



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: P-12 Education Committee

FROM: Angelica Infante-Green *A. Infante*

SUBJECT: Proposed Amendment of Section 100.2(c)(11) of the Commissioner's Regulations to Allow an Exemption of a Student with a Disability from the Requirement for Instruction in Hands-only Cardiopulmonary Resuscitation and the Use of Automated External Defibrillators

DATE: November 9, 2015

AUTHORIZATION(S): *Richard P. Iacono* *Margellen Elin*

SUMMARY

Issue for Decision

Should the Board of Regents adopt, on an emergency basis, the proposed amendment of section 100.2(c)(11) of the Commissioner's Regulations to allow an exemption from the requirement for instruction in hands-only cardiopulmonary resuscitation (CPR) and the use of automated external defibrillators (AEDs) for a student with disability who is physically or cognitively unable to perform the tasks included in such instruction?

Reason(s) for Consideration

Implementation and review of the policy required by statute (Chapter 417 of the Laws of 2014).

Proposed Handling

The proposed amendment is being presented to the P-12 Education Committee for recommendation and to the Full Board for adoption as an emergency action at the November Regents meeting. A copy of the proposed emergency rule and a statement of the facts and circumstances which necessitate emergency action are attached. Supporting materials are available upon request from the Secretary to the Board of

Regents. A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on December 2, 2015.

Procedural History

Effective October 21, 2014, Chapter 417 of the Laws of 2014 amended Education Law §305 to require the Commissioner to make a recommendation to the Board of Regents regarding a potential new mandate for required instruction in CPR and the use of AEDs in senior high schools. The law further required that prior to making this recommendation, the Commissioner seek the recommendations of teachers, school administrators, educators, and others with educational expertise in such curriculum, as well as comments from parents, students, and other interested parties prior to making a recommendation to the Board of Regents.

At the April 2015 Regents meeting, the Department presented a discussion item outlining the steps it took in compliance with the requirements of Chapter 417 of the Laws of 2014, including feedback from stakeholders regarding the impact of mandating such a course. In consideration of this feedback, and recognizing that CPR/AED affects the vital matters of life and death, at their June 2015 meeting, the Board proposed the addition of a new section 100.2(c)(11) of the Commissioner's regulations to require hands-only instruction in CPR and instruction in the use of AEDs in senior high schools. The proposed rule was adopted at the September 2015 Regents meeting and became effective October 7, 2015.

Background Information

Under new section 100.2(c)(11) of Commissioner's regulations, students are required to complete hands-only instruction in CPR and instruction in the use of AEDs at least once between grades 9-12 before graduation. The standards for such instruction must be based on a nationally recognized instructional program that utilizes the most current guidelines for cardiopulmonary resuscitation and emergency cardiovascular care issued by the American Heart Association or a substantially equivalent organization and be consistent with the requirements of the programs adopted by the American Heart Association or the American Red Cross, and must incorporate instruction designed to:

- recognize the signs of a possible cardiac arrest and to call 911;
- provide an opportunity to demonstrate the psychomotor skills necessary to perform hands-only CPR; and
- provide awareness in the use of an AED.

Most students with disabilities have the ability to complete the instruction in hands-only CPR and the use of AEDs requirement described above. However, the Department recognizes that there may be some students who, due to the nature of their disability, will not be able to physically or cognitively perform the tasks included in such instruction (e.g., demonstrating the psychomotor (hands-on) skills to perform CPR). The proposed amendment would allow the Committee on Special Education or

Multidisciplinary Team pursuant to Section 504 of the Rehabilitation Act of 1973 to exempt a student identified as having a disability that precludes his or her ability to participate in instruction in hands-only CPR and the use of AEDs from the instruction requirement in section 100.2(c)(11) of the Commissioner's regulations. The student's individualized education program or Section 504 accommodation plan would need to indicate that such student is physically or cognitively unable to perform the tasks included in the instruction in hands-only CPR and the use of AEDs.

Recommendation

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

VOTED: That a new subparagraph (iv) of paragraph (11) of subdivision (c) of section 100.2 of the Regulations of the Commissioner be added as submitted, effective November 17, 2015, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to ensure the timely implementation during the 2015-2016 school year, of the exemption option for students with disabilities from the requirement for instruction in hands-only CPR and the use of AEDs in senior high school.

Timetable for Implementation

If adopted at the November Regents meeting, the emergency rule will take effect on November 17, 2015. It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the February 2016 Regents meeting, after publication of a Notice of Proposed Rule Making in the State Register on December 2, 2015 and expiration of a 45-day public comment period.

Attachment

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 308, 804-c, 804-d, 4403 and Chapter 417 of the Laws of 2014.

A new subparagraph (iv) of paragraph (11) of subdivision (c) of section 100.2 is added, effective November 17, 2015, as follows:

(11) Students in senior high schools shall be provided instruction in hands-only cardiopulmonary resuscitation and the use of an automated external defibrillator.

(i) . . .

(ii) . . .

(iii) . . .

(iv) A student identified with a disability that precludes his or her ability to participate in hands-only cardiopulmonary resuscitation and the use of an automated external defibrillator may be exempted from the instruction requirement in this paragraph if the student's individualized education program developed in accordance with section 200.4 of this Title or accommodation plan developed pursuant to section 504 of the Rehabilitation Act of 1973 states that the student is physically or cognitively unable to perform the tasks included in the instruction.

8 NYCRR §100.2(c)(11)(iv)

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment is necessary to implement Regents policy to allow an exemption of a student identified as having a disability that precludes his or her ability to participate in hands-only instruction in cardiopulmonary resuscitation (CPR) and instruction in the use of Automated External Defibrillators (AEDs) from the new instruction requirement in section 100.2(c)(11) of the Commissioner's regulations, which became effective October 7, 2015.

Because the Board of Regents meets at monthly intervals, the earliest the proposed amendment could be adopted by regular action after publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on December 2, 2015 and expiration of the 45-day public comment period prescribed in State Administrative Procedure Act (SAPA) section 202 would be the February 22-23, 2016 Regents meeting. Furthermore, pursuant to SAPA, the earliest effective date of the proposed amendment, if adopted at the February meeting, would be March 9, 2016, the date a Notice of Adoption would be published in the State Register. However, the instruction requirement in section 100.2(c)(11) became effective on October 7, 2015 and is now in effect for the 2015-16 school year. While most students with disabilities have the ability to complete the instruction in hands-only CPR and the use of AEDs, the Department recognizes that there may be some students who, due to the nature of their disability, will not be able to physically or cognitively perform the tasks included in such instruction (e.g., demonstrating the psychomotor (hands-on) skills to perform CPR).

These students should be allowed an exemption from the requirement for instruction in CPR and the use of AEDs.

Emergency action is therefore necessary for the preservation of the general welfare in order to ensure the timely implementation during the 2015-2016 school year of the exemption option for students with disabilities from the instruction in hands-only CPR and the use of AEDs requirement in senior high school.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the February 22-23, 2016 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 45-day public comment period prescribed by the State Administrative Procedure Act for State agency rule makings.