



TO: P-12 Education Committee

FROM: Charles A. Szuberla, Jr. *Charles A. Szuberla Jr.*

SUBJECT: Proposed Addition of Section 136.8 of the Commissioner's Regulations, Relating to School Use of an Opioid Antagonist

DATE: July 13, 2015 *Margellen Eisa*

AUTHORIZATION(S): *Richard A. Trentacosta*

SUMMARY

Issue for Decision

Should the Board of Regents add a new section 136.8 of the Commissioner's Regulations to prescribe standards for the provision, maintenance and use of opioid antagonists by school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards, charter schools, non-public elementary and/or secondary schools in this State or any person employed by such district, board or school?

Reason (s) for Consideration

Required by statute (Part V of Chapter 57 of the Laws of 2015).

Proposed Handling

The proposed rule is being presented to the P-12 Education Committee for recommendation and to the Full Board for adoption as an emergency rule at the July 2015 Regents meeting. A statement of the facts and circumstances which necessitate emergency action is attached.

Procedural History

A Notice of Proposed Rule Making was published in the State Register on July 8, 2015. A copy of the proposed rule is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Currently, the problem of heroin and opioid abuse, and accidental overdose related deaths continues to grow at alarming rates across the State and the nation. The percentage of New York State (NYS) high school students who reported using heroin has more than doubled in recent years (Youth Risk Behavior Survey, 2005 and 2011).¹ In 2013, there were 89,269 admissions into treatment facilities for heroin and prescription opioid abuse in NYS alone, an increase from 63,793 in 2004. During this same time period, New Yorkers ages 18 to 24 had the largest increase in such admissions.²

Heroin abuse and misuse remains at epidemic proportions with its far reaching devastation impacting *all* communities. In June of 2014, Governor Andrew M. Cuomo signed legislation to develop and conduct a public health awareness campaign to address the dangers of opioid addiction and heroin use. The NYS Education Department, the NYS Office of Alcohol and Substance Abuse Services and the NYS Department of Health worked collaboratively to raise awareness of this public health crisis, and provided resources to the public by launching a new website. For further information please visit www.combatheroin.ny.gov

As we know, opioid overdose related deaths are preventable when Naloxone, an opioid antagonist, is timely administered. Therefore, the law recently enacted will now permit schools and their employees to administer an opioid-related overdose treatment in the event of an emergency.

Chapter 57 of the Laws of 2015 added a new section 922 to the Education Law, effective August 11, 2015, to permit school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards, charter schools, non-public elementary and/or secondary schools in this state or any person employed by such district, board or school to administer an opioid antagonist in the event of an emergency pursuant to the requirements of Public Health Law subdivision 3 of section 3309. To ensure ready and appropriate access for use during emergencies to any student or staff having opioid overdose symptoms whether or not there is a previous known history of opioid abuse, the statute provides that such entities may deliver, and maintain on-site, opioid antagonists in adequate supplies and types deemed by the Commissioner, in consultation with the Commissioner of the New York State Department of Health.

The proposed rule prescribes standards for the provision, maintenance and use of opioid antagonists pursuant to Education Law 922, to ensure ready and appropriate access for use during emergencies to any student or staff having opioid overdose symptoms whether or not there is a previous history of opioid abuse, pursuant to the

¹Centers for Disease Control and Prevention (CDC). *1991-2013 High School Youth Risk Behavior Survey Data*. Available at <http://nccd.cdc.gov/youthonline/>. Accessed on April 8, 2014

²New York State Office of Alcoholism and Substance Abuse Services (OASAS) Data Warehouse, April 13, 2014.

requirements of Public Health Law section 3309(3). If adopted, this proposed rule would support and align with numerous other statewide initiatives in prevention education, and in the reduction of opiate overdose deaths.

Recommendation

Staff recommends that the Regents take the following action:

VOTED: That section 136.8 of the Regulations of the Commissioner is added, as submitted, effective August 11, 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 to immediately establish standards for the provision, maintenance and administration of opioid antagonists pursuant to Education Law 922, as added by Part V of Chapter 57 of the Laws of 2015, and thus ensure the timely implementation of the statute on its effective date.

Timetable for Implementation

If adopted at the July Regents meeting, the emergency rule will become effective for a 90-day period beginning on August 11, 2015, the effective date of Part V of Chapter 57 of the Laws of 2015. It is anticipated that the proposed rule will be presented for permanent adoption at the September 2015 Regents meeting.

