals.

The proposed regulation, through the addition of new subparagraph (ii), would eliminate the additional years of post-graduate training required for limited permittees if the limited permit holder would be a member of the workforce of a public hospital—defined in the regulation as a general hospital operated by a county, municipality, or public benefit corporation—and provided that the limited permit holder would be subject to the same supervision required of a medical resident. Given the shortage of licensed physicians to cover vital hospital services, this proposed amendment will eliminate a barrier to limited permit holders practicing in public hospitals, which serve a critical portion of New York’s patient population.

Overall, the Department of Health believes that amending both of these regulations is the most effective means to ease physician staffing shortages in hospitals, with guardrails to ensure that physicians educated outside of the US still meet an appropriate education and oversight bar. SED has reviewed and approved the proposed amendment, and they have support from key industry stakeholders. Finally, since all limited permit holders are subject to supervision and oversight by a licensed physician, their practice within the hospital will be monitored to help ensure the highest standards of patient care are met.

COSTS:

Costs to Private Regulated Parties:

This proposal will not result in increased costs to regulated parties.

Costs to Local Government:

This regulation amendment will not impact local governments unless they operate a general hospital. In any event, this proposal will not increase costs for local governments. They

are expected to help hospitals, including those operated by a local government, by alleviating physician staffing shortages.

Costs to the Department of Health:

The proposed regulatory changes will not result in any additional operational costs to the Department of Health.

Costs to Other State Agencies:

The proposed regulatory changes will not result in any additional costs to other State agencies.

Local Government Mandate:

The proposed regulatory changes will not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

The proposed regulatory changes will not create any additional paperwork.

Duplication:

There are no relevant State regulations which duplicate, overlap or conflict with the proposed regulatory changes.

Alternatives:

The alternative would be to take no action and have hospitals continue to screen limited permit holders for additional years of training as a condition of employment. This is not a viable option, however, as taking no action would only exacerbate the current physician staffing shortage.

Federal Standards:

The proposed regulatory changes do not duplicate or conflict with any federal regulations.

Compliance Schedule:

The regulations will be effective upon publication of a Notice of Adoption in the New York State Register.

Contact Person: Katherine Ceroalo
New York State Department of Health
Bureau of Program Counsel, Regulatory Affairs Unit
Corning Tower Building, Room 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.ny.gov

**STATEMENT IN LIEU OF
REGULATORY FLEXIBILITY ANALYSIS**

No Regulatory Flexibility Analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

**STATEMENT IN LIEU OF
RURAL AREA FLEXIBILITY ANALYSIS**

A Rural Area Flexibility Analysis for these amendments is not being submitted because amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. No adverse impact on jobs and employment opportunities is expected as a result of these proposed regulations.

ASSESSMENT OF PUBLIC COMMENT

The Department received comments from an association representing hospitals and an association representing international medical graduates (IMGs). These comments, along with the Department's responses, are summarized below.

Comment: An association representing hospitals supports the regulation. This commenter also proposed that the newly added subparagraph (ii) of 10 NYCRR § 405.4(g)(2) be amended to authorize limited permit holders to provide patient care in all general hospitals, not just public hospitals.

Response: Limited permit holders may work in any general hospital if they have completed a postgraduate training program of a satisfactory length and accreditation under 10 NYCRR § 405.4(g)(2)(i). This regulation's newly added subparagraph (ii) of 10 NYCRR § 405.4(g)(2) *expands* the ability of limited permit holders to work in general hospitals by *also* allowing limited permit holders who have not completed such a postgraduate training program to work in a public hospital. The Department deliberately expanded the ability of limited permit holders to work in general hospitals to public hospitals, which care for New York's most at-risk population. No changes have been made to the regulation in response to this comment.

Comment: An association representing international medical graduates (IMGs) supports the regulation. The commenter also believes the duration of limited permits and policy for renewal is unclear and recommends the establishment of a more structured, time-bound renewal policy to facilitate matching IMGs with residency programs while preventing prolonged reliance on limited permits.

Response: This commenter’s recommendation is outside the scope of this regulation. The recommendation would be better addressed to the State Education Department. No changes have been made to the regulation in response this comment.

Comment: A hospital asked whether a physician employed by the public hospital under the new 10 NYCRR § 405.4(g)(2)(ii) must be a W-2 employee.

Response: No. To clarify the Department’s intention, in the final regulation the words “directly employed by” have been changed to “a member of the workforce of.” The term “workforce” is defined in 45 CFR §160.103 (HIPAA).