

Pursuant to the authority vested in the Public Health and Health Planning Council and Commissioner of Health by section 2803 of the Public Health Law, sections 405.5 and 405.19 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) are hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register:

A new paragraph (7) is added to subdivision (a) of section 405.5, to read as follows:

(7) Nursing services personnel employed in specialty areas, including, but not limited to, emergency services, must complete training and education specific to the specialty area. Nursing services personnel must be periodically reevaluated for competency and ongoing education and training provided to maintain competency in the specialty area.

Subparagraphs (ii) and (iii) of paragraph (2) of subdivision (d) of section 405.19 are amended to read as follows:

(ii) Emergency services supervising nurses shall be licensed and currently registered and possess current, comprehensive knowledge and skills in emergency health care. They shall [have at least one year of clinical experience,] be able to demonstrate skills and knowledge necessary to perform basic life support measures, and be current in ACLS and PALS or have current training and experience equivalent to ACLS and PALS, and meet the competency requirements of Section 405.5(a)(7);

(iii) Registered professional nurses in the emergency service shall be licensed and currently registered professional nurses who possess current, comprehensive knowledge and skills in emergency health care. They shall have [at least one year of clinical experience, have] successfully completed an emergency nursing orientation program, [and] be able to demonstrate skills and knowledge necessary to perform basic life support measures and meet the competency requirements of Section 405.5(a)(7). Within one year of assignment to the emergency service, each emergency service nurse shall be current in ACLS and PALS or have current training and experience equivalent to ACLS and PALS [and shall maintain current competence in ACLS as determined by the hospital].

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

Public Health Law (PHL) § 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.

The Department of Health, pursuant to former PHL §2807-h(1), has granted hospitals limited waivers of 405.19(d)(2)(iii), allowing them to develop new graduate training programs based on training, education, and competency assessment. This authority expired on July 1, 2017. See L. 2014, Ch. 60, Pt. C, §67-b. Nevertheless, the results of these programs have been very successful. Therefore, removing the need to secure a waiver and allowing a training, education and competency-based program through regulation is sound public policy.

### **Needs and Benefits:**

The nursing shortages that currently exist both nationally and in New York State are expected to increase as both the age of the general population and working nurses increases. Similarly, shortages of nurses that work in high-stress specialty areas, such as critical care and the emergency department, will continue to occur during this nurse shortage and as hospitals

struggle with improving the recruitment and retention rates of new and seasoned nurses.

Recruiting nurses for emergency departments, specifically, is made even more challenging by current requirements, in 10 NYCRR Section 405.19, that all nurses working in emergency departments have one year of clinical experience and possess current, comprehensive knowledge and skills in emergency care. This results in hospitals being unable to recruit new graduates. Often, once these new graduates attain the required year of clinical experience, they are unwilling to transfer to the emergency department, preferring to use their newly gained competencies in the clinical area in which they were trained.

The Department of Health, pursuant to former PHL §2807-h(1), has granted hospitals limited waivers of 405.19(d)(2)(iii), allowing them to develop new graduate training programs based on training, education, and competency assessment. This authority expired on July 1, 2017. See L. 2014, Ch. 60, Pt. C, §67-b. Nevertheless, the results of these programs have been very successful.

The proposed regulations will allow hospitals to keep pace with demand for highly trained, emergency department nurses by allowing hospitals to recruit new graduate nurses to work in the emergency department, following a training, education and competency monitoring program developed and administered by the hospital's nursing education program required by 10 NYCRR Section 405.5. By eliminating the one year requirement, hospitals will be able to recruit new graduates and train them for work specifically in the emergency department. Similar to learning experiences in other parts of the hospital, new graduates would develop their clinical competencies by working alongside experienced staff who would supervise and mentor the new staff. This approach could also be adapted for float nurses who may have one year of experience but in a clinical specialty that does not specifically translate to emergency department

competency.

Patient safety and quality of care will be maintained, despite eliminating this nursing experience requirement, as hospitals will be responsible for developing, implementing and monitoring a training and education program that will allow nurses to obtain required skills while gaining invaluable experience within the emergency department.