8 NYCRR §136.8

STATEMENT OF FACTS AND CIRCUMSTANCES

WHICH NECESSITATE EMERGENCY ACTION

The proposed rule is necessary to implement certain provisions of Part V of Chapter 57 of the Laws of 2015, which adds a new section 922 of the Education Law, effective August 11, 2015, to authorize, but not obligate, school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards, charter schools, and non-public elementary and secondary schools to participate in the opioid overdose prevention program as an opioid antagonist recipient pursuant to the provisions of Public Health Law section 3309. For school districts who choose to participate as an opioid antagonist recipient pursuant to the provisions of Public Health Law section 3309, any person employed by such entity who has been trained by a program approved under that section may administer an opioid antagonist to any student or staff having symptoms of an opioid overdose in an instructional school facility, in the event of an emergency pursuant to the requirements of Public Health Law section 3309.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the September 16-17, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be October 7, 2015, the date a Notice of Adoption would be published in the State Register. However,

the provisions of Part V of Chapter 57 of the Laws of 2015 become effective on August 11, 2015 and section 7 of the statute directs the Commissioner to promulgate necessary regulations for the timely implementation of the statute on its effective date.

Therefore, emergency action is necessary at the June 2015 Regents meeting for the preservation of the general welfare in order to immediately establish standards for the provision, maintenance and administration of an opioid antagonist in the event of an emergency pursuant to Education Law section 922, as added by Part V of Chapter 57 of the Laws of 2015, and thus ensure the timely implementation of the statute on its effective date.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the September 16-17, 2015 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 305 and 922 and Chapter 57 of the Laws of 2015

Section 136.8 of the Regulations of the Commissioner of Education is added, effective August 11, 2015, as follows:

§136.8 Opioid Overdose Prevention

(a) Definitions. As used in this section:

(1) Opioid antagonist means a drug approved by the Food and Drug Administration that, when administered, negates or neutralizes in whole or in part the pharmacological effects of an opioid, such as heroin, in the body. For use under this section, opioid antagonist shall be limited to naloxone and other medications approved by the Department of Health for such purpose.

(2) Opioid antagonist recipient (or “recipient”), for purposes of this section, means a school district, board of cooperative educational services (BOCES), county vocational education and extension board, charter school, non-public elementary and/or secondary school, or any person employed by such district, board or school who has been authorized by such district, board or school to participate in an opioid prevention program and has received training by a program approved pursuant to Public Health Law section 3309.

(3) Instructional school facility means a building or other facility maintained by a school district, board of cooperative educational services (BOCES), a county vocational education and extension board, charter school, or non-public elementary and secondary school where instruction is provided to students pursuant to its curriculum.

(b) School districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools may elect to participate as an opioid antagonist recipient pursuant to the provisions of Public Health Law section 3309. For school districts that choose to participate as an opioid antagonist recipient pursuant to the provisions of Public Health Law section 3309, any person employed by such entity who has been trained by a program approved under that section may administer an opioid antagonist in the event of an emergency pursuant to the requirements of Public Health Law section 3309.

(c) School districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools choosing to participate in the opioid overdose prevention program shall comply with the requirements of Public Health Law section 3309 including, but not limited to, appropriate clinical oversight, record keeping and reporting.

(d) School districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools who choose to participate in the opioid overdose prevention program pursuant to Public Health Law section 3309 shall provide and maintain on-site in each instructional school facility opioid antagonists. Each such facility shall have sufficient opioid antagonists available to ensure ready and appropriate access for use during emergencies to any student or staff having symptoms of an opioid overdose, whether or not there is a known previous history of opioid abuse in accordance with the provisions of Public Health Law section 3309. In determining the quantities and

placement of opioid antagonists to be maintained on-site in an instructional school facility, consideration shall be given to:

(1) the number of students, staff and other individuals that are customarily or reasonably anticipated to be within such facility; and

(2) the physical layout of the facility, including but not limited to:

(i) location of stairways and elevators;

(ii) number of floors in the facility;

(iii) location of classrooms and other areas of the facility where large congregations of individuals may occur; and

(iv) any other unique design features of the facility.

(e) Nothing in this section shall require school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools to participate in an opioid overdose prevention program, and any participation by an individual employee shall be voluntary.

(f) Use of an opioid antagonist pursuant to this section and the provisions of Public Health Law section 3309 shall be considered first aid or emergency treatment for the purpose of any statute relating to liability; provided that a school district, board of cooperative educational services (BOCES), county vocational education and extension board, charter school, non-public elementary and/or secondary school, or any person employed by such district, board or school, acting reasonably and in good faith in compliance with the provisions of Public Health Law section 3309, shall not be subject to criminal, civil or administrative liability solely by reason of such action.