

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 6527, 6902 and 6909 of the Education Law and Part C of Chapter 57 of the Laws of 2022

1. The section heading of section 64.7 of the Regulations of the Commissioner of Education is amended to read as follows:

64.7 Administration of immunizations, emergency treatment of anaphylaxis, tuberculosis tests, human immunodeficiency virus (HIV) tests, opioid related overdose treatments, hepatitis C tests and screening for syphilis, gonorrhea, COVID-19, influenza and/or chlamydia infections pursuant to non-patient specific orders and protocols.

2. Section 64.7 of the regulations of the Commissioner of Education is amended by adding a new subdivision (h) to read as follows:

(h) COVID-19 tests and influenza tests.

(1) As used in this subdivision:

(i) COVID-19 test means one or more laboratory or point of care tests that have been fully approved or have received emergency use authorization by the Federal Food and Drug Administration to detect COVID-19 or its antibodies or to detect COVID-19 and influenza virus; and

(ii) influenza test means one or more laboratory or point of care tests approved by the Federal Food and Drug Administration to detect influenza virus.

(2) A registered professional nurse may administer a COVID-19 test or an influenza test pursuant to a written non-patient specific order and protocol prescribed or

ordered by a licensed physician or a certified nurse practitioner, provided that the requirements of this subdivision are met.

(3) Order and protocol.

(i) The non-patient specific order shall include, at a minimum, the following:

(a) the name, license number and signature of the licensed physician or certified nurse practitioner who orders or prescribes the non-patient specific order and protocol;

(b) the name of the specific COVID-19 or influenza test to be administered;

(c) a protocol for administering the ordered COVID-19 or influenza test or a specific reference to a separate written protocol for administering the ordered test, which shall meet the requirements of subparagraph (ii) of this paragraph;

(d) the period of time that the order is effective, including the beginning and ending dates;

(e) a description of the group(s) of persons to be tested; and

(f) the name and license number of the registered professional nurse(s) authorized to execute the non-patient specific order and protocol to administer the ordered COVID-19 or influenza test, or the name of the entity that employs or contracts with registered professional nurse(s) to execute the non-patient specific order and protocol, provided that the registered professional nurse(s) execute the non-patient specific order and protocol only in the course of such employment or pursuant to such contract and the entity is legally authorized to employ or contract with registered professional nurses to provide nursing services.

(ii) The written protocol, incorporated into the order prescribed in subparagraph

(i) of this paragraph, shall, at a minimum, require the registered professional nurse(s) to ensure that:

(a) each potential recipient is assessed, pursuant to criteria in the protocol, for conditions that would qualify or preclude him or her from receiving the ordered test;

(b) informed consent for administering the ordered test or disclosing the test results to a third party (if applicable) has been obtained pursuant to the criteria in the protocol from the recipient, or when the recipient lacks capacity to consent, a person authorized pursuant to law to consent to health care for the recipient;

(c) positive diagnostic test results shall be disclosed to the test recipient, or the recipient's authorized representative, by the registered professional nurse as specifically authorized by the protocol or pursuant to a patient specific order from a licensed physician, licensed physician assistant, or certified nurse practitioner; and

(d) the administration of the ordered test(s) is documented in the recipient's medical record in accordance with criteria in the protocol. Such documentation shall be maintained in accordance with section 29.2(a)(3) of this Title.