## **COSTS:**

### **Costs to Private Regulated Parties:**

This amendment will allow general hospitals to expand their current nurse training programs to include curriculum for emergency department new graduates. Health care facilities will incur minimal costs in order to implement these programs.

### **Costs to Local Government:**

This proposal will not impact local governments unless they operate a general hospital, in which case costs will be the same as costs for private entities.

### **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 regulations do not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

**Paperwork:**

General hospitals will be required to develop, implement and monitor nurse training programs for the emergency department, as they are currently required to do for other parts of the hospital. The regulation may initially increase paperwork as programs are in development, but overall the impact should be minimal.

**Duplication:**

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

**Alternatives:**

The alternative would be to take no action, which represents no change in current requirements for general hospitals. However, the barrier to recruiting newly graduated nurses in emergency departments would still exist, making it increasingly difficult for hospitals to address their staffing shortages.

**Federal Standards:**

The proposed regulations 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.

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## **REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS**

### **Effect of Rule:**

The proposed regulation will apply to all general hospitals with emergency departments in New York State. This proposal will not impact local governments or small business unless they operate a general hospital. In such cases, the flexibility afforded by the regulations is expected to minimize any costs of compliance as described below.

### **Compliance Requirements:**

These regulations will require general hospitals to develop, implement and monitor training programs for emergency department nurses. This requirement expands requirements for nursing training and education that currently exist in Section 405.5.

### **Professional Services:**

General hospitals are already required to have nursing training programs; however, this amendment will make the programs available to new graduate nurses who are interested in emergency nursing.

### **Compliance Costs:**

Compliance costs are minimal, as they build upon existing requirements for nursing training and education found in Section 405.5.



**Economic and Technological Feasibility:**

This proposal is economically and technically feasible.

**Minimizing Adverse Impact:**

The anticipated adverse impact of the proposal is minimal. General hospitals, through their training programs, will ensure patient safety while new graduates are gaining competency and skill.

**Small Business and Local Government Participation:**

Organizations that include general hospitals as members were consulted on the proposed regulations. Additionally, the proposed regulation will have a 60-day public comment period.

**Cure Period:**

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on a party subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one is not included. As this proposed regulation does not create a new penalty or sanction, no cure period is necessary.

## RURAL AREA FLEXIBILITY ANALYSIS

### Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (<http://quickfacts.census.gov>).

Approximately 17% of small health care facilities are located in rural areas.

.Allegany County	.Greene County	.Schoharie County
.Cattaraugus County	.Hamilton County	.Schuyler County
.Cayuga County	.Herkimer County	.Seneca County
.Chautauqua County	.Jefferson County	.St. Lawrence County
.Chemung County	.Lewis County	.Steuben County
.Chenango County	.Livingston County	.Sullivan County
.Clinton County	.Madison County	.Tioga County
.Columbia County	.Montgomery County	.Tompkins County
.Cortland County	.Ontario County	.Ulster County
.Delaware County	.Orleans County	.Warren County
.Essex County	.Oswego County	.Washington County
.Franklin County	.Otsego County	.Wayne County
.Fulton County	.Putnam County	.Wyoming County
.Genesee County	.Rensselaer County	.Yates County
	.Schenectady County	

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

.Albany County	.Monroe County	.Orange County
.Broome County	.Niagara County	.Saratoga County
.Dutchess County	.Oneida County	.Suffolk County
.Erie County	.Onondaga County	

There are 47 general hospitals, approximately 90 diagnostic and treatment centers (D&TCs), 159 nursing homes, and 92 certified home health agencies in rural areas.

**Reporting, Recordkeeping, Other Compliance Requirements and Professional Services:**

The proposed regulation is applicable to those general hospitals located in rural areas and is expected to impose minimal costs. Because the proposed regulatory requirements can be incorporated into existing processes, they are expected to minimally increase the administrative burden on these entities.

**Costs:**

General hospitals are already required to have nurse training and education programs. The cost of developing these training programs should be minimal.

**Minimizing Adverse Impact:**

The impact is minimal.

**Rural Area Participation:**

Organizations that include as members general hospitals located in rural areas were consulted on the proposed regulations.

## **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.